

By: Representative Massengill

To: Transportation

HOUSE BILL NO. 1032

1 AN ACT TO CREATE THE "MISSISSIPPI SECURITY DRONE ACT OF 2023"
 2 FOR PURPOSES OF PROHIBITING GOVERNMENT ENTITIES FROM PURCHASING
 3 COVERED UNMANNED AIRCRAFT SYSTEMS THAT ARE NOT MANUFACTURED BY
 4 COMPANIES BASED IN THE UNITED STATES OR IN ANY TERRITORY OR
 5 COMMONWEALTH UNDER THE JURISDICTION OF THE UNITED STATES; TO
 6 PROVIDE EXEMPTIONS TO THE MISSISSIPPI OFFICE OF HOMELAND SECURITY
 7 AND THE MISSISSIPPI NATIONAL GUARD UNDER CERTAIN CONDITIONS; TO
 8 PRESCRIBE PROCEDURES BY WHICH COVERED UNMANNED AIRCRAFT SYSTEMS
 9 MANUFACTURED BY COMPANIES BASED IN THE UNITED STATES OR IN ANY
 10 TERRITORY OR COMMONWEALTH THEREOF MAY BE PROCURED; TO REQUIRE ALL
 11 STATE AGENCIES, STATE DEPARTMENTS, MUNICIPAL OR COUNTY
 12 GOVERNMENTS, OR ANY POLITICAL SUBDIVISIONS OF THE STATE TO ACCOUNT
 13 FOR EXISTING INVENTORIES OF COVERED UNMANNED AIRCRAFT SYSTEMS
 14 MANUFACTURED OR ASSEMBLED BY A COVERED FOREIGN ENTITY IN THEIR
 15 PERSONAL PROPERTY INVENTORY AND ACCOUNTING SYSTEMS; TO REQUIRE THE
 16 EXECUTIVE DIRECTOR OF THE MISSISSIPPI OFFICE OF HOMELAND SECURITY,
 17 IN CONJUNCTION WITH THE DEPARTMENT OF FINANCE AND ADMINISTRATION
 18 TO PRESCRIBE REGULATIONS OR GUIDANCE TO IMPLEMENT AND ADMINISTER
 19 THE ACT; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, IN
 20 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** This act shall be known and may be cited as the
 23 "Mississippi Security Drone Act of 2023."

24 **SECTION 2.** As used in this act, the following terms shall
 25 have the meanings ascribed herein unless context of use indicates
 26 otherwise:



27 (a) "Covered foreign entity" means an entity that is
28 not a manufacturer with its principal place of business located in
29 the United States or in one (1) of the five (5) territories or
30 commonwealths under the jurisdiction of the United States, and
31 more specifically those entities included on a list developed and
32 maintained by the Federal Acquisition Security Council and
33 provided by the Secretary of Homeland Security to the executive
34 directors of the various states' Office of Homeland Security.

35 This list include entities in the following categories:

36 (i) An entity included on the Consolidated
37 Screening List;

38 (ii) Any entity that is subject to extrajudicial
39 direction from a foreign government, as determined by the
40 Executive Director of the Mississippi Office of Homeland Security;

41 (iii) Any entity the Executive Director of the
42 Mississippi Office of Homeland Security, in coordination with the
43 Director of National Intelligence and the Secretary of Defense,
44 determines poses a national security risk;

45 (iv) Any entity domiciled in the People's Republic
46 of China or subject to influence or control by the Government of
47 the People Republic of China or the Communist Party of the
48 People's Republic of China, as determined by the Executive
49 Director of the Mississippi Office of Homeland Security; and

50 (v) Any subsidiary or affiliate of an entity
51 described in subparagraphs (i) through (iv).



52 (b) "Covered unmanned aircraft system" means unmanned
53 aircraft and associated elements, including communication links
54 and the components that control the unmanned aircraft, which are
55 required for the operator to operate safely and efficiently in the
56 national airspace system.

57 (c) "Secretary" means the Secretary of the United
58 States Department of Homeland Security.

59 (d) "Executive Director" means the Executive Director
60 of the Mississippi Office of Homeland Security.

61 (e) "Government entity" means a state agency, state
62 department, municipal or county government, or any political
63 subdivision of the state.

64 **SECTION 3.** (1) Except as provided under subsection (2), the
65 head of a state agency, state department, municipal or county
66 government, or any political subdivision of the state may not
67 procure or operate any covered unmanned aircraft system that are
68 manufactured or assembled by a covered foreign entity, which
69 includes associated elements consisting of communication links and
70 the components that control the unmanned aircraft which are
71 required for the operator to operate safely and efficiently in the
72 national airspace system. The Executive Director of the
73 Mississippi Office of Homeland Security shall maintain a list of
74 all associated elements developed and updated by the Federal
75 Acquisition Security Council, in coordination with the Secretary
76 of the United States Department of Transportation.



77 (2) (a) The Executive Director of the Mississippi Office of
78 Homeland Security and the Adjutant General of the Mississippi
79 National Guard Secretary are exempt from the restriction imposed
80 under subsection (1) if the operation or procurement:

81 (i) Is for the sole purposes of research,
82 evaluation, training, testing, or analysis for:

- 83 1. Electronic warfare;
- 84 2. Information warfare operations;
- 85 3. Development of unmanned aircraft system or
86 counter-unmanned aircraft system technology;
- 87 4. Counterterrorism or counterintelligence
88 activities;
- 89 5. State or federal criminal investigation;
- 90 or
- 91 6. State or national security investigations,
92 including forensic examinations; and

93 (ii) Is required in statewide interest of the
94 State of Mississippi and the national interest of the United
95 States.

96 (b) The Mississippi Department of Transportation, in
97 consultation with the Executive Director of the Mississippi Office
98 of Homeland Security, is exempt from the restriction under
99 subsection (1) if the operation or procurement is necessary for
100 the sole purpose of conducting safety investigations in
101 conjunction with the National Transportation Safety Board (NTSB).



102 (3) The prohibition under subsection (1) applies to any
103 covered unmanned aircraft systems that are being used by any state
104 agency, state department, municipal or county government, or any
105 political subdivision of the state through the method of
106 contracting for the services of covered unmanned aircraft systems.

