

By: Representatives Byrd, Stamps

To: County Affairs

HOUSE BILL NO. 858

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

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

8 **SECTION 1.** (1) This section shall be known and may be cited
9 as the "Mississippi Regional Pre-Need Disaster Clean Up Act."

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

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

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

19 **SECTION 2.** It is the intent and policy of the Mississippi
20 Legislature that county boards be authorized to jointly contract



for disaster-related solid waste collection, disposal, and monitoring so that the citizens of those counties will be quickly and adequately served as the communities recover from the disaster.

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

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

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

(b) **Bidding procedure for purchases over \$5,000.00 but not over \$75,000.00.** Purchases which involve an expenditure of more than Five Thousand Dollars (\$5,000.00) but not more than Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at



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



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

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

84 (i) **Publication requirement.**

85 1. Purchases which involve an expenditure of
86 more than Seventy-five Thousand Dollars (\$75,000.00), exclusive of
87 freight and shipping charges, may be made from the lowest and best
88 bidder after advertising for competitive bids once each week for
89 two (2) consecutive weeks in a regular newspaper published in the
90 county or municipality in which such agency or governing authority
91 is located. However, all American Recovery and Reinvestment Act
92 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
93 shall be bid. All references to American Recovery and
94 Reinvestment Act projects in this section shall not apply to



95 programs identified in Division B of the American Recovery and
96 Reinvestment Act.

97 2. Reverse auctions shall be the primary
98 method for receiving bids during the bidding process. If a
99 purchasing entity determines that a reverse auction is not in the
100 best interest of the state, then that determination must be
101 approved by the Public Procurement Review Board. The purchasing
102 entity shall submit a detailed explanation of why a reverse
103 auction would not be in the best interest of the state and present
104 an alternative process to be approved by the Public Procurement
105 Review Board. If the Public Procurement Review Board authorizes
106 the purchasing entity to solicit bids with a method other than
107 reverse auction, then the purchasing entity may designate the
108 other methods by which the bids will be received, including, but
109 not limited to, bids sealed in an envelope, bids received
110 electronically in a secure system, or bids received by any other
111 method that promotes open competition and has been approved by the
112 Office of Purchasing and Travel. However, reverse auction shall
113 not be used for any public contract for design, construction,
114 improvement, repair or remodeling of any public facilities,
115 including the purchase of materials, supplies, equipment or goods
116 for same and including buildings, roads and bridges. The Public
117 Procurement Review Board must approve any contract entered into by
118 alternative process. The provisions of this item 2 shall not
119 apply to the individual state institutions of higher learning.



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

132 3. The date as published for the bid opening
133 shall not be less than seven (7) working days after the last
134 published notice; however, if the purchase involves a construction
135 project in which the estimated cost is in excess of Seventy-five
136 Thousand Dollars (\$75,000.00), such bids shall not be opened in
137 less than fifteen (15) working days after the last notice is
138 published and the notice for the purchase of such construction
139 shall be published once each week for two (2) consecutive weeks.
140 However, all American Recovery and Reinvestment Act projects in
141 excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid.
142 For any projects in excess of Twenty-five Thousand Dollars
143 (\$25,000.00) under the American Recovery and Reinvestment Act,
144 publication shall be made one (1) time and the bid opening for



145 construction projects shall not be less than ten (10) working days
146 after the date of the published notice. The notice of intention
147 to let contracts or purchase equipment shall state the time and
148 place at which bids shall be received, list the contracts to be
149 made or types of equipment or supplies to be purchased, and, if
150 all plans and/or specifications are not published, refer to the
151 plans and/or specifications on file. If there is no newspaper
152 published in the county or municipality, then such notice shall be
153 given by posting same at the courthouse, or for municipalities at
154 the city hall, and at two (2) other public places in the county or
155 municipality, and also by publication once each week for two (2)
156 consecutive weeks in some newspaper having a general circulation
157 in the county or municipality in the above-provided manner. On
158 the same date that the notice is submitted to the newspaper for
159 publication, the agency or governing authority involved shall mail
160 written notice to, or provide electronic notification to the main
161 office of the Mississippi Procurement Technical Assistance Program
162 under the Mississippi Development Authority that contains the same
163 information as that in the published notice. Submissions received
164 by the Mississippi Procurement Technical Assistance Program for
165 projects funded by the American Recovery and Reinvestment Act
166 shall be displayed on a separate and unique Internet web page
167 accessible to the public and maintained by the Mississippi
168 Development Authority for the Mississippi Procurement Technical
169 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 39-7-7 and 39-7-11, the agency or governing authority may use the following procedure: Purchases may be made from the lowest and



