

By: Senator(s) Horhn

To: Accountability,  
Efficiency, Transparency

SENATE BILL NO. 2845

1 AN ACT TO AMEND SECTION 31-11-3, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT WHEN UTILIZING THE CONSTRUCTION MANAGER AT-RISK  
3 METHOD OF PROJECT DELIVERY, THE DEPARTMENT OF FINANCE AND  
4 ADMINISTRATION MAY REQUIRE THE MANAGER TO PROCURE ANY AND ALL  
5 RESULTING CONSTRUCTION CONTRACTS NECESSARY TO COMPLETE THE  
6 PROJECT; TO PROVIDE THAT ALL SUCH CONTRACTS SHALL BE BETWEEN THE  
7 MANAGER AND THE CONTRACTORS AND SHALL BE EXEMPT FROM THE  
8 PROVISIONS OF THE BID LAW; TO AMEND SECTION 31-7-13, MISSISSIPPI  
9 CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 31-11-3, Mississippi Code of 1972, is  
12 amended as follows:

13 31-11-3. (1) The Department of Finance and Administration,  
14 for the purposes of carrying out the provisions of this chapter,  
15 in addition to all other rights and powers granted by law, shall  
16 have full power and authority to employ and compensate architects  
17 or other employees necessary for the purpose of making  
18 inspections, preparing plans and specifications, supervising the  
19 erection of any buildings, and making any repairs or additions as  
20 may be determined by the Department of Finance and Administration  
21 to be necessary, pursuant to the rules and regulations of the



22 State Personnel Board. The department shall have entire control  
23 and supervision of, and determine what, if any, buildings,  
24 additions, repairs, demolitions or improvements are to be made  
25 under the provisions of this chapter, subject to the regulations  
26 adopted by the Public Procurement Review Board.

27 (2) The department shall have full power to erect buildings,  
28 make repairs, additions or improvements, demolitions, to grant or  
29 acquire easements or rights-of-way, and to buy materials, supplies  
30 and equipment for any of the institutions or departments of the  
31 state subject to the regulations adopted by the Public Procurement  
32 Review Board. In addition to other powers conferred, the  
33 department shall have full power and authority, as directed by the  
34 Legislature, or when funds have been appropriated for its use for  
35 these purposes, to:

36 (a) Build a state office building;

37 (b) Build suitable plants or buildings for the use and  
38 housing of any state schools or institutions, including the  
39 building of plants or buildings for new state schools or  
40 institutions, as provided for by the Legislature;

41 (c) Provide state aid for the construction of school  
42 buildings;

43 (d) Promote and develop the training of returned  
44 veterans of the United States in all sorts of educational and  
45 vocational learning to be supplied by the proper educational  
46 institution of the State of Mississippi, and in so doing allocate



47 monies appropriated to it for these purposes to the Governor for  
48 use by him in setting up, maintaining and operating an office and  
49 employing a state director of on-the-job training for veterans and  
50 the personnel necessary in carrying out Public Law No. 346 of the  
51 United States;

52 (e) Build and equip a hospital and administration  
53 building at the Mississippi State Penitentiary;

54 (f) Build and equip additional buildings and wards at  
55 the Boswell Retardation Center;

56 (g) Construct a sewage disposal and treatment plant at  
57 the Mississippi State Hospital, and in so doing acquire additional  
58 land as may be necessary, and to exercise the right of eminent  
59 domain in the acquisition of this land;

60 (h) Build and equip the Mississippi central market and  
61 purchase or acquire by eminent domain, if necessary, any lands  
62 needed for this purpose;

63 (i) Build and equip suitable facilities for a training  
64 and employing center for the blind;

65 (j) Build and equip a gymnasium at Columbia Training  
66 School;

67 (k) Approve or disapprove the expenditure of any money  
68 appropriated by the Legislature when authorized by the bill making  
69 the appropriation;

70 (l) Expend monies appropriated to it in paying the  
71 state's part of the cost of any street paving;



72 (m) Sell and convey state lands when authorized by the  
73 Legislature, cause said lands to be properly surveyed and platted,  
74 execute all deeds or other legal instruments, and do any and all  
75 other things required to effectively carry out the purpose and  
76 intent of the Legislature. Any transaction which involves state  
77 lands under the provisions of this paragraph shall be done in a  
78 manner consistent with the provisions of Section 29-1-1;

79 (n) Collect and receive from educational institutions  
80 of the State of Mississippi monies required to be paid by these  
81 institutions to the state in carrying out any veterans'  
82 educational programs;

83 (o) Purchase lands for building sites, or as additions  
84 to building sites, for the erection of buildings and other  
85 facilities which the department is authorized to erect, and  
86 demolish and dispose of old buildings, when necessary for the  
87 proper construction of new buildings. Any transaction which  
88 involves state lands under the provisions of this paragraph shall  
89 be done in a manner consistent with the provisions of Section  
90 29-1-1;

91 (p) Obtain business property insurance with a  
92 deductible of not less than One Hundred Thousand Dollars  
93 (\$100,000.00) on state-owned buildings under the management and  
94 control of the department; \* \* \*

95 (q) In consultation with and approval by the Chairmen  
96 of the Public Property Committees of the Senate and the House of



97 Representatives, enter into contracts for the purpose of providing  
98 parking spaces for state employees who work in the Woolfolk  
99 Building, the Carroll Gartin Justice Building or the Walter  
100 Sillers Office Building \* \* \*;

101 (r) \* \* \* Transfer up to One Million Dollars  
102 (\$1,000,000.00) of available bond funds to each community college  
103 requesting to be exempt from department control and supervision  
104 relating to the repair, renovation and improvement of existing  
105 facilities owned by the community colleges, including utility  
106 infrastructure projects; heating and air conditioning systems; and  
107 the replacement of furniture and equipment. The community  
108 colleges shall abide by all applicable statutes related to the  
109 purchase of the repair, renovation and improvement of such  
110 existing facilities \* \* \*; and

111 (s) Utilize the construction manager at-risk method of  
112 project delivery in accordance with Section 31-7-13.2. If the  
113 construction manager at-risk method is used for a project, the  
114 department shall procure construction management services pursuant  
115 to Section 31-7-13.2(5). After the department procures the  
116 construction manager, the department may require the manager to  
117 procure all resulting construction contracts necessary to complete  
118 the project. All such contracts shall be between the manager and  
119 the contractors and shall be exempt from the provisions of Section  
120 31-7-13.



121           (3) The department shall survey state-owned and  
122 state-utilized buildings to establish an estimate of the costs of  
123 architectural alterations, pursuant to the Americans With  
124 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The  
125 department shall establish priorities for making the identified  
126 architectural alterations and shall make known to the Legislative  
127 Budget Office and to the Legislature the required cost to  
128 effectuate such alterations. To meet the requirements of this  
129 section, the department shall use standards of accessibility that  
130 are at least as stringent as any applicable federal requirements  
131 and may consider:

132           (a) Federal minimum guidelines and requirements issued  
133 by the United States Architectural and Transportation Barriers  
134 Compliance Board and standards issued by other federal agencies;

135           (b) The criteria contained in the American Standard  
136 Specifications for Making Buildings Accessible and Usable by the  
137 Physically Handicapped and any amendments thereto as approved by  
138 the American Standards Association, Incorporated (ANSI Standards);

139           (c) Design manuals;

140           (d) Applicable federal guidelines;

141           (e) Current literature in the field;

142           (f) Applicable safety standards; and

143           (g) Any applicable environmental impact statements.

