

By: Representative Creekmore IV

To: Public Health and Human
Services; Accountability,
Efficiency, Transparency

HOUSE BILL NO. 1064

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE PUBLIC PURCHASING LAWS TO EXEMPT PURCHASES MADE OR
3 CONTRACTS ENTERED INTO BY THE DEPARTMENT OF MENTAL HEALTH THROUGH
4 DECEMBER 31, 2031; TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF
5 1972, TO PROVIDE THAT ANY PERSONAL OR PROFESSIONAL SERVICES
6 CONTRACT ENTERED INTO BY THE MISSISSIPPI DEPARTMENT OF MENTAL
7 HEALTH SHALL BE EXEMPT FROM REVIEW AND APPROVAL BY THE PUBLIC
8 PROCUREMENT REVIEW BOARD THROUGH DECEMBER 31, 2031; AND FOR
9 RELATED PURPOSES.

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

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

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

18 (a) **Bidding procedure for purchases not over \$5,000.00.**
19 Purchases which do not involve an expenditure of more than Five
20 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
21 charges, may be made without advertising or otherwise requesting



22 competitive bids. However, nothing contained in this paragraph
23 (a) shall be construed to prohibit any agency or governing
24 authority from establishing procedures which require competitive
25 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

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



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

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

70 (i) **Publication requirement.**



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

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



121 project in which the estimated cost is in excess of Seventy-five
122 Thousand Dollars (\$75,000.00), such bids shall not be opened in
123 less than fifteen (15) working days after the last notice is
124 published and the notice for the purchase of such construction
125 shall be published once each week for two (2) consecutive weeks.
126 The notice of intention to let contracts or purchase equipment
127 shall state the time and place at which bids shall be received,
128 list the contracts to be made or types of equipment or supplies to
129 be purchased, and, if all plans and/or specifications are not
130 published, refer to the plans and/or specifications on file. If
131 there is no newspaper published in the county or municipality,
132 then such notice shall be given by posting same at the courthouse,
133 or for municipalities at the city hall, and at two (2) other
134 public places in the county or municipality, and also by
135 publication once each week for two (2) consecutive weeks in some
136 newspaper having a general circulation in the county or
137 municipality in the above-provided manner. On the same date that
138 the notice is submitted to the newspaper for publication, the
139 agency or governing authority involved shall mail written notice
140 to, or provide electronic notification to the main office of the
141 Mississippi Procurement Technical Assistance Program under the
142 Mississippi Development Authority that contains the same
143 information as that in the published notice. Within one (1)
144 working day of the contract award, the agency or governing
145 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



196 equipment necessary to perform a specific job. Further, such
197 justification, when placed on the minutes of the board of a
198 governing authority, may serve as authority for that governing
199 authority to write specifications to require a specific item of
200 equipment needed to perform a specific job. In addition to these
201 requirements, from and after July 1, 1990, vendors of relocatable
202 classrooms and the specifications for the purchase of such
203 relocatable classrooms published by local school boards shall meet
204 all pertinent regulations of the State Board of Education,
205 including prior approval of such bid by the State Department of
206 Education.

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

215 (v) **Electronic bids.** Agencies and governing
216 authorities shall provide a secure electronic interactive system
217 for the submittal of bids requiring competitive bidding that shall
218 be an additional bidding option for those bidders who choose to
219 submit their bids electronically. The Department of Finance and
220 Administration shall provide, by regulation, the standards that



221 agencies must follow when receiving electronic bids. Agencies and
222 governing authorities shall make the appropriate provisions
223 necessary to accept electronic bids from those bidders who choose
224 to submit their bids electronically for all purchases requiring
225 competitive bidding under this section. Any special condition or
226 requirement for the electronic bid submission shall be specified
227 in the advertisement for bids required by this section. Agencies
228 or governing authorities that are currently without available high
229 speed Internet access shall be exempt from the requirement of this
230 subparagraph (v) until such time that high speed Internet access
231 becomes available. Any county having a population of less than
232 twenty thousand (20,000) shall be exempt from the provisions of
233 this subparagraph (v). Any municipality having a population of
234 less than ten thousand (10,000) shall be exempt from the
235 provisions of this subparagraph (v). The provisions of this
236 subparagraph (v) shall not require any bidder to submit bids
237 electronically. When construction bids are submitted
238 electronically, the requirement for including a certificate of
239 responsibility, or a statement that the bid enclosed does not
240 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
241 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
242 deemed in compliance with by including same as an attachment with
243 the electronic bid submittal.

