

By: Representative Weathersby

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 875
(As Passed the House)

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE ANY SOLICITATION FOR CONSTRUCTION IN EXCESS OF \$5,000.00
3 TO INCLUDE DRAWINGS, RENDERINGS OR SPECIFICATIONS OF SUFFICIENT
4 DETAIL TO DEFINE THE WORK OR REQUIRE THAT COST PROPOSALS BE BROKEN
5 DOWN BY COMPONENTS; TO PROVIDE THAT AGENCY PURCHASES FOR BUILDINGS
6 DESIGNATED BY THE DEPARTMENT OF ARCHIVES AND HISTORY OF TRUSTEES
7 AS MISSISSIPPI LANDMARKS REQUIRES REQUESTS FOR QUALIFICATIONS FOR
8 PREQUALIFIED BIDDERS TO BE ESTABLISHED AND MAINTAINED BY DFA FOR
9 NOT LESS THAN 15 WORKING DAYS BEFORE THE DATE ESTABLISHED FOR
10 RECEIPT OF SUCH QUALIFICATIONS; TO PRESCRIBE THE DECISION
11 PROCEDURE TO BE USED BY AN AGENCY OR GOVERNING AUTHORITY FOR HIGH
12 COMPLEXITY CONSTRUCTION PROJECTS; TO PROVIDE AN EXCEPTION FROM
13 BIDDING REQUIREMENTS FOR CERTAIN PURCHASES MADE FOR THE
14 RENOVATION, REPAIR, RESTORATION OR IMPROVEMENT TO BUILDINGS
15 DESIGNATED AS MISSISSIPPI LANDMARKS LOCATED WITHIN THE CAPITOL
16 COMPLEX THAT DO NOT EXCEED \$500,000, AND FOR AIRCRAFT AND AIRCRAFT
17 SIMULATION DEVICES FOR ACADEMIC INSTRUCTIONAL PURPOSES; AND FOR
18 RELATED PURPOSES.

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

20 **SECTION 1.** Section 31-7-13, Mississippi Code of 1972, is
21 amended as follows:

22 31-7-13. All agencies and governing authorities shall
23 purchase their commodities and printing; contract for garbage
24 collection or disposal; contract for solid waste collection or
25 disposal; contract for sewage collection or disposal; contract for
26 public construction; and contract for rentals as herein provided.



27 (a) **Bidding procedure for purchases not over \$5,000.00.**

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

35 (b) **Bidding procedure for purchases over \$5,000.00 but**
36 **not over \$75,000.00.** Purchases which involve an expenditure of
37 more than Five Thousand Dollars (\$5,000.00) but not more than
38 Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight
39 and shipping charges, may be made from the lowest and best bidder
40 without publishing or posting advertisement for bids, provided at
41 least two (2) competitive written bids have been obtained. Any
42 state agency or community/junior college purchasing commodities or
43 procuring construction pursuant to this paragraph (b) may
44 authorize its purchasing agent, or his designee, to accept the
45 lowest competitive written bid under Seventy-five Thousand Dollars
46 (\$75,000.00). Any governing authority purchasing commodities
47 pursuant to this paragraph (b) may authorize its purchasing agent,
48 or his designee, with regard to governing authorities other than
49 counties, or its purchase clerk, or his designee, with regard to
50 counties, to accept the lowest and best competitive written bid.
51 Such authorization shall be made in writing by the governing



52 authority and shall be maintained on file in the primary office of
53 the agency and recorded in the official minutes of the governing
54 authority, as appropriate. The purchasing agent or the purchase
55 clerk, or his designee, as the case may be, and not the governing
56 authority, shall be liable for any penalties and/or damages as may
57 be imposed by law for any act or omission of the purchasing agent
58 or purchase clerk, or his designee, constituting a violation of
59 law in accepting any bid without approval by the governing
60 authority. The term "competitive written bid" shall mean a bid
61 submitted on a bid form furnished by the buying agency or
62 governing authority and signed by authorized personnel
63 representing the vendor, or a bid submitted on a vendor's
64 letterhead or identifiable bid form and signed by authorized
65 personnel representing the vendor. "Competitive" shall mean that
66 the bids are developed based upon comparable identification of the
67 needs and are developed independently and without knowledge of
68 other bids or prospective bids. Any * * * solicitation for
69 construction in excess of Five Thousand Dollars (\$5,000.00) shall
70 include drawings, renderings or specifications of sufficient
71 detail defining the work to be performed or shall require that
72 cost proposals be broken down by components to provide detail of
73 component description and pricing. These details shall be
74 submitted with the written bids and become part of the bid
75 evaluation criteria. Bids may be submitted by facsimile,
76 electronic mail or other generally accepted method of information



77 distribution. Bids submitted by electronic transmission shall not
78 require the signature of the vendor's representative unless
79 required by agencies or governing authorities.

