

By: Representatives Bell (21st), McLean

To: Workforce Development

HOUSE BILL NO. 19

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE REVERSE AUCTION METHOD FOR RECEIVING BIDS TO
3 DIFFERENTIATE BETWEEN AGENCIES AND GOVERNING AUTHORITIES; TO
4 PROVIDE THAT IF AN AGENCY DETERMINES THAT A REVERSE AUCTION IS NOT
5 IN THE BEST INTEREST OF THE AGENCY, THEN THAT DETERMINATION MUST
6 BE APPROVED BY THE PUBLIC PROCUREMENT REVIEW BOARD; TO PROVIDE
7 THAT IF A GOVERNING AUTHORITY DETERMINES THAT A REVERSE AUCTION IS
8 NOT IN THE BEST INTEREST OF THE GOVERNING AUTHORITY, THEN THAT
9 DETERMINATION MUST BE APPROVED BY THE GOVERNING BOARD OF THE
10 GOVERNING AUTHORITY; TO PROVIDE THAT THE AGENCY AND GOVERNING
11 AUTHORITY MUST SUBMIT AN EXPLANATION AS TO WHY A REVERSE AUCTION
12 IS NOT IN THE BEST INTEREST OF THE AGENCY OR GOVERNING AUTHORITY;
13 AND FOR RELATED PURPOSES.

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

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

17 31-7-13. All agencies and governing authorities shall
18 purchase their commodities and printing; contract for garbage
19 collection or disposal; contract for solid waste collection or
20 disposal; contract for sewage collection or disposal; contract for
21 public construction; and contract for rentals as herein provided.

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

23 Purchases which do not involve an expenditure of more than Five



24 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
25 charges, may be made without advertising or otherwise requesting
26 competitive bids. However, nothing contained in this paragraph
27 (a) shall be construed to prohibit any agency or governing
28 authority from establishing procedures which require competitive
29 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

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



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

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



(i) **Publication requirement.**

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

2. Reverse auctions shall be the primary method for receiving bids during the bidding process. If * * * an agency or governing authority determines that a reverse auction is not in the best interest of the * * * agency or governing authority, then with respect to the agency, that determination must be approved by the Public Procurement Review Board, and with respect to the governing authority, that determination must be approved by the governing body of the governing authority. * * * An agency shall submit a detailed explanation of why a reverse auction would not be in the best interest of the * * * agency and present an alternative process to be approved by the Public Procurement Review Board. A governing authority shall make



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



individual public schools, including public charter schools and public school districts, only when purchasing copyrighted educational supplemental materials and software as a service product. For such purchases, a local school board may authorize a purchasing entity in its jurisdiction to use a Request for Qualifications which promotes open competition and meets the requirements of the Office of Purchasing and Travel.

3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Seventy-five Thousand Dollars (\$75,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some



newspaper having a general circulation in the county or municipality in the above-provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice. Within one (1) working day of the contract award, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration, notice of the award, including the award recipient, the contract amount, and a brief summary of the contract in accordance with rules promulgated by the department. Within one (1) working day of the contract execution, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration a summary of the executed contract and make a copy of the appropriately redacted contract documents available for linking to the designated web page in accordance with the rules promulgated by the department. The information provided by the agency or governing authority shall be posted to the web page until the project is completed.

4. Agencies and governing authorities using federal funds for the procurement of any good or service, including exempt personal and professional services, must comply



with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards - Subpart D - Post Federal Award Requirements Procurement Standards, in accordance with 2 CFR 200.317 through 2 CFR 200.327.

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

(iii) **Filing requirement.** In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority. In addition to these requirements, a



bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were issued, and such file shall also contain such information as is pertinent to the bid.

(iv) **Specification restrictions.**

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

2. Specifications for construction projects may include an allowance for commodities, equipment, furniture, construction materials or systems in which prospective bidders are instructed to include in their bids specified amounts for such



items so long as the allowance items are acquired by the vendor in a commercially reasonable manner and approved by the agency/governing authority. Such acquisitions shall not be made to circumvent the public purchasing laws.

