

By: Representative Yancey

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 118

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE PUBLIC PURCHASING LAW TO PROVIDE THAT PURCHASES BY
3 GOVERNING AUTHORITIES WHICH DO NOT INVOLVE AN EXPENDITURE OF MORE
4 THAN \$25,000.00 MAY BE MADE WITHOUT ADVERTISING OR OTHERWISE
5 REQUESTING COMPETITIVE BIDS; TO AMEND SECTIONS 31-7-103, 31-7-119
6 AND 31-3-1, MISSISSIPPI CODE OF 1972, TO CONFORM; TO BRING FORWARD
7 SECTIONS 31-5-37 AND 31-5-51, MISSISSIPPI CODE OF 1972, FOR THE
8 PURPOSE OF POSSIBLE AMENDMENT; 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 **for agencies and bidding procedure for purchases not over**
19 **\$25,000.00 for governing authorities.** Agency purchases which do
20 not involve an expenditure of more than Five Thousand Dollars
21 (\$5,000.00), exclusive of freight or shipping charges, and



governing authority purchases which do not involve an expenditure of more than Twenty-five Thousand Dollars (\$25,000.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. However, nothing contained in this paragraph (a) shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive bids on purchases of Five Thousand Dollars (\$5,000.00) or less or Twenty-five Thousand Dollars (\$25,000.00), respectively.

(b) **Bidding procedure for purchases over \$5,000.00 but not over \$75,000.00 for agencies and bidding procedure for purchases over \$25,000.00 but not over \$100,000.00 for governing authorities.** Agency purchases which involve an expenditure of more than Five Thousand Dollars (\$5,000.00) but not more than Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight and shipping charges, and governing authority purchases which involve an expenditure of more than Twenty-five Thousand Dollars (\$25,000.00) but not more than One Hundred Thousand Dollars (\$100,000.00), exclusive of freight or shipping charges, may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. Any state agency or community or junior college purchasing commodities or procuring construction pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, to accept the lowest competitive written bid



47 under Seventy-five Thousand Dollars (\$75,000.00). Any governing
48 authority purchasing commodities pursuant to this paragraph (b)
49 may authorize its purchasing agent, or his designee, with regard
50 to governing authorities other than counties, or its purchase
51 clerk, or his designee, with regard to counties, to accept the
52 lowest and best competitive written bid. Such authorization shall
53 be made in writing by the governing authority and shall be
54 maintained on file in the primary office of the agency and
55 recorded in the official minutes of the governing authority, as
56 appropriate. The purchasing agent or the purchase clerk, or his
57 designee, as the case may be, and not the governing authority,
58 shall be liable for any penalties and/or damages as may be imposed
59 by law for any act or omission of the purchasing agent or purchase
60 clerk, or his designee, constituting a violation of law in
61 accepting any bid without approval by the governing authority.
62 The term "competitive written bid" shall mean a bid submitted on a
63 bid form furnished by the buying agency or governing authority and
64 signed by authorized personnel representing the vendor, or a bid
65 submitted on a vendor's letterhead or identifiable bid form and
66 signed by authorized personnel representing the vendor.
67 "Competitive" shall mean that the bids are developed based upon
68 comparable identification of the needs and are developed
69 independently and without knowledge of other bids or prospective
70 bids. Any bid item for construction in excess of Five Thousand
71 Dollars (\$5,000.00) for agencies or Twenty-five Thousand



72 (\$25,000.00) for governing authorities shall be broken down by
73 components to provide detail of component description and pricing.
74 These details shall be submitted with the written bids and become
75 part of the bid evaluation criteria. Bids may be submitted by
76 facsimile, electronic mail or other generally accepted method of
77 information distribution. Bids submitted by electronic
78 transmission shall not require the signature of the vendor's
79 representative unless required by agencies or governing
80 authorities.