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

81 (i) **Publication requirement.**

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

94 2. Reverse auctions shall be the primary
95 method for receiving bids during the bidding process. If a
96 purchasing entity determines that a reverse auction is not in the
97 best interest of the state, then that determination must be
98 approved by the Public Procurement Review Board. The purchasing
99 entity shall submit a detailed explanation of why a reverse
100 auction would not be in the best interest of the state and present
101 an alternative process to be approved by the Public Procurement



102 Review Board. If the Public Procurement Review Board authorizes
103 the purchasing entity to solicit bids with a method other than
104 reverse auction, then the purchasing entity may designate the
105 other methods by which the bids will be received, including, but
106 not limited to, bids sealed in an envelope, bids received
107 electronically in a secure system, or bids received by any other
108 method that promotes open competition and has been approved by the
109 Office of Purchasing and Travel. However, reverse auction shall
110 not be used for any public contract for design, construction,
111 improvement, repair or remodeling of any public facilities,
112 including the purchase of materials, supplies, equipment or goods
113 for same and including buildings, roads and bridges. The Public
114 Procurement Review Board must approve any contract entered into by
115 alternative process. The provisions of this item 2 shall not
116 apply to the individual state institutions of higher learning.
117 The provisions of this item 2 requiring reverse auction as the
118 primary method of receiving bids shall not apply to term contract
119 purchases as provided in paragraph (n) of this section; however, a
120 purchasing entity may, in its discretion, utilize reverse auction
121 for such purchases. The provisions of this item 2 shall not apply
122 to individual public schools, including public charter schools and
123 public school districts, only when purchasing copyrighted
124 educational supplemental materials and software as a service
125 product. For such purchases, a local school board may authorize a
126 purchasing entity in its jurisdiction to use a Request for



127 Qualifications which promotes open competition and meets the
128 requirements of the Office of Purchasing and Travel.

129 3. The date as published for the bid opening
130 shall not be less than seven (7) working days after the last
131 published notice; however, if the purchase involves a construction
132 project in which the estimated cost is in excess of Seventy-five
133 Thousand Dollars (\$75,000.00), such bids shall not be opened in
134 less than fifteen (15) working days after the last notice is
135 published and the notice for the purchase of such construction
136 shall be published once each week for two (2) consecutive weeks.
137 However, all American Recovery and Reinvestment Act projects in
138 excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid.
139 For any projects in excess of Twenty-five Thousand Dollars
140 (\$25,000.00) under the American Recovery and Reinvestment Act,
141 publication shall be made one (1) time and the bid opening for
142 construction projects shall not be less than ten (10) working days
143 after the date of the published notice. The notice of intention
144 to let contracts or purchase equipment shall state the time and
145 place at which bids shall be received, list the contracts to be
146 made or types of equipment or supplies to be purchased, and, if
147 all plans and/or specifications are not published, refer to the
148 plans and/or specifications on file. If there is no newspaper
149 published in the county or municipality, then such notice shall be
150 given by posting same at the courthouse, or for municipalities at
151 the city hall, and at two (2) other public places in the county or



152 municipality, and also by publication once each week for two (2)
153 consecutive weeks in some newspaper having a general circulation
154 in the county or municipality in the above-provided manner. On
155 the same date that the notice is submitted to the newspaper for
156 publication, the agency or governing authority involved shall mail
157 written notice to, or provide electronic notification to the main
158 office of the Mississippi Procurement Technical Assistance Program
159 under the Mississippi Development Authority that contains the same
160 information as that in the published notice. Submissions received
161 by the Mississippi Procurement Technical Assistance Program for
162 projects funded by the American Recovery and Reinvestment Act
163 shall be displayed on a separate and unique Internet web page
164 accessible to the public and maintained by the Mississippi
165 Development Authority for the Mississippi Procurement Technical
166 Assistance Program. Those American Recovery and Reinvestment Act
167 related submissions shall be publicly posted within twenty-four
168 (24) hours of receipt by the Mississippi Development Authority and
169 the bid opening shall not occur until the submission has been
170 posted for ten (10) consecutive days. The Department of Finance
171 and Administration shall maintain information regarding contracts
172 and other expenditures from the American Recovery and Reinvestment
173 Act, on a unique Internet web page accessible to the public. The
174 Department of Finance and Administration shall promulgate rules
175 regarding format, content and deadlines, unless otherwise
176 specified by law, of the posting of award notices, contract



177 execution and subsequent amendments, links to the contract
178 documents, expenditures against the awarded contracts and general
179 expenditures of funds from the American Recovery and Reinvestment
180 Act. Within one (1) working day of the contract award, the agency
181 or governing authority shall post to the designated web page
182 maintained by the Department of Finance and Administration, notice
183 of the award, including the award recipient, the contract amount,
184 and a brief summary of the contract in accordance with rules
185 promulgated by the department. Within one (1) working day of the
186 contract execution, the agency or governing authority shall post
187 to the designated web page maintained by the Department of Finance
188 and Administration a summary of the executed contract and make a
189 copy of the appropriately redacted contract documents available
190 for linking to the designated web page in accordance with the
191 rules promulgated by the department. The information provided by
192 the agency or governing authority shall be posted to the web page
193 for the duration of the American Recovery and Reinvestment Act
194 funding or until the project is completed, whichever is longer.

195 (ii) **Bidding process amendment procedure.** If all
196 plans and/or specifications are published in the notification,
197 then the plans and/or specifications may not be amended. If all
198 plans and/or specifications are not published in the notification,
199 then amendments to the plans/specifications, bid opening date, bid
200 opening time and place may be made, provided that the agency or
201 governing authority maintains a list of all prospective bidders



202 who are known to have received a copy of the bid documents and all
203 such prospective bidders are sent copies of all amendments. This
204 notification of amendments may be made via mail, facsimile,
205 electronic mail or other generally accepted method of information
206 distribution. No addendum to bid specifications may be issued
207 within two (2) working days of the time established for the
208 receipt of bids unless such addendum also amends the bid opening
209 to a date not less than five (5) working days after the date of
210 the addendum.

211 (iii) **Filing requirement.** In all cases involving
212 governing authorities, before the notice shall be published or
213 posted, the plans or specifications for the construction or
214 equipment being sought shall be filed with the clerk of the board
215 of the governing authority. In addition to these requirements, a
216 bid file shall be established which shall indicate those vendors
217 to whom such solicitations and specifications were issued, and
218 such file shall also contain such information as is pertinent to
219 the bid.

