

By: Representative Bennett

To: Public Property;
Accountability, Efficiency,
Transparency

HOUSE BILL NO. 853

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE THE PREQUALIFICATION OF BIDDERS FOR CONSTRUCTION,
3 MAINTENANCE OR REPAIR AND RENOVATION OF HISTORICAL BUILDINGS AND
4 MISSISSIPPI LANDMARKS FOR \$10,000,000.00 OR MORE; AND FOR RELATED
5 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) **Bidding procedure for purchases not over \$5,000.00.**

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

19 (a) shall be construed to prohibit any agency or governing



20 authority from establishing procedures which require competitive
21 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

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



or purchase clerk, or his designee, constituting a violation of law in accepting any bid without approval by the governing authority. The term "competitive written bid" shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor. "Competitive" shall mean that the bids are developed based upon comparable identification of the needs and are developed independently and without knowledge of other bids or prospective bids. Any bid item for construction in excess of Five Thousand Dollars (\$5,000.00) shall be broken down 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 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 apply to the individual state institutions of higher learning. The provisions of this item 2 requiring reverse auction as the primary method of receiving bids shall not apply to term contract purchases as provided in paragraph (n) of this section; however, a purchasing entity may, in its discretion, utilize reverse auction for such purchases. The provisions of this item 2 shall not apply to individual public schools, including public charter schools and public school districts, only when purchasing copyrighted educational supplemental materials and software as a service product. For such purchases, a local school board may authorize a purchasing entity in its jurisdiction to use a Request for Qualifications which promotes open competition and meets the requirements of the Office of Purchasing and Travel.

3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Seventy-five Thousand Dollars (\$75,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is



published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above-provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice. Within one (1) working day of the contract award, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration, notice of the award, including the award recipient, the contract amount, and a brief summary of the contract in accordance with rules promulgated by



the department. Within one (1) working day of the contract execution, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration a summary of the executed contract and make a copy of the appropriately redacted contract documents available for linking to the designated web page in accordance with the rules promulgated by the department. The information provided by the agency or governing authority shall be posted to the web page until the project is completed.

4. Agencies and governing authorities using federal funds for the procurement of any good or service, including exempt personal and professional services, must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards - Subpart D - Post Federal Award Requirements Procurement Standards, in accordance with 2 CFR 200.317 through 2 CFR 200.327.

(ii) **Bidding process amendment procedure.** If all plans and/or specifications are published in the notification, then the plans and/or specifications may not be amended. If all plans and/or specifications are not published in the notification, then amendments to the plans/specifications, bid opening date, bid opening time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments. This



notification of amendments may be made via mail, facsimile, electronic mail or other generally accepted method of information distribution. No addendum to bid specifications may be issued within two (2) working days of the time established for the receipt of bids unless such addendum also amends the bid opening to a date not less than five (5) working days after the date of the addendum.

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

(iv) **Specification restrictions.**

1. Specifications pertinent to such bidding shall be written so as not to exclude comparable equipment of domestic manufacture. However, if valid justification is presented, the Department of Finance and Administration or the board of a governing authority may approve a request for specific equipment necessary to perform a specific job. Further, such justification, when placed on the minutes of the board of a governing authority, may serve as authority for that governing



195 authority to write specifications to require a specific item of
196 equipment needed to perform a specific job. In addition to these
197 requirements, from and after July 1, 1990, vendors of relocatable
198 classrooms and the specifications for the purchase of such
199 relocatable classrooms published by local school boards shall meet
200 all pertinent regulations of the State Board of Education,
201 including prior approval of such bid by the State Department of
202 Education.

203 2. Specifications for construction projects
204 may include an allowance for commodities, equipment, furniture,
205 construction materials or systems in which prospective bidders are
206 instructed to include in their bids specified amounts for such
207 items so long as the allowance items are acquired by the vendor in
208 a commercially reasonable manner and approved by the
209 agency/governing authority. Such acquisitions shall not be made
210 to circumvent the public purchasing laws.