81 (c) **Bidding procedure for purchases over \$75,000.00 for**
82 **agencies and bidding procedure for purchases over \$100,000.00 for**
83 **governing authorities.**

84 (i) **Publication requirement.**

85 1. Agency purchases which involve an
86 expenditure of more than Seventy-five Thousand Dollars
87 (\$75,000.00), exclusive of freight and shipping charges, and
88 governing authority purchases which involve an expenditure of more
89 than One Hundred Thousand Dollars (\$100,000.00), exclusive of
90 freight and shipping charges, may be made from the lowest and best
91 bidder after advertising for competitive bids once each week for
92 two (2) consecutive weeks in a regular newspaper published in the
93 county or municipality in which such agency or governing authority
94 is located. However, all American Recovery and Reinvestment Act
95 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
96 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 a purchasing entity determines that a reverse auction is not in the best interest of the state, then that determination must be approved by the Public Procurement Review Board. The purchasing entity shall submit a detailed explanation of why a reverse auction would not be in the best interest of the state and present an alternative process to be approved by the Public Procurement Review Board. If the Public Procurement Review Board authorizes the purchasing entity to solicit bids with a method other than reverse auction, then the purchasing entity may designate the other methods by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids received electronically in a secure system, or bids received by any other method that promotes open competition and has been approved by the Office of Purchasing and Travel. However, reverse auction shall not be used for any public contract for design, construction, improvement, repair or remodeling of any public facilities, including the purchase of materials, supplies, equipment or goods for same and including buildings, roads and bridges. The Public Procurement Review Board must approve any contract entered into by alternative process. The provisions of this item 2 shall not



122 apply to the individual state institutions of higher learning.
123 The provisions of this item 2 requiring reverse auction as the
124 primary method of receiving bids shall not apply to term contract
125 purchases as provided in paragraph (n) of this section; however, a
126 purchasing entity may, in its discretion, utilize reverse auction
127 for such purchases. The provisions of this item 2 shall not apply
128 to individual public schools, including public charter schools and
129 public school districts, only when purchasing copyrighted
130 educational supplemental materials and software as a service
131 product. For such purchases, a local school board may authorize a
132 purchasing entity in its jurisdiction to use a Request for
133 Qualifications which promotes open competition and meets the
134 requirements of the Office of Purchasing and Travel.

135 3. The date as published for the bid opening
136 shall not be less than seven (7) working days after the last
137 published notice; however, if the purchase involves a construction
138 project in which the estimated cost is in excess of Seventy-five
139 Thousand Dollars (\$75,000.00) for agencies, or in excess of One
140 Hundred Thousand Dollars (\$100,000.00) for governing authorities,
141 such bids shall not be opened in less than fifteen (15) working
142 days after the last notice is published and the notice for the
143 purchase of such construction shall be published once each week
144 for two (2) consecutive weeks. The notice of intention to let
145 contracts or purchase equipment shall state the time and place at
146 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



247 speed Internet access shall be exempt from the requirement of this
248 subparagraph (v) until such time that high speed Internet access
249 becomes available. Any county having a population of less than
250 twenty thousand (20,000) shall be exempt from the provisions of
251 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



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.

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



(iii) **Decision procedure for Mississippi**

Landmarks. In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), where purchase involves renovation, restoration, or both, of the State Capitol Building or any other historical building designated for at least five (5) years as a Mississippi Landmark by the Board of Trustees of the 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 Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8). Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10(13). However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten Thousand



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

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

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



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



446 agency of the state shall determine that an emergency exists in
447 regard to the purchase of any commodities or repair contracts, so
448 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 designees, shall file with the
451 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 designees, may, in writing, authorize the purchase
461 or repair without having to comply with competitive bidding
462 requirements.

463 If the governing board or the executive head, or his
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 shall certify in writing
473 from whom the purchase was made, or with whom the repair contract
474 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 shall certify in writing thereon from whom such purchase
499 was made, or with whom such a repair contract was made. At the
500 board meeting next following the emergency purchase or repair
501 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



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

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

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

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



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

(iii) **In-house equipment repairs.** Purchases of
parts for repairs to equipment, when such repairs are made by
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.



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.



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

(ix) **Waste disposal facility construction contracts.** Construction of incinerators and other facilities for disposal of solid wastes in which products either generated therein, such as steam, or recovered therefrom, such as materials for recycling, are to be sold or otherwise disposed of; however, in constructing such facilities, a governing authority or agency 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, videocassette 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



measures purchased subject to the restrictions provided in Sections 69-27-331 through 69-27-341. Any purchase by the State Soil and Water Conservation Commission under the exemption authorized by this subparagraph shall require advance authorization spread upon the minutes of the commission 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.

