

By: Representative Bennett

To: Public Property;  
Appropriations A

HOUSE BILL NO. 1615

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
 2 REVISE THE PUBLIC PURCHASING LAW TO EXEMPT PURCHASES MADE BY THE  
 3 DEPARTMENT OF FINANCE AND ADMINISTRATION FOR THE RENOVATION,  
 4 REPAIR, RESTORATION OR IMPROVEMENTS TO THE STATE CAPITOL BUILDING  
 5 AND GROUNDS OR ANY OTHER HISTORICAL BUILDINGS OR SITES UNDER THE  
 6 GENERAL SUPERVISION AND CARE OF THE DEPARTMENT THAT ARE DUALY  
 7 DESIGNATED AS BOTH A NATIONAL HISTORIC LANDMARK AND A MISSISSIPPI  
 8 LANDMARK; TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972, TO  
 9 PROVIDE THAT PURCHASES MADE BY THE DEPARTMENT OF FINANCE AND  
 10 ADMINISTRATION FOR THE RENOVATION, REPAIR, RESTORATION OR  
 11 IMPROVEMENTS TO THE STATE CAPITOL BUILDING AND GROUNDS OR ANY  
 12 OTHER HISTORICAL BUILDINGS OR SITES UNDER THE GENERAL SUPERVISION  
 13 AND CARE OF THE DEPARTMENT THAT ARE DUALY DESIGNATED AS BOTH A  
 14 NATIONAL HISTORIC LANDMARK AND A MISSISSIPPI LANDMARK SHALL BE  
 15 EXEMPT FROM REVIEW AND APPROVAL BY THE PUBLIC PROCUREMENT REVIEW  
 16 BOARD; AND FOR RELATED PURPOSES.

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

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

20 31-7-13. All agencies and governing authorities shall  
 21 purchase their commodities and printing; contract for garbage  
 22 collection or disposal; contract for solid waste collection or  
 23 disposal; contract for sewage collection or disposal; contract for  
 24 public construction; and contract for rentals as herein provided.



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

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

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

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



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



74 vendor's representative unless required by agencies or governing  
75 authorities.

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

77 (i) **Publication requirement.**

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

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



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



123 Qualifications which promotes open competition and meets the  
124 requirements of the Office of Purchasing and Travel.

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



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



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

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





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

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

216                   (iv) **Specification restrictions.**

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



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

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

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



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

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

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



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

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



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

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

305 **Landmarks.** In addition to the decision procedure set forth in  
306 subparagraph (i) of this paragraph (d), where purchase involves  
307 renovation, restoration, or both, of the State Capitol Building or  
308 any other historical building designated for at least five (5)  
309 years as a Mississippi Landmark by the Board of Trustees of the  
310 Department of Archives and History under the authority of Sections  
311 39-7-7 and 39-7-11, the agency or governing authority may use the  
312 following procedure: Purchases may be made from the lowest and  
313 best prequalified bidder. Prequalification of bidders shall be  
314 determined not less than fifteen (15) working days before the  
315 first published notice of bid opening. Prequalification criteria  
316 shall be limited to bidder's knowledge and experience in  
317 historical restoration, preservation and renovation. In  
318 determining the lowest and best bid, freight and shipping charges  
319 shall be included. Life-cycle costing, total cost bids,  
320 warranties, guaranteed buy-back provisions and other relevant  
321 provisions may be included in the best bid calculation. All best  
322 bid and prequalification procedures for state agencies must be in



323 compliance with regulations established by the Department of  
324 Finance and Administration. If any governing authority accepts a  
325 bid other than the lowest bid actually submitted, it shall place  
326 on its minutes detailed calculations and narrative summary showing  
327 that the accepted bid was determined to be the lowest and best  
328 bid, including the dollar amount of the accepted bid and the  
329 dollar amount of the lowest bid. No agency or governing authority  
330 shall accept a bid based on items not included in the  
331 specifications.

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

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

338 (e) **Lease-purchase authorization.** For the purposes of  
339 this section, the term "equipment" shall mean equipment, furniture  
340 and, if applicable, associated software and other applicable  
341 direct costs associated with the acquisition. Any lease-purchase  
342 of equipment which an agency is not required to lease-purchase  
343 under the master lease-purchase program pursuant to Section  
344 31-7-10 and any lease-purchase of equipment which a governing  
345 authority elects to lease-purchase may be acquired by a  
346 lease-purchase agreement under this paragraph (e). Lease-purchase  
347 financing may also be obtained from the vendor or from a



348 third-party source after having solicited and obtained at least  
349 two (2) written competitive bids, as defined in paragraph (b) of  
350 this section, for such financing without advertising for such  
351 bids. Solicitation for the bids for financing may occur before or  
352 after acceptance of bids for the purchase of such equipment or,  
353 where no such bids for purchase are required, at any time before  
354 the purchase thereof. No such lease-purchase agreement shall be  
355 for an annual rate of interest which is greater than the overall  
356 maximum interest rate to maturity on general obligation  
357 indebtedness permitted under Section 75-17-101, and the term of  
358 such lease-purchase agreement shall not exceed the useful life of  
359 equipment covered thereby as determined according to the upper  
360 limit of the asset depreciation range (ADR) guidelines for the  
361 Class Life Asset Depreciation Range System established by the  
362 Internal Revenue Service pursuant to the United States Internal  
363 Revenue Code and regulations thereunder as in effect on December  
364 31, 1980, or comparable depreciation guidelines with respect to  
365 any equipment not covered by ADR guidelines. Any lease-purchase  
366 agreement entered into pursuant to this paragraph (e) may contain  
367 any of the terms and conditions which a master lease-purchase  
368 agreement may contain under the provisions of Section 31-7-10(5),  
369 and shall contain an annual allocation dependency clause  
370 substantially similar to that set forth in Section 31-7-10(8).  
371 Each agency or governing authority entering into a lease-purchase  
372 transaction pursuant to this paragraph (e) shall maintain with



373 respect to each such lease-purchase transaction the same  
374 information as required to be maintained by the Department of  
375 Finance and Administration pursuant to Section 31-7-10(13).  
376 However, nothing contained in this section shall be construed to  
377 permit agencies to acquire items of equipment with a total  
378 acquisition cost in the aggregate of less than Ten Thousand  
379 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
380 equipment, and the purchase thereof by any lessor, acquired by  
381 lease-purchase under this paragraph and all lease-purchase  
382 payments with respect thereto shall be exempt from all Mississippi  
383 sales, use and ad valorem taxes. Interest paid on any  
384 lease-purchase agreement under this section shall be exempt from  
385 State of Mississippi income taxation.

386 (f) **Alternate bid authorization.** When necessary to  
387 ensure ready availability of commodities for public works and the  
388 timely completion of public projects, no more than two (2)  
389 alternate bids may be accepted by a governing authority for  
390 commodities. No purchases may be made through use of such  
391 alternate bids procedure unless the lowest and best bidder cannot  
392 deliver the commodities contained in his bid. In that event,  
393 purchases of such commodities may be made from one (1) of the  
394 bidders whose bid was accepted as an alternate.