211 (v) **Electronic bids.** Agencies and governing
212 authorities shall provide a secure electronic interactive system
213 for the submittal of bids requiring competitive bidding that shall
214 be an additional bidding option for those bidders who choose to
215 submit their bids electronically. The Department of Finance and
216 Administration shall provide, by regulation, the standards that
217 agencies must follow when receiving electronic bids. Agencies and
218 governing authorities shall make the appropriate provisions
219 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 * * * Prequalified Construction**. 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 * * * 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, or for any other construction procurement with a minimum construction cost of Ten Million Dollars (\$10,000,000.00) where the agency or governing authority has determined that prequalification of bidders is in the best interest of the state, the agency or governing authority may use the following procedure: Purchases may be made from the lowest and best prequalified bidder. Solicitation for the prequalification of bidders shall be in accordance with paragraph (c) of this section and shall be determined not less than fifteen (15) working days before the * * * prequalified bidders are invited to submit bids. Prequalification criteria shall be limited to bidder's and proposed subcontractor's knowledge and experience * * * on projects of similar size and scope, past performance, project management team and financial stability. 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



320 under the master lease-purchase program pursuant to Section
321 31-7-10 and any lease-purchase of equipment which a governing
322 authority elects to lease-purchase may be acquired by a
323 lease-purchase agreement under this paragraph (e). Lease-purchase
324 financing may also be obtained from the vendor or from a
325 third-party source after having solicited and obtained at least
326 two (2) written competitive bids, as defined in paragraph (b) of
327 this section, for such financing without advertising for such
328 bids. Solicitation for the bids for financing may occur before or
329 after acceptance of bids for the purchase of such equipment or,
330 where no such bids for purchase are required, at any time before
331 the purchase thereof. No such lease-purchase agreement shall be
332 for an annual rate of interest which is greater than the overall
333 maximum interest rate to maturity on general obligation
334 indebtedness permitted under Section 75-17-101, and the term of
335 such lease-purchase agreement shall not exceed the useful life of
336 equipment covered thereby as determined according to the upper
337 limit of the asset depreciation range (ADR) guidelines for the
338 Class Life Asset Depreciation Range System established by the
339 Internal Revenue Service pursuant to the United States Internal
340 Revenue Code and regulations thereunder as in effect on December
341 31, 1980, or comparable depreciation guidelines with respect to
342 any equipment not covered by ADR guidelines. Any lease-purchase
343 agreement entered into pursuant to this paragraph (e) may contain
344 any of the terms and conditions which a master lease-purchase



345 agreement may contain under the provisions of Section 31-7-10(5),
346 and shall contain an annual allocation dependency clause
347 substantially similar to that set forth in Section 31-7-10(8).
348 Each agency or governing authority entering into a lease-purchase
349 transaction pursuant to this paragraph (e) shall maintain with
350 respect to each such lease-purchase transaction the same
351 information as required to be maintained by the Department of
352 Finance and Administration pursuant to Section 31-7-10(13).
353 However, nothing contained in this section shall be construed to
354 permit agencies to acquire items of equipment with a total
355 acquisition cost in the aggregate of less than Ten Thousand
356 Dollars (\$10,000.00) by a single lease-purchase transaction. All
357 equipment, and the purchase thereof by any lessor, acquired by
358 lease-purchase under this paragraph and all lease-purchase
359 payments with respect thereto shall be exempt from all Mississippi
360 sales, use and ad valorem taxes. Interest paid on any
361 lease-purchase agreement under this section shall be exempt from
362 State of Mississippi income taxation.

363 (f) **Alternate bid authorization.** When necessary to
364 ensure ready availability of commodities for public works and the
365 timely completion of public projects, no more than two (2)
366 alternate bids may be accepted by a governing authority for
367 commodities. No purchases may be made through use of such
368 alternate bids procedure unless the lowest and best bidder cannot
369 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 purchase is made following the statutory requirements set forth in paragraph (a), (b) or (c) of this section, and (ii) a certified copy of the appropriate minutes of the board of such agency requesting the emergency purchase, if applicable. Upon receipt of the statement and applicable board certification, the State Fiscal



Officer, or his designees, may, in writing, authorize the purchase or repair without having to comply with competitive bidding requirements.

If the governing board or the executive head, or his designees, of any agency determines 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 threaten the health or safety of any person, or the preservation or protection of property, then the provisions in this section for competitive bidding shall not apply, and any officer or agent of the agency having general or specific authority for making the purchase or repair contract shall approve the bill presented for payment, and he shall certify in writing from whom the purchase was made, or with whom the repair contract was made.

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

Purchases under the grant program established under Section 37-68-7 in response to COVID-19 and the directive that school



districts create a distance learning plan and fulfill technology needs expeditiously shall be deemed an emergency purchase for purposes of this paragraph (j).

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

If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority. Purchases under the grant program established under Section 37-68-7 in response to COVID-19 and the directive that school districts create a distance learning plan and fulfill technology needs expeditiously shall be deemed an emergency purchase for purposes of this paragraph (k).