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



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

260 (ii) **Decision procedure for Certified Purchasing**
261 **Offices.** In addition to the decision procedure set forth in
262 subparagraph (i) of this paragraph (d), Certified Purchasing
263 Offices may also use the following procedure: Purchases may be
264 made from the bidder offering the best value. In determining the
265 best value bid, freight and shipping charges shall be included.
266 Life-cycle costing, total cost bids, warranties, guaranteed
267 buy-back provisions, documented previous experience, training
268 costs and other relevant provisions, including, but not limited
269 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



320 lease-purchase agreement under this paragraph (e). Lease-purchase
321 financing may also be obtained from the vendor or from a
322 third-party source after having solicited and obtained at least
323 two (2) written competitive bids, as defined in paragraph (b) of
324 this section, for such financing without advertising for such
325 bids. Solicitation for the bids for financing may occur before or
326 after acceptance of bids for the purchase of such equipment or,
327 where no such bids for purchase are required, at any time before
328 the purchase thereof. No such lease-purchase agreement shall be
329 for an annual rate of interest which is greater than the overall
330 maximum interest rate to maturity on general obligation
331 indebtedness permitted under Section 75-17-101, and the term of
332 such lease-purchase agreement shall not exceed the useful life of
333 equipment covered thereby as determined according to the upper
334 limit of the asset depreciation range (ADR) guidelines for the
335 Class Life Asset Depreciation Range System established by the
336 Internal Revenue Service pursuant to the United States Internal
337 Revenue Code and regulations thereunder as in effect on December
338 31, 1980, or comparable depreciation guidelines with respect to
339 any equipment not covered by ADR guidelines. Any lease-purchase
340 agreement entered into pursuant to this paragraph (e) may contain
341 any of the terms and conditions which a master lease-purchase
342 agreement may contain under the provisions of Section 31-7-10(5),
343 and shall contain an annual allocation dependency clause
344 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.



369 (g) **Construction contract change authorization.** In the
370 event a determination is made by an agency or governing authority
371 after a construction contract is let that changes or modifications
372 to the original contract are necessary or would better serve the
373 purpose of the agency or the governing authority, such agency or
374 governing authority may, in its discretion, order such changes
375 pertaining to the construction that are necessary under the
376 circumstances without the necessity of further public bids;
377 provided that such change shall be made in a commercially
378 reasonable manner and shall not be made to circumvent the public
379 purchasing statutes. In addition to any other authorized person,
380 the architect or engineer hired by an agency or governing
381 authority with respect to any public construction contract shall
382 have the authority, when granted by an agency or governing
383 authority, to authorize changes or modifications to the original
384 contract without the necessity of prior approval of the agency or
385 governing authority when any such change or modification is less
386 than one percent (1%) of the total contract amount. The agency or
387 governing authority may limit the number, manner or frequency of
388 such emergency changes or modifications.

389 (h) **Petroleum purchase alternative.** In addition to
390 other methods of purchasing authorized in this chapter, when any
391 agency or governing authority shall have a need for gas, diesel
392 fuel, oils and/or other petroleum products in excess of the amount
393 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:



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

518 Purchasing agreements, contracts and maximum price regulations
519 executed or approved by the Department of Finance and
520 Administration.

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

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

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



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

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



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

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

576 (viii) **Single-source items.** Noncompetitive items
577 available from one (1) source only. In connection with the
578 purchase of noncompetitive items only available from one (1)
579 source, a certification of the conditions and circumstances
580 requiring the purchase shall be filed by the agency with the
581 Department of Finance and Administration and by the governing
582 authority with the board of the governing authority. Upon receipt
583 of that certification the Department of Finance and Administration
584 or the board of the governing authority, as the case may be, may,
585 in writing, authorize the purchase, which authority shall be noted
586 on the minutes of the body at the next regular meeting thereafter.
587 In those situations, a governing authority is not required to
588 obtain the approval of the Department of Finance and
589 Administration. Following the purchase, the executive head of the
590 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.