(xxviii) **Hospital lease of equipment or services.**

Leases by hospitals of equipment or services if the leases are in compliance with paragraph (1)(ii).

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

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



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

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

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

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

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

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

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



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

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

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

(xxxix) **Purchases made by state agencies related to museum exhibits.** Purchases made by an agency related to the fabrication, construction, installation or refurbishing of museum exhibits. An agency making a purchase under this exemption in excess of the bid threshold set forth in paragraph (c) of this section shall publicly advertise a Request for Qualifications or Request for Proposals in which price as an evaluation factor is at least twenty percent (20%) out of the one hundred percent (100%) total weight, but shall be otherwise exempt. Any contract arising from a purchase using this exemption must be approved by the Public Procurement Review Board prior to execution by the agency. The agency shall submit a written report on December 1 of each year to the Chairs of the Senate and House Appropriations



Committees, the Chairs of the Senate and House Accountability, Efficiency and Transparency Committees and the Chair of the Public Procurement Review Board, identifying all purchases made by the agency using this exemption in which the cost of the option selected by the agency was more than twenty-five percent (25%) higher than the lowest cost option available.

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

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

(ii) Bid proposals and contracts may include price adjustment clauses with relation to the cost to the contractor based upon a nationally published industry-wide or nationally published and recognized cost index. The cost index used in a price adjustment clause shall be determined by the Department of Finance and Administration for the state agencies and by the governing board for governing authorities. The bid proposal and



819 contract documents utilizing a price adjustment clause shall
820 contain the basis and method of adjusting unit prices for the
821 change in the cost of such commodities, equipment and public
822 construction.

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

838 (p) **Electrical utility petroleum-based equipment**
839 **purchase procedure.** When in response to a proper advertisement
840 therefor, no bid firm as to price is submitted to an electric
841 utility for power transformers, distribution transformers, power
842 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 fuel access system, enter into negotiations with not fewer than two (2) sellers of fuel management or fuel access systems for competitive written bids to provide the services and products for the systems. In the event that the governing authority or agency cannot locate two (2) sellers of such systems or cannot obtain bids from two (2) sellers of such systems, it shall show proof that it made a diligent, good-faith effort to locate and negotiate with two (2) sellers of such systems. Such proof shall include, but not be limited to, publications of a request for proposals and letters soliciting negotiations and bids. For purposes of this paragraph (q), a fuel management or fuel access system is an automated system of acquiring fuel for vehicles as well as management reports detailing fuel use by vehicles and drivers, and the term "competitive written bid" shall have the meaning as defined in paragraph (b) of this section. Governing authorities and agencies shall be exempt from this process when contracting for the services and products of fuel management or fuel access systems under the terms of a state contract established by the Office of Purchasing and Travel.



867 (r) **Solid waste contract proposal procedure.** Before
868 entering into any contract for garbage collection or disposal,
869 contract for solid waste collection or disposal or contract for
870 sewage collection or disposal, which involves an expenditure of
871 more than Seventy-five Thousand Dollars (\$75,000.00), a governing
872 authority or agency shall issue publicly a request for proposals
873 concerning the specifications for such services which shall be
874 advertised for in the same manner as provided in this section for
875 seeking bids for purchases which involve an expenditure of more
876 than the amount provided in paragraph (c) of this section. Any
877 request for proposals when issued shall contain terms and
878 conditions relating to price, financial responsibility,
879 technology, legal responsibilities and other relevant factors as
880 are determined by the governing authority or agency to be
881 appropriate for inclusion; all factors determined relevant by the
882 governing authority or agency or required by this paragraph (r)
883 shall be duly included in the advertisement to elicit proposals.
884 After responses to the request for proposals have been duly
885 received, the governing authority or agency shall select the most
886 qualified proposal or proposals on the basis of price, technology
887 and other relevant factors and from such proposals, but not
888 limited to the terms thereof, negotiate and enter into contracts
889 with one or more of the persons or firms submitting proposals. If
890 the governing authority or agency deems none of the proposals to
891 be qualified or otherwise acceptable, the request for proposals



892 process may be reinitiated. Notwithstanding any other provisions
893 of this paragraph, where a county with at least thirty-five
894 thousand (35,000) nor more than forty thousand (40,000)
895 population, according to the 1990 federal decennial census, owns
896 or operates a solid waste landfill, the governing authorities of
897 any other county or municipality may contract with the governing
898 authorities of the county owning or operating the landfill,
899 pursuant to a resolution duly adopted and spread upon the minutes
900 of each governing authority involved, for garbage or solid waste
901 collection or disposal services through contract negotiations.

