

By: Senator(s) Horhn

To: Labor; Accountability,  
Efficiency, Transparency

SENATE BILL NO. 2591

1 AN ACT TO ESTABLISH THE OPPORTUNITIES FOR DIVERSITY IN  
 2 CONTRACTING PROGRAM (ODC) TO BE ADMINISTERED BY THE MISSISSIPPI  
 3 DEVELOPMENT AUTHORITY TO IMPROVE THE NUMBER OF SOCIALLY AND  
 4 ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERNS THAT DO  
 5 BUSINESS WITH THE STATE BY FACILITATING AND IMPROVING ACCESS TO  
 6 GOVERNMENT CONTRACTS; TO REQUIRE EACH STATE AGENCY TO APPOINT AN  
 7 ODC COMPLIANCE OFFICER WHO WILL BE RESPONSIBLE FOR MONITORING  
 8 COMPLIANCE WITH THE ODC PROGRAM AND FOR REPORTING COMPLIANCE OR  
 9 NONCOMPLIANCE FOR THEIR RESPECTIVE AGENCIES TO THE MDA; TO  
 10 ESTABLISH THE RESPONSIBILITIES OF ODC COMPLIANCE OFFICERS; TO  
 11 REQUIRE STATE AGENCIES TO INCLUDE CERTAIN LANGUAGE IN CONTRACTS  
 12 FOR GOODS AND SERVICES; TO ESTABLISH A PROCESS FOR ISSUING ODC  
 13 WAIVERS; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, IN  
 14 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** This act shall be known and may be cited as the  
 17 "Opportunities for Diversity in Contracting Act."

18 **SECTION 2.** The State of Mississippi is committed to  
 19 improving the number of socially and economically disadvantaged  
 20 small business concerns that do business with the state by  
 21 facilitating and improving access to government contracts.  
 22 Facilitating this access is not only the right thing to do but  
 23 will foster an environment in which all Mississippi businesses  
 24 have access to and compete fairly in the procurement process.



25           **SECTION 3.** As used in this section:

26                   (a) "ODC business enterprise" means a socially and  
27 economically disadvantaged small business concern certified as a  
28 participant in the Opportunities for Diversity in Contracting  
29 Program by the Mississippi Development Authority under this  
30 section.

31                   (b) "MDA" means the Mississippi Development Authority.

32                   (c) "Socially and economically disadvantaged small  
33 business concern" means a socially and economically disadvantaged  
34 small business concern as defined under the Small Business Act (15  
35 USCA, Section 637(a)), except that the net worth of the business  
36 may not be greater than Seven Hundred Fifty Thousand Dollars  
37 (\$750,000.00).

38           **SECTION 4.** (1) The MDA shall establish a business  
39 assistance program known as the Opportunities for Diversity in  
40 Contracting Program (ODC Program) with the goal of improving the  
41 number of socially and economically disadvantaged small business  
42 concerns that do business with the state by facilitating and  
43 improving access to government contracts. MDA shall adopt rules  
44 to administer the program that do all of the following:

45                   (a) Establish procedures by which a sole  
46 proprietorship, association, partnership, corporation, limited  
47 liability corporation, or joint venture may apply for  
48 certification as an ODC business enterprise;



49           (b) Except as provided in paragraph (n) of this  
50 subsection, establish agency procurement goals for contracting  
51 with ODC business enterprises in the award of contracts based on  
52 the availability of eligible program participants as determined by  
53 the MDA;

54                   (i) Goals established under this paragraph shall  
55 be based on a percentage level of participation and a percentage  
56 of contractor availability;

57                   (ii) Goals established under this paragraph shall  
58 be applied at the contract level, relative to an overall dollar  
59 goal for each state agency, in accordance with the following  
60 certification categories: construction, architecture, and  
61 engineering; professional services; goods and services; and  
62 information technology services;

63           (c) Establish a system of certifying ODC business  
64 enterprises;

65           (d) Establish standards to determine when an ODC  
66 business enterprise no longer qualifies for ODC business  
67 enterprise certification;

68           (e) Develop a process for evaluating and adjusting  
69 goals established by this section to determine what adjustments  
70 are necessary to achieve participation goals established by the  
71 executive director;

72           (f) Establish a point system or comparable system to  
73 evaluate bid proposals to encourage ODC business enterprises to



74 participate in the procurement of professional services and  
75 information technology services;

76 (g) Establish a system to track data and analyze each  
77 certification category established under paragraph (b) (ii) of this  
78 subsection;

79 (h) Establish a process to mediate complaints and to  
80 review ODC business enterprise certification appeals;

81 (i) Implement an outreach program to educate potential  
82 participants about the Opportunities for Diversity in Contracting  
83 Program;

84 (j) Establish a system to assist state agencies in  
85 identifying and utilizing ODC business enterprises in their  
86 contracting processes;

87 (k) Implement a system of self-reporting by ODC  
88 business enterprises as well as an on-site inspection process to  
89 validate the qualifications of an ODC business enterprise;

90 (l) Establish a waiver mechanism to waive program goals  
91 or participation requirements for those companies that, despite  
92 their documented best efforts, are unable to contract with  
93 certified ODC business enterprises;

94 (m) Establish a process for monitoring overall program  
95 compliance in which equal employment opportunity officers  
96 primarily are responsible for monitoring their respective  
97 agencies; and



98 (n) Establish guidelines for institutions of higher  
99 learning to allow the institutions of higher learning to establish  
100 agency procurement goals for contracting with ODC business  
101 enterprises.

102 (2) Business and personal financial information and trade  
103 secrets submitted by Opportunities for Diversity in Contracting  
104 Program applicants pursuant to this section shall be exempt from  
105 the provisions of the Mississippi Public Records Act of 1983,  
106 unless the executive director presents the financial information  
107 or trade secrets at a public hearing or public proceeding  
108 regarding the applicant's eligibility to participate in the  
109 program.

110 **SECTION 5.** (1) Each state agency shall appoint an ODC  
111 compliance officer who will be responsible for monitoring  
112 compliance with the ODC Program and for reporting compliance or  
113 noncompliance for their respective agencies to the MDA. The ODC  
114 compliance officer shall also be responsible for:

115 (a) Analyzing spending on goods, services and  
116 construction projects for his agency and determining missed  
117 opportunities for the inclusion of ODC vendors;

118 (b) Analyzing the spending of the state agency with ODC  
119 vendors, as well as ODC vendor availability by regions of the  
120 state so the MDA may determine the appropriate ODC goal for each  
121 contract;



122 (c) Reporting ODC enrollment for all contracts issued  
123 by each state agency to the MDA;

124 (d) Implementing a scorecard system that will be  
125 developed by MDA, which tracks each state agency's ODC Program  
126 expenditures;

127 (e) Implementing an outreach and training plan that  
128 will be developed by MDA, to ensure compliance with ODC Program  
129 requirements;

130 (f) Attending semiannual training conducted by MDA on  
131 ODC Program requirements; and

132 (g) Participating in an annual compliance review  
133 conducted by MDA and implementing recommendations made by MDA as a  
134 result of the review process.

135 (2) State agencies shall ensure that all contracts for the  
136 purchase of goods and services contain language that:

137 (a) Prohibits contractors and subcontractors from  
138 engaging in discriminatory employment practices;

139 (b) Certifies that contractors and subcontractors are  
140 in compliance with all applicable state and federal law governing  
141 fair labor and employment practices; and

142 (c) Encourages contractors and subcontractors to  
143 purchase goods and services from certified ODC vendors.