107 **SECTION 4.** The procurement of covered unmanned aircraft
108 systems by state agencies, state departments, municipal or county
109 governments, or any political subdivisions of the state, as
110 authorized under the provisions of Section 3 of this act shall be
111 acquired in compliance with the public purchasing law established
112 under Section 31-7-13, provided that:

113 (a) All covered unmanned aircraft systems purchased in
114 the State of Mississippi after July 1, 2023, must be purchased
115 from a covered unmanned aircraft system manufacturer based in the
116 United States or in one (1) of the five (5) territories or
117 commonwealths under the jurisdiction of the United States;

118 (b) American-based covered unmanned aircraft system
119 manufacturers with its principal location of manufacture in the
120 State of Mississippi shall have priority on bid over
121 American-based manufacturers located out of the State of
122 Mississippi, regardless of price;

123 (c) Covered unmanned aircraft systems purchased are
124 required to have collision detection and avoidance software
125 capabilities;



126 (d) Procurement of covered unmanned aircraft system
127 services in Mississippi for government entities must be done by
128 covered unmanned aircraft system service providers using
129 American-made covered unmanned aircraft system; and

130 (e) Covered unmanned aircraft system service providers
131 using covered unmanned aircraft systems manufactured by
132 Mississippi-based covered unmanned aircraft system manufacturers
133 shall have priority over all other manufacturers of covered
134 unmanned aircraft systems in the United States or in one (1) of
135 the five (5) territories or commonwealths under the jurisdiction
136 of the United States.

137 **SECTION 5.** (1) Beginning on July 1, 2023, except as
138 provided in subsection (2), no state or federal funds awarded
139 through a contract, grant or cooperative agreement, or otherwise
140 made available may be used:

141 (a) To purchase a covered unmanned aircraft system, or
142 a system to counter unmanned aircraft systems, that is
143 manufactured or assembled by a covered foreign entity; or

144 (b) In connection with the operation of such a drone or
145 unmanned aircraft system.

146 (2) A state agency, state department, municipal or county
147 government or any political subdivision of the state is exempt
148 from the restriction under subsection (1) if:

149 (a) The contract, grant or cooperative agreement was
150 awarded before July 1, 2023; or



151 (b) The operation or procurement is for the sole
152 purposes of research, evaluation, training, testing, or analysis,
153 as determined by the Executive Director of the Mississippi Office
154 of Homeland Security or Adjutant General of the Mississippi
155 National Guard for:

156 (i) Electronic warfare;

157 (ii) Information warfare operations;

158 (iii) Development of unmanned aircraft system or
159 counter-unmanned aircraft system technology;

160 (iv) Counterterrorism or counterintelligence
161 activities;

162 (v) State or federal criminal investigation; or

163 (vi) State or national security investigations,
164 including forensic examinations; or

165 (vii) The safe integration of unmanned aircraft
166 systems in state and national airspace as determined by Federal
167 Aviation Administration in consultation with regional Flight
168 Standards District Offices within the State of Mississippi; and

169 (c) The procurement and operation is required in
170 statewide interest of the State of Mississippi and the national
171 interest of the United States.

172 **SECTION 6.** (1) All state agencies, state departments,
173 municipal or county governments, or any political subdivisions of
174 the state must account for existing inventories of covered
175 unmanned aircraft systems manufactured or assembled by a covered



176 foreign entity in their personal property inventory and accounting
177 systems, regardless of the original procurement cost, or the
178 purpose of procurement due to the special monitoring, inventory
179 and accounting measures necessary to track the items'
180 capabilities.

181 (2) Due to the sensitive nature of missions and operations
182 conducted by the Mississippi Office of Homeland Security and
183 Mississippi National Guard, inventory data related to covered
184 unmanned aircraft systems manufactured or assembled by a covered
185 foreign entity may be excluded from the full inventory process,
186 upon a showing by such agencies that:

187 (a) The unmanned aircraft systems are deemed expendable
188 due to mission risk, such as recovery issues; or

189 (b) The unmanned aircraft systems are one-time-use
190 covered unmanned aircraft due to requirements and low cost.

191 **SECTION 7.** Not later than ninety (90) days after the
192 effective date of the enactment of this act, the Executive
193 Director of the Mississippi Office of Homeland Security, in
194 conjunction with the Department of Finance and Administration
195 shall prescribe regulations or guidance to implement and
196 administer Sections 1 through 6 of this act.

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

199 31-7-13. Except as otherwise provided under Sections 3 and 4
200 of this act, all agencies and governing authorities shall purchase



201 their commodities and printing; contract for garbage collection or
202 disposal; contract for solid waste collection or disposal;
203 contract for sewage collection or disposal; contract for public
204 construction; and contract for rentals as herein provided.

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

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

210 (a) shall be construed to prohibit any agency or governing
211 authority from establishing procedures which require competitive
212 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

213 (b) **Bidding procedure for purchases over \$5,000.00 but**

214 **not over \$75,000.00.** Purchases which involve an expenditure of
215 more than Five Thousand Dollars (\$5,000.00) but not more than
216 Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight
217 and shipping charges, may be made from the lowest and best bidder
218 without publishing or posting advertisement for bids, provided at
219 least two (2) competitive written bids have been obtained. Any
220 state agency or community/junior college purchasing commodities or
221 procuring construction pursuant to this paragraph (b) may
222 authorize its purchasing agent, or his designee, to accept the
223 lowest competitive written bid under Seventy-five Thousand Dollars
224 (\$75,000.00). Any governing authority purchasing commodities
225 pursuant to this paragraph (b) may authorize its purchasing agent,



226 or his designee, with regard to governing authorities other than
227 counties, or its purchase clerk, or his designee, with regard to
228 counties, to accept the lowest and best competitive written bid.
229 Such authorization shall be made in writing by the governing
230 authority and shall be maintained on file in the primary office of
231 the agency and recorded in the official minutes of the governing
232 authority, as appropriate. The purchasing agent or the purchase
233 clerk, or his designee, as the case may be, and not the governing
234 authority, shall be liable for any penalties and/or damages as may
235 be imposed by law for any act or omission of the purchasing agent
236 or purchase clerk, or his designee, constituting a violation of
237 law in accepting any bid without approval by the governing
238 authority. The term "competitive written bid" shall mean a bid
239 submitted on a bid form furnished by the buying agency or
240 governing authority and signed by authorized personnel
241 representing the vendor, or a bid submitted on a vendor's
242 letterhead or identifiable bid form and signed by authorized
243 personnel representing the vendor. "Competitive" shall mean that
244 the bids are developed based upon comparable identification of the
245 needs and are developed independently and without knowledge of
246 other bids or prospective bids. Any bid item for construction in
247 excess of Five Thousand Dollars (\$5,000.00) shall be broken down
248 by components to provide detail of component description and
249 pricing. These details shall be submitted with the written bids
250 and become part of the bid evaluation criteria. Bids may be



251 submitted by facsimile, electronic mail or other generally
252 accepted method of information distribution. Bids submitted by
253 electronic transmission shall not require the signature of the
254 vendor's representative unless required by agencies or governing
255 authorities.