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

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

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



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

521 Purchasing agreements, contracts and maximum price regulations
522 executed or approved by the Department of Finance and
523 Administration.

524 (ii) **Outside equipment repairs.** Repairs to
525 equipment, when such repairs are made by repair facilities in the
526 private sector; however, engines, transmissions, rear axles and/or
527 other such components shall not be included in this exemption when
528 replaced as a complete unit instead of being repaired and the need
529 for such total component replacement is known before disassembly
530 of the component; however, invoices identifying the equipment,
531 specific repairs made, parts identified by number and name,
532 supplies used in such repairs, and the number of hours of labor
533 and costs therefor shall be required for the payment for such
534 repairs.

535 (iii) **In-house equipment repairs.** Purchases of
536 parts for repairs to equipment, when such repairs are made by
537 personnel of the agency or governing authority; however, entire
538 assemblies, such as engines or transmissions, shall not be
539 included in this exemption when the entire assembly is being
540 replaced instead of being repaired.

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



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

555 (vi) **Intergovernmental sales and transfers.**
556 Purchases, sales, transfers or trades by governing authorities or
557 state agencies when such purchases, sales, transfers or trades are
558 made by a private treaty agreement or through means of
559 negotiation, from any federal agency or authority, another
560 governing authority or state agency of the State of Mississippi,
561 or any state agency or governing authority of another state.
562 Nothing in this section shall permit such purchases through public
563 auction except as provided for in subparagraph (v) of this
564 paragraph (m). It is the intent of this section to allow
565 governmental entities to dispose of and/or purchase commodities
566 from other governmental entities at a price that is agreed to by
567 both parties. This shall allow for purchases and/or sales at
568 prices which may be determined to be below the market value if the



569 selling entity determines that the sale at below market value is
570 in the best interest of the taxpayers of the state. Governing
571 authorities shall place the terms of the agreement and any
572 justification on the minutes, and state agencies shall obtain
573 approval from the Department of Finance and Administration, prior
574 to releasing or taking possession of the commodities.

575 (vii) **Perishable supplies or food.** Perishable
576 supplies or food purchased for use in connection with hospitals,
577 the school lunch programs, homemaking programs and for the feeding
578 of county or municipal prisoners.

579 (viii) **Single-source items.** Noncompetitive items
580 available from one (1) source only. In connection with the
581 purchase of noncompetitive items only available from one (1)
582 source, a certification of the conditions and circumstances
583 requiring the purchase shall be filed by the agency with the
584 Department of Finance and Administration and by the governing
585 authority with the board of the governing authority. Upon receipt
586 of that certification the Department of Finance and Administration
587 or the board of the governing authority, as the case may be, may,
588 in writing, authorize the purchase, which authority shall be noted
589 on the minutes of the body at the next regular meeting thereafter.
590 In those situations, a governing authority is not required to
591 obtain the approval of the Department of Finance and
592 Administration. Following the purchase, the executive head of the
593 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 proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals.



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

621 (xi) **Information technology products.** Purchases
622 of information technology products made by governing authorities
623 under the provisions of purchase schedules, or contracts executed
624 or approved by the Mississippi Department of Information
625 Technology Services and designated for use by governing
626 authorities.

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

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

637 (xiv) **Library books and other reference materials.**
638 Purchases by libraries or for libraries of books and periodicals;
639 processed film, videocassette tapes, filmstrips and slides;
640 recorded audiotapes, cassettes and diskettes; and any such items
641 as would be used for teaching, research or other information
642 distribution; however, equipment such as projectors, recorders,



643 audio or video equipment, and monitor televisions are not exempt
644 under this subparagraph.

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

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

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

659 (xviii) **Purchases of prison industry products by**
660 **the Department of Corrections, regional correctional facilities or**
661 **privately owned prisons.** Purchases made by the Mississippi
662 Department of Corrections, regional correctional facilities or
663 privately owned prisons involving any item that is manufactured,
664 processed, grown or produced from the state's prison industries.

665 (xix) **Undercover operations equipment.** Purchases
666 of surveillance equipment or any other high-tech equipment to be
667 used by law enforcement agents in undercover operations, provided



668 that any such purchase shall be in compliance with regulations
669 established by the Department of Finance and Administration.

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

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

679 (xxii) **Garbage, solid waste and sewage contracts.**
680 Contracts for garbage collection or disposal, contracts for solid
681 waste collection or disposal and contracts for sewage collection
682 or disposal.

