

By: Senator(s) Hopson

To: Accountability,
Efficiency, Transparency

SENATE BILL NO. 2882

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 EXEMPT STATE AGENCIES FROM THE PROCUREMENT AND BIDDING
3 REQUIREMENTS FOR PURCHASES RELATED TO MUSEUM EXHIBITS AND DISPLAY
4 ITEMS; TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972, TO
5 EXEMPT ANY PERSONAL OR PROFESSIONAL SERVICES CONTRACTS ENTERED
6 INTO BY A STATE AGENCY FOR THE DESIGN, OPERATION OR MAINTENANCE OF
7 MUSEUM EXHIBITS FOR THE PURVIEW OF THE PUBLIC PROCUREMENT REVIEW
8 BOARD; AND FOR RELATED PURPOSES.

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

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

12 31-7-13. All agencies and governing authorities shall
13 purchase their commodities and printing; contract for garbage
14 collection or disposal; contract for solid waste collection or
15 disposal; contract for sewage collection or disposal; contract for
16 public construction; and contract for rentals as herein provided.

17 (a) **Bidding procedure for purchases not over \$5,000.00.**
18 Purchases which do not involve an expenditure of more than Five
19 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
20 charges, may be made without advertising or otherwise requesting
21 competitive bids. However, nothing contained in this paragraph



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

25 (b) **Bidding procedure for purchases over \$5,000.00 but**
26 **not over \$75,000.00.** Purchases which involve an expenditure of
27 more than Five Thousand Dollars (\$5,000.00) but not more than
28 Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight
29 and shipping charges, may be made from the lowest and best bidder
30 without publishing or posting an advertisement for bids, provided
31 at least two (2) competitive written bids have been obtained. Any
32 state agency or community or junior college purchasing commodities
33 or procuring construction pursuant to this paragraph (b) may
34 authorize its purchasing agent, or his or her designee, to accept
35 the lowest competitive written bid under Seventy-five Thousand
36 Dollars (\$75,000.00). Any governing authority purchasing
37 commodities pursuant to this paragraph (b) may authorize its
38 purchasing agent, or his or her designee, with regard to governing
39 authorities other than counties, or its purchase clerk, or his or
40 her designee, with regard to counties, to accept the lowest and
41 best competitive written bid. Such authorization shall be made in
42 writing by the governing authority and shall be maintained on file
43 in the primary office of the agency and recorded in the official
44 minutes of the governing authority, as appropriate. The
45 purchasing agent or the purchase clerk, or his or her designee, as
46 the case may be, and not the governing authority, shall be liable



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

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

69 (i) **Publication requirement.**

70 1. Purchases which involve an expenditure of
71 more than Seventy-five Thousand Dollars (\$75,000.00), exclusive of



72 freight and shipping charges, may be made from the lowest and best
73 bidder after advertising for competitive bids once each week for
74 two (2) consecutive weeks in a regular newspaper published in the
75 county or municipality in which such agency or governing authority
76 is located. However, all American Recovery and Reinvestment Act
77 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
78 shall be bid. All references to American Recovery and
79 Reinvestment Act projects in this section shall not apply to
80 programs identified in Division B of the American Recovery and
81 Reinvestment Act.

82 2. Reverse auctions shall be the primary
83 method for receiving bids during the bidding process. If a
84 purchasing entity determines that a reverse auction is not in the
85 best interest of the state, then that determination must be
86 approved by the Public Procurement Review Board. The purchasing
87 entity shall submit a detailed explanation of why a reverse
88 auction would not be in the best interest of the state and present
89 an alternative process to be approved by the Public Procurement
90 Review Board. If the Public Procurement Review Board authorizes
91 the purchasing entity to solicit bids with a method other than
92 reverse auction, then the purchasing entity may designate the
93 other methods by which the bids will be received, including, but
94 not limited to, bids sealed in an envelope, bids received
95 electronically in a secure system, or bids received by any other
96 method that promotes open competition and has been approved by the



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

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



122 less than fifteen (15) working days after the last notice is
123 published and the notice for the purchase of such construction
124 shall be published once each week for two (2) consecutive weeks.
125 However, all American Recovery and Reinvestment Act projects in
126 excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid.
127 For any projects in excess of Twenty-five Thousand Dollars
128 (\$25,000.00) under the American Recovery and Reinvestment Act,
129 publication shall be made one (1) time and the bid opening for
130 construction projects shall not be less than ten (10) working days
131 after the date of the published notice. The notice of intention
132 to let contracts or purchase equipment shall state the time and
133 place at which bids shall be received, list the contracts to be
134 made or types of equipment or supplies to be purchased, and, if
135 all plans and/or specifications are not published, refer to the
136 plans and/or specifications on file. If there is no newspaper
137 published in the county or municipality, then such notice shall be
138 given by posting same at the courthouse, or for municipalities at
139 the city hall, and at two (2) other public places in the county or
140 municipality, and also by publication once each week for two (2)
141 consecutive weeks in some newspaper having a general circulation
142 in the county or municipality in the above-provided manner. On
143 the same date that the notice is submitted to the newspaper for
144 publication, the agency or governing authority involved shall mail
145 written notice to, or provide electronic notification to the main
146 office of the Mississippi Procurement Technical Assistance Program



147 under the Mississippi Development Authority that contains the same
148 information as that in the published notice. Submissions received
149 by the Mississippi Procurement Technical Assistance Program for
150 projects funded by the American Recovery and Reinvestment Act
151 shall be displayed on a separate and unique Internet web page
152 accessible to the public and maintained by the Mississippi
153 Development Authority for the Mississippi Procurement Technical
154 Assistance Program. Those American Recovery and Reinvestment Act
155 related submissions shall be publicly posted within twenty-four
156 (24) hours of receipt by the Mississippi Development Authority and
157 the bid opening shall not occur until the submission has been
158 posted for ten (10) consecutive days. The Department of Finance
159 and Administration shall maintain information regarding contracts
160 and other expenditures from the American Recovery and Reinvestment
161 Act, on a unique Internet web page accessible to the public. The
162 Department of Finance and Administration shall promulgate rules
163 regarding format, content and deadlines, unless otherwise
164 specified by law, of the posting of award notices, contract
165 execution and subsequent amendments, links to the contract
166 documents, expenditures against the awarded contracts and general
167 expenditures of funds from the American Recovery and Reinvestment
168 Act. Within one (1) working day of the contract award, the agency
169 or governing authority shall post to the designated web page
170 maintained by the Department of Finance and Administration, notice
171 of the award, including the award recipient, the contract amount,



172 and a brief summary of the contract in accordance with rules
173 promulgated by the department. Within one (1) working day of the
174 contract execution, the agency or governing authority shall post
175 to the designated web page maintained by the Department of Finance
176 and Administration a summary of the executed contract and make a
177 copy of the appropriately redacted contract documents available
178 for linking to the designated web page in accordance with the
179 rules promulgated by the department. The information provided by
180 the agency or governing authority shall be posted to the web page
181 for the duration of the American Recovery and Reinvestment Act
182 funding or until the project is completed, whichever is longer.

183 (ii) **Bidding process amendment procedure.** If all
184 plans and/or specifications are published in the notification,
185 then the plans and/or specifications may not be amended. If all
186 plans and/or specifications are not published in the notification,
187 then amendments to the plans/specifications, bid opening date, bid
188 opening time and place may be made, provided that the agency or
189 governing authority maintains a list of all prospective bidders
190 who are known to have received a copy of the bid documents and all
191 such prospective bidders are sent copies of all amendments. This
192 notification of amendments may be made via mail, facsimile,
193 electronic mail or other generally accepted method of information
194 distribution. No addendum to bid specifications may be issued
195 within two (2) working days of the time established for the
196 receipt of bids unless such addendum also amends the bid opening



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

199 (iii) **Filing requirement.** In all cases involving
200 governing authorities, before the notice shall be published or
201 posted, the plans or specifications for the construction or
202 equipment being sought shall be filed with the clerk of the board
203 of the governing authority. In addition to these requirements, a
204 bid file shall be established which shall indicate those vendors
205 to whom such solicitations and specifications were issued, and
206 such file shall also contain such information as is pertinent to
207 the bid.