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



917 Black, Hispanic or Native American, according to the following
918 definitions:

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

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

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

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

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

938 (u) **Procurement of construction services by state**
939 **institutions of higher learning.** Contracts for privately financed
940 construction of auxiliary facilities on the campus of a state
941 institution of higher learning may be awarded by the Board of



Trustees of State Institutions of Higher Learning to the lowest and best bidder, where sealed bids are solicited, or to the offeror whose proposal is determined to represent the best value to the citizens of the State of Mississippi, where requests for 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 payment in full to the contractor for the disaster-related solid waste collection, disposal or monitoring services provided. Nothing in this subparagraph (ii) shall be construed as requiring a county or municipality to opt in to any such contract established in subparagraph (i) of this paragraph.

SECTION 2. Section 31-7-103, Mississippi Code of 1972, is amended as follows:

31-7-103. The purchase clerk shall be responsible as hereinafter provided for the purchase and acquisition of all equipment, heavy equipment, machinery, supplies, commodities, materials and services to be acquired for the county from successful bidders or other vendors, as authorized by law. The central purchase system shall comply with the requirements prescribed by the State Department of Audit under the authority of Section 7-7-211 and in accordance with Section 31-7-113, and the purchase clerk shall be responsible for the maintenance of such system. No requisition to purchase, purchase order or receiving report shall be required for the purchase of any item or services with an acquisition cost of not more than * * * Twenty-five



991 Thousand Dollars (\$25,000.00) in the aggregate; however, the
992 invoice for every such purchase shall be signed by the department
993 head or his or her designee, or a receipt signed by the person
994 making the purchase shall be attached to the invoice and forwarded
995 to the purchase clerk. No claim based on any such purchase shall
996 be approved except after compliance with the provisions of this
997 section.

998 **SECTION 3.** Section 31-7-119, Mississippi Code of 1972, is
999 amended as follows:

1000 31-7-119. (1) Except as provided in subsection (2) of this
1001 section, neither the board of supervisors nor any member thereof
1002 shall individually purchase, order or receive any equipment, heavy
1003 equipment, machinery, supplies, commodities, materials or services
1004 for the use or benefit of the county.

1005 (2) In any county in which the board of supervisors is not
1006 required to operate on a countywide system of road administration,
1007 the prohibition as provided in subsection (1) of this section
1008 shall not apply (a) to purchases of not more than * * *

1009 Twenty-five Thousand Dollars (\$25,000.00) in the aggregate; or (b)
1010 to the purchase of parts or repair services in emergency
1011 situations, which purchases are exempt from bid requirements
1012 pursuant to Section 31-7-13(m)(ii) and (iii). Any supervisor who
1013 purchases any item or services in accordance with this subsection
1014 (2) shall sign the invoice or receipt and forward it to the
1015 purchase clerk in the manner provided by Section 31-7-103. No



1016 claim based on any such purchase shall be approved unless the
1017 purchase was made in compliance with the provisions of this
1018 subsection.

1019 **SECTION 4.** Section 31-3-1, Mississippi Code of 1972, is
1020 amended as follows:

1021 31-3-1. The following words, as used in this chapter, shall
1022 have the meanings specified below:

1023 "Board": The State Board of Contractors created under this
1024 chapter.

