

By: Representative Weathersby

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 879

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE PUBLIC PURCHASING LAW TO PROVIDE THAT COMPETITIVE BIDS
3 OVER SEVENTY-FIVE THOUSAND DOLLARS MAY BE ADVERTISED ON THE
4 PROCUREMENT PORTAL ESTABLISHED BY THE DEPARTMENT OF FINANCE AND
5 ADMINISTRATION; AND FOR RELATED PURPOSES.

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

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

9 31-7-13. All agencies and governing authorities shall
10 purchase their commodities and printing; contract for garbage
11 collection or disposal; contract for solid waste collection or
12 disposal; contract for sewage collection or disposal; contract for
13 public construction; and contract for rentals as herein provided.

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

15 Purchases which do not involve an expenditure of more than Five
16 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
17 charges, may be made without advertising or otherwise requesting
18 competitive bids. However, nothing contained in this paragraph

19 (a) shall be construed to prohibit any agency or governing



20 authority from establishing procedures which require competitive
21 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

22 (b) **Bidding procedure for purchases over \$5,000.00 but**
23 **not over \$75,000.00.** Purchases which involve an expenditure of
24 more than Five Thousand Dollars (\$5,000.00) but not more than
25 Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight
26 and shipping charges, may be made from the lowest and best bidder
27 without publishing or posting advertisement for bids, provided at
28 least two (2) competitive written bids have been obtained. Any
29 state agency or community/junior college purchasing commodities or
30 procuring construction pursuant to this paragraph (b) may
31 authorize its purchasing agent, or his designee, to accept the
32 lowest competitive written bid under Seventy-five Thousand Dollars
33 (\$75,000.00). Any governing authority purchasing commodities
34 pursuant to this paragraph (b) may authorize its purchasing agent,
35 or his designee, with regard to governing authorities other than
36 counties, or its purchase clerk, or his designee, with regard to
37 counties, to accept the lowest and best competitive written bid.
38 Such authorization shall be made in writing by the governing
39 authority and shall be maintained on file in the primary office of
40 the agency and recorded in the official minutes of the governing
41 authority, as appropriate. The purchasing agent or the purchase
42 clerk, or his designee, as the case may be, and not the governing
43 authority, shall be liable for any penalties and/or damages as may
44 be imposed by law for any act or omission of the purchasing agent



45 or purchase clerk, or his designee, constituting a violation of
46 law in accepting any bid without approval by the governing
47 authority. The term "competitive written bid" shall mean a bid
48 submitted on a bid form furnished by the buying agency or
49 governing authority and signed by authorized personnel
50 representing the vendor, or a bid submitted on a vendor's
51 letterhead or identifiable bid form and signed by authorized
52 personnel representing the vendor. "Competitive" shall mean that
53 the bids are developed based upon comparable identification of the
54 needs and are developed independently and without knowledge of
55 other bids or prospective bids. Any bid item for construction in
56 excess of Five Thousand Dollars (\$5,000.00) shall be broken down
57 by components to provide detail of component description and
58 pricing. These details shall be submitted with the written bids
59 and become part of the bid evaluation criteria. Bids may be
60 submitted by facsimile, electronic mail or other generally
61 accepted method of information distribution. Bids submitted by
62 electronic transmission shall not require the signature of the
63 vendor's representative unless required by agencies or governing
64 authorities.

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

66 (i) **Publication requirement.**

67 1. Purchases which involve an expenditure of
68 more than Seventy-five Thousand Dollars (\$75,000.00), exclusive of
69 freight and shipping charges, may be made from the lowest and best



70 bidder after advertising for competitive bids * * * for * * *
71 seven (7) consecutive * * * calendar days on the procurement
72 portal established by the Department of Finance and Administration
73 under Section 25-53-151. In addition to advertising on the
74 portal, agencies and governing authorities may also advertise once
75 each week for two (2) consecutive weeks in a regular newspaper
76 published or having general circulation in the county or
77 municipality in which such agency or governing authority is
78 located. * * * Governing authorities shall provide notification
79 regarding a solicitation to the main office of the Mississippi
80 Procurement Technical Assistance Program under the Mississippi
81 Development Authority for posting on the portal. If the governing
82 authority chooses to advertise in a newspaper, electronic
83 notification to the Mississippi Procurement Technical Program
84 shall be sent on the same day the advertisement is sent to the
85 newspaper.

86 2. Reverse auctions shall be the primary
87 method for receiving bids during the bidding process. If a
88 purchasing entity determines that a reverse auction is not in the
89 best interest of the state, then that determination must be
90 approved by the Public Procurement Review Board. The purchasing
91 entity shall submit a detailed explanation of why a reverse
92 auction would not be in the best interest of the state and present
93 an alternative process to be approved by the Public Procurement
94 Review Board. If the Public Procurement Review Board authorizes



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



119 Qualifications which promotes open competition and meets the
120 requirements of the Office of Purchasing and Travel.

