

By: Representative Bell (21st)

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 1505

1 AN ACT TO AMEND SECTION 31-7-13.2, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE CONSTRUCTION MANAGER AT RISK METHOD OF PROJECT
3 DELIVERY TO PROVIDE THAT THE CONSTRUCTION MANAGER FOR PROJECTS FOR
4 INSTITUTIONS OF HIGHER LEARNING AND INDIVIDUAL COMMUNITY AND
5 JUNIOR COLLEGES SHALL NOT BE REQUIRED TO SOLICIT BIDS FOR
6 CONSTRUCTION ON THE PROJECT USING THE PUBLIC PURCHASING LAW; TO
7 PROVIDE HOW SUCH CONSTRUCTION MANAGER SHALL OBTAIN PROPOSALS FROM
8 CONTRACTORS AND VENDORS AND ENTER INTO CONTRACTS; TO BRING FORWARD
9 SECTION 31-7-13, MISSISSIPPI CODE OF 1972, FOR THE PURPOSE OF
10 POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 31-7-13.2, Mississippi Code of 1972, is
13 amended as follows:

14 31-7-13.2 (1) When used in this section, "construction
15 manager at risk" means a method of project delivery in which a
16 construction manager guarantees a maximum price for the
17 construction of a project and in which the governing authority or
18 board, before using this method of project delivery, shall include
19 a detailed explanation of why using the construction manager at
20 risk method of project delivery for a particular project satisfies
21 the public need better than that traditional design-bid-build
22 method based on the following criteria:



23 (a) The use of construction manager at risk for the
24 project provides a savings in time or cost over traditional
25 methods; and

26 (b) The size and type of the project is suitable for
27 use of the construction management at risk method of project
28 delivery.

29 (2) When the construction manager at risk method of project
30 delivery is used:

31 (a) There may be a separate contract for design
32 services and a separate contract for construction services;

33 (b) The contract for construction services may be
34 entered into at the same time as a contract for the design
35 services or later;

36 (c) Design and construction of the project may be in
37 sequential or concurrent phases; and

38 (d) Finance, maintenance, operation, reconstruction or
39 other related services may be included for a guaranteed maximum
40 price.

41 (3) When procuring design professional services under a
42 construction manager at risk project delivery method, the agency
43 or governing authority shall procure the services of a design
44 professional pursuant to qualifications-based selection
45 procedures.



46 (4) Before the substantial completion of the design
47 documents, the agency or governing authority may elect to hire a
48 construction manager.

49 (5) When procuring construction management services under
50 the "at risk" model of this section, the agency or governing
51 authority shall follow the qualifications-based selection
52 procedures as outlined in subsection (10) of this section * * * to
53 identify and select the construction manager.

54 (6) The agency or governing authority may require the
55 architect or engineer and the construction manager, by contract,
56 to cooperate in the design, planning and scheduling, and
57 construction process. The contract shall not make the primary
58 designer or construction manager a subcontractor or joint-venture
59 partner to the other or limit the primary designer's or
60 construction manager's independent obligations to the agency or
61 governing authority.

62 (7) Notwithstanding anything to the contrary in this
63 chapter:

64 (a) Each project for construction under a construction
65 manager at risk contract shall be a specific, single project with
66 a minimum construction cost of Twenty-five Million Dollars
67 (\$25,000,000.00).

68 (b) Each project under a construction manager at risk
69 contract shall be a specific, single project. For the purposes of
70 this paragraph, "specific, single project" means a project that is



constructed at a single location, at a common location or for a common purpose.

(8) Agencies shall retain an independent architectural or engineering firm to provide guidance and administration of the professional engineering or professional architecture aspects of the project throughout the development of the scope, design, and construction of the project.

(9) The state shall, on an annual basis, compile and make public all proceedings, records, contracts and other public records relating to procurement transactions authorized under this section.

(10) For purposes of this section, the "qualifications-based selection procedure" shall include:

(a) Publicly announcing all requirements for construction management at risk, architectural, engineering, and land surveying services, to procure these services on the basis of demonstrated competence and qualifications, and to negotiate contracts at fair and reasonable prices after the most qualified firm has been selected.

(b) Agencies or governing authorities shall establish procedures to prequalify firms seeking to provide construction management at risk, architectural, engineering, and land surveying services or may use prequalification lists from other state agencies or governing authorities to meet the requirements of this section.



96 (c) Whenever a project requiring construction
97 management at risk, architectural, engineering, or land surveying
98 services is proposed for an agency or governing authority, the
99 agency or governing authority shall provide advance notice
100 published in a professional services bulletin or advertised within
101 the official state newspaper setting forth the projects and
102 services to be procured for not less than fourteen (14) days. The
103 professional services bulletin shall be mailed to each firm that
104 has requested the information or is prequalified * * *. The
105 professional services bulletin shall include a description of each
106 project and shall state the time and place for interested firms to
107 submit a letter of interest and, if required by the public notice,
108 a statement of qualifications.

109 (d) The agency or governing authority shall evaluate
110 the firms submitting letters of interest and other prequalified
111 firms, taking into account qualifications. The agency or
112 governing authority may consider, but shall not be limited to,
113 considering:

- 114 (i) Ability of professional personnel;
- 115 (ii) Past record and experience;
- 116 (iii) Performance data on file;
- 117 (iv) Willingness to meet time requirements;
- 118 (v) Location;
- 119 (vi) Workload of the firm; and



(vii) Any other qualifications-based factors as the agency or governing authority may determine in writing are applicable.