144 (3) State agencies shall not issue ODC waivers without  
145 undertaking the following:



146 (a) Having all ODC waivers reviewed by the agency's  
147 procurement officer, in collaboration with its ODC compliance  
148 officer, who will certify that each ODC waiver issued by the  
149 agency complies with criteria for granting an ODC waiver;

150 (b) Submitting quarterly reports to MDA that list each  
151 ODC waiver granted by the agency; and

152 (c) Permitting MDA to complete its review of each state  
153 agency's quarterly reports and to conduct periodic audits of each  
154 state agency's administration of the ODC waiver process.

155 (4) If MDA determines that a state agency has not properly  
156 administered the issuance of ODC waivers, subsequent ODC waivers  
157 shall not be issued without the approval of MDA. MDA may release  
158 a state agency from the approval process once MDA has determined  
159 that an agency has the ability to consistently administer the  
160 waiver process.

161 **SECTION 6.** The MDA shall file an annual report with the  
162 Governor, Lieutenant Governor and Speaker of the House of  
163 Representatives regarding describing progress in advancing the ODC  
164 Program as well as any initiatives that are implemented to  
165 increase the number of certified ODC vendors doing business with  
166 the state.

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

169 31-7-13. All agencies and governing authorities shall  
170 purchase their commodities and printing; contract for garbage



171 collection or disposal; contract for solid waste collection or  
172 disposal; contract for sewage collection or disposal; contract for  
173 public construction; and contract for rentals as herein provided.

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

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

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

182 (b) **Bidding procedure for purchases over \$5,000.00 but  
183 not over \$75,000.00.** Purchases which involve an expenditure of

184 more than Five Thousand Dollars (\$5,000.00) but not more than  
185 Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight  
186 and shipping charges, may be made from the lowest and best bidder  
187 without publishing or posting advertisement for bids, provided at  
188 least two (2) competitive written bids have been obtained. In

189 determining the lowest and best bidder, a point system or  
190 comparable system established under the Opportunities for

191 Diversity in Contracting Act shall be utilized. Any state agency  
192 or community or junior college purchasing commodities or procuring  
193 construction pursuant to this paragraph (b) may authorize its  
194 purchasing agent, or his designee, to accept the lowest  
195 competitive written bid under Seventy-five Thousand Dollars





196 (\$75,000.00). Any governing authority purchasing commodities  
197 pursuant to this paragraph (b) may authorize its purchasing agent,  
198 or his designee, with regard to governing authorities other than  
199 counties, or its purchase clerk, or his designee, with regard to  
200 counties, to accept the lowest and best competitive written bid.  
201 Such authorization shall be made in writing by the governing  
202 authority and shall be maintained on file in the primary office of  
203 the agency and recorded in the official minutes of the governing  
204 authority, as appropriate. The purchasing agent or the purchase  
205 clerk, or his designee, as the case may be, and not the governing  
206 authority, shall be liable for any penalties and/or damages as may  
207 be imposed by law for any act or omission of the purchasing agent  
208 or purchase clerk, or his designee, constituting a violation of  
209 law in accepting any bid without approval by the governing  
210 authority. The term "competitive written bid" shall mean a bid  
211 submitted on a bid form furnished by the buying agency or  
212 governing authority and signed by authorized personnel  
213 representing the vendor, or a bid submitted on a vendor's  
214 letterhead or identifiable bid form and signed by authorized  
215 personnel representing the vendor. "Competitive" shall mean that  
216 the bids are developed based upon comparable identification of the  
217 needs and are developed independently and without knowledge of  
218 other bids or prospective bids. Any bid item for construction in  
219 excess of Five Thousand Dollars (\$5,000.00) shall be broken down  
220 by components to provide detail of component description and



221 pricing. These details shall be submitted with the written bids  
222 and become part of the bid evaluation criteria. Bids may be  
223 submitted by facsimile, electronic mail or other generally  
224 accepted method of information distribution. Bids submitted by  
225 electronic transmission shall not require the signature of the  
226 vendor's representative unless required by agencies or governing  
227 authorities.

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

229 (i) **Publication requirement.**

230 1. Purchases which involve an expenditure of  
231 more than Seventy-five Thousand Dollars (\$75,000.00), exclusive of  
232 freight and shipping charges, may be made from the lowest and best  
233 bidder after advertising for competitive bids once each week for  
234 two (2) consecutive weeks in a regular newspaper published in the  
235 county or municipality in which such agency or governing authority  
236 is located. In determining the lowest and best bidder, a point  
237 system or comparable system established under the Opportunities  
238 for Diversity in Contracting Act shall be utilized. However, all  
239 American Recovery and Reinvestment Act projects in excess of  
240 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. All  
241 references to American Recovery and Reinvestment Act projects in  
242 this section shall not apply to programs identified in Division B  
243 of the American Recovery and Reinvestment Act.

244 2. Reverse auctions shall be the primary  
245 method for receiving bids during the bidding process. If a



246 purchasing entity determines that a reverse auction is not in the  
247 best interest of the state, then that determination must be  
248 approved by the Public Procurement Review Board. The purchasing  
249 entity shall submit a detailed explanation of why a reverse  
250 auction would not be in the best interest of the state and present  
251 an alternative process to be approved by the Public Procurement  
252 Review Board. If the Public Procurement Review Board authorizes  
253 the purchasing entity to solicit bids with a method other than  
254 reverse auction, then the purchasing entity may designate the  
255 other methods by which the bids will be received, including, but  
256 not limited to, bids sealed in an envelope, bids received  
257 electronically in a secure system, or bids received by any other  
258 method that promotes open competition and has been approved by the  
259 Office of Purchasing and Travel. However, reverse auction shall  
260 not be used for any public contract for design, construction,  
261 improvement, repair or remodeling of any public facilities,  
262 including the purchase of materials, supplies, equipment or goods  
263 for same and including buildings, roads and bridges. The Public  
264 Procurement Review Board must approve any contract entered into by  
265 alternative process. The provisions of this item 2 shall not  
266 apply to the individual state institutions of higher learning.  
267 The provisions of this item 2 requiring reverse auction as the  
268 primary method of receiving bids shall not apply to term contract  
269 purchases as provided in paragraph (n) of this section; however, a  
270 purchasing entity may, in its discretion, utilize reverse auction



271 for such purchases. The provisions of this item 2 shall not apply  
272 to individual public schools, including public charter schools and  
273 public school districts, only when purchasing copyrighted  
274 educational supplemental materials and software as a service  
275 product. For such purchases, a local school board may authorize a  
276 purchasing entity in its jurisdiction to use a Request for  
277 Qualifications which promotes open competition and meets the  
278 requirements of the Office of Purchasing and Travel.

