

By: Representative Byrd

To: County Affairs

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 858

1 AN ACT TO CREATE THE MISSISSIPPI REGIONAL PRENEED DISASTER
2 CLEAN UP ACT; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972,
3 TO AUTHORIZE COUNTY BOARDS OF SUPERVISORS OR THE GOVERNING
4 AUTHORITIES OF MUNICIPALITIES, AS THE CASE MAY BE, TO ENTER INTO
5 JOINT BID AGREEMENTS FOR DISASTER CLEAN-UP; TO AMEND SECTION
6 17-13-11, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING
7 SECTION; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** (1) This section shall be known and may be cited
10 as the "Mississippi Regional Preneed Disaster Cleanup Act."

11 (2) For the purposes of this section, the following words
12 and phrases shall have the meanings ascribed in this section
13 unless the context clearly indicates otherwise:

14 (a) "Disaster-related" means arising out of a severe
15 weather event or other emergency as declared by the Governor.

16 (b) "Preneed" means a contract entered into in advance
17 of the need for the goods or services, such that the contracted
18 entity is retained before the need for performance of the
19 contract.



20 **SECTION 2.** It is the intent and policy of the Mississippi
21 Legislature that county boards or the governing authorities of
22 municipalities be authorized to jointly contract for preneed
23 disaster-related solid waste collection, disposal, and monitoring
24 so that the citizens of those counties and municipalities will be
25 quickly and adequately served as the community recovers from the
26 disaster.

27 **SECTION 3.** Section 31-7-13, Mississippi Code of 1972, is
28 amended as follows:

29 31-7-13. All agencies and governing authorities shall
30 purchase their commodities and printing; contract for garbage
31 collection or disposal; contract for solid waste collection or
32 disposal; contract for sewage collection or disposal; contract for
33 public construction; and contract for rentals as herein provided.

34 (a) **Bidding procedure for purchases not over \$5,000.00.**
35 Purchases which do not involve an expenditure of more than Five
36 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
37 charges, may be made without advertising or otherwise requesting
38 competitive bids. However, nothing contained in this paragraph
39 (a) shall be construed to prohibit any agency or governing
40 authority from establishing procedures which require competitive
41 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

42 (b) **Bidding procedure for purchases over \$5,000.00 but**
43 **not over \$75,000.00.** Purchases which involve an expenditure of
44 more than Five Thousand Dollars (\$5,000.00) but not more than



45 Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight
46 and shipping charges, may be made from the lowest and best bidder
47 without publishing or posting advertisement for bids, provided at
48 least two (2) competitive written bids have been obtained. Any
49 state agency or community/junior college purchasing commodities or
50 procuring construction pursuant to this paragraph (b) may
51 authorize its purchasing agent, or his designee, to accept the
52 lowest competitive written bid under Seventy-five Thousand Dollars
53 (\$75,000.00). Any governing authority purchasing commodities
54 pursuant to this paragraph (b) may authorize its purchasing agent,
55 or his designee, with regard to governing authorities other than
56 counties, or its purchase clerk, or his designee, with regard to
57 counties, to accept the lowest and best competitive written bid.
58 Such authorization shall be made in writing by the governing
59 authority and shall be maintained on file in the primary office of
60 the agency and recorded in the official minutes of the governing
61 authority, as appropriate. The purchasing agent or the purchase
62 clerk, or his designee, as the case may be, and not the governing
63 authority, shall be liable for any penalties and/or damages as may
64 be imposed by law for any act or omission of the purchasing agent
65 or purchase clerk, or his designee, constituting a violation of
66 law in accepting any bid without approval by the governing
67 authority. The term "competitive written bid" shall mean a bid
68 submitted on a bid form furnished by the buying agency or
69 governing authority and signed by authorized personnel



70 representing the vendor, or a bid submitted on a vendor's
71 letterhead or identifiable bid form and signed by authorized
72 personnel representing the vendor. "Competitive" shall mean that
73 the bids are developed based upon comparable identification of the
74 needs and are developed independently and without knowledge of
75 other bids or prospective bids. Any bid item for construction in
76 excess of Five Thousand Dollars (\$5,000.00) shall be broken down
77 by components to provide detail of component description and
78 pricing. These details shall be submitted with the written bids
79 and become part of the bid evaluation criteria. Bids may be
80 submitted by facsimile, electronic mail or other generally
81 accepted method of information distribution. Bids submitted by
82 electronic transmission shall not require the signature of the
83 vendor's representative unless required by agencies or governing
84 authorities.

85 (c) **Bidding procedure for purchases over \$75,000.00.**

86 (i) **Publication requirement.**

87 1. Purchases which involve an expenditure of
88 more than Seventy-five Thousand Dollars (\$75,000.00), exclusive of
89 freight and shipping charges, may be made from the lowest and best
90 bidder after advertising for competitive bids once each week for
91 two (2) consecutive weeks in a regular newspaper published in the
92 county or municipality in which such agency or governing authority
93 is located. However, all American Recovery and Reinvestment Act
94 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)



shall be bid. All references to American Recovery and Reinvestment Act projects in this section shall not apply to programs identified in Division B of the American Recovery and Reinvestment Act.