The agency or governing authority may conduct discussions with and require public presentations by firms deemed to be the most qualified regarding their qualifications, approach to the project and ability to furnish the required services.

(e) The agency or governing authority shall establish a committee to select firms to provide construction management at risk, architectural, engineering, and land surveying services. A selection committee may include at least one (1) public member nominated by a statewide association of the profession affected. The public member may not be employed or associated with any firm holding a contract with the agency or governing authority nor may the public member's firm be considered for a contract with that agency or governing authority while serving as a public member of the committee. In no case shall the agency or governing authority, before selecting a firm for negotiation under paragraph (f) of this subsection (10), seek formal or informal submission of verbal or written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation.

(f) On the basis of evaluations, discussions, and any presentations, the agency or governing authority shall select no less than three (3) firms that it determines to be qualified to



provide services for the project and rank them in order of qualifications to provide services regarding the specific project. The agency or governing authority shall then contact the firm ranked most preferred to negotiate a contract at a fair and reasonable compensation. If fewer than three (3) firms submit letters of interest and the agency or governing authority determines that one (1) or both of those firms are so qualified, the agency or governing authority may proceed to negotiate a contract under paragraph (g) of this subsection (10).

(g) The agency or governing authority shall prepare a written description of the scope of the proposed services to be used as a basis for negotiations and shall negotiate a contract with the highest qualified firm at compensation that the agency or governing authority determines in writing to be fair and reasonable. In making this decision, the agency or governing authority shall take into account the estimated value, scope, complexity, and professional nature of the services to be rendered. In no case may the agency or governing authority establish a maximum overhead rate or other payment formula designed to eliminate firms from contention or restrict competition or negotiation of fees. If the agency or governing authority is unable to negotiate a satisfactory contract with the firm that is most preferred, negotiations with that firm shall be terminated. The agency or governing authority shall then begin negotiations with the firm that is next preferred. If the agency



or governing authority is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be terminated. The agency or governing authority shall then begin negotiations with the firm that is next preferred. If the agency or governing authority is unable to negotiate a satisfactory contract with any of the selected firms, the agency or governing authority shall reevaluate the construction management at risk, architectural, engineering, or land surveying services requested, including the estimated value, scope, complexity, and fee requirements. The agency or governing authority shall then compile a second list of not less than three (3) qualified firms and proceed in accordance with the provisions of this section. A firm negotiating a contract with an agency or governing authority shall negotiate subcontracts * * * at compensation that the firm determines in writing to be fair and reasonable based upon a written description of the scope of the proposed services.

(11) (a) Except as otherwise provided in this section, the construction manager selected by the agency or governing authority to provide construction management at risk services shall solicit bids for construction on the project pursuant to Section 31-7-13. The construction manager shall be entitled to enter into contracts for construction with the lowest and best bidders, as determined in consultation with the agency or governing authority. Before soliciting bids or entering into any such contract, the construction manager, in consultation with the agency or governing



195 authority, may prequalify any contractors or vendors seeking to
196 submit a bid on the project, taking into account defined
197 qualifications which may include, but not be limited to, the
198 following:

199 (i) Past experience and performance record on
200 projects of similar size and scope;

201 (ii) Current financial status and ability to
202 provide acceptable payment and performance bonds and meet defined
203 insurance requirements;

204 (iii) Current workload and backlog of committed
205 work for the period scheduled for the project under consideration;

206 (iv) Safety record to include prior citations and
207 fines if applicable;

208 (v) History of legal disputes or performance
209 defaults;

210 (vi) Identification and experience of project
211 personnel and required manpower;

212 (vii) Plan for and ability to meet the applicable
213 project schedule; and

214 (viii) Any other qualification-based factors as
215 the agency, governing authority or construction manager may
216 determine are applicable.

217 (b) The construction manager, in consultation with the
218 agency or governing authority, shall publish the defined
219 qualifications that shall be considered in the prequalification



process at least two (2) weeks in advance of any prequalification of contractors or vendors seeking to submit a bid on the project. Publication shall be in a regular newspaper published in the county or municipality in which the agency or governing authority is located. The agency or governing authority shall also post the defined prequalification requirements on its website.

(c) The failure of a bidder to provide information in a timely and complete manner in response to any prequalification process may result in the disqualification of such bidder in the discretion of the agency, governing authority, and construction manager.

(d) Except as otherwise provided in Section 25-61-9, confidential and proprietary information furnished by a bidder pursuant to this section shall not be disclosed outside of the agency, governing authority, or construction manager without the prior written consent of the bidder. The bidder shall identify and label any information considered to be confidential and proprietary at the time of submission of the same to the agency, governing authority, or construction manager.

(12) The provisions of this section shall not affect any procurement by the Mississippi Transportation Commission.

(13) The provisions of subsection (11) of this section shall not apply to procurements by existing or future Mississippi Institutions of Higher Learning ("IHL") or their related entities, joint ventures, or subsidiaries governed by or in connection with



the named institutions or the individual community and junior colleges.

(a) For procurements by any Mississippi IHL or individual community or junior college, the construction manager shall be permitted to obtain proposals from contractors or vendors, with such proposals being based on the qualifications and criteria set forth in paragraph (b) of this subsection, for contracts for the various scopes of work for the project, and the construction manager shall not be required to follow the public bid process of Section 31-7-13 for such contracts.