395 (g) **Construction contract change authorization.** In the  
396 event a determination is made by an agency or governing authority  
397 after a construction contract is let that changes or modifications





398 to the original contract are necessary or would better serve the  
399 purpose of the agency or the governing authority, such agency or  
400 governing authority may, in its discretion, order such changes  
401 pertaining to the construction that are necessary under the  
402 circumstances without the necessity of further public bids;  
403 provided that such change shall be made in a commercially  
404 reasonable manner and shall not be made to circumvent the public  
405 purchasing statutes. In addition to any other authorized person,  
406 the architect or engineer hired by an agency or governing  
407 authority with respect to any public construction contract shall  
408 have the authority, when granted by an agency or governing  
409 authority, to authorize changes or modifications to the original  
410 contract without the necessity of prior approval of the agency or  
411 governing authority when any such change or modification is less  
412 than one percent (1%) of the total contract amount. The agency or  
413 governing authority may limit the number, manner or frequency of  
414 such emergency changes or modifications.

415 (h) **Petroleum purchase alternative.** In addition to  
416 other methods of purchasing authorized in this chapter, when any  
417 agency or governing authority shall have a need for gas, diesel  
418 fuel, oils and/or other petroleum products in excess of the amount  
419 set forth in paragraph (a) of this section, such agency or  
420 governing authority may purchase the commodity after having  
421 solicited and obtained at least two (2) competitive written bids,  
422 as defined in paragraph (b) of this section. If two (2)



423 competitive written bids are not obtained, the entity shall comply  
424 with the procedures set forth in paragraph (c) of this section.  
425 In the event any agency or governing authority shall have  
426 advertised for bids for the purchase of gas, diesel fuel, oils and  
427 other petroleum products and coal and no acceptable bids can be  
428 obtained, such agency or governing authority is authorized and  
429 directed to enter into any negotiations necessary to secure the  
430 lowest and best contract available for the purchase of such  
431 commodities.

432           (i) **Road construction petroleum products price**  
433 **adjustment clause authorization.** Any agency or governing  
434 authority authorized to enter into contracts for the construction,  
435 maintenance, surfacing or repair of highways, roads or streets,  
436 may include in its bid proposal and contract documents a price  
437 adjustment clause with relation to the cost to the contractor,  
438 including taxes, based upon an industry-wide cost index, of  
439 petroleum products including asphalt used in the performance or  
440 execution of the contract or in the production or manufacture of  
441 materials for use in such performance. Such industry-wide index  
442 shall be established and published monthly by the Mississippi  
443 Department of Transportation with a copy thereof to be mailed,  
444 upon request, to the clerks of the governing authority of each  
445 municipality and the clerks of each board of supervisors  
446 throughout the state. The price adjustment clause shall be based  
447 on the cost of such petroleum products only and shall not include



448 any additional profit or overhead as part of the adjustment. The  
449 bid proposals or document contract shall contain the basis and  
450 methods of adjusting unit prices for the change in the cost of  
451 such petroleum products.

452 (j) **State agency emergency purchase procedure.** If the  
453 governing board or the executive head, or his designees, of any  
454 agency of the state shall determine that an emergency exists in  
455 regard to the purchase of any commodities or repair contracts, so  
456 that the delay incident to giving opportunity for competitive  
457 bidding would be detrimental to the interests of the state, then  
458 the head of such agency, or his designees, shall file with the  
459 Department of Finance and Administration (i) a statement  
460 explaining the conditions and circumstances of the emergency,  
461 which shall include a detailed description of the events leading  
462 up to the situation and the negative impact to the entity if the  
463 purchase is made following the statutory requirements set forth in  
464 paragraph (a), (b) or (c) of this section, and (ii) a certified  
465 copy of the appropriate minutes of the board of such agency  
466 requesting the emergency purchase, if applicable. Upon receipt of  
467 the statement and applicable board certification, the State Fiscal  
468 Officer, or his designees, may, in writing, authorize the purchase  
469 or repair without having to comply with competitive bidding  
470 requirements.

471 If the governing board or the executive head, or his  
472 designees, of any agency determines that an emergency exists in



473 regard to the purchase of any commodities or repair contracts, so  
474 that the delay incident to giving opportunity for competitive  
475 bidding would threaten the health or safety of any person, or the  
476 preservation or protection of property, then the provisions in  
477 this section for competitive bidding shall not apply, and any  
478 officer or agent of the agency having general or specific  
479 authority for making the purchase or repair contract shall approve  
480 the bill presented for payment, and he shall certify in writing  
481 from whom the purchase was made, or with whom the repair contract  
482 was made.

483 Total purchases made under this paragraph (j) shall only be  
484 for the purpose of meeting needs created by the emergency  
485 situation. Following the emergency purchase, documentation of the  
486 purchase, including a description of the commodity purchased, the  
487 purchase price thereof and the nature of the emergency shall be  
488 filed with the Department of Finance and Administration. Any  
489 contract awarded pursuant to this paragraph (j) shall not exceed a  
490 term of one (1) year.

491 Purchases under the grant program established under Section  
492 37-68-7 in response to COVID-19 and the directive that school  
493 districts create a distance learning plan and fulfill technology  
494 needs expeditiously shall be deemed an emergency purchase for  
495 purposes of this paragraph (j).

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

497 If the governing authority, or the governing authority acting



498 through its designee, shall determine that an emergency exists in  
499 regard to the purchase of any commodities or repair contracts, so  
500 that the delay incident to giving opportunity for competitive  
501 bidding would be detrimental to the interest of the governing  
502 authority, then the provisions herein for competitive bidding  
503 shall not apply and any officer or agent of such governing  
504 authority having general or special authority therefor in making  
505 such purchase or repair shall approve the bill presented therefor,  
506 and he shall certify in writing thereon from whom such purchase  
507 was made, or with whom such a repair contract was made. At the  
508 board meeting next following the emergency purchase or repair  
509 contract, documentation of the purchase or repair contract,  
510 including a description of the commodity purchased, the price  
511 thereof and the nature of the emergency shall be presented to the  
512 board and shall be placed on the minutes of the board of such  
513 governing authority. Purchases under the grant program  
514 established under Section 37-68-7 in response to COVID-19 and the  
515 directive that school districts create a distance learning plan  
516 and fulfill technology needs expeditiously shall be deemed an  
517 emergency purchase for purposes of this paragraph (k).

518 (1) **Hospital purchase, lease-purchase and lease**  
519 **authorization.**

520 (i) The commissioners or board of trustees of any  
521 public hospital may contract with such lowest and best bidder for  
522 the purchase or lease-purchase of any commodity under a contract



523 of purchase or lease-purchase agreement whose obligatory payment  
524 terms do not exceed five (5) years.

525 (ii) In addition to the authority granted in  
526 subparagraph (i) of this paragraph (1), the commissioners or board  
527 of trustees is authorized to enter into contracts for the lease of  
528 equipment or services, or both, which it considers necessary for  
529 the proper care of patients if, in its opinion, it is not  
530 financially feasible to purchase the necessary equipment or  
531 services. Any such contract for the lease of equipment or  
532 services executed by the commissioners or board shall not exceed a  
533 maximum of five (5) years' duration and shall include a  
534 cancellation clause based on unavailability of funds. If such  
535 cancellation clause is exercised, there shall be no further  
536 liability on the part of the lessee. Any such contract for the  
537 lease of equipment or services executed on behalf of the  
538 commissioners or board that complies with the provisions of this  
539 subparagraph (ii) shall be excepted from the bid requirements set  
540 forth in this section.

541 (m) **Exceptions from bidding requirements.** Excepted  
542 from bid requirements are:

543 (i) **Purchasing agreements approved by department.**  
544 Purchasing agreements, contracts and maximum price regulations  
545 executed or approved by the Department of Finance and  
546 Administration.