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

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

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

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

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



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

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

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

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

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

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



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

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

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

676 (xxii) **Garbage, solid waste and sewage contracts.**
677 Contracts for garbage collection or disposal, contracts for solid
678 waste collection or disposal and contracts for sewage collection
679 or disposal.

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

686 (xxiv) **Purchases of Mississippi Industries for the**
687 **Blind products or services.** Purchases made by state agencies or
688 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.

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

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

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

(xxxiv) **Certain transfers made pursuant to the provisions of Section 57-105-1(7).** Transfers of public property



or facilities under Section 57-105-1(7) and construction related to such public property or facilities.

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

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

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

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



(xxxix) **Purchases made by state agencies related to museum exhibits.** Purchases made by an agency related to the fabrication, construction, installation or refurbishing of museum exhibits. An agency making a purchase under this exemption in excess of the bid threshold set forth in paragraph (c) of this section shall publicly advertise a Request for Qualifications or Request for Proposals in which price as an evaluation factor is at least twenty percent (20%) out of the one hundred percent (100%) total weight, but shall be otherwise exempt. Any contract arising from a purchase using this exemption must be approved by the Public Procurement Review Board prior to execution by the agency. The agency shall submit a written report on December 1 of each year to the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Accountability, Efficiency and Transparency Committees and the Chair of the Public Procurement Review Board, identifying all purchases made by the agency using this exemption in which the cost of the option selected by the agency was more than twenty-five percent (25%) higher than the lowest cost option available.

(xl) Purchases made by the Department of Mental Health. Purchases made or contracts entered into by the Department of Mental Health. This subparagraph shall stand repealed on December 31, 2031.

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



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

(ii) Bid proposals and contracts may include price adjustment clauses with relation to the cost to the contractor based upon a nationally published industry-wide or nationally published and recognized cost index. The cost index used in a price adjustment clause shall be determined by the Department of Finance and Administration for the state agencies and by the governing board for governing authorities. The bid proposal and contract documents utilizing a price adjustment clause shall contain the basis and method of adjusting unit prices for the change in the cost of such commodities, equipment and public 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 fuel access system, enter into negotiations with not fewer than two (2) sellers of fuel management or fuel access systems for competitive written bids to provide the services and products for the systems. In the event that the governing authority or agency



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

853 (r) **Solid waste contract proposal procedure.** Before
854 entering into any contract for garbage collection or disposal,
855 contract for solid waste collection or disposal or contract for
856 sewage collection or disposal, which involves an expenditure of
857 more than Seventy-five Thousand Dollars (\$75,000.00), a governing
858 authority or agency shall issue publicly a request for proposals
859 concerning the specifications for such services which shall be
860 advertised for in the same manner as provided in this section for
861 seeking bids for purchases which involve an expenditure of more
862 than the amount provided in paragraph (c) of this section. Any



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



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

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

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

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



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

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

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

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



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

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

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

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



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

965 27-104-7. (1) (a) There is created the Public Procurement
966 Review Board, which shall be reconstituted on January 1, 2018, and
967 shall be composed of the following members:

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

970 (ii) Two (2) individuals appointed by the
971 Lieutenant Governor with the advice and consent of the Senate; and

972 (iii) The Executive Director of the Department of
973 Finance and Administration, serving as an ex officio and nonvoting
974 member.

975 (b) The initial terms of each appointee shall be as
976 follows:

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

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

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

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

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



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

991 (c) When appointing members to the Public Procurement
992 Review Board, the Governor and Lieutenant Governor shall take into
993 consideration persons who possess at least five (5) years of
994 management experience in general business, health care or finance
995 for an organization, corporation or other public or private
996 entity. Any person, or any employee or owner of a company, who
997 receives any grants, procurements or contracts that are subject to
998 approval under this section shall not be appointed to the Public
999 Procurement Review Board. Any person, or any employee or owner of
1000 a company, who is a principal of the source providing a personal
1001 or professional service shall not be appointed to the Public
1002 Procurement Review Board if the principal owns or controls a
1003 greater than five percent (5%) interest or has an ownership value
1004 of One Million Dollars (\$1,000,000.00) in the source's business,
1005 whichever is smaller. No member shall be an officer or employee
1006 of the State of Mississippi while serving as a voting member on
1007 the Public Procurement Review Board.