208 (iv) **Specification restrictions.**

209 1. Specifications pertinent to such bidding
210 shall be written so as not to exclude comparable equipment of
211 domestic manufacture. However, if valid justification is
212 presented, the Department of Finance and Administration or the
213 board of a governing authority may approve a request for specific
214 equipment necessary to perform a specific job. Further, such
215 justification, when placed on the minutes of the board of a
216 governing authority, may serve as authority for that governing
217 authority to write specifications to require a specific item of
218 equipment needed to perform a specific job. In addition to these
219 requirements, from and after July 1, 1990, vendors of relocatable
220 classrooms and the specifications for the purchase of such
221 relocatable classrooms published by local school boards shall meet



222 all pertinent regulations of the State Board of Education,
223 including prior approval of such bid by the State Department of
224 Education.

225 2. Specifications for construction projects
226 may include an allowance for commodities, equipment, furniture,
227 construction materials or systems in which prospective bidders are
228 instructed to include in their bids specified amounts for such
229 items so long as the allowance items are acquired by the vendor in
230 a commercially reasonable manner and approved by the
231 agency/governing authority. Such acquisitions shall not be made
232 to circumvent the public purchasing laws.

233 (v) **Electronic bids.** Agencies and governing
234 authorities shall provide a secure electronic interactive system
235 for the submittal of bids requiring competitive bidding that shall
236 be an additional bidding option for those bidders who choose to
237 submit their bids electronically. The Department of Finance and
238 Administration shall provide, by regulation, the standards that
239 agencies must follow when receiving electronic bids. Agencies and
240 governing authorities shall make the appropriate provisions
241 necessary to accept electronic bids from those bidders who choose
242 to submit their bids electronically for all purchases requiring
243 competitive bidding under this section. Any special condition or
244 requirement for the electronic bid submission shall be specified
245 in the advertisement for bids required by this section. Agencies
246 or governing authorities that are currently without available



247 high-speed internet access shall be exempt from the requirement of
248 this subparagraph (v) until such time that high-speed internet
249 access becomes available. Any county having a population of less
250 than twenty thousand (20,000) shall be exempt from the provisions
251 of this subparagraph (v). Any municipality having a population of
252 less than ten thousand (10,000) shall be exempt from the
253 provisions of this subparagraph (v). The provisions of this
254 subparagraph (v) shall not require any bidder to submit bids
255 electronically. When construction bids are submitted
256 electronically, the requirement for including a certificate of
257 responsibility, or a statement that the bid enclosed does not
258 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
259 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
260 deemed in compliance with by including same as an attachment with
261 the electronic bid submittal.

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

263 (i) **Decision procedure.** Purchases may be made
264 from the lowest and best bidder. In determining the lowest and
265 best bid, freight and shipping charges shall be included.
266 Life-cycle costing, total cost bids, warranties, guaranteed
267 buy-back provisions and other relevant provisions may be included
268 in the best bid calculation. All best bid procedures for state
269 agencies must be in compliance with regulations established by the
270 Department of Finance and Administration. If any governing
271 authority accepts a bid other than the lowest bid actually



272 submitted, it shall place on its minutes detailed calculations and
273 a narrative summary showing that the accepted bid was determined
274 to be the lowest and best bid, including the dollar amount of the
275 accepted bid and the dollar amount of the lowest bid. No agency
276 or governing authority shall accept a bid based on items not
277 included in the specifications.

278 (ii) **Decision procedure for Certified Purchasing**
279 **Offices.** In addition to the decision procedure set forth in
280 subparagraph (i) of this paragraph (d), Certified Purchasing
281 Offices may also use the following procedure: Purchases may be
282 made from the bidder offering the best value. In determining the
283 best value bid, freight and shipping charges shall be included.
284 Life-cycle costing, total cost bids, warranties, guaranteed
285 buy-back provisions, documented previous experience, training
286 costs and other relevant provisions, including, but not limited
287 to, a bidder having a local office and inventory located within
288 the jurisdiction of the governing authority, may be included in
289 the best value calculation. This provision shall authorize
290 Certified Purchasing Offices to utilize a Request For Proposals
291 (RFP) process when purchasing commodities. All best value
292 procedures for state agencies must be in compliance with
293 regulations established by the Department of Finance and
294 Administration. No agency or governing authority shall accept a
295 bid based on items or criteria not included in the specifications.



296 (iii) **Decision procedure for Mississippi**
297 **Landmarks.** In addition to the decision procedure set forth in
298 subparagraph (i) of this paragraph (d), where purchase involves
299 renovation, restoration, or both, of the State Capitol Building or
300 any other historical building designated for at least five (5)
301 years as a Mississippi Landmark by the Board of Trustees of the
302 Department of Archives and History under the authority of Sections
303 39-7-7 and 39-7-11, the agency or governing authority may use the
304 following procedure: Purchases may be made from the lowest and
305 best prequalified bidder. Prequalification of bidders shall be
306 determined not less than fifteen (15) working days before the
307 first published notice of bid opening. Prequalification criteria
308 shall be limited to bidder's knowledge and experience in
309 historical restoration, preservation and renovation. In
310 determining the lowest and best bid, freight and shipping charges
311 shall be included. Life-cycle costing, total cost bids,
312 warranties, guaranteed buy-back provisions and other relevant
313 provisions may be included in the best bid calculation. All best
314 bid and prequalification procedures for state agencies must be in
315 compliance with regulations established by the Department of
316 Finance and Administration. If any governing authority accepts a
317 bid other than the lowest bid actually submitted, it shall place
318 on its minutes detailed calculations and narrative summary showing
319 that the accepted bid was determined to be the lowest and best
320 bid, including the dollar amount of the accepted bid and the



321 dollar amount of the lowest bid. No agency or governing authority
322 shall accept a bid based on items not included in the
323 specifications.

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

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

330 (e) **Lease-purchase authorization.** For the purposes of
331 this section, the term "equipment" shall mean equipment, furniture
332 and, if applicable, associated software and other applicable
333 direct costs associated with the acquisition. Any lease-purchase
334 of equipment which an agency is not required to lease-purchase
335 under the master lease-purchase program pursuant to Section
336 31-7-10 and any lease-purchase of equipment which a governing
337 authority elects to lease-purchase may be acquired by a
338 lease-purchase agreement under this paragraph (e). Lease-purchase
339 financing may also be obtained from the vendor or from a
340 third-party source after having solicited and obtained at least
341 two (2) written competitive bids, as defined in paragraph (b) of
342 this section, for such financing without advertising for such
343 bids. Solicitation for the bids for financing may occur before or
344 after acceptance of bids for the purchase of such equipment or,
345 where no such bids for purchase are required, at any time before



346 the purchase thereof. No such lease-purchase agreement shall be
347 for an annual rate of interest which is greater than the overall
348 maximum interest rate to maturity on general obligation
349 indebtedness permitted under Section 75-17-101, and the term of
350 such lease-purchase agreement shall not exceed the useful life of
351 equipment covered thereby as determined according to the upper
352 limit of the asset depreciation range (ADR) guidelines for the
353 Class Life Asset Depreciation Range System established by the
354 Internal Revenue Service pursuant to the United States Internal
355 Revenue Code and regulations thereunder as in effect on December
356 31, 1980, or comparable depreciation guidelines with respect to
357 any equipment not covered by ADR guidelines. Any lease-purchase
358 agreement entered into pursuant to this paragraph (e) may contain
359 any of the terms and conditions which a master lease-purchase
360 agreement may contain under the provisions of Section 31-7-10(5),
361 and shall contain an annual allocation dependency clause
362 substantially similar to that set forth in Section 31-7-10(8).
363 Each agency or governing authority entering into a lease-purchase
364 transaction pursuant to this paragraph (e) shall maintain with
365 respect to each such lease-purchase transaction the same
366 information as required to be maintained by the Department of
367 Finance and Administration pursuant to Section 31-7-10(13).
368 However, nothing contained in this section shall be construed to
369 permit agencies to acquire items of equipment with a total
370 acquisition cost in the aggregate of less than Ten Thousand



371 Dollars (\$10,000.00) by a single lease-purchase transaction. All
372 equipment, and the purchase thereof by any lessor, acquired by
373 lease-purchase under this paragraph and all lease-purchase
374 payments with respect thereto shall be exempt from all Mississippi
375 sales, use and ad valorem taxes. Interest paid on any
376 lease-purchase agreement under this section shall be exempt from
377 State of Mississippi income taxation.

