

By: Senator(s) Williams

To: Public Property;
Accountability, Efficiency,
Transparency

SENATE BILL NO. 2304

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 EXEMPT PURCHASES FOR RENOVATION, REPAIR, RESTORATION OR
3 IMPROVEMENTS TO THE STATE CAPITOL BUILDING AND GROUNDS OR OTHER
4 CERTAIN NATIONAL OR STATE LANDMARKS FROM BIDDING PROCEDURES; TO
5 AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972, TO CONFORM; AND
6 FOR RELATED PURPOSES.

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

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

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

15 (a) **Bidding procedure for purchases not over \$5,000.00.**

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

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



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

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



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



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

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

212 (v) **Electronic bids.** Agencies and governing
213 authorities shall provide a secure electronic interactive system
214 for the submittal of bids requiring competitive bidding that shall
215 be an additional bidding option for those bidders who choose to
216 submit their bids electronically. The Department of Finance and
217 Administration shall provide, by regulation, the standards that
218 agencies must follow when receiving electronic bids. Agencies and
219 governing authorities shall make the appropriate provisions
220 necessary to accept electronic bids from those bidders who choose



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

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

(i) **Decision procedure.** Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed



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

(ii) **Decision procedure for Certified Purchasing Offices.** In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), Certified Purchasing Offices may also use the following procedure: Purchases may be made from the bidder offering the best value. In determining the best value bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions, documented previous experience, training costs and other relevant provisions, including, but not limited to, a bidder having a local office and inventory located within the jurisdiction of the governing authority, may be included in the best value calculation. This provision shall authorize Certified Purchasing Offices to utilize a Request For Proposals (RFP) process when purchasing commodities. All best value



procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. No agency or governing authority shall accept a bid based on items or criteria not included in the specifications.

(iii) **Decision procedure for Mississippi**

Landmarks. In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), where purchase involves renovation, restoration, or both, of the State Capitol Building or any other historical building designated for at least five (5) years as a Mississippi Landmark by the Board of Trustees of the Department of Archives and History under the authority of Sections 39-7-7 and 39-7-11, the agency or governing authority may use the following procedure: Purchases may be made from the lowest and best prequalified bidder. Prequalification of bidders shall be determined not less than fifteen (15) working days before the first published notice of bid opening. Prequalification criteria shall be limited to bidder's knowledge and experience in historical restoration, preservation and renovation. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid and prequalification procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a



bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

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

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

(e) **Lease-purchase authorization.** For the purposes of this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of



321 this section, for such financing without advertising for such
322 bids. Solicitation for the bids for financing may occur before or
323 after acceptance of bids for the purchase of such equipment or,
324 where no such bids for purchase are required, at any time before
325 the purchase thereof. No such lease-purchase agreement shall be
326 for an annual rate of interest which is greater than the overall
327 maximum interest rate to maturity on general obligation
328 indebtedness permitted under Section 75-17-101, and the term of
329 such lease-purchase agreement shall not exceed the useful life of
330 equipment covered thereby as determined according to the upper
331 limit of the asset depreciation range (ADR) guidelines for the
332 Class Life Asset Depreciation Range System established by the
333 Internal Revenue Service pursuant to the United States Internal
334 Revenue Code and regulations thereunder as in effect on December
335 31, 1980, or comparable depreciation guidelines with respect to
336 any equipment not covered by ADR guidelines. Any lease-purchase
337 agreement entered into pursuant to this paragraph (e) may contain
338 any of the terms and conditions which a master lease-purchase
339 agreement may contain under the provisions of Section 31-7-10(5),
340 and shall contain an annual allocation dependency clause
341 substantially similar to that set forth in Section 31-7-10(8).
342 Each agency or governing authority entering into a lease-purchase
343 transaction pursuant to this paragraph (e) shall maintain with
344 respect to each such lease-purchase transaction the same
345 information as required to be maintained by the Department of



Finance and Administration pursuant to Section 31-7-10(13).
However, nothing contained in this section shall be construed to
permit agencies to acquire items of equipment with a total
acquisition cost in the aggregate of less than Ten Thousand
Dollars (\$10,000.00) by a single lease-purchase transaction. All
equipment, and the purchase thereof by any lessor, acquired by
lease-purchase under this paragraph and all lease-purchase
payments with respect thereto shall be exempt from all Mississippi
sales, use and ad valorem taxes. Interest paid on any
lease-purchase agreement under this section shall be exempt from
State of Mississippi income taxation.