2. Reverse auctions shall be the primary method for receiving bids during the bidding process. If a purchasing entity determines that a reverse auction is not in the best interest of the state, then that determination must be approved by the Public Procurement Review Board. The purchasing entity shall submit a detailed explanation of why a reverse auction would not be in the best interest of the state and present an alternative process to be approved by the Public Procurement Review Board. If the Public Procurement Review Board authorizes the purchasing entity to solicit bids with a method other than reverse auction, then the purchasing entity may designate the other methods by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids received electronically in a secure system, or bids received by any other method that promotes open competition and has been approved by the Office of Purchasing and Travel. However, reverse auction shall not be used for any public contract for design, construction, improvement, repair or remodeling of any public facilities, including the purchase of materials, supplies, equipment or goods for same and including buildings, roads and bridges. The Public Procurement Review Board must approve any contract entered into by



alternative process. The provisions of this item 2 shall not apply to the individual state institutions of higher learning. The provisions of this item 2 requiring reverse auction as the primary method of receiving bids shall not apply to term contract purchases as provided in paragraph (n) of this section; however, a purchasing entity may, in its discretion, utilize reverse auction for such purchases. The provisions of this item 2 shall not apply to individual public schools, including public charter schools and public school districts, only when purchasing copyrighted educational supplemental materials and software as a service product. For such purchases, a local school board may authorize a purchasing entity in its jurisdiction to use a Request for Qualifications which promotes open competition and meets the requirements of the Office of Purchasing and Travel.

3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Seventy-five Thousand Dollars (\$75,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any projects in excess of Twenty-five Thousand Dollars



(\$25,000.00) under the American Recovery and Reinvestment Act, publication shall be made one (1) time and the bid opening for construction projects shall not be less than ten (10) working days after the date of the published notice. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above-provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice. Submissions received by the Mississippi Procurement Technical Assistance Program for projects funded by the American Recovery and Reinvestment Act shall be displayed on a separate and unique Internet web page accessible to the public and maintained by the Mississippi



Development Authority for the Mississippi Procurement Technical Assistance Program. Those American Recovery and Reinvestment Act related submissions shall be publicly posted within twenty-four (24) hours of receipt by the Mississippi Development Authority and the bid opening shall not occur until the submission has been posted for ten (10) consecutive days. The Department of Finance and Administration shall maintain information regarding contracts and other expenditures from the American Recovery and Reinvestment Act, on a unique Internet web page accessible to the public. The Department of Finance and Administration shall promulgate rules regarding format, content and deadlines, unless otherwise specified by law, of the posting of award notices, contract execution and subsequent amendments, links to the contract documents, expenditures against the awarded contracts and general expenditures of funds from the American Recovery and Reinvestment Act. Within one (1) working day of the contract award, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration, notice of the award, including the award recipient, the contract amount, and a brief summary of the contract in accordance with rules promulgated by the department. Within one (1) working day of the contract execution, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration a summary of the executed contract and make a copy of the appropriately redacted contract documents available



for linking to the designated web page in accordance with the rules promulgated by the department. The information provided by the agency or governing authority shall be posted to the web page for the duration of the American Recovery and Reinvestment Act funding or until the project is completed, whichever is longer.

(ii) **Bidding process amendment procedure.** If all plans and/or specifications are published in the notification, then the plans and/or specifications may not be amended. If all plans and/or specifications are not published in the notification, then amendments to the plans/specifications, bid opening date, bid opening time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments. This notification of amendments may be made via mail, facsimile, electronic mail or other generally accepted method of information distribution. No addendum to bid specifications may be issued within two (2) working days of the time established for the receipt of bids unless such addendum also amends the bid opening to a date not less than five (5) working days after the date of the addendum.

(iii) **Filing requirement.** In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board



of the governing authority. In addition to these requirements, a bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were issued, and such file shall also contain such information as is pertinent to the bid.

(iv) **Specification restrictions.**

1. Specifications pertinent to such bidding shall be written so as not to exclude comparable equipment of domestic manufacture. However, if valid justification is presented, the Department of Finance and Administration or the board of a governing authority may approve a request for specific equipment necessary to perform a specific job. Further, such justification, when placed on the minutes of the board of a governing authority, may serve as authority for that governing authority to write specifications to require a specific item of equipment needed to perform a specific job. In addition to these requirements, from and after July 1, 1990, vendors of relocatable classrooms and the specifications for the purchase of such relocatable classrooms published by local school boards shall meet all pertinent regulations of the State Board of Education, including prior approval of such bid by the State Department of Education.

2. Specifications for construction projects may include an allowance for commodities, equipment, furniture, construction materials or systems in which prospective bidders are



instructed to include in their bids specified amounts for such items so long as the allowance items are acquired by the vendor in a commercially reasonable manner and approved by the agency/governing authority. Such acquisitions shall not be made to circumvent the public purchasing laws.

(v) **Electronic bids.** Agencies and governing authorities shall provide a secure electronic interactive system for the submittal of bids requiring competitive bidding that shall be an additional bidding option for those bidders who choose to submit their bids electronically. The Department of Finance and Administration shall provide, by regulation, the standards that agencies must follow when receiving electronic bids. Agencies and governing authorities shall make the appropriate provisions necessary to accept electronic bids from those bidders who choose to submit their bids electronically for all purchases requiring competitive bidding under this section. Any special condition or requirement for the electronic bid submission shall be specified in the advertisement for bids required by this section. Agencies or governing authorities that are currently without available high speed Internet access shall be exempt from the requirement of this subparagraph (v) until such time that high speed Internet access becomes available. Any county having a population of less than twenty thousand (20,000) shall be exempt from the provisions of this subparagraph (v). Any municipality having a population of less than ten thousand (10,000) shall be exempt from the



provisions of this subparagraph (v). The provisions of this subparagraph (v) shall not require any bidder to submit bids electronically. When construction bids are submitted electronically, the requirement for including a certificate of responsibility, or a statement that the bid enclosed does not exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the bid envelope as indicated in Section 31-3-21(1) and (2) shall be deemed in compliance with by including same as an attachment with the electronic bid submittal.