121 3. The date as published for the bid opening
122 shall not be less than seven (7) working days after the * * * end
123 of the required notice period; however, if the purchase involves a
124 construction project in which the estimated cost is in excess of
125 Seventy-five Thousand Dollars (\$75,000.00), such bids shall not be
126 opened in less than fifteen (15) working days after the * * * end
127 of the required notice * * * period. The notice of intention to
128 let contracts or purchase equipment shall state the time and place
129 at which bids shall be received, list the contracts to be made or
130 types of equipment or supplies to be purchased, and, if all plans
131 and/or specifications are not published, refer to the plans and/or
132 specifications on file. * * *

133 (ii) **Bidding process amendment procedure.** If all
134 plans and/or specifications are published in the notification,
135 then the plans and/or specifications may not be amended. If all
136 plans and/or specifications are not published in the notification,
137 then amendments to the plans/specifications, bid opening date, bid
138 opening time and place may be made, provided that the agency or
139 governing authority maintains a list of all prospective bidders
140 who are known to have received a copy of the bid documents and all
141 such prospective bidders are sent copies of all amendments. This
142 notification of amendments may be made via mail, facsimile,
143 electronic mail or other generally accepted method of information



144 distribution. No addendum to bid specifications may be issued
145 within two (2) working days of the time established for the
146 receipt of bids unless such addendum also amends the bid opening
147 to a date not less than five (5) working days after the date of
148 the addendum.

149 (iii) **Filing requirement.** In all cases involving
150 governing authorities, before the notice shall be published or
151 posted, the plans or specifications for the construction or
152 equipment being sought shall be filed with the clerk of the board
153 of the governing authority. In addition to these requirements, a
154 bid file shall be established which shall indicate those vendors
155 to whom such solicitations and specifications were issued, and
156 such file shall also contain such information as is pertinent to
157 the bid.

158 (iv) **Specification restrictions.**

159 1. Specifications pertinent to such bidding
160 shall be written so as not to exclude comparable equipment of
161 domestic manufacture. However, if valid justification is
162 presented, the Department of Finance and Administration or the
163 board of a governing authority may approve a request for specific
164 equipment necessary to perform a specific job. Further, such
165 justification, when placed on the minutes of the board of a
166 governing authority, may serve as authority for that governing
167 authority to write specifications to require a specific item of
168 equipment needed to perform a specific job. In addition to these



169 requirements, from and after July 1, 1990, vendors of relocatable
170 classrooms and the specifications for the purchase of such
171 relocatable classrooms published by local school boards shall meet
172 all pertinent regulations of the State Board of Education,
173 including prior approval of such bid by the State Department of
174 Education.

175 2. Specifications for construction projects
176 may include an allowance for commodities, equipment, furniture,
177 construction materials or systems in which prospective bidders are
178 instructed to include in their bids specified amounts for such
179 items so long as the allowance items are acquired by the vendor in
180 a commercially reasonable manner and approved by the
181 agency/governing authority. Such acquisitions shall not be made
182 to circumvent the public purchasing laws.

183 (v) **Electronic bids.** Agencies and governing
184 authorities shall provide a secure electronic interactive system
185 for the submittal of bids requiring competitive bidding that shall
186 be either the sole means for submission or offered as an
187 additional bidding option for those bidders who choose to submit
188 their bids electronically. The Department of Finance and
189 Administration shall provide, by regulation, the standards that
190 agencies must follow when receiving electronic bids. Agencies and
191 governing authorities shall make the appropriate provisions
192 necessary to accept electronic bids from those bidders who choose
193 to submit their bids electronically for all purchases requiring



194 competitive bidding under this section. Any special condition or
195 requirement for the electronic bid submission shall be specified
196 in the advertisement for bids required by this section. Agencies
197 or governing authorities that are currently without available high
198 speed Internet access shall be exempt from the requirement of this
199 subparagraph (v) until such time that high speed Internet access
200 becomes available. Any county having a population of less than
201 twenty thousand (20,000) shall be exempt from the provisions of
202 this subparagraph (v). Any municipality having a population of
203 less than ten thousand (10,000) shall be exempt from the
204 provisions of this subparagraph (v). * * * When construction bids
205 are submitted electronically, the requirement for including a
206 certificate of responsibility, or a statement that the bid
207 enclosed does not exceed Fifty Thousand Dollars (\$50,000.00), on
208 the exterior of the bid envelope as indicated in Section
209 31-3-21(1) and (2) shall be deemed in compliance with by including
210 same as an attachment with the electronic bid submittal.

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

212 (i) **Decision procedure.** Purchases may be made
213 from the lowest and best bidder. In determining the lowest and
214 best bid, freight and shipping charges shall be included.
215 Life-cycle costing, total cost bids, warranties, guaranteed
216 buy-back provisions and other relevant provisions may be included
217 in the best bid calculation. All best bid procedures for state
218 agencies must be in compliance with regulations established by the



219 Department of Finance and Administration. If any governing
220 authority accepts a bid other than the lowest bid actually
221 submitted, it shall place on its minutes detailed calculations and
222 narrative summary showing that the accepted bid was determined to
223 be the lowest and best bid, including the dollar amount of the
224 accepted bid and the dollar amount of the lowest bid. No agency
225 or governing authority shall accept a bid based on items not
226 included in the specifications.