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

257 (i) **Publication requirement.**

258 1. Purchases which involve an expenditure of
259 more than Seventy-five Thousand Dollars (\$75,000.00), exclusive of
260 freight and shipping charges, may be made from the lowest and best
261 bidder after advertising for competitive bids once each week for
262 two (2) consecutive weeks in a regular newspaper published in the
263 county or municipality in which such agency or governing authority
264 is located. However, all American Recovery and Reinvestment Act
265 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
266 shall be bid. All references to American Recovery and
267 Reinvestment Act projects in this section shall not apply to
268 programs identified in Division B of the American Recovery and
269 Reinvestment Act.

270 2. Reverse auctions shall be the primary
271 method for receiving bids during the bidding process. If a
272 purchasing entity determines that a reverse auction is not in the
273 best interest of the state, then that determination must be
274 approved by the Public Procurement Review Board. The purchasing
275 entity shall submit a detailed explanation of why a reverse



276 auction would not be in the best interest of the state and present
277 an alternative process to be approved by the Public Procurement
278 Review Board. If the Public Procurement Review Board authorizes
279 the purchasing entity to solicit bids with a method other than
280 reverse auction, then the purchasing entity may designate the
281 other methods by which the bids will be received, including, but
282 not limited to, bids sealed in an envelope, bids received
283 electronically in a secure system, or bids received by any other
284 method that promotes open competition and has been approved by the
285 Office of Purchasing and Travel. However, reverse auction shall
286 not be used for any public contract for design, construction,
287 improvement, repair or remodeling of any public facilities,
288 including the purchase of materials, supplies, equipment or goods
289 for same and including buildings, roads and bridges. The Public
290 Procurement Review Board must approve any contract entered into by
291 alternative process. The provisions of this item 2 shall not
292 apply to the individual state institutions of higher learning.
293 The provisions of this item 2 requiring reverse auction as the
294 primary method of receiving bids shall not apply to term contract
295 purchases as provided in paragraph (n) of this section; however, a
296 purchasing entity may, in its discretion, utilize reverse auction
297 for such purchases. The provisions of this item 2 shall not apply
298 to individual public schools, including public charter schools and
299 public school districts, only when purchasing copyrighted
300 educational supplemental materials and software as a service



301 product. For such purchases, a local school board may authorize a
302 purchasing entity in its jurisdiction to use a Request for
303 Qualifications which promotes open competition and meets the
304 requirements of the Office of Purchasing and Travel.

305 3. The date as published for the bid opening
306 shall not be less than seven (7) working days after the last
307 published notice; however, if the purchase involves a construction
308 project in which the estimated cost is in excess of Seventy-five
309 Thousand Dollars (\$75,000.00), such bids shall not be opened in
310 less than fifteen (15) working days after the last notice is
311 published and the notice for the purchase of such construction
312 shall be published once each week for two (2) consecutive weeks.
313 However, all American Recovery and Reinvestment Act projects in
314 excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid.
315 For any projects in excess of Twenty-five Thousand Dollars
316 (\$25,000.00) under the American Recovery and Reinvestment Act,
317 publication shall be made one (1) time and the bid opening for
318 construction projects shall not be less than ten (10) working days
319 after the date of the published notice. The notice of intention
320 to let contracts or purchase equipment shall state the time and
321 place at which bids shall be received, list the contracts to be
322 made or types of equipment or supplies to be purchased, and, if
323 all plans and/or specifications are not published, refer to the
324 plans and/or specifications on file. If there is no newspaper
325 published in the county or municipality, then such notice shall be



326 given by posting same at the courthouse, or for municipalities at
327 the city hall, and at two (2) other public places in the county or
328 municipality, and also by publication once each week for two (2)
329 consecutive weeks in some newspaper having a general circulation
330 in the county or municipality in the above-provided manner. On
331 the same date that the notice is submitted to the newspaper for
332 publication, the agency or governing authority involved shall mail
333 written notice to, or provide electronic notification to the main
334 office of the Mississippi Procurement Technical Assistance Program
335 under the Mississippi Development Authority that contains the same
336 information as that in the published notice. Submissions received
337 by the Mississippi Procurement Technical Assistance Program for
338 projects funded by the American Recovery and Reinvestment Act
339 shall be displayed on a separate and unique Internet web page
340 accessible to the public and maintained by the Mississippi
341 Development Authority for the Mississippi Procurement Technical
342 Assistance Program. Those American Recovery and Reinvestment Act
343 related submissions shall be publicly posted within twenty-four
344 (24) hours of receipt by the Mississippi Development Authority and
345 the bid opening shall not occur until the submission has been
346 posted for ten (10) consecutive days. The Department of Finance
347 and Administration shall maintain information regarding contracts
348 and other expenditures from the American Recovery and Reinvestment
349 Act, on a unique Internet web page accessible to the public. The
350 Department of Finance and Administration shall promulgate rules



351 regarding format, content and deadlines, unless otherwise
352 specified by law, of the posting of award notices, contract
353 execution and subsequent amendments, links to the contract
354 documents, expenditures against the awarded contracts and general
355 expenditures of funds from the American Recovery and Reinvestment
356 Act. Within one (1) working day of the contract award, the agency
357 or governing authority shall post to the designated web page
358 maintained by the Department of Finance and Administration, notice
359 of the award, including the award recipient, the contract amount,
360 and a brief summary of the contract in accordance with rules
361 promulgated by the department. Within one (1) working day of the
362 contract execution, the agency or governing authority shall post
363 to the designated web page maintained by the Department of Finance
364 and Administration a summary of the executed contract and make a
365 copy of the appropriately redacted contract documents available
366 for linking to the designated web page in accordance with the
367 rules promulgated by the department. The information provided by
368 the agency or governing authority shall be posted to the web page
369 for the duration of the American Recovery and Reinvestment Act
370 funding or until the project is completed, whichever is longer.

371 (ii) **Bidding process amendment procedure.** If all
372 plans and/or specifications are published in the notification,
373 then the plans and/or specifications may not be amended. If all
374 plans and/or specifications are not published in the notification,
375 then amendments to the plans/specifications, bid opening date, bid



376 opening time and place may be made, provided that the agency or
377 governing authority maintains a list of all prospective bidders
378 who are known to have received a copy of the bid documents and all
379 such prospective bidders are sent copies of all amendments. This
380 notification of amendments may be made via mail, facsimile,
381 electronic mail or other generally accepted method of information
382 distribution. No addendum to bid specifications may be issued
383 within two (2) working days of the time established for the
384 receipt of bids unless such addendum also amends the bid opening
385 to a date not less than five (5) working days after the date of
386 the addendum.