279                   3. The date as published for the bid opening  
280 shall not be less than seven (7) working days after the last  
281 published notice; however, if the purchase involves a construction  
282 project in which the estimated cost is in excess of Seventy-five  
283 Thousand Dollars (\$75,000.00), such bids shall not be opened in  
284 less than fifteen (15) working days after the last notice is  
285 published and the notice for the purchase of such construction  
286 shall be published once each week for two (2) consecutive weeks.  
287 However, all American Recovery and Reinvestment Act projects in  
288 excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid.  
289 For any projects in excess of Twenty-five Thousand Dollars  
290 (\$25,000.00) under the American Recovery and Reinvestment Act,  
291 publication shall be made one (1) time and the bid opening for  
292 construction projects shall not be less than ten (10) working days  
293 after the date of the published notice. The notice of intention  
294 to let contracts or purchase equipment shall state the time and  
295 place at which bids shall be received, list the contracts to be



296 made or types of equipment or supplies to be purchased, and, if  
297 all plans and/or specifications are not published, refer to the  
298 plans and/or specifications on file. If there is no newspaper  
299 published in the county or municipality, then such notice shall be  
300 given by posting same at the courthouse, or for municipalities at  
301 the city hall, and at two (2) other public places in the county or  
302 municipality, and also by publication once each week for two (2)  
303 consecutive weeks in some newspaper having a general circulation  
304 in the county or municipality in the above-provided manner. On  
305 the same date that the notice is submitted to the newspaper for  
306 publication, the agency or governing authority involved shall mail  
307 written notice to, or provide electronic notification to the main  
308 office of the Mississippi Procurement Technical Assistance Program  
309 under the Mississippi Development Authority that contains the same  
310 information as that in the published notice. Submissions received  
311 by the Mississippi Procurement Technical Assistance Program for  
312 projects funded by the American Recovery and Reinvestment Act  
313 shall be displayed on a separate and unique Internet web page  
314 accessible to the public and maintained by the Mississippi  
315 Development Authority for the Mississippi Procurement Technical  
316 Assistance Program. Those American Recovery and Reinvestment Act  
317 related submissions shall be publicly posted within twenty-four  
318 (24) hours of receipt by the Mississippi Development Authority and  
319 the bid opening shall not occur until the submission has been  
320 posted for ten (10) consecutive days. The Department of Finance



321 and Administration shall maintain information regarding contracts  
322 and other expenditures from the American Recovery and Reinvestment  
323 Act, on a unique Internet web page accessible to the public. The  
324 Department of Finance and Administration shall promulgate rules  
325 regarding format, content and deadlines, unless otherwise  
326 specified by law, of the posting of award notices, contract  
327 execution and subsequent amendments, links to the contract  
328 documents, expenditures against the awarded contracts and general  
329 expenditures of funds from the American Recovery and Reinvestment  
330 Act. Within one (1) working day of the contract award, the agency  
331 or governing authority shall post to the designated web page  
332 maintained by the Department of Finance and Administration, notice  
333 of the award, including the award recipient, the contract amount,  
334 and a brief summary of the contract in accordance with rules  
335 promulgated by the department. Within one (1) working day of the  
336 contract execution, the agency or governing authority shall post  
337 to the designated web page maintained by the Department of Finance  
338 and Administration a summary of the executed contract and make a  
339 copy of the appropriately redacted contract documents available  
340 for linking to the designated web page in accordance with the  
341 rules promulgated by the department. The information provided by  
342 the agency or governing authority shall be posted to the web page  
343 for the duration of the American Recovery and Reinvestment Act  
344 funding or until the project is completed, whichever is longer.



345                   (ii) **Bidding process amendment procedure.** If all  
346 plans and/or specifications are published in the notification,  
347 then the plans and/or specifications may not be amended. If all  
348 plans and/or specifications are not published in the notification,  
349 then amendments to the plans/specifications, bid opening date, bid  
350 opening time and place may be made, provided that the agency or  
351 governing authority maintains a list of all prospective bidders  
352 who are known to have received a copy of the bid documents and all  
353 such prospective bidders are sent copies of all amendments. This  
354 notification of amendments may be made via mail, facsimile,  
355 electronic mail or other generally accepted method of information  
356 distribution. No addendum to bid specifications may be issued  
357 within two (2) working days of the time established for the  
358 receipt of bids unless such addendum also amends the bid opening  
359 to a date not less than five (5) working days after the date of  
360 the addendum.

361                   (iii) **Filing requirement.** In all cases involving  
362 governing authorities, before the notice shall be published or  
363 posted, the plans or specifications for the construction or  
364 equipment being sought shall be filed with the clerk of the board  
365 of the governing authority. In addition to these requirements, a  
366 bid file shall be established which shall indicate those vendors  
367 to whom such solicitations and specifications were issued, and  
368 such file shall also contain such information as is pertinent to  
369 the bid.



370 (iv) **Specification restrictions.**

371 1. Specifications pertinent to such bidding  
372 shall be written so as not to exclude comparable equipment of  
373 domestic manufacture. However, if valid justification is  
374 presented, the Department of Finance and Administration or the  
375 board of a governing authority may approve a request for specific  
376 equipment necessary to perform a specific job. Further, such  
377 justification, when placed on the minutes of the board of a  
378 governing authority, may serve as authority for that governing  
379 authority to write specifications to require a specific item of  
380 equipment needed to perform a specific job. In addition to these  
381 requirements, from and after July 1, 1990, vendors of relocatable  
382 classrooms and the specifications for the purchase of such  
383 relocatable classrooms published by local school boards shall meet  
384 all pertinent regulations of the State Board of Education,  
385 including prior approval of such bid by the State Department of  
386 Education.

387 2. Specifications for construction projects  
388 may include an allowance for commodities, equipment, furniture,  
389 construction materials or systems in which prospective bidders are  
390 instructed to include in their bids specified amounts for such  
391 items so long as the allowance items are acquired by the vendor in  
392 a commercially reasonable manner and approved by the  
393 agency/governing authority. Such acquisitions shall not be made  
394 to circumvent the public purchasing laws.





395                   (v) **Electronic bids.** Agencies and governing  
396 authorities shall provide a secure electronic interactive system  
397 for the submittal of bids requiring competitive bidding that shall  
398 be an additional bidding option for those bidders who choose to  
399 submit their bids electronically. The Department of Finance and  
400 Administration shall provide, by regulation, the standards that  
401 agencies must follow when receiving electronic bids. Agencies and  
402 governing authorities shall make the appropriate provisions  
403 necessary to accept electronic bids from those bidders who choose  
404 to submit their bids electronically for all purchases requiring  
405 competitive bidding under this section. Any special condition or  
406 requirement for the electronic bid submission shall be specified  
407 in the advertisement for bids required by this section. Agencies  
408 or governing authorities that are currently without available high  
409 speed Internet access shall be exempt from the requirement of this  
410 subparagraph (v) until such time that high speed Internet access  
411 becomes available. Any county having a population of less than  
412 twenty thousand (20,000) shall be exempt from the provisions of  
413 this subparagraph (v). Any municipality having a population of  
414 less than ten thousand (10,000) shall be exempt from the  
415 provisions of this subparagraph (v). The provisions of this  
416 subparagraph (v) shall not require any bidder to submit bids  
417 electronically. When construction bids are submitted  
418 electronically, the requirement for including a certificate of  
419 responsibility, or a statement that the bid enclosed does not



420 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the  
421 bid envelope as indicated in Section 31-3-21(1) and (2) shall be  
422 deemed in compliance with by including same as an attachment with  
423 the electronic bid submittal.