378 (f) **Alternate bid authorization.** When necessary to
379 ensure a ready availability of commodities for public works and
380 the timely completion of public projects, no more than two (2)
381 alternate bids may be accepted by a governing authority for
382 commodities. No purchases may be made through the use of such
383 alternate * * * bid procedures unless the lowest and best bidder
384 cannot deliver the commodities contained in his or her bid. In
385 that event, purchases of such commodities may be made from one (1)
386 of the bidders whose bid was accepted as an alternate.

387 (g) **Construction contract change authorization.** In the
388 event a determination is made by an agency or governing authority
389 after a construction contract is let that changes or modifications
390 to the original contract are necessary or would better serve the
391 purpose of the agency or the governing authority, such agency or
392 governing authority may, in its discretion, order such changes
393 pertaining to the construction that are necessary under the
394 circumstances without the necessity of further public bids;
395 provided that such change shall be made in a commercially



396 reasonable manner and shall not be made to circumvent the public
397 purchasing statutes. In addition to any other authorized person,
398 the architect or engineer hired by an agency or governing
399 authority with respect to any public construction contract shall
400 have the authority, when granted by an agency or governing
401 authority, to authorize changes or modifications to the original
402 contract without the necessity of prior approval of the agency or
403 governing authority when any such change or modification is less
404 than one percent (1%) of the total contract amount. The agency or
405 governing authority may limit the number, manner or frequency of
406 such emergency changes or modifications.

407 (h) **Petroleum purchase alternative.** In addition to
408 other methods of purchasing authorized in this chapter, when any
409 agency or governing authority shall have a need for gas, diesel
410 fuel, oils and/or other petroleum products in excess of the amount
411 set forth in paragraph (a) of this section, such agency or
412 governing authority may purchase the commodity after having
413 solicited and obtained at least two (2) competitive written bids,
414 as defined in paragraph (b) of this section. If two (2)
415 competitive written bids are not obtained, the entity shall comply
416 with the procedures set forth in paragraph (c) of this section.
417 In the event any agency or governing authority shall have
418 advertised for bids for the purchase of gas, diesel fuel, oils and
419 other petroleum products and coal and no acceptable bids can be
420 obtained, such agency or governing authority is authorized and



421 directed to enter into any negotiations necessary to secure the
422 lowest and best contract available for the purchase of such
423 commodities.

424 (i) **Road construction petroleum products price**
425 **adjustment clause authorization.** Any agency or governing
426 authority authorized to enter into contracts for the construction,
427 maintenance, surfacing or repair of highways, roads or streets,
428 may include in its bid proposal and contract documents a price
429 adjustment clause with relation to the cost to the contractor,
430 including taxes, based upon an industry-wide cost index, of
431 petroleum products including asphalt used in the performance or
432 execution of the contract or in the production or manufacture of
433 materials for use in such performance. Such industry-wide index
434 shall be established and published monthly by the Mississippi
435 Department of Transportation with a copy thereof to be mailed,
436 upon request, to the clerks of the governing authority of each
437 municipality and the clerks of each board of supervisors
438 throughout the state. The price adjustment clause shall be based
439 on the cost of such petroleum products only and shall not include
440 any additional profit or overhead as part of the adjustment. The
441 bid proposals or document contracts shall contain the basis and
442 methods of adjusting unit prices for the change in the cost of
443 such petroleum products.

444 (j) **State agency emergency purchase procedure.** If the
445 governing board or the executive head, or his or her designees, of



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

463 If the governing board or the executive head, or his or her
464 designees, of any agency determines that an emergency exists in
465 regard to the purchase of any commodities or repair contracts, so
466 that the delay incident to giving opportunity for competitive
467 bidding would threaten the health or safety of any person, or the
468 preservation or protection of property, then the provisions in
469 this section for competitive bidding shall not apply, and any
470 officer or agent of the agency having general or specific



471 authority for making the purchase or repair contract shall approve
472 the bill presented for payment, and he or she shall certify in
473 writing from whom the purchase was made, or with whom the repair
474 contract was made.

475 Total purchases made under this paragraph (j) shall only be
476 for the purpose of meeting needs created by the emergency
477 situation. Following the emergency purchase, documentation of the
478 purchase, including a description of the commodity purchased, the
479 purchase price thereof and the nature of the emergency shall be
480 filed with the Department of Finance and Administration. Any
481 contract awarded pursuant to this paragraph (j) shall not exceed a
482 term of one (1) year.

483 Purchases under the grant program established under Section
484 37-68-7 in response to COVID-19 and the directive that school
485 districts create a distance learning plan and fulfill technology
486 needs expeditiously shall be deemed an emergency purchase for
487 purposes of this paragraph (j).

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

489 If the governing authority, or the governing authority acting
490 through its designee, shall determine that an emergency exists in
491 regard to the purchase of any commodities or repair contracts, so
492 that the delay incident to giving opportunity for competitive
493 bidding would be detrimental to the interest of the governing
494 authority, then the provisions herein for competitive bidding
495 shall not apply and any officer or agent of such governing



496 authority having general or special authority therefor in making
497 such purchase or repair shall approve the bill presented therefor,
498 and he or she shall certify in writing thereon from whom such
499 purchase was made, or with whom such a repair contract was made.
500 At the board meeting next following the emergency purchase or
501 repair contract, documentation of the purchase or repair contract,
502 including a description of the commodity purchased, the price
503 thereof and the nature of the emergency shall be presented to the
504 board and shall be placed on the minutes of the board of such
505 governing authority. Purchases under the grant program
506 established under Section 37-68-7 in response to COVID-19 and the
507 directive that school districts create a distance learning plan
508 and fulfill technology needs expeditiously shall be deemed an
509 emergency purchase for purposes of this paragraph (k).

510 (1) **Hospital purchase, lease-purchase and lease**
511 **authorization.**

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

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



521 the proper care of patients if, in its opinion, it is not
522 financially feasible to purchase the necessary equipment or
523 services. Any such contract for the lease of equipment or
524 services executed by the commissioners or board shall not exceed a
525 maximum of five (5) years' duration and shall include a
526 cancellation clause based on the unavailability of funds. If such
527 cancellation clause is exercised, there shall be no further
528 liability on the part of the lessee. Any such contract for the
529 lease of equipment or services executed on behalf of the
530 commissioners or board that complies with the provisions of this
531 subparagraph (ii) shall be excepted from the bid requirements set
532 forth in this section.

533 (m) **Exceptions from bidding requirements.** Excepted
534 from bid requirements are:

535 (i) **Purchasing agreements approved by department.**
536 Purchasing agreements, contracts and maximum price regulations
537 executed or approved by the Department of Finance and
538 Administration.

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



546 specific repairs made, parts identified by number and name,
547 supplies used in such repairs, and the number of hours of labor
548 and costs therefor shall be required for the payment for such
549 repairs.