1025 "Contractor": Any person contracting or undertaking as prime
1026 contractor, subcontractor or sub-subcontractor of any tier to do
1027 any erection, building, construction, reconstruction, demolition,
1028 repair, maintenance or related work on any public or private
1029 project; however, "contractor" shall not include any owner of a
1030 dwelling or other structure to be constructed, altered, repaired
1031 or improved and not for sale, lease, public use or assembly, or
1032 any person duly permitted by the Mississippi State Oil and Gas
1033 Board, pursuant to Section 53-3-11, Mississippi Code of 1972, to
1034 conduct operations within the state, and acting pursuant to said
1035 permit. It is further provided that nothing herein shall apply
1036 to:

1037 (a) Any contract or undertaking on a public or private
1038 project by a prime contractor, subcontractor or sub-subcontractor
1039 of any tier involving erection, building, construction,
1040 reconstruction, repair, maintenance or related work where such



1041 contract, subcontract or undertaking is less than Fifty Thousand
1042 Dollars (\$50,000.00);

1043 (b) Highway construction, highway bridges, overpasses
1044 and any other project incidental to the construction of highways
1045 which are designated as federal aid projects and in which federal
1046 funds are involved;

1047 (c) A residential project to be occupied by fifty (50)
1048 or fewer families and not more than three (3) stories in height;

1049 (d) A residential subdivision where the contractor is
1050 developing either single-family or multifamily lots;

1051 (e) A new commercial construction project not exceeding
1052 seventy-five hundred (7500) square feet and not more than two (2)
1053 stories in height undertaken by an individual or entity licensed
1054 under the provisions of Section 73-59-1 et seq.;

1055 (f) Erection of a microwave tower built for the purpose
1056 of telecommunication transmissions;

1057 (g) Any contract or undertaking on a public project by
1058 a prime contractor, subcontractor or sub-subcontractor of any tier
1059 involving the construction, reconstruction, repair or maintenance
1060 of fire protection systems where such contract, subcontract or
1061 undertaking is less than Five Thousand Dollars (\$5,000.00) for any
1062 board, commission, council or agency of the State of Mississippi
1063 or less than Twenty-five Thousand Dollars (\$25,000.00) for any
1064 district, county or municipality of the state, including school,



1065 hospital, airport and all other types of governing agencies
1066 created by or operating under the laws of this state;

1067 (h) Any contract or undertaking on a private project by
1068 a prime contractor, subcontractor or sub-subcontractor of any tier
1069 involving the construction, reconstruction, repair or maintenance
1070 of fire protection systems where such contract, subcontract or
1071 undertaking is less than Ten Thousand Dollars (\$10,000.00);

1072 (i) Any contract or undertaking on a private or public
1073 project by a prime contractor, subcontractor or sub-subcontractor
1074 of any tier involving the construction, reconstruction, repair or
1075 maintenance of technically specialized installations if performed
1076 by a Mississippi contractor who has been in the business of
1077 installing fire protection sprinkler systems on or before July 1,
1078 2000; or

1079 (j) Any contractor undertaking to build, construct,
1080 reconstruct, repair, demolish, perform maintenance on, or other
1081 related work, whether on the surface or subsurface, on oil or gas
1082 wells, pipelines, processing plants, or treatment facilities or
1083 other structures of facilities. Nothing herein shall be construed
1084 to limit the application or effect of Section 31-5-41.

1085 "Certificate of responsibility": A certificate numbered and
1086 held by a contractor issued by the board under the provisions of
1087 this chapter after payment of the special privilege license tax
1088 therefor levied under this chapter.



1089 "Person": Any person, firm, corporation, joint venture or
1090 partnership, association or other type of business entity.

1091 "Private project": Any project for erection, building,
1092 construction, reconstruction, repair, maintenance or related work
1093 which is not funded in whole or in part with public funds.

1094 "Public agency": Any board, commission, council or agency of
1095 the State of Mississippi or any district, county or municipality
1096 thereof, including school, hospital, airport and all other types
1097 of governing agencies created by or operating under the laws of
1098 this state.

1099 "Public funds": Monies of public agencies, whether obtained
1100 from taxation, donation or otherwise; or monies being expended by
1101 public agencies for the purposes for which such public agencies
1102 exist.

1103 "Public project": Any project for erection, building,
1104 construction, reconstruction, repair, maintenance or related work
1105 which is funded in whole or in part with public funds.