(d) **Lowest and best bid decision procedure.**

(i) **Decision procedure.** Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.



(ii) **Decision procedure for Certified Purchasing Offices.** In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), Certified Purchasing Offices may also use the following procedure: Purchases may be made from the bidder offering the best value. In determining the best value bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions, documented previous experience, training costs and other relevant provisions, including, but not limited to, a bidder having a local office and inventory located within the jurisdiction of the governing authority, may be included in the best value calculation. This provision shall authorize Certified Purchasing Offices to utilize a Request For Proposals (RFP) process when purchasing commodities. All best value procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. No agency or governing authority shall accept a bid based on items or criteria not included in the specifications.

(iii) **Decision procedure for Mississippi Landmarks.** In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), where purchase involves renovation, restoration, or both, of the State Capitol Building or any other historical building designated for at least five (5) years as a Mississippi Landmark by the Board of Trustees of the Department of Archives and History under the authority of Sections



320 39-7-7 and 39-7-11, the agency or governing authority may use the
321 following procedure: Purchases may be made from the lowest and
322 best prequalified bidder. Prequalification of bidders shall be
323 determined not less than fifteen (15) working days before the
324 first published notice of bid opening. Prequalification criteria
325 shall be limited to bidder's knowledge and experience in
326 historical restoration, preservation and renovation. In
327 determining the lowest and best bid, freight and shipping charges
328 shall be included. Life-cycle costing, total cost bids,
329 warranties, guaranteed buy-back provisions and other relevant
330 provisions may be included in the best bid calculation. All best
331 bid and prequalification procedures for state agencies must be in
332 compliance with regulations established by the Department of
333 Finance and Administration. If any governing authority accepts a
334 bid other than the lowest bid actually submitted, it shall place
335 on its minutes detailed calculations and narrative summary showing
336 that the accepted bid was determined to be the lowest and best
337 bid, including the dollar amount of the accepted bid and the
338 dollar amount of the lowest bid. No agency or governing authority
339 shall accept a bid based on items not included in the
340 specifications.

341 (iv) **Construction project negotiations authority.**

342 If the lowest and best bid is not more than ten percent (10%)
343 above the amount of funds allocated for a public construction or
344 renovation project, then the agency or governing authority shall



be permitted to negotiate with the lowest bidder in order to enter into a contract for an amount not to exceed the funds allocated.

(e) **Lease-purchase authorization.** For the purposes of this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of equipment covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the



370 Class Life Asset Depreciation Range System established by the
371 Internal Revenue Service pursuant to the United States Internal
372 Revenue Code and regulations thereunder as in effect on December
373 31, 1980, or comparable depreciation guidelines with respect to
374 any equipment not covered by ADR guidelines. Any lease-purchase
375 agreement entered into pursuant to this paragraph (e) may contain
376 any of the terms and conditions which a master lease-purchase
377 agreement may contain under the provisions of Section 31-7-10(5),
378 and shall contain an annual allocation dependency clause
379 substantially similar to that set forth in Section 31-7-10(8).
380 Each agency or governing authority entering into a lease-purchase
381 transaction pursuant to this paragraph (e) shall maintain with
382 respect to each such lease-purchase transaction the same
383 information as required to be maintained by the Department of
384 Finance and Administration pursuant to Section 31-7-10(13).
385 However, nothing contained in this section shall be construed to
386 permit agencies to acquire items of equipment with a total
387 acquisition cost in the aggregate of less than Ten Thousand
388 Dollars (\$10,000.00) by a single lease-purchase transaction. All
389 equipment, and the purchase thereof by any lessor, acquired by
390 lease-purchase under this paragraph and all lease-purchase
391 payments with respect thereto shall be exempt from all Mississippi
392 sales, use and ad valorem taxes. Interest paid on any
393 lease-purchase agreement under this section shall be exempt from
394 State of Mississippi income taxation.



395 (f) **Alternate bid authorization.** When necessary to
396 ensure ready availability of commodities for public works and the
397 timely completion of public projects, no more than two (2)
398 alternate bids may be accepted by a governing authority for
399 commodities. No purchases may be made through use of such
400 alternate bids procedure unless the lowest and best bidder cannot
401 deliver the commodities contained in his bid. In that event,
402 purchases of such commodities may be made from one (1) of the
403 bidders whose bid was accepted as an alternate.

404 (g) **Construction contract change authorization.** In the
405 event a determination is made by an agency or governing authority
406 after a construction contract is let that changes or modifications
407 to the original contract are necessary or would better serve the
408 purpose of the agency or the governing authority, such agency or
409 governing authority may, in its discretion, order such changes
410 pertaining to the construction that are necessary under the
411 circumstances without the necessity of further public bids;
412 provided that such change shall be made in a commercially
413 reasonable manner and shall not be made to circumvent the public
414 purchasing statutes. In addition to any other authorized person,
415 the architect or engineer hired by an agency or governing
416 authority with respect to any public construction contract shall
417 have the authority, when granted by an agency or governing
418 authority, to authorize changes or modifications to the original
419 contract without the necessity of prior approval of the agency or



governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

(h) **Petroleum purchase alternative.** In addition to other methods of purchasing authorized in this chapter, when any agency or governing authority shall have a need for gas, diesel fuel, oils and/or other petroleum products in excess of the amount set forth in paragraph (a) of this section, such agency or governing authority may purchase the commodity after having solicited and obtained at least two (2) competitive written bids, as defined in paragraph (b) of this section. If two (2) competitive written bids are not obtained, the entity shall comply with the procedures set forth in paragraph (c) of this section. In the event any agency or governing authority shall have advertised for bids for the purchase of gas, diesel fuel, oils and other petroleum products and coal and no acceptable bids can be obtained, such agency or governing authority is authorized and directed to enter into any negotiations necessary to secure the lowest and best contract available for the purchase of such commodities.