547                   (ii) **Outside equipment repairs.** Repairs to  
548 equipment, when such repairs are made by repair facilities in the  
549 private sector; however, engines, transmissions, rear axles and/or  
550 other such components shall not be included in this exemption when  
551 replaced as a complete unit instead of being repaired and the need  
552 for such total component replacement is known before disassembly  
553 of the component; however, invoices identifying the equipment,  
554 specific repairs made, parts identified by number and name,  
555 supplies used in such repairs, and the number of hours of labor  
556 and costs therefor shall be required for the payment for such  
557 repairs.

558                   (iii) **In-house equipment repairs.** Purchases of  
559 parts for repairs to equipment, when such repairs are made by  
560 personnel of the agency or governing authority; however, entire  
561 assemblies, such as engines or transmissions, shall not be  
562 included in this exemption when the entire assembly is being  
563 replaced instead of being repaired.

564                   (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
565 of gravel or fill dirt which are to be removed and transported by  
566 the purchaser.

567                   (v) **Governmental equipment auctions.** Motor  
568 vehicles or other equipment purchased from a federal agency or  
569 authority, another governing authority or state agency of the  
570 State of Mississippi, or any governing authority or state agency  
571 of another state at a public auction held for the purpose of



572 disposing of such vehicles or other equipment. Any purchase by a  
573 governing authority under the exemption authorized by this  
574 subparagraph (v) shall require advance authorization spread upon  
575 the minutes of the governing authority to include the listing of  
576 the item or items authorized to be purchased and the maximum bid  
577 authorized to be paid for each item or items.

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

579 Purchases, sales, transfers or trades by governing authorities or  
580 state agencies when such purchases, sales, transfers or trades are  
581 made by a private treaty agreement or through means of  
582 negotiation, from any federal agency or authority, another  
583 governing authority or state agency of the State of Mississippi,  
584 or any state agency or governing authority of another state.  
585 Nothing in this section shall permit such purchases through public  
586 auction except as provided for in subparagraph (v) of this  
587 paragraph (m). It is the intent of this section to allow  
588 governmental entities to dispose of and/or purchase commodities  
589 from other governmental entities at a price that is agreed to by  
590 both parties. This shall allow for purchases and/or sales at  
591 prices which may be determined to be below the market value if the  
592 selling entity determines that the sale at below market value is  
593 in the best interest of the taxpayers of the state. Governing  
594 authorities shall place the terms of the agreement and any  
595 justification on the minutes, and state agencies shall obtain





596 approval from the Department of Finance and Administration, prior  
597 to releasing or taking possession of the commodities.

598 (vii) **Perishable supplies or food.** Perishable  
599 supplies or food purchased for use in connection with hospitals,  
600 the school lunch programs, homemaking programs and for the feeding  
601 of county or municipal prisoners.

602 (viii) **Single-source items.** Noncompetitive items  
603 available from one (1) source only. In connection with the  
604 purchase of noncompetitive items only available from one (1)  
605 source, a certification of the conditions and circumstances  
606 requiring the purchase shall be filed by the agency with the  
607 Department of Finance and Administration and by the governing  
608 authority with the board of the governing authority. Upon receipt  
609 of that certification the Department of Finance and Administration  
610 or the board of the governing authority, as the case may be, may,  
611 in writing, authorize the purchase, which authority shall be noted  
612 on the minutes of the body at the next regular meeting thereafter.  
613 In those situations, a governing authority is not required to  
614 obtain the approval of the Department of Finance and  
615 Administration. Following the purchase, the executive head of the  
616 state agency, or his designees, shall file with the Department of  
617 Finance and Administration, documentation of the purchase,  
618 including a description of the commodity purchased, the purchase  
619 price thereof and the source from whom it was purchased.



620                   (ix) **Waste disposal facility construction**  
621 **contracts.** Construction of incinerators and other facilities for  
622 disposal of solid wastes in which products either generated  
623 therein, such as steam, or recovered therefrom, such as materials  
624 for recycling, are to be sold or otherwise disposed of; however,  
625 in constructing such facilities, a governing authority or agency  
626 shall publicly issue requests for proposals, advertised for in the  
627 same manner as provided herein for seeking bids for public  
628 construction projects, concerning the design, construction,  
629 ownership, operation and/or maintenance of such facilities,  
630 wherein such requests for proposals when issued shall contain  
631 terms and conditions relating to price, financial responsibility,  
632 technology, environmental compatibility, legal responsibilities  
633 and such other matters as are determined by the governing  
634 authority or agency to be appropriate for inclusion; and after  
635 responses to the request for proposals have been duly received,  
636 the governing authority or agency may select the most qualified  
637 proposal or proposals on the basis of price, technology and other  
638 relevant factors and from such proposals, but not limited to the  
639 terms thereof, negotiate and enter contracts with one or more of  
640 the persons or firms submitting proposals.

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



644                   (xi)   **Information technology products.** Purchases  
645 of information technology products made by governing authorities  
646 under the provisions of purchase schedules, or contracts executed  
647 or approved by the Mississippi Department of Information  
648 Technology Services and designated for use by governing  
649 authorities.

650                   (xii)   **Energy efficiency services and equipment.**  
651 Energy efficiency services and equipment acquired by school  
652 districts, community and junior colleges, institutions of higher  
653 learning and state agencies or other applicable governmental  
654 entities on a shared-savings, lease or lease-purchase basis  
655 pursuant to Section 31-7-14.

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

660                   (xiv)   **Library books and other reference materials.**  
661 Purchases by libraries or for libraries of books and periodicals;  
662 processed film, videocassette tapes, filmstrips and slides;  
663 recorded audiotapes, cassettes and diskettes; and any such items  
664 as would be used for teaching, research or other information  
665 distribution; however, equipment such as projectors, recorders,  
666 audio or video equipment, and monitor televisions are not exempt  
667 under this subparagraph.



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

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

674                   (xvii)   **Multichannel interactive video systems.**  
675 From and after July 1, 1990, contracts by Mississippi Authority  
676 for Educational Television with any private educational  
677 institution or private nonprofit organization whose purposes are  
678 educational in regard to the construction, purchase, lease or  
679 lease-purchase of facilities and equipment and the employment of  
680 personnel for providing multichannel interactive video systems  
681 (ITSF) in the school districts of this state.

682                   (xviii)   **Purchases of prison industry products by**  
683 **the Department of Corrections, regional correctional facilities or**  
684 **privately owned prisons.**   Purchases made by the Mississippi  
685 Department of Corrections, regional correctional facilities or  
686 privately owned prisons involving any item that is manufactured,  
687 processed, grown or produced from the state's prison industries.

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



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

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

702                   (xxii)   **Garbage, solid waste and sewage contracts.**  
703 Contracts for garbage collection or disposal, contracts for solid  
704 waste collection or disposal and contracts for sewage collection  
705 or disposal.

706                   (xxiii)   **Municipal water tank maintenance**  
707 **contracts.** Professional maintenance program contracts for the  
708 repair or maintenance of municipal water tanks, which provide  
709 professional services needed to maintain municipal water storage  
710 tanks for a fixed annual fee for a duration of two (2) or more  
711 years.

