

By: Representative Shanks

To: Municipalities

HOUSE BILL NO. 1391

1 AN ACT TO PROHIBIT THE GOVERNING AUTHORITIES OF ANY  
 2 MUNICIPALITY FROM ENTERING INTO ANY MINORITY SET-ASIDE CONTRACT  
 3 WITH A MINORITY BUSINESS; TO AMEND SECTION 31-7-13, MISSISSIPPI  
 4 CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; TO BRING  
 5 FORWARD SECTION 31-7-1, MISSISSIPPI CODE OF 1972, WHICH PERTAINS  
 6 TO CERTAIN DEFINITIONS, FOR PURPOSES OF POSSIBLE AMENDMENT; AND  
 7 FOR RELATED PURPOSES.

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

9 **SECTION 1.** Notwithstanding any state law to the contrary,  
 10 from and after the effective date of this act, the governing  
 11 authorities of any municipality, as prescribed in Section 21-1-21,  
 12 are prohibited from entering into any minority set-aside contract  
 13 with a minority business. As used in this section, "minority  
 14 business" means a business which is owned by a majority of persons  
 15 who are United States citizens or permanent resident aliens (as  
 16 defined by the Immigration and Naturalization Service) of the  
 17 United States, and who are Asian, Black, Hispanic or Native  
 18 American, according to the following definitions:



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

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

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

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

30 **SECTION 2.** Section 31-7-13, Mississippi Code of 1972, is  
31 amended as follows:

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

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

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

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



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

45 (b) **Bidding procedure for purchases over \$5,000.00 but**  
46 **not over \$75,000.00.** Purchases which involve an expenditure of  
47 more than Five Thousand Dollars (\$5,000.00) but not more than  
48 Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight  
49 and shipping charges, may be made from the lowest and best bidder  
50 without publishing or posting advertisement for bids, provided at  
51 least two (2) competitive written bids have been obtained. Any  
52 state agency or community/junior college purchasing commodities or  
53 procuring construction pursuant to this paragraph (b) may  
54 authorize its purchasing agent, or his designee, to accept the  
55 lowest competitive written bid under Seventy-five Thousand Dollars  
56 (\$75,000.00). Any governing authority purchasing commodities  
57 pursuant to this paragraph (b) may authorize its purchasing agent,  
58 or his designee, with regard to governing authorities other than  
59 counties, or its purchase clerk, or his designee, with regard to  
60 counties, to accept the lowest and best competitive written bid.  
61 Such authorization shall be made in writing by the governing  
62 authority and shall be maintained on file in the primary office of  
63 the agency and recorded in the official minutes of the governing  
64 authority, as appropriate. The purchasing agent or the purchase  
65 clerk, or his designee, as the case may be, and not the governing  
66 authority, shall be liable for any penalties and/or damages as may  
67 be imposed by law for any act or omission of the purchasing agent



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

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

89 (i) **Publication requirement.**

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



93 bidder after advertising for competitive bids once each week for  
94 two (2) consecutive weeks in a regular newspaper published in the  
95 county or municipality in which such agency or governing authority  
96 is located. However, all American Recovery and Reinvestment Act  
97 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
98 shall be bid. All references to American Recovery and  
99 Reinvestment Act projects in this section shall not apply to  
100 programs identified in Division B of the American Recovery and  
101 Reinvestment Act.

102                   2. Reverse auctions shall be the primary  
103 method for receiving bids during the bidding process. If a  
104 purchasing entity determines that a reverse auction is not in the  
105 best interest of the state, then that determination must be  
106 approved by the Public Procurement Review Board. The purchasing  
107 entity shall submit a detailed explanation of why a reverse  
108 auction would not be in the best interest of the state and present  
109 an alternative process to be approved by the Public Procurement  
110 Review Board. If the Public Procurement Review Board authorizes  
111 the purchasing entity to solicit bids with a method other than  
112 reverse auction, then the purchasing entity may designate the  
113 other methods by which the bids will be received, including, but  
114 not limited to, bids sealed in an envelope, bids received  
115 electronically in a secure system, or bids received by any other  
116 method that promotes open competition and has been approved by the  
117 Office of Purchasing and Travel. However, reverse auction shall



118 not be used for any public contract for design, construction,  
119 improvement, repair or remodeling of any public facilities,  
120 including the purchase of materials, supplies, equipment or goods  
121 for same and including buildings, roads and bridges. The Public  
122 Procurement Review Board must approve any contract entered into by  
123 alternative process. The provisions of this item 2 shall not  
124 apply to the individual state institutions of higher learning.  
125 The provisions of this item 2 requiring reverse auction as the  
126 primary method of receiving bids shall not apply to term contract  
127 purchases as provided in paragraph (n) of this section; however, a  
128 purchasing entity may, in its discretion, utilize reverse auction  
129 for such purchases. The provisions of this item 2 shall not apply  
130 to individual public schools, including public charter schools and  
131 public school districts, only when purchasing copyrighted  
132 educational supplemental materials and software as a service  
133 product. For such purchases, a local school board may authorize a  
134 purchasing entity in its jurisdiction to use a Request for  
135 Qualifications which promotes open competition and meets the  
136 requirements of the Office of Purchasing and Travel.