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

425 (i) **Decision procedure.** Purchases may be made  
426 from the lowest and best bidder. In determining the lowest and  
427 best bid, freight and shipping charges shall be included.  
428 Life-cycle costing, total cost bids, warranties, guaranteed  
429 buy-back provisions and other relevant provisions may be included  
430 in the best bid calculation. All best bid procedures for state  
431 agencies must be in compliance with regulations established by the  
432 Department of Finance and Administration. If any governing  
433 authority accepts a bid other than the lowest bid actually  
434 submitted, it shall place on its minutes detailed calculations and  
435 narrative summary showing that the accepted bid was determined to  
436 be the lowest and best bid, including the dollar amount of the  
437 accepted bid and the dollar amount of the lowest bid. No agency  
438 or governing authority shall accept a bid based on items not  
439 included in the specifications.

440 (ii) **Decision procedure for Certified Purchasing**  
441 **Offices.** In addition to the decision procedure set forth in  
442 subparagraph (i) of this paragraph (d), Certified Purchasing  
443 Offices may also use the following procedure: Purchases may be  
444 made from the bidder offering the best value. In determining the



445 best value bid, freight and shipping charges shall be included.  
446 Life-cycle costing, total cost bids, warranties, guaranteed  
447 buy-back provisions, documented previous experience, training  
448 costs and other relevant provisions, including, but not limited  
449 to, a bidder having a local office and inventory located within  
450 the jurisdiction of the governing authority, may be included in  
451 the best value calculation. This provision shall authorize  
452 Certified Purchasing Offices to utilize a Request For Proposals  
453 (RFP) process when purchasing commodities. All best value  
454 procedures for state agencies must be in compliance with  
455 regulations established by the Department of Finance and  
456 Administration. No agency or governing authority shall accept a  
457 bid based on items or criteria not included in the specifications.

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

459 **Landmarks.** In addition to the decision procedure set forth in  
460 subparagraph (i) of this paragraph (d), where purchase involves  
461 renovation, restoration, or both, of the State Capitol Building or  
462 any other historical building designated for at least five (5)  
463 years as a Mississippi Landmark by the Board of Trustees of the  
464 Department of Archives and History under the authority of Sections  
465 39-7-7 and 39-7-11, the agency or governing authority may use the  
466 following procedure: Purchases may be made from the lowest and  
467 best prequalified bidder. Prequalification of bidders shall be  
468 determined not less than fifteen (15) working days before the  
469 first published notice of bid opening. Prequalification criteria



470 shall be limited to bidder's knowledge and experience in  
471 historical restoration, preservation and renovation. In  
472 determining the lowest and best bid, freight and shipping charges  
473 shall be included. Life-cycle costing, total cost bids,  
474 warranties, guaranteed buy-back provisions and other relevant  
475 provisions may be included in the best bid calculation. All best  
476 bid and prequalification procedures for state agencies must be in  
477 compliance with regulations established by the Department of  
478 Finance and Administration. If any governing authority accepts a  
479 bid other than the lowest bid actually submitted, it shall place  
480 on its minutes detailed calculations and narrative summary showing  
481 that the accepted bid was determined to be the lowest and best  
482 bid, including the dollar amount of the accepted bid and the  
483 dollar amount of the lowest bid. No agency or governing authority  
484 shall accept a bid based on items not included in the  
485 specifications.

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

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

492 (e) **Lease-purchase authorization.** For the purposes of  
493 this section, the term "equipment" shall mean equipment, furniture  
494 and, if applicable, associated software and other applicable



495 direct costs associated with the acquisition. Any lease-purchase  
496 of equipment which an agency is not required to lease-purchase  
497 under the master lease-purchase program pursuant to Section  
498 31-7-10 and any lease-purchase of equipment which a governing  
499 authority elects to lease-purchase may be acquired by a  
500 lease-purchase agreement under this paragraph (e). Lease-purchase  
501 financing may also be obtained from the vendor or from a  
502 third-party source after having solicited and obtained at least  
503 two (2) written competitive bids, as defined in paragraph (b) of  
504 this section, for such financing without advertising for such  
505 bids. Solicitation for the bids for financing may occur before or  
506 after acceptance of bids for the purchase of such equipment or,  
507 where no such bids for purchase are required, at any time before  
508 the purchase thereof. No such lease-purchase agreement shall be  
509 for an annual rate of interest which is greater than the overall  
510 maximum interest rate to maturity on general obligation  
511 indebtedness permitted under Section 75-17-101, and the term of  
512 such lease-purchase agreement shall not exceed the useful life of  
513 equipment covered thereby as determined according to the upper  
514 limit of the asset depreciation range (ADR) guidelines for the  
515 Class Life Asset Depreciation Range System established by the  
516 Internal Revenue Service pursuant to the United States Internal  
517 Revenue Code and regulations thereunder as in effect on December  
518 31, 1980, or comparable depreciation guidelines with respect to  
519 any equipment not covered by ADR guidelines. Any lease-purchase



520 agreement entered into pursuant to this paragraph (e) may contain  
521 any of the terms and conditions which a master lease-purchase  
522 agreement may contain under the provisions of Section 31-7-10(5),  
523 and shall contain an annual allocation dependency clause  
524 substantially similar to that set forth in Section 31-7-10(8).  
525 Each agency or governing authority entering into a lease-purchase  
526 transaction pursuant to this paragraph (e) shall maintain with  
527 respect to each such lease-purchase transaction the same  
528 information as required to be maintained by the Department of  
529 Finance and Administration pursuant to Section 31-7-10(13).  
530 However, nothing contained in this section shall be construed to  
531 permit agencies to acquire items of equipment with a total  
532 acquisition cost in the aggregate of less than Ten Thousand  
533 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
534 equipment, and the purchase thereof by any lessor, acquired by  
535 lease-purchase under this paragraph and all lease-purchase  
536 payments with respect thereto shall be exempt from all Mississippi  
537 sales, use and ad valorem taxes. Interest paid on any  
538 lease-purchase agreement under this section shall be exempt from  
539 State of Mississippi income taxation.

540           (f) **Alternate bid authorization.** When necessary to  
541 ensure ready availability of commodities for public works and the  
542 timely completion of public projects, no more than two (2)  
543 alternate bids may be accepted by a governing authority for  
544 commodities. No purchases may be made through use of such



545 alternate bids procedure unless the lowest and best bidder cannot  
546 deliver the commodities contained in his bid. In that event,  
547 purchases of such commodities may be made from one (1) of the  
548 bidders whose bid was accepted as an alternate.

549           (g) **Construction contract change authorization.** In the  
550 event a determination is made by an agency or governing authority  
551 after a construction contract is let that changes or modifications  
552 to the original contract are necessary or would better serve the  
553 purpose of the agency or the governing authority, such agency or  
554 governing authority may, in its discretion, order such changes  
555 pertaining to the construction that are necessary under the  
556 circumstances without the necessity of further public bids;  
557 provided that such change shall be made in a commercially  
558 reasonable manner and shall not be made to circumvent the public  
559 purchasing statutes. In addition to any other authorized person,  
560 the architect or engineer hired by an agency or governing  
561 authority with respect to any public construction contract shall  
562 have the authority, when granted by an agency or governing  
563 authority, to authorize changes or modifications to the original  
564 contract without the necessity of prior approval of the agency or  
565 governing authority when any such change or modification is less  
566 than one percent (1%) of the total contract amount. The agency or  
567 governing authority may limit the number, manner or frequency of  
568 such emergency changes or modifications.