(v) **Electronic bids.** Agencies and governing authorities shall provide a secure electronic interactive system for the submittal of bids requiring competitive bidding that shall be an additional bidding option for those bidders who choose to submit their bids electronically. The Department of Finance and Administration shall provide, by regulation, the standards that agencies must follow when receiving electronic bids. Agencies and governing authorities shall make the appropriate provisions necessary to accept electronic bids from those bidders who choose to submit their bids electronically for all purchases requiring competitive bidding under this section. Any special condition or requirement for the electronic bid submission shall be specified in the advertisement for bids required by this section. Agencies or governing authorities that are currently without available high speed Internet access shall be exempt from the requirement of this subparagraph (v) until such time that high speed Internet access becomes available. Any county having a population of less than twenty thousand (20,000) shall be exempt from the provisions of this subparagraph (v). Any municipality having a population of less than ten thousand (10,000) shall be exempt from the provisions of this subparagraph (v). The provisions of this



subparagraph (v) shall not require any bidder to submit bids electronically. When construction bids are submitted electronically, the requirement for including a certificate of responsibility, or a statement that the bid enclosed does not exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the bid envelope as indicated in Section 31-3-21(1) and (2) shall be deemed in compliance with by including same as an attachment with the electronic bid submittal.

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

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



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

291 (iii) **Decision procedure for Mississippi**
292 **Landmarks.** In addition to the decision procedure set forth in
293 subparagraph (i) of this paragraph (d), where purchase involves
294 renovation, restoration, or both, of the State Capitol Building or
295 any other historical building designated for at least five (5)
296 years as a Mississippi Landmark by the Board of Trustees of the
297 Department of Archives and History under the authority of Sections



39-7-7 and 39-7-11, the agency or governing authority may use the following procedure: Purchases may be made from the lowest and best prequalified bidder. Prequalification of bidders shall be determined not less than fifteen (15) working days before the first published notice of bid opening. Prequalification criteria shall be limited to bidder's knowledge and experience in historical restoration, preservation and renovation. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid and prequalification procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

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

If the lowest and best bid is not more than ten percent (10%) above the amount of funds allocated for a public construction or renovation project, then the agency or governing authority shall



be permitted to negotiate with the lowest bidder in order to enter into a contract for an amount not to exceed the funds allocated.

(e) **Lease-purchase authorization.** For the purposes of this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of equipment covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the



348 Class Life Asset Depreciation Range System established by the
349 Internal Revenue Service pursuant to the United States Internal
350 Revenue Code and regulations thereunder as in effect on December
351 31, 1980, or comparable depreciation guidelines with respect to
352 any equipment not covered by ADR guidelines. Any lease-purchase
353 agreement entered into pursuant to this paragraph (e) may contain
354 any of the terms and conditions which a master lease-purchase
355 agreement may contain under the provisions of Section 31-7-10(5),
356 and shall contain an annual allocation dependency clause
357 substantially similar to that set forth in Section 31-7-10(8).
358 Each agency or governing authority entering into a lease-purchase
359 transaction pursuant to this paragraph (e) shall maintain with
360 respect to each such lease-purchase transaction the same
361 information as required to be maintained by the Department of
362 Finance and Administration pursuant to Section 31-7-10(13).
363 However, nothing contained in this section shall be construed to
364 permit agencies to acquire items of equipment with a total
365 acquisition cost in the aggregate of less than Ten Thousand
366 Dollars (\$10,000.00) by a single lease-purchase transaction. All
367 equipment, and the purchase thereof by any lessor, acquired by
368 lease-purchase under this paragraph and all lease-purchase
369 payments with respect thereto shall be exempt from all Mississippi
370 sales, use and ad valorem taxes. Interest paid on any
371 lease-purchase agreement under this section shall be exempt from
372 State of Mississippi income taxation.