387 (iii) **Filing requirement.** In all cases involving
388 governing authorities, before the notice shall be published or
389 posted, the plans or specifications for the construction or
390 equipment being sought shall be filed with the clerk of the board
391 of the governing authority. In addition to these requirements, a
392 bid file shall be established which shall indicate those vendors
393 to whom such solicitations and specifications were issued, and
394 such file shall also contain such information as is pertinent to
395 the bid.

396 (iv) **Specification restrictions.**

397 1. Specifications pertinent to such bidding
398 shall be written so as not to exclude comparable equipment of
399 domestic manufacture. However, if valid justification is
400 presented, the Department of Finance and Administration or the



401 board of a governing authority may approve a request for specific
402 equipment necessary to perform a specific job. Further, such
403 justification, when placed on the minutes of the board of a
404 governing authority, may serve as authority for that governing
405 authority to write specifications to require a specific item of
406 equipment needed to perform a specific job. In addition to these
407 requirements, from and after July 1, 1990, vendors of relocatable
408 classrooms and the specifications for the purchase of such
409 relocatable classrooms published by local school boards shall meet
410 all pertinent regulations of the State Board of Education,
411 including prior approval of such bid by the State Department of
412 Education.

413 2. Specifications for construction projects
414 may include an allowance for commodities, equipment, furniture,
415 construction materials or systems in which prospective bidders are
416 instructed to include in their bids specified amounts for such
417 items so long as the allowance items are acquired by the vendor in
418 a commercially reasonable manner and approved by the
419 agency/governing authority. Such acquisitions shall not be made
420 to circumvent the public purchasing laws.

421 (v) **Electronic bids.** Agencies and governing
422 authorities shall provide a secure electronic interactive system
423 for the submittal of bids requiring competitive bidding that shall
424 be an additional bidding option for those bidders who choose to
425 submit their bids electronically. The Department of Finance and



426 Administration shall provide, by regulation, the standards that
427 agencies must follow when receiving electronic bids. Agencies and
428 governing authorities shall make the appropriate provisions
429 necessary to accept electronic bids from those bidders who choose
430 to submit their bids electronically for all purchases requiring
431 competitive bidding under this section. Any special condition or
432 requirement for the electronic bid submission shall be specified
433 in the advertisement for bids required by this section. Agencies
434 or governing authorities that are currently without available high
435 speed Internet access shall be exempt from the requirement of this
436 subparagraph (v) until such time that high speed Internet access
437 becomes available. Any county having a population of less than
438 twenty thousand (20,000) shall be exempt from the provisions of
439 this subparagraph (v). Any municipality having a population of
440 less than ten thousand (10,000) shall be exempt from the
441 provisions of this subparagraph (v). The provisions of this
442 subparagraph (v) shall not require any bidder to submit bids
443 electronically. When construction bids are submitted
444 electronically, the requirement for including a certificate of
445 responsibility, or a statement that the bid enclosed does not
446 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
447 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
448 deemed in compliance with by including same as an attachment with
449 the electronic bid submittal.

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



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

466 (ii) **Decision procedure for Certified Purchasing**
467 **Offices.** In addition to the decision procedure set forth in
468 subparagraph (i) of this paragraph (d), Certified Purchasing
469 Offices may also use the following procedure: Purchases may be
470 made from the bidder offering the best value. In determining the
471 best value bid, freight and shipping charges shall be included.
472 Life-cycle costing, total cost bids, warranties, guaranteed
473 buy-back provisions, documented previous experience, training
474 costs and other relevant provisions, including, but not limited
475 to, a bidder having a local office and inventory located within



476 the jurisdiction of the governing authority, may be included in
477 the best value calculation. This provision shall authorize
478 Certified Purchasing Offices to utilize a Request For Proposals
479 (RFP) process when purchasing commodities. All best value
480 procedures for state agencies must be in compliance with
481 regulations established by the Department of Finance and
482 Administration. No agency or governing authority shall accept a
483 bid based on items or criteria not included in the specifications.

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

485 **Landmarks.** In addition to the decision procedure set forth in
486 subparagraph (i) of this paragraph (d), where purchase involves
487 renovation, restoration, or both, of the State Capitol Building or
488 any other historical building designated for at least five (5)
489 years as a Mississippi Landmark by the Board of Trustees of the
490 Department of Archives and History under the authority of Sections
491 39-7-7 and 39-7-11, the agency or governing authority may use the
492 following procedure: Purchases may be made from the lowest and
493 best prequalified bidder. Prequalification of bidders shall be
494 determined not less than fifteen (15) working days before the
495 first published notice of bid opening. Prequalification criteria
496 shall be limited to bidder's knowledge and experience in
497 historical restoration, preservation and renovation. In
498 determining the lowest and best bid, freight and shipping charges
499 shall be included. Life-cycle costing, total cost bids,
500 warranties, guaranteed buy-back provisions and other relevant



501 provisions may be included in the best bid calculation. All best
502 bid and prequalification procedures for state agencies must be in
503 compliance with regulations established by the Department of
504 Finance and Administration. If any governing authority accepts a
505 bid other than the lowest bid actually submitted, it shall place
506 on its minutes detailed calculations and narrative summary showing
507 that the accepted bid was determined to be the lowest and best
508 bid, including the dollar amount of the accepted bid and the
509 dollar amount of the lowest bid. No agency or governing authority
510 shall accept a bid based on items not included in the
511 specifications.

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

518 (e) **Lease-purchase authorization.** For the purposes of
519 this section, the term "equipment" shall mean equipment, furniture
520 and, if applicable, associated software and other applicable
521 direct costs associated with the acquisition. Any lease-purchase
522 of equipment which an agency is not required to lease-purchase
523 under the master lease-purchase program pursuant to Section
524 31-7-10 and any lease-purchase of equipment which a governing
525 authority elects to lease-purchase may be acquired by a



526 lease-purchase agreement under this paragraph (e). Lease-purchase
527 financing may also be obtained from the vendor or from a
528 third-party source after having solicited and obtained at least
529 two (2) written competitive bids, as defined in paragraph (b) of
530 this section, for such financing without advertising for such
531 bids. Solicitation for the bids for financing may occur before or
532 after acceptance of bids for the purchase of such equipment or,
533 where no such bids for purchase are required, at any time before
534 the purchase thereof. No such lease-purchase agreement shall be
535 for an annual rate of interest which is greater than the overall
536 maximum interest rate to maturity on general obligation
537 indebtedness permitted under Section 75-17-101, and the term of
538 such lease-purchase agreement shall not exceed the useful life of
539 equipment covered thereby as determined according to the upper
540 limit of the asset depreciation range (ADR) guidelines for the
541 Class Life Asset Depreciation Range System established by the
542 Internal Revenue Service pursuant to the United States Internal
543 Revenue Code and regulations thereunder as in effect on December
544 31, 1980, or comparable depreciation guidelines with respect to
545 any equipment not covered by ADR guidelines. Any lease-purchase
546 agreement entered into pursuant to this paragraph (e) may contain
547 any of the terms and conditions which a master lease-purchase
548 agreement may contain under the provisions of Section 31-7-10(5),
549 and shall contain an annual allocation dependency clause
550 substantially similar to that set forth in Section 31-7-10(8).



