

By: Representative Zuber

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 256

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 INCREASE THE PROCUREMENT THRESHOLD FOR COMPETITIVE BID
3 REQUIREMENTS FOR PUBLIC SCHOOLS, SCHOOL DISTRICTS AND CHARTER
4 SCHOOLS UNDER THE PUBLIC PURCHASING LAW UP TO \$10,000.00; AND FOR
5 RELATED PURPOSES.

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

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

9 31-7-13. All agencies and governing authorities shall
10 purchase their commodities and printing; contract for garbage
11 collection or disposal; contract for solid waste collection or
12 disposal; contract for sewage collection or disposal; contract for
13 public construction; and contract for rentals as herein provided.

14 (a) (i) **Bidding procedure for purchases not over**
15 **\$5,000.00.** Purchases which do not involve an expenditure of more
16 than Five Thousand Dollars (\$5,000.00), exclusive of freight or
17 shipping charges, may be made without advertising or otherwise
18 requesting competitive bids. However, nothing contained in this
19 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.

(ii) Bidding procedure for purchases by public schools, school districts and charter schools not over \$10,000.00.
Purchases by public schools, school districts and charter schools which do not involve an expenditure of more than Ten Thousand Dollars (\$10,000.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. However, nothing contained in this subparagraph (ii) shall be construed to prohibit any local school district or charter school governing authority from establishing procedures which require competitive bids on purchases of Ten Thousand Dollars (\$10,000.00) or less.

(b) Bidding procedure for purchases over \$5,000.00 but not over \$75,000.00. 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, 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 under Seventy-five Thousand Dollars



45 (\$75,000.00). Any governing authority purchasing commodities
46 pursuant to this paragraph (b) may authorize its purchasing agent,
47 or his designee, with regard to governing authorities other than
48 counties, or its purchase clerk, or his designee, with regard to
49 counties, to accept the lowest and best competitive written bid.
50 Such authorization shall be made in writing by the governing
51 authority and shall be maintained on file in the primary office of
52 the agency and recorded in the official minutes of the governing
53 authority, as appropriate. The purchasing agent or the purchase
54 clerk, or his designee, as the case may be, and not the governing
55 authority, shall be liable for any penalties and/or damages as may
56 be imposed by law for any act or omission of the purchasing agent
57 or purchase clerk, or his designee, constituting a violation of
58 law in accepting any bid without approval by the governing
59 authority. The term "competitive written bid" shall mean a bid
60 submitted on a bid form furnished by the buying agency or
61 governing authority and signed by authorized personnel
62 representing the vendor, or a bid submitted on a vendor's
63 letterhead or identifiable bid form and signed by authorized
64 personnel representing the vendor. "Competitive" shall mean that
65 the bids are developed based upon comparable identification of the
66 needs and are developed independently and without knowledge of
67 other bids or prospective bids. Any bid item for construction in
68 excess of Five Thousand Dollars (\$5,000.00) shall be broken down
69 by components to provide detail of component description and



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

(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 a purchasing entity determines that a reverse auction is not in the best interest of the state, then that determination must be



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

(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 reasonable manner and shall not be made to circumvent the public purchasing statutes. In addition to any other authorized person, the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original 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, which shall include a detailed description of the events leading up to the situation and the negative impact to the entity if the



445 purchase is made following the statutory requirements set forth in
446 paragraph (a), (b) or (c) of this section, and (ii) a certified
447 copy of the appropriate minutes of the board of such agency
448 requesting the emergency purchase, if applicable. Upon receipt of
449 the statement and applicable board certification, the State Fiscal
450 Officer, or his designees, may, in writing, authorize the purchase
451 or repair without having to comply with competitive bidding
452 requirements.

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

465 Total purchases made under this paragraph (j) shall only be
466 for the purpose of meeting needs created by the emergency
467 situation. Following the emergency purchase, documentation of the
468 purchase, including a description of the commodity purchased, the
469 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 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



544 included in this exemption when the entire assembly is being
545 replaced instead of being repaired.

