

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.