(i) **Road construction petroleum products price adjustment clause authorization.** Any agency or governing authority authorized to enter into contracts for the construction, maintenance, surfacing or repair of highways, roads or streets,



may include in its bid proposal and contract documents a price adjustment clause with relation to the cost to the contractor, including taxes, based upon an industry-wide cost index, of petroleum products including asphalt used in the performance or execution of the contract or in the production or manufacture of materials for use in such performance. Such industry-wide index shall be established and published monthly by the Mississippi Department of Transportation with a copy thereof to be mailed, upon request, to the clerks of the governing authority of each municipality and the clerks of each board of supervisors throughout the state. The price adjustment clause shall be based on the cost of such petroleum products only and shall not include any additional profit or overhead as part of the adjustment. The bid proposals or document contract shall contain the basis and methods of adjusting unit prices for the change in the cost of such petroleum products.

(j) **State agency emergency purchase procedure.** If the governing board or the executive head, or his designees, of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the head of such agency, or his designees, shall file with the Department of Finance and Administration (i) a statement explaining the conditions and circumstances of the emergency,



470 which shall include a detailed description of the events leading
471 up to the situation and the negative impact to the entity if the
472 purchase is made following the statutory requirements set forth in
473 paragraph (a), (b) or (c) of this section, and (ii) a certified
474 copy of the appropriate minutes of the board of such agency
475 requesting the emergency purchase, if applicable. Upon receipt of
476 the statement and applicable board certification, the State Fiscal
477 Officer, or his designees, may, in writing, authorize the purchase
478 or repair without having to comply with competitive bidding
479 requirements.

480 If the governing board or the executive head, or his
481 designees, of any agency determines that an emergency exists in
482 regard to the purchase of any commodities or repair contracts, so
483 that the delay incident to giving opportunity for competitive
484 bidding would threaten the health or safety of any person, or the
485 preservation or protection of property, then the provisions in
486 this section for competitive bidding shall not apply, and any
487 officer or agent of the agency having general or specific
488 authority for making the purchase or repair contract shall approve
489 the bill presented for payment, and he shall certify in writing
490 from whom the purchase was made, or with whom the repair contract
491 was made.

492 Total purchases made under this paragraph (j) shall only be
493 for the purpose of meeting needs created by the emergency
494 situation. Following the emergency purchase, documentation of the



495 purchase, including a description of the commodity purchased, the
496 purchase price thereof and the nature of the emergency shall be
497 filed with the Department of Finance and Administration. Any
498 contract awarded pursuant to this paragraph (j) shall not exceed a
499 term of one (1) year.

500 Purchases under the grant program established under Section
501 37-68-7 in response to COVID-19 and the directive that school
502 districts create a distance learning plan and fulfill technology
503 needs expeditiously shall be deemed an emergency purchase for
504 purposes of this paragraph (j).

505 (k) **Governing authority emergency purchase procedure.**

506 If the governing authority, or the governing authority acting
507 through its designee, shall determine that an emergency exists in
508 regard to the purchase of any commodities or repair contracts, so
509 that the delay incident to giving opportunity for competitive
510 bidding would be detrimental to the interest of the governing
511 authority, then the provisions herein for competitive bidding
512 shall not apply and any officer or agent of such governing
513 authority having general or special authority therefor in making
514 such purchase or repair shall approve the bill presented therefor,
515 and he shall certify in writing thereon from whom such purchase
516 was made, or with whom such a repair contract was made. At the
517 board meeting next following the emergency purchase or repair
518 contract, documentation of the purchase or repair contract,
519 including a description of the commodity purchased, the price



thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority. Purchases under the grant program established under Section 37-68-7 in response to COVID-19 and the directive that school districts create a distance learning plan and fulfill technology needs expeditiously shall be deemed an emergency purchase for purposes of this paragraph (k).

(1) **Hospital purchase, lease-purchase and lease authorization.**

(i) The commissioners or board of trustees of any public hospital may contract with such lowest and best bidder for the purchase or lease-purchase of any commodity under a contract of purchase or lease-purchase agreement whose obligatory payment terms do not exceed five (5) years.

(ii) In addition to the authority granted in subparagraph (i) of this paragraph (1), the commissioners or board of trustees is authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further



liability on the part of the lessee. Any such contract for the lease of equipment or services executed on behalf of the commissioners or board that complies with the provisions of this subparagraph (ii) shall be excepted from the bid requirements set forth in this section.

(m) **Exceptions from bidding requirements.** Excepted from bid requirements are:

(i) **Purchasing agreements approved by department.** Purchasing agreements, contracts and maximum price regulations executed or approved by the Department of Finance and Administration.

(ii) **Outside equipment repairs.** Repairs to equipment, when such repairs are made by repair facilities in the private sector; however, engines, transmissions, rear axles and/or other such components shall not be included in this exemption when replaced as a complete unit instead of being repaired and the need for such total component replacement is known before disassembly of the component; however, invoices identifying the equipment, specific repairs made, parts identified by number and name, supplies used in such repairs, and the number of hours of labor and costs therefor shall be required for the payment for such repairs.

(iii) **In-house equipment repairs.** Purchases of parts for repairs to equipment, when such repairs are made by personnel of the agency or governing authority; however, entire



assemblies, such as engines or transmissions, shall not be included in this exemption when the entire assembly is being replaced instead of being repaired.