712                   (xxiv)   **Purchases of Mississippi Industries for the**  
713 **Blind products or services.** Purchases made by state agencies or  
714 governing authorities involving any item that is manufactured,  
715 processed or produced by, or any services provided by, the  
716 Mississippi Industries for the Blind.



717                    (xxv)    **Purchases of state-adopted textbooks.**  
718 Purchases of state-adopted textbooks by public school districts.

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

722                    (xxvii)    **Used heavy or specialized machinery or**  
723 **equipment for installation of soil and water conservation**  
724 **practices purchased at auction.** Used heavy or specialized  
725 machinery or equipment used for the installation and  
726 implementation of soil and water conservation practices or  
727 measures purchased subject to the restrictions provided in  
728 Sections 69-27-331 through 69-27-341. Any purchase by the State  
729 Soil and Water Conservation Commission under the exemption  
730 authorized by this subparagraph shall require advance  
731 authorization spread upon the minutes of the commission to include  
732 the listing of the item or items authorized to be purchased and  
733 the maximum bid authorized to be paid for each item or items.

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

737                    (xxix)    **Purchases made pursuant to qualified**  
738 **cooperative purchasing agreements.** Purchases made by certified  
739 purchasing offices of state agencies or governing authorities  
740 under cooperative purchasing agreements previously approved by the  
741 Office of Purchasing and Travel and established by or for any



742 municipality, county, parish or state government or the federal  
743 government, provided that the notification to potential  
744 contractors includes a clause that sets forth the availability of  
745 the cooperative purchasing agreement to other governmental  
746 entities. Such purchases shall only be made if the use of the  
747 cooperative purchasing agreements is determined to be in the best  
748 interest of the governmental entity.

749                   (xxx) **School yearbooks.** Purchases of school  
750 yearbooks by state agencies or governing authorities; however,  
751 state agencies and governing authorities shall use for these  
752 purchases the RFP process as set forth in the Mississippi  
753 Procurement Manual adopted by the Office of Purchasing and Travel.

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

757                   (xxxiii) **Toll roads and bridge construction**  
758 **projects.** Contracts entered into under the provisions of Section  
759 65-43-1 or 65-43-3.

760                   (xxxiiii) **Certain purchases under Section 57-1-221.**  
761 Contracts entered into pursuant to the provisions of Section  
762 57-1-221.

763                   (xxxiv) **Certain transfers made pursuant to the**  
764 **provisions of Section 57-105-1(7).** Transfers of public property  
765 or facilities under Section 57-105-1(7) and construction related  
766 to such public property or facilities.



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

770 (xxxvi) **Certain purchases by an academic medical**  
771 **center or health sciences school.** Purchases by an academic  
772 medical center or health sciences school, as defined in Section  
773 37-115-50, of commodities that are used for clinical purposes and  
774 1. intended for use in the diagnosis of disease or other  
775 conditions or in the cure, mitigation, treatment or prevention of  
776 disease, and 2. medical devices, biological, drugs and  
777 radiation-emitting devices as defined by the United States Food  
778 and Drug Administration.

779 (xxxvii) **Certain purchases made under the Alyce G.**  
780 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi  
781 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi  
782 Lottery Law.

783 (xxxviii) **Certain purchases made by the Department**  
784 **of Health and the Department of Revenue.** Purchases made by the  
785 Department of Health and the Department of Revenue solely for the  
786 purpose of fulfilling their respective responsibilities under the  
787 Mississippi Medical Cannabis Act. This subparagraph shall stand  
788 repealed on June 30, 2026.

789 (xxxix) **Certain purchases at landmark buildings.**  
790 Purchases made by the Department of Finance and Administration for  
791 the renovation, repair, restoration or improvements to the State





792 Capitol building and grounds or any other historical buildings or  
793 sites under the general supervision and care of the department  
794 that are dually designated as both a National Historic Landmark  
795 and a Mississippi Landmark.

796 (n) **Term contract authorization.** All contracts for the  
797 purchase of:

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

808 (ii) Bid proposals and contracts may include price  
809 adjustment clauses with relation to the cost to the contractor  
810 based upon a nationally published industry-wide or nationally  
811 published and recognized cost index. The cost index used in a  
812 price adjustment clause shall be determined by the Department of  
813 Finance and Administration for the state agencies and by the  
814 governing board for governing authorities. The bid proposal and  
815 contract documents utilizing a price adjustment clause shall  
816 contain the basis and method of adjusting unit prices for the



817 change in the cost of such commodities, equipment and public  
818 construction.

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

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



841           (q) **Fuel management system bidding procedure.** Any  
842 governing authority or agency of the state shall, before  
843 contracting for the services and products of a fuel management or  
844 fuel access system, enter into negotiations with not fewer than  
845 two (2) sellers of fuel management or fuel access systems for  
846 competitive written bids to provide the services and products for  
847 the systems. In the event that the governing authority or agency  
848 cannot locate two (2) sellers of such systems or cannot obtain  
849 bids from two (2) sellers of such systems, it shall show proof  
850 that it made a diligent, good-faith effort to locate and negotiate  
851 with two (2) sellers of such systems. Such proof shall include,  
852 but not be limited to, publications of a request for proposals and  
853 letters soliciting negotiations and bids. For purposes of this  
854 paragraph (q), a fuel management or fuel access system is an  
855 automated system of acquiring fuel for vehicles as well as  
856 management reports detailing fuel use by vehicles and drivers, and  
857 the term "competitive written bid" shall have the meaning as  
858 defined in paragraph (b) of this section. Governing authorities  
859 and agencies shall be exempt from this process when contracting  
860 for the services and products of fuel management or fuel access  
861 systems under the terms of a state contract established by the  
862 Office of Purchasing and Travel.

863           (r) **Solid waste contract proposal procedure.** Before  
864 entering into any contract for garbage collection or disposal,  
865 contract for solid waste collection or disposal or contract for



866 sewage collection or disposal, which involves an expenditure of  
867 more than Seventy-five Thousand Dollars (\$75,000.00), a governing  
868 authority or agency shall issue publicly a request for proposals  
869 concerning the specifications for such services which shall be  
870 advertised for in the same manner as provided in this section for  
871 seeking bids for purchases which involve an expenditure of more  
872 than the amount provided in paragraph (c) of this section. Any  
873 request for proposals when issued shall contain terms and  
874 conditions relating to price, financial responsibility,  
875 technology, legal responsibilities and other relevant factors as  
876 are determined by the governing authority or agency to be  
877 appropriate for inclusion; all factors determined relevant by the  
878 governing authority or agency or required by this paragraph (r)  
879 shall be duly included in the advertisement to elicit proposals.  
880 After responses to the request for proposals have been duly  
881 received, the governing authority or agency shall select the most  
882 qualified proposal or proposals on the basis of price, technology  
883 and other relevant factors and from such proposals, but not  
884 limited to the terms thereof, negotiate and enter into contracts  
885 with one or more of the persons or firms submitting proposals. If  
886 the governing authority or agency deems none of the proposals to  
887 be qualified or otherwise acceptable, the request for proposals  
888 process may be reinitiated. Notwithstanding any other provisions  
889 of this paragraph, where a county with at least thirty-five  
890 thousand (35,000) nor more than forty thousand (40,000)



891 population, according to the 1990 federal decennial census, owns  
892 or operates a solid waste landfill, the governing authorities of  
893 any other county or municipality may contract with the governing  
894 authorities of the county owning or operating the landfill,  
895 pursuant to a resolution duly adopted and spread upon the minutes  
896 of each governing authority involved, for garbage or solid waste  
897 collection or disposal services through contract negotiations.

