

By: Representatives Hulum, Bell (65th)

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 1322

1 AN ACT TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE THE PUBLIC PROCUREMENT REVIEW BOARD TO ADOPT
3 REGULATIONS TO SET ASIDE AT LEAST FIVE PERCENT (5%) OF ANTICIPATED
4 ANNUAL EXPENDITURES FOR THE PURCHASE OF COMMODITIES FROM MINORITY
5 BUSINESSES; TO PROVIDE THAT BUSINESSES OWNED BY VETERANS AND
6 BUSINESSES OWNED BY PEOPLE WITH DISABILITIES SHALL ALSO BE
7 ELIGIBLE FOR THE SET-ASIDES; TO AMEND SECTION 31-7-13, MISSISSIPPI
8 CODE OF 1972, TO AMEND THE PUBLIC PURCHASING LAW TO REQUIRE ANY
9 AGENCY OR GOVERNING AUTHORITY TO SET ASIDE NOT MORE THAN TWENTY
10 PERCENT (20%) OF ITS ANTICIPATED ANNUAL EXPENDITURES FOR THE
11 PURCHASE OF COMMODITIES FROM MINORITY BUSINESSES; TO PROVIDE THAT
12 BUSINESSES OWNED BY VETERANS AND BUSINESSES OWNED BY PEOPLE WITH
13 DISABILITIES SHALL ALSO BE ELIGIBLE FOR THE SET-ASIDES; AND FOR
14 RELATED PURPOSES.

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

16 **SECTION 1.** Section 27-104-7, Mississippi Code of 1972, is
17 amended as follows:

18 27-104-7. (1) (a) There is created the Public Procurement
19 Review Board, which shall be reconstituted on January 1, 2018, and
20 shall be composed of the following members:

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

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



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

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

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

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

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

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

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

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

(c) When appointing members to the Public Procurement Review Board, the Governor and Lieutenant Governor shall take into consideration persons who possess at least five (5) years of management experience in general business, health care or finance for an organization, corporation or other public or private entity. Any person, or any employee or owner of a company, who



50 receives any grants, procurements or contracts that are subject to
51 approval under this section shall not be appointed to the Public
52 Procurement Review Board. Any person, or any employee or owner of
53 a company, who is a principal of the source providing a personal
54 or professional service shall not be appointed to the Public
55 Procurement Review Board if the principal owns or controls a
56 greater than five percent (5%) interest or has an ownership value
57 of One Million Dollars (\$1,000,000.00) in the source's business,
58 whichever is smaller. No member shall be an officer or employee
59 of the State of Mississippi while serving as a voting member on
60 the Public Procurement Review Board.

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

64 (e) The members of the Public Procurement Review Board
65 shall elect a chair from among the membership, and he or she shall
66 preside over the meetings of the board. The board shall annually
67 elect a vice chair, who shall serve in the absence of the chair.
68 No business shall be transacted, including adoption of rules of
69 procedure, without the presence of a quorum of the board. Three
70 (3) members shall be a quorum. No action shall be valid unless
71 approved by a majority of the members present and voting, entered
72 upon the minutes of the board and signed by the chair. Necessary
73 clerical and administrative support for the board shall be
74 provided by the Department of Finance and Administration. Minutes



75 shall be kept of the proceedings of each meeting, copies of which
76 shall be filed on a monthly basis with the chairs of the
77 Accountability, Efficiency and Transparency Committees of the
78 Senate and House of Representatives and the chairs of the
79 Appropriations Committees of the Senate and House of
80 Representatives.

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

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

87 (b) Adopt regulations governing the approval of
88 contracts let for the construction and maintenance of state
89 buildings and other state facilities as well as related contracts
90 for architectural and engineering services.

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

95 (c) Adopt regulations governing any lease or rental
96 agreement by any state agency or department, including any state
97 agency financed entirely by federal funds, for space outside the
98 buildings under the jurisdiction of the Department of Finance and
99 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 Finance and Administration to review and preapprove the lease before the time for advertisement begins;

(d) Adopt * * * regulations to set aside at least five percent (5%) of anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the department and shall be subject to all bid requirements. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder; however, if no minority bid is available or if the minority bid is more than two percent (2%) higher than the lowest



bid, then bids shall be accepted and awarded to the lowest and best bidder. However, the provisions in this paragraph shall not be construed to prohibit the rejection of a bid when only one (1) bid is received. Such rejection shall be placed in the minutes. For the purposes of this paragraph, the term "minority business" means a business which is owned by a person who is a citizen or lawful permanent resident of the United States and who is:

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

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

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

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

(v) Female;

(vi) Veteran: the same as that term is defined in 38 USCS 101(2); or

(vii) Person with a disability: any person who has a physical or mental impairment that significantly limits a person's ability to perform major life activities, as defined by the Americans with Disabilities Act.