(iv) **Raw gravel or dirt.** Raw unprocessed deposits of gravel or fill dirt which are to be removed and transported by the purchaser.

(v) **Governmental equipment auctions.** Motor vehicles or other equipment purchased from a federal agency or authority, another governing authority or state agency of the State of Mississippi, or any governing authority or state agency of another state at a public auction held for the purpose of disposing of such vehicles or other equipment. Any purchase by a governing authority under the exemption authorized by this subparagraph (v) shall require advance authorization spread upon the minutes of the governing authority to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(vi) **Intergovernmental sales and transfers.** Purchases, sales, transfers or trades by governing authorities or state agencies when such purchases, sales, transfers or trades are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi, or any state agency or governing authority of another state.

Nothing in this section shall permit such purchases through public



595 auction except as provided for in subparagraph (v) of this
596 paragraph (m). It is the intent of this section to allow
597 governmental entities to dispose of and/or purchase commodities
598 from other governmental entities at a price that is agreed to by
599 both parties. This shall allow for purchases and/or sales at
600 prices which may be determined to be below the market value if the
601 selling entity determines that the sale at below market value is
602 in the best interest of the taxpayers of the state. Governing
603 authorities shall place the terms of the agreement and any
604 justification on the minutes, and state agencies shall obtain
605 approval from the Department of Finance and Administration, prior
606 to releasing or taking possession of the commodities.

607 (vii) **Perishable supplies or food.** Perishable
608 supplies or food purchased for use in connection with hospitals,
609 the school lunch programs, homemaking programs and for the feeding
610 of county or municipal prisoners.

611 (viii) **Single-source items.** Noncompetitive items
612 available from one (1) source only. In connection with the
613 purchase of noncompetitive items only available from one (1)
614 source, a certification of the conditions and circumstances
615 requiring the purchase shall be filed by the agency with the
616 Department of Finance and Administration and by the governing
617 authority with the board of the governing authority. Upon receipt
618 of that certification the Department of Finance and Administration
619 or the board of the governing authority, as the case may be, may,



620 in writing, authorize the purchase, which authority shall be noted
621 on the minutes of the body at the next regular meeting thereafter.
622 In those situations, a governing authority is not required to
623 obtain the approval of the Department of Finance and
624 Administration. Following the purchase, the executive head of the
625 state agency, or his designees, shall file with the Department of
626 Finance and Administration, documentation of the purchase,
627 including a description of the commodity purchased, the purchase
628 price thereof and the source from whom it was purchased.

629 (ix) **Waste disposal facility construction**
630 **contracts.** Construction of incinerators and other facilities for
631 disposal of solid wastes in which products either generated
632 therein, such as steam, or recovered therefrom, such as materials
633 for recycling, are to be sold or otherwise disposed of; however,
634 in constructing such facilities, a governing authority or agency
635 shall publicly issue requests for proposals, advertised for in the
636 same manner as provided herein for seeking bids for public
637 construction projects, concerning the design, construction,
638 ownership, operation and/or maintenance of such facilities,
639 wherein such requests for proposals when issued shall contain
640 terms and conditions relating to price, financial responsibility,
641 technology, environmental compatibility, legal responsibilities
642 and such other matters as are determined by the governing
643 authority or agency to be appropriate for inclusion; and after
644 responses to the request for proposals have been duly received,



645 the governing authority or agency may select the most qualified
646 proposal or proposals on the basis of price, technology and other
647 relevant factors and from such proposals, but not limited to the
648 terms thereof, negotiate and enter contracts with one or more of
649 the persons or firms submitting proposals.

650 (x) **Hospital group purchase contracts.** Supplies,
651 commodities and equipment purchased by hospitals through group
652 purchase programs pursuant to Section 31-7-38.

653 (xi) **Information technology products.** Purchases
654 of information technology products made by governing authorities
655 under the provisions of purchase schedules, or contracts executed
656 or approved by the Mississippi Department of Information
657 Technology Services and designated for use by governing
658 authorities.

659 (xii) **Energy efficiency services and equipment.**
660 Energy efficiency services and equipment acquired by school
661 districts, community and junior colleges, institutions of higher
662 learning and state agencies or other applicable governmental
663 entities on a shared-savings, lease or lease-purchase basis
664 pursuant to Section 31-7-14.

665 (xiii) **Municipal electrical utility system fuel.**
666 Purchases of coal and/or natural gas by municipally owned electric
667 power generating systems that have the capacity to use both coal
668 and natural gas for the generation of electric power.



669 (xiv) **Library books and other reference materials.**

670 Purchases by libraries or for libraries of books and periodicals;
671 processed film, videocassette tapes, filmstrips and slides;
672 recorded audiotapes, cassettes and diskettes; and any such items
673 as would be used for teaching, research or other information
674 distribution; however, equipment such as projectors, recorders,
675 audio or video equipment, and monitor televisions are not exempt
676 under this subparagraph.

677 (xv) **Unmarked vehicles.** Purchases of unmarked
678 vehicles when such purchases are made in accordance with
679 purchasing regulations adopted by the Department of Finance and
680 Administration pursuant to Section 31-7-9(2).

681 (xvi) **Election ballots.** Purchases of ballots
682 printed pursuant to Section 23-15-351.

683 (xvii) **Multichannel interactive video systems.**
684 From and after July 1, 1990, contracts by Mississippi Authority
685 for Educational Television with any private educational
686 institution or private nonprofit organization whose purposes are
687 educational in regard to the construction, purchase, lease or
688 lease-purchase of facilities and equipment and the employment of
689 personnel for providing multichannel interactive video systems
690 (ITSF) in the school districts of this state.