898           (s) **Minority set-aside authorization.** Notwithstanding  
899 any provision of this section to the contrary, any agency or  
900 governing authority, by order placed on its minutes, may, in its  
901 discretion, set aside not more than twenty percent (20%) of its  
902 anticipated annual expenditures for the purchase of commodities  
903 from minority businesses; however, all such set-aside purchases  
904 shall comply with all purchasing regulations promulgated by the  
905 Department of Finance and Administration and shall be subject to  
906 bid requirements under this section. Set-aside purchases for  
907 which competitive bids are required shall be made from the lowest  
908 and best minority business bidder. For the purposes of this  
909 paragraph, the term "minority business" means a business which is  
910 owned by a majority of persons who are United States citizens or  
911 permanent resident aliens (as defined by the Immigration and  
912 Naturalization Service) of the United States, and who are Asian,  
913 Black, Hispanic or Native American, according to the following  
914 definitions:



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

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

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

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

926 (t) **Construction punch list restriction.** The  
927 architect, engineer or other representative designated by the  
928 agency or governing authority that is contracting for public  
929 construction or renovation may prepare and submit to the  
930 contractor only one (1) preliminary punch list of items that do  
931 not meet the contract requirements at the time of substantial  
932 completion and one (1) final list immediately before final  
933 completion and final payment.

934 (u) **Procurement of construction services by state**  
935 **institutions of higher learning.** Contracts for privately financed  
936 construction of auxiliary facilities on the campus of a state  
937 institution of higher learning may be awarded by the Board of  
938 Trustees of State Institutions of Higher Learning to the lowest  
939 and best bidder, where sealed bids are solicited, or to the



940 offeror whose proposal is determined to represent the best value  
941 to the citizens of the State of Mississippi, where requests for  
942 proposals are solicited.

943           (v) **Insurability of bidders for public construction or**  
944 **other public contracts.** In any solicitation for bids to perform  
945 public construction or other public contracts to which this  
946 section applies, including, but not limited to, contracts for  
947 repair and maintenance, for which the contract will require  
948 insurance coverage in an amount of not less than One Million  
949 Dollars (\$1,000,000.00), bidders shall be permitted to either  
950 submit proof of current insurance coverage in the specified amount  
951 or demonstrate ability to obtain the required coverage amount of  
952 insurance if the contract is awarded to the bidder. Proof of  
953 insurance coverage shall be submitted within five (5) business  
954 days from bid acceptance.

955           (w) **Purchase authorization clarification.** Nothing in  
956 this section shall be construed as authorizing any purchase not  
957 authorized by law.

958           (x) **Mississippi Regional Pre-Need Disaster Clean Up**  
959 **Act.** (i) The Department of Finance and Administration shall  
960 enter into nine (9) contracts for the pre-need purchase of labor,  
961 services, work, materials, equipment, supplies or other personal  
962 property for disaster-related solid waste collection, disposal or  
963 monitoring. One (1) contract shall be entered into for each of



964 the nine (9) Mississippi Emergency Management Association  
965 districts:

- 966 1. Coahoma, DeSoto, Grenada, Panola, Quitman,  
967 Tallahatchie, Tate, Tunica and Yalobusha Counties;
- 968 2. Alcorn, Benton, Itawamba, Lafayette, Lee,  
969 Marshall, Pontotoc, Prentiss, Tippah, Tishomingo and Union  
970 Counties;
- 971 3. Attala, Bolivar, Carroll, Holmes,  
972 Humphreys, Leflore, Montgomery, Sunflower and Washington Counties;
- 973 4. Calhoun, Chickasaw, Choctaw, Clay,  
974 Lowndes, Monroe, Noxubee, Oktibbeha, Webster and Winston Counties;
- 975 5. Claiborne, Covich, Hinds, Issaquena,  
976 Madison, Rankin, Sharkey, Simpson, Warren and Yazoo Counties;
- 977 6. Clarke, Jasper, Kemper, Lauderdale, Leake,  
978 Neshoba, Newton, Scott, and Smith Counties and the Mississippi  
979 Band of Choctaw Indians;
- 980 7. Adams, Amite, Franklin, Jefferson,  
981 Lawrence, Lincoln, Pike, Walthall and Wilkinson Counties;
- 982 8. Covington, Forrest, Greene, Jefferson  
983 Davis, Jones, Lamar, Marion, Perry and Wayne Counties; and
- 984 9. George, Hancock, Harrison, Jackson, Pearl  
985 River and Stone Counties.

986 Any such contract shall set forth the manner of awarding such  
987 a contract, the method of payment, and any other matter deemed  
988 necessary to carry out the purposes of the agreement. Such





989 contract may be entered into only for a term of one (1) year, with  
990 an option for an additional one-year extension after the  
991 conclusion of the first year of the contract, and only after  
992 having solicited bids or proposals, as appropriate, which shall be  
993 publicly advertised by posting on a web page maintained by the  
994 Department of Finance and Administration through submission of  
995 such advertisement to the Mississippi Procurement Technical  
996 Assistance Program under the Mississippi Development Authority.  
997 The bid opening shall not occur until after the submission has  
998 been posted for at least ten (10) consecutive days. The state's  
999 share of expenditures for solid waste collection, disposal or  
1000 monitoring under any contract shall be appropriated and paid in  
1001 the manner set forth in the contract and in the same manner as for  
1002 other solid waste collection, disposal, or monitoring expenses of  
1003 the state. Any contract entered into under this paragraph shall  
1004 not be subject to the provisions of Section 17-13-11.

1005 (ii) Any board of supervisors of any county or any  
1006 governing authority of any municipality may opt in to the benefits  
1007 and services provided under the appropriate and relevant contract  
1008 established in subparagraph (i) of this paragraph at the time of a  
1009 disaster event in that county or municipality. At the time of opt  
1010 in, the county or municipality shall assume responsibility for  
1011 payment in full to the contractor for the disaster-related solid  
1012 waste collection, disposal or monitoring services provided.  
1013 Nothing in this subparagraph (ii) shall be construed as requiring



1014 a county or municipality to opt in to any such contract  
1015 established in subparagraph (i) of this paragraph.

1016 **SECTION 2.** Section 27-104-7, Mississippi Code of 1972, is  
1017 amended as follows:

1018 27-104-7. (1) (a) There is created the Public Procurement  
1019 Review Board, which shall be reconstituted on January 1, 2018, and  
1020 shall be composed of the following members:

1021 (i) Three (3) individuals appointed by the  
1022 Governor with the advice and consent of the Senate;

1023 (ii) Two (2) individuals appointed by the  
1024 Lieutenant Governor with the advice and consent of the Senate; and

1025 (iii) The Executive Director of the Department of  
1026 Finance and Administration, serving as an ex officio and nonvoting  
1027 member.

1028 (b) The initial terms of each appointee shall be as  
1029 follows:

1030 (i) One (1) member appointed by the Governor to  
1031 serve for a term ending on June 30, 2019;

1032 (ii) One (1) member appointed by the Governor to  
1033 serve for a term ending on June 30, 2020;

1034 (iii) One (1) member appointed by the Governor to  
1035 serve for a term ending on June 30, 2021;

1036 (iv) One (1) member appointed by the Lieutenant  
1037 Governor to serve for a term ending on June 30, 2019; and



1038 (v) One (1) member appointed by the Lieutenant  
1039 Governor to serve for a term ending on June 30, 2020.