(b) For IHL and community and junior college projects, the construction manager selected by the agency or governing authority to provide construction management at risk services shall obtain proposals from contractors or vendors for construction of the project on terms that the construction management firm, in consultation with the agency or governing authority, deems to be fair and reasonable based upon a written description of the scope of the proposed work or services. The construction manager shall then be entitled to enter into contracts for construction with contractors or vendors that the construction manager deems to be the preferred contractor or vendor, taking into account various qualifications and criteria which may include, but not be limited to, the following:



(i) Cost of the work or services to be performed or supplied by the contractor or vendor to the construction manager;

(ii) Past experience and performance record on projects of similar size and scope;

(iii) Current financial status and ability to provide acceptable payment and performance bonds and meet defined insurance requirements;

(iv) Current workload and backlog of committed work for the period scheduled for the project under consideration;

(v) Safety record to include prior citations and fines if applicable;

(vi) History of legal disputes or performance defaults;

(vii) Identification and experience of project personnel and required manpower;

(viii) Plan for and ability to meet the applicable project schedule; and

(ix) Any other factors as the agency, governing authority or construction manager may determine are applicable.

(c) The construction manager, in consultation with the agency or governing authority, shall publish the above defined qualifications and criteria that shall be considered in the process for selecting contractors and vendors that will contract with the construction manager to construct the project at least



four (4) weeks in advance of any award of contract to such contractors or vendors. Publication shall be in a regular newspaper published in the county or municipality in which the agency or governing authority is located. The agency or governing authority shall also post the defined prequalification requirements on its website.

(d) The failure of a contractor or vendor to provide information requested by construction manager or the agency or governing authority in a timely and complete manner in connection with the selection process may result in the disqualification of such contractor or vendor from being considered for a contract, as determined in the discretion of the agency, governing authority, and construction manager.

(e) Except as otherwise provided in Section 25-61-9, confidential and proprietary information furnished by construction manager or a contractor or vendor pursuant to this section shall not be disclosed outside of the agency, governing authority or construction manager without the prior written consent of all parties. The construction manager, contractor, or vendor shall identify and label any information considered to be confidential and proprietary at the time of submission of the same to the agency, governing authority, or construction manager.

(f) The construction manager selected by the agency or governing authority shall not be required to submit a proposed guaranteed maximum price for the construction of a project, or for



a phase or component of the project, until after the construction manager obtains the contemplated proposals from potential contractors and/or vendors for that project, phase, or component, and the agency or governing authority has issued a completed set of construction drawings and specifications for the project, phase, or component.

(g) Nothing in this section prevents a construction manager or its affiliates from self-performing construction work on a project so long as the construction manager or affiliate submits a proposal for a specific scope of work, as would other contractors or vendors, and the proposals are reviewed by the agency or governing authority, deemed to be fair and reasonable as compared to other proposals for the same or similar scope of work, and an award to the construction manager or its affiliate is determined to be in the overall best interests of the project as a whole.

SECTION 2. Section 31-7-13, Mississippi Code of 1972, is brought forward as follows:

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

(a) **Bidding procedure for purchases not over \$5,000.00.**
Purchases which do not involve an expenditure of more than Five



343 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
344 charges, may be made without advertising or otherwise requesting
345 competitive bids. However, nothing contained in this paragraph
346 (a) shall be construed to prohibit any agency or governing
347 authority from establishing procedures which require competitive
348 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

349 (b) **Bidding procedure for purchases over \$5,000.00 but**
350 **not over \$75,000.00.** Purchases which involve an expenditure of
351 more than Five Thousand Dollars (\$5,000.00) but not more than
352 Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight
353 and shipping charges, may be made from the lowest and best bidder
354 without publishing or posting advertisement for bids, provided at
355 least two (2) competitive written bids have been obtained. Any
356 state agency or community or junior college purchasing commodities
357 or procuring construction pursuant to this paragraph (b) may
358 authorize its purchasing agent, or his designee, to accept the
359 lowest competitive written bid under Seventy-five Thousand Dollars
360 (\$75,000.00). Any governing authority purchasing commodities
361 pursuant to this paragraph (b) may authorize its purchasing agent,
362 or his designee, with regard to governing authorities other than
363 counties, or its purchase clerk, or his designee, with regard to
364 counties, to accept the lowest and best competitive written bid.
365 Such authorization shall be made in writing by the governing
366 authority and shall be maintained on file in the primary office of
367 the agency and recorded in the official minutes of the governing



368 authority, as appropriate. The purchasing agent or the purchase
369 clerk, or his designee, as the case may be, and not the governing
370 authority, shall be liable for any penalties and/or damages as may
371 be imposed by law for any act or omission of the purchasing agent
372 or purchase clerk, or his designee, constituting a violation of
373 law in accepting any bid without approval by the governing
374 authority. The term "competitive written bid" shall mean a bid
375 submitted on a bid form furnished by the buying agency or
376 governing authority and signed by authorized personnel
377 representing the vendor, or a bid submitted on a vendor's
378 letterhead or identifiable bid form and signed by authorized
379 personnel representing the vendor. "Competitive" shall mean that
380 the bids are developed based upon comparable identification of the
381 needs and are developed independently and without knowledge of
382 other bids or prospective bids. Any bid item for construction in
383 excess of Five Thousand Dollars (\$5,000.00) shall be broken down
384 by components to provide detail of component description and
385 pricing. These details shall be submitted with the written bids
386 and become part of the bid evaluation criteria. Bids may be
387 submitted by facsimile, electronic mail or other generally
388 accepted method of information distribution. Bids submitted by
389 electronic transmission shall not require the signature of the
390 vendor's representative unless required by agencies or governing
391 authorities.