1008 (d) Members of the Public Procurement Review Board
1009 shall be entitled to per diem as authorized by Section 25-3-69 and
1010 travel reimbursement as authorized by Section 25-3-41.



1011 (e) The members of the Public Procurement Review Board
1012 shall elect a chair from among the membership, and he or she shall
1013 preside over the meetings of the board. The board shall annually
1014 elect a vice chair, who shall serve in the absence of the chair.
1015 No business shall be transacted, including adoption of rules of
1016 procedure, without the presence of a quorum of the board. Three
1017 (3) members shall be a quorum. No action shall be valid unless
1018 approved by a majority of the members present and voting, entered
1019 upon the minutes of the board and signed by the chair. Necessary
1020 clerical and administrative support for the board shall be
1021 provided by the Department of Finance and Administration. Minutes
1022 shall be kept of the proceedings of each meeting, copies of which
1023 shall be filed on a monthly basis with the chairs of the
1024 Accountability, Efficiency and Transparency Committees of the
1025 Senate and House of Representatives and the chairs of the
1026 Appropriations Committees of the Senate and House of
1027 Representatives.

1028 (2) The Public Procurement Review Board shall have the
1029 following powers and responsibilities:

1030 (a) Approve all purchasing regulations governing the
1031 purchase or lease by any agency, as defined in Section 31-7-1, of
1032 commodities and equipment, except computer equipment acquired
1033 pursuant to Sections 25-53-1 through 25-53-29;

1034 (b) Adopt regulations governing the approval of
1035 contracts let for the construction and maintenance of state



buildings and other state facilities as well as related contracts for architectural and engineering services.

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

(c) Adopt regulations governing any lease or rental agreement by any state agency or department, including any state agency financed entirely by federal funds, for space outside the buildings under the jurisdiction of the Department of Finance and Administration. These regulations shall require each agency requesting to lease such space to provide the following information that shall be published by the Department of Finance and Administration on its website: the agency to lease the space; the terms of the lease; the approximate square feet to be leased; the use for the space; a description of a suitable space; the general location desired for the leased space; the contact information for a person from the agency; the deadline date for the agency to have received a lease proposal; any other specific terms or conditions of the agency; and any other information deemed appropriate by the Division of Real Property Management of the Department of Finance and Administration or the Public Procurement Review Board. The information shall be provided sufficiently in advance of the time the space is needed to allow the Division of Real Property Management of the Department of



1061 Finance and Administration to review and preapprove the lease
1062 before the time for advertisement begins;

1063 (d) Adopt, in its discretion, regulations to set aside
1064 at least five percent (5%) of anticipated annual expenditures for
1065 the purchase of commodities from minority businesses; however, all
1066 such set-aside purchases shall comply with all purchasing
1067 regulations promulgated by the department and shall be subject to
1068 all bid requirements. Set-aside purchases for which competitive
1069 bids are required shall be made from the lowest and best minority
1070 business bidder; however, if no minority bid is available or if
1071 the minority bid is more than two percent (2%) higher than the
1072 lowest bid, then bids shall be accepted and awarded to the lowest
1073 and best bidder. However, the provisions in this paragraph shall
1074 not be construed to prohibit the rejection of a bid when only one
1075 (1) bid is received. Such rejection shall be placed in the
1076 minutes. For the purposes of this paragraph, the term "minority
1077 business" means a business which is owned by a person who is a
1078 citizen or lawful permanent resident of the United States and who
1079 is:

1080 (i) Black: having origins in any of the black
1081 racial groups of Africa;

1082 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
1083 Central or South American, or other Spanish or Portuguese culture
1084 or origin regardless of race;