137                   3. The date as published for the bid opening  
138 shall not be less than seven (7) working days after the last  
139 published notice; however, if the purchase involves a construction  
140 project in which the estimated cost is in excess of Seventy-five  
141 Thousand Dollars (\$75,000.00), such bids shall not be opened in  
142 less than fifteen (15) working days after the last notice is



143 published and the notice for the purchase of such construction  
144 shall be published once each week for two (2) consecutive weeks.  
145 However, all American Recovery and Reinvestment Act projects in  
146 excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid.  
147 For any projects in excess of Twenty-five Thousand Dollars  
148 (\$25,000.00) under the American Recovery and Reinvestment Act,  
149 publication shall be made one (1) time and the bid opening for  
150 construction projects shall not be less than ten (10) working days  
151 after the date of the published notice. The notice of intention  
152 to let contracts or purchase equipment shall state the time and  
153 place at which bids shall be received, list the contracts to be  
154 made or types of equipment or supplies to be purchased, and, if  
155 all plans and/or specifications are not published, refer to the  
156 plans and/or specifications on file. If there is no newspaper  
157 published in the county or municipality, then such notice shall be  
158 given by posting same at the courthouse, or for municipalities at  
159 the city hall, and at two (2) other public places in the county or  
160 municipality, and also by publication once each week for two (2)  
161 consecutive weeks in some newspaper having a general circulation  
162 in the county or municipality in the above-provided manner. On  
163 the same date that the notice is submitted to the newspaper for  
164 publication, the agency or governing authority involved shall mail  
165 written notice to, or provide electronic notification to the main  
166 office of the Mississippi Procurement Technical Assistance Program  
167 under the Mississippi Development Authority that contains the same



168 information as that in the published notice. Submissions received  
169 by the Mississippi Procurement Technical Assistance Program for  
170 projects funded by the American Recovery and Reinvestment Act  
171 shall be displayed on a separate and unique Internet web page  
172 accessible to the public and maintained by the Mississippi  
173 Development Authority for the Mississippi Procurement Technical  
174 Assistance Program. Those American Recovery and Reinvestment Act  
175 related submissions shall be publicly posted within twenty-four  
176 (24) hours of receipt by the Mississippi Development Authority and  
177 the bid opening shall not occur until the submission has been  
178 posted for ten (10) consecutive days. The Department of Finance  
179 and Administration shall maintain information regarding contracts  
180 and other expenditures from the American Recovery and Reinvestment  
181 Act, on a unique Internet web page accessible to the public. The  
182 Department of Finance and Administration shall promulgate rules  
183 regarding format, content and deadlines, unless otherwise  
184 specified by law, of the posting of award notices, contract  
185 execution and subsequent amendments, links to the contract  
186 documents, expenditures against the awarded contracts and general  
187 expenditures of funds from the American Recovery and Reinvestment  
188 Act. Within one (1) working day of the contract award, the agency  
189 or governing authority shall post to the designated web page  
190 maintained by the Department of Finance and Administration, notice  
191 of the award, including the award recipient, the contract amount,  
192 and a brief summary of the contract in accordance with rules





193 promulgated by the department. Within one (1) working day of the  
194 contract execution, the agency or governing authority shall post  
195 to the designated web page maintained by the Department of Finance  
196 and Administration a summary of the executed contract and make a  
197 copy of the appropriately redacted contract documents available  
198 for linking to the designated web page in accordance with the  
199 rules promulgated by the department. The information provided by  
200 the agency or governing authority shall be posted to the web page  
201 for the duration of the American Recovery and Reinvestment Act  
202 funding or until the project is completed, whichever is longer.

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



217 to a date not less than five (5) working days after the date of  
218 the addendum.

219 (iii) **Filing requirement.** In all cases involving  
220 governing authorities, before the notice shall be published or  
221 posted, the plans or specifications for the construction or  
222 equipment being sought shall be filed with the clerk of the board  
223 of the governing authority. In addition to these requirements, a  
224 bid file shall be established which shall indicate those vendors  
225 to whom such solicitations and specifications were issued, and  
226 such file shall also contain such information as is pertinent to  
227 the bid.

228 (iv) **Specification restrictions.**

229 1. Specifications pertinent to such bidding  
230 shall be written so as not to exclude comparable equipment of  
231 domestic manufacture. However, if valid justification is  
232 presented, the Department of Finance and Administration or the  
233 board of a governing authority may approve a request for specific  
234 equipment necessary to perform a specific job. Further, such  
235 justification, when placed on the minutes of the board of a  
236 governing authority, may serve as authority for that governing  
237 authority to write specifications to require a specific item of  
238 equipment needed to perform a specific job. In addition to these  
239 requirements, from and after July 1, 1990, vendors of relocatable  
240 classrooms and the specifications for the purchase of such  
241 relocatable classrooms published by local school boards shall meet



242 all pertinent regulations of the State Board of Education,  
243 including prior approval of such bid by the State Department of  
244 Education.

245                   2. Specifications for construction projects  
246 may include an allowance for commodities, equipment, furniture,  
247 construction materials or systems in which prospective bidders are  
248 instructed to include in their bids specified amounts for such  
249 items so long as the allowance items are acquired by the vendor in  
250 a commercially reasonable manner and approved by the  
251 agency/governing authority. Such acquisitions shall not be made  
252 to circumvent the public purchasing laws.