220 (iv) **Specification restrictions.**

221 1. Specifications pertinent to such bidding
222 shall be written so as not to exclude comparable equipment of
223 domestic manufacture. However, if valid justification is
224 presented, the Department of Finance and Administration or the
225 board of a governing authority may approve a request for specific
226 equipment necessary to perform a specific job. Further, such



227 justification, when placed on the minutes of the board of a
228 governing authority, may serve as authority for that governing
229 authority to write specifications to require a specific item of
230 equipment needed to perform a specific job. In addition to these
231 requirements, from and after July 1, 1990, vendors of relocatable
232 classrooms and the specifications for the purchase of such
233 relocatable classrooms published by local school boards shall meet
234 all pertinent regulations of the State Board of Education,
235 including prior approval of such bid by the State Department of
236 Education.

237 2. Specifications for construction projects
238 may include an allowance for commodities, equipment, furniture,
239 construction materials or systems in which prospective bidders are
240 instructed to include in their bids specified amounts for such
241 items so long as the allowance items are acquired by the vendor in
242 a commercially reasonable manner and approved by the
243 agency/governing authority. Such acquisitions shall not be made
244 to circumvent the public purchasing laws.

245 (v) **Electronic bids.** Agencies and governing
246 authorities shall provide a secure electronic interactive system
247 for the submittal of bids requiring competitive bidding that shall
248 be an additional bidding option for those bidders who choose to
249 submit their bids electronically. The Department of Finance and
250 Administration shall provide, by regulation, the standards that
251 agencies must follow when receiving electronic bids. Agencies and



252 governing authorities shall make the appropriate provisions
253 necessary to accept electronic bids from those bidders who choose
254 to submit their bids electronically for all purchases requiring
255 competitive bidding under this section. Any special condition or
256 requirement for the electronic bid submission shall be specified
257 in the advertisement for bids required by this section. Agencies
258 or governing authorities that are currently without available high
259 speed Internet access shall be exempt from the requirement of this
260 subparagraph (v) until such time that high speed Internet access
261 becomes available. Any county having a population of less than
262 twenty thousand (20,000) shall be exempt from the provisions of
263 this subparagraph (v). Any municipality having a population of
264 less than ten thousand (10,000) shall be exempt from the
265 provisions of this subparagraph (v). The provisions of this
266 subparagraph (v) shall not require any bidder to submit bids
267 electronically. When construction bids are submitted
268 electronically, the requirement for including a certificate of
269 responsibility, or a statement that the bid enclosed does not
270 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
271 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
272 deemed in compliance with by including same as an attachment with
273 the electronic bid submittal.

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

275 (i) **Decision procedure.** Purchases may be made
276 from the lowest and best bidder. In determining the lowest and



277 best bid, freight and shipping charges shall be included.
278 Life-cycle costing, total cost bids, warranties, guaranteed
279 buy-back provisions and other relevant provisions may be included
280 in the best bid calculation. All best bid procedures for state
281 agencies must be in compliance with regulations established by the
282 Department of Finance and Administration. If any governing
283 authority accepts a bid other than the lowest bid actually
284 submitted, it shall place on its minutes detailed calculations and
285 narrative summary showing that the accepted bid was determined to
286 be the lowest and best bid, including the dollar amount of the
287 accepted bid and the dollar amount of the lowest bid. No agency
288 or governing authority shall accept a bid based on items not
289 included in the specifications.

290 (ii) **Decision procedure for Certified Purchasing**
291 **Offices.** In addition to the decision procedure set forth in
292 subparagraph (i) of this paragraph (d), Certified Purchasing
293 Offices may also use the following procedure: Purchases may be
294 made from the bidder offering the best value. In determining the
295 best value bid, freight and shipping charges shall be included.
296 Life-cycle costing, total cost bids, warranties, guaranteed
297 buy-back provisions, documented previous experience, training
298 costs and other relevant provisions, including, but not limited
299 to, a bidder having a local office and inventory located within
300 the jurisdiction of the governing authority, may be included in
301 the best value calculation. This provision shall authorize



302 Certified Purchasing Offices to utilize a Request For Proposals
303 (RFP) process when purchasing commodities. All best value
304 procedures for state agencies must be in compliance with
305 regulations established by the Department of Finance and
306 Administration. No agency or governing authority shall accept a
307 bid based on items or criteria not included in the specifications.

308 (iii) **Decision procedure for Mississippi**

309 **Landmarks.** In addition to the decision procedure set forth in
310 subparagraph (i) of this paragraph (d), where purchase involves
311 renovation, restoration, or both, of the State Capitol Building or
312 any other historical building designated * * * as a Mississippi
313 Landmark by the Board of Trustees of the Department of Archives
314 and History under the authority of Sections 39-7-7 and 39-7-11, or
315 at any building that is determined by the Mississippi Department
316 of Archives and History as being potentially eligible for such
317 designation, including those buildings having such designation
318 which are located within the Capitol Complex where procurement
319 exceeds Five Hundred Thousand Dollars (\$500,000.00), the agency or
320 governing authority may use the following procedure: Purchases
321 may be made from the lowest and best prequalified bidder.
322 Requests for qualifications for bidders shall be posted on the
323 procurement portal established and maintained by the Department of
324 Finance and Administration for not less than fifteen (15) working
325 days prior to the date established for receipt of such
326 qualifications. Prequalification of bidders shall be



327 determined * * * on or before the first published notice of bid
328 opening. Prequalification criteria shall be limited to bidder's
329 and proposed subcontractor's knowledge and experience in
330 historical restoration, preservation and renovation. In
331 determining the lowest and best bid, freight and shipping charges
332 shall be included. Life-cycle costing, total cost bids,
333 warranties, guaranteed buy-back provisions and other relevant
334 provisions may be included in the best bid calculation. All best
335 bid and prequalification procedures for state agencies must be in
336 compliance with regulations established by the Department of
337 Finance and Administration. If any governing authority accepts a
338 bid other than the lowest bid actually submitted, it shall place
339 on its minutes detailed calculations and narrative summary showing
340 that the accepted bid was determined to be the lowest and best
341 bid, including the dollar amount of the accepted bid and the
342 dollar amount of the lowest bid. No agency or governing authority
343 shall accept a bid based on items not included in the
344 specifications.