1085 (iii) Asian-American: having origins in any of
1086 the original people of the Far East, Southeast Asia, the Indian
1087 subcontinent, or the Pacific Islands;

1088 (iv) American Indian or Alaskan Native: having
1089 origins in any of the original people of North America; or

1090 (v) Female;

1091 (e) In consultation with and approval by the Chairs of
1092 the Senate and House Public Property Committees, approve leases,
1093 for a term not to exceed eighteen (18) months, entered into by
1094 state agencies for the purpose of providing parking arrangements
1095 for state employees who work in the Woolfolk Building, the Carroll
1096 Gartin Justice Building or the Walter Sillers Office Building;

1097 (f) (i) Except as otherwise provided in subparagraph
1098 (ii) of this paragraph, promulgate rules and regulations governing
1099 the solicitation and selection of contractual services personnel,
1100 including personal and professional services contracts for any
1101 form of consulting, policy analysis, public relations, marketing,
1102 public affairs, legislative advocacy services or any other
1103 contract that the board deems appropriate for oversight, with the
1104 exception of:

1105 1. Any personal service contracts entered
1106 into by any agency that employs only nonstate service employees as
1107 defined in Section 25-9-107(c);

1108 2. Any personal service contracts entered
1109 into for computer or information technology-related services



1110 governed by the Mississippi Department of Information Technology
1111 Services;

1112 3. Any personal service contracts entered
1113 into by the individual state institutions of higher learning;

1114 4. Any personal service contracts entered
1115 into by the Mississippi Department of Transportation;

1116 5. Any personal service contracts entered
1117 into by the Department of Human Services through June 30, 2019,
1118 which the Executive Director of the Department of Human Services
1119 determines would be useful in establishing and operating the
1120 Department of Child Protection Services;

1121 6. Any personal service contracts entered
1122 into by the Department of Child Protection Services through June
1123 30, 2019;

1124 7. Any contracts for entertainers and/or
1125 performers at the Mississippi State Fairgrounds entered into by
1126 the Mississippi Fair Commission;

1127 8. Any contracts entered into by the
1128 Department of Finance and Administration when procuring aircraft
1129 maintenance, parts, equipment and/or services;

1130 9. Any contract entered into by the
1131 Department of Public Safety for service on specialized equipment
1132 and/or software required for the operation of such specialized
1133 equipment for use by the Office of Forensics Laboratories;



1134 10. Any personal or professional service
1135 contract entered into by the Mississippi Department of Health or
1136 the Department of Revenue solely in connection with their
1137 respective responsibilities under the Mississippi Medical Cannabis
1138 Act from February 2, 2022, through June 30, 2026;

1139 11. Any contract for attorney, accountant,
1140 actuary auditor, architect, engineer, anatomical pathologist, or
1141 utility rate expert services;

1142 12. Any personal service contracts approved
1143 by the Executive Director of the Department of Finance and
1144 Administration and entered into by the Coordinator of Mental
1145 Health Accessibility through June 30, 2022;

1146 13. Any personal or professional services
1147 contract entered into by the State Department of Health in
1148 carrying out its responsibilities under the ARPA Rural Water
1149 Associations Infrastructure Grant Program through June 30, 2026;

1150 14. And any personal or professional services
1151 contract entered into by the Mississippi Department of
1152 Environmental Quality in carrying out its responsibilities under
1153 the Mississippi Municipality and County Water Infrastructure Grant
1154 Program Act of 2022, through June 30, 2026;

1155 15. Any personal or professional services
1156 contract entered into by an agency for the design, operation or
1157 maintenance of museum exhibits. An agency making a purchase under
1158 this exemption shall publicly advertise a Request for



1159 Qualifications but shall be otherwise exempt. Any contracts
1160 arising from the use of this exemption must be approved by the
1161 Public Procurement Review Board prior to execution by the
1162 agency; * * *

1163 16. Any personal or professional services
1164 contract entered into by the Mississippi Department of
1165 Environmental Quality in carrying out its responsibilities under
1166 Section 49-2-13(1). This item * * * 16 shall stand repealed on
1167 July 1, 2028 * * * ; and

1168 17. Any personal or professional services
1169 contract entered into by the Mississippi Department of Mental
1170 Health. This item shall stand repealed on December 31, 2031.