253                   (v) **Electronic bids.** Agencies and governing  
254 authorities shall provide a secure electronic interactive system  
255 for the submittal of bids requiring competitive bidding that shall  
256 be an additional bidding option for those bidders who choose to  
257 submit their bids electronically. The Department of Finance and  
258 Administration shall provide, by regulation, the standards that  
259 agencies must follow when receiving electronic bids. Agencies and  
260 governing authorities shall make the appropriate provisions  
261 necessary to accept electronic bids from those bidders who choose  
262 to submit their bids electronically for all purchases requiring  
263 competitive bidding under this section. Any special condition or  
264 requirement for the electronic bid submission shall be specified  
265 in the advertisement for bids required by this section. Agencies  
266 or governing authorities that are currently without available high



267 speed Internet access shall be exempt from the requirement of this  
268 subparagraph (v) until such time that high speed Internet access  
269 becomes available. Any county having a population of less than  
270 twenty thousand (20,000) shall be exempt from the provisions of  
271 this subparagraph (v). Any municipality having a population of  
272 less than ten thousand (10,000) shall be exempt from the  
273 provisions of this subparagraph (v). The provisions of this  
274 subparagraph (v) shall not require any bidder to submit bids  
275 electronically. When construction bids are submitted  
276 electronically, the requirement for including a certificate of  
277 responsibility, or a statement that the bid enclosed does not  
278 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the  
279 bid envelope as indicated in Section 31-3-21(1) and (2) shall be  
280 deemed in compliance with by including same as an attachment with  
281 the electronic bid submittal.

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

283 (i) **Decision procedure.** Purchases may be made  
284 from the lowest and best bidder. In determining the lowest and  
285 best bid, freight and shipping charges shall be included.  
286 Life-cycle costing, total cost bids, warranties, guaranteed  
287 buy-back provisions and other relevant provisions may be included  
288 in the best bid calculation. All best bid procedures for state  
289 agencies must be in compliance with regulations established by the  
290 Department of Finance and Administration. If any governing  
291 authority accepts a bid other than the lowest bid actually



292 submitted, it shall place on its minutes detailed calculations and  
293 narrative summary showing that the accepted bid was determined to  
294 be the lowest and best bid, including the dollar amount of the  
295 accepted bid and the dollar amount of the lowest bid. No agency  
296 or governing authority shall accept a bid based on items not  
297 included in the specifications.

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



(iii) **Decision procedure for Mississippi**

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



341 dollar amount of the lowest bid. No agency or governing authority  
342 shall accept a bid based on items not included in the  
343 specifications.

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

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

350 (e) **Lease-purchase authorization.** For the purposes of  
351 this section, the term "equipment" shall mean equipment, furniture  
352 and, if applicable, associated software and other applicable  
353 direct costs associated with the acquisition. Any lease-purchase  
354 of equipment which an agency is not required to lease-purchase  
355 under the master lease-purchase program pursuant to Section  
356 31-7-10 and any lease-purchase of equipment which a governing  
357 authority elects to lease-purchase may be acquired by a  
358 lease-purchase agreement under this paragraph (e). Lease-purchase  
359 financing may also be obtained from the vendor or from a  
360 third-party source after having solicited and obtained at least  
361 two (2) written competitive bids, as defined in paragraph (b) of  
362 this section, for such financing without advertising for such  
363 bids. Solicitation for the bids for financing may occur before or  
364 after acceptance of bids for the purchase of such equipment or,  
365 where no such bids for purchase are required, at any time before



366 the purchase thereof. No such lease-purchase agreement shall be  
367 for an annual rate of interest which is greater than the overall  
368 maximum interest rate to maturity on general obligation  
369 indebtedness permitted under Section 75-17-101, and the term of  
370 such lease-purchase agreement shall not exceed the useful life of  
371 equipment covered thereby as determined according to the upper  
372 limit of the asset depreciation range (ADR) guidelines for the  
373 Class Life Asset Depreciation Range System established by the  
374 Internal Revenue Service pursuant to the United States Internal  
375 Revenue Code and regulations thereunder as in effect on December  
376 31, 1980, or comparable depreciation guidelines with respect to  
377 any equipment not covered by ADR guidelines. Any lease-purchase  
378 agreement entered into pursuant to this paragraph (e) may contain  
379 any of the terms and conditions which a master lease-purchase  
380 agreement may contain under the provisions of Section 31-7-10(5),  
381 and shall contain an annual allocation dependency clause  
382 substantially similar to that set forth in Section 31-7-10(8).  
383 Each agency or governing authority entering into a lease-purchase  
384 transaction pursuant to this paragraph (e) shall maintain with  
385 respect to each such lease-purchase transaction the same  
386 information as required to be maintained by the Department of  
387 Finance and Administration pursuant to Section 31-7-10(13).  
388 However, nothing contained in this section shall be construed to  
389 permit agencies to acquire items of equipment with a total  
390 acquisition cost in the aggregate of less than Ten Thousand





391 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
392 equipment, and the purchase thereof by any lessor, acquired by  
393 lease-purchase under this paragraph and all lease-purchase  
394 payments with respect thereto shall be exempt from all Mississippi  
395 sales, use and ad valorem taxes. Interest paid on any  
396 lease-purchase agreement under this section shall be exempt from  
397 State of Mississippi income taxation.

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

407           (g) **Construction contract change authorization.** In the  
408 event a determination is made by an agency or governing authority  
409 after a construction contract is let that changes or modifications  
410 to the original contract are necessary or would better serve the  
411 purpose of the agency or the governing authority, such agency or  
412 governing authority may, in its discretion, order such changes  
413 pertaining to the construction that are necessary under the  
414 circumstances without the necessity of further public bids;  
415 provided that such change shall be made in a commercially



416 reasonable manner and shall not be made to circumvent the public  
417 purchasing statutes. In addition to any other authorized person,  
418 the architect or engineer hired by an agency or governing  
419 authority with respect to any public construction contract shall  
420 have the authority, when granted by an agency or governing  
421 authority, to authorize changes or modifications to the original  
422 contract without the necessity of prior approval of the agency or  
423 governing authority when any such change or modification is less  
424 than one percent (1%) of the total contract amount. The agency or  
425 governing authority may limit the number, manner or frequency of  
426 such emergency changes or modifications.