550 (iii) **In-house equipment repairs.** Purchases of
551 parts for repairs to equipment, when such repairs are made by
552 personnel of the agency or governing authority; however, entire
553 assemblies, such as engines or transmissions, shall not be
554 included in this exemption when the entire assembly is being
555 replaced instead of being repaired.

556 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
557 of gravel or fill dirt which are to be removed and transported by
558 the purchaser.

559 (v) **Governmental equipment auctions.** Motor
560 vehicles or other equipment purchased from a federal agency or
561 authority, another governing authority or state agency of the
562 State of Mississippi, or any governing authority or state agency
563 of another state at a public auction held for the purpose of
564 disposing of such vehicles or other equipment. Any purchase by a
565 governing authority under the exemption authorized by this
566 subparagraph (v) shall require advance authorization spread upon
567 the minutes of the governing authority to include the listing of
568 the item or items authorized to be purchased and the maximum bid
569 authorized to be paid for each item or items.



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

590 (vii) **Perishable supplies or food.** Perishable
591 supplies or food purchased for use in connection with hospitals,
592 the school lunch programs, homemaking programs and for the feeding
593 of county or municipal prisoners.



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

612 (ix) **Waste disposal facility construction**
613 **contracts.** Construction of incinerators and other facilities for
614 disposal of solid wastes in which products either generated
615 therein, such as steam, or recovered therefrom, such as materials
616 for recycling, are to be sold or otherwise disposed of; however,
617 in constructing such facilities, a governing authority or agency
618 shall publicly issue requests for proposals, advertised for in the



619 same manner as provided herein for seeking bids for public
620 construction projects, concerning the design, construction,
621 ownership, operation and/or maintenance of such facilities,
622 wherein such requests for proposals when issued shall contain
623 terms and conditions relating to price, financial responsibility,
624 technology, environmental compatibility, legal responsibilities
625 and such other matters as are determined by the governing
626 authority or agency to be appropriate for inclusion; and after
627 responses to the request for proposals have been duly received,
628 the governing authority or agency may select the most qualified
629 proposal or proposals on the basis of price, technology and other
630 relevant factors and from such proposals, but not limited to the
631 terms thereof, negotiate and enter contracts with one or more of
632 the persons or firms submitting proposals.

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

636 (xi) **Information technology products.** Purchases
637 of information technology products made by governing authorities
638 under the provisions of purchase schedules, or contracts executed
639 or approved by the Mississippi Department of Information
640 Technology Services and designated for use by governing
641 authorities.

642 (xii) **Energy efficiency services and equipment.**
643 Energy efficiency services and equipment acquired by school



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

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

652 (xiv) **Library books and other reference materials.**
653 Purchases by libraries or for libraries of books and periodicals;
654 processed film, video cassette tapes, filmstrips and slides;
655 recorded audiotapes, cassettes and diskettes; and any such items
656 as would be used for teaching, research or other information
657 distribution; however, equipment such as projectors, recorders,
658 audio or video equipment, and monitor televisions are not exempt
659 under this subparagraph.

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

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

666 (xvii) **Multichannel interactive video systems.**
667 From and after July 1, 1990, contracts by Mississippi Authority
668 for Educational Television with any private educational



669 institution or private nonprofit organization whose purposes are
670 educational in regard to the construction, purchase, lease or
671 lease-purchase of facilities and equipment and the employment of
672 personnel for providing multichannel interactive video systems
673 (ITSF) in the school districts of this state.

674 (xviii) **Purchases of prison industry products by**
675 **the Department of Corrections, regional correctional facilities or**
676 **privately owned prisons.** Purchases made by the Mississippi
677 Department of Corrections, regional correctional facilities or
678 privately owned prisons involving any item that is manufactured,
679 processed, grown or produced from the state's prison industries.

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

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

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



694 (xxii) **Garbage, solid waste and sewage contracts.**
695 Contracts for garbage collection or disposal, contracts for solid
696 waste collection or disposal and contracts for sewage collection
697 or disposal.

698 (xxiii) **Municipal water tank maintenance**
699 **contracts.** Professional maintenance program contracts for the
700 repair or maintenance of municipal water tanks, which provide
701 professional services needed to maintain municipal water storage
702 tanks for a fixed annual fee for a duration of two (2) or more
703 years.

704 (xxiv) **Purchases of Mississippi Industries for the**
705 **Blind products or services.** Purchases made by state agencies or
706 governing authorities involving any item that is manufactured,
707 processed or produced by, or any services provided by, the
708 Mississippi Industries for the Blind.

709 (xxv) **Purchases of state-adopted textbooks.**
710 Purchases of state-adopted textbooks by public school districts.

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

714 (xxvii) **Used heavy or specialized machinery or**
715 **equipment for installation of soil and water conservation**
716 **practices purchased at auction.** Used heavy or specialized
717 machinery or equipment used for the installation and
718 implementation of soil and water conservation practices or



719 measures purchased subject to the restrictions provided in
720 Sections 69-27-331 through 69-27-341. Any purchase by the State
721 Soil and Water Conservation Commission under the exemption
722 authorized by this subparagraph shall require advance
723 authorization spread upon the minutes of the commission to include
724 the listing of the item or items authorized to be purchased and
725 the maximum bid authorized to be paid for each item * * *.

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

729 (xxix) **Purchases made pursuant to qualified**
730 **cooperative purchasing agreements.** Purchases made by certified
731 purchasing offices of state agencies or governing authorities
732 under cooperative purchasing agreements previously approved by the
733 Office of Purchasing and Travel and established by or for any
734 municipality, county, parish or state government or the federal
735 government, provided that the notification to potential
736 contractors includes a clause that sets forth the availability of
737 the cooperative purchasing agreement to other governmental
738 entities. Such purchases shall only be made if the use of the
739 cooperative purchasing agreements is determined to be in the best
740 interest of the governmental entity.

741 (xxx) **School yearbooks.** Purchases of school
742 yearbooks by state agencies or governing authorities; however,
743 state agencies and governing authorities shall use for these



744 purchases the RFP process as set forth in the Mississippi
745 Procurement Manual adopted by the Office of Purchasing and Travel.

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

749 (xxxiii) **Toll roads and bridge construction**
750 **projects.** Contracts entered into under the provisions of Section
751 65-43-1 or 65-43-3.

752 (xxxiiii) **Certain purchases under Section 57-1-221.**
753 Contracts entered into pursuant to the provisions of Section
754 57-1-221.

755 (xxxiv) **Certain transfers made pursuant to the**
756 **provisions of Section 57-105-1(7).** Transfers of public property
757 or facilities under Section 57-105-1(7) and construction related
758 to such public property or facilities.

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

762 (xxxvi) **Certain purchases by an academic medical**
763 **center or health sciences school.** Purchases by an academic
764 medical center or health sciences school, as defined in Section
765 37-115-50, of commodities that are used for clinical purposes and
766 1. intended for use in the diagnosis of disease or other
767 conditions or in the cure, mitigation, treatment or prevention of
768 disease, and 2. medical devices, biological, drugs and



769 radiation-emitting devices as defined by the United States Food
770 and Drug Administration.

771 (xxxvii) **Certain purchases made under the Alyce G.**
772 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi
773 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
774 Lottery Law.

775 (xxxviii) **Certain purchases made by the Department**
776 **of Health and the Department of Revenue.** Purchases made by the
777 Department of Health and the Department of Revenue solely for the
778 purpose of fulfilling their respective responsibilities under the
779 Mississippi Medical Cannabis Act. This subparagraph shall stand
780 repealed on June 30, 2026.

781 (xxxix) **Purchases made by state agencies related**
782 **to museum exhibits and items on display.** Purchases made by an
783 agency related to the fabrication, construction, installation or
784 refurbishing of museum exhibits as well as items for display
785 including, but not limited to, artifacts, replicas or
786 reproductions of artifacts, mannequins, motion pictures, still
787 photographs, paintings, sculptures, recorded audio content or
788 other creative works of art or expression regardless of the
789 medium.