1171 Any such rules and regulations shall provide for maintaining
1172 continuous internal audit covering the activities of such agency
1173 affecting its revenue and expenditures as required under Section
1174 7-7-3(6)(d). Any rules and regulation changes related to personal
1175 and professional services contracts that the Public Procurement
1176 Review Board may propose shall be submitted to the Chairs of the
1177 Accountability, Efficiency and Transparency Committees of the
1178 Senate and House of Representatives and the Chairs of the
1179 Appropriation Committees of the Senate and House of
1180 Representatives at least fifteen (15) days before the board votes
1181 on the proposed changes, and those rules and regulation changes,
1182 if adopted, shall be promulgated in accordance with the
1183 Mississippi Administrative Procedures Act.



1184 (ii) From and after July 1, 2024, the Public
1185 Procurement Review Board shall promulgate rules and regulations
1186 that require the Department of Finance and Administration to
1187 conduct personal and professional services solicitations as
1188 provided in subparagraph (i) of this paragraph for those services
1189 in excess of Seventy-five Thousand Dollars (\$75,000.00) for the
1190 Department of Marine Resources, the Department of Wildlife,
1191 Fisheries and Parks, the Mississippi Emergency Management Agency
1192 and the Mississippi Development Authority, with assistance to be
1193 provided from these entities. Any powers that have been conferred
1194 upon agencies in order to comply with the provisions of this
1195 section for personal and professional services solicitations shall
1196 be conferred upon the Department of Finance and Administration to
1197 conduct personal and professional services solicitations for the
1198 Department of Marine Resources, the Department of Wildlife,
1199 Fisheries and Parks, the Mississippi Emergency Management Agency
1200 and the Mississippi Development Authority for those services in
1201 excess of Seventy-five Thousand Dollars (\$75,000.00). The
1202 Department of Finance and Administration shall make any
1203 submissions that are required to be made by other agencies to the
1204 Public Procurement Review Board for the Department of Marine
1205 Resources, the Department of Wildlife, Fisheries and Parks, the
1206 Mississippi Emergency Management Agency and the Mississippi
1207 Development Authority.



1208 The provisions of this subparagraph (ii) shall stand repealed
1209 on June 30, 2027;

1210 (g) Approve all personal and professional services
1211 contracts involving the expenditures of funds in excess of
1212 Seventy-five Thousand Dollars (\$75,000.00), except as provided in
1213 paragraph (f) of this subsection (2) and in subsection (8);

1214 (h) Develop mandatory standards with respect to
1215 contractual services personnel that require invitations for public
1216 bid, requests for proposals, record keeping and financial
1217 responsibility of contractors. The Public Procurement Review
1218 Board shall, unless exempted under this paragraph (h) or under
1219 paragraph (i) or (o) of this subsection (2), require the agency
1220 involved to submit the procurement to a competitive procurement
1221 process, and may reserve the right to reject any or all resulting
1222 procurements;

1223 (i) Prescribe certain circumstances by which agency
1224 heads may enter into contracts for personal and professional
1225 services without receiving prior approval from the Public
1226 Procurement Review Board. The Public Procurement Review Board may
1227 establish a preapproved list of providers of various personal and
1228 professional services for set prices with which state agencies may
1229 contract without bidding or prior approval from the board;

1230 (i) Agency requirements may be fulfilled by
1231 procuring services performed incident to the state's own programs.
1232 The agency head shall determine in writing whether the price



1233 represents a fair market value for the services. When the
1234 procurements are made from other governmental entities, the
1235 private sector need not be solicited; however, these contracts
1236 shall still be submitted for approval to the Public Procurement
1237 Review Board.