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

155 (f) (i) Except as otherwise provided in subparagraph
156 (ii) of this paragraph, promulgate rules and regulations governing
157 the solicitation and selection of contractual services personnel,
158 including personal and professional services contracts for any
159 form of consulting, policy analysis, public relations, marketing,
160 public affairs, legislative advocacy services or any other
161 contract that the board deems appropriate for oversight, with the
162 exception of:

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

166 2. Any personal service contracts entered
167 into for computer or information technology-related services
168 governed by the Mississippi Department of Information Technology
169 Services;

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

172 4. Any personal service contracts entered
173 into by the Mississippi Department of Transportation;



174 5. Any personal service contracts entered
175 into by the Department of Human Services through June 30, 2019,
176 which the Executive Director of the Department of Human Services
177 determines would be useful in establishing and operating the
178 Department of Child Protection Services;

179 6. Any personal service contracts entered
180 into by the Department of Child Protection Services through June
181 30, 2019;

182 7. Any contracts for entertainers and/or
183 performers at the Mississippi State Fairgrounds entered into by
184 the Mississippi Fair Commission;

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

188 9. Any contract entered into by the
189 Department of Public Safety for service on specialized equipment
190 and/or software required for the operation of such specialized
191 equipment for use by the Office of Forensics Laboratories;

192 10. Any personal or professional service
193 contract entered into by the Mississippi Department of Health or
194 the Department of Revenue solely in connection with their
195 respective responsibilities under the Mississippi Medical Cannabis
196 Act from February 2, 2022, through June 30, 2026;



197 11. Any contract for attorney, accountant,
198 actuary auditor, architect, engineer, anatomical pathologist, or
199 utility rate expert services;

200 12. Any personal service contracts approved
201 by the Executive Director of the Department of Finance and
202 Administration and entered into by the Coordinator of Mental
203 Health Accessibility through June 30, 2022;

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

208 14. And any personal or professional services
209 contract entered into by the Mississippi Department of
210 Environmental Quality in carrying out its responsibilities under
211 the Mississippi Municipality and County Water Infrastructure Grant
212 Program Act of 2022, through June 30, 2026;

213 15. Any personal or professional services
214 contract entered into by an agency for the design, operation or
215 maintenance of museum exhibits. An agency making a purchase under
216 this exemption shall publicly advertise a Request for
217 Qualifications but shall be otherwise exempt. Any contracts
218 arising from the use of this exemption must be approved by the
219 Public Procurement Review Board prior to execution by the agency;
220 and



221 16. Any personal or professional services
222 contract entered into by the Mississippi Department of
223 Environmental Quality in carrying out its responsibilities under
224 Section 49-2-13(1). This item * * * 16 shall stand repealed on
225 July 1, 2028.

226 Any such rules and regulations shall provide for maintaining
227 continuous internal audit covering the activities of such agency
228 affecting its revenue and expenditures as required under Section
229 7-7-3(6)(d). Any rules and regulation changes related to personal
230 and professional services contracts that the Public Procurement
231 Review Board may propose shall be submitted to the Chairs of the
232 Accountability, Efficiency and Transparency Committees of the
233 Senate and House of Representatives and the Chairs of the
234 Appropriation Committees of the Senate and House of
235 Representatives at least fifteen (15) days before the board votes
236 on the proposed changes, and those rules and regulation changes,
237 if adopted, shall be promulgated in accordance with the
238 Mississippi Administrative Procedures Act.

239 (ii) From and after July 1, 2024, the Public
240 Procurement Review Board shall promulgate rules and regulations
241 that require the Department of Finance and Administration to
242 conduct personal and professional services solicitations as
243 provided in subparagraph (i) of this paragraph for those services
244 in excess of Seventy-five Thousand Dollars (\$75,000.00) for the
245 Department of Marine Resources, the Department of Wildlife,



Fisheries and Parks, the Mississippi Emergency Management Agency and the Mississippi Development Authority, with assistance to be provided from these entities. Any powers that have been conferred upon agencies in order to comply with the provisions of this section for personal and professional services solicitations shall be conferred upon the Department of Finance and Administration to conduct personal and professional services solicitations for the Department of Marine Resources, the Department of Wildlife, Fisheries and Parks, the Mississippi Emergency Management Agency and the Mississippi Development Authority for those services in excess of Seventy-five Thousand Dollars (\$75,000.00). The Department of Finance and Administration shall make any submissions that are required to be made by other agencies to the Public Procurement Review Board for the Department of Marine Resources, the Department of Wildlife, Fisheries and Parks, the Mississippi Emergency Management Agency and the Mississippi Development Authority.

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

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

(h) Develop mandatory standards with respect to contractual services personnel that require invitations for public



bid, requests for proposals, record keeping and financial responsibility of contractors. The Public Procurement Review Board shall, unless exempted under this paragraph (h) or under paragraph (i) or (o) of this subsection (2), require the agency involved to submit the procurement to a competitive procurement process, and may reserve the right to reject any or all resulting procurements;

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

(i) Agency requirements may be fulfilled by procuring services performed incident to the state's own programs. The agency head shall determine in writing whether the price represents a fair market value for the services. When the procurements are made from other governmental entities, the private sector need not be solicited; however, these contracts shall still be submitted for approval to the Public Procurement Review Board.

(ii) Contracts between two (2) state agencies, both under Public Procurement Review Board purview, shall not require Public Procurement Review Board approval. However, the



contracts shall still be entered into the enterprise resource planning system;

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

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

(l) Authorize personal and professional service contracts to be effective for more than one (1) year provided a funding condition is included in any such multiple year contract, except the State Board of Education, which shall have the authority to enter into contractual agreements for student assessment for a period up to ten (10) years. The State Board of Education shall procure these services in accordance with the Public Procurement Review Board procurement regulations;

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

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



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

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

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

(iii) Any agency alleging to have a sole source for any personal or professional service, other than those exempted under paragraph (f) of this subsection (2) and subsection (8), shall publish on the procurement portal website established by Sections 25-53-151 and 27-104-165, for at least fourteen (14) days, the terms of the proposed contract for those services. In addition, the publication shall include, but is not limited to, the following information:

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



343 2. An explanation of why the personal or
344 professional service is the only one that can meet the needs of
345 the agency;

346 3. An explanation of why the source is the
347 only person or entity that can provide the required personal or
348 professional service;

349 4. An explanation of why the amount to be
350 expended for the personal or professional service is reasonable;
351 and

352 5. The efforts that the agency went through
353 to obtain the best possible price for the personal or professional
354 service.