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

(g) **Construction contract change authorization.** In the
event a determination is made by an agency or governing authority
after a construction contract is let that changes or modifications
to the original contract are necessary or would better serve the
purpose of the agency or the governing authority, such agency or



governing authority may, in its discretion, order such changes pertaining to the construction that are necessary under the circumstances without the necessity of further public bids; provided that such change shall be made in a commercially reasonable manner and shall not be made to circumvent the public purchasing statutes. In addition to any other authorized person, the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original contract without the necessity of prior approval of the agency or governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

(h) **Petroleum purchase alternative.** In addition to other methods of purchasing authorized in this chapter, when any agency or governing authority shall have a need for gas, diesel fuel, oils and/or other petroleum products in excess of the amount set forth in paragraph (a) of this section, such agency or governing authority may purchase the commodity after having solicited and obtained at least two (2) competitive written bids, as defined in paragraph (b) of this section. If two (2) competitive written bids are not obtained, the entity shall comply with the procedures set forth in paragraph (c) of this section.



In the event any agency or governing authority shall have advertised for bids for the purchase of gas, diesel fuel, oils and other petroleum products and coal and no acceptable bids can be obtained, such agency or governing authority is authorized and directed to enter into any negotiations necessary to secure the lowest and best contract available for the purchase of such commodities.

(i) **Road construction petroleum products price adjustment clause authorization.** Any agency or governing authority authorized to enter into contracts for the construction, maintenance, surfacing or repair of highways, roads or streets, may include in its bid proposal and contract documents a price adjustment clause with relation to the cost to the contractor, including taxes, based upon an industry-wide cost index, of petroleum products including asphalt used in the performance or execution of the contract or in the production or manufacture of materials for use in such performance. Such industry-wide index shall be established and published monthly by the Mississippi Department of Transportation with a copy thereof to be mailed, upon request, to the clerks of the governing authority of each municipality and the clerks of each board of supervisors throughout the state. The price adjustment clause shall be based on the cost of such petroleum products only and shall not include any additional profit or overhead as part of the adjustment. The bid proposals or document contract shall contain the basis and



methods of adjusting unit prices for the change in the cost of such petroleum products.

(j) **State agency emergency purchase procedure.** If the governing board or the executive head, or his designees, of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the head of such agency, or his designees, shall file with the Department of Finance and Administration (i) a statement explaining the conditions and circumstances of the emergency, which shall include a detailed description of the events leading up to the situation and the negative impact to the entity if the 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.



496 (ii) In addition to the authority granted in
497 subparagraph (i) of this paragraph (1), the commissioners or board
498 of trustees is authorized to enter into contracts for the lease of
499 equipment or services, or both, which it considers necessary for
500 the proper care of patients if, in its opinion, it is not
501 financially feasible to purchase the necessary equipment or
502 services. Any such contract for the lease of equipment or
503 services executed by the commissioners or board shall not exceed a
504 maximum of five (5) years' duration and shall include a
505 cancellation clause based on unavailability of funds. If such
506 cancellation clause is exercised, there shall be no further
507 liability on the part of the lessee. Any such contract for the
508 lease of equipment or services executed on behalf of the
509 commissioners or board that complies with the provisions of this
510 subparagraph (ii) shall be excepted from the bid requirements set
511 forth in this section.

512 (m) **Exceptions from bidding requirements.** Excepted
513 from bid requirements are:

514 (i) **Purchasing agreements approved by department.**
515 Purchasing agreements, contracts and maximum price regulations
516 executed or approved by the Department of Finance and
517 Administration.

518 (ii) **Outside equipment repairs.** Repairs to
519 equipment, when such repairs are made by repair facilities in the
520 private sector; however, engines, transmissions, rear axles and/or



other such components shall not be included in this exemption when replaced as a complete unit instead of being repaired and the need for such total component replacement is known before disassembly of the component; however, invoices identifying the equipment, specific repairs made, parts identified by number and name, supplies used in such repairs, and the number of hours of labor and costs therefor shall be required for the payment for such repairs.

(iii) **In-house equipment repairs.** Purchases of parts for repairs to equipment, when such repairs are made by personnel of the agency or governing authority; however, entire assemblies, such as engines or transmissions, shall not be 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 auction except as provided for in subparagraph (v) of this paragraph (m). It is the intent of this section to allow governmental entities to dispose of and/or purchase commodities from other governmental entities at a price that is agreed to by both parties. This shall allow for purchases and/or sales at prices which may be determined to be below the market value if the selling entity determines that the sale at below market value is in the best interest of the taxpayers of the state. Governing authorities shall place the terms of the agreement and any justification on the minutes, and state agencies shall obtain approval from the Department of Finance and Administration, prior to releasing or taking possession of the commodities.

(vii) **Perishable supplies or food.** Perishable

supplies or food purchased for use in connection with hospitals,



the school lunch programs, homemaking programs and for the feeding of county or municipal prisoners.