1238 (ii) Contracts between two (2) state agencies,
1239 both under Public Procurement Review Board purview, shall not
1240 require Public Procurement Review Board approval. However, the
1241 contracts shall still be entered into the enterprise resource
1242 planning system;

1243 (j) Provide standards for the issuance of requests for
1244 proposals, the evaluation of proposals received, consideration of
1245 costs and quality of services proposed, contract negotiations, the
1246 administrative monitoring of contract performance by the agency
1247 and successful steps in terminating a contract;

1248 (k) Present recommendations for governmental
1249 privatization and to evaluate privatization proposals submitted by
1250 any state agency;

1251 (l) Authorize personal and professional service
1252 contracts to be effective for more than one (1) year provided a
1253 funding condition is included in any such multiple year contract,
1254 except the State Board of Education, which shall have the
1255 authority to enter into contractual agreements for student
1256 assessment for a period up to ten (10) years. The State Board of



1257 Education shall procure these services in accordance with the
1258 Public Procurement Review Board procurement regulations;

1259 (m) Request the State Auditor to conduct a performance
1260 audit on any personal or professional service contract;

1261 (n) Prepare an annual report to the Legislature
1262 concerning the issuance of personal and professional services
1263 contracts during the previous year, collecting any necessary
1264 information from state agencies in making such report;

1265 (o) Develop and implement the following standards and
1266 procedures for the approval of any sole source contract for
1267 personal and professional services regardless of the value of the
1268 procurement:

1269 (i) For the purposes of this paragraph (o), the
1270 term "sole source" means only one (1) source is available that can
1271 provide the required personal or professional service.

1272 (ii) An agency that has been issued a binding,
1273 valid court order mandating that a particular source or provider
1274 must be used for the required service must include a copy of the
1275 applicable court order in all future sole source contract reviews
1276 for the particular personal or professional service referenced in
1277 the court order.

1278 (iii) Any agency alleging to have a sole source
1279 for any personal or professional service, other than those
1280 exempted under paragraph (f) of this subsection (2) and subsection
1281 (8), shall publish on the procurement portal website established



1282 by Sections 25-53-151 and 27-104-165, for at least fourteen (14)
1283 days, the terms of the proposed contract for those services. In
1284 addition, the publication shall include, but is not limited to,
1285 the following information:

1286 1. The personal or professional service
1287 offered in the contract;

1288 2. An explanation of why the personal or
1289 professional service is the only one that can meet the needs of
1290 the agency;

1291 3. An explanation of why the source is the
1292 only person or entity that can provide the required personal or
1293 professional service;

1294 4. An explanation of why the amount to be
1295 expended for the personal or professional service is reasonable;
1296 and

1297 5. The efforts that the agency went through
1298 to obtain the best possible price for the personal or professional
1299 service.

1300 (iv) If any person or entity objects and proposes
1301 that the personal or professional service published under
1302 subparagraph (iii) of this paragraph (o) is not a sole source
1303 service and can be provided by another person or entity, then the
1304 objecting person or entity shall notify the Public Procurement
1305 Review Board and the agency that published the proposed sole



1306 source contract with a detailed explanation of why the personal or
1307 professional service is not a sole source service.

1308 (v) 1. If the agency determines after review that
1309 the personal or professional service in the proposed sole source
1310 contract can be provided by another person or entity, then the
1311 agency must withdraw the sole source contract publication from the
1312 procurement portal website and submit the procurement of the
1313 personal or professional service to an advertised competitive bid
1314 or selection process.

1315 2. If the agency determines after review that
1316 there is only one (1) source for the required personal or
1317 professional service, then the agency may appeal to the Public
1318 Procurement Review Board. The agency has the burden of proving
1319 that the personal or professional service is only provided by one
1320 (1) source.

1321 3. If the Public Procurement Review Board has
1322 any reasonable doubt as to whether the personal or professional
1323 service can only be provided by one (1) source, then the agency
1324 must submit the procurement of the personal or professional
1325 service to an advertised competitive bid or selection process. No
1326 action taken by the Public Procurement Review Board in this appeal
1327 process shall be valid unless approved by a majority of the
1328 members of the Public Procurement Review Board present and voting.