691 (xviii) **Purchases of prison industry products by**
692 **the Department of Corrections, regional correctional facilities or**
693 **privately owned prisons.** Purchases made by the Mississippi



694 Department of Corrections, regional correctional facilities or
695 privately owned prisons involving any item that is manufactured,
696 processed, grown or produced from the state's prison industries.

697 (xix) **Undercover operations equipment.** Purchases
698 of surveillance equipment or any other high-tech equipment to be
699 used by law enforcement agents in undercover operations, provided
700 that any such purchase shall be in compliance with regulations
701 established by the Department of Finance and Administration.

702 (xx) **Junior college books for rent.** Purchases by
703 community or junior colleges of textbooks which are obtained for
704 the purpose of renting such books to students as part of a book
705 service system.

706 (xxi) **Certain school district purchases.**
707 Purchases of commodities made by school districts from vendors
708 with which any levying authority of the school district, as
709 defined in Section 37-57-1, has contracted through competitive
710 bidding procedures for purchases of the same commodities.

711 (xxii) **Garbage, solid waste and sewage contracts.**
712 Contracts for garbage collection or disposal, contracts for solid
713 waste collection or disposal and contracts for sewage collection
714 or disposal.

715 (xxiii) **Municipal water tank maintenance**
716 **contracts.** Professional maintenance program contracts for the
717 repair or maintenance of municipal water tanks, which provide
718 professional services needed to maintain municipal water storage



719 tanks for a fixed annual fee for a duration of two (2) or more
720 years.

721 (xxiv) **Purchases of Mississippi Industries for the**
722 **Blind products.** Purchases made by state agencies or governing
723 authorities involving any item that is manufactured, processed or
724 produced by the Mississippi Industries for the Blind.

725 (xxv) **Purchases of state-adopted textbooks.**
726 Purchases of state-adopted textbooks by public school districts.

727 (xxvi) **Certain purchases under the Mississippi**
728 **Major Economic Impact Act.** Contracts entered into pursuant to the
729 provisions of Section 57-75-9(2), (3) and (4).

730 (xxvii) **Used heavy or specialized machinery or**
731 **equipment for installation of soil and water conservation**
732 **practices purchased at auction.** Used heavy or specialized
733 machinery or equipment used for the installation and
734 implementation of soil and water conservation practices or
735 measures purchased subject to the restrictions provided in
736 Sections 69-27-331 through 69-27-341. Any purchase by the State
737 Soil and Water Conservation Commission under the exemption
738 authorized by this subparagraph shall require advance
739 authorization spread upon the minutes of the commission to include
740 the listing of the item or items authorized to be purchased and
741 the maximum bid authorized to be paid for each item or items.



742 (xxviii) **Hospital lease of equipment or services.**

743 Leases by hospitals of equipment or services if the leases are in
744 compliance with paragraph (1)(ii).

745 (xxix) **Purchases made pursuant to qualified**

746 **cooperative purchasing agreements.** Purchases made by certified
747 purchasing offices of state agencies or governing authorities
748 under cooperative purchasing agreements previously approved by the
749 Office of Purchasing and Travel and established by or for any
750 municipality, county, parish or state government or the federal
751 government, provided that the notification to potential
752 contractors includes a clause that sets forth the availability of
753 the cooperative purchasing agreement to other governmental
754 entities. Such purchases shall only be made if the use of the
755 cooperative purchasing agreements is determined to be in the best
756 interest of the governmental entity.

757 (xxx) **School yearbooks.** Purchases of school
758 yearbooks by state agencies or governing authorities; provided,
759 however, that state agencies and governing authorities shall use
760 for these purchases the RFP process as set forth in the
761 Mississippi Procurement Manual adopted by the Office of Purchasing
762 and Travel.

763 (xxxi) **Design-build method of contracting and**
764 **certain other contracts.** Contracts entered into under the
765 provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.



766 (xxxii) **Toll roads and bridge construction**
767 **projects.** Contracts entered into under the provisions of Section
768 65-43-1 or 65-43-3.

769 (xxxiii) **Certain purchases under Section 57-1-221.**
770 Contracts entered into pursuant to the provisions of Section
771 57-1-221.

772 (xxxiv) **Certain transfers made pursuant to the**
773 **provisions of Section 57-105-1(7).** Transfers of public property
774 or facilities under Section 57-105-1(7) and construction related
775 to such public property or facilities.

776 (xxxv) **Certain purchases or transfers entered into**
777 **with local electrical power associations.** Contracts or agreements
778 entered into under the provisions of Section 55-3-33.

779 (xxxvi) **Certain purchases by an academic medical**
780 **center or health sciences school.** Purchases by an academic
781 medical center or health sciences school, as defined in Section
782 37-115-50, of commodities that are used for clinical purposes and
783 1. intended for use in the diagnosis of disease or other
784 conditions or in the cure, mitigation, treatment or prevention of
785 disease, and 2. medical devices, biological, drugs and
786 radiation-emitting devices as defined by the United States Food
787 and Drug Administration.

788 (xxxvii) **Certain purchases made under the Alyce G.**
789 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi



790 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
791 Lottery Law.

792 (xxxviii) **Certain purchases made by the Department**
793 **of Health and the Department of Revenue.** Purchases made by the
794 Department of Health and/or the Department of Revenue solely for
795 the purpose of fulfilling their respective responsibilities under
796 the Mississippi Medical Cannabis Act. This subparagraph shall
797 stand repealed on June 30, 2023.