569           (h) **Petroleum purchase alternative.** In addition to  
570 other methods of purchasing authorized in this chapter, when any  
571 agency or governing authority shall have a need for gas, diesel  
572 fuel, oils and/or other petroleum products in excess of the amount  
573 set forth in paragraph (a) of this section, such agency or  
574 governing authority may purchase the commodity after having  
575 solicited and obtained at least two (2) competitive written bids,  
576 as defined in paragraph (b) of this section. If two (2)  
577 competitive written bids are not obtained, the entity shall comply  
578 with the procedures set forth in paragraph (c) of this section.  
579 In the event any agency or governing authority shall have  
580 advertised for bids for the purchase of gas, diesel fuel, oils and  
581 other petroleum products and coal and no acceptable bids can be  
582 obtained, such agency or governing authority is authorized and  
583 directed to enter into any negotiations necessary to secure the  
584 lowest and best contract available for the purchase of such  
585 commodities.

586           (i) **Road construction petroleum products price**  
587 **adjustment clause authorization.** Any agency or governing  
588 authority authorized to enter into contracts for the construction,  
589 maintenance, surfacing or repair of highways, roads or streets,  
590 may include in its bid proposal and contract documents a price  
591 adjustment clause with relation to the cost to the contractor,  
592 including taxes, based upon an industry-wide cost index, of  
593 petroleum products including asphalt used in the performance or





594 execution of the contract or in the production or manufacture of  
595 materials for use in such performance. Such industry-wide index  
596 shall be established and published monthly by the Mississippi  
597 Department of Transportation with a copy thereof to be mailed,  
598 upon request, to the clerks of the governing authority of each  
599 municipality and the clerks of each board of supervisors  
600 throughout the state. The price adjustment clause shall be based  
601 on the cost of such petroleum products only and shall not include  
602 any additional profit or overhead as part of the adjustment. The  
603 bid proposals or document contract shall contain the basis and  
604 methods of adjusting unit prices for the change in the cost of  
605 such petroleum products.

606 (j) **State agency emergency purchase procedure.** If the  
607 governing board or the executive head, or his designees, of any  
608 agency of the state shall determine that an emergency exists in  
609 regard to the purchase of any commodities or repair contracts, so  
610 that the delay incident to giving opportunity for competitive  
611 bidding would be detrimental to the interests of the state, then  
612 the head of such agency, or his designees, shall file with the  
613 Department of Finance and Administration (i) a statement  
614 explaining the conditions and circumstances of the emergency,  
615 which shall include a detailed description of the events leading  
616 up to the situation and the negative impact to the entity if the  
617 purchase is made following the statutory requirements set forth in  
618 paragraph (a), (b) or (c) of this section, and (ii) a certified



619 copy of the appropriate minutes of the board of such agency  
620 requesting the emergency purchase, if applicable. Upon receipt of  
621 the statement and applicable board certification, the State Fiscal  
622 Officer, or his designees, may, in writing, authorize the purchase  
623 or repair without having to comply with competitive bidding  
624 requirements.

625         If the governing board or the executive head, or his  
626 designees, of any agency determines that an emergency exists in  
627 regard to the purchase of any commodities or repair contracts, so  
628 that the delay incident to giving opportunity for competitive  
629 bidding would threaten the health or safety of any person, or the  
630 preservation or protection of property, then the provisions in  
631 this section for competitive bidding shall not apply, and any  
632 officer or agent of the agency having general or specific  
633 authority for making the purchase or repair contract shall approve  
634 the bill presented for payment, and he shall certify in writing  
635 from whom the purchase was made, or with whom the repair contract  
636 was made.

637         Total purchases made under this paragraph (j) shall only be  
638 for the purpose of meeting needs created by the emergency  
639 situation. Following the emergency purchase, documentation of the  
640 purchase, including a description of the commodity purchased, the  
641 purchase price thereof and the nature of the emergency shall be  
642 filed with the Department of Finance and Administration. Any



643 contract awarded pursuant to this paragraph (j) shall not exceed a  
644 term of one (1) year.

645 Purchases under the grant program established under Section  
646 37-68-7 in response to COVID-19 and the directive that school  
647 districts create a distance learning plan and fulfill technology  
648 needs expeditiously shall be deemed an emergency purchase for  
649 purposes of this paragraph (j).

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

651 If the governing authority, or the governing authority acting  
652 through its designee, shall determine that an emergency exists in  
653 regard to the purchase of any commodities or repair contracts, so  
654 that the delay incident to giving opportunity for competitive  
655 bidding would be detrimental to the interest of the governing  
656 authority, then the provisions herein for competitive bidding  
657 shall not apply and any officer or agent of such governing  
658 authority having general or special authority therefor in making  
659 such purchase or repair shall approve the bill presented therefor,  
660 and he shall certify in writing thereon from whom such purchase  
661 was made, or with whom such a repair contract was made. At the  
662 board meeting next following the emergency purchase or repair  
663 contract, documentation of the purchase or repair contract,  
664 including a description of the commodity purchased, the price  
665 thereof and the nature of the emergency shall be presented to the  
666 board and shall be placed on the minutes of the board of such  
667 governing authority. Purchases under the grant program



668 established under Section 37-68-7 in response to COVID-19 and the  
669 directive that school districts create a distance learning plan  
670 and fulfill technology needs expeditiously shall be deemed an  
671 emergency purchase for purposes of this paragraph (k).

672 (1) **Hospital purchase, lease-purchase and lease**  
673 **authorization.**

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

679 (ii) In addition to the authority granted in  
680 subparagraph (i) of this paragraph (1), the commissioners or board  
681 of trustees is authorized to enter into contracts for the lease of  
682 equipment or services, or both, which it considers necessary for  
683 the proper care of patients if, in its opinion, it is not  
684 financially feasible to purchase the necessary equipment or  
685 services. Any such contract for the lease of equipment or  
686 services executed by the commissioners or board shall not exceed a  
687 maximum of five (5) years' duration and shall include a  
688 cancellation clause based on unavailability of funds. If such  
689 cancellation clause is exercised, there shall be no further  
690 liability on the part of the lessee. Any such contract for the  
691 lease of equipment or services executed on behalf of the  
692 commissioners or board that complies with the provisions of this



693 subparagraph (ii) shall be excepted from the bid requirements set  
694 forth in this section.

695 (m) **Exceptions from bidding requirements.** Excepted  
696 from bid requirements are:

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

698 Purchasing agreements, contracts and maximum price regulations  
699 executed or approved by the Department of Finance and  
700 Administration.

701 (ii) **Outside equipment repairs.** Repairs to  
702 equipment, when such repairs are made by repair facilities in the  
703 private sector; however, engines, transmissions, rear axles and/or  
704 other such components shall not be included in this exemption when  
705 replaced as a complete unit instead of being repaired and the need  
706 for such total component replacement is known before disassembly  
707 of the component; however, invoices identifying the equipment,  
708 specific repairs made, parts identified by number and name,  
709 supplies used in such repairs, and the number of hours of labor  
710 and costs therefor shall be required for the payment for such  
711 repairs.

712 (iii) **In-house equipment repairs.** Purchases of  
713 parts for repairs to equipment, when such repairs are made by  
714 personnel of the agency or governing authority; however, entire  
715 assemblies, such as engines or transmissions, shall not be  
716 included in this exemption when the entire assembly is being  
717 replaced instead of being repaired.



718 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
719 of gravel or fill dirt which are to be removed and transported by  
720 the purchaser.