551 Each agency or governing authority entering into a lease-purchase
552 transaction pursuant to this paragraph (e) shall maintain with
553 respect to each such lease-purchase transaction the same
554 information as required to be maintained by the Department of
555 Finance and Administration pursuant to Section 31-7-10(13).
556 However, nothing contained in this section shall be construed to
557 permit agencies to acquire items of equipment with a total
558 acquisition cost in the aggregate of less than Ten Thousand
559 Dollars (\$10,000.00) by a single lease-purchase transaction. All
560 equipment, and the purchase thereof by any lessor, acquired by
561 lease-purchase under this paragraph and all lease-purchase
562 payments with respect thereto shall be exempt from all Mississippi
563 sales, use and ad valorem taxes. Interest paid on any
564 lease-purchase agreement under this section shall be exempt from
565 State of Mississippi income taxation.

566 (f) **Alternate bid authorization.** When necessary to
567 ensure ready availability of commodities for public works and the
568 timely completion of public projects, no more than two (2)
569 alternate bids may be accepted by a governing authority for
570 commodities. No purchases may be made through use of such
571 alternate bids procedure unless the lowest and best bidder cannot
572 deliver the commodities contained in his bid. In that event,
573 purchases of such commodities may be made from one (1) of the
574 bidders whose bid was accepted as an alternate.



575 (g) **Construction contract change authorization.** In the
576 event a determination is made by an agency or governing authority
577 after a construction contract is let that changes or modifications
578 to the original contract are necessary or would better serve the
579 purpose of the agency or the governing authority, such agency or
580 governing authority may, in its discretion, order such changes
581 pertaining to the construction that are necessary under the
582 circumstances without the necessity of further public bids;
583 provided that such change shall be made in a commercially
584 reasonable manner and shall not be made to circumvent the public
585 purchasing statutes. In addition to any other authorized person,
586 the architect or engineer hired by an agency or governing
587 authority with respect to any public construction contract shall
588 have the authority, when granted by an agency or governing
589 authority, to authorize changes or modifications to the original
590 contract without the necessity of prior approval of the agency or
591 governing authority when any such change or modification is less
592 than one percent (1%) of the total contract amount. The agency or
593 governing authority may limit the number, manner or frequency of
594 such emergency changes or modifications.

595 (h) **Petroleum purchase alternative.** In addition to
596 other methods of purchasing authorized in this chapter, when any
597 agency or governing authority shall have a need for gas, diesel
598 fuel, oils and/or other petroleum products in excess of the amount
599 set forth in paragraph (a) of this section, such agency or



600 governing authority may purchase the commodity after having
601 solicited and obtained at least two (2) competitive written bids,
602 as defined in paragraph (b) of this section. If two (2)
603 competitive written bids are not obtained, the entity shall comply
604 with the procedures set forth in paragraph (c) of this section.
605 In the event any agency or governing authority shall have
606 advertised for bids for the purchase of gas, diesel fuel, oils and
607 other petroleum products and coal and no acceptable bids can be
608 obtained, such agency or governing authority is authorized and
609 directed to enter into any negotiations necessary to secure the
610 lowest and best contract available for the purchase of such
611 commodities.

612 (i) **Road construction petroleum products price**
613 **adjustment clause authorization.** Any agency or governing
614 authority authorized to enter into contracts for the construction,
615 maintenance, surfacing or repair of highways, roads or streets,
616 may include in its bid proposal and contract documents a price
617 adjustment clause with relation to the cost to the contractor,
618 including taxes, based upon an industry-wide cost index, of
619 petroleum products including asphalt used in the performance or
620 execution of the contract or in the production or manufacture of
621 materials for use in such performance. Such industry-wide index
622 shall be established and published monthly by the Mississippi
623 Department of Transportation with a copy thereof to be mailed,
624 upon request, to the clerks of the governing authority of each



625 municipality and the clerks of each board of supervisors
626 throughout the state. The price adjustment clause shall be based
627 on the cost of such petroleum products only and shall not include
628 any additional profit or overhead as part of the adjustment. The
629 bid proposals or document contract shall contain the basis and
630 methods of adjusting unit prices for the change in the cost of
631 such petroleum products.

632 (j) **State agency emergency purchase procedure.** If the
633 governing board or the executive head, or his designees, of any
634 agency of the state shall determine that an emergency exists in
635 regard to the purchase of any commodities or repair contracts, so
636 that the delay incident to giving opportunity for competitive
637 bidding would be detrimental to the interests of the state, then
638 the head of such agency, or his designees, shall file with the
639 Department of Finance and Administration (i) a statement
640 explaining the conditions and circumstances of the emergency,
641 which shall include a detailed description of the events leading
642 up to the situation and the negative impact to the entity if the
643 purchase is made following the statutory requirements set forth in
644 paragraph (a), (b) or (c) of this section, and (ii) a certified
645 copy of the appropriate minutes of the board of such agency
646 requesting the emergency purchase, if applicable. Upon receipt of
647 the statement and applicable board certification, the State Fiscal
648 Officer, or his designees, may, in writing, authorize the purchase



649 or repair without having to comply with competitive bidding
650 requirements.

651 If the governing board or the executive head, or his
652 designees, of any agency determines that an emergency exists in
653 regard to the purchase of any commodities or repair contracts, so
654 that the delay incident to giving opportunity for competitive
655 bidding would threaten the health or safety of any person, or the
656 preservation or protection of property, then the provisions in
657 this section for competitive bidding shall not apply, and any
658 officer or agent of the agency having general or specific
659 authority for making the purchase or repair contract shall approve
660 the bill presented for payment, and he shall certify in writing
661 from whom the purchase was made, or with whom the repair contract
662 was made.