427           (h) **Petroleum purchase alternative.** In addition to  
428 other methods of purchasing authorized in this chapter, when any  
429 agency or governing authority shall have a need for gas, diesel  
430 fuel, oils and/or other petroleum products in excess of the amount  
431 set forth in paragraph (a) of this section, such agency or  
432 governing authority may purchase the commodity after having  
433 solicited and obtained at least two (2) competitive written bids,  
434 as defined in paragraph (b) of this section. If two (2)  
435 competitive written bids are not obtained, the entity shall comply  
436 with the procedures set forth in paragraph (c) of this section.  
437 In the event any agency or governing authority shall have  
438 advertised for bids for the purchase of gas, diesel fuel, oils and  
439 other petroleum products and coal and no acceptable bids can be  
440 obtained, such agency or governing authority is authorized and



441 directed to enter into any negotiations necessary to secure the  
442 lowest and best contract available for the purchase of such  
443 commodities.

444           (i) **Road construction petroleum products price**  
445 **adjustment clause authorization.** Any agency or governing  
446 authority authorized to enter into contracts for the construction,  
447 maintenance, surfacing or repair of highways, roads or streets,  
448 may include in its bid proposal and contract documents a price  
449 adjustment clause with relation to the cost to the contractor,  
450 including taxes, based upon an industry-wide cost index, of  
451 petroleum products including asphalt used in the performance or  
452 execution of the contract or in the production or manufacture of  
453 materials for use in such performance. Such industry-wide index  
454 shall be established and published monthly by the Mississippi  
455 Department of Transportation with a copy thereof to be mailed,  
456 upon request, to the clerks of the governing authority of each  
457 municipality and the clerks of each board of supervisors  
458 throughout the state. The price adjustment clause shall be based  
459 on the cost of such petroleum products only and shall not include  
460 any additional profit or overhead as part of the adjustment. The  
461 bid proposals or document contract shall contain the basis and  
462 methods of adjusting unit prices for the change in the cost of  
463 such petroleum products.

464           (j) **State agency emergency purchase procedure.** If the  
465 governing board or the executive head, or his designees, of any



466 agency of the state shall determine that an emergency exists in  
467 regard to the purchase of any commodities or repair contracts, so  
468 that the delay incident to giving opportunity for competitive  
469 bidding would be detrimental to the interests of the state, then  
470 the head of such agency, or his designees, shall file with the  
471 Department of Finance and Administration (i) a statement  
472 explaining the conditions and circumstances of the emergency,  
473 which shall include a detailed description of the events leading  
474 up to the situation and the negative impact to the entity if the  
475 purchase is made following the statutory requirements set forth in  
476 paragraph (a), (b) or (c) of this section, and (ii) a certified  
477 copy of the appropriate minutes of the board of such agency  
478 requesting the emergency purchase, if applicable. Upon receipt of  
479 the statement and applicable board certification, the State Fiscal  
480 Officer, or his designees, may, in writing, authorize the purchase  
481 or repair without having to comply with competitive bidding  
482 requirements.

483         If the governing board or the executive head, or his  
484 designees, of any agency determines that an emergency exists in  
485 regard to the purchase of any commodities or repair contracts, so  
486 that the delay incident to giving opportunity for competitive  
487 bidding would threaten the health or safety of any person, or the  
488 preservation or protection of property, then the provisions in  
489 this section for competitive bidding shall not apply, and any  
490 officer or agent of the agency having general or specific



491 authority for making the purchase or repair contract shall approve  
492 the bill presented for payment, and he shall certify in writing  
493 from whom the purchase was made, or with whom the repair contract  
494 was made.

495 Total purchases made under this paragraph (j) shall only be  
496 for the purpose of meeting needs created by the emergency  
497 situation. Following the emergency purchase, documentation of the  
498 purchase, including a description of the commodity purchased, the  
499 purchase price thereof and the nature of the emergency shall be  
500 filed with the Department of Finance and Administration. Any  
501 contract awarded pursuant to this paragraph (j) shall not exceed a  
502 term of one (1) year.

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

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

509 If the governing authority, or the governing authority acting  
510 through its designee, shall determine that an emergency exists in  
511 regard to the purchase of any commodities or repair contracts, so  
512 that the delay incident to giving opportunity for competitive  
513 bidding would be detrimental to the interest of the governing  
514 authority, then the provisions herein for competitive bidding  
515 shall not apply and any officer or agent of such governing



516 authority having general or special authority therefor in making  
517 such purchase or repair shall approve the bill presented therefor,  
518 and he shall certify in writing thereon from whom such purchase  
519 was made, or with whom such a repair contract was made. At the  
520 board meeting next following the emergency purchase or repair  
521 contract, documentation of the purchase or repair contract,  
522 including a description of the commodity purchased, the price  
523 thereof and the nature of the emergency shall be presented to the  
524 board and shall be placed on the minutes of the board of such  
525 governing authority. Purchases under the grant program  
526 established under Section 37-68-7 in response to COVID-19 and the  
527 directive that school districts create a distance learning plan  
528 and fulfill technology needs expeditiously shall be deemed an  
529 emergency purchase for purposes of this paragraph (k).