144           (4) The department shall observe the provisions of Section  
145 31-5-23 in letting contracts and shall use Mississippi products,



146 including paint, varnish and lacquer which contain as vehicles  
147 tung oil and either ester gum or modified resin (with rosin as the  
148 principal base of constituents), and turpentine shall be used as a  
149 solvent or thinner, where these products are available at a cost  
150 not to exceed the cost of products grown, produced, prepared, made  
151 or manufactured outside of the State of Mississippi.

152 (5) The department shall have authority to accept grants,  
153 loans or donations from the United States government or from any  
154 other sources for the purpose of matching funds in carrying out  
155 the provisions of this chapter.

156 (6) The department shall build a wheelchair ramp at the War  
157 Memorial Building which complies with all applicable federal laws,  
158 regulations and specifications regarding wheelchair ramps.

159 (7) The department shall review and preapprove all  
160 architectural or engineering service contracts entered into by any  
161 state agency, institution, commission, board or authority,  
162 regardless of the source of funding used to defray the costs of  
163 the construction or renovation project, for which services are to  
164 be obtained to ensure compliance with purchasing regulations and  
165 to confirm that the contracts are procured by a competitive  
166 qualification-based selection process except where such  
167 appointment is for an emergency project or for a continuation of a  
168 previous appointment for a directly related project. The  
169 provisions of this subsection (7) shall not apply to:



170 (a) Any architectural or engineering contract fully  
171 paid for by self-generated funds of any of the state institutions  
172 of higher learning;

173 (b) Any architectural or engineering contract that is  
174 self-administered at a state institution of higher learning as  
175 provided under Section 27-104-7(2) (b) or 37-101-15(m);

176 (c) Community college projects that are fully funded  
177 from local funds or other nonstate sources which are outside the  
178 Department of Finance and Administration's appropriations or as  
179 directed by the Legislature;

180 (d) Any construction or design projects of the State  
181 Military Department that are fully or partially funded from  
182 federal funds or other nonstate sources; and

183 (e) Any project of the State Department of  
184 Transportation.

185 (8) (a) The department shall have the authority to obtain  
186 annually from the state institutions of higher learning, the state  
187 community colleges and junior colleges, the Department of Mental  
188 Health, the Department of Corrections and the Department of  
189 Wildlife, Fisheries and Parks information on all renovation and  
190 repair expenditures for buildings under their operation and  
191 control, including duties, responsibilities and costs of any  
192 architect or engineer hired by any such institutions, and shall  
193 annually report the same to the Legislative Budget Office, the





194 Chairman of the House Public Property Committee and the Chairman  
195 of the Senate Public Property Committee before September 1.

196 (b) All state agencies, departments and institutions  
197 are required to cooperate with the Department of Finance and  
198 Administration in carrying out the provisions of this subsection.

199 (c) Expenditures shall not include those amounts  
200 expended for janitorial, landscaping or administrative support,  
201 but shall include expenditures from both state and nonstate  
202 sources.

203 (d) Expenditures shall not include amounts expended by  
204 the department on behalf of state agencies, departments and  
205 institutions through the Department of Finance and Administration  
206 administered contracts, but shall include amounts transferred to  
207 the Department of Finance and Administration for support of such  
208 contracts.

209 (9) As an alternative to other methods of awarding contracts  
210 as prescribed by law, the department may elect to use the method  
211 of contracting for construction projects set out in Sections  
212 31-7-13.1 and 31-7-13.2; however, the design-build method of  
213 construction contracting authorized under Section 31-7-13.1 may be  
214 used only when the Legislature has specifically required or  
215 authorized the use of this method in the legislation authorizing a  
216 project.

217 (10) The department shall have the authority, for the  
218 purposes of carrying out the provisions of this chapter, and in



219 addition to all other rights and powers granted by law, to create  
220 and maintain a list of suspended and debarred contractors and  
221 subcontractors. Consistent with this authority, the department  
222 may adopt regulations governing the suspension or debarment of  
223 contractors and subcontractors, which regulations shall be subject  
224 to the approval of the Public Procurement Review Board. A  
225 suspended or debarred contractor or subcontractor shall be  
226 disqualified from consideration for contracts with the department  
227 during the suspension or debarment period in accordance with the  
228 department's regulations.

229 (11) This section shall not apply to the Mississippi State  
230 Port Authority.

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

233 31-7-13. All agencies and governing authorities shall  
234 purchase their commodities and printing; contract for garbage  
235 collection or disposal; contract for solid waste collection or  
236 disposal; contract for sewage collection or disposal; contract for  
237 public construction; and contract for rentals as herein provided.

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

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

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



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

246 (b) **Bidding procedure for purchases over \$5,000.00 but**  
247 **not over \$75,000.00.** Purchases which involve an expenditure of  
248 more than Five Thousand Dollars (\$5,000.00) but not more than  
249 Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight  
250 and shipping charges, may be made from the lowest and best bidder  
251 without publishing or posting advertisement for bids, provided at  
252 least two (2) competitive written bids have been obtained. Any  
253 state agency or community/junior college purchasing commodities or  
254 procuring construction pursuant to this paragraph (b) may  
255 authorize its purchasing agent, or his designee, to accept the  
256 lowest competitive written bid under Seventy-five Thousand Dollars  
257 (\$75,000.00). Any governing authority purchasing commodities  
258 pursuant to this paragraph (b) may authorize its purchasing agent,  
259 or his designee, with regard to governing authorities other than  
260 counties, or its purchase clerk, or his designee, with regard to  
261 counties, to accept the lowest and best competitive written bid.  
262 Such authorization shall be made in writing by the governing  
263 authority and shall be maintained on file in the primary office of  
264 the agency and recorded in the official minutes of the governing  
265 authority, as appropriate. The purchasing agent or the purchase  
266 clerk, or his designee, as the case may be, and not the governing  
267 authority, shall be liable for any penalties and/or damages as may  
268 be imposed by law for any act or omission of the purchasing agent



269 or purchase clerk, or his designee, constituting a violation of  
270 law in accepting any bid without approval by the governing  
271 authority. The term "competitive written bid" shall mean a bid  
272 submitted on a bid form furnished by the buying agency or  
273 governing authority and signed by authorized personnel  
274 representing the vendor, or a bid submitted on a vendor's  
275 letterhead or identifiable bid form and signed by authorized  
276 personnel representing the vendor. "Competitive" shall mean that  
277 the bids are developed based upon comparable identification of the  
278 needs and are developed independently and without knowledge of  
279 other bids or prospective bids. Any bid item for construction in  
280 excess of Five Thousand Dollars (\$5,000.00) shall be broken down  
281 by components to provide detail of component description and  
282 pricing. These details shall be submitted with the written bids  
283 and become part of the bid evaluation criteria. Bids may be  
284 submitted by facsimile, electronic mail or other generally  
285 accepted method of information distribution. Bids submitted by  
286 electronic transmission shall not require the signature of the  
287 vendor's representative unless required by agencies or governing  
288 authorities.