355 (iv) If any person or entity objects and proposes
356 that the personal or professional service published under
357 subparagraph (iii) of this paragraph (o) is not a sole source
358 service and can be provided by another person or entity, then the
359 objecting person or entity shall notify the Public Procurement
360 Review Board and the agency that published the proposed sole
361 source contract with a detailed explanation of why the personal or
362 professional service is not a sole source service.

363 (v) 1. If the agency determines after review that
364 the personal or professional service in the proposed sole source
365 contract can be provided by another person or entity, then the
366 agency must withdraw the sole source contract publication from the
367 procurement portal website and submit the procurement of the



personal or professional service to an advertised competitive bid or selection process.

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

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

(vi) The Public Procurement Review Board shall prepare and submit a quarterly report to the House of Representatives and Senate Accountability, Efficiency and Transparency Committees that details the sole source contracts presented to the Public Procurement Review Board and the reasons that the Public Procurement Review Board approved or rejected each contract. These quarterly reports shall also include the documentation and memoranda required in subsection (4) of this section. An agency that submitted a sole source contract shall be



prepared to explain the sole source contract to each committee by
December 15 of each year upon request by the committee;

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

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

(4) All sole source contracts for personal and professional
services awarded by state agencies, other than those exempted
under Section 27-104-7(2)(f) and (8), whether approved by an
agency head or the Public Procurement Review Board, shall contain
in the procurement file a written determination for the approval,
using a request form furnished by the Public Procurement Review
Board. The written determination shall document the basis for the
determination, including any market analysis conducted in order to
ensure that the service required was practicably available from
only one (1) source. A memorandum shall accompany the request
form and address the following four (4) points:



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

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

422 (c) Explanation of why the price is considered
423 reasonable; and

424 (d) Description of the efforts that were made to
425 conduct a noncompetitive negotiation to get the best possible
426 price for the taxpayers.

427 (5) In conjunction with the State Personnel Board, the
428 Public Procurement Review Board shall develop and promulgate rules
429 and regulations to define the allowable legal relationship between
430 contract employees and the contracting departments, agencies and
431 institutions of state government under the jurisdiction of the
432 State Personnel Board, in compliance with the applicable rules and
433 regulations of the federal Internal Revenue Service (IRS) for
434 federal employment tax purposes. Under these regulations, the
435 usual common law rules are applicable to determine and require
436 that such worker is an independent contractor and not an employee,
437 requiring evidence of lawful behavioral control, lawful financial
438 control and lawful relationship of the parties. Any state
439 department, agency or institution shall only be authorized to
440 contract for personnel services in compliance with those
441 regulations.



442 (6) No member of the Public Procurement Review Board shall
443 use his or her official authority or influence to coerce, by
444 threat of discharge from employment, or otherwise, the purchase of
445 commodities, the contracting for personal or professional
446 services, or the contracting for public construction under this
447 chapter.

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

451 (8) Nothing in this section shall impair or limit the
452 authority of the Board of Trustees of the Public Employees'
453 Retirement System to enter into any personal or professional
454 services contracts directly related to their constitutional
455 obligation to manage the trust funds, including, but not limited
456 to, actuarial, custodial banks, cash management, investment
457 consultant and investment management contracts. Nothing in this
458 section shall impair or limit the authority of the State Treasurer
459 to enter into any personal or professional services contracts
460 involving the management of trust funds, including, but not
461 limited to, actuarial, custodial banks, cash management,
462 investment consultant and investment management contracts.

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



467 **SECTION 2.** Section 31-7-13, Mississippi Code of 1972, is
468 amended as follows:

469 31-7-13. All agencies and governing authorities shall
470 purchase their commodities and printing; contract for garbage
471 collection or disposal; contract for solid waste collection or
472 disposal; contract for sewage collection or disposal; contract for
473 public construction; and contract for rentals as herein provided.

474 (a) **Bidding procedure for purchases not over \$5,000.00.**
475 Purchases which do not involve an expenditure of more than Five
476 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
477 charges, may be made without advertising or otherwise requesting
478 competitive bids. However, nothing contained in this paragraph
479 (a) shall be construed to prohibit any agency or governing
480 authority from establishing procedures which require competitive
481 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

482 (b) **Bidding procedure for purchases over \$5,000.00 but**
483 **not over \$75,000.00.** Purchases which involve an expenditure of
484 more than Five Thousand Dollars (\$5,000.00) but not more than
485 Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight
486 and shipping charges, may be made from the lowest and best bidder
487 without publishing or posting advertisement for bids, provided at
488 least two (2) competitive written bids have been obtained. Any
489 state agency or community or junior college purchasing commodities
490 or procuring construction pursuant to this paragraph (b) may
491 authorize its purchasing agent, or his designee, to accept the



lowest competitive written bid under Seventy-five Thousand Dollars (\$75,000.00). Any governing authority purchasing commodities pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, with regard to governing authorities other than counties, or its purchase clerk, or his designee, with regard to counties, to accept the lowest and best competitive written bid. Such authorization shall be made in writing by the governing authority and shall be maintained on file in the primary office of the agency and recorded in the official minutes of the governing authority, as appropriate. The purchasing agent or the purchase clerk, or his designee, as the case may be, and not the governing authority, shall be liable for any penalties and/or damages as may 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



617 with the Uniform Administrative Requirements, Cost Principles, and
618 Audit Requirements for Federal Awards - Subpart D - Post Federal
619 Award Requirements Procurement Standards, in accordance with 2 CFR
620 200.317 through 2 CFR 200.327.