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

382 (g) **Construction contract change authorization.** In the
383 event a determination is made by an agency or governing authority
384 after a construction contract is let that changes or modifications
385 to the original contract are necessary or would better serve the
386 purpose of the agency or the governing authority, such agency or
387 governing authority may, in its discretion, order such changes
388 pertaining to the construction that are necessary under the
389 circumstances without the necessity of further public bids;
390 provided that such change shall be made in a commercially
391 reasonable manner and shall not be made to circumvent the public
392 purchasing statutes. In addition to any other authorized person,
393 the architect or engineer hired by an agency or governing
394 authority with respect to any public construction contract shall
395 have the authority, when granted by an agency or governing
396 authority, to authorize changes or modifications to the original
397 contract without the necessity of prior approval of the agency or



governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

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

(i) **Road construction petroleum products price adjustment clause authorization.** Any agency or governing authority authorized to enter into contracts for the construction, maintenance, surfacing or repair of highways, roads or streets,



may include in its bid proposal and contract documents a price adjustment clause with relation to the cost to the contractor, including taxes, based upon an industry-wide cost index, of petroleum products including asphalt used in the performance or execution of the contract or in the production or manufacture of materials for use in such performance. Such industry-wide index shall be established and published monthly by the Mississippi Department of Transportation with a copy thereof to be mailed, upon request, to the clerks of the governing authority of each municipality and the clerks of each board of supervisors throughout the state. The price adjustment clause shall be based on the cost of such petroleum products only and shall not include any additional profit or overhead as part of the adjustment. The bid proposals or document contract shall contain the basis and methods of adjusting unit prices for the change in the cost of such petroleum products.

(j) **State agency emergency purchase procedure.** If the governing board or the executive head, or his designees, of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the head of such agency, or his designees, shall file with the Department of Finance and Administration (i) a statement explaining the conditions and circumstances of the emergency,



448 which shall include a detailed description of the events leading
449 up to the situation and the negative impact to the entity if the
450 purchase is made following the statutory requirements set forth in
451 paragraph (a), (b) or (c) of this section, and (ii) a certified
452 copy of the appropriate minutes of the board of such agency
453 requesting the emergency purchase, if applicable. Upon receipt of
454 the statement and applicable board certification, the State Fiscal
455 Officer, or his designees, may, in writing, authorize the purchase
456 or repair without having to comply with competitive bidding
457 requirements.

458 If the governing board or the executive head, or his
459 designees, of any agency determines that an emergency exists in
460 regard to the purchase of any commodities or repair contracts, so
461 that the delay incident to giving opportunity for competitive
462 bidding would threaten the health or safety of any person, or the
463 preservation or protection of property, then the provisions in
464 this section for competitive bidding shall not apply, and any
465 officer or agent of the agency having general or specific
466 authority for making the purchase or repair contract shall approve
467 the bill presented for payment, and he shall certify in writing
468 from whom the purchase was made, or with whom the repair contract
469 was made.

470 Total purchases made under this paragraph (j) shall only be
471 for the purpose of meeting needs created by the emergency
472 situation. Following the emergency purchase, documentation of the



purchase, including a description of the commodity purchased, the purchase price thereof and the nature of the emergency shall be filed with the Department of Finance and Administration. Any contract awarded pursuant to this paragraph (j) shall not exceed a term of one (1) year.

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

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

If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price



thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority. Purchases under the grant program established under Section 37-68-7 in response to COVID-19 and the directive that school districts create a distance learning plan and fulfill technology needs expeditiously shall be deemed an emergency purchase for purposes of this paragraph (k).

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

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

(ii) In addition to the authority granted in subparagraph (i) of this paragraph (1), the commissioners or board of trustees is authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further



523 liability on the part of the lessee. Any such contract for the
524 lease of equipment or services executed on behalf of the
525 commissioners or board that complies with the provisions of this
526 subparagraph (ii) shall be excepted from the bid requirements set
527 forth in this section.

528 (m) **Exceptions from bidding requirements.** Excepted
529 from bid requirements are:

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

531 Purchasing agreements, contracts and maximum price regulations
532 executed or approved by the Department of Finance and
533 Administration.

534 (ii) **Outside equipment repairs.** Repairs to
535 equipment, when such repairs are made by repair facilities in the
536 private sector; however, engines, transmissions, rear axles and/or
537 other such components shall not be included in this exemption when
538 replaced as a complete unit instead of being repaired and the need
539 for such total component replacement is known before disassembly
540 of the component; however, invoices identifying the equipment,
541 specific repairs made, parts identified by number and name,
542 supplies used in such repairs, and the number of hours of labor
543 and costs therefor shall be required for the payment for such
544 repairs.