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

290 (i) **Publication requirement.**

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



294 bidder after advertising for competitive bids once each week for  
295 two (2) consecutive weeks in a regular newspaper published in the  
296 county or municipality in which such agency or governing authority  
297 is located. However, all American Recovery and Reinvestment Act  
298 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
299 shall be bid. All references to American Recovery and  
300 Reinvestment Act projects in this section shall not apply to  
301 programs identified in Division B of the American Recovery and  
302 Reinvestment Act.

303                   2. Reverse auctions shall be the primary  
304 method for receiving bids during the bidding process. If a  
305 purchasing entity determines that a reverse auction is not in the  
306 best interest of the state, then that determination must be  
307 approved by the Public Procurement Review Board. The purchasing  
308 entity shall submit a detailed explanation of why a reverse  
309 auction would not be in the best interest of the state and present  
310 an alternative process to be approved by the Public Procurement  
311 Review Board. If the Public Procurement Review Board authorizes  
312 the purchasing entity to solicit bids with a method other than  
313 reverse auction, then the purchasing entity may designate the  
314 other methods by which the bids will be received, including, but  
315 not limited to, bids sealed in an envelope, bids received  
316 electronically in a secure system, or bids received by any other  
317 method that promotes open competition and has been approved by the  
318 Office of Purchasing and Travel. However, reverse auction shall



319 not be used for any public contract for design, construction,  
320 improvement, repair or remodeling of any public facilities,  
321 including the purchase of materials, supplies, equipment or goods  
322 for same and including buildings, roads and bridges. The Public  
323 Procurement Review Board must approve any contract entered into by  
324 alternative process. The provisions of this item 2 shall not  
325 apply to the individual state institutions of higher learning.  
326 The provisions of this item 2 requiring reverse auction as the  
327 primary method of receiving bids shall not apply to term contract  
328 purchases as provided in paragraph (n) of this section; however, a  
329 purchasing entity may, in its discretion, utilize reverse auction  
330 for such purchases. The provisions of this item 2 shall not apply  
331 to individual public schools, including public charter schools and  
332 public school districts, only when purchasing copyrighted  
333 educational supplemental materials and software as a service  
334 product. For such purchases, a local school board may authorize a  
335 purchasing entity in its jurisdiction to use a Request for  
336 Qualifications which promotes open competition and meets the  
337 requirements of the Office of Purchasing and Travel.

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



344 published and the notice for the purchase of such construction  
345 shall be published once each week for two (2) consecutive weeks.  
346 However, all American Recovery and Reinvestment Act projects in  
347 excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid.  
348 For any projects in excess of Twenty-five Thousand Dollars  
349 (\$25,000.00) under the American Recovery and Reinvestment Act,  
350 publication shall be made one (1) time and the bid opening for  
351 construction projects shall not be less than ten (10) working days  
352 after the date of the published notice. The notice of intention  
353 to let contracts or purchase equipment shall state the time and  
354 place at which bids shall be received, list the contracts to be  
355 made or types of equipment or supplies to be purchased, and, if  
356 all plans and/or specifications are not published, refer to the  
357 plans and/or specifications on file. If there is no newspaper  
358 published in the county or municipality, then such notice shall be  
359 given by posting same at the courthouse, or for municipalities at  
360 the city hall, and at two (2) other public places in the county or  
361 municipality, and also by publication once each week for two (2)  
362 consecutive weeks in some newspaper having a general circulation  
363 in the county or municipality in the above-provided manner. On  
364 the same date that the notice is submitted to the newspaper for  
365 publication, the agency or governing authority involved shall mail  
366 written notice to, or provide electronic notification to the main  
367 office of the Mississippi Procurement Technical Assistance Program  
368 under the Mississippi Development Authority that contains the same



369 information as that in the published notice. Submissions received  
370 by the Mississippi Procurement Technical Assistance Program for  
371 projects funded by the American Recovery and Reinvestment Act  
372 shall be displayed on a separate and unique Internet web page  
373 accessible to the public and maintained by the Mississippi  
374 Development Authority for the Mississippi Procurement Technical  
375 Assistance Program. Those American Recovery and Reinvestment Act  
376 related submissions shall be publicly posted within twenty-four  
377 (24) hours of receipt by the Mississippi Development Authority and  
378 the bid opening shall not occur until the submission has been  
379 posted for ten (10) consecutive days. The Department of Finance  
380 and Administration shall maintain information regarding contracts  
381 and other expenditures from the American Recovery and Reinvestment  
382 Act, on a unique Internet web page accessible to the public. The  
383 Department of Finance and Administration shall promulgate rules  
384 regarding format, content and deadlines, unless otherwise  
385 specified by law, of the posting of award notices, contract  
386 execution and subsequent amendments, links to the contract  
387 documents, expenditures against the awarded contracts and general  
388 expenditures of funds from the American Recovery and Reinvestment  
389 Act. Within one (1) working day of the contract award, the agency  
390 or governing authority shall post to the designated web page  
391 maintained by the Department of Finance and Administration, notice  
392 of the award, including the award recipient, the contract amount,  
393 and a brief summary of the contract in accordance with rules





394 promulgated by the department. Within one (1) working day of the  
395 contract execution, the agency or governing authority shall post  
396 to the designated web page maintained by the Department of Finance  
397 and Administration a summary of the executed contract and make a  
398 copy of the appropriately redacted contract documents available  
399 for linking to the designated web page in accordance with the  
400 rules promulgated by the department. The information provided by  
401 the agency or governing authority shall be posted to the web page  
402 for the duration of the American Recovery and Reinvestment Act  
403 funding or until the project is completed, whichever is longer.

404 (ii) **Bidding process amendment procedure.** If all  
405 plans and/or specifications are published in the notification,  
406 then the plans and/or specifications may not be amended. If all  
407 plans and/or specifications are not published in the notification,  
408 then amendments to the plans/specifications, bid opening date, bid  
409 opening time and place may be made, provided that the agency or  
410 governing authority maintains a list of all prospective bidders  
411 who are known to have received a copy of the bid documents and all  
412 such prospective bidders are sent copies of all amendments. This  
413 notification of amendments may be made via mail, facsimile,  
414 electronic mail or other generally accepted method of information  
415 distribution. No addendum to bid specifications may be issued  
416 within two (2) working days of the time established for the  
417 receipt of bids unless such addendum also amends the bid opening



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

420 (iii) **Filing requirement.** In all cases involving  
421 governing authorities, before the notice shall be published or  
422 posted, the plans or specifications for the construction or  
423 equipment being sought shall be filed with the clerk of the board  
424 of the governing authority. In addition to these requirements, a  
425 bid file shall be established which shall indicate those vendors  
426 to whom such solicitations and specifications were issued, and  
427 such file shall also contain such information as is pertinent to  
428 the bid.