392 (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



443 published notice; however, if the purchase involves a construction
444 project in which the estimated cost is in excess of Seventy-five
445 Thousand Dollars (\$75,000.00), such bids shall not be opened in
446 less than fifteen (15) working days after the last notice is
447 published and the notice for the purchase of such construction
448 shall be published once each week for two (2) consecutive weeks.
449 The notice of intention to let contracts or purchase equipment
450 shall state the time and place at which bids shall be received,
451 list the contracts to be made or types of equipment or supplies to
452 be purchased, and, if all plans and/or specifications are not
453 published, refer to the plans and/or specifications on file. If
454 there is no newspaper published in the county or municipality,
455 then such notice shall be given by posting same at the courthouse,
456 or for municipalities at the city hall, and at two (2) other
457 public places in the county or municipality, and also by
458 publication once each week for two (2) consecutive weeks in some
459 newspaper having a general circulation in the county or
460 municipality in the above-provided manner. On the same date that
461 the notice is submitted to the newspaper for publication, the
462 agency or governing authority involved shall mail written notice
463 to, or provide electronic notification to the main office of the
464 Mississippi Procurement Technical Assistance Program under the
465 Mississippi Development Authority that contains the same
466 information as that in the published notice. Within one (1)
467 working day of the contract award, the agency or governing



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

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

(ii) **Bidding process amendment procedure.** If all plans and/or specifications are published in the notification, then the plans and/or specifications may not be amended. If all plans and/or specifications are not published in the notification, then amendments to the plans/specifications, bid opening date, bid



opening time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments. This notification of amendments may be made via mail, facsimile, electronic mail or other generally accepted method of information distribution. No addendum to bid specifications may be issued within two (2) working days of the time established for the receipt of bids unless such addendum also amends the bid opening to a date not less than five (5) working days after the date of the addendum.

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

(iv) **Specification restrictions.**

1. Specifications pertinent to such bidding shall be written so as not to exclude comparable equipment of domestic manufacture. However, if valid justification is presented, the Department of Finance and Administration or the



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

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

(v) **Electronic bids.** Agencies and governing authorities shall provide a secure electronic interactive system for the submittal of bids requiring competitive bidding that shall be an additional bidding option for those bidders who choose to submit their bids electronically. The Department of Finance and



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

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



568 (i) **Decision procedure.** Purchases may be made
569 from the lowest and best bidder. In determining the lowest and
570 best bid, freight and shipping charges shall be included.
571 Life-cycle costing, total cost bids, warranties, guaranteed
572 buy-back provisions and other relevant provisions may be included
573 in the best bid calculation. All best bid procedures for state
574 agencies must be in compliance with regulations established by the
575 Department of Finance and Administration. If any governing
576 authority accepts a bid other than the lowest bid actually
577 submitted, it shall place on its minutes detailed calculations and
578 narrative summary showing that the accepted bid was determined to
579 be the lowest and best bid, including the dollar amount of the
580 accepted bid and the dollar amount of the lowest bid. No agency
581 or governing authority shall accept a bid based on items not
582 included in the specifications.

583 (ii) **Decision procedure for Certified Purchasing**
584 **Offices.** In addition to the decision procedure set forth in
585 subparagraph (i) of this paragraph (d), Certified Purchasing
586 Offices may also use the following procedure: Purchases may be
587 made from the bidder offering the best value. In determining the
588 best value bid, freight and shipping charges shall be included.
589 Life-cycle costing, total cost bids, warranties, guaranteed
590 buy-back provisions, documented previous experience, training
591 costs and other relevant provisions, including, but not limited
592 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



618 provisions may be included in the best bid calculation. All best
619 bid and prequalification procedures for state agencies must be in
620 compliance with regulations established by the Department of
621 Finance and Administration. If any governing authority accepts a
622 bid other than the lowest bid actually submitted, it shall place
623 on its minutes detailed calculations and narrative summary showing
624 that the accepted bid was determined to be the lowest and best
625 bid, including the dollar amount of the accepted bid and the
626 dollar amount of the lowest bid. No agency or governing authority
627 shall accept a bid based on items not included in the
628 specifications.

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

630 If the lowest and best bid is not more than ten percent (10%)
631 above the amount of funds allocated for a public construction or
632 renovation project, then the agency or governing authority shall
633 be permitted to negotiate with the lowest bidder in order to enter
634 into a contract for an amount not to exceed the funds allocated.