227 (ii) **Decision procedure for Certified Purchasing**
228 **Offices.** In addition to the decision procedure set forth in
229 subparagraph (i) of this paragraph (d), Certified Purchasing
230 Offices may also use the following procedure: Purchases may be
231 made from the bidder offering the best value. In determining the
232 best value bid, freight and shipping charges shall be included.
233 Life-cycle costing, total cost bids, warranties, guaranteed
234 buy-back provisions, documented previous experience, training
235 costs and other relevant provisions, including, but not limited
236 to, a bidder having a local office and inventory located within
237 the jurisdiction of the governing authority, may be included in
238 the best value calculation. This provision shall authorize
239 Certified Purchasing Offices to utilize a Request For Proposals
240 (RFP) process when purchasing commodities. All best value
241 procedures for state agencies must be in compliance with
242 regulations established by the Department of Finance and



243 Administration. No agency or governing authority shall accept a
244 bid based on items or criteria not included in the specifications.

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

246 **Landmarks.** In addition to the decision procedure set forth in
247 subparagraph (i) of this paragraph (d), where purchase involves
248 renovation, restoration, or both, of the State Capitol Building or
249 any other historical building designated for at least five (5)
250 years as a Mississippi Landmark by the Board of Trustees of the
251 Department of Archives and History under the authority of Sections
252 39-7-7 and 39-7-11, the agency or governing authority may use the
253 following procedure: Purchases may be made from the lowest and
254 best prequalified bidder. Prequalification of bidders shall be
255 determined not less than fifteen (15) working days before the
256 first published notice of bid opening. Prequalification criteria
257 shall be limited to bidder's knowledge and experience in
258 historical restoration, preservation and renovation. In
259 determining the lowest and best bid, freight and shipping charges
260 shall be included. Life-cycle costing, total cost bids,
261 warranties, guaranteed buy-back provisions and other relevant
262 provisions may be included in the best bid calculation. All best
263 bid and prequalification procedures for state agencies must be in
264 compliance with regulations established by the Department of
265 Finance and Administration. If any governing authority accepts a
266 bid other than the lowest bid actually submitted, it shall place
267 on its minutes detailed calculations and narrative summary showing



268 that the accepted bid was determined to be the lowest and best
269 bid, including the dollar amount of the accepted bid and the
270 dollar amount of the lowest bid. No agency or governing authority
271 shall accept a bid based on items not included in the
272 specifications.

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

274 If the lowest and best bid is not more than ten percent (10%)
275 above the amount of funds allocated for a public construction or
276 renovation project, then the agency or governing authority shall
277 be permitted to negotiate with the lowest bidder in order to enter
278 into a contract for an amount not to exceed the funds allocated.

279 (e) **Lease-purchase authorization.** For the purposes of
280 this section, the term "equipment" shall mean equipment, furniture
281 and, if applicable, associated software and other applicable
282 direct costs associated with the acquisition. Any lease-purchase
283 of equipment which an agency is not required to lease-purchase
284 under the master lease-purchase program pursuant to Section
285 31-7-10 and any lease-purchase of equipment which a governing
286 authority elects to lease-purchase may be acquired by a
287 lease-purchase agreement under this paragraph (e). Lease-purchase
288 financing may also be obtained from the vendor or from a
289 third-party source after having solicited and obtained at least
290 two (2) written competitive bids, as defined in paragraph (b) of
291 this section, for such financing without advertising for such
292 bids. Solicitation for the bids for financing may occur before or



293 after acceptance of bids for the purchase of such equipment or,
294 where no such bids for purchase are required, at any time before
295 the purchase thereof. No such lease-purchase agreement shall be
296 for an annual rate of interest which is greater than the overall
297 maximum interest rate to maturity on general obligation
298 indebtedness permitted under Section 75-17-101, and the term of
299 such lease-purchase agreement shall not exceed the useful life of
300 equipment covered thereby as determined according to the upper
301 limit of the asset depreciation range (ADR) guidelines for the
302 Class Life Asset Depreciation Range System established by the
303 Internal Revenue Service pursuant to the United States Internal
304 Revenue Code and regulations thereunder as in effect on December
305 31, 1980, or comparable depreciation guidelines with respect to
306 any equipment not covered by ADR guidelines. Any lease-purchase
307 agreement entered into pursuant to this paragraph (e) may contain
308 any of the terms and conditions which a master lease-purchase
309 agreement may contain under the provisions of Section 31-7-10(5),
310 and shall contain an annual allocation dependency clause
311 substantially similar to that set forth in Section 31-7-10(8).
312 Each agency or governing authority entering into a lease-purchase
313 transaction pursuant to this paragraph (e) shall maintain with
314 respect to each such lease-purchase transaction the same
315 information as required to be maintained by the Department of
316 Finance and Administration pursuant to Section 31-7-10(13).
317 However, nothing contained in this section shall be construed to



318 permit agencies to acquire items of equipment with a total
319 acquisition cost in the aggregate of less than Ten Thousand
320 Dollars (\$10,000.00) by a single lease-purchase transaction. All
321 equipment, and the purchase thereof by any lessor, acquired by
322 lease-purchase under this paragraph and all lease-purchase
323 payments with respect thereto shall be exempt from all Mississippi
324 sales, use and ad valorem taxes. Interest paid on any
325 lease-purchase agreement under this section shall be exempt from
326 State of Mississippi income taxation.