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

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



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

646 (iv) **Specification restrictions.**

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

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



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

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



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

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

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



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

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



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

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

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



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

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



791 Class Life Asset Depreciation Range System established by the
792 Internal Revenue Service pursuant to the United States Internal
793 Revenue Code and regulations thereunder as in effect on December
794 31, 1980, or comparable depreciation guidelines with respect to
795 any equipment not covered by ADR guidelines. Any lease-purchase
796 agreement entered into pursuant to this paragraph (e) may contain
797 any of the terms and conditions which a master lease-purchase
798 agreement may contain under the provisions of Section 31-7-10(5),
799 and shall contain an annual allocation dependency clause
800 substantially similar to that set forth in Section 31-7-10(8).
801 Each agency or governing authority entering into a lease-purchase
802 transaction pursuant to this paragraph (e) shall maintain with
803 respect to each such lease-purchase transaction the same
804 information as required to be maintained by the Department of
805 Finance and Administration pursuant to Section 31-7-10(13).
806 However, nothing contained in this section shall be construed to
807 permit agencies to acquire items of equipment with a total
808 acquisition cost in the aggregate of less than Ten Thousand
809 Dollars (\$10,000.00) by a single lease-purchase transaction. All
810 equipment, and the purchase thereof by any lessor, acquired by
811 lease-purchase under this paragraph and all lease-purchase
812 payments with respect thereto shall be exempt from all Mississippi
813 sales, use and ad valorem taxes. Interest paid on any
814 lease-purchase agreement under this section shall be exempt from
815 State of Mississippi income taxation.



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

825 (g) **Construction contract change authorization.** In the
826 event a determination is made by an agency or governing authority
827 after a construction contract is let that changes or modifications
828 to the original contract are necessary or would better serve the
829 purpose of the agency or the governing authority, such agency or
830 governing authority may, in its discretion, order such changes
831 pertaining to the construction that are necessary under the
832 circumstances without the necessity of further public bids;
833 provided that such change shall be made in a commercially
834 reasonable manner and shall not be made to circumvent the public
835 purchasing statutes. In addition to any other authorized person,
836 the architect or engineer hired by an agency or governing
837 authority with respect to any public construction contract shall
838 have the authority, when granted by an agency or governing
839 authority, to authorize changes or modifications to the original
840 contract without the necessity of prior approval of the agency or



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

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

862 (i) **Road construction petroleum products price**
863 **adjustment clause authorization.** Any agency or governing
864 authority authorized to enter into contracts for the construction,
865 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,



891 which shall include a detailed description of the events leading
892 up to the situation and the negative impact to the entity if the
893 purchase is made following the statutory requirements set forth in
894 paragraph (a), (b) or (c) of this section, and (ii) a certified
895 copy of the appropriate minutes of the board of such agency
896 requesting the emergency purchase, if applicable. Upon receipt of
897 the statement and applicable board certification, the State Fiscal
898 Officer, or his designees, may, in writing, authorize the purchase
899 or repair without having to comply with competitive bidding
900 requirements.

901 If the governing board or the executive head, or his
902 designees, of any agency determines that an emergency exists in
903 regard to the purchase of any commodities or repair contracts, so
904 that the delay incident to giving opportunity for competitive
905 bidding would threaten the health or safety of any person, or the
906 preservation or protection of property, then the provisions in
907 this section for competitive bidding shall not apply, and any
908 officer or agent of the agency having general or specific
909 authority for making the purchase or repair contract shall approve
910 the bill presented for payment, and he shall certify in writing
911 from whom the purchase was made, or with whom the repair contract
912 was made.

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



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

921 Purchases under the grant program established under Section
922 37-68-7 in response to COVID-19 and the directive that school
923 districts create a distance learning plan and fulfill technology
924 needs expeditiously shall be deemed an emergency purchase for
925 purposes of this paragraph (j).

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

927 If the governing authority, or the governing authority acting
928 through its designee, shall determine that an emergency exists in
929 regard to the purchase of any commodities or repair contracts, so
930 that the delay incident to giving opportunity for competitive
931 bidding would be detrimental to the interest of the governing
932 authority, then the provisions herein for competitive bidding
933 shall not apply and any officer or agent of such governing
934 authority having general or special authority therefor in making
935 such purchase or repair shall approve the bill presented therefor,
936 and he shall certify in writing thereon from whom such purchase
937 was made, or with whom such a repair contract was made. At the
938 board meeting next following the emergency purchase or repair
939 contract, documentation of the purchase or repair contract,
940 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



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

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

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

977 (ii) **Outside equipment repairs.** Repairs to
978 equipment, when such repairs are made by repair facilities in the
979 private sector; however, engines, transmissions, rear axles and/or
980 other such components shall not be included in this exemption when
981 replaced as a complete unit instead of being repaired and the need
982 for such total component replacement is known before disassembly
983 of the component; however, invoices identifying the equipment,
984 specific repairs made, parts identified by number and name,
985 supplies used in such repairs, and the number of hours of labor
986 and costs therefor shall be required for the payment for such
987 repairs.