429 (iv) **Specification restrictions.**

430 1. Specifications pertinent to such bidding  
431 shall be written so as not to exclude comparable equipment of  
432 domestic manufacture. However, if valid justification is  
433 presented, the Department of Finance and Administration or the  
434 board of a governing authority may approve a request for specific  
435 equipment necessary to perform a specific job. Further, such  
436 justification, when placed on the minutes of the board of a  
437 governing authority, may serve as authority for that governing  
438 authority to write specifications to require a specific item of  
439 equipment needed to perform a specific job. In addition to these  
440 requirements, from and after July 1, 1990, vendors of relocatable  
441 classrooms and the specifications for the purchase of such  
442 relocatable classrooms published by local school boards shall meet



443 all pertinent regulations of the State Board of Education,  
444 including prior approval of such bid by the State Department of  
445 Education.

446                   2. Specifications for construction projects  
447 may include an allowance for commodities, equipment, furniture,  
448 construction materials or systems in which prospective bidders are  
449 instructed to include in their bids specified amounts for such  
450 items so long as the allowance items are acquired by the vendor in  
451 a commercially reasonable manner and approved by the  
452 agency/governing authority. Such acquisitions shall not be made  
453 to circumvent the public purchasing laws.

454                   (v) **Electronic bids.** Agencies and governing  
455 authorities shall provide a secure electronic interactive system  
456 for the submittal of bids requiring competitive bidding that shall  
457 be an additional bidding option for those bidders who choose to  
458 submit their bids electronically. The Department of Finance and  
459 Administration shall provide, by regulation, the standards that  
460 agencies must follow when receiving electronic bids. Agencies and  
461 governing authorities shall make the appropriate provisions  
462 necessary to accept electronic bids from those bidders who choose  
463 to submit their bids electronically for all purchases requiring  
464 competitive bidding under this section. Any special condition or  
465 requirement for the electronic bid submission shall be specified  
466 in the advertisement for bids required by this section. Agencies  
467 or governing authorities that are currently without available high



468 speed Internet access shall be exempt from the requirement of this  
469 subparagraph (v) until such time that high speed Internet access  
470 becomes available. Any county having a population of less than  
471 twenty thousand (20,000) shall be exempt from the provisions of  
472 this subparagraph (v). Any municipality having a population of  
473 less than ten thousand (10,000) shall be exempt from the  
474 provisions of this subparagraph (v). The provisions of this  
475 subparagraph (v) shall not require any bidder to submit bids  
476 electronically. When construction bids are submitted  
477 electronically, the requirement for including a certificate of  
478 responsibility, or a statement that the bid enclosed does not  
479 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the  
480 bid envelope as indicated in Section 31-3-21(1) and (2) shall be  
481 deemed in compliance with by including same as an attachment with  
482 the electronic bid submittal.

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

484 (i) **Decision procedure.** Purchases may be made  
485 from the lowest and best bidder. In determining the lowest and  
486 best bid, freight and shipping charges shall be included.  
487 Life-cycle costing, total cost bids, warranties, guaranteed  
488 buy-back provisions and other relevant provisions may be included  
489 in the best bid calculation. All best bid procedures for state  
490 agencies must be in compliance with regulations established by the  
491 Department of Finance and Administration. If any governing  
492 authority accepts a bid other than the lowest bid actually



493 submitted, it shall place on its minutes detailed calculations and  
494 narrative summary showing that the accepted bid was determined to  
495 be the lowest and best bid, including the dollar amount of the  
496 accepted bid and the dollar amount of the lowest bid. No agency  
497 or governing authority shall accept a bid based on items not  
498 included in the specifications.

499 (ii) **Decision procedure for Certified Purchasing**  
500 **Offices.** In addition to the decision procedure set forth in  
501 subparagraph (i) of this paragraph (d), Certified Purchasing  
502 Offices may also use the following procedure: Purchases may be  
503 made from the bidder offering the best value. In determining the  
504 best value bid, freight and shipping charges shall be included.  
505 Life-cycle costing, total cost bids, warranties, guaranteed  
506 buy-back provisions, documented previous experience, training  
507 costs and other relevant provisions, including, but not limited  
508 to, a bidder having a local office and inventory located within  
509 the jurisdiction of the governing authority, may be included in  
510 the best value calculation. This provision shall authorize  
511 Certified Purchasing Offices to utilize a Request For Proposals  
512 (RFP) process when purchasing commodities. All best value  
513 procedures for state agencies must be in compliance with  
514 regulations established by the Department of Finance and  
515 Administration. No agency or governing authority shall accept a  
516 bid based on items or criteria not included in the specifications.



(iii) **Decision procedure for Mississippi**

518 **Landmarks.** In addition to the decision procedure set forth in  
519 subparagraph (i) of this paragraph (d), where purchase involves  
520 renovation, restoration, or both, of the State Capitol Building or  
521 any other historical building designated for at least five (5)  
522 years as a Mississippi Landmark by the Board of Trustees of the  
523 Department of Archives and History under the authority of Sections  
524 39-7-7 and 39-7-11, the agency or governing authority may use the  
525 following procedure: Purchases may be made from the lowest and  
526 best prequalified bidder. Prequalification of bidders shall be  
527 determined not less than fifteen (15) working days before the  
528 first published notice of bid opening. Prequalification criteria  
529 shall be limited to bidder's knowledge and experience in  
530 historical restoration, preservation and renovation. In  
531 determining the lowest and best bid, freight and shipping charges  
532 shall be included. Life-cycle costing, total cost bids,  
533 warranties, guaranteed buy-back provisions and other relevant  
534 provisions may be included in the best bid calculation. All best  
535 bid and prequalification procedures for state agencies must be in  
536 compliance with regulations established by the Department of  
537 Finance and Administration. If any governing authority accepts a  
538 bid other than the lowest bid actually submitted, it shall place  
539 on its minutes detailed calculations and narrative summary showing  
540 that the accepted bid was determined to be the lowest and best  
541 bid, including the dollar amount of the accepted bid and the



542 dollar amount of the lowest bid. No agency or governing authority  
543 shall accept a bid based on items not included in the  
544 specifications.