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

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

537                   (ii) In addition to the authority granted in  
538 subparagraph (i) of this paragraph (1), the commissioners or board  
539 of trustees is authorized to enter into contracts for the lease of  
540 equipment or services, or both, which it considers necessary for



541 the proper care of patients if, in its opinion, it is not  
542 financially feasible to purchase the necessary equipment or  
543 services. Any such contract for the lease of equipment or  
544 services executed by the commissioners or board shall not exceed a  
545 maximum of five (5) years' duration and shall include a  
546 cancellation clause based on unavailability of funds. If such  
547 cancellation clause is exercised, there shall be no further  
548 liability on the part of the lessee. Any such contract for the  
549 lease of equipment or services executed on behalf of the  
550 commissioners or board that complies with the provisions of this  
551 subparagraph (ii) shall be excepted from the bid requirements set  
552 forth in this section.

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

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

559 (ii) **Outside equipment repairs.** Repairs to  
560 equipment, when such repairs are made by repair facilities in the  
561 private sector; however, engines, transmissions, rear axles and/or  
562 other such components shall not be included in this exemption when  
563 replaced as a complete unit instead of being repaired and the need  
564 for such total component replacement is known before disassembly  
565 of the component; however, invoices identifying the equipment,



566 specific repairs made, parts identified by number and name,  
567 supplies used in such repairs, and the number of hours of labor  
568 and costs therefor shall be required for the payment for such  
569 repairs.

570 (iii) **In-house equipment repairs.** Purchases of  
571 parts for repairs to equipment, when such repairs are made by  
572 personnel of the agency or governing authority; however, entire  
573 assemblies, such as engines or transmissions, shall not be  
574 included in this exemption when the entire assembly is being  
575 replaced instead of being repaired.

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

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





590                   (vi)    **Intergovernmental sales and transfers.**  
591 Purchases, sales, transfers or trades by governing authorities or  
592 state agencies when such purchases, sales, transfers or trades are  
593 made by a private treaty agreement or through means of  
594 negotiation, from any federal agency or authority, another  
595 governing authority or state agency of the State of Mississippi,  
596 or any state agency or governing authority of another state.  
597 Nothing in this section shall permit such purchases through public  
598 auction except as provided for in subparagraph (v) of this  
599 paragraph (m). It is the intent of this section to allow  
600 governmental entities to dispose of and/or purchase commodities  
601 from other governmental entities at a price that is agreed to by  
602 both parties. This shall allow for purchases and/or sales at  
603 prices which may be determined to be below the market value if the  
604 selling entity determines that the sale at below market value is  
605 in the best interest of the taxpayers of the state. Governing  
606 authorities shall place the terms of the agreement and any  
607 justification on the minutes, and state agencies shall obtain  
608 approval from the Department of Finance and Administration, prior  
609 to releasing or taking possession of the commodities.

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



614 (viii) **Single-source items.** Noncompetitive items  
615 available from one (1) source only. In connection with the  
616 purchase of noncompetitive items only available from one (1)  
617 source, a certification of the conditions and circumstances  
618 requiring the purchase shall be filed by the agency with the  
619 Department of Finance and Administration and by the governing  
620 authority with the board of the governing authority. Upon receipt  
621 of that certification the Department of Finance and Administration  
622 or the board of the governing authority, as the case may be, may,  
623 in writing, authorize the purchase, which authority shall be noted  
624 on the minutes of the body at the next regular meeting thereafter.  
625 In those situations, a governing authority is not required to  
626 obtain the approval of the Department of Finance and  
627 Administration. Following the purchase, the executive head of the  
628 state agency, or his designees, shall file with the Department of  
629 Finance and Administration, documentation of the purchase,  
630 including a description of the commodity purchased, the purchase  
631 price thereof and the source from whom it was purchased.

632 (ix) **Waste disposal facility construction**  
633 **contracts.** Construction of incinerators and other facilities for  
634 disposal of solid wastes in which products either generated  
635 therein, such as steam, or recovered therefrom, such as materials  
636 for recycling, are to be sold or otherwise disposed of; however,  
637 in constructing such facilities, a governing authority or agency  
638 shall publicly issue requests for proposals, advertised for in the



639 same manner as provided herein for seeking bids for public  
640 construction projects, concerning the design, construction,  
641 ownership, operation and/or maintenance of such facilities,  
642 wherein such requests for proposals when issued shall contain  
643 terms and conditions relating to price, financial responsibility,  
644 technology, environmental compatibility, legal responsibilities  
645 and such other matters as are determined by the governing  
646 authority or agency to be appropriate for inclusion; and after  
647 responses to the request for proposals have been duly received,  
648 the governing authority or agency may select the most qualified  
649 proposal or proposals on the basis of price, technology and other  
650 relevant factors and from such proposals, but not limited to the  
651 terms thereof, negotiate and enter contracts with one or more of  
652 the persons or firms submitting proposals.

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

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

662           (xii) **Energy efficiency services and equipment.**  
663 Energy efficiency services and equipment acquired by school



664 districts, community and junior colleges, institutions of higher  
665 learning and state agencies or other applicable governmental  
666 entities on a shared-savings, lease or lease-purchase basis  
667 pursuant to Section 31-7-14.

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

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

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

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

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

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

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

687 From and after July 1, 1990, contracts by Mississippi Authority  
688 for Educational Television with any private educational



689 institution or private nonprofit organization whose purposes are  
690 educational in regard to the construction, purchase, lease or  
691 lease-purchase of facilities and equipment and the employment of  
692 personnel for providing multichannel interactive video systems  
693 (ITSF) in the school districts of this state.

694 (xviii) **Purchases of prison industry products by**  
695 **the Department of Corrections, regional correctional facilities or**  
696 **privately owned prisons.** Purchases made by the Mississippi  
697 Department of Corrections, regional correctional facilities or  
698 privately owned prisons involving any item that is manufactured,  
699 processed, grown or produced from the state's prison industries.