327 (f) **Alternate bid authorization.** When necessary to
328 ensure ready availability of commodities for public works and the
329 timely completion of public projects, no more than two (2)
330 alternate bids may be accepted by a governing authority for
331 commodities. No purchases may be made through use of such
332 alternate bids procedure unless the lowest and best bidder cannot
333 deliver the commodities contained in his bid. In that event,
334 purchases of such commodities may be made from one (1) of the
335 bidders whose bid was accepted as an alternate.

336 (g) **Construction contract change authorization.** In the
337 event a determination is made by an agency or governing authority
338 after a construction contract is let that changes or modifications
339 to the original contract are necessary or would better serve the
340 purpose of the agency or the governing authority, such agency or
341 governing authority may, in its discretion, order such changes
342 pertaining to the construction that are necessary under the



343 circumstances without the necessity of further public bids;
344 provided that such change shall be made in a commercially
345 reasonable manner and shall not be made to circumvent the public
346 purchasing statutes. In addition to any other authorized person,
347 the architect or engineer hired by an agency or governing
348 authority with respect to any public construction contract shall
349 have the authority, when granted by an agency or governing
350 authority, to authorize changes or modifications to the original
351 contract without the necessity of prior approval of the agency or
352 governing authority when any such change or modification is less
353 than one percent (1%) of the total contract amount. The agency or
354 governing authority may limit the number, manner or frequency of
355 such emergency changes or modifications.

356 (h) **Petroleum purchase alternative.** In addition to
357 other methods of purchasing authorized in this chapter, when any
358 agency or governing authority shall have a need for gas, diesel
359 fuel, oils and/or other petroleum products in excess of the amount
360 set forth in paragraph (a) of this section, such agency or
361 governing authority may purchase the commodity after having
362 solicited and obtained at least two (2) competitive written bids,
363 as defined in paragraph (b) of this section. If two (2)
364 competitive written bids are not obtained, the entity shall comply
365 with the procedures set forth in paragraph (c) of this section.
366 In the event any agency or governing authority shall have
367 advertised for bids for the purchase of gas, diesel fuel, oils and



368 other petroleum products and coal and no acceptable bids can be
369 obtained, such agency or governing authority is authorized and
370 directed to enter into any negotiations necessary to secure the
371 lowest and best contract available for the purchase of such
372 commodities.

373 (i) **Road construction petroleum products price**
374 **adjustment clause authorization.** Any agency or governing
375 authority authorized to enter into contracts for the construction,
376 maintenance, surfacing or repair of highways, roads or streets,
377 may include in its bid proposal and contract documents a price
378 adjustment clause with relation to the cost to the contractor,
379 including taxes, based upon an industry-wide cost index, of
380 petroleum products including asphalt used in the performance or
381 execution of the contract or in the production or manufacture of
382 materials for use in such performance. Such industry-wide index
383 shall be established and published monthly by the Mississippi
384 Department of Transportation with a copy thereof to be mailed,
385 upon request, to the clerks of the governing authority of each
386 municipality and the clerks of each board of supervisors
387 throughout the state. The price adjustment clause shall be based
388 on the cost of such petroleum products only and shall not include
389 any additional profit or overhead as part of the adjustment. The
390 bid proposals or document contract shall contain the basis and
391 methods of adjusting unit prices for the change in the cost of
392 such petroleum products.



393 (j) **State agency emergency purchase procedure.** If the
394 governing board or the executive head, or his designees, of any
395 agency of the state shall determine that an emergency exists in
396 regard to the purchase of any commodities or repair contracts, so
397 that the delay incident to giving opportunity for competitive
398 bidding would be detrimental to the interests of the state, then
399 the head of such agency, or his designees, shall file with the
400 Department of Finance and Administration (i) a statement
401 explaining the conditions and circumstances of the emergency,
402 which shall include a detailed description of the events leading
403 up to the situation and the negative impact to the entity if the
404 purchase is made following the statutory requirements set forth in
405 paragraph (a), (b) or (c) of this section, and (ii) a certified
406 copy of the appropriate minutes of the board of such agency
407 requesting the emergency purchase, if applicable. Upon receipt of
408 the statement and applicable board certification, the State Fiscal
409 Officer, or his designees, may, in writing, authorize the purchase
410 or repair without having to comply with competitive bidding
411 requirements.