798 (n) **Term contract authorization.** All contracts for the
799 purchase of:

800 (i) All contracts for the purchase of commodities,
801 equipment and public construction (including, but not limited to,
802 repair and maintenance), may be let for periods of not more than
803 sixty (60) months in advance, subject to applicable statutory
804 provisions prohibiting the letting of contracts during specified
805 periods near the end of terms of office. Term contracts for a
806 period exceeding twenty-four (24) months shall also be subject to
807 ratification or cancellation by governing authority boards taking
808 office subsequent to the governing authority board entering the
809 contract.

810 (ii) Bid proposals and contracts may include price
811 adjustment clauses with relation to the cost to the contractor
812 based upon a nationally published industry-wide or nationally
813 published and recognized cost index. The cost index used in a
814 price adjustment clause shall be determined by the Department of



815 Finance and Administration for the state agencies and by the
816 governing board for governing authorities. The bid proposal and
817 contract documents utilizing a price adjustment clause shall
818 contain the basis and method of adjusting unit prices for the
819 change in the cost of such commodities, equipment and public
820 construction.

821 (o) **Purchase law violation prohibition and vendor**
822 **penalty.** No contract or purchase as herein authorized shall be
823 made for the purpose of circumventing the provisions of this
824 section requiring competitive bids, nor shall it be lawful for any
825 person or concern to submit individual invoices for amounts within
826 those authorized for a contract or purchase where the actual value
827 of the contract or commodity purchased exceeds the authorized
828 amount and the invoices therefor are split so as to appear to be
829 authorized as purchases for which competitive bids are not
830 required. Submission of such invoices shall constitute a
831 misdemeanor punishable by a fine of not less than Five Hundred
832 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
833 or by imprisonment for thirty (30) days in the county jail, or
834 both such fine and imprisonment. In addition, the claim or claims
835 submitted shall be forfeited.

836 (p) **Electrical utility petroleum-based equipment**
837 **purchase procedure.** When in response to a proper advertisement
838 therefor, no bid firm as to price is submitted to an electric
839 utility for power transformers, distribution transformers, power



breakers, reclosers or other articles containing a petroleum product, the electric utility may accept the lowest and best bid therefor although the price is not firm.

(q) **Fuel management system bidding procedure.** Any governing authority or agency of the state shall, before contracting for the services and products of a fuel management or fuel access system, enter into negotiations with not fewer than two (2) sellers of fuel management or fuel access systems for competitive written bids to provide the services and products for the systems. In the event that the governing authority or agency cannot locate two (2) sellers of such systems or cannot obtain bids from two (2) sellers of such systems, it shall show proof that it made a diligent, good-faith effort to locate and negotiate with two (2) sellers of such systems. Such proof shall include, but not be limited to, publications of a request for proposals and letters soliciting negotiations and bids. For purposes of this paragraph (q), a fuel management or fuel access system is an automated system of acquiring fuel for vehicles as well as management reports detailing fuel use by vehicles and drivers, and the term "competitive written bid" shall have the meaning as defined in paragraph (b) of this section. Governing authorities and agencies shall be exempt from this process when contracting for the services and products of fuel management or fuel access systems under the terms of a state contract established by the Office of Purchasing and Travel.



865 (r) **Solid waste contract proposal procedure.** Before
866 entering into any contract for garbage collection or disposal,
867 contract for solid waste collection or disposal or contract for
868 sewage collection or disposal, which involves an expenditure of
869 more than Seventy-five Thousand Dollars (\$75,000.00), a governing
870 authority or agency shall issue publicly a request for proposals
871 concerning the specifications for such services which shall be
872 advertised for in the same manner as provided in this section for
873 seeking bids for purchases which involve an expenditure of more
874 than the amount provided in paragraph (c) of this section. Any
875 request for proposals when issued shall contain terms and
876 conditions relating to price, financial responsibility,
877 technology, legal responsibilities and other relevant factors as
878 are determined by the governing authority or agency to be
879 appropriate for inclusion; all factors determined relevant by the
880 governing authority or agency or required by this paragraph (r)
881 shall be duly included in the advertisement to elicit proposals.
882 After responses to the request for proposals have been duly
883 received, the governing authority or agency shall select the most
884 qualified proposal or proposals on the basis of price, technology
885 and other relevant factors and from such proposals, but not
886 limited to the terms thereof, negotiate and enter into contracts
887 with one or more of the persons or firms submitting proposals. If
888 the governing authority or agency deems none of the proposals to
889 be qualified or otherwise acceptable, the request for proposals



890 process may be reinitiated. Notwithstanding any other provisions
891 of this paragraph, where a county with at least thirty-five
892 thousand (35,000) nor more than forty thousand (40,000)
893 population, according to the 1990 federal decennial census, owns
894 or operates a solid waste landfill, the governing authorities of
895 any other county or municipality may contract with the governing
896 authorities of the county owning or operating the landfill,
897 pursuant to a resolution duly adopted and spread upon the minutes
898 of each governing authority involved, for garbage or solid waste
899 collection or disposal services through contract negotiations.

900 (s) **Minority set-aside authorization.** Notwithstanding
901 any provision of this section to the contrary, any agency or
902 governing authority, by order placed on its minutes, may, in its
903 discretion, set aside not more than twenty percent (20%) of its
904 anticipated annual expenditures for the purchase of commodities
905 from minority businesses; however, all such set-aside purchases
906 shall comply with all purchasing regulations promulgated by the
907 Department of Finance and Administration and shall be subject to
908 bid requirements under this section. Set-aside purchases for
909 which competitive bids are required shall be made from the lowest
910 and best minority business bidder. For the purposes of this
911 paragraph, the term "minority business" means a business which is
912 owned by a majority of persons who are United States citizens or
913 permanent resident aliens (as defined by the Immigration and
914 Naturalization Service) of the United States, and who are Asian,



915 Black, Hispanic or Native American, according to the following
916 definitions:

917 (i) "Asian" means persons having origins in any of
918 the original people of the Far East, Southeast Asia, the Indian
919 subcontinent, or the Pacific Islands.