663 Total purchases made under this paragraph (j) shall only be
664 for the purpose of meeting needs created by the emergency
665 situation. Following the emergency purchase, documentation of the
666 purchase, including a description of the commodity purchased, the
667 purchase price thereof and the nature of the emergency shall be
668 filed with the Department of Finance and Administration. Any
669 contract awarded pursuant to this paragraph (j) shall not exceed a
670 term of one (1) year.

671 Purchases under the grant program established under Section
672 37-68-7 in response to COVID-19 and the directive that school
673 districts create a distance learning plan and fulfill technology



674 needs expeditiously shall be deemed an emergency purchase for
675 purposes of this paragraph (j).

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

677 If the governing authority, or the governing authority acting
678 through its designee, shall determine that an emergency exists in
679 regard to the purchase of any commodities or repair contracts, so
680 that the delay incident to giving opportunity for competitive
681 bidding would be detrimental to the interest of the governing
682 authority, then the provisions herein for competitive bidding
683 shall not apply and any officer or agent of such governing
684 authority having general or special authority therefor in making
685 such purchase or repair shall approve the bill presented therefor,
686 and he shall certify in writing thereon from whom such purchase
687 was made, or with whom such a repair contract was made. At the
688 board meeting next following the emergency purchase or repair
689 contract, documentation of the purchase or repair contract,
690 including a description of the commodity purchased, the price
691 thereof and the nature of the emergency shall be presented to the
692 board and shall be placed on the minutes of the board of such
693 governing authority. Purchases under the grant program
694 established under Section 37-68-7 in response to COVID-19 and the
695 directive that school districts create a distance learning plan
696 and fulfill technology needs expeditiously shall be deemed an
697 emergency purchase for purposes of this paragraph (k).



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

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

705 (ii) In addition to the authority granted in
706 subparagraph (i) of this paragraph (1), the commissioners or board
707 of trustees is authorized to enter into contracts for the lease of
708 equipment or services, or both, which it considers necessary for
709 the proper care of patients if, in its opinion, it is not
710 financially feasible to purchase the necessary equipment or
711 services. Any such contract for the lease of equipment or
712 services executed by the commissioners or board shall not exceed a
713 maximum of five (5) years' duration and shall include a
714 cancellation clause based on unavailability of funds. If such
715 cancellation clause is exercised, there shall be no further
716 liability on the part of the lessee. Any such contract for the
717 lease of equipment or services executed on behalf of the
718 commissioners or board that complies with the provisions of this
719 subparagraph (ii) shall be excepted from the bid requirements set
720 forth in this section.

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



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

724 Purchasing agreements, contracts and maximum price regulations
725 executed or approved by the Department of Finance and
726 Administration.

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

738 (iii) **In-house equipment repairs.** Purchases of
739 parts for repairs to equipment, when such repairs are made by
740 personnel of the agency or governing authority; however, entire
741 assemblies, such as engines or transmissions, shall not be
742 included in this exemption when the entire assembly is being
743 replaced instead of being repaired.

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



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

758 (vi) **Intergovernmental sales and transfers.**
759 Purchases, sales, transfers or trades by governing authorities or
760 state agencies when such purchases, sales, transfers or trades are
761 made by a private treaty agreement or through means of
762 negotiation, from any federal agency or authority, another
763 governing authority or state agency of the State of Mississippi,
764 or any state agency or governing authority of another state.
765 Nothing in this section shall permit such purchases through public
766 auction except as provided for in subparagraph (v) of this
767 paragraph (m). It is the intent of this section to allow
768 governmental entities to dispose of and/or purchase commodities
769 from other governmental entities at a price that is agreed to by
770 both parties. This shall allow for purchases and/or sales at
771 prices which may be determined to be below the market value if the



772 selling entity determines that the sale at below market value is
773 in the best interest of the taxpayers of the state. Governing
774 authorities shall place the terms of the agreement and any
775 justification on the minutes, and state agencies shall obtain
776 approval from the Department of Finance and Administration, prior
777 to releasing or taking possession of the commodities.

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

782 (viii) **Single-source items.** Noncompetitive items
783 available from one (1) source only. In connection with the
784 purchase of noncompetitive items only available from one (1)
785 source, a certification of the conditions and circumstances
786 requiring the purchase shall be filed by the agency with the
787 Department of Finance and Administration and by the governing
788 authority with the board of the governing authority. Upon receipt
789 of that certification the Department of Finance and Administration
790 or the board of the governing authority, as the case may be, may,
791 in writing, authorize the purchase, which authority shall be noted
792 on the minutes of the body at the next regular meeting thereafter.
793 In those situations, a governing authority is not required to
794 obtain the approval of the Department of Finance and
795 Administration. Following the purchase, the executive head of the
796 state agency or his designees, shall file with the Department of



797 Finance and Administration, documentation of the purchase,
798 including a description of the commodity purchased, the purchase
799 price thereof and the source from whom it was purchased.

800 (ix) **Waste disposal facility construction**
801 **contracts.** Construction of incinerators and other facilities for
802 disposal of solid wastes in which products either generated
803 therein, such as steam, or recovered therefrom, such as materials
804 for recycling, are to be sold or otherwise disposed of; however,
805 in constructing such facilities, a governing authority or agency
806 shall publicly issue requests for proposals, advertised for in the
807 same manner as provided herein for seeking bids for public
808 construction projects, concerning the design, construction,
809 ownership, operation and/or maintenance of such facilities,
810 wherein such requests for proposals when issued shall contain
811 terms and conditions relating to price, financial responsibility,
812 technology, environmental compatibility, legal responsibilities
813 and such other matters as are determined by the governing
814 authority or agency to be appropriate for inclusion; and after
815 responses to the request for proposals have been duly received,
816 the governing authority or agency may select the most qualified
817 proposal or proposals on the basis of price, technology and other
818 relevant factors and from such proposals, but not limited to the
819 terms thereof, negotiate and enter contracts with one or more of
820 the persons or firms submitting proposals.



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

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

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

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

840 (xiv) **Library books and other reference materials.**
841 Purchases by libraries or for libraries of books and periodicals;
842 processed film, videocassette tapes, filmstrips and slides;
843 recorded audiotapes, cassettes and diskettes; and any such items
844 as would be used for teaching, research or other information
845 distribution; however, equipment such as projectors, recorders,



846 audio or video equipment, and monitor televisions are not exempt
847 under this subparagraph.

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

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

854 (xvii) **Multichannel interactive video systems.**
855 From and after July 1, 1990, contracts by Mississippi Authority
856 for Educational Television with any private educational
857 institution or private nonprofit organization whose purposes are
858 educational in regard to the construction, purchase, lease or
859 lease-purchase of facilities and equipment and the employment of
860 personnel for providing multichannel interactive video systems
861 (ITSF) in the school districts of this state.