345 (iv) **Construction project negotiations authority.**
346 If the lowest and best bid is not more than ten percent (10%)
347 above the amount of funds allocated for a public construction or
348 renovation project, then the agency or governing authority shall
349 be permitted to negotiate with the lowest bidder in order to enter
350 into a contract for an amount not to exceed the funds allocated.



351 (v) Decision procedure for high complexity
352 construction projects. In addition to the decision procedure set
353 forth in paragraph (d) (i), where a purchase involves construction,
354 renovation, or both, of buildings or facilities of high
355 complexity, the agency or governing authority may use the
356 following procedure: Purchases may be made from the lowest and
357 best prequalified bidder. Requests for qualifications for bidders
358 shall be posted on the procurement portal established and
359 maintained by the Department of Finance and Administration for not
360 less than fifteen (15) working days prior to the date established
361 for receipt of such qualifications. Prequalification of bidders
362 shall be determined on or before the first published notice of bid
363 opening. Prequalification criteria shall be limited to bidder's
364 and proposed sub-contractor's knowledge and experience in high
365 complexity projects. For the purpose of this section, the term
366 "high complexity construction project" means medical, clinical,
367 research, laboratory, archival, museum, data center and similar
368 buildings or facilities at which the criticality and integration
369 of installed systems or components necessitate the use of highly
370 skilled and experienced contractors. In determining the lowest
371 and best bid, freight and shipping charges shall be included.
372 Life-cycle costing, total cost bids, warranties, guaranteed
373 buy-back provisions and other relevant provisions may be included
374 in the best bid calculation. All best bid and prequalification
375 procedures for state agencies must be in compliance with



376 regulations established by the Department of Finance and
377 Administration. If any governing authority accepts a bid other
378 than the lowest bid actually submitted, it shall place on its
379 minutes detailed calculations and narrative summary showing that
380 the accepted bid was determined to be the lowest and best bid,
381 including the dollar amount of the accepted bid and the dollar
382 amount of the lowest bid. No agency or governing authority shall
383 accept a bid based on items not included in the specifications.

384 (e) **Lease-purchase authorization.** For the purposes of
385 this section, the term "equipment" shall mean equipment, furniture
386 and, if applicable, associated software and other applicable
387 direct costs associated with the acquisition. Any lease-purchase
388 of equipment which an agency is not required to lease-purchase
389 under the master lease-purchase program pursuant to Section
390 31-7-10 and any lease-purchase of equipment which a governing
391 authority elects to lease-purchase may be acquired by a
392 lease-purchase agreement under this paragraph (e). Lease-purchase
393 financing may also be obtained from the vendor or from a
394 third-party source after having solicited and obtained at least
395 two (2) written competitive bids, as defined in paragraph (b) of
396 this section, for such financing without advertising for such
397 bids. Solicitation for the bids for financing may occur before or
398 after acceptance of bids for the purchase of such equipment or,
399 where no such bids for purchase are required, at any time before
400 the purchase thereof. No such lease-purchase agreement shall be



401 for an annual rate of interest which is greater than the overall
402 maximum interest rate to maturity on general obligation
403 indebtedness permitted under Section 75-17-101, and the term of
404 such lease-purchase agreement shall not exceed the useful life of
405 equipment covered thereby as determined according to the upper
406 limit of the asset depreciation range (ADR) guidelines for the
407 Class Life Asset Depreciation Range System established by the
408 Internal Revenue Service pursuant to the United States Internal
409 Revenue Code and regulations thereunder as in effect on December
410 31, 1980, or comparable depreciation guidelines with respect to
411 any equipment not covered by ADR guidelines. Any lease-purchase
412 agreement entered into pursuant to this paragraph (e) may contain
413 any of the terms and conditions which a master lease-purchase
414 agreement may contain under the provisions of Section 31-7-10(5),
415 and shall contain an annual allocation dependency clause
416 substantially similar to that set forth in Section 31-7-10(8).
417 Each agency or governing authority entering into a lease-purchase
418 transaction pursuant to this paragraph (e) shall maintain with
419 respect to each such lease-purchase transaction the same
420 information as required to be maintained by the Department of
421 Finance and Administration pursuant to Section 31-7-10(13).
422 However, nothing contained in this section shall be construed to
423 permit agencies to acquire items of equipment with a total
424 acquisition cost in the aggregate of less than Ten Thousand
425 Dollars (\$10,000.00) by a single lease-purchase transaction. All



426 equipment, and the purchase thereof by any lessor, acquired by
427 lease-purchase under this paragraph and all lease-purchase
428 payments with respect thereto shall be exempt from all Mississippi
429 sales, use and ad valorem taxes. Interest paid on any
430 lease-purchase agreement under this section shall be exempt from
431 State of Mississippi income taxation.

432 (f) **Alternate bid authorization.** When necessary to
433 ensure ready availability of commodities for public works and the
434 timely completion of public projects, no more than two (2)
435 alternate bids may be accepted by a governing authority for
436 commodities. No purchases may be made through use of such
437 alternate bids procedure unless the lowest and best bidder cannot
438 deliver the commodities contained in his bid. In that event,
439 purchases of such commodities may be made from one (1) of the
440 bidders whose bid was accepted as an alternate.