412 If the governing board or the executive head, or his
413 designees, of any agency determines that an emergency exists in
414 regard to the purchase of any commodities or repair contracts, so
415 that the delay incident to giving opportunity for competitive
416 bidding would threaten the health or safety of any person, or the
417 preservation or protection of property, then the provisions in



418 this section for competitive bidding shall not apply, and any
419 officer or agent of the agency having general or specific
420 authority for making the purchase or repair contract shall approve
421 the bill presented for payment, and he shall certify in writing
422 from whom the purchase was made, or with whom the repair contract
423 was made.

424 Total purchases made under this paragraph (j) shall only be
425 for the purpose of meeting needs created by the emergency
426 situation. Following the emergency purchase, documentation of the
427 purchase, including a description of the commodity purchased, the
428 purchase price thereof and the nature of the emergency shall be
429 filed with the Department of Finance and Administration. Any
430 contract awarded pursuant to this paragraph (j) shall not exceed a
431 term of one (1) year.

432 Purchases under the grant program established under Section
433 37-68-7 in response to COVID-19 and the directive that school
434 districts create a distance learning plan and fulfill technology
435 needs expeditiously shall be deemed an emergency purchase for
436 purposes of this paragraph (j).

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

438 If the governing authority, or the governing authority acting
439 through its designee, shall determine that an emergency exists in
440 regard to the purchase of any commodities or repair contracts, so
441 that the delay incident to giving opportunity for competitive
442 bidding would be detrimental to the interest of the governing



443 authority, then the provisions herein for competitive bidding
444 shall not apply and any officer or agent of such governing
445 authority having general or special authority therefor in making
446 such purchase or repair shall approve the bill presented therefor,
447 and he shall certify in writing thereon from whom such purchase
448 was made, or with whom such a repair contract was made. At the
449 board meeting next following the emergency purchase or repair
450 contract, documentation of the purchase or repair contract,
451 including a description of the commodity purchased, the price
452 thereof and the nature of the emergency shall be presented to the
453 board and shall be placed on the minutes of the board of such
454 governing authority. Purchases under the grant program
455 established under Section 37-68-7 in response to COVID-19 and the
456 directive that school districts create a distance learning plan
457 and fulfill technology needs expeditiously shall be deemed an
458 emergency purchase for purposes of this paragraph (k).

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

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

466 (ii) In addition to the authority granted in
467 subparagraph (i) of this paragraph (1), the commissioners or board



468 of trustees is authorized to enter into contracts for the lease of
469 equipment or services, or both, which it considers necessary for
470 the proper care of patients if, in its opinion, it is not
471 financially feasible to purchase the necessary equipment or
472 services. Any such contract for the lease of equipment or
473 services executed by the commissioners or board shall not exceed a
474 maximum of five (5) years' duration and shall include a
475 cancellation clause based on unavailability of funds. If such
476 cancellation clause is exercised, there shall be no further
477 liability on the part of the lessee. Any such contract for the
478 lease of equipment or services executed on behalf of the
479 commissioners or board that complies with the provisions of this
480 subparagraph (ii) shall be excepted from the bid requirements set
481 forth in this section.

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

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

488 (ii) **Outside equipment repairs.** Repairs to
489 equipment, when such repairs are made by repair facilities in the
490 private sector; however, engines, transmissions, rear axles and/or
491 other such components shall not be included in this exemption when
492 replaced as a complete unit instead of being repaired and the need



493 for such total component replacement is known before disassembly
494 of the component; however, invoices identifying the equipment,
495 specific repairs made, parts identified by number and name,
496 supplies used in such repairs, and the number of hours of labor
497 and costs therefor shall be required for the payment for such
498 repairs.

499 (iii) **In-house equipment repairs.** Purchases of
500 parts for repairs to equipment, when such repairs are made by
501 personnel of the agency or governing authority; however, entire
502 assemblies, such as engines or transmissions, shall not be
503 included in this exemption when the entire assembly is being
504 replaced instead of being repaired.

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

508 (v) **Governmental equipment auctions.** Motor
509 vehicles or other equipment purchased from a federal agency or
510 authority, another governing authority or state agency of the
511 State of Mississippi, or any governing authority or state agency
512 of another state at a public auction held for the purpose of
513 disposing of such vehicles or other equipment. Any purchase by a
514 governing authority under the exemption authorized by this
515 subparagraph (v) shall require advance authorization spread upon
516 the minutes of the governing authority to include the listing of



517 the item or items authorized to be purchased and the maximum bid
518 authorized to be paid for each item or items.

519 (vi) **Intergovernmental sales and transfers.**

520 Purchases, sales, transfers or trades by governing authorities or
521 state agencies when such purchases, sales, transfers or trades are
522 made by a private treaty agreement or through means of
523 negotiation, from any federal agency or authority, another
524 governing authority or state agency of the State of Mississippi,
525 or any state agency or governing authority of another state.