635 (e) **Lease-purchase authorization.** For the purposes of
636 this section, the term "equipment" shall mean equipment, furniture
637 and, if applicable, associated software and other applicable
638 direct costs associated with the acquisition. Any lease-purchase
639 of equipment which an agency is not required to lease-purchase
640 under the master lease-purchase program pursuant to Section
641 31-7-10 and any lease-purchase of equipment which a governing
642 authority elects to lease-purchase may be acquired by a



643 lease-purchase agreement under this paragraph (e). Lease-purchase
644 financing may also be obtained from the vendor or from a
645 third-party source after having solicited and obtained at least
646 two (2) written competitive bids, as defined in paragraph (b) of
647 this section, for such financing without advertising for such
648 bids. Solicitation for the bids for financing may occur before or
649 after acceptance of bids for the purchase of such equipment or,
650 where no such bids for purchase are required, at any time before
651 the purchase thereof. No such lease-purchase agreement shall be
652 for an annual rate of interest which is greater than the overall
653 maximum interest rate to maturity on general obligation
654 indebtedness permitted under Section 75-17-101, and the term of
655 such lease-purchase agreement shall not exceed the useful life of
656 equipment covered thereby as determined according to the upper
657 limit of the asset depreciation range (ADR) guidelines for the
658 Class Life Asset Depreciation Range System established by the
659 Internal Revenue Service pursuant to the United States Internal
660 Revenue Code and regulations thereunder as in effect on December
661 31, 1980, or comparable depreciation guidelines with respect to
662 any equipment not covered by ADR guidelines. Any lease-purchase
663 agreement entered into pursuant to this paragraph (e) may contain
664 any of the terms and conditions which a master lease-purchase
665 agreement may contain under the provisions of Section 31-7-10(5),
666 and shall contain an annual allocation dependency clause
667 substantially similar to that set forth in Section 31-7-10(8).



668 Each agency or governing authority entering into a lease-purchase
669 transaction pursuant to this paragraph (e) shall maintain with
670 respect to each such lease-purchase transaction the same
671 information as required to be maintained by the Department of
672 Finance and Administration pursuant to Section 31-7-10(13).
673 However, nothing contained in this section shall be construed to
674 permit agencies to acquire items of equipment with a total
675 acquisition cost in the aggregate of less than Ten Thousand
676 Dollars (\$10,000.00) by a single lease-purchase transaction. All
677 equipment, and the purchase thereof by any lessor, acquired by
678 lease-purchase under this paragraph and all lease-purchase
679 payments with respect thereto shall be exempt from all Mississippi
680 sales, use and ad valorem taxes. Interest paid on any
681 lease-purchase agreement under this section shall be exempt from
682 State of Mississippi income taxation.

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



692 (g) **Construction contract change authorization.** In the
693 event a determination is made by an agency or governing authority
694 after a construction contract is let that changes or modifications
695 to the original contract are necessary or would better serve the
696 purpose of the agency or the governing authority, such agency or
697 governing authority may, in its discretion, order such changes
698 pertaining to the construction that are necessary under the
699 circumstances without the necessity of further public bids;
700 provided that such change shall be made in a commercially
701 reasonable manner and shall not be made to circumvent the public
702 purchasing statutes. In addition to any other authorized person,
703 the architect or engineer hired by an agency or governing
704 authority with respect to any public construction contract shall
705 have the authority, when granted by an agency or governing
706 authority, to authorize changes or modifications to the original
707 contract without the necessity of prior approval of the agency or
708 governing authority when any such change or modification is less
709 than one percent (1%) of the total contract amount. The agency or
710 governing authority may limit the number, manner or frequency of
711 such emergency changes or modifications.

712 (h) **Petroleum purchase alternative.** In addition to
713 other methods of purchasing authorized in this chapter, when any
714 agency or governing authority shall have a need for gas, diesel
715 fuel, oils and/or other petroleum products in excess of the amount
716 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:



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

841 Purchasing agreements, contracts and maximum price regulations
842 executed or approved by the Department of Finance and
843 Administration.

844 (ii) **Outside equipment repairs.** Repairs to
845 equipment, when such repairs are made by repair facilities in the
846 private sector; however, engines, transmissions, rear axles and/or
847 other such components shall not be included in this exemption when
848 replaced as a complete unit instead of being repaired and the need
849 for such total component replacement is known before disassembly
850 of the component; however, invoices identifying the equipment,
851 specific repairs made, parts identified by number and name,
852 supplies used in such repairs, and the number of hours of labor
853 and costs therefor shall be required for the payment for such
854 repairs.

855 (iii) **In-house equipment repairs.** Purchases of
856 parts for repairs to equipment, when such repairs are made by
857 personnel of the agency or governing authority; however, entire
858 assemblies, such as engines or transmissions, shall not be
859 included in this exemption when the entire assembly is being
860 replaced instead of being repaired.

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



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

875 (vi) **Intergovernmental sales and transfers.**
876 Purchases, sales, transfers or trades by governing authorities or
877 state agencies when such purchases, sales, transfers or trades are
878 made by a private treaty agreement or through means of
879 negotiation, from any federal agency or authority, another
880 governing authority or state agency of the State of Mississippi,
881 or any state agency or governing authority of another state.
882 Nothing in this section shall permit such purchases through public
883 auction except as provided for in subparagraph (v) of this
884 paragraph (m). It is the intent of this section to allow
885 governmental entities to dispose of and/or purchase commodities
886 from other governmental entities at a price that is agreed to by
887 both parties. This shall allow for purchases and/or sales at
888 prices which may be determined to be below the market value if the



889 selling entity determines that the sale at below market value is
890 in the best interest of the taxpayers of the state. Governing
891 authorities shall place the terms of the agreement and any
892 justification on the minutes, and state agencies shall obtain
893 approval from the Department of Finance and Administration, prior
894 to releasing or taking possession of the commodities.

895 (vii) **Perishable supplies or food.** Perishable
896 supplies or food purchased for use in connection with hospitals,
897 the school lunch programs, homemaking programs and for the feeding
898 of county or municipal prisoners.