441 (g) **Construction contract change authorization.** In the
442 event a determination is made by an agency or governing authority
443 after a construction contract is let that changes or modifications
444 to the original contract are necessary or would better serve the
445 purpose of the agency or the governing authority, such agency or
446 governing authority may, in its discretion, order such changes
447 pertaining to the construction that are necessary under the
448 circumstances without the necessity of further public bids;
449 provided that such change shall be made in a commercially
450 reasonable manner and shall not be made to circumvent the public



451 purchasing statutes. In addition to any other authorized person,
452 the architect or engineer hired by an agency or governing
453 authority with respect to any public construction contract shall
454 have the authority, when granted by an agency or governing
455 authority, to authorize changes or modifications to the original
456 contract without the necessity of prior approval of the agency or
457 governing authority when any such change or modification is less
458 than one percent (1%) of the total contract amount. The agency or
459 governing authority may limit the number, manner or frequency of
460 such emergency changes or modifications.

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



476 lowest and best contract available for the purchase of such
477 commodities.

478 (i) **Road construction petroleum products price**
479 **adjustment clause authorization.** Any agency or governing
480 authority authorized to enter into contracts for the construction,
481 maintenance, surfacing or repair of highways, roads or streets,
482 may include in its bid proposal and contract documents a price
483 adjustment clause with relation to the cost to the contractor,
484 including taxes, based upon an industry-wide cost index, of
485 petroleum products including asphalt used in the performance or
486 execution of the contract or in the production or manufacture of
487 materials for use in such performance. Such industry-wide index
488 shall be established and published monthly by the Mississippi
489 Department of Transportation with a copy thereof to be mailed,
490 upon request, to the clerks of the governing authority of each
491 municipality and the clerks of each board of supervisors
492 throughout the state. The price adjustment clause shall be based
493 on the cost of such petroleum products only and shall not include
494 any additional profit or overhead as part of the adjustment. The
495 bid proposals or document contract shall contain the basis and
496 methods of adjusting unit prices for the change in the cost of
497 such petroleum products.

498 (j) **State agency emergency purchase procedure.** If the
499 governing board or the executive head, or his designees, of any
500 agency of the state shall determine that an emergency exists in



501 regard to the purchase of any commodities or repair contracts, so
502 that the delay incident to giving opportunity for competitive
503 bidding would be detrimental to the interests of the state, then
504 the head of such agency, or his designees, shall file with the
505 Department of Finance and Administration (i) a statement
506 explaining the conditions and circumstances of the emergency,
507 which shall include a detailed description of the events leading
508 up to the situation and the negative impact to the entity if the
509 purchase is made following the statutory requirements set forth in
510 paragraph (a), (b) or (c) of this section, and (ii) a certified
511 copy of the appropriate minutes of the board of such agency
512 requesting the emergency purchase, if applicable. Upon receipt of
513 the statement and applicable board certification, the State Fiscal
514 Officer, or his designees, may, in writing, authorize the purchase
515 or repair without having to comply with competitive bidding
516 requirements.

517 If the governing board or the executive head, or his
518 designees, of any agency determines that an emergency exists in
519 regard to the purchase of any commodities or repair contracts, so
520 that the delay incident to giving opportunity for competitive
521 bidding would threaten the health or safety of any person, or the
522 preservation or protection of property, then the provisions in
523 this section for competitive bidding shall not apply, and any
524 officer or agent of the agency having general or specific
525 authority for making the purchase or repair contract shall approve



526 the bill presented for payment, and he shall certify in writing
527 from whom the purchase was made, or with whom the repair contract
528 was made.

529 Total purchases made under this paragraph (j) shall only be
530 for the purpose of meeting needs created by the emergency
531 situation. Following the emergency purchase, documentation of the
532 purchase, including a description of the commodity purchased, the
533 purchase price thereof and the nature of the emergency shall be
534 filed with the Department of Finance and Administration. Any
535 contract awarded pursuant to this paragraph (j) shall not exceed a
536 term of one (1) year.

537 Purchases under the grant program established under Section
538 37-68-7 in response to COVID-19 and the directive that school
539 districts create a distance learning plan and fulfill technology
540 needs expeditiously shall be deemed an emergency purchase for
541 purposes of this paragraph (j).

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

543 If the governing authority, or the governing authority acting
544 through its designee, shall determine that an emergency exists in
545 regard to the purchase of any commodities or repair contracts, so
546 that the delay incident to giving opportunity for competitive
547 bidding would be detrimental to the interest of the governing
548 authority, then the provisions herein for competitive bidding
549 shall not apply and any officer or agent of such governing
550 authority having general or special authority therefor in making



551 such purchase or repair shall approve the bill presented therefor,
552 and he shall certify in writing thereon from whom such purchase
553 was made, or with whom such a repair contract was made. At the
554 board meeting next following the emergency purchase or repair
555 contract, documentation of the purchase or repair contract,
556 including a description of the commodity purchased, the price
557 thereof and the nature of the emergency shall be presented to the
558 board and shall be placed on the minutes of the board of such
559 governing authority. Purchases under the grant program
560 established under Section 37-68-7 in response to COVID-19 and the
561 directive that school districts create a distance learning plan
562 and fulfill technology needs expeditiously shall be deemed an
563 emergency purchase for purposes of this paragraph (k).