790 (n) **Term contract authorization.** All contracts for the
791 purchase of:

792 (i) All contracts for the purchase of commodities,
793 equipment and public construction (including, but not limited to,



794 repair and maintenance), may be let for periods of not more than
795 sixty (60) months in advance, subject to applicable statutory
796 provisions prohibiting the letting of contracts during specified
797 periods near the end of terms of office. Term contracts for a
798 period exceeding twenty-four (24) months shall also be subject to
799 ratification or cancellation by governing authority boards taking
800 office subsequent to the governing authority board entering the
801 contract.

802 (ii) Bid proposals and contracts may include price
803 adjustment clauses with relation to the cost to the contractor
804 based upon a nationally published industry-wide or nationally
805 published and recognized cost index. The cost index used in a
806 price adjustment clause shall be determined by the Department of
807 Finance and Administration for the state agencies and by the
808 governing board for governing authorities. The bid proposal and
809 contract documents utilizing a price adjustment clause shall
810 contain the basis and method of adjusting unit prices for the
811 change in the cost of such commodities, equipment and public
812 construction.

813 (o) **Purchase law violation prohibition and vendor**
814 **penalty.** No contract or purchase as herein authorized shall be
815 made for the purpose of circumventing the provisions of this
816 section requiring competitive bids, nor shall it be lawful for any
817 person or concern to submit individual invoices for amounts within
818 those authorized for a contract or purchase where the actual value



819 of the contract or commodity purchased exceeds the authorized
820 amount and the invoices therefor are split so as to appear to be
821 authorized as purchases for which competitive bids are not
822 required. Submission of such invoices shall constitute a
823 misdemeanor punishable by a fine of not less than Five Hundred
824 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
825 or by imprisonment for thirty (30) days in the county jail, or
826 both such fine and imprisonment. In addition, the claim or claims
827 submitted shall be forfeited.

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

835 (q) **Fuel management system bidding procedure.** Any
836 governing authority or agency of the state shall, before
837 contracting for the services and products of a fuel management or
838 fuel access system, enter into negotiations with not fewer than
839 two (2) sellers of fuel management or fuel access systems for
840 competitive written bids to provide the services and products for
841 the systems. In the event that the governing authority or agency
842 cannot locate two (2) sellers of such systems or cannot obtain
843 bids from two (2) sellers of such systems, it shall show proof



844 that it made a diligent, good-faith effort to locate and negotiate
845 with two (2) sellers of such systems. Such proof shall include,
846 but not be limited to, publications of a request for proposals and
847 letters soliciting negotiations and bids. For purposes of this
848 paragraph (q), a fuel management or fuel access system is an
849 automated system of acquiring fuel for vehicles as well as
850 management reports detailing fuel use by vehicles and drivers, and
851 the term "competitive written bid" shall have the meaning as
852 defined in paragraph (b) of this section. Governing authorities
853 and agencies shall be exempt from this process when contracting
854 for the services and products of fuel management or fuel access
855 systems under the terms of a state contract established by the
856 Office of Purchasing and Travel.

857 (r) **Solid waste contract proposal procedure.** Before
858 entering into any contract for garbage collection or disposal,
859 contract for solid waste collection or disposal or contract for
860 sewage collection or disposal, which involves an expenditure of
861 more than Seventy-five Thousand Dollars (\$75,000.00), a governing
862 authority or agency shall issue publicly a request for proposals
863 concerning the specifications for such services which shall be
864 advertised for in the same manner as provided in this section for
865 seeking bids for purchases which involve an expenditure of more
866 than the amount provided in paragraph (c) of this section. Any
867 request for proposals when issued shall contain terms and
868 conditions relating to price, financial responsibility,



869 technology, legal responsibilities and other relevant factors as
870 are determined by the governing authority or agency to be
871 appropriate for inclusion; all factors determined relevant by the
872 governing authority or agency or required by this paragraph (r)
873 shall be duly included in the advertisement to elicit proposals.
874 After responses to the request for proposals have been duly
875 received, the governing authority or agency shall select the most
876 qualified proposal or proposals on the basis of price, technology
877 and other relevant factors and from such proposals, but not
878 limited to the terms thereof, negotiate and enter into contracts
879 with one or more of the persons or firms submitting proposals. If
880 the governing authority or agency deems none of the proposals to
881 be qualified or otherwise acceptable, the request for proposals
882 process may be reinitiated. Notwithstanding any other provisions
883 of this paragraph, where a county with at least thirty-five
884 thousand (35,000) nor more than forty thousand (40,000)
885 population, according to the 1990 federal decennial census, owns
886 or operates a solid waste landfill, the governing authorities of
887 any other county or municipality may contract with the governing
888 authorities of the county owning or operating the landfill,
889 pursuant to a resolution duly adopted and spread upon the minutes
890 of each governing authority involved, for garbage or solid waste
891 collection or disposal services through contract negotiations.

892 (s) **Minority set-aside authorization.** Notwithstanding
893 any provision of this section to the contrary, any agency or



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

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

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

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



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

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

928 (u) **Procurement of construction services by state**
929 **institutions of higher learning.** Contracts for privately financed
930 construction of auxiliary facilities on the campus of a state
931 institution of higher learning may be awarded by the Board of
932 Trustees of State Institutions of Higher Learning to the lowest
933 and best bidder, where sealed bids are solicited, or to the
934 offeror whose proposal is determined to represent the best value
935 to the citizens of the State of Mississippi, where requests for
936 proposals are solicited.

937 (v) **Insurability of bidders for public construction or**
938 **other public contracts.** In any solicitation for bids to perform
939 public construction or other public contracts to which this
940 section applies, including, but not limited to, contracts for
941 repair and maintenance, for which the contract will require



942 insurance coverage in an amount of not less than One Million
943 Dollars (\$1,000,000.00), bidders shall be permitted to either
944 submit proof of current insurance coverage in the specified amount
945 or demonstrate ability to obtain the required coverage amount of
946 insurance if the contract is awarded to the bidder. Proof of
947 insurance coverage shall be submitted within five (5) business
948 days from bid acceptance.

949 (w) **Purchase authorization clarification.** Nothing in
950 this section shall be construed as authorizing any purchase not
951 authorized by law.

952 (x) **Mississippi Regional Pre-Need Disaster Clean Up**
953 **Act.** (i) The Department of Finance and Administration shall
954 enter into nine (9) contracts for the pre-need purchase of labor,
955 services, work, materials, equipment, supplies or other personal
956 property for disaster-related solid waste collection, disposal or
957 monitoring. One (1) contract shall be entered into for each of
958 the nine (9) Mississippi Emergency Management Association
959 districts:

960 1. Coahoma, DeSoto, Grenada, Panola, Quitman,
961 Tallahatchie, Tate, Tunica and Yalobusha Counties;

962 2. Alcorn, Benton, Itawamba, Lafayette, Lee,
963 Marshall, Pontotoc, Prentiss, Tippah, Tishomingo and Union
964 Counties;

965 3. Attala, Bolivar, Carroll, Holmes,
966 Humphreys, Leflore, Montgomery, Sunflower and Washington Counties;



967 4. Calhoun, Chickasaw, Choctaw, Clay,
968 Lowndes, Monroe, Noxubee, Oktibbeha, Webster and Winston Counties;
969 5. Claiborne, Covich, Hinds, Issaquena,
970 Madison, Rankin, Sharkey, Simpson, Warren and Yazoo Counties;
971 6. Clarke, Jasper, Kemper, Lauderdale, Leake,
972 Neshoba, Newton, Scott, and Smith Counties and the Mississippi
973 Band of Choctaw Indians;
974 7. Adams, Amite, Franklin, Jefferson,
975 Lawrence, Lincoln, Pike, Walthall and Wilkinson Counties;
976 8. Covington, Forrest, Greene, Jefferson
977 Davis, Jones, Lamar, Marion, Perry and Wayne Counties; and
978 9. George, Hancock, Harrison, Jackson, Pearl
979 River and Stone Counties.