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

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

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



714 (xxii) **Garbage, solid waste and sewage contracts.**  
715 Contracts for garbage collection or disposal, contracts for solid  
716 waste collection or disposal and contracts for sewage collection  
717 or disposal.

718 (xxiii) **Municipal water tank maintenance**  
719 **contracts.** Professional maintenance program contracts for the  
720 repair or maintenance of municipal water tanks, which provide  
721 professional services needed to maintain municipal water storage  
722 tanks for a fixed annual fee for a duration of two (2) or more  
723 years.

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

728 (xxv) **Purchases of state-adopted textbooks.**  
729 Purchases of state-adopted textbooks by public school districts.

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

733 (xxvii) **Used heavy or specialized machinery or**  
734 **equipment for installation of soil and water conservation**  
735 **practices purchased at auction.** Used heavy or specialized  
736 machinery or equipment used for the installation and  
737 implementation of soil and water conservation practices or  
738 measures purchased subject to the restrictions provided in



739 Sections 69-27-331 through 69-27-341. Any purchase by the State  
740 Soil and Water Conservation Commission under the exemption  
741 authorized by this subparagraph shall require advance  
742 authorization spread upon the minutes of the commission to include  
743 the listing of the item or items authorized to be purchased and  
744 the maximum bid authorized to be paid for each item or items.

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

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

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

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

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

761 yearbooks by state agencies or governing authorities; provided,  
762 however, that state agencies and governing authorities shall use  
763 for these purchases the RFP process as set forth in the



764 Mississippi Procurement Manual adopted by the Office of Purchasing  
765 and Travel.

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

769 (xxxiii) **Toll roads and bridge construction**  
770 **projects.** Contracts entered into under the provisions of Section  
771 65-43-1 or 65-43-3.

772 (xxxiiii) **Certain purchases under Section 57-1-221.**  
773 Contracts entered into pursuant to the provisions of Section  
774 57-1-221.

775 (xxxv) **Certain transfers made pursuant to the**  
776 **provisions of Section 57-105-1(7).** Transfers of public property  
777 or facilities under Section 57-105-1(7) and construction related  
778 to such public property or facilities.

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

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





789 radiation-emitting devices as defined by the United States Food  
790 and Drug Administration.

791 (xxxvii) **Certain purchases made under the Alyce G.**  
792 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi  
793 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi  
794 Lottery Law.

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

801 (n) **Term contract authorization.** All contracts for the  
802 purchase of:

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



813 (ii) Bid proposals and contracts may include price  
814 adjustment clauses with relation to the cost to the contractor  
815 based upon a nationally published industry-wide or nationally  
816 published and recognized cost index. The cost index used in a  
817 price adjustment clause shall be determined by the Department of  
818 Finance and Administration for the state agencies and by the  
819 governing board for governing authorities. The bid proposal and  
820 contract documents utilizing a price adjustment clause shall  
821 contain the basis and method of adjusting unit prices for the  
822 change in the cost of such commodities, equipment and public  
823 construction.

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



837 both such fine and imprisonment. In addition, the claim or claims  
838 submitted shall be forfeited.

839 (p) **Electrical utility petroleum-based equipment**  
840 **purchase procedure.** When in response to a proper advertisement  
841 therefor, no bid firm as to price is submitted to an electric  
842 utility for power transformers, distribution transformers, power  
843 breakers, reclosers or other articles containing a petroleum  
844 product, the electric utility may accept the lowest and best bid  
845 therefor although the price is not firm.

846 (q) **Fuel management system bidding procedure.** Any  
847 governing authority or agency of the state shall, before  
848 contracting for the services and products of a fuel management or  
849 fuel access system, enter into negotiations with not fewer than  
850 two (2) sellers of fuel management or fuel access systems for  
851 competitive written bids to provide the services and products for  
852 the systems. In the event that the governing authority or agency  
853 cannot locate two (2) sellers of such systems or cannot obtain  
854 bids from two (2) sellers of such systems, it shall show proof  
855 that it made a diligent, good-faith effort to locate and negotiate  
856 with two (2) sellers of such systems. Such proof shall include,  
857 but not be limited to, publications of a request for proposals and  
858 letters soliciting negotiations and bids. For purposes of this  
859 paragraph (q), a fuel management or fuel access system is an  
860 automated system of acquiring fuel for vehicles as well as  
861 management reports detailing fuel use by vehicles and drivers, and



862 the term "competitive written bid" shall have the meaning as  
863 defined in paragraph (b) of this section. Governing authorities  
864 and agencies shall be exempt from this process when contracting  
865 for the services and products of fuel management or fuel access  
866 systems under the terms of a state contract established by the  
867 Office of Purchasing and Travel.

868 (r) **Solid waste contract proposal procedure.** Before  
869 entering into any contract for garbage collection or disposal,  
870 contract for solid waste collection or disposal or contract for  
871 sewage collection or disposal, which involves an expenditure of  
872 more than Seventy-five Thousand Dollars (\$75,000.00), a governing  
873 authority or agency shall issue publicly a request for proposals  
874 concerning the specifications for such services which shall be  
875 advertised for in the same manner as provided in this section for  
876 seeking bids for purchases which involve an expenditure of more  
877 than the amount provided in paragraph (c) of this section. Any  
878 request for proposals when issued shall contain terms and  
879 conditions relating to price, financial responsibility,  
880 technology, legal responsibilities and other relevant factors as  
881 are determined by the governing authority or agency to be  
882 appropriate for inclusion; all factors determined relevant by the  
883 governing authority or agency or required by this paragraph (r)  
884 shall be duly included in the advertisement to elicit proposals.  
885 After responses to the request for proposals have been duly  
886 received, the governing authority or agency shall select the most