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

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

571 (ii) In addition to the authority granted in
572 subparagraph (i) of this paragraph (1), the commissioners or board
573 of trustees is authorized to enter into contracts for the lease of
574 equipment or services, or both, which it considers necessary for
575 the proper care of patients if, in its opinion, it is not



576 financially feasible to purchase the necessary equipment or
577 services. Any such contract for the lease of equipment or
578 services executed by the commissioners or board shall not exceed a
579 maximum of five (5) years' duration and shall include a
580 cancellation clause based on unavailability of funds. If such
581 cancellation clause is exercised, there shall be no further
582 liability on the part of the lessee. Any such contract for the
583 lease of equipment or services executed on behalf of the
584 commissioners or board that complies with the provisions of this
585 subparagraph (ii) shall be excepted from the bid requirements set
586 forth in this section.

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

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

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



601 supplies used in such repairs, and the number of hours of labor
602 and costs therefor shall be required for the payment for such
603 repairs.

604 (iii) **In-house equipment repairs.** Purchases of
605 parts for repairs to equipment, when such repairs are made by
606 personnel of the agency or governing authority; however, entire
607 assemblies, such as engines or transmissions, shall not be
608 included in this exemption when the entire assembly is being
609 replaced instead of being repaired.

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

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

624 (vi) **Intergovernmental sales and transfers.**
625 Purchases, sales, transfers or trades by governing authorities or



626 state agencies when such purchases, sales, transfers or trades are
627 made by a private treaty agreement or through means of
628 negotiation, from any federal agency or authority, another
629 governing authority or state agency of the State of Mississippi,
630 or any state agency or governing authority of another state.
631 Nothing in this section shall permit such purchases through public
632 auction except as provided for in subparagraph (v) of this
633 paragraph (m). It is the intent of this section to allow
634 governmental entities to dispose of and/or purchase commodities
635 from other governmental entities at a price that is agreed to by
636 both parties. This shall allow for purchases and/or sales at
637 prices which may be determined to be below the market value if the
638 selling entity determines that the sale at below market value is
639 in the best interest of the taxpayers of the state. Governing
640 authorities shall place the terms of the agreement and any
641 justification on the minutes, and state agencies shall obtain
642 approval from the Department of Finance and Administration, prior
643 to releasing or taking possession of the commodities.

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

648 (viii) **Single-source items.** Noncompetitive items
649 available from one (1) source only. In connection with the
650 purchase of noncompetitive items only available from one (1)



651 source, a certification of the conditions and circumstances
652 requiring the purchase shall be filed by the agency with the
653 Department of Finance and Administration and by the governing
654 authority with the board of the governing authority. Upon receipt
655 of that certification the Department of Finance and Administration
656 or the board of the governing authority, as the case may be, may,
657 in writing, authorize the purchase, which authority shall be noted
658 on the minutes of the body at the next regular meeting thereafter.
659 In those situations, a governing authority is not required to
660 obtain the approval of the Department of Finance and
661 Administration. Following the purchase, the executive head of the
662 state agency, or his designees, shall file with the Department of
663 Finance and Administration, documentation of the purchase,
664 including a description of the commodity purchased, the purchase
665 price thereof and the source from whom it was purchased.

666 (ix) **Waste disposal facility construction**
667 **contracts.** Construction of incinerators and other facilities for
668 disposal of solid wastes in which products either generated
669 therein, such as steam, or recovered therefrom, such as materials
670 for recycling, are to be sold or otherwise disposed of; however,
671 in constructing such facilities, a governing authority or agency
672 shall publicly issue requests for proposals, advertised for in the
673 same manner as provided herein for seeking bids for public
674 construction projects, concerning the design, construction,
675 ownership, operation and/or maintenance of such facilities,



676 wherein such requests for proposals when issued shall contain
677 terms and conditions relating to price, financial responsibility,
678 technology, environmental compatibility, legal responsibilities
679 and such other matters as are determined by the governing
680 authority or agency to be appropriate for inclusion; and after
681 responses to the request for proposals have been duly received,
682 the governing authority or agency may select the most qualified
683 proposal or proposals on the basis of price, technology and other
684 relevant factors and from such proposals, but not limited to the
685 terms thereof, negotiate and enter contracts with one or more of
686 the persons or firms submitting proposals.

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

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

696 (xii) **Energy efficiency services and equipment.**
697 Energy efficiency services and equipment acquired by school
698 districts, community and junior colleges, institutions of higher
699 learning and state agencies or other applicable governmental



700 entities on a shared-savings, lease or lease-purchase basis
701 pursuant to Section 31-7-14.

702 (xiii) **Municipal electrical utility system fuel.**

703 Purchases of coal and/or natural gas by municipally owned electric
704 power generating systems that have the capacity to use both coal
705 and natural gas for the generation of electric power.

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

707 Purchases by libraries or for libraries of books and periodicals;
708 processed film, videocassette tapes, filmstrips and slides;
709 recorded audiotapes, cassettes and diskettes; and any such items
710 as would be used for teaching, research or other information
711 distribution; however, equipment such as projectors, recorders,
712 audio or video equipment, and monitor televisions are not exempt
713 under this subparagraph.

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

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

720 (xvii) **Multichannel interactive video systems.**

721 From and after July 1, 1990, contracts by Mississippi Authority
722 for Educational Television with any private educational
723 institution or private nonprofit organization whose purposes are
724 educational in regard to the construction, purchase, lease or



725 lease-purchase of facilities and equipment and the employment of
726 personnel for providing multichannel interactive video systems
727 (ITSF) in the school districts of this state.

728 (xviii) **Purchases of prison industry products by**
729 **the Department of Corrections, regional correctional facilities or**
730 **privately owned prisons.** Purchases made by the Mississippi
731 Department of Corrections, regional correctional facilities or
732 privately owned prisons involving any item that is manufactured,
733 processed, grown or produced from the state's prison industries.