899 (viii) **Single-source items.** Noncompetitive items
900 available from one (1) source only. In connection with the
901 purchase of noncompetitive items only available from one (1)
902 source, a certification of the conditions and circumstances
903 requiring the purchase shall be filed by the agency with the
904 Department of Finance and Administration and by the governing
905 authority with the board of the governing authority. Upon receipt
906 of that certification the Department of Finance and Administration
907 or the board of the governing authority, as the case may be, may,
908 in writing, authorize the purchase, which authority shall be noted
909 on the minutes of the body at the next regular meeting thereafter.
910 In those situations, a governing authority is not required to
911 obtain the approval of the Department of Finance and
912 Administration. Following the purchase, the executive head of the
913 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.



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

941 (xi) **Information technology products.** Purchases
942 of information technology products made by governing authorities
943 under the provisions of purchase schedules, or contracts executed
944 or approved by the Mississippi Department of Information
945 Technology Services and designated for use by governing
946 authorities.

947 (xii) **Energy efficiency services and equipment.**
948 Energy efficiency services and equipment acquired by school
949 districts, community and junior colleges, institutions of higher
950 learning and state agencies or other applicable governmental
951 entities on a shared-savings, lease or lease-purchase basis
952 pursuant to Section 31-7-14.

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

957 (xiv) **Library books and other reference materials.**
958 Purchases by libraries or for libraries of books and periodicals;
959 processed film, videocassette tapes, filmstrips and slides;
960 recorded audiotapes, cassettes and diskettes; and any such items
961 as would be used for teaching, research or other information
962 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



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

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

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

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

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

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



1012 processed or produced by, or any services provided by, the
1013 Mississippi Industries for the Blind.

1014 (xxv) **Purchases of state-adopted textbooks.**

1015 Purchases of state-adopted textbooks by public school districts.

1016 (xxvi) **Certain purchases under the Mississippi**

1017 **Major Economic Impact Act.** Contracts entered into pursuant to the
1018 provisions of Section 57-75-9(2), (3) and (4).

1019 (xxvii) **Used heavy or specialized machinery or**

1020 **equipment for installation of soil and water conservation**

1021 **practices purchased at auction.** Used heavy or specialized

1022 machinery or equipment used for the installation and

1023 implementation of soil and water conservation practices or

1024 measures purchased subject to the restrictions provided in

1025 Sections 69-27-331 through 69-27-341. Any purchase by the State

1026 Soil and Water Conservation Commission under the exemption

1027 authorized by this subparagraph shall require advance

1028 authorization spread upon the minutes of the commission to include

1029 the listing of the item or items authorized to be purchased and

1030 the maximum bid authorized to be paid for each item or items.

1031 (xxviii) **Hospital lease of equipment or services.**

1032 Leases by hospitals of equipment or services if the leases are in

1033 compliance with paragraph (1)(ii).

1034 (xxix) **Purchases made pursuant to qualified**

1035 **cooperative purchasing agreements.** Purchases made by certified

1036 purchasing offices of state agencies or governing authorities



1037 under cooperative purchasing agreements previously approved by the
1038 Office of Purchasing and Travel and established by or for any
1039 municipality, county, parish or state government or the federal
1040 government, provided that the notification to potential
1041 contractors includes a clause that sets forth the availability of
1042 the cooperative purchasing agreement to other governmental
1043 entities. Such purchases shall only be made if the use of the
1044 cooperative purchasing agreements is determined to be in the best
1045 interest of the governmental entity.

1046 (xxx) **School yearbooks.** Purchases of school
1047 yearbooks by state agencies or governing authorities; however,
1048 state agencies and governing authorities shall use for these
1049 purchases the RFP process as set forth in the Mississippi
1050 Procurement Manual adopted by the Office of Purchasing and Travel.

1051 (xxxii) **Design-build method of contracting and**
1052 **certain other contracts.** Contracts entered into under the
1053 provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

1054 (xxxiii) **Toll roads and bridge construction**
1055 **projects.** Contracts entered into under the provisions of Section
1056 65-43-1 or 65-43-3.

1057 (xxxiiii) **Certain purchases under Section 57-1-221.**
1058 Contracts entered into pursuant to the provisions of Section
1059 57-1-221.

1060 (xxxiv) **Certain transfers made pursuant to the**
1061 **provisions of Section 57-105-1(7).** Transfers of public property



1062 or facilities under Section 57-105-1(7) and construction related
1063 to such public property or facilities.

1064 (xxxv) **Certain purchases or transfers entered into**
1065 **with local electrical power associations.** Contracts or agreements
1066 entered into under the provisions of Section 55-3-33.

1067 (xxxvi) **Certain purchases by an academic medical**
1068 **center or health sciences school.** Purchases by an academic
1069 medical center or health sciences school, as defined in Section
1070 37-115-50, of commodities that are used for clinical purposes and
1071 1. intended for use in the diagnosis of disease or other
1072 conditions or in the cure, mitigation, treatment or prevention of
1073 disease, and 2. medical devices, biological, drugs and
1074 radiation-emitting devices as defined by the United States Food
1075 and Drug Administration.

1076 (xxxvii) **Certain purchases made under the Alyce G.**
1077 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi
1078 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
1079 Lottery Law.

1080 (xxxviii) **Certain purchases made by the Department**
1081 **of Health and the Department of Revenue.** Purchases made by the
1082 Department of Health and the Department of Revenue solely for the
1083 purpose of fulfilling their respective responsibilities under the
1084 Mississippi Medical Cannabis Act. This subparagraph shall stand
1085 repealed on June 30, 2026.