980 Any such contract shall set forth the manner of awarding such
981 a contract, the method of payment, and any other matter deemed
982 necessary to carry out the purposes of the agreement. Such
983 contract may be entered into only for a term of one (1) year, with
984 an option for an additional one-year extension after the
985 conclusion of the first year of the contract, and only after
986 having solicited bids or proposals, as appropriate, which shall be
987 publicly advertised by posting on a web page maintained by the
988 Department of Finance and Administration through submission of
989 such advertisement to the Mississippi Procurement Technical
990 Assistance Program under the Mississippi Development Authority.
991 The bid opening shall not occur until after the submission has



992 been posted for at least ten (10) consecutive days. The state's
993 share of expenditures for solid waste collection, disposal or
994 monitoring under any contract shall be appropriated and paid in
995 the manner set forth in the contract and in the same manner as for
996 other solid waste collection, disposal, or monitoring expenses of
997 the state. Any contract entered into under this paragraph shall
998 not be subject to the provisions of Section 17-13-11.

999 (ii) Any board of supervisors of any county or any
1000 governing authority of any municipality may opt into the benefits
1001 and services provided under the appropriate and relevant contract
1002 established in subparagraph (i) of this paragraph at the time of a
1003 disaster event in that county or municipality. At the time of
1004 opt-in, the county or municipality shall assume responsibility for
1005 payment in full to the contractor for the disaster-related solid
1006 waste collection, disposal or monitoring services provided.
1007 Nothing in this subparagraph (ii) shall be construed as requiring
1008 a county or municipality to opt into any such contract established
1009 in subparagraph (i) of this paragraph.

1010 **SECTION 2.** Section 27-104-7, Mississippi Code of 1972, is
1011 amended as follows:

1012 27-104-7. (1) (a) There is created the Public Procurement
1013 Review Board, which shall be reconstituted on January 1, 2018, and
1014 shall be composed of the following members:

1015 (i) Three (3) individuals appointed by the
1016 Governor with the advice and consent of the Senate;



1017 (ii) Two (2) individuals appointed by the
1018 Lieutenant Governor with the advice and consent of the Senate; and
1019 (iii) The Executive Director of the Department of
1020 Finance and Administration, serving as an ex officio and nonvoting
1021 member.

1022 (b) The initial terms of each appointee shall be as
1023 follows:

1024 (i) One (1) member appointed by the Governor to
1025 serve for a term ending on June 30, 2019;

1026 (ii) One (1) member appointed by the Governor to
1027 serve for a term ending on June 30, 2020;

1028 (iii) One (1) member appointed by the Governor to
1029 serve for a term ending on June 30, 2021;

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

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

1034 After the expiration of the initial terms, all appointed
1035 members' terms shall be for a period of four (4) years from the
1036 expiration date of the previous term, and until such time as the
1037 member's successor is duly appointed and qualified.

1038 (c) When appointing members to the Public Procurement
1039 Review Board, the Governor and Lieutenant Governor shall take into
1040 consideration persons who possess at least five (5) years of
1041 management experience in general business, health care or finance



1042 for an organization, corporation or other public or private
1043 entity. Any person, or any employee or owner of a company, who
1044 receives any grants, procurements or contracts that are subject to
1045 approval under this section shall not be appointed to the Public
1046 Procurement Review Board. Any person, or any employee or owner of
1047 a company, who is a principal of the source providing a personal
1048 or professional service shall not be appointed to the Public
1049 Procurement Review Board if the principal owns or controls a
1050 greater than five percent (5%) interest or has an ownership value
1051 of One Million Dollars (\$1,000,000.00) in the source's business,
1052 whichever is smaller. No member shall be an officer or employee
1053 of the State of Mississippi while serving as a voting member on
1054 the Public Procurement Review Board.

1055 (d) Members of the Public Procurement Review Board
1056 shall be entitled to per diem as authorized by Section 25-3-69 and
1057 travel reimbursement as authorized by Section 25-3-41.

1058 (e) The members of the Public Procurement Review Board
1059 shall elect a chair from among the membership, and he or she shall
1060 preside over the meetings of the board. The board shall annually
1061 elect a vice chair, who shall serve in the absence of the chair.
1062 No business shall be transacted, including the adoption of rules
1063 of procedure, without the presence of a quorum of the board.
1064 Three (3) members shall be a quorum. No action shall be valid
1065 unless approved by a majority of the members present and voting,
1066 entered upon the minutes of the board and signed by the chair.



1067 Necessary clerical and administrative support for the board shall
1068 be provided by the Department of Finance and Administration.
1069 Minutes shall be kept of the proceedings of each meeting, copies
1070 of which shall be filed on a monthly basis with the chairs of the
1071 Accountability, Efficiency and Transparency Committees of the
1072 Senate and House of Representatives and the chairs of the
1073 Appropriations Committees of the Senate and House of
1074 Representatives.

1075 (2) The Public Procurement Review Board shall have the
1076 following powers and responsibilities:

1077 (a) Approve all purchasing regulations governing the
1078 purchase or lease by any agency, as defined in Section 31-7-1, of
1079 commodities and equipment, except computer equipment acquired
1080 pursuant to Sections 25-53-1 through 25-53-29;

1081 (b) Adopt regulations governing the approval of
1082 contracts let for the construction and maintenance of state
1083 buildings and other state facilities as well as related contracts
1084 for architectural and engineering services.

1085 The provisions of this paragraph (b) shall not apply to such
1086 contracts involving buildings and other facilities of state
1087 institutions of higher learning which are self-administered as
1088 provided under this paragraph (b) or Section 37-101-15(m);

1089 (c) Adopt regulations governing any lease or rental
1090 agreement by any state agency or department, including any state
1091 agency financed entirely by federal funds, for space outside the



1092 buildings under the jurisdiction of the Department of Finance and
1093 Administration. These regulations shall require each agency
1094 requesting to lease such space to provide the following
1095 information that shall be published by the Department of Finance
1096 and Administration on its website: the agency to lease the space;
1097 the terms of the lease; the approximate square feet to be leased;
1098 the use for the space; a description of a suitable space; the
1099 general location desired for the leased space; the contact
1100 information for a person from the agency; the deadline date for
1101 the agency to have received a lease proposal; any other specific
1102 terms or conditions of the agency; and any other information
1103 deemed appropriate by the Division of Real Property Management of
1104 the Department of Finance and Administration or the Public
1105 Procurement Review Board. The information shall be provided
1106 sufficiently in advance of the time the space is needed to allow
1107 the Division of Real Property Management of the Department of
1108 Finance and Administration to review and preapprove the lease
1109 before the time for advertisement begins;

1110 (d) Adopt, in its discretion, regulations to set aside
1111 at least five percent (5%) of anticipated annual expenditures for
1112 the purchase of commodities from minority businesses; however, all
1113 such set-aside purchases shall comply with all purchasing
1114 regulations promulgated by the department and shall be subject to
1115 all bid requirements. Set-aside purchases for which competitive
1116 bids are required shall be made from the lowest and best minority



1117 business bidder; however, if no minority bid is available or if
1118 the minority bid is more than two percent (2%) higher than the
1119 lowest bid, then bids shall be accepted and awarded to the lowest
1120 and best bidder. However, the provisions in this paragraph shall
1121 not be construed to prohibit the rejection of a bid when only one
1122 (1) bid is received. Such rejection shall be placed in the
1123 minutes. For the purposes of this paragraph, the term "minority
1124 business" means a business which is owned by a person who is a
1125 citizen or lawful permanent resident of the United States and who
1126 is:

1127 (i) Black: having origins in any of the black
1128 racial groups of Africa;