best prequalified bidder. Prequalification of bidders shall be determined not less than fifteen (15) working days before the first published notice of bid opening. Prequalification criteria shall be limited to bidder's knowledge and experience in historical restoration, preservation and renovation. 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 and prequalification 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.

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

If the lowest and best bid is not more than ten percent (10%) above the amount of funds allocated for a public construction or 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 Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal



Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8). Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10(13). However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten Thousand Dollars (\$10,000.00) by a single lease-purchase transaction. All equipment, and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

(f) **Alternate bid authorization.** When necessary to ensure ready availability of commodities for public works and the



timely completion of public projects, no more than two (2) alternate bids may be accepted by a governing authority for commodities. No purchases may be made through use of such alternate bids procedure unless the lowest and best bidder cannot deliver the commodities contained in his bid. In that event, purchases of such commodities may be made from one (1) of the bidders whose bid was accepted as an alternate.

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



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

459 (j) **State agency emergency purchase procedure.** If the
460 governing board or the executive head, or his designees, of any
461 agency of the state shall determine that an emergency exists in
462 regard to the purchase of any commodities or repair contracts, so
463 that the delay incident to giving opportunity for competitive
464 bidding would be detrimental to the interests of the state, then
465 the head of such agency, or his designees, shall file with the
466 Department of Finance and Administration (i) a statement
467 explaining the conditions and circumstances of the emergency,
468 which shall include a detailed description of the events leading
469 up to the situation and the negative impact to the entity if the



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

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

490 Total purchases made under this paragraph (j) shall only be
491 for the purpose of meeting needs created by the emergency
492 situation. Following the emergency purchase, documentation of the
493 purchase, including a description of the commodity purchased, the
494 purchase price thereof and the nature of the emergency shall be



filed with the Department of Finance and Administration. Any contract awarded pursuant to this paragraph (j) shall not exceed a term of one (1) year.

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 (j).

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

If the governing authority, or the governing authority acting through its designee, 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 interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, 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



545 commissioners or board that complies with the provisions of this
546 subparagraph (ii) shall be excepted from the bid requirements set
547 forth in this section.

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

550 (i) **Purchasing agreements approved by department.**

551 Purchasing agreements, contracts and maximum price regulations
552 executed or approved by the Department of Finance and
553 Administration.

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

565 (iii) **In-house equipment repairs.** Purchases of
566 parts for repairs to equipment, when such repairs are made by
567 personnel of the agency or governing authority; however, entire
568 assemblies, such as engines or transmissions, shall not be



569 included in this exemption when the entire assembly is being
570 replaced instead of being repaired.

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

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

585 (vi) **Intergovernmental sales and transfers.**
586 Purchases, sales, transfers or trades by governing authorities or
587 state agencies when such purchases, sales, transfers or trades are
588 made by a private treaty agreement or through means of
589 negotiation, from any federal agency or authority, another
590 governing authority or state agency of the State of Mississippi,
591 or any state agency or governing authority of another state.
592 Nothing in this section shall permit such purchases through public
593 auction except as provided for in subparagraph (v) of this



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

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

(viii) **Single-source items.** Noncompetitive items available from one (1) source only. In connection with the purchase of noncompetitive items only available from one (1) source, a certification of the conditions and circumstances requiring the purchase shall be filed by the agency with the Department of Finance and Administration and by the governing authority with the board of the governing authority. Upon receipt of that certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted



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

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



proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals.

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

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

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

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

(xiv) **Library books and other reference materials.** Purchases by libraries or for libraries of books and periodicals;



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

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

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

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

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



693 privately owned prisons involving any item that is manufactured,
694 processed, grown or produced from the state's prison industries.

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

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

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

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

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



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

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

723 (xxv) **Purchases of state-adopted textbooks.**
724 Purchases of state-adopted textbooks by public school districts.