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

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

560 (vi) **Intergovernmental sales and transfers.**
561 Purchases, sales, transfers or trades by governing authorities or
562 state agencies when such purchases, sales, transfers or trades are
563 made by a private treaty agreement or through means of
564 negotiation, from any federal agency or authority, another
565 governing authority or state agency of the State of Mississippi,
566 or any state agency or governing authority of another state.
567 Nothing in this section shall permit such purchases through public
568 auction except as provided for in subparagraph (v) of this



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

(vii) **Perishable supplies or food.** Perishable supplies or food purchased for use in connection with hospitals, the school lunch programs, homemaking programs and for the feeding 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
same manner as provided herein for seeking bids for public
construction projects, concerning the design, construction,
ownership, operation and/or maintenance of such facilities,
wherein such requests for proposals when issued shall contain
terms and conditions relating to price, financial responsibility,
technology, environmental compatibility, legal responsibilities
and such other matters as are determined by the governing
authority or agency to be appropriate for inclusion; and after
responses to the request for proposals have been duly received,
the governing authority or agency may select the most qualified



619 proposal or proposals on the basis of price, technology and other
620 relevant factors and from such proposals, but not limited to the
621 terms thereof, negotiate and enter contracts with one or more of
622 the persons or firms submitting proposals.

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

626 (xi) **Information technology products.** Purchases
627 of information technology products made by governing authorities
628 under the provisions of purchase schedules, or contracts executed
629 or approved by the Mississippi Department of Information
630 Technology Services and designated for use by governing
631 authorities.

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

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

642 (xiv) **Library books and other reference materials.**
643 Purchases by libraries or for libraries of books and periodicals;



644 processed film, videocassette tapes, filmstrips and slides;
645 recorded audiotapes, cassettes and diskettes; and any such items
646 as would be used for teaching, research or other information
647 distribution; however, equipment such as projectors, recorders,
648 audio or video equipment, and monitor televisions are not exempt
649 under this subparagraph.

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

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

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

664 (xviii) **Purchases of prison industry products by**
665 **the Department of Corrections, regional correctional facilities or**
666 **privately owned prisons.** Purchases made by the Mississippi
667 Department of Corrections, regional correctional facilities or



668 privately owned prisons involving any item that is manufactured,
669 processed, grown or produced from the state's prison industries.

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

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

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

684 (xxii) **Garbage, solid waste and sewage contracts.**
685 Contracts for garbage collection or disposal, contracts for solid
686 waste collection or disposal and contracts for sewage collection
687 or disposal.

688 (xxiii) **Municipal water tank maintenance**
689 **contracts.** Professional maintenance program contracts for the
690 repair or maintenance of municipal water tanks, which provide
691 professional services needed to maintain municipal water storage



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

694 (xxiv) **Purchases of Mississippi Industries for the**
695 **Blind products or services.** Purchases made by state agencies or
696 governing authorities involving any item that is manufactured,
697 processed or produced by, or any services provided by, the
698 Mississippi Industries for the Blind.

699 (xxv) **Purchases of state-adopted textbooks.**
700 Purchases of state-adopted textbooks by public school districts.

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

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



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

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

731 (xxx) **School yearbooks.** Purchases of school
732 yearbooks by state agencies or governing authorities; however,
733 state agencies and governing authorities shall use for these
734 purchases the RFP process as set forth in the Mississippi
735 Procurement Manual adopted by the Office of Purchasing and Travel.

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



739 (xxxii) **Toll roads and bridge construction**
740 **projects.** Contracts entered into under the provisions of Section
741 65-43-1 or 65-43-3.

742 (xxxiii) **Certain purchases under Section 57-1-221.**
743 Contracts entered into pursuant to the provisions of Section
744 57-1-221.

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

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

752 (xxxvi) **Certain purchases by an academic medical**
753 **center or health sciences school.** Purchases by an academic
754 medical center or health sciences school, as defined in Section
755 37-115-50, of commodities that are used for clinical purposes and
756 1. intended for use in the diagnosis of disease or other
757 conditions or in the cure, mitigation, treatment or prevention of
758 disease, and 2. medical devices, biological, drugs and
759 radiation-emitting devices as defined by the United States Food
760 and Drug Administration.

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



763 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
764 Lottery Law.

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

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



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

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

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

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



(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



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

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



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



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

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

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



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

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

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

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

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



(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



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

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