1106 **SECTION 5.** Section 31-5-37, Mississippi Code of 1972, is
1107 brought forward as follows:

1108 31-5-37. (1) All public works projects utilizing funds
1109 received by state or local governmental entities resulting from a
1110 federally declared disaster or a spill of national significance,
1111 including damages, penalties, fines or supplemental projects paid
1112 or financed by responsible parties pursuant to a court order,
1113 negotiated settlement, or other instrument, including under any



1114 law distributing such fines and penalties including the federal
1115 Resources and Ecosystems Sustainability, Tourist Opportunities and
1116 Revived Economy of the Gulf Coast Act of 2011 (R.E.S.T.O.R.E.),
1117 the Oil Pollution Act of 1990 or the Federal Water Pollution
1118 Control Act or similar legislation, shall be subject to the hiring
1119 policies established by this section.

1120 (2) Contractors submitting bids for public works projects
1121 that involve an expenditure of Five Thousand Dollars (\$5,000.00)
1122 or more and that are financed, in whole or in part, through the
1123 use of funds described in subsection (1) of this section shall
1124 submit with their bid a certification that they will comply with
1125 the provisions of this section if they are awarded a contract.
1126 The contractor shall submit to the agency or governing authority
1127 that solicited the bid and the Mississippi Department of
1128 Employment Security an employment plan within seven (7) days after
1129 the award of the contract which shall include the following:

1130 (a) The types of jobs involved in the public works
1131 project;

1132 (b) The skill level of the jobs involved in the
1133 project;

1134 (c) Wage information on the jobs involved in the
1135 project;

1136 (d) The number of vacant positions that the contractor
1137 and any subcontractor needs to fill;



1138 (e) How the contractor and any subcontractor will
1139 recruit, low-wage and unemployed individuals for job vacancies;
1140 (f) Such other information as may be required by the
1141 Mississippi Department of Employment Security; and
1142 (g) Proof of registration with the Mississippi
1143 Department of Employment Security for taxation in accordance with
1144 the provisions of Title 71.

1145 (3) From the date written notice of the contract award is
1146 received and until ten (10) business days after the receipt of the
1147 employment plan by the Mississippi Department of Employment
1148 Security, the contractor and any subcontractor shall not hire any
1149 personnel to fill vacant positions necessary for the public works
1150 project except residents of the State of Mississippi who are to be
1151 verified by the Mississippi Department of Employment Security
1152 and/or those qualified individuals who are submitted by the
1153 Mississippi Department of Employment Security. For purposes of
1154 this subsection, the contractor or subcontractor is authorized to
1155 employ Mississippi residents to begin work immediately, and such
1156 persons are to be verified by the Mississippi Department of
1157 Employment Security after employment by the contractor or
1158 subcontractor. During the ten-day period, the Mississippi
1159 Department of Employment Security shall submit qualified
1160 individuals to the contractor to consider for the vacant
1161 positions. The contractor shall review the individuals submitted
1162 by the department before hiring individuals who are not submitted



by the department. The contract award shall be vacated if the contractor fails to comply with the provisions of this subsection.

SECTION 6. Section 31-5-51, Mississippi Code of 1972, is brought forward as follows:

31-5-51. (1) Any person entering into a formal contract with the state or any county, city or political subdivision thereof, or other public authority for the construction, alteration or repair of any public building or public work, before entering into such contract, shall furnish to such public body, except as provided in subsection (5) of this section, bonds with good and sufficient surety as follows:

(a) A performance bond payable to, in favor of or for the protection of such public body, as owner, for the work to be done in an amount not less than the amount of the contract, conditioned for the full and faithful performance of the contract;

(b) A payment bond payable to such public body but conditioned for the prompt payment of all persons supplying labor or material used in the prosecution of the work under said contract, for the use of each such person, in an amount not less than the amount of the contract; and

(c) The bonds herein provided for may be made by any surety company which is authorized to do business in the State of Mississippi and listed on the United States Treasury Department's list of acceptable sureties, or such bonds may be guaranteed by a personal surety as provided for herein. The personal surety shall



1188 deposit with the State Treasurer cash or certificates of deposit
1189 in an amount not less than the amount of the contract, and the
1190 State Treasurer shall hold same in trust and on deposit for the
1191 benefit of the public body that is a party to the contract
1192 providing for the construction, alteration or repair of the public
1193 building or for the public work.