721 (v) **Governmental equipment auctions.** Motor  
722 vehicles or other equipment purchased from a federal agency or  
723 authority, another governing authority or state agency of the  
724 State of Mississippi, or any governing authority or state agency  
725 of another state at a public auction held for the purpose of  
726 disposing of such vehicles or other equipment. Any purchase by a  
727 governing authority under the exemption authorized by this  
728 subparagraph (v) shall require advance authorization spread upon  
729 the minutes of the governing authority to include the listing of  
730 the item or items authorized to be purchased and the maximum bid  
731 authorized to be paid for each item or items.

732 (vi) **Intergovernmental sales and transfers.**  
733 Purchases, sales, transfers or trades by governing authorities or  
734 state agencies when such purchases, sales, transfers or trades are  
735 made by a private treaty agreement or through means of  
736 negotiation, from any federal agency or authority, another  
737 governing authority or state agency of the State of Mississippi,  
738 or any state agency or governing authority of another state.  
739 Nothing in this section shall permit such purchases through public  
740 auction except as provided for in subparagraph (v) of this  
741 paragraph (m). It is the intent of this section to allow  
742 governmental entities to dispose of and/or purchase commodities



743 from other governmental entities at a price that is agreed to by  
744 both parties. This shall allow for purchases and/or sales at  
745 prices which may be determined to be below the market value if the  
746 selling entity determines that the sale at below market value is  
747 in the best interest of the taxpayers of the state. Governing  
748 authorities shall place the terms of the agreement and any  
749 justification on the minutes, and state agencies shall obtain  
750 approval from the Department of Finance and Administration, prior  
751 to releasing or taking possession of the commodities.

752 (vii) **Perishable supplies or food.** Perishable  
753 supplies or food purchased for use in connection with hospitals,  
754 the school lunch programs, homemaking programs and for the feeding  
755 of county or municipal prisoners.

756 (viii) **Single-source items.** Noncompetitive items  
757 available from one (1) source only. In connection with the  
758 purchase of noncompetitive items only available from one (1)  
759 source, a certification of the conditions and circumstances  
760 requiring the purchase shall be filed by the agency with the  
761 Department of Finance and Administration and by the governing  
762 authority with the board of the governing authority. Upon receipt  
763 of that certification the Department of Finance and Administration  
764 or the board of the governing authority, as the case may be, may,  
765 in writing, authorize the purchase, which authority shall be noted  
766 on the minutes of the body at the next regular meeting thereafter.  
767 In those situations, a governing authority is not required to



768 obtain the approval of the Department of Finance and  
769 Administration. Following the purchase, the executive head of the  
770 state agency, or his designees, shall file with the Department of  
771 Finance and Administration, documentation of the purchase,  
772 including a description of the commodity purchased, the purchase  
773 price thereof and the source from whom it was purchased.

774 (ix) **Waste disposal facility construction**  
775 **contracts.** Construction of incinerators and other facilities for  
776 disposal of solid wastes in which products either generated  
777 therein, such as steam, or recovered therefrom, such as materials  
778 for recycling, are to be sold or otherwise disposed of; however,  
779 in constructing such facilities, a governing authority or agency  
780 shall publicly issue requests for proposals, advertised for in the  
781 same manner as provided herein for seeking bids for public  
782 construction projects, concerning the design, construction,  
783 ownership, operation and/or maintenance of such facilities,  
784 wherein such requests for proposals when issued shall contain  
785 terms and conditions relating to price, financial responsibility,  
786 technology, environmental compatibility, legal responsibilities  
787 and such other matters as are determined by the governing  
788 authority or agency to be appropriate for inclusion; and after  
789 responses to the request for proposals have been duly received,  
790 the governing authority or agency may select the most qualified  
791 proposal or proposals on the basis of price, technology and other  
792 relevant factors and from such proposals, but not limited to the





793 terms thereof, negotiate and enter contracts with one or more of  
794 the persons or firms submitting proposals.

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

798                   (xi) **Information technology products.** Purchases  
799 of information technology products made by governing authorities  
800 under the provisions of purchase schedules, or contracts executed  
801 or approved by the Mississippi Department of Information  
802 Technology Services and designated for use by governing  
803 authorities.

804                   (xii) **Energy efficiency services and equipment.**  
805 Energy efficiency services and equipment acquired by school  
806 districts, community and junior colleges, institutions of higher  
807 learning and state agencies or other applicable governmental  
808 entities on a shared-savings, lease or lease-purchase basis  
809 pursuant to Section 31-7-14.

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

814                   (xiv) **Library books and other reference materials.**  
815 Purchases by libraries or for libraries of books and periodicals;  
816 processed film, videocassette tapes, filmstrips and slides;  
817 recorded audiotapes, cassettes and diskettes; and any such items



818 as would be used for teaching, research or other information  
819 distribution; however, equipment such as projectors, recorders,  
820 audio or video equipment, and monitor televisions are not exempt  
821 under this subparagraph.

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

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

828 (xvii) **Multichannel interactive video systems.**  
829 From and after July 1, 1990, contracts by Mississippi Authority  
830 for Educational Television with any private educational  
831 institution or private nonprofit organization whose purposes are  
832 educational in regard to the construction, purchase, lease or  
833 lease-purchase of facilities and equipment and the employment of  
834 personnel for providing multichannel interactive video systems  
835 (ITSF) in the school districts of this state.

836 (xviii) **Purchases of prison industry products by**  
837 **the Department of Corrections, regional correctional facilities or**  
838 **privately owned prisons.** Purchases made by the Mississippi  
839 Department of Corrections, regional correctional facilities or  
840 privately owned prisons involving any item that is manufactured,  
841 processed, grown or produced from the state's prison industries.



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

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

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

856                   (xxii)   **Garbage, solid waste and sewage contracts.**  
857 Contracts for garbage collection or disposal, contracts for solid  
858 waste collection or disposal and contracts for sewage collection  
859 or disposal.

860                   (xxiii)   **Municipal water tank maintenance**  
861 **contracts.** Professional maintenance program contracts for the  
862 repair or maintenance of municipal water tanks, which provide  
863 professional services needed to maintain municipal water storage  
864 tanks for a fixed annual fee for a duration of two (2) or more  
865 years.



866                    (xxiv)    **Purchases of Mississippi Industries for the**  
867 **Blind products or services.** Purchases made by state agencies or  
868 governing authorities involving any item that is manufactured,  
869 processed or produced by, or any services provided by, the  
870 Mississippi Industries for the Blind.

871                    (xxv)    **Purchases of state-adopted textbooks.**  
872 Purchases of state-adopted textbooks by public school districts.

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

876                    (xxvii)    **Used heavy or specialized machinery or**  
877 **equipment for installation of soil and water conservation**  
878 **practices purchased at auction.** Used heavy or specialized  
879 machinery or equipment used for the installation and  
880 implementation of soil and water conservation practices or  
881 measures purchased subject to the restrictions provided in  
882 Sections 69-27-331 through 69-27-341. Any purchase by the State  
883 Soil and Water Conservation Commission under the exemption  
884 authorized by this subparagraph shall require advance  
885 authorization spread upon the minutes of the commission to include  
886 the listing of the item or items authorized to be purchased and  
887 the maximum bid authorized to be paid for each item or items.