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



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

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

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

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



1016 auction except as provided for in subparagraph (v) of this
1017 paragraph (m). It is the intent of this section to allow
1018 governmental entities to dispose of and/or purchase commodities
1019 from other governmental entities at a price that is agreed to by
1020 both parties. This shall allow for purchases and/or sales at
1021 prices which may be determined to be below the market value if the
1022 selling entity determines that the sale at below market value is
1023 in the best interest of the taxpayers of the state. Governing
1024 authorities shall place the terms of the agreement and any
1025 justification on the minutes, and state agencies shall obtain
1026 approval from the Department of Finance and Administration, prior
1027 to releasing or taking possession of the commodities.

1028 (vii) **Perishable supplies or food.** Perishable
1029 supplies or food purchased for use in connection with hospitals,
1030 the school lunch programs, homemaking programs and for the feeding
1031 of county or municipal prisoners.

1032 (viii) **Single-source items.** Noncompetitive items
1033 available from one (1) source only. In connection with the
1034 purchase of noncompetitive items only available from one (1)
1035 source, a certification of the conditions and circumstances
1036 requiring the purchase shall be filed by the agency with the
1037 Department of Finance and Administration and by the governing
1038 authority with the board of the governing authority. Upon receipt
1039 of that certification the Department of Finance and Administration
1040 or the board of the governing authority, as the case may be, may,



1041 in writing, authorize the purchase, which authority shall be noted
1042 on the minutes of the body at the next regular meeting thereafter.
1043 In those situations, a governing authority is not required to
1044 obtain the approval of the Department of Finance and
1045 Administration. Following the purchase, the executive head of the
1046 state agency, or his designees, shall file with the Department of
1047 Finance and Administration, documentation of the purchase,
1048 including a description of the commodity purchased, the purchase
1049 price thereof and the source from whom it was purchased.

1050 (ix) **Waste disposal facility construction**
1051 **contracts.** Construction of incinerators and other facilities for
1052 disposal of solid wastes in which products either generated
1053 therein, such as steam, or recovered therefrom, such as materials
1054 for recycling, are to be sold or otherwise disposed of; however,
1055 in constructing such facilities, a governing authority or agency
1056 shall publicly issue requests for proposals, advertised for in the
1057 same manner as provided herein for seeking bids for public
1058 construction projects, concerning the design, construction,
1059 ownership, operation and/or maintenance of such facilities,
1060 wherein such requests for proposals when issued shall contain
1061 terms and conditions relating to price, financial responsibility,
1062 technology, environmental compatibility, legal responsibilities
1063 and such other matters as are determined by the governing
1064 authority or agency to be appropriate for inclusion; and after
1065 responses to the request for proposals have been duly received,



1066 the governing authority or agency may select the most qualified
1067 proposal or proposals on the basis of price, technology and other
1068 relevant factors and from such proposals, but not limited to the
1069 terms thereof, negotiate and enter contracts with one or more of
1070 the persons or firms submitting proposals.

1071 (x) **Hospital group purchase contracts.** Supplies,
1072 commodities and equipment purchased by hospitals through group
1073 purchase programs pursuant to Section 31-7-38.

1074 (xi) **Information technology products.** Purchases
1075 of information technology products made by governing authorities
1076 under the provisions of purchase schedules, or contracts executed
1077 or approved by the Mississippi Department of Information
1078 Technology Services and designated for use by governing
1079 authorities.

1080 (xii) **Energy efficiency services and equipment.**
1081 Energy efficiency services and equipment acquired by school
1082 districts, community and junior colleges, institutions of higher
1083 learning and state agencies or other applicable governmental
1084 entities on a shared-savings, lease or lease-purchase basis
1085 pursuant to Section 31-7-14.

1086 (xiii) **Municipal electrical utility system fuel.**
1087 Purchases of coal and/or natural gas by municipally owned electric
1088 power generating systems that have the capacity to use both coal
1089 and natural gas for the generation of electric power.



1090 (xiv) **Library books and other reference materials.**

1091 Purchases by libraries or for libraries of books and periodicals;
1092 processed film, videocassette tapes, filmstrips and slides;
1093 recorded audiotapes, cassettes and diskettes; and any such items
1094 as would be used for teaching, research or other information
1095 distribution; however, equipment such as projectors, recorders,
1096 audio or video equipment, and monitor televisions are not exempt
1097 under this subparagraph.

1098 (xv) **Unmarked vehicles.** Purchases of unmarked
1099 vehicles when such purchases are made in accordance with
1100 purchasing regulations adopted by the Department of Finance and
1101 Administration pursuant to Section 31-7-9(2).

1102 (xvi) **Election ballots.** Purchases of ballots
1103 printed pursuant to Section 23-15-351.

1104 (xvii) **Multichannel interactive video systems.**
1105 From and after July 1, 1990, contracts by Mississippi Authority
1106 for Educational Television with any private educational
1107 institution or private nonprofit organization whose purposes are
1108 educational in regard to the construction, purchase, lease or
1109 lease-purchase of facilities and equipment and the employment of
1110 personnel for providing multichannel interactive video systems
1111 (ITSF) in the school districts of this state.

1112 (xviii) **Purchases of prison industry products by**
1113 **the Department of Corrections, regional correctional facilities or**
1114 **privately owned prisons.** Purchases made by the Mississippi



1115 Department of Corrections, regional correctional facilities or
1116 privately owned prisons involving any item that is manufactured,
1117 processed, grown or produced from the state's prison industries.