1040 After the expiration of the initial terms, all appointed  
1041 members' terms shall be for a period of four (4) years from the  
1042 expiration date of the previous term, and until such time as the  
1043 member's successor is duly appointed and qualified.

1044 (c) When appointing members to the Public Procurement  
1045 Review Board, the Governor and Lieutenant Governor shall take into  
1046 consideration persons who possess at least five (5) years of  
1047 management experience in general business, health care or finance  
1048 for an organization, corporation or other public or private  
1049 entity. Any person, or any employee or owner of a company, who  
1050 receives any grants, procurements or contracts that are subject to  
1051 approval under this section shall not be appointed to the Public  
1052 Procurement Review Board. Any person, or any employee or owner of  
1053 a company, who is a principal of the source providing a personal  
1054 or professional service shall not be appointed to the Public  
1055 Procurement Review Board if the principal owns or controls a  
1056 greater than five percent (5%) interest or has an ownership value  
1057 of One Million Dollars (\$1,000,000.00) in the source's business,  
1058 whichever is smaller. No member shall be an officer or employee  
1059 of the State of Mississippi while serving as a voting member on  
1060 the Public Procurement Review Board.



1061 (d) Members of the Public Procurement Review Board  
1062 shall be entitled to per diem as authorized by Section 25-3-69 and  
1063 travel reimbursement as authorized by Section 25-3-41.

1064 (e) The members of the Public Procurement Review Board  
1065 shall elect a chair from among the membership, and he or she shall  
1066 preside over the meetings of the board. The board shall annually  
1067 elect a vice chair, who shall serve in the absence of the chair.  
1068 No business shall be transacted, including adoption of rules of  
1069 procedure, without the presence of a quorum of the board. Three  
1070 (3) members shall be a quorum. No action shall be valid unless  
1071 approved by a majority of the members present and voting, entered  
1072 upon the minutes of the board and signed by the chair. Necessary  
1073 clerical and administrative support for the board shall be  
1074 provided by the Department of Finance and Administration. Minutes  
1075 shall be kept of the proceedings of each meeting, copies of which  
1076 shall be filed on a monthly basis with the chairs of the  
1077 Accountability, Efficiency and Transparency Committees of the  
1078 Senate and House of Representatives and the chairs of the  
1079 Appropriations Committees of the Senate and House of  
1080 Representatives.

1081 (2) The Public Procurement Review Board shall have the  
1082 following powers and responsibilities:

1083 (a) Approve all purchasing regulations governing the  
1084 purchase or lease by any agency, as defined in Section 31-7-1, of



1085 commodities and equipment, except computer equipment acquired  
1086 pursuant to Sections 25-53-1 through 25-53-29;

1087 (b) Adopt regulations governing the approval of  
1088 contracts let for the construction and maintenance of state  
1089 buildings and other state facilities as well as related contracts  
1090 for architectural and engineering services.

1091 The provisions of this paragraph (b) shall not apply to such  
1092 contracts involving buildings and other facilities of state  
1093 institutions of higher learning which are self-administered as  
1094 provided under this paragraph (b) or Section 37-101-15(m);

1095 (c) Adopt regulations governing any lease or rental  
1096 agreement by any state agency or department, including any state  
1097 agency financed entirely by federal funds, for space outside the  
1098 buildings under the jurisdiction of the Department of Finance and  
1099 Administration. These regulations shall require each agency  
1100 requesting to lease such space to provide the following  
1101 information that shall be published by the Department of Finance  
1102 and Administration on its website: the agency to lease the space;  
1103 the terms of the lease; the approximate square feet to be leased;  
1104 the use for the space; a description of a suitable space; the  
1105 general location desired for the leased space; the contact  
1106 information for a person from the agency; the deadline date for  
1107 the agency to have received a lease proposal; any other specific  
1108 terms or conditions of the agency; and any other information  
1109 deemed appropriate by the Division of Real Property Management of



1110 the Department of Finance and Administration or the Public  
1111 Procurement Review Board. The information shall be provided  
1112 sufficiently in advance of the time the space is needed to allow  
1113 the Division of Real Property Management of the Department of  
1114 Finance and Administration to review and preapprove the lease  
1115 before the time for advertisement begins;

1116 (d) Adopt, in its discretion, regulations to set aside  
1117 at least five percent (5%) of anticipated annual expenditures for  
1118 the purchase of commodities from minority businesses; however, all  
1119 such set-aside purchases shall comply with all purchasing  
1120 regulations promulgated by the department and shall be subject to  
1121 all bid requirements. Set-aside purchases for which competitive  
1122 bids are required shall be made from the lowest and best minority  
1123 business bidder; however, if no minority bid is available or if  
1124 the minority bid is more than two percent (2%) higher than the  
1125 lowest bid, then bids shall be accepted and awarded to the lowest  
1126 and best bidder. However, the provisions in this paragraph shall  
1127 not be construed to prohibit the rejection of a bid when only one  
1128 (1) bid is received. Such rejection shall be placed in the  
1129 minutes. For the purposes of this paragraph, the term "minority  
1130 business" means a business which is owned by a person who is a  
1131 citizen or lawful permanent resident of the United States and who  
1132 is:

1133 (i) Black: having origins in any of the black  
1134 racial groups of Africa;



1135                   (ii) Hispanic: of Mexican, Puerto Rican, Cuban,  
1136 Central or South American, or other Spanish or Portuguese culture  
1137 or origin regardless of race;

1138                   (iii) Asian-American: having origins in any of  
1139 the original people of the Far East, Southeast Asia, the Indian  
1140 subcontinent, or the Pacific Islands;

1141                   (iv) American Indian or Alaskan Native: having  
1142 origins in any of the original people of North America; or

1143                   (v) Female;

1144                   (e) In consultation with and approval by the Chairs of  
1145 the Senate and House Public Property Committees, approve leases,  
1146 for a term not to exceed eighteen (18) months, entered into by  
1147 state agencies for the purpose of providing parking arrangements  
1148 for state employees who work in the Woolfolk Building, the Carroll  
1149 Gartin Justice Building or the Walter Sillers Office Building;

1150                   (f) (i) Except as otherwise provided in subparagraph  
1151 (ii) of this paragraph, promulgate rules and regulations governing  
1152 the solicitation and selection of contractual services personnel,  
1153 including personal and professional services contracts for any  
1154 form of consulting, policy analysis, public relations, marketing,  
1155 public affairs, legislative advocacy services or any other  
1156 contract that the board deems appropriate for oversight, with the  
1157 exception of:



1158                   1. Any personal service contracts entered  
1159 into by any agency that employs only nonstate service employees as  
1160 defined in Section 25-9-107(c);

1161                   2. Any personal service contracts entered  
1162 into for computer or information technology-related services  
1163 governed by the Mississippi Department of Information Technology  
1164 Services;

1165                   3. Any personal service contracts entered  
1166 into by the individual state institutions of higher learning;

1167                   4. Any personal service contracts entered  
1168 into by the Mississippi Department of Transportation;

1169                   5. Any personal service contracts entered  
1170 into by the Department of Human Services through June 30, 2019,  
1171 which the Executive Director of the Department of Human Services  
1172 determines would be useful in establishing and operating the  
1173 Department of Child Protection Services;