887 qualified proposal or proposals on the basis of price, technology  
888 and other relevant factors and from such proposals, but not  
889 limited to the terms thereof, negotiate and enter into contracts  
890 with one or more of the persons or firms submitting proposals. If  
891 the governing authority or agency deems none of the proposals to  
892 be qualified or otherwise acceptable, the request for proposals  
893 process may be reinitiated. Notwithstanding any other provisions  
894 of this paragraph, where a county with at least thirty-five  
895 thousand (35,000) nor more than forty thousand (40,000)  
896 population, according to the 1990 federal decennial census, owns  
897 or operates a solid waste landfill, the governing authorities of  
898 any other county or municipality may contract with the governing  
899 authorities of the county owning or operating the landfill,  
900 pursuant to a resolution duly adopted and spread upon the minutes  
901 of each governing authority involved, for garbage or solid waste  
902 collection or disposal services through contract negotiations.

903 (s) **Minority set-aside authorization.** Notwithstanding  
904 any provision of this section to the contrary, any agency or  
905 governing authority, subject to the limitation prescribed for the  
906 governing authorities of municipalities under this paragraph (s),  
907 by order placed on its minutes, may, in its discretion, set aside  
908 not more than twenty percent (20%) of its anticipated annual  
909 expenditures for the purchase of commodities from minority  
910 businesses; however, all such set-aside purchases shall comply  
911 with all purchasing regulations promulgated by the Department of



912 Finance and Administration and shall be subject to bid  
913 requirements under this section. Set-aside purchases for which  
914 competitive bids are required shall be made from the lowest and  
915 best minority business bidder. For the purposes of this  
916 paragraph, the term "minority business" means a business which is  
917 owned by a majority of persons who are United States citizens or  
918 permanent resident aliens (as defined by the Immigration and  
919 Naturalization Service) of the United States, and who are Asian,  
920 Black, Hispanic or Native American, according to the following  
921 definitions:

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

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

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

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

933 From and after the effective date of this act, the governing  
934 authorities of any municipality shall not enter into any new  
935 set-aside purchases as set out under this paragraph (s).



936                   (t)   **Construction punch list restriction.**   The  
937 architect, engineer or other representative designated by the  
938 agency or governing authority that is contracting for public  
939 construction or renovation may prepare and submit to the  
940 contractor only one (1) preliminary punch list of items that do  
941 not meet the contract requirements at the time of substantial  
942 completion and one (1) final list immediately before final  
943 completion and final payment.

944                   (u)   **Procurement of construction services by state**  
945 **institutions of higher learning.**   Contracts for privately financed  
946 construction of auxiliary facilities on the campus of a state  
947 institution of higher learning may be awarded by the Board of  
948 Trustees of State Institutions of Higher Learning to the lowest  
949 and best bidder, where sealed bids are solicited, or to the  
950 offeror whose proposal is determined to represent the best value  
951 to the citizens of the State of Mississippi, where requests for  
952 proposals are solicited.

953                   (v)   **Insurability of bidders for public construction or**  
954 **other public contracts.**   In any solicitation for bids to perform  
955 public construction or other public contracts to which this  
956 section applies, including, but not limited to, contracts for  
957 repair and maintenance, for which the contract will require  
958 insurance coverage in an amount of not less than One Million  
959 Dollars (\$1,000,000.00), bidders shall be permitted to either  
960 submit proof of current insurance coverage in the specified amount



961 or demonstrate ability to obtain the required coverage amount of  
962 insurance if the contract is awarded to the bidder. Proof of  
963 insurance coverage shall be submitted within five (5) business  
964 days from bid acceptance.

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

968 **SECTION 3.** Section 31-7-1, Mississippi Code of 1972, is  
969 brought forward as follows:

970 31-7-1. The following terms are defined for the purposes of  
971 this chapter to have the following meanings:

972 (a) "Agency" means any state board, commission,  
973 committee, council, university, department or unit thereof created  
974 by the Constitution or statutes if such board, commission,  
975 committee, council, university, department, unit or the head  
976 thereof is authorized to appoint subordinate staff by the  
977 Constitution or statute, except a legislative or judicial board,  
978 commission, committee, council, department or unit thereof; except  
979 a charter school authorized by the Mississippi Charter School  
980 Authorizer Board; and except the Mississippi State Port Authority;  
981 except the Mississippi School of the Arts (MSA) established in  
982 Section 37-140-1 et seq. for the sole purpose of the application  
983 of the term "agency" as it pertains to the Public Procurement  
984 Review Board's powers and responsibilities as defined in Section  
985 27-104-7(2) (a), but without application to the use of the term





986 within this chapter, effective July 1, 2020; and except the  
987 Mississippi School for the Blind and the Mississippi School for  
988 the Deaf (MSBD) for the sole purpose of the application of the  
989 term "agency" as it pertains to the Public Procurement Review  
990 Board's powers and responsibilities as defined in Section  
991 27-104-7(2) (a), but without application to the use of the term  
992 within this chapter, effective July 1, 2021. An academic medical  
993 center or health sciences school as defined in Section 37-115-50  
994 is not an "agency" for those purchases of commodities as defined  
995 in this section that are used for clinical purposes and (i)  
996 intended for use in the diagnosis of disease or other conditions  
997 or in the cure, mitigation, treatment or prevention of disease,  
998 and (ii) medical devices, biological, drugs and radiation emitting  
999 devices as defined by the United States Food and Drug  
1000 Administration.