545 (iii) **In-house equipment repairs.** Purchases of
546 parts for repairs to equipment, when such repairs are made by
547 personnel of the agency or governing authority; however, entire



assemblies, such as engines or transmissions, shall not be included in this exemption when the entire assembly is being replaced instead of being repaired.

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

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

(vi) **Intergovernmental sales and transfers.** Purchases, sales, transfers or trades by governing authorities or state agencies when such purchases, sales, transfers or trades are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi, or any state agency or governing authority of another state. Nothing in this section shall permit such purchases through public



573 auction except as provided for in subparagraph (v) of this
574 paragraph (m). It is the intent of this section to allow
575 governmental entities to dispose of and/or purchase commodities
576 from other governmental entities at a price that is agreed to by
577 both parties. This shall allow for purchases and/or sales at
578 prices which may be determined to be below the market value if the
579 selling entity determines that the sale at below market value is
580 in the best interest of the taxpayers of the state. Governing
581 authorities shall place the terms of the agreement and any
582 justification on the minutes, and state agencies shall obtain
583 approval from the Department of Finance and Administration, prior
584 to releasing or taking possession of the commodities.

585 (vii) **Perishable supplies or food.** Perishable
586 supplies or food purchased for use in connection with hospitals,
587 the school lunch programs, homemaking programs and for the feeding
588 of county or municipal prisoners.

589 (viii) **Single-source items.** Noncompetitive items
590 available from one (1) source only. In connection with the
591 purchase of noncompetitive items only available from one (1)
592 source, a certification of the conditions and circumstances
593 requiring the purchase shall be filed by the agency with the
594 Department of Finance and Administration and by the governing
595 authority with the board of the governing authority. Upon receipt
596 of that certification the Department of Finance and Administration
597 or the board of the governing authority, as the case may be, may,



598 in writing, authorize the purchase, which authority shall be noted
599 on the minutes of the body at the next regular meeting thereafter.
600 In those situations, a governing authority is not required to
601 obtain the approval of the Department of Finance and
602 Administration. Following the purchase, the executive head of the
603 state agency, or his designees, shall file with the Department of
604 Finance and Administration, documentation of the purchase,
605 including a description of the commodity purchased, the purchase
606 price thereof and the source from whom it was purchased.

607 (ix) **Waste disposal facility construction**
608 **contracts.** Construction of incinerators and other facilities for
609 disposal of solid wastes in which products either generated
610 therein, such as steam, or recovered therefrom, such as materials
611 for recycling, are to be sold or otherwise disposed of; however,
612 in constructing such facilities, a governing authority or agency
613 shall publicly issue requests for proposals, advertised for in the
614 same manner as provided herein for seeking bids for public
615 construction projects, concerning the design, construction,
616 ownership, operation and/or maintenance of such facilities,
617 wherein such requests for proposals when issued shall contain
618 terms and conditions relating to price, financial responsibility,
619 technology, environmental compatibility, legal responsibilities
620 and such other matters as are determined by the governing
621 authority or agency to be appropriate for inclusion; and after
622 responses to the request for proposals have been duly received,



623 the governing authority or agency may select the most qualified
624 proposal or proposals on the basis of price, technology and other
625 relevant factors and from such proposals, but not limited to the
626 terms thereof, negotiate and enter contracts with one or more of
627 the persons or firms submitting proposals.

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

631 (xi) **Information technology products.** Purchases
632 of information technology products made by governing authorities
633 under the provisions of purchase schedules, or contracts executed
634 or approved by the Mississippi Department of Information
635 Technology Services and designated for use by governing
636 authorities.

637 (xii) **Energy efficiency services and equipment.**
638 Energy efficiency services and equipment acquired by school
639 districts, community and junior colleges, institutions of higher
640 learning and state agencies or other applicable governmental
641 entities on a shared-savings, lease or lease-purchase basis
642 pursuant to Section 31-7-14.