920 (ii) "Black" means persons having origins in any
921 black racial group of Africa.

922 (iii) "Hispanic" means persons of Spanish or
923 Portuguese culture with origins in Mexico, South or Central
924 America, or the Caribbean Islands, regardless of race.

925 (iv) "Native American" means persons having
926 origins in any of the original people of North America, including
927 American Indians, Eskimos and Aleuts.

928 (t) **Construction punch list restriction.** The
929 architect, engineer or other representative designated by the
930 agency or governing authority that is contracting for public
931 construction or renovation may prepare and submit to the
932 contractor only one (1) preliminary punch list of items that do
933 not meet the contract requirements at the time of substantial
934 completion and one (1) final list immediately before final
935 completion and final payment.

936 (u) **Procurement of construction services by state**
937 **institutions of higher learning.** Contracts for privately financed
938 construction of auxiliary facilities on the campus of a state
939 institution of higher learning may be awarded by the Board of



Trustees of State Institutions of Higher Learning to the lowest and best bidder, where sealed bids are solicited, or to the offeror whose proposal is determined to represent the best value to the citizens of the State of Mississippi, where requests for proposals are solicited.

(v) **Insurability of bidders for public construction or other public contracts.** In any solicitation for bids to perform public construction or other public contracts to which this section applies, including, but not limited to, contracts for repair and maintenance, for which the contract will require insurance coverage in an amount of not less than One Million Dollars (\$1,000,000.00), bidders shall be permitted to either submit proof of current insurance coverage in the specified amount or demonstrate ability to obtain the required coverage amount of insurance if the contract is awarded to the bidder. Proof of insurance coverage shall be submitted within five (5) business days from bid acceptance.

(w) **Purchase authorization clarification.** Nothing in this section shall be construed as authorizing any purchase not authorized by law.

(x) **Mississippi Regional Preneed Disaster Cleanup Act.**
Any combination of two (2) or more county boards of supervisors or
any combination of two (2) or more governing authorities of
municipalities, as the case may be, may contract by joint
agreement for the preneed purchase of labor, services, work,



965 materials, equipment, supplies or other personal property for
966 disaster-related solid waste collection, disposal or monitoring.
967 Any such joint agreement shall be entered into by each of the
968 boards or each of the governing authorities of the municipalities,
969 as the case may be, which shall set forth the manner of awarding
970 such a contract, the method of payment by each contracting board
971 or each contracting governing authority of a municipality, as the
972 case may be, and any other matter deemed necessary to carry out
973 the purposes of the agreement. Such contracts may be entered into
974 only for a maximum term of two (2) years and only after having
975 solicited bids or proposals, as appropriate, which shall be
976 publicly advertised by posting on a web page maintained by the
977 Department of Finance and Administration through submission of
978 such advertisement to the Mississippi Procurement Technical
979 Assistance Program under the Mississippi Development Authority.
980 The bid opening shall not occur until after the submission has
981 been posted for at least ten (10) consecutive days. Each
982 contracting board's share or each governing authority's share, as
983 the case may be, of expenditures for solid waste collection,
984 disposal or monitoring under any contract shall be appropriated
985 and paid in the manner set forth in the joint agreement and in the
986 same manner as for other solid waste collection, disposal or
987 monitoring expenses of the contracting board or the contracting
988 governing authority of the municipality, as the case may be. The
989 contracting boards or the contracting governing authorities of the



municipalities, as the case may be, entering into a joint agreement, as herein permitted, may designate a joint purchasing or bidding agent, and the agent shall comply with this paragraph. Any joint agreement entered into under this paragraph shall not be subject to the provisions of Section 17-13-11.

SECTION 4. Section 17-13-11, Mississippi Code of 1972, is amended as follows:

17-13-11. (1) Every agreement made by a local governmental unit hereunder shall, prior to and as a condition precedent to its entry into force, be submitted to the Attorney General of this state who shall determine whether the agreement is in proper form and compatible with the laws of this state. No agreement may be considered that does not cite the specific authority under which each of the local governing units involved may exercise the powers necessary to fulfill the terms of the joint agreement. The Attorney General shall approve any such agreement submitted to him hereunder unless he shall find that it does not meet the conditions set forth herein and elsewhere in the laws of this state and shall detail in writing, addressed to the governing bodies of the units concerned, the specific respects in which the proposed agreement fails to meet the requirements of law.

Failure to disapprove an agreement submitted hereunder within sixty (60) days of its submission shall constitute approval thereof.



(2) In the event that an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer, unit or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its being in force, be submitted to the state officer, unit or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing action of the Attorney General pursuant to subsection (1) of this section.

(3) Prior to its being in force, an agreement made pursuant to this chapter shall be filed with the chancery clerk of each of the counties wherein a participating local governmental unit is located and with the Secretary of State. The chancery clerk and the Secretary of State shall preserve such agreements as public records and index and docket the same separate and apart from all other records in his office.

(4) The provisions of this section shall not apply to two (2) or more county boards of supervisors or to two (2) or more governing authorities of municipalities, as the case may be, who contract by joint agreement for disaster clean-up pursuant to Section 31-7-13 (x).

SECTION 5. This act shall take effect and be in force from and after its passage.