862 (xviii) **Purchases of prison industry products by**
863 **the Department of Corrections, regional correctional facilities or**
864 **privately owned prisons.** Purchases made by the Mississippi
865 Department of Corrections, regional correctional facilities or
866 privately owned prisons involving any item that is manufactured,
867 processed, grown or produced from the state's prison industries.

868 (xix) **Undercover operations equipment.** Purchases
869 of surveillance equipment or any other high-tech equipment to be
870 used by law enforcement agents in undercover operations, provided



871 that any such purchase shall be in compliance with regulations
872 established by the Department of Finance and Administration.

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

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

882 (xxii) **Garbage, solid waste and sewage contracts.**
883 Contracts for garbage collection or disposal, contracts for solid
884 waste collection or disposal and contracts for sewage collection
885 or disposal.

886 (xxiii) **Municipal water tank maintenance**
887 **contracts.** Professional maintenance program contracts for the
888 repair or maintenance of municipal water tanks, which provide
889 professional services needed to maintain municipal water storage
890 tanks for a fixed annual fee for a duration of two (2) or more
891 years.

892 (xxiv) **Purchases of Mississippi Industries for the**
893 **Blind products.** Purchases made by state agencies or governing
894 authorities involving any item that is manufactured, processed or
895 produced by the Mississippi Industries for the Blind.



896 (xxv) **Purchases of state-adopted textbooks.**
897 Purchases of state-adopted textbooks by public school districts.

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

901 (xxvii) **Used heavy or specialized machinery or**
902 **equipment for installation of soil and water conservation**
903 **practices purchased at auction.** Used heavy or specialized
904 machinery or equipment used for the installation and
905 implementation of soil and water conservation practices or
906 measures purchased subject to the restrictions provided in
907 Sections 69-27-331 through 69-27-341. Any purchase by the State
908 Soil and Water Conservation Commission under the exemption
909 authorized by this subparagraph shall require advance
910 authorization spread upon the minutes of the commission to include
911 the listing of the item or items authorized to be purchased and
912 the maximum bid authorized to be paid for each item or items.

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

916 (xxix) **Purchases made pursuant to qualified**
917 **cooperative purchasing agreements.** Purchases made by certified
918 purchasing offices of state agencies or governing authorities
919 under cooperative purchasing agreements previously approved by the
920 Office of Purchasing and Travel and established by or for any



921 municipality, county, parish or state government or the federal
922 government, provided that the notification to potential
923 contractors includes a clause that sets forth the availability of
924 the cooperative purchasing agreement to other governmental
925 entities. Such purchases shall only be made if the use of the
926 cooperative purchasing agreements is determined to be in the best
927 interest of the governmental entity.

928 (xxx) **School yearbooks.** Purchases of school
929 yearbooks by state agencies or governing authorities; provided,
930 however, that state agencies and governing authorities shall use
931 for these purchases the RFP process as set forth in the
932 Mississippi Procurement Manual adopted by the Office of Purchasing
933 and Travel.

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

937 (xxxiii) **Toll roads and bridge construction**
938 **projects.** Contracts entered into under the provisions of Section
939 65-43-1 or 65-43-3.

940 (xxxiiii) **Certain purchases under Section 57-1-221.**
941 Contracts entered into pursuant to the provisions of Section
942 57-1-221.

943 (xxxiv) **Certain transfers made pursuant to the**
944 **provisions of Section 57-105-1(7).** Transfers of public property



945 or facilities under Section 57-105-1(7) and construction related
946 to such public property or facilities.

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

950 (xxxvi) **Certain purchases by an academic medical**
951 **center or health sciences school.** Purchases by an academic
952 medical center or health sciences school, as defined in Section
953 37-115-50, of commodities that are used for clinical purposes and
954 1. intended for use in the diagnosis of disease or other
955 conditions or in the cure, mitigation, treatment or prevention of
956 disease, and 2. medical devices, biological, drugs and
957 radiation-emitting devices as defined by the United States Food
958 and Drug Administration.

959 (xxxvii) **Certain purchases made under the Alyce G.**
960 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi
961 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
962 Lottery Law.

963 (xxxviii) **Certain purchases made by the Department**
964 **of Health and the Department of Revenue.** Purchases made by the
965 Department of Health and/or the Department of Revenue solely for
966 the purpose of fulfilling their respective responsibilities under
967 the Mississippi Medical Cannabis Act. This subparagraph shall
968 stand repealed on June 30, 2023.



969 (n) **Term contract authorization.** All contracts for the
970 purchase of:

971 (i) All contracts for the purchase of commodities,
972 equipment and public construction (including, but not limited to,
973 repair and maintenance), may be let for periods of not more than
974 sixty (60) months in advance, subject to applicable statutory
975 provisions prohibiting the letting of contracts during specified
976 periods near the end of terms of office. Term contracts for a
977 period exceeding twenty-four (24) months shall also be subject to
978 ratification or cancellation by governing authority boards taking
979 office subsequent to the governing authority board entering the
980 contract.

981 (ii) Bid proposals and contracts may include price
982 adjustment clauses with relation to the cost to the contractor
983 based upon a nationally published industry-wide or nationally
984 published and recognized cost index. The cost index used in a
985 price adjustment clause shall be determined by the Department of
986 Finance and Administration for the state agencies and by the
987 governing board for governing authorities. The bid proposal and
988 contract documents utilizing a price adjustment clause shall
989 contain the basis and method of adjusting unit prices for the
990 change in the cost of such commodities, equipment and public
991 construction.

992 (o) **Purchase law violation prohibition and vendor**
993 **penalty.** No contract or purchase as herein authorized shall be



994 made for the purpose of circumventing the provisions of this
995 section requiring competitive bids, nor shall it be lawful for any
996 person or concern to submit individual invoices for amounts within
997 those authorized for a contract or purchase where the actual value
998 of the contract or commodity purchased exceeds the authorized
999 amount and the invoices therefor are split so as to appear to be
1000 authorized as purchases for which competitive bids are not
1001 required. Submission of such invoices shall constitute a
1002 misdemeanor punishable by a fine of not less than Five Hundred
1003 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1004 or by imprisonment for thirty (30) days in the county jail, or
1005 both such fine and imprisonment. In addition, the claim or claims
1006 submitted shall be forfeited.