526 Nothing in this section shall permit such purchases through public
527 auction except as provided for in subparagraph (v) of this
528 paragraph (m). It is the intent of this section to allow
529 governmental entities to dispose of and/or purchase commodities
530 from other governmental entities at a price that is agreed to by
531 both parties. This shall allow for purchases and/or sales at
532 prices which may be determined to be below the market value if the
533 selling entity determines that the sale at below market value is
534 in the best interest of the taxpayers of the state. Governing
535 authorities shall place the terms of the agreement and any
536 justification on the minutes, and state agencies shall obtain
537 approval from the Department of Finance and Administration, prior
538 to releasing or taking possession of the commodities.

539 (vii) **Perishable supplies or food.** Perishable
540 supplies or food purchased for use in connection with hospitals,



541 the school lunch programs, homemaking programs and for the feeding
542 of county or municipal prisoners.

543 (viii) **Single-source items.** Noncompetitive items
544 available from one (1) source only. In connection with the
545 purchase of noncompetitive items only available from one (1)
546 source, a certification of the conditions and circumstances
547 requiring the purchase shall be filed by the agency with the
548 Department of Finance and Administration and by the governing
549 authority with the board of the governing authority. Upon receipt
550 of that certification the Department of Finance and Administration
551 or the board of the governing authority, as the case may be, may,
552 in writing, authorize the purchase, which authority shall be noted
553 on the minutes of the body at the next regular meeting thereafter.
554 In those situations, a governing authority is not required to
555 obtain the approval of the Department of Finance and
556 Administration. Following the purchase, the executive head of the
557 state agency, or his designees, shall file with the Department of
558 Finance and Administration, documentation of the purchase,
559 including a description of the commodity purchased, the purchase
560 price thereof and the source from whom it was purchased.

561 (ix) **Waste disposal facility construction**
562 **contracts.** Construction of incinerators and other facilities for
563 disposal of solid wastes in which products either generated
564 therein, such as steam, or recovered therefrom, such as materials
565 for recycling, are to be sold or otherwise disposed of; however,



566 in constructing such facilities, a governing authority or agency
567 shall publicly issue requests for proposals, advertised for in the
568 same manner as provided herein for seeking bids for public
569 construction projects, concerning the design, construction,
570 ownership, operation and/or maintenance of such facilities,
571 wherein such requests for proposals when issued shall contain
572 terms and conditions relating to price, financial responsibility,
573 technology, environmental compatibility, legal responsibilities
574 and such other matters as are determined by the governing
575 authority or agency to be appropriate for inclusion; and after
576 responses to the request for proposals have been duly received,
577 the governing authority or agency may select the most qualified
578 proposal or proposals on the basis of price, technology and other
579 relevant factors and from such proposals, but not limited to the
580 terms thereof, negotiate and enter contracts with one or more of
581 the persons or firms submitting proposals.

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

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



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

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

601 (xiv) **Library books and other reference materials.**
602 Purchases by libraries or for libraries of books and periodicals;
603 processed film, videocassette tapes, filmstrips and slides;
604 recorded audiotapes, cassettes and diskettes; and any such items
605 as would be used for teaching, research or other information
606 distribution; however, equipment such as projectors, recorders,
607 audio or video equipment, and monitor televisions are not exempt
608 under this subparagraph.

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

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



615 (xvii) **Multichannel interactive video systems.**
616 From and after July 1, 1990, contracts by Mississippi Authority
617 for Educational Television with any private educational
618 institution or private nonprofit organization whose purposes are
619 educational in regard to the construction, purchase, lease or
620 lease-purchase of facilities and equipment and the employment of
621 personnel for providing multichannel interactive video systems
622 (ITSF) in the school districts of this state.

623 (xviii) **Purchases of prison industry products by**
624 **the Department of Corrections, regional correctional facilities or**
625 **privately owned prisons.** Purchases made by the Mississippi
626 Department of Corrections, regional correctional facilities or
627 privately owned prisons involving any item that is manufactured,
628 processed, grown or produced from the state's prison industries.

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

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

638 (xxi) **Certain school district purchases.**
639 Purchases of commodities made by school districts from vendors



640 with which any levying authority of the school district, as
641 defined in Section 37-57-1, has contracted through competitive
642 bidding procedures for purchases of the same commodities.

643 (xxii) **Garbage, solid waste and sewage contracts.**
644 Contracts for garbage collection or disposal, contracts for solid
645 waste collection or disposal and contracts for sewage collection
646 or disposal.

647 (xxiii) **Municipal water tank maintenance**
648 **contracts.** Professional maintenance program contracts for the
649 repair or maintenance of municipal water tanks, which provide
650 professional services needed to maintain municipal water storage
651 tanks for a fixed annual fee for a duration of two (2) or more
652 years.

653 (xxiv) **Purchases of Mississippi Industries for the**
654 **Blind products.** Purchases made by state agencies or governing
655 authorities involving any item that is manufactured, processed or
656 produced by the Mississippi Industries for the Blind.

657 (xxv) **Purchases of state-adopted textbooks.**
658 Purchases of state-adopted textbooks by public school districts.