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

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

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

748 (xxii) **Garbage, solid waste and sewage contracts.**
749 Contracts for garbage collection or disposal, contracts for solid



750 waste collection or disposal and contracts for sewage collection
751 or disposal.

752 (xxiii) **Municipal water tank maintenance**
753 **contracts.** Professional maintenance program contracts for the
754 repair or maintenance of municipal water tanks, which provide
755 professional services needed to maintain municipal water storage
756 tanks for a fixed annual fee for a duration of two (2) or more
757 years.

758 (xxiv) **Purchases of Mississippi Industries for the**
759 **Blind products.** Purchases made by state agencies or governing
760 authorities involving any item that is manufactured, processed or
761 produced by the Mississippi Industries for the Blind.

762 (xxv) **Purchases of state-adopted textbooks.**
763 Purchases of state-adopted textbooks by public school districts.

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

767 (xxvii) **Used heavy or specialized machinery or**
768 **equipment for installation of soil and water conservation**
769 **practices purchased at auction.** Used heavy or specialized
770 machinery or equipment used for the installation and
771 implementation of soil and water conservation practices or
772 measures purchased subject to the restrictions provided in
773 Sections 69-27-331 through 69-27-341. Any purchase by the State
774 Soil and Water Conservation Commission under the exemption



775 authorized by this subparagraph shall require advance
776 authorization spread upon the minutes of the commission to include
777 the listing of the item or items authorized to be purchased and
778 the maximum bid authorized to be paid for each item or items.

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

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

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

783 **cooperative purchasing agreements.** Purchases made by certified
784 purchasing offices of state agencies or governing authorities
785 under cooperative purchasing agreements previously approved by the
786 Office of Purchasing and Travel and established by or for any
787 municipality, county, parish or state government or the federal
788 government, provided that the notification to potential
789 contractors includes a clause that sets forth the availability of
790 the cooperative purchasing agreement to other governmental
791 entities. Such purchases shall only be made if the use of the
792 cooperative purchasing agreements is determined to be in the best
793 interest of the governmental entity.

794 (xxx) **School yearbooks.** Purchases of school

795 yearbooks by state agencies or governing authorities; provided,
796 however, that state agencies and governing authorities shall use
797 for these purchases the RFP process as set forth in the
798 Mississippi Procurement Manual adopted by the Office of Purchasing
799 and Travel.



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

803 (xxxiii) **Toll roads and bridge construction**
804 **projects.** Contracts entered into under the provisions of Section
805 65-43-1 or 65-43-3.

806 (xxxiiii) **Certain purchases under Section 57-1-221.**
807 Contracts entered into pursuant to the provisions of Section
808 57-1-221.

809 (xxxv) **Certain transfers made pursuant to the**
810 **provisions of Section 57-105-1(7).** Transfers of public property
811 or facilities under Section 57-105-1(7) and construction related
812 to such public property or facilities.

813 (xxxvi) **Certain purchases or transfers entered into**
814 **with local electrical power associations.** Contracts or agreements
815 entered into under the provisions of Section 55-3-33.

816 (xxxvii) **Certain purchases by an academic medical**
817 **center or health sciences school.** Purchases by an academic
818 medical center or health sciences school, as defined in Section
819 37-115-50, of commodities that are used for clinical purposes and
820 1. intended for use in the diagnosis of disease or other
821 conditions or in the cure, mitigation, treatment or prevention of
822 disease, and 2. medical devices, biological, drugs and
823 radiation-emitting devices as defined by the United States Food
824 and Drug Administration.



825 (xxxvii) **Certain purchases made under the Alyce G.**
826 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi
827 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
828 Lottery Law.

829 (xxxviii) **Certain purchases made by the Department**
830 **of Health and the Department of Revenue.** Purchases made by the
831 Department of Health and/or the Department of Revenue solely for
832 the purpose of fulfilling their respective responsibilities under
833 the Mississippi Medical Cannabis Act. This subparagraph shall
834 stand repealed on June 30, 2023.

835 (xxxix) **Certain purchases at buildings designated**
836 **as a Mississippi Landmark.** Purchases of not more Five Hundred
837 Thousand Dollars (\$500,000.00) made by the Department of Finance
838 and Administration for the renovation, repair, restoration or
839 improvements to the State Capitol Building or any other historical
840 building under the general supervision and care of the department
841 located within the Capitol Complex which is designated as a
842 Mississippi Landmark by the Board of Trustees of the Department of
843 Archives and History under the authority of Sections 39-7-7 and
844 39-7-11.

845 (xl) **Aircraft and aircraft simulation devices for**
846 **academic instructional purposes.** Purchases of aircraft and
847 aircraft simulation devices, any parts or equipment relating
848 thereto, by any state institution of higher learning which offers
849 undergraduate and graduate degree programs in aviation, or the



850 Board of Trustees of State Institutions of Higher Learning, acting
851 on behalf of any state institution of higher learning which offers
852 undergraduate and graduate degree programs in aviation, for
853 purposes of academic instruction. The university's chair of the
854 Department of Commercial Aviation shall be authorized to develop
855 purchasing procedures which shall be in compliance with the
856 exemption created in this subparagraph, which shall be subject to
857 approval by the IHL board before its implementation.

858 (n) **Term contract authorization.** All contracts for the
859 purchase of:

860 (i) All contracts for the purchase of commodities,
861 equipment and public construction (including, but not limited to,
862 repair and maintenance), may be let for periods of not more than
863 sixty (60) months in advance, subject to applicable statutory
864 provisions prohibiting the letting of contracts during specified
865 periods near the end of terms of office. Term contracts for a
866 period exceeding twenty-four (24) months shall also be subject to
867 ratification or cancellation by governing authority boards taking
868 office subsequent to the governing authority board entering the
869 contract.