683 (xxiii) **Municipal water tank maintenance**
684 **contracts.** Professional maintenance program contracts for the
685 repair or maintenance of municipal water tanks, which provide
686 professional services needed to maintain municipal water storage
687 tanks for a fixed annual fee for a duration of two (2) or more
688 years.

689 (xxiv) **Purchases of Mississippi Industries for the**
690 **Blind products or services.** Purchases made by state agencies or
691 governing authorities involving any item that is manufactured,



processed or produced by, or any services provided by, the
Mississippi Industries for the Blind.

(xxv) **Purchases of state-adopted textbooks.**

Purchases of state-adopted textbooks by public school districts.

(xxvi) **Certain purchases under the Mississippi**

Major Economic Impact Act. Contracts entered into pursuant to the
provisions of Section 57-75-9(2), (3) and (4).

(xxvii) **Used heavy or specialized machinery or**

equipment for installation of soil and water conservation

practices purchased at auction. Used heavy or specialized

machinery or equipment used for the installation and

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.

(xxxii) **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.

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

(xxxiiii) **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



791 provisions prohibiting the letting of contracts during specified
792 periods near the end of terms of office. Term contracts for a
793 period exceeding twenty-four (24) months shall also be subject to
794 ratification or cancellation by governing authority boards taking
795 office subsequent to the governing authority board entering the
796 contract.

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

808 (o) **Purchase law violation prohibition and vendor**
809 **penalty.** No contract or purchase as herein authorized shall be
810 made for the purpose of circumventing the provisions of this
811 section requiring competitive bids, nor shall it be lawful for any
812 person or concern to submit individual invoices for amounts within
813 those authorized for a contract or purchase where the actual value
814 of the contract or commodity purchased exceeds the authorized
815 amount and the invoices therefor are split so as to appear to be



816 authorized as purchases for which competitive bids are not
817 required. Submission of such invoices shall constitute a
818 misdemeanor punishable by a fine of not less than Five Hundred
819 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
820 or by imprisonment for thirty (30) days in the county jail, or
821 both such fine and imprisonment. In addition, the claim or claims
822 submitted shall be forfeited.

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

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

(r) **Solid waste contract proposal procedure.** Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Seventy-five Thousand Dollars (\$75,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than the amount provided in paragraph (c) of this section. Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be



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

(s) **Minority set-aside authorization.** Notwithstanding any provision of this section to the contrary, any agency or governing authority, by order placed on its minutes, may, in its discretion, set aside not more than twenty percent (20%) of its



891 anticipated annual expenditures for the purchase of commodities
892 from minority businesses; however, all such set-aside purchases
893 shall comply with all purchasing regulations promulgated by the
894 Department of Finance and Administration and shall be subject to
895 bid requirements under this section. Set-aside purchases for
896 which competitive bids are required shall be made from the lowest
897 and best minority business bidder. For the purposes of this
898 paragraph, the term "minority business" means a business which is
899 owned by a majority of persons who are United States citizens or
900 permanent resident aliens (as defined by the Immigration and
901 Naturalization Service) of the United States, and who are Asian,
902 Black, Hispanic or Native American, according to the following
903 definitions:

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

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

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

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



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

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

932 (v) **Insurability of bidders for public construction or**
933 **other public contracts.** In any solicitation for bids to perform
934 public construction or other public contracts to which this
935 section applies, including, but not limited to, contracts for
936 repair and maintenance, for which the contract will require
937 insurance coverage in an amount of not less than One Million
938 Dollars (\$1,000,000.00), bidders shall be permitted to either
939 submit proof of current insurance coverage in the specified amount



940 or demonstrate ability to obtain the required coverage amount of
941 insurance if the contract is awarded to the bidder. Proof of
942 insurance coverage shall be submitted within five (5) business
943 days from bid acceptance.

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

947 (x) **Mississippi Regional Pre-Need Disaster Clean Up**

948 **Act.** (i) The Department of Finance and Administration shall
949 develop and implement a process that creates a preferred vendor
950 list for both disaster debris removal and monitoring.

951 (ii) Any board of supervisors of any county or any
952 governing authority of any municipality may opt in to the benefits
953 and services provided under the appropriate and relevant contract
954 established in subparagraph (i) of this paragraph at the time of a
955 disaster event in that county or municipality. At the time of opt
956 in, the county or municipality shall assume responsibility for
957 payment in full to the contractor for the disaster-related solid
958 waste collection, disposal or monitoring services provided.
959 Nothing in this subparagraph (ii) shall be construed as requiring
960 a county or municipality to opt in to any such contract
961 established in subparagraph (i) of this paragraph.

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