1174                   6. Any personal service contracts entered  
1175 into by the Department of Child Protection Services through June  
1176 30, 2019;

1177                   7. Any contracts for entertainers and/or  
1178 performers at the Mississippi State Fairgrounds entered into by  
1179 the Mississippi Fair Commission;

1180                   8. Any contracts entered into by the  
1181 Department of Finance and Administration when procuring aircraft  
1182 maintenance, parts, equipment and/or services;





1183                   9. Any contract entered into by the  
1184 Department of Public Safety for service on specialized equipment  
1185 and/or software required for the operation of such specialized  
1186 equipment for use by the Office of Forensics Laboratories;

1187                   10. Any personal or professional service  
1188 contract entered into by the Mississippi Department of Health or  
1189 the Department of Revenue solely in connection with their  
1190 respective responsibilities under the Mississippi Medical Cannabis  
1191 Act from February 2, 2022, through June 30, 2026;

1192                   11. Any contract for attorney, accountant,  
1193 actuary auditor, architect, engineer, anatomical pathologist, or  
1194 utility rate expert services;

1195                   12. Any personal service contracts approved  
1196 by the Executive Director of the Department of Finance and  
1197 Administration and entered into by the Coordinator of Mental  
1198 Health Accessibility through June 30, 2022;

1199                   13. Any personal or professional services  
1200 contract entered into by the State Department of Health in  
1201 carrying out its responsibilities under the ARPA Rural Water  
1202 Associations Infrastructure Grant Program through June 30, 2026;

1203       \* \* \*

1204                   14. And any personal or professional services  
1205 contract entered into by the Mississippi Department of  
1206 Environmental Quality in carrying out its responsibilities under



1207 the Mississippi Municipality and County Water Infrastructure Grant  
1208 Program Act of 2022, through June 30, 2026 \* \* \*; and

1209 15. Any personal or professional services  
1210 contract entered into by the Department of Finance and  
1211 Administration for architectural, engineering, operation or  
1212 maintenance services at the State Capitol building and grounds or  
1213 any other historical buildings or sites under the general  
1214 supervision and care of the department that are dually designated  
1215 as both a National Historic Landmark and a Mississippi Landmark.

1216 Any such rules and regulations shall provide for maintaining  
1217 continuous internal audit covering the activities of such agency  
1218 affecting its revenue and expenditures as required under Section  
1219 7-7-3(6) (d). Any rules and regulation changes related to personal  
1220 and professional services contracts that the Public Procurement  
1221 Review Board may propose shall be submitted to the Chairs of the  
1222 Accountability, Efficiency and Transparency Committees of the  
1223 Senate and House of Representatives and the Chairs of the  
1224 Appropriation Committees of the Senate and House of  
1225 Representatives at least fifteen (15) days before the board votes  
1226 on the proposed changes, and those rules and regulation changes,  
1227 if adopted, shall be promulgated in accordance with the  
1228 Mississippi Administrative Procedures Act.

1229 (ii) From and after July 1, 2024, the Public  
1230 Procurement Review Board shall promulgate rules and regulations  
1231 that require the Department of Finance and Administration to



1232 conduct personal and professional services solicitations as  
1233 provided in subparagraph (i) of this paragraph for those services  
1234 in excess of Seventy-five Thousand Dollars (\$75,000.00) for the  
1235 Department of Marine Resources, the Department of Wildlife,  
1236 Fisheries and Parks, the Mississippi Emergency Management Agency  
1237 and the Mississippi Development Authority, with assistance to be  
1238 provided from these entities. Any powers that have been conferred  
1239 upon agencies in order to comply with the provisions of this  
1240 section for personal and professional services solicitations shall  
1241 be conferred upon the Department of Finance and Administration to  
1242 conduct personal and professional services solicitations for the  
1243 Department of Marine Resources, the Department of Wildlife,  
1244 Fisheries and Parks, the Mississippi Emergency Management Agency  
1245 and the Mississippi Development Authority for those services in  
1246 excess of Seventy-five Thousand Dollars (\$75,000.00). The  
1247 Department of Finance and Administration shall make any  
1248 submissions that are required to be made by other agencies to the  
1249 Public Procurement Review Board for the Department of Marine  
1250 Resources, the Department of Wildlife, Fisheries and Parks, the  
1251 Mississippi Emergency Management Agency and the Mississippi  
1252 Development Authority.

1253 The provisions of this subparagraph (ii) shall stand repealed  
1254 on June 30, 2027;

1255 (g) Approve all personal and professional services  
1256 contracts involving the expenditures of funds in excess of



1257 Seventy-five Thousand Dollars (\$75,000.00), except as provided in  
1258 paragraph (f) of this subsection (2) and in subsection (8);

1259           (h) Develop mandatory standards with respect to  
1260 contractual services personnel that require invitations for public  
1261 bid, requests for proposals, record keeping and financial  
1262 responsibility of contractors. The Public Procurement Review  
1263 Board shall, unless exempted under this paragraph (h) or under  
1264 paragraph (i) or (o) of this subsection (2), require the agency  
1265 involved to submit the procurement to a competitive procurement  
1266 process, and may reserve the right to reject any or all resulting  
1267 procurements;

1268           (i) Prescribe certain circumstances by which agency  
1269 heads may enter into contracts for personal and professional  
1270 services without receiving prior approval from the Public  
1271 Procurement Review Board. The Public Procurement Review Board may  
1272 establish a preapproved list of providers of various personal and  
1273 professional services for set prices with which state agencies may  
1274 contract without bidding or prior approval from the board;

1275           (i) Agency requirements may be fulfilled by  
1276 procuring services performed incident to the state's own programs.  
1277 The agency head shall determine in writing whether the price  
1278 represents a fair market value for the services. When the  
1279 procurements are made from other governmental entities, the  
1280 private sector need not be solicited; however, these contracts



1281 shall still be submitted for approval to the Public Procurement  
1282 Review Board.

1283 (ii) Contracts between two (2) state agencies,  
1284 both under Public Procurement Review Board purview, shall not  
1285 require Public Procurement Review Board approval. However, the  
1286 contracts shall still be entered into the enterprise resource  
1287 planning system;

1288 (j) Provide standards for the issuance of requests for  
1289 proposals, the evaluation of proposals received, consideration of  
1290 costs and quality of services proposed, contract negotiations, the  
1291 administrative monitoring of contract performance by the agency  
1292 and successful steps in terminating a contract;

1293 (k) Present recommendations for governmental  
1294 privatization and to evaluate privatization proposals submitted by  
1295 any state agency;

1296 (l) Authorize personal and professional service  
1297 contracts to be effective for more than one (1) year provided a  
1298 funding condition is included in any such multiple year contract,  
1299 except the State Board of Education, which shall have the  
1300 authority to enter into contractual agreements for student  
1301 assessment for a period up to ten (10) years. The State Board of  
1302 Education shall procure these services in accordance with the  
1303 Public Procurement Review Board procurement regulations;

1304 (m) Request the State Auditor to conduct a performance  
1305 audit on any personal or professional service contract;



1306 (n) Prepare an annual report to the Legislature  
1307 concerning the issuance of personal and professional services  
1308 contracts during the previous year, collecting any necessary  
1309 information from state agencies in making such report;

1310 (o) Develop and implement the following standards and  
1311 procedures for the approval of any sole source contract for  
1312 personal and professional services regardless of the value of the  
1313 procurement:

1314 (i) For the purposes of this paragraph (o), the  
1315 term "sole source" means only one (1) source is available that can  
1316 provide the required personal or professional service.