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



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

648 Purchases by libraries or for libraries of books and periodicals;
649 processed film, videocassette tapes, filmstrips and slides;
650 recorded audiotapes, cassettes and diskettes; and any such items
651 as would be used for teaching, research or other information
652 distribution; however, equipment such as projectors, recorders,
653 audio or video equipment, and monitor televisions are not exempt
654 under this subparagraph.

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

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

661 (xvii) **Multichannel interactive video systems.**
662 From and after July 1, 1990, contracts by Mississippi Authority
663 for Educational Television with any private educational
664 institution or private nonprofit organization whose purposes are
665 educational in regard to the construction, purchase, lease or
666 lease-purchase of facilities and equipment and the employment of
667 personnel for providing multichannel interactive video systems
668 (ITSF) in the school districts of this state.

669 (xviii) **Purchases of prison industry products by**
670 **the Department of Corrections, regional correctional facilities or**
671 **privately owned prisons.** Purchases made by the Mississippi



672 Department of Corrections, regional correctional facilities or
673 privately owned prisons involving any item that is manufactured,
674 processed, grown or produced from the state's prison industries.

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

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

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

689 (xxii) **Garbage, solid waste and sewage contracts.**
690 Contracts for garbage collection or disposal, contracts for solid
691 waste collection or disposal and contracts for sewage collection
692 or disposal.

693 (xxiii) **Municipal water tank maintenance**
694 **contracts.** Professional maintenance program contracts for the
695 repair or maintenance of municipal water tanks, which provide
696 professional services needed to maintain municipal water storage



697 tanks for a fixed annual fee for a duration of two (2) or more
698 years.

699 (xxiv) **Purchases of Mississippi Industries for the**
700 **Blind products or services.** Purchases made by state agencies or
701 governing authorities involving any item that is manufactured,
702 processed or produced by, or any services provided by, the
703 Mississippi Industries for the Blind.

704 (xxv) **Purchases of state-adopted textbooks.**
705 Purchases of state-adopted textbooks by public school districts.

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

709 (xxvii) **Used heavy or specialized machinery or**
710 **equipment for installation of soil and water conservation**
711 **practices purchased at auction.** Used heavy or specialized
712 machinery or equipment used for the installation and
713 implementation of soil and water conservation practices or
714 measures purchased subject to the restrictions provided in
715 Sections 69-27-331 through 69-27-341. Any purchase by the State
716 Soil and Water Conservation Commission under the exemption
717 authorized by this subparagraph shall require advance
718 authorization spread upon the minutes of the commission to include
719 the listing of the item or items authorized to be purchased and
720 the maximum bid authorized to be paid for each item or items.



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

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

736 (xxx) **School yearbooks.** Purchases of school
737 yearbooks by state agencies or governing authorities; however,
738 state agencies and governing authorities shall use for these
739 purchases the RFP process as set forth in the Mississippi
740 Procurement Manual adopted by the Office of Purchasing and Travel.

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



744 (xxxii) **Toll roads and bridge construction**
745 **projects.** Contracts entered into under the provisions of Section
746 65-43-1 or 65-43-3.

747 (xxxiii) **Certain purchases under Section 57-1-221.**
748 Contracts entered into pursuant to the provisions of Section
749 57-1-221.

750 (xxxiv) **Certain transfers made pursuant to the**
751 **provisions of Section 57-105-1(7).** Transfers of public property
752 or facilities under Section 57-105-1(7) and construction related
753 to such public property or facilities.

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

757 (xxxvi) **Certain purchases by an academic medical**
758 **center or health sciences school.** Purchases by an academic
759 medical center or health sciences school, as defined in Section
760 37-115-50, of commodities that are used for clinical purposes and
761 1. intended for use in the diagnosis of disease or other
762 conditions or in the cure, mitigation, treatment or prevention of
763 disease, and 2. medical devices, biological, drugs and
764 radiation-emitting devices as defined by the United States Food
765 and Drug Administration.

766 (xxxvii) **Certain purchases made under the Alyce G.**
767 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi



768 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
769 Lottery Law.