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



891                   (xxix)   **Purchases made pursuant to qualified**  
892 **cooperative purchasing agreements.** Purchases made by certified  
893 purchasing offices of state agencies or governing authorities  
894 under cooperative purchasing agreements previously approved by the  
895 Office of Purchasing and Travel and established by or for any  
896 municipality, county, parish or state government or the federal  
897 government, provided that the notification to potential  
898 contractors includes a clause that sets forth the availability of  
899 the cooperative purchasing agreement to other governmental  
900 entities. Such purchases shall only be made if the use of the  
901 cooperative purchasing agreements is determined to be in the best  
902 interest of the governmental entity.

903                   (xxx)   **School yearbooks.** Purchases of school  
904 yearbooks by state agencies or governing authorities; however,  
905 state agencies and governing authorities shall use for these  
906 purchases the RFP process as set forth in the Mississippi  
907 Procurement Manual adopted by the Office of Purchasing and Travel.

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

911                   (xxxii)   **Toll roads and bridge construction**  
912 **projects.** Contracts entered into under the provisions of Section  
913 65-43-1 or 65-43-3.



914 (xxxiii) **Certain purchases under Section 57-1-221.**  
915 Contracts entered into pursuant to the provisions of Section  
916 57-1-221.

917 (xxxiv) **Certain transfers made pursuant to the**  
918 **provisions of Section 57-105-1(7).** Transfers of public property  
919 or facilities under Section 57-105-1(7) and construction related  
920 to such public property or facilities.

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

924 (xxxvi) **Certain purchases by an academic medical**  
925 **center or health sciences school.** Purchases by an academic  
926 medical center or health sciences school, as defined in Section  
927 37-115-50, of commodities that are used for clinical purposes and  
928 1. intended for use in the diagnosis of disease or other  
929 conditions or in the cure, mitigation, treatment or prevention of  
930 disease, and 2. medical devices, biological, drugs and  
931 radiation-emitting devices as defined by the United States Food  
932 and Drug Administration.

933 (xxxvii) **Certain purchases made under the Alyce G.**  
934 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi  
935 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi  
936 Lottery Law.

937 (xxxviii) **Certain purchases made by the Department**  
938 **of Health and the Department of Revenue.** Purchases made by the



939 Department of Health and the Department of Revenue solely for the  
940 purpose of fulfilling their respective responsibilities under the  
941 Mississippi Medical Cannabis Act. This subparagraph shall stand  
942 repealed on June 30, 2026.

943 (n) **Term contract authorization.** All contracts for the  
944 purchase of:

945 (i) All contracts for the purchase of commodities,  
946 equipment and public construction (including, but not limited to,  
947 repair and maintenance), may be let for periods of not more than  
948 sixty (60) months in advance, subject to applicable statutory  
949 provisions prohibiting the letting of contracts during specified  
950 periods near the end of terms of office. Term contracts for a  
951 period exceeding twenty-four (24) months shall also be subject to  
952 ratification or cancellation by governing authority boards taking  
953 office subsequent to the governing authority board entering the  
954 contract.

955 (ii) Bid proposals and contracts may include price  
956 adjustment clauses with relation to the cost to the contractor  
957 based upon a nationally published industry-wide or nationally  
958 published and recognized cost index. The cost index used in a  
959 price adjustment clause shall be determined by the Department of  
960 Finance and Administration for the state agencies and by the  
961 governing board for governing authorities. The bid proposal and  
962 contract documents utilizing a price adjustment clause shall  
963 contain the basis and method of adjusting unit prices for the



964 change in the cost of such commodities, equipment and public  
965 construction.

966           (o) **Purchase law violation prohibition and vendor**  
967 **penalty.** No contract or purchase as herein authorized shall be  
968 made for the purpose of circumventing the provisions of this  
969 section requiring competitive bids, nor shall it be lawful for any  
970 person or concern to submit individual invoices for amounts within  
971 those authorized for a contract or purchase where the actual value  
972 of the contract or commodity purchased exceeds the authorized  
973 amount and the invoices therefor are split so as to appear to be  
974 authorized as purchases for which competitive bids are not  
975 required. Submission of such invoices shall constitute a  
976 misdemeanor punishable by a fine of not less than Five Hundred  
977 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
978 or by imprisonment for thirty (30) days in the county jail, or  
979 both such fine and imprisonment. In addition, the claim or claims  
980 submitted shall be forfeited.

981           (p) **Electrical utility petroleum-based equipment**  
982 **purchase procedure.** When in response to a proper advertisement  
983 therefor, no bid firm as to price is submitted to an electric  
984 utility for power transformers, distribution transformers, power  
985 breakers, reclosers or other articles containing a petroleum  
986 product, the electric utility may accept the lowest and best bid  
987 therefor although the price is not firm.





988                    (q)    **Fuel management system bidding procedure.**    Any  
989 governing authority or agency of the state shall, before  
990 contracting for the services and products of a fuel management or  
991 fuel access system, enter into negotiations with not fewer than  
992 two (2) sellers of fuel management or fuel access systems for  
993 competitive written bids to provide the services and products for  
994 the systems. In the event that the governing authority or agency  
995 cannot locate two (2) sellers of such systems or cannot obtain  
996 bids from two (2) sellers of such systems, it shall show proof  
997 that it made a diligent, good-faith effort to locate and negotiate  
998 with two (2) sellers of such systems. Such proof shall include,  
999 but not be limited to, publications of a request for proposals and  
1000 letters soliciting negotiations and bids. For purposes of this  
1001 paragraph (q), a fuel management or fuel access system is an  
1002 automated system of acquiring fuel for vehicles as well as  
1003 management reports detailing fuel use by vehicles and drivers, and  
1004 the term "competitive written bid" shall have the meaning as  
1005 defined in paragraph (b) of this section. Governing authorities  
1006 and agencies shall be exempt from this process when contracting  
1007 for the services and products of fuel management or fuel access  
1008 systems under the terms of a state contract established by the  
1009 Office of Purchasing and Travel.

1010                    (r)    **Solid waste contract proposal procedure.**    Before  
1011 entering into any contract for garbage collection or disposal,  
1012 contract for solid waste collection or disposal or contract for



1013 sewage collection or disposal, which involves an expenditure of  
1014 more than Seventy-five Thousand Dollars (\$75,000.00), a governing  
1015 authority or agency shall issue publicly a request for proposals  
1016 concerning the specifications for such services which shall be  
1017 advertised for in the same manner as provided in this section for  
1018 seeking bids for purchases which involve an expenditure of more  
1019 than the amount provided in paragraph (c) of this section. Any  
1020 request for proposals when issued shall contain terms and  
1021 conditions relating to price, financial responsibility,  
1022 technology, legal responsibilities and other relevant factors as  
1023 are determined by the governing authority or agency to be  
1024 appropriate for inclusion; all factors determined relevant by the  
1025 governing authority or agency or required by this paragraph (r)  
1026 shall be duly included in the advertisement to elicit proposals.  
1027 After responses to the request for proposals have been duly  
1028 received, the governing authority or agency shall select the most  
1029 qualified proposal or proposals on the basis of price, technology  
1030 and other relevant factors and from such proposals, but not  
1031 limited to the terms thereof, negotiate and enter into contracts  
1032 with one or more of the persons or firms submitting proposals. If  
1033 the governing authority or agency deems none of the proposals to  
1034 be qualified or otherwise acceptable, the request for proposals  
1035 process may be reinitiated. Notwithstanding any other provisions  
1036 of this paragraph, where a county with at least thirty-five  
1037 thousand (35,000) nor more than forty thousand (40,000)



1038 population, according to the 1990 federal decennial census, owns  
1039 or operates a solid waste landfill, the governing authorities of  
1040 any other county or municipality may contract with the governing  
1041 authorities of the county owning or operating the landfill,  
1042 pursuant to a resolution duly adopted and spread upon the minutes  
1043 of each governing authority involved, for garbage or solid waste  
1044 collection or disposal services through contract negotiations.