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



875 Finance and Administration for the state agencies and by the
876 governing board for governing authorities. The bid proposal and
877 contract documents utilizing a price adjustment clause shall
878 contain the basis and method of adjusting unit prices for the
879 change in the cost of such commodities, equipment and public
880 construction.

881 (o) **Purchase law violation prohibition and vendor**
882 **penalty.** No contract or purchase as herein authorized shall be
883 made for the purpose of circumventing the provisions of this
884 section requiring competitive bids, nor shall it be lawful for any
885 person or concern to submit individual invoices for amounts within
886 those authorized for a contract or purchase where the actual value
887 of the contract or commodity purchased exceeds the authorized
888 amount and the invoices therefor are split so as to appear to be
889 authorized as purchases for which competitive bids are not
890 required. Submission of such invoices shall constitute a
891 misdemeanor punishable by a fine of not less than Five Hundred
892 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
893 or by imprisonment for thirty (30) days in the county jail, or
894 both such fine and imprisonment. In addition, the claim or claims
895 submitted shall be forfeited.

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



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

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



925 (r) **Solid waste contract proposal procedure.** Before
926 entering into any contract for garbage collection or disposal,
927 contract for solid waste collection or disposal or contract for
928 sewage collection or disposal, which involves an expenditure of
929 more than Seventy-five Thousand Dollars (\$75,000.00), a governing
930 authority or agency shall issue publicly a request for proposals
931 concerning the specifications for such services which shall be
932 advertised for in the same manner as provided in this section for
933 seeking bids for purchases which involve an expenditure of more
934 than the amount provided in paragraph (c) of this section. Any
935 request for proposals when issued shall contain terms and
936 conditions relating to price, financial responsibility,
937 technology, legal responsibilities and other relevant factors as
938 are determined by the governing authority or agency to be
939 appropriate for inclusion; all factors determined relevant by the
940 governing authority or agency or required by this paragraph (r)
941 shall be duly included in the advertisement to elicit proposals.
942 After responses to the request for proposals have been duly
943 received, the governing authority or agency shall select the most
944 qualified proposal or proposals on the basis of price, technology
945 and other relevant factors and from such proposals, but not
946 limited to the terms thereof, negotiate and enter into contracts
947 with one or more of the persons or firms submitting proposals. If
948 the governing authority or agency deems none of the proposals to
949 be qualified or otherwise acceptable, the request for proposals



950 process may be reinitiated. Notwithstanding any other provisions
951 of this paragraph, where a county with at least thirty-five
952 thousand (35,000) nor more than forty thousand (40,000)
953 population, according to the 1990 federal decennial census, owns
954 or operates a solid waste landfill, the governing authorities of
955 any other county or municipality may contract with the governing
956 authorities of the county owning or operating the landfill,
957 pursuant to a resolution duly adopted and spread upon the minutes
958 of each governing authority involved, for garbage or solid waste
959 collection or disposal services through contract negotiations.

960 (s) **Minority set-aside authorization.** Notwithstanding
961 any provision of this section to the contrary, any agency or
962 governing authority, by order placed on its minutes, may, in its
963 discretion, set aside not more than twenty percent (20%) of its
964 anticipated annual expenditures for the purchase of commodities
965 from minority businesses; however, all such set-aside purchases
966 shall comply with all purchasing regulations promulgated by the
967 Department of Finance and Administration and shall be subject to
968 bid requirements under this section. Set-aside purchases for
969 which competitive bids are required shall be made from the lowest
970 and best minority business bidder. For the purposes of this
971 paragraph, the term "minority business" means a business which is
972 owned by a majority of persons who are United States citizens or
973 permanent resident aliens (as defined by the Immigration and
974 Naturalization Service) of the United States, and who are Asian,



975 Black, Hispanic or Native American, according to the following
976 definitions:

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

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

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

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

988 (t) **Construction punch list restriction.** The
989 architect, engineer or other representative designated by the
990 agency or governing authority that is contracting for public
991 construction or renovation may prepare and submit to the
992 contractor only one (1) preliminary punch list of items that do
993 not meet the contract requirements at the time of substantial
994 completion and one (1) final list immediately before final
995 completion and final payment.

996 (u) **Procurement of construction services by state**
997 **institutions of higher learning.** Contracts for privately financed
998 construction of auxiliary facilities on the campus of a state
999 institution of higher learning may be awarded by the Board of



1000 Trustees of State Institutions of Higher Learning to the lowest
1001 and best bidder, where sealed bids are solicited, or to the
1002 offeror whose proposal is determined to represent the best value
1003 to the citizens of the State of Mississippi, where requests for
1004 proposals are solicited.

1005 (v) **Insurability of bidders for public construction or**
1006 **other public contracts.** In any solicitation for bids to perform
1007 public construction or other public contracts to which this
1008 section applies, including, but not limited to, contracts for
1009 repair and maintenance, for which the contract will require
1010 insurance coverage in an amount of not less than One Million
1011 Dollars (\$1,000,000.00), bidders shall be permitted to either
1012 submit proof of current insurance coverage in the specified amount
1013 or demonstrate ability to obtain the required coverage amount of
1014 insurance if the contract is awarded to the bidder. Proof of
1015 insurance coverage shall be submitted within five (5) business
1016 days from bid acceptance.

1017 (w) **Purchase authorization clarification.** Nothing in
1018 this section shall be construed as authorizing any purchase not
1019 authorized by law.

1020 **SECTION 2.** This act shall take effect and be in force from
1021 and after July 1, 2023, and shall stand repealed on June 30, 2023.