1086 (xxxix) **Purchases made by state agencies related**
1087 **to museum exhibits.** Purchases made by an agency related to the
1088 fabrication, construction, installation or refurbishing of museum
1089 exhibits. An agency making a purchase under this exemption in
1090 excess of the bid threshold set forth in paragraph (c) of this
1091 section shall publicly advertise a Request for Qualifications or
1092 Request for Proposals in which price as an evaluation factor is at
1093 least twenty percent (20%) out of the one hundred percent (100%)
1094 total weight, but shall be otherwise exempt. Any contract arising
1095 from a purchase using this exemption must be approved by the
1096 Public Procurement Review Board prior to execution by the agency.
1097 The agency shall submit a written report on December 1 of each
1098 year to the Chairs of the Senate and House Appropriations
1099 Committees, the Chairs of the Senate and House Accountability,
1100 Efficiency and Transparency Committees and the Chair of the Public
1101 Procurement Review Board, identifying all purchases made by the
1102 agency using this exemption in which the cost of the option
1103 selected by the agency was more than twenty-five percent (25%)
1104 higher than the lowest cost option available.

1105 (n) **Term contract authorization.** All contracts for the
1106 purchase of:

1107 (i) All contracts for the purchase of commodities,
1108 equipment and public construction (including, but not limited to,
1109 repair and maintenance), may be let for periods of not more than
1110 sixty (60) months in advance, subject to applicable statutory



1111 provisions prohibiting the letting of contracts during specified
1112 periods near the end of terms of office. Term contracts for a
1113 period exceeding twenty-four (24) months shall also be subject to
1114 ratification or cancellation by governing authority boards taking
1115 office subsequent to the governing authority board entering the
1116 contract.

1117 (ii) Bid proposals and contracts may include price
1118 adjustment clauses with relation to the cost to the contractor
1119 based upon a nationally published industry-wide or nationally
1120 published and recognized cost index. The cost index used in a
1121 price adjustment clause shall be determined by the Department of
1122 Finance and Administration for the state agencies and by the
1123 governing board for governing authorities. The bid proposal and
1124 contract documents utilizing a price adjustment clause shall
1125 contain the basis and method of adjusting unit prices for the
1126 change in the cost of such commodities, equipment and public
1127 construction.

1128 (o) **Purchase law violation prohibition and vendor**
1129 **penalty.** No contract or purchase as herein authorized shall be
1130 made for the purpose of circumventing the provisions of this
1131 section requiring competitive bids, nor shall it be lawful for any
1132 person or concern to submit individual invoices for amounts within
1133 those authorized for a contract or purchase where the actual value
1134 of the contract or commodity purchased exceeds the authorized
1135 amount and the invoices therefor are split so as to appear to be



1136 authorized as purchases for which competitive bids are not
1137 required. Submission of such invoices shall constitute a
1138 misdemeanor punishable by a fine of not less than Five Hundred
1139 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1140 or by imprisonment for thirty (30) days in the county jail, or
1141 both such fine and imprisonment. In addition, the claim or claims
1142 submitted shall be forfeited.

1143 (p) **Electrical utility petroleum-based equipment**
1144 **purchase procedure.** When in response to a proper advertisement
1145 therefor, no bid firm as to price is submitted to an electric
1146 utility for power transformers, distribution transformers, power
1147 breakers, reclosers or other articles containing a petroleum
1148 product, the electric utility may accept the lowest and best bid
1149 therefor although the price is not firm.

1150 (q) **Fuel management system bidding procedure.** Any
1151 governing authority or agency of the state shall, before
1152 contracting for the services and products of a fuel management or
1153 fuel access system, enter into negotiations with not fewer than
1154 two (2) sellers of fuel management or fuel access systems for
1155 competitive written bids to provide the services and products for
1156 the systems. In the event that the governing authority or agency
1157 cannot locate two (2) sellers of such systems or cannot obtain
1158 bids from two (2) sellers of such systems, it shall show proof
1159 that it made a diligent, good-faith effort to locate and negotiate
1160 with two (2) sellers of such systems. Such proof shall include,



1161 but not be limited to, publications of a request for proposals and
1162 letters soliciting negotiations and bids. For purposes of this
1163 paragraph (q), a fuel management or fuel access system is an
1164 automated system of acquiring fuel for vehicles as well as
1165 management reports detailing fuel use by vehicles and drivers, and
1166 the term "competitive written bid" shall have the meaning as
1167 defined in paragraph (b) of this section. Governing authorities
1168 and agencies shall be exempt from this process when contracting
1169 for the services and products of fuel management or fuel access
1170 systems under the terms of a state contract established by the
1171 Office of Purchasing and Travel.