1329 (vi) The Public Procurement Review Board shall
1330 prepare and submit a quarterly report to the House of



1331 Representatives and Senate Accountability, Efficiency and
1332 Transparency Committees that details the sole source contracts
1333 presented to the Public Procurement Review Board and the reasons
1334 that the Public Procurement Review Board approved or rejected each
1335 contract. These quarterly reports shall also include the
1336 documentation and memoranda required in subsection (4) of this
1337 section. An agency that submitted a sole source contract shall be
1338 prepared to explain the sole source contract to each committee by
1339 December 15 of each year upon request by the committee;

1340 (p) Assess any fines and administrative penalties
1341 provided for in Sections 31-7-401 through 31-7-423.

1342 (3) All submissions shall be made sufficiently in advance of
1343 each monthly meeting of the Public Procurement Review Board as
1344 prescribed by the Public Procurement Review Board. If the Public
1345 Procurement Review Board rejects any contract submitted for review
1346 or approval, the Public Procurement Review Board shall clearly set
1347 out the reasons for its action, including, but not limited to, the
1348 policy that the agency has violated in its submitted contract and
1349 any corrective actions that the agency may take to amend the
1350 contract to comply with the rules and regulations of the Public
1351 Procurement Review Board.

1352 (4) All sole source contracts for personal and professional
1353 services awarded by state agencies, other than those exempted
1354 under Section 27-104-7(2)(f) and (8), whether approved by an
1355 agency head or the Public Procurement Review Board, shall contain



1356 in the procurement file a written determination for the approval,
1357 using a request form furnished by the Public Procurement Review
1358 Board. The written determination shall document the basis for the
1359 determination, including any market analysis conducted in order to
1360 ensure that the service required was practicably available from
1361 only one (1) source. A memorandum shall accompany the request
1362 form and address the following four (4) points:

1363 (a) Explanation of why this service is the only service
1364 that can meet the needs of the purchasing agency;

1365 (b) Explanation of why this vendor is the only
1366 practicably available source from which to obtain this service;

1367 (c) Explanation of why the price is considered
1368 reasonable; and

1369 (d) Description of the efforts that were made to
1370 conduct a noncompetitive negotiation to get the best possible
1371 price for the taxpayers.

1372 (5) In conjunction with the State Personnel Board, the
1373 Public Procurement Review Board shall develop and promulgate rules
1374 and regulations to define the allowable legal relationship between
1375 contract employees and the contracting departments, agencies and
1376 institutions of state government under the jurisdiction of the
1377 State Personnel Board, in compliance with the applicable rules and
1378 regulations of the federal Internal Revenue Service (IRS) for
1379 federal employment tax purposes. Under these regulations, the
1380 usual common law rules are applicable to determine and require



1381 that such worker is an independent contractor and not an employee,
1382 requiring evidence of lawful behavioral control, lawful financial
1383 control and lawful relationship of the parties. Any state
1384 department, agency or institution shall only be authorized to
1385 contract for personnel services in compliance with those
1386 regulations.

1387 (6) No member of the Public Procurement Review Board shall
1388 use his or her official authority or influence to coerce, by
1389 threat of discharge from employment, or otherwise, the purchase of
1390 commodities, the contracting for personal or professional
1391 services, or the contracting for public construction under this
1392 chapter.

1393 (7) Notwithstanding any other laws or rules to the contrary,
1394 the provisions of subsection (2) of this section shall not be
1395 applicable to the Mississippi State Port Authority at Gulfport.

1396 (8) Nothing in this section shall impair or limit the
1397 authority of the Board of Trustees of the Public Employees'
1398 Retirement System to enter into any personal or professional
1399 services contracts directly related to their constitutional
1400 obligation to manage the trust funds, including, but not limited
1401 to, actuarial, custodial banks, cash management, investment
1402 consultant and investment management contracts. Nothing in this
1403 section shall impair or limit the authority of the State Treasurer
1404 to enter into any personal or professional services contracts
1405 involving the management of trust funds, including, but not



1406 limited to, actuarial, custodial banks, cash management,
1407 investment consultant and investment management contracts.

1408 (9) Through December 31, 2026, the provisions of this
1409 section related to rental agreements or leasing of real property
1410 for the purpose of conducting agency business shall not apply to
1411 the Office of Workforce Development created in **Section 37-153-7**.

1412 **SECTION 3.** This act shall take effect and be in force from
1413 and after July 1, 2025.