1118 (xix) **Undercover operations equipment.** Purchases
1119 of surveillance equipment or any other high-tech equipment to be
1120 used by law enforcement agents in undercover operations, provided
1121 that any such purchase shall be in compliance with regulations
1122 established by the Department of Finance and Administration.

1123 (xx) **Junior college books for rent.** Purchases by
1124 community or junior colleges of textbooks which are obtained for
1125 the purpose of renting such books to students as part of a book
1126 service system.

1127 (xxi) **Certain school district purchases.**
1128 Purchases of commodities made by school districts from vendors
1129 with which any levying authority of the school district, as
1130 defined in Section 37-57-1, has contracted through competitive
1131 bidding procedures for purchases of the same commodities.

1132 (xxii) **Garbage, solid waste and sewage contracts.**
1133 Contracts for garbage collection or disposal, contracts for solid
1134 waste collection or disposal and contracts for sewage collection
1135 or disposal.

1136 (xxiii) **Municipal water tank maintenance**
1137 **contracts.** Professional maintenance program contracts for the
1138 repair or maintenance of municipal water tanks, which provide
1139 professional services needed to maintain municipal water storage



1140 tanks for a fixed annual fee for a duration of two (2) or more
1141 years.

1142 (xxiv) **Purchases of Mississippi Industries for the**
1143 **Blind products or services.** Purchases made by state agencies or
1144 governing authorities involving any item that is manufactured,
1145 processed or produced by, or any services provided by, the
1146 Mississippi Industries for the Blind.

1147 (xxv) **Purchases of state-adopted textbooks.**
1148 Purchases of state-adopted textbooks by public school districts.

1149 (xxvi) **Certain purchases under the Mississippi**
1150 **Major Economic Impact Act.** Contracts entered into pursuant to the
1151 provisions of Section 57-75-9(2), (3) and (4).

1152 (xxvii) **Used heavy or specialized machinery or**
1153 **equipment for installation of soil and water conservation**
1154 **practices purchased at auction.** Used heavy or specialized
1155 machinery or equipment used for the installation and
1156 implementation of soil and water conservation practices or
1157 measures purchased subject to the restrictions provided in
1158 Sections 69-27-331 through 69-27-341. Any purchase by the State
1159 Soil and Water Conservation Commission under the exemption
1160 authorized by this subparagraph shall require advance
1161 authorization spread upon the minutes of the commission to include
1162 the listing of the item or items authorized to be purchased and
1163 the maximum bid authorized to be paid for each item or items.



1164 (xxviii) **Hospital lease of equipment or services.**
1165 Leases by hospitals of equipment or services if the leases are in
1166 compliance with paragraph (1)(ii).

1167 (xxix) **Purchases made pursuant to qualified**
1168 **cooperative purchasing agreements.** Purchases made by certified
1169 purchasing offices of state agencies or governing authorities
1170 under cooperative purchasing agreements previously approved by the
1171 Office of Purchasing and Travel and established by or for any
1172 municipality, county, parish or state government or the federal
1173 government, provided that the notification to potential
1174 contractors includes a clause that sets forth the availability of
1175 the cooperative purchasing agreement to other governmental
1176 entities. Such purchases shall only be made if the use of the
1177 cooperative purchasing agreements is determined to be in the best
1178 interest of the governmental entity.

1179 (xxx) **School yearbooks.** Purchases of school
1180 yearbooks by state agencies or governing authorities; however,
1181 state agencies and governing authorities shall use for these
1182 purchases the RFP process as set forth in the Mississippi
1183 Procurement Manual adopted by the Office of Purchasing and Travel.

1184 (xxxi) **Design-build method of contracting and**
1185 **certain other contracts.** Contracts entered into under the
1186 provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.



1187 (xxxii) **Toll roads and bridge construction**
1188 **projects.** Contracts entered into under the provisions of Section
1189 65-43-1 or 65-43-3.

1190 (xxxiii) **Certain purchases under Section 57-1-221.**
1191 Contracts entered into pursuant to the provisions of Section
1192 57-1-221.

1193 (xxxiv) **Certain transfers made pursuant to the**
1194 **provisions of Section 57-105-1(7).** Transfers of public property
1195 or facilities under Section 57-105-1(7) and construction related
1196 to such public property or facilities.

1197 (xxxv) **Certain purchases or transfers entered into**
1198 **with local electrical power associations.** Contracts or agreements
1199 entered into under the provisions of Section 55-3-33.

1200 (xxxvi) **Certain purchases by an academic medical**
1201 **center or health sciences school.** Purchases by an academic
1202 medical center or health sciences school, as defined in Section
1203 37-115-50, of commodities that are used for clinical purposes and
1204 1. intended for use in the diagnosis of disease or other
1205 conditions or in the cure, mitigation, treatment or prevention of
1206 disease, and 2. medical devices, biological, drugs and
1207 radiation-emitting devices as defined by the United States Food
1208 and Drug Administration.

1209 (xxxvii) **Certain purchases made under the Alyce G.**
1210 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi



1211 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
1212 Lottery Law.

1213 (xxxviii) **Certain purchases made by the Department**
1214 **of Health and the Department of Revenue.** Purchases made by the
1215 Department of Health and the Department of Revenue solely for the
1216 purpose of fulfilling their respective responsibilities under the
1217 Mississippi Medical Cannabis Act. This subparagraph shall stand
1218 repealed on June 30, 2026.