1129 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
1130 Central or South American, or other Spanish or Portuguese culture
1131 or origin regardless of race;

1132 (iii) Asian-American: having origins in any of
1133 the original people of the Far East, Southeast Asia, the Indian
1134 subcontinent, or the Pacific Islands;

1135 (iv) American Indian or Alaskan Native: having
1136 origins in any of the original people of North America; or

1137 (v) Female;

1138 (e) In consultation with and approval by the Chairs of
1139 the Senate and House Public Property Committees, approve leases,
1140 for a term not to exceed eighteen (18) months, entered into by
1141 state agencies for the purpose of providing parking arrangements



1142 for state employees who work in the Woolfolk Building, the Carroll
1143 Gartin Justice Building or the Walter Sillers Office Building;

1144 (f) (i) Except as otherwise provided in subparagraph
1145 (ii) of this paragraph, promulgate rules and regulations governing
1146 the solicitation and selection of contractual services personnel,
1147 including personal and professional services contracts for any
1148 form of consulting, policy analysis, public relations, marketing,
1149 public affairs, legislative advocacy services or any other
1150 contract that the board deems appropriate for oversight, with the
1151 exception of:

1152 1. Any personal service contracts entered
1153 into by any agency that employs only nonstate service employees as
1154 defined in Section 25-9-107(c);

1155 2. Any personal service contracts entered
1156 into for computer or information technology-related services
1157 governed by the Mississippi Department of Information Technology
1158 Services;

1159 3. Any personal service contracts entered
1160 into by the individual state institutions of higher learning;

1161 4. Any personal service contracts entered
1162 into by the Mississippi Department of Transportation;

1163 5. Any personal service contracts entered
1164 into by the Department of Human Services through June 30, 2019,
1165 which the Executive Director of the Department of Human Services



1166 determines would be useful in establishing and operating the
1167 Department of Child Protection Services;

1168 6. Any personal service contracts entered
1169 into by the Department of Child Protection Services through June
1170 30, 2019;

1171 7. Any contracts for entertainers and/or
1172 performers at the Mississippi State Fairgrounds entered into by
1173 the Mississippi Fair Commission;

1174 8. Any contracts entered into by the
1175 Department of Finance and Administration when procuring aircraft
1176 maintenance, parts, equipment and/or services;

1177 9. Any contract entered into by the
1178 Department of Public Safety for service on specialized equipment
1179 and/or software required for the operation of such specialized
1180 equipment for use by the Office of Forensics Laboratories;

1181 10. Any personal or professional service
1182 contract entered into by the Mississippi Department of Health or
1183 the Department of Revenue solely in connection with their
1184 respective responsibilities under the Mississippi Medical Cannabis
1185 Act from February 2, 2022, through June 30, 2026;

1186 11. Any contract for attorney, accountant,
1187 actuary auditor, architect, engineer, anatomical pathologist, or
1188 utility rate expert services;

1189 12. Any personal service contracts approved
1190 by the Executive Director of the Department of Finance and



1191 Administration and entered into by the Coordinator of Mental
1192 Health Accessibility through June 30, 2022;

1193 13. Any personal or professional services
1194 contract entered into by the State Department of Health in
1195 carrying out its responsibilities under the ARPA Rural Water
1196 Associations Infrastructure Grant Program through June 30,
1197 2026; * * *

1198 14. * * * Any personal or professional
1199 services contract entered into by the Mississippi Department of
1200 Environmental Quality in carrying out its responsibilities under
1201 the Mississippi Municipality and County Water Infrastructure Grant
1202 Program Act of 2022, through June 30, 2026 * * *; and

1203 15. Any personal or professional service
1204 contract entered into by an agency for the design, operation or
1205 maintenance of museum exhibits.

1206 Any such rules and regulations shall provide for maintaining
1207 continuous internal audit covering the activities of such agency
1208 affecting its revenue and expenditures as required under Section
1209 7-7-3(6) (d). Any rules and regulation changes related to personal
1210 and professional services contracts that the Public Procurement
1211 Review Board may propose shall be submitted to the Chairs of the
1212 Accountability, Efficiency and Transparency Committees of the
1213 Senate and House of Representatives and the Chairs of the
1214 Appropriation Committees of the Senate and House of
1215 Representatives at least fifteen (15) days before the board votes



1216 on the proposed changes, and those rules and regulation changes,
1217 if adopted, shall be promulgated in accordance with the
1218 Mississippi Administrative Procedures Act.

1219 (ii) From and after July 1, 2024, the Public
1220 Procurement Review Board shall promulgate rules and regulations
1221 that require the Department of Finance and Administration to
1222 conduct personal and professional services solicitations as
1223 provided in subparagraph (i) of this paragraph for those services
1224 in excess of Seventy-five Thousand Dollars (\$75,000.00) for the
1225 Department of Marine Resources, the Department of Wildlife,
1226 Fisheries and Parks, the Mississippi Emergency Management Agency
1227 and the Mississippi Development Authority, with assistance to be
1228 provided from these entities. Any powers that have been conferred
1229 upon agencies in order to comply with the provisions of this
1230 section for personal and professional services solicitations shall
1231 be conferred upon the Department of Finance and Administration to
1232 conduct personal and professional services solicitations for the
1233 Department of Marine Resources, the Department of Wildlife,
1234 Fisheries and Parks, the Mississippi Emergency Management Agency
1235 and the Mississippi Development Authority for those services in
1236 excess of Seventy-five Thousand Dollars (\$75,000.00). The
1237 Department of Finance and Administration shall make any
1238 submissions that are required to be made by other agencies to the
1239 Public Procurement Review Board for the Department of Marine
1240 Resources, the Department of Wildlife, Fisheries and Parks, the



1241 Mississippi Emergency Management Agency and the Mississippi
1242 Development Authority.

1243 The provisions of this subparagraph (ii) shall stand repealed
1244 on June 30, 2027;

1245 (g) Approve all personal and professional services
1246 contracts involving the expenditures of funds in excess of
1247 Seventy-five Thousand Dollars (\$75,000.00), except as provided in
1248 paragraph (f) of this subsection (2) and in subsection (8);

1249 (h) Develop mandatory standards with respect to
1250 contractual services personnel that require invitations for public
1251 bid, requests for proposals, record keeping and financial
1252 responsibility of contractors. The Public Procurement Review
1253 Board shall, unless exempted under this paragraph (h) or under
1254 paragraph (i) or (o) of this subsection (2), require the agency
1255 involved to submit the procurement to a competitive procurement
1256 process, and may reserve the right to reject any or all resulting
1257 procurements;

1258 (i) Prescribe certain circumstances by which agency
1259 heads may enter into contracts for personal and professional
1260 services without receiving prior approval from the Public
1261 Procurement Review Board. The Public Procurement Review Board may
1262 establish a preapproved list of providers of various personal and
1263 professional services for set prices with which state agencies may
1264 contract without bidding or prior approval from the board;



1265 (i) Agency requirements may be fulfilled by
1266 procuring services performed incident to the state's own programs.
1267 The agency head shall determine in writing whether the price
1268 represents a fair market value for the services. When the
1269 procurements are made from other governmental entities, the
1270 private sector need not be solicited; however, these contracts
1271 shall still be submitted for approval to the Public Procurement
1272 Review Board.