1001 (b) "Governing authority" means boards of supervisors,  
1002 governing boards of all school districts, all boards of directors  
1003 of public water supply districts, boards of directors of master  
1004 public water supply districts, municipal public utility  
1005 commissions, governing authorities of all municipalities, port  
1006 authorities, Mississippi State Port Authority, commissioners and  
1007 boards of trustees of any public hospitals, boards of trustees of  
1008 public library systems, district attorneys, school attendance  
1009 officers and any political subdivision of the state supported  
1010 wholly or in part by public funds of the state or political



1011 subdivisions thereof, including commissions, boards and agencies  
1012 created or operated under the authority of any county or  
1013 municipality of this state. The term "governing authority" shall  
1014 not include economic development authorities supported in part by  
1015 private funds, or commissions appointed to hold title to and  
1016 oversee the development and management of lands and buildings  
1017 which are donated by private individuals to the public for the use  
1018 and benefit of the community and which are supported in part by  
1019 private funds. The term "governing authority" also shall not  
1020 include the governing board of a charter school. The term  
1021 "governing authority" also shall not include the Mississippi  
1022 School of the Arts established in Section 37-140-1 et seq., for  
1023 the sole purpose of the application of the term "agency" as it  
1024 pertains to the Public Procurement Review Board's powers and  
1025 responsibilities as defined in Section 27-104-7(2) (a), but without  
1026 application to the use of the term within this chapter, effective  
1027 July 1, 2020. The term "governing authority" also shall not  
1028 include the Mississippi School for the Blind and the Mississippi  
1029 School for the Deaf (MSBD) for the sole purpose of the application  
1030 of the term "governing authority" as it pertains to the Public  
1031 Procurement Review Board's powers and responsibilities as defined  
1032 in Section 27-104-7(2) (a), but without application to the use of  
1033 the term within this chapter, effective July 1, 2021.

1034 (c) "Purchasing agent" means any administrator,  
1035 superintendent, purchase clerk or other chief officer so



1036 designated having general or special authority to negotiate for  
1037 and make private contract for or purchase for any governing  
1038 authority or agency, including issue purchase orders, invitations  
1039 for bid, requests for proposals, and receive and accept bids.

1040 (d) "Public funds" means and includes any appropriated  
1041 funds, special funds, fees or any other emoluments received by an  
1042 agency or governing authority.

1043 (e) "Commodities" means and includes the various  
1044 commodities, goods, merchandise, furniture, equipment, automotive  
1045 equipment of every kind, and other personal property purchased by  
1046 the agencies of the state and governing authorities, but not  
1047 commodities purchased for resale or raw materials converted into  
1048 products for resale.

1049 (i) "Equipment" shall be construed to include:  
1050 automobiles, trucks, tractors, office appliances and all other  
1051 equipment of every kind and description.

1052 (ii) "Furniture" shall be construed to include:  
1053 desks, chairs, tables, seats, filing cabinets, bookcases and all  
1054 other items of a similar nature as well as dormitory furniture,  
1055 appliances, carpets and all other items of personal property  
1056 generally referred to as home, office or school furniture.

1057 (f) "Emergency" means any circumstances caused by fire,  
1058 flood, explosion, storm, earthquake, epidemic, riot, insurrection  
1059 or caused by any inherent defect due to defective construction, or  
1060 when the immediate preservation of order or of public health is



1061 necessary by reason of unforeseen emergency, or when the immediate  
1062 restoration of a condition of usefulness of any public building,  
1063 equipment, road or bridge appears advisable, or in the case of a  
1064 public utility when there is a failure of any machine or other  
1065 thing used and useful in the generation, production or  
1066 distribution of electricity, water or natural gas, or in the  
1067 transportation or treatment of sewage; or when the delay incident  
1068 to obtaining competitive bids could cause adverse impact upon the  
1069 governing authorities or agency, its employees or its citizens; or  
1070 in the case of a public airport, when the delay incident to  
1071 publishing an advertisement for competitive bids would endanger  
1072 public safety in a specific (not general) manner, result in or  
1073 perpetuate a specific breach of airport security, or prevent the  
1074 airport from providing specific air transportation services.

1075           (g) "Construction" means the process of building,  
1076 altering, improving, renovating or demolishing a public structure,  
1077 public building, or other public real property. It does not  
1078 include routine operation, routine repair or regularly scheduled  
1079 maintenance of existing public structures, public buildings or  
1080 other public real property.

1081           (h) "Purchase" means buying, renting, leasing or  
1082 otherwise acquiring.

1083           (i) "Certified purchasing office" means any purchasing  
1084 office in which fifty percent (50%) or more of the purchasing  
1085 agents hold a certification from the Universal Public Purchasing



1086 Certification Council or other nationally recognized purchasing  
1087 certification, and in which, in the case of a state agency  
1088 purchasing office, in addition to the national certification, one  
1089 hundred percent (100%) of the purchasing officials hold a  
1090 certification from the State of Mississippi's Basic or Advanced  
1091 Purchasing Certification Program.

1092 (j) "Certified Mississippi Purchasing Agent" means a  
1093 state agency purchasing official who holds a certification from  
1094 the Mississippi Basic Purchasing Certification Program as  
1095 established by the Office of Purchasing, Travel and Fleet  
1096 Management.

1097 (k) "Certified Mississippi Procurement Manager" means a  
1098 state agency purchasing official who holds a certification from  
1099 the Mississippi Advanced Purchasing Certification Program as  
1100 established by the Office of Purchasing, Travel and Fleet  
1101 Management.

1102 **SECTION 4.** This act shall take effect and be in force from  
1103 and after its passage.