1219 (xxxix) **Purchases made by state agencies related**
1220 **to museum exhibits.** Purchases made by an agency related to the
1221 fabrication, construction, installation or refurbishing of museum
1222 exhibits. An agency making a purchase under this exemption in
1223 excess of the bid threshold set forth in paragraph (c) of this
1224 section shall publicly advertise a Request for Qualifications or
1225 Request for Proposals in which price as an evaluation factor is at
1226 least twenty percent (20%) out of the one hundred percent (100%)
1227 total weight, but shall be otherwise exempt. Any contract arising
1228 from a purchase using this exemption must be approved by the
1229 Public Procurement Review Board prior to execution by the agency.
1230 The agency shall submit a written report on December 1 of each
1231 year to the Chairs of the Senate and House Appropriations
1232 Committees, the Chairs of the Senate and House Accountability,
1233 Efficiency and Transparency Committees and the Chair of the Public
1234 Procurement Review Board, identifying all purchases made by the
1235 agency using this exemption in which the cost of the option



1236 selected by the agency was more than twenty-five percent (25%)
1237 higher than the lowest cost option available.

1238 (n) **Term contract authorization.** All contracts for the
1239 purchase of:

1240 (i) All contracts for the purchase of commodities,
1241 equipment and public construction (including, but not limited to,
1242 repair and maintenance), may be let for periods of not more than
1243 sixty (60) months in advance, subject to applicable statutory
1244 provisions prohibiting the letting of contracts during specified
1245 periods near the end of terms of office. Term contracts for a
1246 period exceeding twenty-four (24) months shall also be subject to
1247 ratification or cancellation by governing authority boards taking
1248 office subsequent to the governing authority board entering the
1249 contract.

1250 (ii) Bid proposals and contracts may include price
1251 adjustment clauses with relation to the cost to the contractor
1252 based upon a nationally published industry-wide or nationally
1253 published and recognized cost index. The cost index used in a
1254 price adjustment clause shall be determined by the Department of
1255 Finance and Administration for the state agencies and by the
1256 governing board for governing authorities. The bid proposal and
1257 contract documents utilizing a price adjustment clause shall
1258 contain the basis and method of adjusting unit prices for the
1259 change in the cost of such commodities, equipment and public
1260 construction.



1261 (o) **Purchase law violation prohibition and vendor**
1262 **penalty.** No contract or purchase as herein authorized shall be
1263 made for the purpose of circumventing the provisions of this
1264 section requiring competitive bids, nor shall it be lawful for any
1265 person or concern to submit individual invoices for amounts within
1266 those authorized for a contract or purchase where the actual value
1267 of the contract or commodity purchased exceeds the authorized
1268 amount and the invoices therefor are split so as to appear to be
1269 authorized as purchases for which competitive bids are not
1270 required. Submission of such invoices shall constitute a
1271 misdemeanor punishable by a fine of not less than Five Hundred
1272 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1273 or by imprisonment for thirty (30) days in the county jail, or
1274 both such fine and imprisonment. In addition, the claim or claims
1275 submitted shall be forfeited.

1276 (p) **Electrical utility petroleum-based equipment**
1277 **purchase procedure.** When in response to a proper advertisement
1278 therefor, no bid firm as to price is submitted to an electric
1279 utility for power transformers, distribution transformers, power
1280 breakers, reclosers or other articles containing a petroleum
1281 product, the electric utility may accept the lowest and best bid
1282 therefor although the price is not firm.

1283 (q) **Fuel management system bidding procedure.** Any
1284 governing authority or agency of the state shall, before
1285 contracting for the services and products of a fuel management or



1286 fuel access system, enter into negotiations with not fewer than
1287 two (2) sellers of fuel management or fuel access systems for
1288 competitive written bids to provide the services and products for
1289 the systems. In the event that the governing authority or agency
1290 cannot locate two (2) sellers of such systems or cannot obtain
1291 bids from two (2) sellers of such systems, it shall show proof
1292 that it made a diligent, good-faith effort to locate and negotiate
1293 with two (2) sellers of such systems. Such proof shall include,
1294 but not be limited to, publications of a request for proposals and
1295 letters soliciting negotiations and bids. For purposes of this
1296 paragraph (q), a fuel management or fuel access system is an
1297 automated system of acquiring fuel for vehicles as well as
1298 management reports detailing fuel use by vehicles and drivers, and
1299 the term "competitive written bid" shall have the meaning as
1300 defined in paragraph (b) of this section. Governing authorities
1301 and agencies shall be exempt from this process when contracting
1302 for the services and products of fuel management or fuel access
1303 systems under the terms of a state contract established by the
1304 Office of Purchasing and Travel.

1305 (r) **Solid waste contract proposal procedure.** Before
1306 entering into any contract for garbage collection or disposal,
1307 contract for solid waste collection or disposal or contract for
1308 sewage collection or disposal, which involves an expenditure of
1309 more than Seventy-five Thousand Dollars (\$75,000.00), a governing
1310 authority or agency shall issue publicly a request for proposals