1007 (p) **Electrical utility petroleum-based equipment**
1008 **purchase procedure.** When in response to a proper advertisement
1009 therefor, no bid firm as to price is submitted to an electric
1010 utility for power transformers, distribution transformers, power
1011 breakers, reclosers or other articles containing a petroleum
1012 product, the electric utility may accept the lowest and best bid
1013 therefor although the price is not firm.

1014 (q) **Fuel management system bidding procedure.** Any
1015 governing authority or agency of the state shall, before
1016 contracting for the services and products of a fuel management or
1017 fuel access system, enter into negotiations with not fewer than
1018 two (2) sellers of fuel management or fuel access systems for



1019 competitive written bids to provide the services and products for
1020 the systems. In the event that the governing authority or agency
1021 cannot locate two (2) sellers of such systems or cannot obtain
1022 bids from two (2) sellers of such systems, it shall show proof
1023 that it made a diligent, good-faith effort to locate and negotiate
1024 with two (2) sellers of such systems. Such proof shall include,
1025 but not be limited to, publications of a request for proposals and
1026 letters soliciting negotiations and bids. For purposes of this
1027 paragraph (q), a fuel management or fuel access system is an
1028 automated system of acquiring fuel for vehicles as well as
1029 management reports detailing fuel use by vehicles and drivers, and
1030 the term "competitive written bid" shall have the meaning as
1031 defined in paragraph (b) of this section. Governing authorities
1032 and agencies shall be exempt from this process when contracting
1033 for the services and products of fuel management or fuel access
1034 systems under the terms of a state contract established by the
1035 Office of Purchasing and Travel.

1036 (r) **Solid waste contract proposal procedure.** Before
1037 entering into any contract for garbage collection or disposal,
1038 contract for solid waste collection or disposal or contract for
1039 sewage collection or disposal, which involves an expenditure of
1040 more than Seventy-five Thousand Dollars (\$75,000.00), a governing
1041 authority or agency shall issue publicly a request for proposals
1042 concerning the specifications for such services which shall be
1043 advertised for in the same manner as provided in this section for



1044 seeking bids for purchases which involve an expenditure of more
1045 than the amount provided in paragraph (c) of this section. Any
1046 request for proposals when issued shall contain terms and
1047 conditions relating to price, financial responsibility,
1048 technology, legal responsibilities and other relevant factors as
1049 are determined by the governing authority or agency to be
1050 appropriate for inclusion; all factors determined relevant by the
1051 governing authority or agency or required by this paragraph (r)
1052 shall be duly included in the advertisement to elicit proposals.
1053 After responses to the request for proposals have been duly
1054 received, the governing authority or agency shall select the most
1055 qualified proposal or proposals on the basis of price, technology
1056 and other relevant factors and from such proposals, but not
1057 limited to the terms thereof, negotiate and enter into contracts
1058 with one or more of the persons or firms submitting proposals. If
1059 the governing authority or agency deems none of the proposals to
1060 be qualified or otherwise acceptable, the request for proposals
1061 process may be reinitiated. Notwithstanding any other provisions
1062 of this paragraph, where a county with at least thirty-five
1063 thousand (35,000) nor more than forty thousand (40,000)
1064 population, according to the 1990 federal decennial census, owns
1065 or operates a solid waste landfill, the governing authorities of
1066 any other county or municipality may contract with the governing
1067 authorities of the county owning or operating the landfill,
1068 pursuant to a resolution duly adopted and spread upon the minutes



1069 of each governing authority involved, for garbage or solid waste
1070 collection or disposal services through contract negotiations.

1071 (s) **Minority set-aside authorization.** Notwithstanding
1072 any provision of this section to the contrary, any agency or
1073 governing authority, by order placed on its minutes, may, in its
1074 discretion, set aside not more than twenty percent (20%) of its
1075 anticipated annual expenditures for the purchase of commodities
1076 from minority businesses; however, all such set-aside purchases
1077 shall comply with all purchasing regulations promulgated by the
1078 Department of Finance and Administration and shall be subject to
1079 bid requirements under this section. Set-aside purchases for
1080 which competitive bids are required shall be made from the lowest
1081 and best minority business bidder. For the purposes of this
1082 paragraph, the term "minority business" means a business which is
1083 owned by a majority of persons who are United States citizens or
1084 permanent resident aliens (as defined by the Immigration and
1085 Naturalization Service) of the United States, and who are Asian,
1086 Black, Hispanic or Native American, according to the following
1087 definitions:

1088 (i) "Asian" means persons having origins in any of
1089 the original people of the Far East, Southeast Asia, the Indian
1090 subcontinent, or the Pacific Islands.

1091 (ii) "Black" means persons having origins in any
1092 black racial group of Africa.



1093 (iii) "Hispanic" means persons of Spanish or
1094 Portuguese culture with origins in Mexico, South or Central
1095 America, or the Caribbean Islands, regardless of race.

1096 (iv) "Native American" means persons having
1097 origins in any of the original people of North America, including
1098 American Indians, Eskimos and Aleuts.

1099 (t) **Construction punch list restriction.** The
1100 architect, engineer or other representative designated by the
1101 agency or governing authority that is contracting for public
1102 construction or renovation may prepare and submit to the
1103 contractor only one (1) preliminary punch list of items that do
1104 not meet the contract requirements at the time of substantial
1105 completion and one (1) final list immediately before final
1106 completion and final payment.

1107 (u) **Procurement of construction services by state**
1108 **institutions of higher learning.** Contracts for privately financed
1109 construction of auxiliary facilities on the campus of a state
1110 institution of higher learning may be awarded by the Board of
1111 Trustees of State Institutions of Higher Learning to the lowest
1112 and best bidder, where sealed bids are solicited, or to the
1113 offeror whose proposal is determined to represent the best value
1114 to the citizens of the State of Mississippi, where requests for
1115 proposals are solicited.

1116 (v) **Insurability of bidders for public construction or**
1117 **other public contracts.** In any solicitation for bids to perform



1118 public construction or other public contracts to which this
1119 section applies, including, but not limited to, contracts for
1120 repair and maintenance, for which the contract will require
1121 insurance coverage in an amount of not less than One Million
1122 Dollars (\$1,000,000.00), bidders shall be permitted to either
1123 submit proof of current insurance coverage in the specified amount
1124 or demonstrate ability to obtain the required coverage amount of
1125 insurance if the contract is awarded to the bidder. Proof of
1126 insurance coverage shall be submitted within five (5) business
1127 days from bid acceptance.

1128 (w) **Purchase authorization clarification.** Nothing in
1129 this section shall be construed as authorizing any purchase not
1130 authorized by law.

1131 **SECTION 9.** This act shall take effect and be in force from
1132 and after July 1, 2023.