1172 (r) **Solid waste contract proposal procedure.** Before
1173 entering into any contract for garbage collection or disposal,
1174 contract for solid waste collection or disposal or contract for
1175 sewage collection or disposal, which involves an expenditure of
1176 more than Seventy-five Thousand Dollars (\$75,000.00), a governing
1177 authority or agency shall issue publicly a request for proposals
1178 concerning the specifications for such services which shall be
1179 advertised for in the same manner as provided in this section for
1180 seeking bids for purchases which involve an expenditure of more
1181 than the amount provided in paragraph (c) of this section. Any
1182 request for proposals when issued shall contain terms and
1183 conditions relating to price, financial responsibility,
1184 technology, legal responsibilities and other relevant factors as
1185 are determined by the governing authority or agency to be



1186 appropriate for inclusion; all factors determined relevant by the
1187 governing authority or agency or required by this paragraph (r)
1188 shall be duly included in the advertisement to elicit proposals.
1189 After responses to the request for proposals have been duly
1190 received, the governing authority or agency shall select the most
1191 qualified proposal or proposals on the basis of price, technology
1192 and other relevant factors and from such proposals, but not
1193 limited to the terms thereof, negotiate and enter into contracts
1194 with one or more of the persons or firms submitting proposals. If
1195 the governing authority or agency deems none of the proposals to
1196 be qualified or otherwise acceptable, the request for proposals
1197 process may be reinitiated. Notwithstanding any other provisions
1198 of this paragraph, where a county with at least thirty-five
1199 thousand (35,000) nor more than forty thousand (40,000)
1200 population, according to the 1990 federal decennial census, owns
1201 or operates a solid waste landfill, the governing authorities of
1202 any other county or municipality may contract with the governing
1203 authorities of the county owning or operating the landfill,
1204 pursuant to a resolution duly adopted and spread upon the minutes
1205 of each governing authority involved, for garbage or solid waste
1206 collection or disposal services through contract negotiations.

1207 (s) **Minority set-aside authorization.** Notwithstanding
1208 any provision of this section to the contrary, any agency or
1209 governing authority, by order placed on its minutes, may, in its
1210 discretion, set aside not more than twenty percent (20%) of its



1211 anticipated annual expenditures for the purchase of commodities
1212 from minority businesses; however, all such set-aside purchases
1213 shall comply with all purchasing regulations promulgated by the
1214 Department of Finance and Administration and shall be subject to
1215 bid requirements under this section. Set-aside purchases for
1216 which competitive bids are required shall be made from the lowest
1217 and best minority business bidder. For the purposes of this
1218 paragraph, the term "minority business" means a business which is
1219 owned by a majority of persons who are United States citizens or
1220 permanent resident aliens (as defined by the Immigration and
1221 Naturalization Service) of the United States, and who are Asian,
1222 Black, Hispanic or Native American, according to the following
1223 definitions:

1224 (i) "Asian" means persons having origins in any of
1225 the original people of the Far East, Southeast Asia, the Indian
1226 subcontinent, or the Pacific Islands.

1227 (ii) "Black" means persons having origins in any
1228 black racial group of Africa.

1229 (iii) "Hispanic" means persons of Spanish or
1230 Portuguese culture with origins in Mexico, South or Central
1231 America, or the Caribbean Islands, regardless of race.

1232 (iv) "Native American" means persons having
1233 origins in any of the original people of North America, including
1234 American Indians, Eskimos and Aleuts.



1235 (t) **Construction punch list restriction.** The
1236 architect, engineer or other representative designated by the
1237 agency or governing authority that is contracting for public
1238 construction or renovation may prepare and submit to the
1239 contractor only one (1) preliminary punch list of items that do
1240 not meet the contract requirements at the time of substantial
1241 completion and one (1) final list immediately before final
1242 completion and final payment.

1243 (u) **Procurement of construction services by state**
1244 **institutions of higher learning.** Contracts for privately financed
1245 construction of auxiliary facilities on the campus of a state
1246 institution of higher learning may be awarded by the Board of
1247 Trustees of State Institutions of Higher Learning to the lowest
1248 and best bidder, where sealed bids are solicited, or to the
1249 offeror whose proposal is determined to represent the best value
1250 to the citizens of the State of Mississippi, where requests for
1251 proposals are solicited.

1252 (v) **Insurability of bidders for public construction or**
1253 **other public contracts.** In any solicitation for bids to perform
1254 public construction or other public contracts to which this
1255 section applies, including, but not limited to, contracts for
1256 repair and maintenance, for which the contract will require
1257 insurance coverage in an amount of not less than One Million
1258 Dollars (\$1,000,000.00), bidders shall be permitted to either
1259 submit proof of current insurance coverage in the specified amount



1260 or demonstrate ability to obtain the required coverage amount of
1261 insurance if the contract is awarded to the bidder. Proof of
1262 insurance coverage shall be submitted within five (5) business
1263 days from bid acceptance.

1264 (w) **Purchase authorization clarification.** Nothing in
1265 this section shall be construed as authorizing any purchase not
1266 authorized by law.

1267 (x) **Mississippi Regional Pre-Need Disaster Clean Up**
1268 **Act.** (i) The Department of Finance and Administration shall
1269 develop and implement a process that creates a preferred vendor
1270 list for both disaster debris removal and monitoring.

1271 (ii) Any board of supervisors of any county or any
1272 governing authority of any municipality may opt in to the benefits
1273 and services provided under the appropriate and relevant contract
1274 established in subparagraph (i) of this paragraph at the time of a
1275 disaster event in that county or municipality. At the time of opt
1276 in, the county or municipality shall assume responsibility for
1277 payment in full to the contractor for the disaster-related solid
1278 waste collection, disposal or monitoring services provided.
1279 Nothing in this subparagraph (ii) shall be construed as requiring
1280 a county or municipality to opt in to any such contract
1281 established in subparagraph (i) of this paragraph.

1282 **SECTION 3.** This act shall take effect and be in force from
1283 and after July 1, 2025.