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

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

551 (e) **Lease-purchase authorization.** For the purposes of  
552 this section, the term "equipment" shall mean equipment, furniture  
553 and, if applicable, associated software and other applicable  
554 direct costs associated with the acquisition. Any lease-purchase  
555 of equipment which an agency is not required to lease-purchase  
556 under the master lease-purchase program pursuant to Section  
557 31-7-10 and any lease-purchase of equipment which a governing  
558 authority elects to lease-purchase may be acquired by a  
559 lease-purchase agreement under this paragraph (e). Lease-purchase  
560 financing may also be obtained from the vendor or from a  
561 third-party source after having solicited and obtained at least  
562 two (2) written competitive bids, as defined in paragraph (b) of  
563 this section, for such financing without advertising for such  
564 bids. Solicitation for the bids for financing may occur before or  
565 after acceptance of bids for the purchase of such equipment or,  
566 where no such bids for purchase are required, at any time before



567 the purchase thereof. No such lease-purchase agreement shall be  
568 for an annual rate of interest which is greater than the overall  
569 maximum interest rate to maturity on general obligation  
570 indebtedness permitted under Section 75-17-101, and the term of  
571 such lease-purchase agreement shall not exceed the useful life of  
572 equipment covered thereby as determined according to the upper  
573 limit of the asset depreciation range (ADR) guidelines for the  
574 Class Life Asset Depreciation Range System established by the  
575 Internal Revenue Service pursuant to the United States Internal  
576 Revenue Code and regulations thereunder as in effect on December  
577 31, 1980, or comparable depreciation guidelines with respect to  
578 any equipment not covered by ADR guidelines. Any lease-purchase  
579 agreement entered into pursuant to this paragraph (e) may contain  
580 any of the terms and conditions which a master lease-purchase  
581 agreement may contain under the provisions of Section 31-7-10(5),  
582 and shall contain an annual allocation dependency clause  
583 substantially similar to that set forth in Section 31-7-10(8).  
584 Each agency or governing authority entering into a lease-purchase  
585 transaction pursuant to this paragraph (e) shall maintain with  
586 respect to each such lease-purchase transaction the same  
587 information as required to be maintained by the Department of  
588 Finance and Administration pursuant to Section 31-7-10(13).  
589 However, nothing contained in this section shall be construed to  
590 permit agencies to acquire items of equipment with a total  
591 acquisition cost in the aggregate of less than Ten Thousand





592 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
593 equipment, and the purchase thereof by any lessor, acquired by  
594 lease-purchase under this paragraph and all lease-purchase  
595 payments with respect thereto shall be exempt from all Mississippi  
596 sales, use and ad valorem taxes. Interest paid on any  
597 lease-purchase agreement under this section shall be exempt from  
598 State of Mississippi income taxation.

599           (f) **Alternate bid authorization.** When necessary to  
600 ensure ready availability of commodities for public works and the  
601 timely completion of public projects, no more than two (2)  
602 alternate bids may be accepted by a governing authority for  
603 commodities. No purchases may be made through use of such  
604 alternate bids procedure unless the lowest and best bidder cannot  
605 deliver the commodities contained in his bid. In that event,  
606 purchases of such commodities may be made from one (1) of the  
607 bidders whose bid was accepted as an alternate.

608           (g) **Construction contract change authorization.** In the  
609 event a determination is made by an agency or governing authority  
610 after a construction contract is let that changes or modifications  
611 to the original contract are necessary or would better serve the  
612 purpose of the agency or the governing authority, such agency or  
613 governing authority may, in its discretion, order such changes  
614 pertaining to the construction that are necessary under the  
615 circumstances without the necessity of further public bids;  
616 provided that such change shall be made in a commercially



617 reasonable manner and shall not be made to circumvent the public  
618 purchasing statutes. In addition to any other authorized person,  
619 the architect or engineer hired by an agency or governing  
620 authority with respect to any public construction contract shall  
621 have the authority, when granted by an agency or governing  
622 authority, to authorize changes or modifications to the original  
623 contract without the necessity of prior approval of the agency or  
624 governing authority when any such change or modification is less  
625 than one percent (1%) of the total contract amount. The agency or  
626 governing authority may limit the number, manner or frequency of  
627 such emergency changes or modifications.

628           (h) **Petroleum purchase alternative.** In addition to  
629 other methods of purchasing authorized in this chapter, when any  
630 agency or governing authority shall have a need for gas, diesel  
631 fuel, oils and/or other petroleum products in excess of the amount  
632 set forth in paragraph (a) of this section, such agency or  
633 governing authority may purchase the commodity after having  
634 solicited and obtained at least two (2) competitive written bids,  
635 as defined in paragraph (b) of this section. If two (2)  
636 competitive written bids are not obtained, the entity shall comply  
637 with the procedures set forth in paragraph (c) of this section.  
638 In the event any agency or governing authority shall have  
639 advertised for bids for the purchase of gas, diesel fuel, oils and  
640 other petroleum products and coal and no acceptable bids can be  
641 obtained, such agency or governing authority is authorized and



642 directed to enter into any negotiations necessary to secure the  
643 lowest and best contract available for the purchase of such  
644 commodities.

645           (i) **Road construction petroleum products price**  
646 **adjustment clause authorization.** Any agency or governing  
647 authority authorized to enter into contracts for the construction,  
648 maintenance, surfacing or repair of highways, roads or streets,  
649 may include in its bid proposal and contract documents a price  
650 adjustment clause with relation to the cost to the contractor,  
651 including taxes, based upon an industry-wide cost index, of  
652 petroleum products including asphalt used in the performance or  
653 execution of the contract or in the production or manufacture of  
654 materials for use in such performance. Such industry-wide index  
655 shall be established and published monthly by the Mississippi  
656 Department of Transportation with a copy thereof to be mailed,  
657 upon request, to the clerks of the governing authority of each  
658 municipality and the clerks of each board of supervisors  
659 throughout the state. The price adjustment clause shall be based  
660 on the cost of such petroleum products only and shall not include  
661 any additional profit or overhead as part of the adjustment. The  
662 bid proposals or document contract shall contain the basis and  
663 methods of adjusting unit prices for the change in the cost of  
664 such petroleum products.

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



667 agency of the state shall determine that an emergency exists in  
668 regard to the purchase of any commodities or repair contracts, so  
669 that the delay incident to giving opportunity for competitive  
670 bidding would be detrimental to the interests of the state, then  
671 the head of such agency, or his designees, shall file with the  
672 Department of Finance and Administration (i) a statement  
673 explaining the conditions and circumstances of the emergency,  
674 which shall include a detailed description of the events leading  
675 up to the situation and the negative impact to the entity if the  
676 purchase is made following the statutory requirements set forth in  
677 paragraph (a), (b) or (c) of this section, and (ii) a certified  
678 copy of the appropriate minutes of the board of such agency  
679 requesting the emergency purchase, if applicable. Upon receipt of  
680 the statement and applicable board certification, the State Fiscal  
681 Officer, or his designees, may, in writing, authorize the purchase  
682 or repair without having to comply with competitive bidding  
683 requirements.

684         If the governing board or the executive head, or his  
685 designees, of any agency determines that an emergency exists in  
686 regard to the purchase of any commodities or repair contracts, so  
687 that the delay incident to giving opportunity for competitive  
688 bidding would threaten the health or safety of any person, or the  
689 preservation or protection of property, then the provisions in  
690 this section for competitive bidding shall not apply, and any  
691 officer or agent of the agency having general or specific



692 authority for making the purchase or repair contract shall approve  
693 the bill presented for payment, and he shall certify in writing  
694 from whom the purchase was made, or with whom the repair contract  
695 was made.