770 (xxxviii) **Certain purchases made by the Department**
771 **of Health and the Department of Revenue.** Purchases made by the
772 Department of Health and the Department of Revenue solely for the
773 purpose of fulfilling their respective responsibilities under the
774 Mississippi Medical Cannabis Act. This subparagraph shall stand
775 repealed on June 30, 2026.

776 (xxxix) **Purchases made by state agencies related**
777 **to museum exhibits.** Purchases made by an agency related to the
778 fabrication, construction, installation or refurbishing of museum
779 exhibits. An agency making a purchase under this exemption in
780 excess of the bid threshold set forth in paragraph (c) of this
781 section shall publicly advertise a Request for Qualifications or
782 Request for Proposals in which price as an evaluation factor is at
783 least twenty percent (20%) out of the one hundred percent (100%)
784 total weight, but shall be otherwise exempt. Any contract arising
785 from a purchase using this exemption must be approved by the
786 Public Procurement Review Board prior to execution by the agency.
787 The agency shall submit a written report on December 1 of each
788 year to the Chairs of the Senate and House Appropriations
789 Committees, the Chairs of the Senate and House Accountability,
790 Efficiency and Transparency Committees and the Chair of the Public
791 Procurement Review Board, identifying all purchases made by the
792 agency using this exemption in which the cost of the option



793 selected by the agency was more than twenty-five percent (25%)
794 higher than the lowest cost option available.

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

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

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



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

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

(q) **Fuel management system bidding procedure.** Any governing authority or agency of the state shall, before contracting for the services and products of a fuel management or



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

862 (r) **Solid waste contract proposal procedure.** Before
863 entering into any contract for garbage collection or disposal,
864 contract for solid waste collection or disposal or contract for
865 sewage collection or disposal, which involves an expenditure of
866 more than Seventy-five Thousand Dollars (\$75,000.00), a governing
867 authority or agency shall issue publicly a request for proposals



868 concerning the specifications for such services which shall be
869 advertised for in the same manner as provided in this section for
870 seeking bids for purchases which involve an expenditure of more
871 than the amount provided in paragraph (c) of this section. Any
872 request for proposals when issued shall contain terms and
873 conditions relating to price, financial responsibility,
874 technology, legal responsibilities and other relevant factors as
875 are determined by the governing authority or agency to be
876 appropriate for inclusion; all factors determined relevant by the
877 governing authority or agency or required by this paragraph (r)
878 shall be duly included in the advertisement to elicit proposals.
879 After responses to the request for proposals have been duly
880 received, the governing authority or agency shall select the most
881 qualified proposal or proposals on the basis of price, technology
882 and other relevant factors and from such proposals, but not
883 limited to the terms thereof, negotiate and enter into contracts
884 with one or more of the persons or firms submitting proposals. If
885 the governing authority or agency deems none of the proposals to
886 be qualified or otherwise acceptable, the request for proposals
887 process may be reinitiated. Notwithstanding any other provisions
888 of this paragraph, where a county with at least thirty-five
889 thousand (35,000) nor more than forty thousand (40,000)
890 population, according to the 1990 federal decennial census, owns
891 or operates a solid waste landfill, the governing authorities of
892 any other county or municipality may contract with the governing



authorities of the county owning or operating the landfill,
pursuant to a resolution duly adopted and spread upon the minutes
of each governing authority involved, for garbage or solid waste
collection or disposal services through contract negotiations.

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

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



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

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

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

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

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



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

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

(x) **Mississippi Regional Pre-Need Disaster Clean Up Act.** (i) The Department of Finance and Administration shall develop and implement a process that creates a preferred vendor list for both disaster debris removal and monitoring.

(ii) Any board of supervisors of any county or any governing authority of any municipality may opt in to the benefits and services provided under the appropriate and relevant contract established in subparagraph (i) of this paragraph at the time of a disaster event in that county or municipality. At the time of opt in, the county or municipality shall assume responsibility for



967 payment in full to the contractor for the disaster-related solid
968 waste collection, disposal or monitoring services provided.
969 Nothing in this subparagraph (ii) shall be construed as requiring
970 a county or municipality to opt in to any such contract
971 established in subparagraph (i) of this paragraph.

972 **SECTION 2.** This act shall take effect and be in force from
973 and after July 1, 2025.