1311 concerning the specifications for such services which shall be
1312 advertised for in the same manner as provided in this section for
1313 seeking bids for purchases which involve an expenditure of more
1314 than the amount provided in paragraph (c) of this section. Any
1315 request for proposals when issued shall contain terms and
1316 conditions relating to price, financial responsibility,
1317 technology, legal responsibilities and other relevant factors as
1318 are determined by the governing authority or agency to be
1319 appropriate for inclusion; all factors determined relevant by the
1320 governing authority or agency or required by this paragraph (r)
1321 shall be duly included in the advertisement to elicit proposals.
1322 After responses to the request for proposals have been duly
1323 received, the governing authority or agency shall select the most
1324 qualified proposal or proposals on the basis of price, technology
1325 and other relevant factors and from such proposals, but not
1326 limited to the terms thereof, negotiate and enter into contracts
1327 with one or more of the persons or firms submitting proposals. If
1328 the governing authority or agency deems none of the proposals to
1329 be qualified or otherwise acceptable, the request for proposals
1330 process may be reinitiated. Notwithstanding any other provisions
1331 of this paragraph, where a county with at least thirty-five
1332 thousand (35,000) nor more than forty thousand (40,000)
1333 population, according to the 1990 federal decennial census, owns
1334 or operates a solid waste landfill, the governing authorities of
1335 any other county or municipality may contract with the governing



1336 authorities of the county owning or operating the landfill,
1337 pursuant to a resolution duly adopted and spread upon the minutes
1338 of each governing authority involved, for garbage or solid waste
1339 collection or disposal services through contract negotiations.

1340 (s) **Minority set-aside authorization.** Notwithstanding
1341 any provision of this section to the contrary, any agency or
1342 governing authority, by order placed on its minutes, * * * shall
1343 set aside not more than twenty percent (20%) of its anticipated
1344 annual expenditures for the purchase of commodities from minority
1345 businesses; however, all such set-aside purchases shall comply
1346 with all purchasing regulations promulgated by the Department of
1347 Finance and Administration and shall be subject to bid
1348 requirements under this section. Set-aside purchases for which
1349 competitive bids are required shall be made from the lowest and
1350 best minority business bidder. For the purposes of this
1351 paragraph, the term "minority business" means a business which is
1352 owned by a majority of persons who are United States citizens or
1353 permanent resident aliens (as defined by the Immigration and
1354 Naturalization Service) of the United States, and who are Asian,
1355 Black, Hispanic * * *, Native American, a veteran or a person with
1356 a disability according to the following definitions:

1357 (i) "Asian" means persons having origins in any of
1358 the original people of the Far East, Southeast Asia, the Indian
1359 subcontinent, or the Pacific Islands.



1360 (ii) "Black" means persons having origins in any
1361 black racial group of Africa.

1362 (iii) "Hispanic" means persons of Spanish or
1363 Portuguese culture with origins in Mexico, South or Central
1364 America, or the Caribbean Islands, regardless of race.

1365 (iv) "Native American" means persons having
1366 origins in any of the original people of North America, including
1367 American Indians, Eskimos and Aleuts.

1368 (v) "Veterans" means the same as that term is
1369 defined in 38 USCS 101(2).

1370 (vi) "Person with a disability" means any person
1371 who has a physical or mental impairment that significantly limits
1372 a person's ability to perform major life activities, as defined by
1373 the Americans with Disabilities Act.

1374 (t) **Construction punch list restriction.** The
1375 architect, engineer or other representative designated by the
1376 agency or governing authority that is contracting for public
1377 construction or renovation may prepare and submit to the
1378 contractor only one (1) preliminary punch list of items that do
1379 not meet the contract requirements at the time of substantial
1380 completion and one (1) final list immediately before final
1381 completion and final payment.

1382 (u) **Procurement of construction services by state**
1383 **institutions of higher learning.** Contracts for privately financed
1384 construction of auxiliary facilities on the campus of a state



1385 institution of higher learning may be awarded by the Board of
1386 Trustees of State Institutions of Higher Learning to the lowest
1387 and best bidder, where sealed bids are solicited, or to the
1388 offeror whose proposal is determined to represent the best value
1389 to the citizens of the State of Mississippi, where requests for
1390 proposals are solicited.

1391 (v) **Insurability of bidders for public construction or**
1392 **other public contracts.** In any solicitation for bids to perform
1393 public construction or other public contracts to which this
1394 section applies, including, but not limited to, contracts for
1395 repair and maintenance, for which the contract will require
1396 insurance coverage in an amount of not less than One Million
1397 Dollars (\$1,000,000.00), bidders shall be permitted to either
1398 submit proof of current insurance coverage in the specified amount
1399 or demonstrate ability to obtain the required coverage amount of
1400 insurance if the contract is awarded to the bidder. Proof of
1401 insurance coverage shall be submitted within five (5) business
1402 days from bid acceptance.

1403 (w) **Purchase authorization clarification.** Nothing in
1404 this section shall be construed as authorizing any purchase not
1405 authorized by law.

1406 (x) **Mississippi Regional Pre-Need Disaster Clean Up**
1407 **Act.** (i) The Department of Finance and Administration shall
1408 develop and implement a process that creates a preferred vendor
1409 list for both disaster debris removal and monitoring.



1410 (ii) Any board of supervisors of any county or any
1411 governing authority of any municipality may opt in to the benefits
1412 and services provided under the appropriate and relevant contract
1413 established in subparagraph (i) of this paragraph at the time of a
1414 disaster event in that county or municipality. At the time of opt
1415 in, the county or municipality shall assume responsibility for
1416 payment in full to the contractor for the disaster-related solid
1417 waste collection, disposal or monitoring services provided.
1418 Nothing in this subparagraph (ii) shall be construed as requiring
1419 a county or municipality to opt in to any such contract
1420 established in subparagraph (i) of this paragraph.

1421 **SECTION 3.** This act shall take effect and be in force from
1422 and after July 1, 2025.