1273 (ii) Contracts between two (2) state agencies,
1274 both under Public Procurement Review Board purview, shall not
1275 require Public Procurement Review Board approval. However, the
1276 contracts shall still be entered into the enterprise resource
1277 planning system;

1278 (j) Provide standards for the issuance of requests for
1279 proposals, the evaluation of proposals received, consideration of
1280 costs and quality of services proposed, contract negotiations, the
1281 administrative monitoring of contract performance by the agency
1282 and successful steps in terminating a contract;

1283 (k) Present recommendations for governmental
1284 privatization and to evaluate privatization proposals submitted by
1285 any state agency;

1286 (l) Authorize personal and professional service
1287 contracts to be effective for more than one (1) year provided a
1288 funding condition is included in any such multiple-year contract,
1289 except the State Board of Education, which shall have the



1290 authority to enter into contractual agreements for student
1291 assessment for a period up to ten (10) years. The State Board of
1292 Education shall procure these services in accordance with the
1293 Public Procurement Review Board procurement regulations;

1294 (m) Request the State Auditor to conduct a performance
1295 audit on any personal or professional service contract;

1296 (n) Prepare an annual report to the Legislature
1297 concerning the issuance of personal and professional services
1298 contracts during the previous year, collecting any necessary
1299 information from state agencies in making such report;

1300 (o) Develop and implement the following standards and
1301 procedures for the approval of any sole source contract for
1302 personal and professional services regardless of the value of the
1303 procurement:

1304 (i) For the purposes of this paragraph (o), the
1305 term "sole source" means only one (1) source is available that can
1306 provide the required personal or professional service.

1307 (ii) An agency that has been issued a binding,
1308 valid court order mandating that a particular source or provider
1309 must be used for the required service must include a copy of the
1310 applicable court order in all future sole source contract reviews
1311 for the particular personal or professional service referenced in
1312 the court order.

1313 (iii) Any agency alleging to have a sole source
1314 for any personal or professional service, other than those



1315 exempted under paragraph (f) of this subsection (2) and subsection
1316 (8), shall publish on the procurement portal website established
1317 by Sections 25-53-151 and 27-104-165, for at least fourteen (14)
1318 days, the terms of the proposed contract for those services. In
1319 addition, the publication shall include, but is not limited to,
1320 the following information:

1321 1. The personal or professional service
1322 offered in the contract;

1323 2. An explanation of why the personal or
1324 professional service is the only one (1) that can meet the needs
1325 of the agency;

1326 3. An explanation of why the source is the
1327 only person or entity that can provide the required personal or
1328 professional service;

1329 4. An explanation of why the amount to be
1330 expended for the personal or professional service is reasonable;
1331 and

1332 5. The efforts that the agency went through
1333 to obtain the best possible price for the personal or professional
1334 service.

1335 (iv) If any person or entity objects and proposes
1336 that the personal or professional service published under
1337 subparagraph (iii) of this paragraph (o) is not a sole source
1338 service and can be provided by another person or entity, then the
1339 objecting person or entity shall notify the Public Procurement



1340 Review Board and the agency that published the proposed sole
1341 source contract with a detailed explanation of why the personal or
1342 professional service is not a sole source service.

1343 (v) 1. If the agency determines after review that
1344 the personal or professional service in the proposed sole source
1345 contract can be provided by another person or entity, then the
1346 agency must withdraw the sole source contract publication from the
1347 procurement portal website and submit the procurement of the
1348 personal or professional service to an advertised competitive bid
1349 or selection process.

1350 2. If the agency determines after review that
1351 there is only one (1) source for the required personal or
1352 professional service, then the agency may appeal to the Public
1353 Procurement Review Board. The agency has the burden of proving
1354 that the personal or professional service is only provided by one
1355 (1) source.

1356 3. If the Public Procurement Review Board has
1357 any reasonable doubt as to whether the personal or professional
1358 service can only be provided by one (1) source, then the agency
1359 must submit the procurement of the personal or professional
1360 service to an advertised competitive bid or selection process. No
1361 action taken by the Public Procurement Review Board in this appeal
1362 process shall be valid unless approved by a majority of the
1363 members of the Public Procurement Review Board present and voting.



1364 (vi) The Public Procurement Review Board shall
1365 prepare and submit a quarterly report to the House of
1366 Representatives and Senate Accountability, Efficiency and
1367 Transparency Committees that details the sole source contracts
1368 presented to the Public Procurement Review Board and the reasons
1369 that the Public Procurement Review Board approved or rejected each
1370 contract. These quarterly reports shall also include the
1371 documentation and memoranda required in subsection (4) of this
1372 section. An agency that submitted a sole source contract shall be
1373 prepared to explain the sole source contract to each committee by
1374 December 15 of each year upon request by the committee;

1375 (p) Assess any fines and administrative penalties
1376 provided for in Sections 31-7-401 through 31-7-423.

1377 (3) All submissions shall be made sufficiently in advance of
1378 each monthly meeting of the Public Procurement Review Board as
1379 prescribed by the Public Procurement Review Board. If the Public
1380 Procurement Review Board rejects any contract submitted for review
1381 or approval, the Public Procurement Review Board shall clearly set
1382 out the reasons for its action, including, but not limited to, the
1383 policy that the agency has violated in its submitted contract and
1384 any corrective actions that the agency may take to amend the
1385 contract to comply with the rules and regulations of the Public
1386 Procurement Review Board.

1387 (4) All sole source contracts for personal and professional
1388 services awarded by state agencies, other than those exempted



1389 under Section 27-104-7(2) (f) and (8), whether approved by an
1390 agency head or the Public Procurement Review Board, shall contain
1391 in the procurement file a written determination for the approval,
1392 using a request form furnished by the Public Procurement Review
1393 Board. The written determination shall document the basis for the
1394 determination, including any market analysis conducted in order to
1395 ensure that the service required was practicably available from
1396 only one (1) source. A memorandum shall accompany the request
1397 form and address the following four (4) points:

1398 (a) Explanation of why this service is the only service
1399 that can meet the needs of the purchasing agency;

1400 (b) Explanation of why this vendor is the only
1401 practicably available source from which to obtain this service;

1402 (c) Explanation of why the price is considered
1403 reasonable; and

1404 (d) Description of the efforts that were made to
1405 conduct a noncompetitive negotiation to get the best possible
1406 price for the taxpayers.

1407 (5) In conjunction with the State Personnel Board, the
1408 Public Procurement Review Board shall develop and promulgate rules
1409 and regulations to define the allowable legal relationship between
1410 contract employees and the contracting departments, agencies and
1411 institutions of state government under the jurisdiction of the
1412 State Personnel Board, in compliance with the applicable rules and
1413 regulations of the federal Internal Revenue Service (IRS) for



1414 federal employment tax purposes. Under these regulations, the
1415 usual common law rules are applicable to determine and require
1416 that such worker is an independent contractor and not an employee,
1417 requiring evidence of lawful behavioral control, lawful financial
1418 control and lawful relationship of the parties. Any state
1419 department, agency or institution shall only be authorized to
1420 contract for personnel services in compliance with those
1421 regulations.

1422 (6) No member of the Public Procurement Review Board shall
1423 use his or her official authority or influence to coerce, by
1424 threat of discharge from employment, or otherwise, the purchase of
1425 commodities, the contracting for personal or professional
1426 services, or the contracting for public construction under this
1427 chapter.

1428 (7) Notwithstanding any other laws or rules to the contrary,
1429 the provisions of subsection (2) of this section shall not be
1430 applicable to the Mississippi State Port Authority at Gulfport.

1431 (8) Nothing in this section shall impair or limit the
1432 authority of the Board of Trustees of the Public Employees'
1433 Retirement System to enter into any personal or professional
1434 services contracts directly related to their constitutional
1435 obligation to manage the trust funds, including, but not limited
1436 to, actuarial, custodial banks, cash management, investment
1437 consultant and investment management contracts. Nothing in this
1438 section shall impair or limit the authority of the State Treasurer



1439 to enter into any personal or professional services contracts
1440 involving the management of trust funds, including, but not
1441 limited to, actuarial, custodial banks, cash management,
1442 investment consultant and investment management contracts.

1443 (9) Through December 31, 2024, the provisions of this
1444 section related to rental agreements or leasing of real property
1445 for the purpose of conducting agency business shall not apply to
1446 the Office of Workforce Development created in Section 37-153-7.

1447 **SECTION 3.** This act shall take effect and be in force from
1448 and after July 1, 2024.