1194 (2) Every person who has furnished labor or material used in
1195 the prosecution of the work provided for in such contract, in
1196 respect of which a payment bond is furnished and who has not been
1197 paid in full therefor before the expiration of a period of ninety
1198 (90) days after the date on which the last of the labor was
1199 performed by him or the last of the materials was furnished by him
1200 and for which such claim is made, provided the same has been
1201 approved, where required, by the public authority or its architect
1202 or engineers, or such approval is being withheld as a result of
1203 unreasonable acts of the contractor, shall have the right to sue
1204 on such payment bond for the amount, or the balance thereof that
1205 is due and payable, but unpaid at the time of institution of such
1206 suit and to prosecute said action to final execution and judgment.
1207 Notwithstanding anything to the contrary contained herein, if the
1208 amount claimed in such action is subject to contractual provisions
1209 or conditions, between the parties involved in such action, the
1210 action shall be abated pending the performance of such provisions
1211 and the fulfillment of such conditions.



1212 (3) Any person having direct contractual relationship with a
1213 subcontractor but no contractual relationship express or implied
1214 with the contractor furnishing said payment bond shall have a
1215 right of action upon the said payment bond upon giving written
1216 notice to said contractor within ninety (90) days from the date on
1217 which such person did or performed the last of the labor or
1218 furnished or supplied the last of the material for which such
1219 claim is made, stating with substantial accuracy the amount
1220 claimed and the name of the party to whom the material was
1221 furnished or supplied or for whom the labor was done or performed.
1222 Such notice shall be given in writing by the claimant to the
1223 contractor or surety at any place where the contractor or surety
1224 maintains an office or conducts business. Such notice may be
1225 personally delivered by the claimant to the contractor or surety,
1226 or it may be mailed by certified mail, return receipt requested,
1227 postage prepaid, to the contractor or surety. No such action may
1228 be maintained by any person not having a direct contractual
1229 relationship with the contractor-principal, unless the notice
1230 required by this section shall have been given.

1231 (4) The only persons protected by such payment bond, subject
1232 to the notice provisions of this section are:

1233 (a) Subcontractors and material suppliers of the
1234 contractor;

1235 (b) Sub-subcontractors and material suppliers of those
1236 subcontractors named in subsection (4)(a) of this section; and



1237 (c) Laborers who have performed work on the project
1238 site.

1239 (5) Whenever a contract is less than Twenty-five Thousand
1240 Dollars (\$25,000.00) the owners may elect to make a lump sum
1241 payment at the completion of the job. Lump sum payments will not
1242 be made until completion and acceptance by the governing agency.
1243 In such a case a performance bond or payment bond will not be
1244 required.

1245 (6) Except as otherwise provided in subsection (1)(c) for a
1246 personal surety, no surety or surety company shall be allowed to
1247 guarantee or write bonds for the benefit of the public body that
1248 is a party to a contract providing for the construction,
1249 alteration or repair of a public building or for public work,
1250 unless that surety is listed on the United States Treasury
1251 Department's list of acceptable sureties. If the surety is not
1252 listed on the United States Treasury Department's list of
1253 acceptable sureties, the public body for which the public work is
1254 being performed shall be liable to the extent that the surety
1255 would be liable.

1256 (7) Any person entering into a formal contract with the
1257 state which exceeds Five Thousand Dollars (\$5,000.00), or with a
1258 county, city or other public authority which exceeds Twenty-five
1259 Thousand dollars (\$25,000.00), for the construction, alteration or
1260 repair of any public building or public work, before entering into
1261 such contract, shall furnish to the public body proof of general



1262 liability insurance coverage in an amount not less than One
1263 Million Dollars (\$1,000,000.00) for bodily injury and property
1264 damage. Exempted from the provisions of this subsection are any
1265 persons who enter into a contract with the Mississippi Department
1266 of Rehabilitation Services for the construction, alteration or
1267 repair of the home of a disabled individual who has been
1268 determined eligible for services by the Mississippi Department of
1269 Rehabilitation Services.

1270 **SECTION 7.** This act shall take effect and be in force from
1271 and after July 1, 2025.