696 Total purchases made under this paragraph (j) shall only be  
697 for the purpose of meeting needs created by the emergency  
698 situation. Following the emergency purchase, documentation of the  
699 purchase, including a description of the commodity purchased, the  
700 purchase price thereof and the nature of the emergency shall be  
701 filed with the Department of Finance and Administration. Any  
702 contract awarded pursuant to this paragraph (j) shall not exceed a  
703 term of one (1) year.

704 Purchases under the grant program established under Section  
705 37-68-7 in response to COVID-19 and the directive that school  
706 districts create a distance learning plan and fulfill technology  
707 needs expeditiously shall be deemed an emergency purchase for  
708 purposes of this paragraph (j).

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

710 If the governing authority, or the governing authority acting  
711 through its designee, shall determine that an emergency exists in  
712 regard to the purchase of any commodities or repair contracts, so  
713 that the delay incident to giving opportunity for competitive  
714 bidding would be detrimental to the interest of the governing  
715 authority, then the provisions herein for competitive bidding  
716 shall not apply and any officer or agent of such governing



717 authority having general or special authority therefor in making  
718 such purchase or repair shall approve the bill presented therefor,  
719 and he shall certify in writing thereon from whom such purchase  
720 was made, or with whom such a repair contract was made. At the  
721 board meeting next following the emergency purchase or repair  
722 contract, documentation of the purchase or repair contract,  
723 including a description of the commodity purchased, the price  
724 thereof and the nature of the emergency shall be presented to the  
725 board and shall be placed on the minutes of the board of such  
726 governing authority. Purchases under the grant program  
727 established under Section 37-68-7 in response to COVID-19 and the  
728 directive that school districts create a distance learning plan  
729 and fulfill technology needs expeditiously shall be deemed an  
730 emergency purchase for purposes of this paragraph (k).

731           (1) **Hospital purchase, lease-purchase and lease**  
732 **authorization.**

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

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



742 the proper care of patients if, in its opinion, it is not  
743 financially feasible to purchase the necessary equipment or  
744 services. Any such contract for the lease of equipment or  
745 services executed by the commissioners or board shall not exceed a  
746 maximum of five (5) years' duration and shall include a  
747 cancellation clause based on unavailability of funds. If such  
748 cancellation clause is exercised, there shall be no further  
749 liability on the part of the lessee. Any such contract for the  
750 lease of equipment or services executed on behalf of the  
751 commissioners or board that complies with the provisions of this  
752 subparagraph (ii) shall be excepted from the bid requirements set  
753 forth in this section.

754 (m) **Exceptions from bidding requirements.** Excepted  
755 from bid requirements are:

756 (i) **Purchasing agreements approved by department.**  
757 Purchasing agreements, contracts and maximum price regulations  
758 executed or approved by the Department of Finance and  
759 Administration.

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



767 specific repairs made, parts identified by number and name,  
768 supplies used in such repairs, and the number of hours of labor  
769 and costs therefor shall be required for the payment for such  
770 repairs.

771 (iii) **In-house equipment repairs.** Purchases of  
772 parts for repairs to equipment, when such repairs are made by  
773 personnel of the agency or governing authority; however, entire  
774 assemblies, such as engines or transmissions, shall not be  
775 included in this exemption when the entire assembly is being  
776 replaced instead of being repaired.

777 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
778 of gravel or fill dirt which are to be removed and transported by  
779 the purchaser.

780 (v) **Governmental equipment auctions.** Motor  
781 vehicles or other equipment purchased from a federal agency or  
782 authority, another governing authority or state agency of the  
783 State of Mississippi, or any governing authority or state agency  
784 of another state at a public auction held for the purpose of  
785 disposing of such vehicles or other equipment. Any purchase by a  
786 governing authority under the exemption authorized by this  
787 subparagraph (v) shall require advance authorization spread upon  
788 the minutes of the governing authority to include the listing of  
789 the item or items authorized to be purchased and the maximum bid  
790 authorized to be paid for each item or items.





791                   (vi)   **Intergovernmental sales and transfers.**  
792 Purchases, sales, transfers or trades by governing authorities or  
793 state agencies when such purchases, sales, transfers or trades are  
794 made by a private treaty agreement or through means of  
795 negotiation, from any federal agency or authority, another  
796 governing authority or state agency of the State of Mississippi,  
797 or any state agency or governing authority of another state.  
798 Nothing in this section shall permit such purchases through public  
799 auction except as provided for in subparagraph (v) of this  
800 paragraph (m). It is the intent of this section to allow  
801 governmental entities to dispose of and/or purchase commodities  
802 from other governmental entities at a price that is agreed to by  
803 both parties. This shall allow for purchases and/or sales at  
804 prices which may be determined to be below the market value if the  
805 selling entity determines that the sale at below market value is  
806 in the best interest of the taxpayers of the state. Governing  
807 authorities shall place the terms of the agreement and any  
808 justification on the minutes, and state agencies shall obtain  
809 approval from the Department of Finance and Administration, prior  
810 to releasing or taking possession of the commodities.

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



815 (viii) **Single-source items.** Noncompetitive items  
816 available from one (1) source only. In connection with the  
817 purchase of noncompetitive items only available from one (1)  
818 source, a certification of the conditions and circumstances  
819 requiring the purchase shall be filed by the agency with the  
820 Department of Finance and Administration and by the governing  
821 authority with the board of the governing authority. Upon receipt  
822 of that certification the Department of Finance and Administration  
823 or the board of the governing authority, as the case may be, may,  
824 in writing, authorize the purchase, which authority shall be noted  
825 on the minutes of the body at the next regular meeting thereafter.  
826 In those situations, a governing authority is not required to  
827 obtain the approval of the Department of Finance and  
828 Administration. Following the purchase, the executive head of the  
829 state agency, or his designees, shall file with the Department of  
830 Finance and Administration, documentation of the purchase,  
831 including a description of the commodity purchased, the purchase  
832 price thereof and the source from whom it was purchased.

833 (ix) **Waste disposal facility construction**  
834 **contracts.** Construction of incinerators and other facilities for  
835 disposal of solid wastes in which products either generated  
836 therein, such as steam, or recovered therefrom, such as materials  
837 for recycling, are to be sold or otherwise disposed of; however,  
838 in constructing such facilities, a governing authority or agency  
839 shall publicly issue requests for proposals, advertised for in the



840 same manner as provided herein for seeking bids for public  
841 construction projects, concerning the design, construction,  
842 ownership, operation and/or maintenance of such facilities,  
843 wherein such requests for proposals when issued shall contain  
844 terms and conditions relating to price, financial responsibility,  
845 technology, environmental compatibility, legal responsibilities  
846 and such other matters as are determined by the governing  
847 authority or agency to be appropriate for inclusion; and after  
848 responses to the request for proposals have been duly received,  
849 the governing authority or agency may select the most qualified  
850 proposal or proposals on the basis of price, technology and other  
851 relevant factors and from such proposals, but not limited to the  
852 terms thereof, negotiate and enter contracts with one or more of  
853 the persons or firms submitting proposals.