1045           (s) **Minority set-aside authorization.** Notwithstanding  
1046 any provision of this section to the contrary, any agency or  
1047 governing authority, by order placed on its minutes, may, in its  
1048 discretion, set aside not more than twenty percent (20%) of its  
1049 anticipated annual expenditures for the purchase of commodities  
1050 from minority businesses; however, all such set-aside purchases  
1051 shall comply with all purchasing regulations promulgated by the  
1052 Department of Finance and Administration and shall be subject to  
1053 bid requirements under this section. Set-aside purchases for  
1054 which competitive bids are required shall be made from the lowest  
1055 and best minority business bidder. For the purposes of this  
1056 paragraph, the term "minority business" means a business which is  
1057 owned by a majority of persons who are United States citizens or  
1058 permanent resident aliens (as defined by the Immigration and  
1059 Naturalization Service) of the United States, and who are Asian,  
1060 Black, Hispanic or Native American, according to the following  
1061 definitions:



1062 (i) "Asian" means persons having origins in any of  
1063 the original people of the Far East, Southeast Asia, the Indian  
1064 subcontinent, or the Pacific Islands.

1065 (ii) "Black" means persons having origins in any  
1066 black racial group of Africa.

1067 (iii) "Hispanic" means persons of Spanish or  
1068 Portuguese culture with origins in Mexico, South or Central  
1069 America, or the Caribbean Islands, regardless of race.

1070 (iv) "Native American" means persons having  
1071 origins in any of the original people of North America, including  
1072 American Indians, Eskimos and Aleuts.

1073 (t) **Construction punch list restriction.** The  
1074 architect, engineer or other representative designated by the  
1075 agency or governing authority that is contracting for public  
1076 construction or renovation may prepare and submit to the  
1077 contractor only one (1) preliminary punch list of items that do  
1078 not meet the contract requirements at the time of substantial  
1079 completion and one (1) final list immediately before final  
1080 completion and final payment.

1081 (u) **Procurement of construction services by state**  
1082 **institutions of higher learning.** Contracts for privately financed  
1083 construction of auxiliary facilities on the campus of a state  
1084 institution of higher learning may be awarded by the Board of  
1085 Trustees of State Institutions of Higher Learning to the lowest  
1086 and best bidder, where sealed bids are solicited, or to the



1087 offeror whose proposal is determined to represent the best value  
1088 to the citizens of the State of Mississippi, where requests for  
1089 proposals are solicited.

1090 (v) **Insurability of bidders for public construction or**  
1091 **other public contracts.** In any solicitation for bids to perform  
1092 public construction or other public contracts to which this  
1093 section applies, including, but not limited to, contracts for  
1094 repair and maintenance, for which the contract will require  
1095 insurance coverage in an amount of not less than One Million  
1096 Dollars (\$1,000,000.00), bidders shall be permitted to either  
1097 submit proof of current insurance coverage in the specified amount  
1098 or demonstrate ability to obtain the required coverage amount of  
1099 insurance if the contract is awarded to the bidder. Proof of  
1100 insurance coverage shall be submitted within five (5) business  
1101 days from bid acceptance.

1102 (w) **Purchase authorization clarification.** Nothing in  
1103 this section shall be construed as authorizing any purchase not  
1104 authorized by law.

1105 (x) **Mississippi Regional Pre-Need Disaster Clean Up**  
1106 **Act.** (i) The Department of Finance and Administration shall  
1107 enter into nine (9) contracts for the pre-need purchase of labor,  
1108 services, work, materials, equipment, supplies or other personal  
1109 property for disaster-related solid waste collection, disposal or  
1110 monitoring. One (1) contract shall be entered into for each of



1111 the nine (9) Mississippi Emergency Management Association  
1112 districts:

- 1113 1. Coahoma, DeSoto, Grenada, Panola, Quitman,  
1114 Tallahatchie, Tate, Tunica and Yalobusha Counties;
- 1115 2. Alcorn, Benton, Itawamba, Lafayette, Lee,  
1116 Marshall, Pontotoc, Prentiss, Tippah, Tishomingo and Union  
1117 Counties;
- 1118 3. Attala, Bolivar, Carroll, Holmes,  
1119 Humphreys, Leflore, Montgomery, Sunflower and Washington Counties;
- 1120 4. Calhoun, Chickasaw, Choctaw, Clay,  
1121 Lowndes, Monroe, Noxubee, Oktibbeha, Webster and Winston Counties;
- 1122 5. Claiborne, Covich, Hinds, Issaquena,  
1123 Madison, Rankin, Sharkey, Simpson, Warren and Yazoo Counties;
- 1124 6. Clarke, Jasper, Kemper, Lauderdale, Leake,  
1125 Neshoba, Newton, Scott, and Smith Counties and the Mississippi  
1126 Band of Choctaw Indians;
- 1127 7. Adams, Amite, Franklin, Jefferson,  
1128 Lawrence, Lincoln, Pike, Walthall and Wilkinson Counties;
- 1129 8. Covington, Forrest, Greene, Jefferson  
1130 Davis, Jones, Lamar, Marion, Perry and Wayne Counties; and
- 1131 9. George, Hancock, Harrison, Jackson, Pearl  
1132 River and Stone Counties.

1133 Any such contract shall set forth the manner of awarding such  
1134 a contract, the method of payment, and any other matter deemed  
1135 necessary to carry out the purposes of the agreement. Such



1136 contract may be entered into only for a term of one (1) year, with  
1137 an option for an additional one-year extension after the  
1138 conclusion of the first year of the contract, and only after  
1139 having solicited bids or proposals, as appropriate, which shall be  
1140 publicly advertised by posting on a web page maintained by the  
1141 Department of Finance and Administration through submission of  
1142 such advertisement to the Mississippi Procurement Technical  
1143 Assistance Program under the Mississippi Development Authority.  
1144 The bid opening shall not occur until after the submission has  
1145 been posted for at least ten (10) consecutive days. The state's  
1146 share of expenditures for solid waste collection, disposal or  
1147 monitoring under any contract shall be appropriated and paid in  
1148 the manner set forth in the contract and in the same manner as for  
1149 other solid waste collection, disposal, or monitoring expenses of  
1150 the state. Any contract entered into under this paragraph shall  
1151 not be subject to the provisions of Section 17-13-11.

1152 (ii) Any board of supervisors of any county or any  
1153 governing authority of any municipality may opt in to the benefits  
1154 and services provided under the appropriate and relevant contract  
1155 established in subparagraph (i) of this paragraph at the time of a  
1156 disaster event in that county or municipality. At the time of opt  
1157 in, the county or municipality shall assume responsibility for  
1158 payment in full to the contractor for the disaster-related solid  
1159 waste collection, disposal or monitoring services provided.  
1160 Nothing in this subparagraph (ii) shall be construed as requiring



1161 a county or municipality to opt in to any such contract  
1162 established in subparagraph (i) of this paragraph.

1163 **SECTION 8.** This act shall take effect and be in force from  
1164 and after July 1, 2024.