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

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



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

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

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

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

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

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



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

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

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

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

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

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



788 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
789 Lottery Law.

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

796 (n) **Term contract authorization.** All contracts for the
797 purchase of:

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

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



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

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

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



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

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



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



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

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



913 Black, Hispanic or Native American, according to the following
914 definitions:

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

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

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

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

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

934 (u) **Procurement of construction services by state**
935 **institutions of higher learning.** Contracts for privately financed
936 construction of auxiliary facilities on the campus of a state
937 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 Pre-Need Disaster Clean Up Act.** Any combination of two (2) or more county boards of supervisors may contract by joint agreement for the purchase or lease-purchase of commodities, pre-need purchase of labor, services, work, materials, equipment, supplies or other personal



963 property for disaster-related solid waste collection, disposal or
964 monitoring. Any such joint agreement shall be entered into by
965 each of the boards which shall set forth the manner of awarding
966 such a contract, the method of payment by each contracting board,
967 and any other matter deemed necessary to carry out the purposes of
968 the agreement. Such contracts may be entered into only for a
969 maximum term of two (2) years and only after having solicited bids
970 or proposals, as appropriate, which shall be publicly advertised
971 by posting on a web page maintained by the Department of Finance
972 and Administration through submission of such advertisement to the
973 Mississippi Procurement Technical Assistance Program under the
974 Mississippi Development Authority. The bid opening shall not
975 occur until after the submission has been posted for at least ten
976 (10) consecutive days. Each contracting board's share of
977 expenditures for commodities, solid waste collection, disposal or
978 monitoring under any contract shall be appropriated and paid in
979 the manner set forth in the joint agreement and in the same manner
980 as for other commodities, other solid waste collection, disposal,
981 or monitoring expenses of the contracting board. The contracting
982 boards entering into a joint agreement, as herein permitted, may
983 designate a joint purchasing or bidding agent, and the agent shall
984 comply with this paragraph. Any joint agreement entered into
985 under this paragraph shall not be subject to the provisions of
986 Section 17-13-11.



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

989 17-13-11. (1) Every agreement made by a local governmental
990 unit hereunder shall, prior to and as a condition precedent to its
991 entry into force, be submitted to the Attorney General of this
992 state who shall determine whether the agreement is in proper form
993 and compatible with the laws of this state. No agreement may be
994 considered that does not cite the specific authority under which
995 each of the local governing units involved may exercise the powers
996 necessary to fulfill the terms of the joint agreement. The
997 Attorney General shall approve any such agreement submitted to him
998 hereunder unless he shall find that it does not meet the
999 conditions set forth herein and elsewhere in the laws of this
1000 state and shall detail in writing, addressed to the governing
1001 bodies of the units concerned, the specific respects in which the
1002 proposed agreement fails to meet the requirements of law.

1003 Failure to disapprove an agreement submitted hereunder within
1004 sixty (60) days of its submission shall constitute approval
1005 thereof.

1006 (2) In the event that an agreement made pursuant to this
1007 chapter shall deal in whole or in part with the provision of
1008 services or facilities with regard to which an officer, unit or
1009 agency of the state government has constitutional or statutory
1010 powers of control, the agreement shall, as a condition precedent
1011 to its being in force, be submitted to the state officer, unit or



1012 agency having such power of control and shall be approved or
1013 disapproved by him or it as to all matters within his or its
1014 jurisdiction in the same manner and subject to the same
1015 requirements governing action of the Attorney General pursuant to
1016 subsection (1) of this section.

1017 (3) Prior to its being in force, an agreement made pursuant
1018 to this chapter shall be filed with the chancery clerk of each of
1019 the counties wherein a participating local governmental unit is
1020 located and with the Secretary of State. The chancery clerk and
1021 the Secretary of State shall preserve such agreements as public
1022 records and index and docket the same separate and apart from all
1023 other records in his office.

1024 (4) The provisions of this section shall not apply to two
1025 (2) or more county boards of supervisors who contract by joint
1026 agreement for disaster clean-up pursuant to Section 31-7-13 (x).

1027 **SECTION 5.** This act shall take effect and be in force from
1028 and after its passage.