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

662 (xxvii) **Used heavy or specialized machinery or**
663 **equipment for installation of soil and water conservation**
664 **practices purchased at auction.** Used heavy or specialized



665 machinery or equipment used for the installation and
666 implementation of soil and water conservation practices or
667 measures purchased subject to the restrictions provided in
668 Sections 69-27-331 through 69-27-341. Any purchase by the State
669 Soil and Water Conservation Commission under the exemption
670 authorized by this subparagraph shall require advance
671 authorization spread upon the minutes of the commission to include
672 the listing of the item or items authorized to be purchased and
673 the maximum bid authorized to be paid for each item or items.

674 (xxviii) **Hospital lease of equipment or services.**
675 Leases by hospitals of equipment or services if the leases are in
676 compliance with paragraph (1)(ii).

677 (xxix) **Purchases made pursuant to qualified**
678 **cooperative purchasing agreements.** Purchases made by certified
679 purchasing offices of state agencies or governing authorities
680 under cooperative purchasing agreements previously approved by the
681 Office of Purchasing and Travel and established by or for any
682 municipality, county, parish or state government or the federal
683 government, provided that the notification to potential
684 contractors includes a clause that sets forth the availability of
685 the cooperative purchasing agreement to other governmental
686 entities. Such purchases shall only be made if the use of the
687 cooperative purchasing agreements is determined to be in the best
688 interest of the governmental entity.



689 (xxx) **School yearbooks.** Purchases of school
690 yearbooks by state agencies or governing authorities; provided,
691 however, that state agencies and governing authorities shall use
692 for these purchases the RFP process as set forth in the
693 Mississippi Procurement Manual adopted by the Office of Purchasing
694 and Travel.

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

698 (xxxiii) **Toll roads and bridge construction**
699 **projects.** Contracts entered into under the provisions of Section
700 65-43-1 or 65-43-3.

701 (xxxiiii) **Certain purchases under Section 57-1-221.**
702 Contracts entered into pursuant to the provisions of Section
703 57-1-221.

704 (xxxiv) **Certain transfers made pursuant to the**
705 **provisions of Section 57-105-1(7).** Transfers of public property
706 or facilities under Section 57-105-1(7) and construction related
707 to such public property or facilities.

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

711 (xxxvi) **Certain purchases by an academic medical**
712 **center or health sciences school.** Purchases by an academic
713 medical center or health sciences school, as defined in Section



714 37-115-50, of commodities that are used for clinical purposes and
715 1. intended for use in the diagnosis of disease or other
716 conditions or in the cure, mitigation, treatment or prevention of
717 disease, and 2. medical devices, biological, drugs and
718 radiation-emitting devices as defined by the United States Food
719 and Drug Administration.

720 (xxxvii) **Certain purchases made under the Alyce G.**
721 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi
722 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
723 Lottery Law.

724 (xxxviii) **Certain purchases made by the Department**
725 **of Health and the Department of Revenue.** Purchases made by the
726 Department of Health and/or the Department of Revenue solely for
727 the purpose of fulfilling their respective responsibilities under
728 the Mississippi Medical Cannabis Act. This subparagraph shall
729 stand repealed on June 30, 2023.

730 (n) **Term contract authorization.** All contracts for the
731 purchase of:

732 (i) All contracts for the purchase of commodities,
733 equipment and public construction (including, but not limited to,
734 repair and maintenance), may be let for periods of not more than
735 sixty (60) months in advance, subject to applicable statutory
736 provisions prohibiting the letting of contracts during specified
737 periods near the end of terms of office. Term contracts for a
738 period exceeding twenty-four (24) months shall also be subject to



739 ratification or cancellation by governing authority boards taking
740 office subsequent to the governing authority board entering the
741 contract.

742 (ii) Bid proposals and contracts may include price
743 adjustment clauses with relation to the cost to the contractor
744 based upon a nationally published industry-wide or nationally
745 published and recognized cost index. The cost index used in a
746 price adjustment clause shall be determined by the Department of
747 Finance and Administration for the state agencies and by the
748 governing board for governing authorities. The bid proposal and
749 contract documents utilizing a price adjustment clause shall
750 contain the basis and method of adjusting unit prices for the
751 change in the cost of such commodities, equipment and public
752 construction.

753 (o) **Purchase law violation prohibition and vendor**
754 **penalty.** No contract or purchase as herein authorized shall be
755 made for the purpose of circumventing the provisions of this
756 section requiring competitive bids, nor shall it be lawful for any
757 person or concern to submit individual invoices for amounts within
758 those authorized for a contract or purchase where the actual value
759 of the contract or commodity purchased exceeds the authorized
760 amount and the invoices therefor are split so as to appear to be
761 authorized as purchases for which competitive bids are not
762 required. Submission of such invoices shall constitute a
763 misdemeanor punishable by a fine of not less than Five Hundred



764 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
765 or by imprisonment for thirty (30) days in the county jail, or
766 both such fine and imprisonment. In addition, the claim or claims
767 submitted shall be forfeited.