1317 (ii) An agency that has been issued a binding,  
1318 valid court order mandating that a particular source or provider  
1319 must be used for the required service must include a copy of the  
1320 applicable court order in all future sole source contract reviews  
1321 for the particular personal or professional service referenced in  
1322 the court order.

1323 (iii) Any agency alleging to have a sole source  
1324 for any personal or professional service, other than those  
1325 exempted under paragraph (f) of this subsection (2) and subsection  
1326 (8), shall publish on the procurement portal website established  
1327 by Sections 25-53-151 and 27-104-165, for at least fourteen (14)  
1328 days, the terms of the proposed contract for those services. In  
1329 addition, the publication shall include, but is not limited to,  
1330 the following information:



- 1331                   1. The personal or professional service  
1332 offered in the contract;
- 1333                   2. An explanation of why the personal or  
1334 professional service is the only one that can meet the needs of  
1335 the agency;
- 1336                   3. An explanation of why the source is the  
1337 only person or entity that can provide the required personal or  
1338 professional service;
- 1339                   4. An explanation of why the amount to be  
1340 expended for the personal or professional service is reasonable;  
1341 and
- 1342                   5. The efforts that the agency went through  
1343 to obtain the best possible price for the personal or professional  
1344 service.

1345                   (iv) If any person or entity objects and proposes  
1346 that the personal or professional service published under  
1347 subparagraph (iii) of this paragraph (o) is not a sole source  
1348 service and can be provided by another person or entity, then the  
1349 objecting person or entity shall notify the Public Procurement  
1350 Review Board and the agency that published the proposed sole  
1351 source contract with a detailed explanation of why the personal or  
1352 professional service is not a sole source service.

1353                   (v) 1. If the agency determines after review that  
1354 the personal or professional service in the proposed sole source  
1355 contract can be provided by another person or entity, then the



1356 agency must withdraw the sole source contract publication from the  
1357 procurement portal website and submit the procurement of the  
1358 personal or professional service to an advertised competitive bid  
1359 or selection process.

1360                   2. If the agency determines after review that  
1361 there is only one (1) source for the required personal or  
1362 professional service, then the agency may appeal to the Public  
1363 Procurement Review Board. The agency has the burden of proving  
1364 that the personal or professional service is only provided by one  
1365 (1) source.

1366                   3. If the Public Procurement Review Board has  
1367 any reasonable doubt as to whether the personal or professional  
1368 service can only be provided by one (1) source, then the agency  
1369 must submit the procurement of the personal or professional  
1370 service to an advertised competitive bid or selection process. No  
1371 action taken by the Public Procurement Review Board in this appeal  
1372 process shall be valid unless approved by a majority of the  
1373 members of the Public Procurement Review Board present and voting.

1374                   (vi) The Public Procurement Review Board shall  
1375 prepare and submit a quarterly report to the House of  
1376 Representatives and Senate Accountability, Efficiency and  
1377 Transparency Committees that details the sole source contracts  
1378 presented to the Public Procurement Review Board and the reasons  
1379 that the Public Procurement Review Board approved or rejected each  
1380 contract. These quarterly reports shall also include the





1381 documentation and memoranda required in subsection (4) of this  
1382 section. An agency that submitted a sole source contract shall be  
1383 prepared to explain the sole source contract to each committee by  
1384 December 15 of each year upon request by the committee;

1385 (p) Assess any fines and administrative penalties  
1386 provided for in Sections 31-7-401 through 31-7-423.

1387 (3) All submissions shall be made sufficiently in advance of  
1388 each monthly meeting of the Public Procurement Review Board as  
1389 prescribed by the Public Procurement Review Board. If the Public  
1390 Procurement Review Board rejects any contract submitted for review  
1391 or approval, the Public Procurement Review Board shall clearly set  
1392 out the reasons for its action, including, but not limited to, the  
1393 policy that the agency has violated in its submitted contract and  
1394 any corrective actions that the agency may take to amend the  
1395 contract to comply with the rules and regulations of the Public  
1396 Procurement Review Board.

1397 (4) All sole source contracts for personal and professional  
1398 services awarded by state agencies, other than those exempted  
1399 under Section 27-104-7(2) (f) and (8), whether approved by an  
1400 agency head or the Public Procurement Review Board, shall contain  
1401 in the procurement file a written determination for the approval,  
1402 using a request form furnished by the Public Procurement Review  
1403 Board. The written determination shall document the basis for the  
1404 determination, including any market analysis conducted in order to  
1405 ensure that the service required was practicably available from



1406 only one (1) source. A memorandum shall accompany the request  
1407 form and address the following four (4) points:

1408 (a) Explanation of why this service is the only service  
1409 that can meet the needs of the purchasing agency;

1410 (b) Explanation of why this vendor is the only  
1411 practicably available source from which to obtain this service;

1412 (c) Explanation of why the price is considered  
1413 reasonable; and

1414 (d) Description of the efforts that were made to  
1415 conduct a noncompetitive negotiation to get the best possible  
1416 price for the taxpayers.

1417 (5) In conjunction with the State Personnel Board, the  
1418 Public Procurement Review Board shall develop and promulgate rules  
1419 and regulations to define the allowable legal relationship between  
1420 contract employees and the contracting departments, agencies and  
1421 institutions of state government under the jurisdiction of the  
1422 State Personnel Board, in compliance with the applicable rules and  
1423 regulations of the federal Internal Revenue Service (IRS) for  
1424 federal employment tax purposes. Under these regulations, the  
1425 usual common law rules are applicable to determine and require  
1426 that such worker is an independent contractor and not an employee,  
1427 requiring evidence of lawful behavioral control, lawful financial  
1428 control and lawful relationship of the parties. Any state  
1429 department, agency or institution shall only be authorized to



1430 contract for personnel services in compliance with those  
1431 regulations.

1432 (6) No member of the Public Procurement Review Board shall  
1433 use his or her official authority or influence to coerce, by  
1434 threat of discharge from employment, or otherwise, the purchase of  
1435 commodities, the contracting for personal or professional  
1436 services, or the contracting for public construction under this  
1437 chapter.

1438 (7) Notwithstanding any other laws or rules to the contrary,  
1439 the provisions of subsection (2) of this section shall not be  
1440 applicable to the Mississippi State Port Authority at Gulfport.

1441 (8) Nothing in this section shall impair or limit the  
1442 authority of the Board of Trustees of the Public Employees'  
1443 Retirement System to enter into any personal or professional  
1444 services contracts directly related to their constitutional  
1445 obligation to manage the trust funds, including, but not limited  
1446 to, actuarial, custodial banks, cash management, investment  
1447 consultant and investment management contracts. Nothing in this  
1448 section shall impair or limit the authority of the State Treasurer  
1449 to enter into any personal or professional services contracts  
1450 involving the management of trust funds, including, but not  
1451 limited to, actuarial, custodial banks, cash management,  
1452 investment consultant and investment management contracts.

1453 (9) Through December 31, 2024, the provisions of this  
1454 section related to rental agreements or leasing of real property



1455 for the purpose of conducting agency business shall not apply to  
1456 the Office of Workforce Development created in Section 37-153-7.

1457           **SECTION 3.** This act shall take effect and be in force from  
1458 and after July 1, 2024.