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

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

863                   (xii) **Energy efficiency services and equipment.**  
864 Energy efficiency services and equipment acquired by school



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

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

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

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

874 Purchases by libraries or for libraries of books and periodicals;  
875 processed film, videocassette tapes, filmstrips and slides;  
876 recorded audiotapes, cassettes and diskettes; and any such items  
877 as would be used for teaching, research or other information  
878 distribution; however, equipment such as projectors, recorders,  
879 audio or video equipment, and monitor televisions are not exempt  
880 under this subparagraph.

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

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

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

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



890 institution or private nonprofit organization whose purposes are  
891 educational in regard to the construction, purchase, lease or  
892 lease-purchase of facilities and equipment and the employment of  
893 personnel for providing multichannel interactive video systems  
894 (ITSF) in the school districts of this state.

895                   (xviii) **Purchases of prison industry products by**  
896 **the Department of Corrections, regional correctional facilities or**  
897 **privately owned prisons.** Purchases made by the Mississippi  
898 Department of Corrections, regional correctional facilities or  
899 privately owned prisons involving any item that is manufactured,  
900 processed, grown or produced from the state's prison industries.

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

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

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



915                    (xxii)    **Garbage, solid waste and sewage contracts.**  
916    Contracts for garbage collection or disposal, contracts for solid  
917    waste collection or disposal and contracts for sewage collection  
918    or disposal.

919                    (xxiii)   **Municipal water tank maintenance**  
920    **contracts.**   Professional maintenance program contracts for the  
921    repair or maintenance of municipal water tanks, which provide  
922    professional services needed to maintain municipal water storage  
923    tanks for a fixed annual fee for a duration of two (2) or more  
924    years.

925                    (xxiv)    **Purchases of Mississippi Industries for the**  
926    **Blind products.**   Purchases made by state agencies or governing  
927    authorities involving any item that is manufactured, processed or  
928    produced by the Mississippi Industries for the Blind.

929                    (xxv)    **Purchases of state-adopted textbooks.**  
930    Purchases of state-adopted textbooks by public school districts.

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

934                    (xxvii)   **Used heavy or specialized machinery or**  
935    **equipment for installation of soil and water conservation**  
936    **practices purchased at auction.**   Used heavy or specialized  
937    machinery or equipment used for the installation and  
938    implementation of soil and water conservation practices or  
939    measures purchased subject to the restrictions provided in



940 Sections 69-27-331 through 69-27-341. Any purchase by the State  
941 Soil and Water Conservation Commission under the exemption  
942 authorized by this subparagraph shall require advance  
943 authorization spread upon the minutes of the commission to include  
944 the listing of the item or items authorized to be purchased and  
945 the maximum bid authorized to be paid for each item or items.

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

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

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

950 **cooperative purchasing agreements.** Purchases made by certified  
951 purchasing offices of state agencies or governing authorities  
952 under cooperative purchasing agreements previously approved by the  
953 Office of Purchasing and Travel and established by or for any  
954 municipality, county, parish or state government or the federal  
955 government, provided that the notification to potential  
956 contractors includes a clause that sets forth the availability of  
957 the cooperative purchasing agreement to other governmental  
958 entities. Such purchases shall only be made if the use of the  
959 cooperative purchasing agreements is determined to be in the best  
960 interest of the governmental entity.

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

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



965 Mississippi Procurement Manual adopted by the Office of Purchasing  
966 and Travel.

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

970                    (xxxiii) **Toll roads and bridge construction**  
971 **projects.** Contracts entered into under the provisions of Section  
972 65-43-1 or 65-43-3.

973                    (xxxiiii) **Certain purchases under Section 57-1-221.**  
974 Contracts entered into pursuant to the provisions of Section  
975 57-1-221.

976                    (xxxiv) **Certain transfers made pursuant to the**  
977 **provisions of Section 57-105-1(7).** Transfers of public property  
978 or facilities under Section 57-105-1(7) and construction related  
979 to such public property or facilities.

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

983                    (xxxvi) **Certain purchases by an academic medical**  
984 **center or health sciences school.** Purchases by an academic  
985 medical center or health sciences school, as defined in Section  
986 37-115-50, of commodities that are used for clinical purposes and  
987 1. intended for use in the diagnosis of disease or other  
988 conditions or in the cure, mitigation, treatment or prevention of  
989 disease, and 2. medical devices, biological, drugs and





990 radiation-emitting devices as defined by the United States Food  
991 and Drug Administration.

992 (xxxvii) **Certain purchases made under the Alyce G.  
993 Clarke Mississippi Lottery Law.** Contracts made by the Mississippi  
994 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi  
995 Lottery Law.

996 (xxxviii) **Certain purchases made by the Department  
997 of Health and the Department of Revenue.** Purchases made by the  
998 Department of Health and/or the Department of Revenue solely for  
999 the purpose of fulfilling their respective responsibilities under  
1000 the Mississippi Medical Cannabis Act. This subparagraph shall  
1001 stand repealed on June 30, 2023.

1002 (xxxix) **Certain construction manager at-risk**  
1003 **contracts.** Construction manager at-risk contracts entered into  
1004 under Section 31-11-3(1)(s).

1005 (n) **Term contract authorization.** All contracts for the  
1006 purchase of:

1007 (i) All contracts for the purchase of commodities,  
1008 equipment and public construction (including, but not limited to,  
1009 repair and maintenance), may be let for periods of not more than  
1010 sixty (60) months in advance, subject to applicable statutory  
1011 provisions prohibiting the letting of contracts during specified  
1012 periods near the end of terms of office. Term contracts for a  
1013 period exceeding twenty-four (24) months shall also be subject to  
1014 ratification or cancellation by governing authority boards taking



1015 office subsequent to the governing authority board entering the  
1016 contract.

1017 (ii) Bid proposals and contracts may include price  
1018 adjustment clauses with relation to the cost to the contractor  
1019 based upon a nationally published industry-wide or nationally  
1020 published and recognized cost index. The cost index used in a  
1021 price adjustment clause shall be determined by the Department of  
1022 Finance and Administration for the state agencies and by the  
1023 governing board for governing authorities. The bid proposal and  
1024 contract documents utilizing a price adjustment clause shall  
1025 contain the basis and method of adjusting unit prices for the  
1026 change in the cost of such commodities, equipment and public  
1027 construction.

1028 (o) **Purchase law violation prohibition and vendor**  
1029 **penalty.** No contract or purchase as herein authorized shall be  
1030 made for the purpose of circumventing the provisions of this  
1031 section requiring competitive bids, nor shall it be lawful for any  
1032 person or concern to submit individual invoices for amounts within  
1033 those authorized for a contract or purchase where the actual value  
1034 of the contract or commodity purchased exceeds the authorized  
1035 amount and the invoices therefor are split so as to appear to be  
1036 authorized as purchases for which competitive bids are not  
1037 required. Submission of such invoices shall constitute a  
1038 misdemeanor punishable by a fine of not less than Five Hundred  
1039 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),



1040 or by imprisonment for thirty (30) days in the county jail, or  
1041 both such fine and imprisonment. In addition, the claim or claims  
1042 submitted shall be forfeited.