768 (p) **Electrical utility petroleum-based equipment**
769 **purchase procedure.** When in response to a proper advertisement
770 therefor, no bid firm as to price is submitted to an electric
771 utility for power transformers, distribution transformers, power
772 breakers, reclosers or other articles containing a petroleum
773 product, the electric utility may accept the lowest and best bid
774 therefor although the price is not firm.

775 (q) **Fuel management system bidding procedure.** Any
776 governing authority or agency of the state shall, before
777 contracting for the services and products of a fuel management or
778 fuel access system, enter into negotiations with not fewer than
779 two (2) sellers of fuel management or fuel access systems for
780 competitive written bids to provide the services and products for
781 the systems. In the event that the governing authority or agency
782 cannot locate two (2) sellers of such systems or cannot obtain
783 bids from two (2) sellers of such systems, it shall show proof
784 that it made a diligent, good-faith effort to locate and negotiate
785 with two (2) sellers of such systems. Such proof shall include,
786 but not be limited to, publications of a request for proposals and
787 letters soliciting negotiations and bids. For purposes of this
788 paragraph (q), a fuel management or fuel access system is an



789 automated system of acquiring fuel for vehicles as well as
790 management reports detailing fuel use by vehicles and drivers, and
791 the term "competitive written bid" shall have the meaning as
792 defined in paragraph (b) of this section. Governing authorities
793 and agencies shall be exempt from this process when contracting
794 for the services and products of fuel management or fuel access
795 systems under the terms of a state contract established by the
796 Office of Purchasing and Travel.

797 (r) **Solid waste contract proposal procedure.** Before
798 entering into any contract for garbage collection or disposal,
799 contract for solid waste collection or disposal or contract for
800 sewage collection or disposal, which involves an expenditure of
801 more than Seventy-five Thousand Dollars (\$75,000.00), a governing
802 authority or agency shall issue publicly a request for proposals
803 concerning the specifications for such services which shall be
804 advertised for in the same manner as provided in this section for
805 seeking bids for purchases which involve an expenditure of more
806 than the amount provided in paragraph (c) of this section. Any
807 request for proposals when issued shall contain terms and
808 conditions relating to price, financial responsibility,
809 technology, legal responsibilities and other relevant factors as
810 are determined by the governing authority or agency to be
811 appropriate for inclusion; all factors determined relevant by the
812 governing authority or agency or required by this paragraph (r)
813 shall be duly included in the advertisement to elicit proposals.



814 After responses to the request for proposals have been duly
815 received, the governing authority or agency shall select the most
816 qualified proposal or proposals on the basis of price, technology
817 and other relevant factors and from such proposals, but not
818 limited to the terms thereof, negotiate and enter into contracts
819 with one or more of the persons or firms submitting proposals. If
820 the governing authority or agency deems none of the proposals to
821 be qualified or otherwise acceptable, the request for proposals
822 process may be reinitiated. Notwithstanding any other provisions
823 of this paragraph, where a county with at least thirty-five
824 thousand (35,000) nor more than forty thousand (40,000)
825 population, according to the 1990 federal decennial census, owns
826 or operates a solid waste landfill, the governing authorities of
827 any other county or municipality may contract with the governing
828 authorities of the county owning or operating the landfill,
829 pursuant to a resolution duly adopted and spread upon the minutes
830 of each governing authority involved, for garbage or solid waste
831 collection or disposal services through contract negotiations.

832 (s) **Minority set-aside authorization.** Notwithstanding
833 any provision of this section to the contrary, any agency or
834 governing authority, by order placed on its minutes, may, in its
835 discretion, set aside not more than twenty percent (20%) of its
836 anticipated annual expenditures for the purchase of commodities
837 from minority businesses; however, all such set-aside purchases
838 shall comply with all purchasing regulations promulgated by the



839 Department of Finance and Administration and shall be subject to
840 bid requirements under this section. Set-aside purchases for
841 which competitive bids are required shall be made from the lowest
842 and best minority business bidder. For the purposes of this
843 paragraph, the term "minority business" means a business which is
844 owned by a majority of persons who are United States citizens or
845 permanent resident aliens (as defined by the Immigration and
846 Naturalization Service) of the United States, and who are Asian,
847 Black, Hispanic or Native American, according to the following
848 definitions:

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

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

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

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

860 (t) **Construction punch list restriction.** The
861 architect, engineer or other representative designated by the
862 agency or governing authority that is contracting for public
863 construction or renovation may prepare and submit to the



864 contractor only one (1) preliminary punch list of items that do
865 not meet the contract requirements at the time of substantial
866 completion and one (1) final list immediately before final
867 completion and final payment.

868 (u) **Procurement of construction services by state**
869 **institutions of higher learning.** Contracts for privately financed
870 construction of auxiliary facilities on the campus of a state
871 institution of higher learning may be awarded by the Board of
872 Trustees of State Institutions of Higher Learning to the lowest
873 and best bidder, where sealed bids are solicited, or to the
874 offeror whose proposal is determined to represent the best value
875 to the citizens of the State of Mississippi, where requests for
876 proposals are solicited.

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



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

892 **SECTION 2.** This act shall take effect and be in force from
893 and after July 1, 2023.