1043 (p) **Electrical utility petroleum-based equipment**  
1044 **purchase procedure.** When in response to a proper advertisement  
1045 therefor, no bid firm as to price is submitted to an electric  
1046 utility for power transformers, distribution transformers, power  
1047 breakers, reclosers or other articles containing a petroleum  
1048 product, the electric utility may accept the lowest and best bid  
1049 therefor although the price is not firm.

1050 (q) **Fuel management system bidding procedure.** Any  
1051 governing authority or agency of the state shall, before  
1052 contracting for the services and products of a fuel management or  
1053 fuel access system, enter into negotiations with not fewer than  
1054 two (2) sellers of fuel management or fuel access systems for  
1055 competitive written bids to provide the services and products for  
1056 the systems. In the event that the governing authority or agency  
1057 cannot locate two (2) sellers of such systems or cannot obtain  
1058 bids from two (2) sellers of such systems, it shall show proof  
1059 that it made a diligent, good-faith effort to locate and negotiate  
1060 with two (2) sellers of such systems. Such proof shall include,  
1061 but not be limited to, publications of a request for proposals and  
1062 letters soliciting negotiations and bids. For purposes of this  
1063 paragraph (q), a fuel management or fuel access system is an  
1064 automated system of acquiring fuel for vehicles as well as



1065 management reports detailing fuel use by vehicles and drivers, and  
1066 the term "competitive written bid" shall have the meaning as  
1067 defined in paragraph (b) of this section. Governing authorities  
1068 and agencies shall be exempt from this process when contracting  
1069 for the services and products of fuel management or fuel access  
1070 systems under the terms of a state contract established by the  
1071 Office of Purchasing and Travel.

1072 (r) **Solid waste contract proposal procedure.** Before  
1073 entering into any contract for garbage collection or disposal,  
1074 contract for solid waste collection or disposal or contract for  
1075 sewage collection or disposal, which involves an expenditure of  
1076 more than Seventy-five Thousand Dollars (\$75,000.00), a governing  
1077 authority or agency shall issue publicly a request for proposals  
1078 concerning the specifications for such services which shall be  
1079 advertised for in the same manner as provided in this section for  
1080 seeking bids for purchases which involve an expenditure of more  
1081 than the amount provided in paragraph (c) of this section. Any  
1082 request for proposals when issued shall contain terms and  
1083 conditions relating to price, financial responsibility,  
1084 technology, legal responsibilities and other relevant factors as  
1085 are determined by the governing authority or agency to be  
1086 appropriate for inclusion; all factors determined relevant by the  
1087 governing authority or agency or required by this paragraph (r)  
1088 shall be duly included in the advertisement to elicit proposals.  
1089 After responses to the request for proposals have been duly



1090 received, the governing authority or agency shall select the most  
1091 qualified proposal or proposals on the basis of price, technology  
1092 and other relevant factors and from such proposals, but not  
1093 limited to the terms thereof, negotiate and enter into contracts  
1094 with one or more of the persons or firms submitting proposals. If  
1095 the governing authority or agency deems none of the proposals to  
1096 be qualified or otherwise acceptable, the request for proposals  
1097 process may be reinitiated. Notwithstanding any other provisions  
1098 of this paragraph, where a county with at least thirty-five  
1099 thousand (35,000) nor more than forty thousand (40,000)  
1100 population, according to the 1990 federal decennial census, owns  
1101 or operates a solid waste landfill, the governing authorities of  
1102 any other county or municipality may contract with the governing  
1103 authorities of the county owning or operating the landfill,  
1104 pursuant to a resolution duly adopted and spread upon the minutes  
1105 of each governing authority involved, for garbage or solid waste  
1106 collection or disposal services through contract negotiations.

1107 (s) **Minority set-aside authorization.** Notwithstanding  
1108 any provision of this section to the contrary, any agency or  
1109 governing authority, by order placed on its minutes, may, in its  
1110 discretion, set aside not more than twenty percent (20%) of its  
1111 anticipated annual expenditures for the purchase of commodities  
1112 from minority businesses; however, all such set-aside purchases  
1113 shall comply with all purchasing regulations promulgated by the  
1114 Department of Finance and Administration and shall be subject to



1115 bid requirements under this section. Set-aside purchases for  
1116 which competitive bids are required shall be made from the lowest  
1117 and best minority business bidder. For the purposes of this  
1118 paragraph, the term "minority business" means a business which is  
1119 owned by a majority of persons who are United States citizens or  
1120 permanent resident aliens (as defined by the Immigration and  
1121 Naturalization Service) of the United States, and who are Asian,  
1122 Black, Hispanic or Native American, according to the following  
1123 definitions:

1124 (i) "Asian" means persons having origins in any of  
1125 the original people of the Far East, Southeast Asia, the Indian  
1126 subcontinent, or the Pacific Islands.

1127 (ii) "Black" means persons having origins in any  
1128 black racial group of Africa.

1129 (iii) "Hispanic" means persons of Spanish or  
1130 Portuguese culture with origins in Mexico, South or Central  
1131 America, or the Caribbean Islands, regardless of race.

1132 (iv) "Native American" means persons having  
1133 origins in any of the original people of North America, including  
1134 American Indians, Eskimos and Aleuts.

1135 (t) **Construction punch list restriction.** The  
1136 architect, engineer or other representative designated by the  
1137 agency or governing authority that is contracting for public  
1138 construction or renovation may prepare and submit to the  
1139 contractor only one (1) preliminary punch list of items that do



1140 not meet the contract requirements at the time of substantial  
1141 completion and one (1) final list immediately before final  
1142 completion and final payment.

1143           (u)   **Procurement of construction services by state**  
1144 **institutions of higher learning.** Contracts for privately financed  
1145 construction of auxiliary facilities on the campus of a state  
1146 institution of higher learning may be awarded by the Board of  
1147 Trustees of State Institutions of Higher Learning to the lowest  
1148 and best bidder, where sealed bids are solicited, or to the  
1149 offeror whose proposal is determined to represent the best value  
1150 to the citizens of the State of Mississippi, where requests for  
1151 proposals are solicited.

1152           (v)   **Insurability of bidders for public construction or**  
1153 **other public contracts.** In any solicitation for bids to perform  
1154 public construction or other public contracts to which this  
1155 section applies, including, but not limited to, contracts for  
1156 repair and maintenance, for which the contract will require  
1157 insurance coverage in an amount of not less than One Million  
1158 Dollars (\$1,000,000.00), bidders shall be permitted to either  
1159 submit proof of current insurance coverage in the specified amount  
1160 or demonstrate ability to obtain the required coverage amount of  
1161 insurance if the contract is awarded to the bidder. Proof of  
1162 insurance coverage shall be submitted within five (5) business  
1163 days from bid acceptance.



1164                   (w) **Purchase authorization clarification.** Nothing in  
1165 this section shall be construed as authorizing any purchase not  
1166 authorized by law.

1167                   **SECTION 3.** This act shall take effect and be in force from  
1168 and after July 1, 2023.