(viii) **Single-source items.** Noncompetitive items available from one (1) source only. In connection with the purchase of noncompetitive items only available from one (1) source, a certification of the conditions and circumstances requiring the purchase shall be filed by the agency with the Department of Finance and Administration and by the governing authority with the board of the governing authority. Upon receipt of that certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter. In those situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration. Following the purchase, the executive head of the state agency, or his designees, shall file with the Department of Finance and Administration, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the source from whom it was purchased.

(ix) **Waste disposal facility construction contracts.** Construction of incinerators and other facilities for disposal of solid wastes in which products either generated therein, such as steam, or recovered therefrom, such as materials for recycling, are to be sold or otherwise disposed of; however,



in constructing such facilities, a governing authority or agency shall publicly issue requests for proposals, advertised for in the same manner as provided herein for seeking bids for public construction projects, concerning the design, construction, ownership, operation and/or maintenance of such facilities, wherein such requests for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, environmental compatibility, legal responsibilities and such other matters as are determined by the governing authority or agency to be appropriate for inclusion; and after responses to the request for proposals have been duly received, the governing authority or agency may select the most qualified 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.

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

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



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

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

631 (xiv) **Library books and other reference materials.**
632 Purchases by libraries or for libraries of books and periodicals;
633 processed film, videocassette tapes, filmstrips and slides;
634 recorded audiotapes, cassettes and diskettes; and any such items
635 as would be used for teaching, research or other information
636 distribution; however, equipment such as projectors, recorders,
637 audio or video equipment, and monitor televisions are not exempt
638 under this subparagraph.

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

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



645 (xvii) **Multichannel interactive video systems.**

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

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

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

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

668 (xxi) **Certain school district purchases.**

669 Purchases of commodities made by school districts from vendors



670 with which any levying authority of the school district, as
671 defined in Section 37-57-1, has contracted through competitive
672 bidding procedures for purchases of the same commodities.

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

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

683 (xxiv) **Purchases of Mississippi Industries for the**
684 **Blind products or services.** Purchases made by state agencies or
685 governing authorities involving any item that is manufactured,
686 processed or produced by, or any services provided by, the
687 Mississippi Industries for the Blind.

688 (xxv) **Purchases of state-adopted textbooks.**
689 Purchases of state-adopted textbooks by public school districts.

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

693 (xxvii) **Used heavy or specialized machinery or**
694 **equipment for installation of soil and water conservation**



695 **practices purchased at auction.** Used heavy or specialized
696 machinery or equipment used for the installation and
697 implementation of soil and water conservation practices or
698 measures purchased subject to the restrictions provided in
699 Sections 69-27-331 through 69-27-341. Any purchase by the State
700 Soil and Water Conservation Commission under the exemption
701 authorized by this subparagraph shall require advance
702 authorization spread upon the minutes of the commission to include
703 the listing of the item or items authorized to be purchased and
704 the maximum bid authorized to be paid for each item or items.

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

706 Leases by hospitals of equipment or services if the leases are in
707 compliance with paragraph (1)(ii).

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

709 **cooperative purchasing agreements.** Purchases made by certified
710 purchasing offices of state agencies or governing authorities
711 under cooperative purchasing agreements previously approved by the
712 Office of Purchasing and Travel and established by or for any
713 municipality, county, parish or state government or the federal
714 government, provided that the notification to potential
715 contractors includes a clause that sets forth the availability of
716 the cooperative purchasing agreement to other governmental
717 entities. Such purchases shall only be made if the use of the
718 cooperative purchasing agreements is determined to be in the best
719 interest of the governmental entity.



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

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

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

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

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

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

(xxxvi) **Certain purchases by an academic medical center or health sciences school.** Purchases by an academic medical center or health sciences school, as defined in Section 37-115-50, of commodities that are used for clinical purposes and



1. intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease, and 2. medical devices, biological, drugs and radiation-emitting devices as defined by the United States Food and Drug Administration.

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

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

(xxxix) **Purchases made by state agencies related to museum exhibits.** Purchases made by an agency related to the fabrication, construction, installation or refurbishing of museum exhibits. An agency making a purchase under this exemption in excess of the bid threshold set forth in paragraph (c) of this section shall publicly advertise a Request for Qualifications or Request for Proposals in which price as an evaluation factor is at least twenty percent (20%) out of the one hundred percent (100%) total weight, but shall be otherwise exempt. Any contract arising from a purchase using this exemption must be approved by the



Public Procurement Review Board prior to execution by the agency. The agency shall submit a written report on December 1 of each year to the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Accountability, Efficiency and Transparency Committees and the Chair of the Public Procurement Review Board, identifying all purchases made by the agency using this exemption in which the cost of the option selected by the agency was more than twenty-five percent (25%) higher than the lowest cost option available.

(xl) **Certain purchases at landmark buildings.**

Purchases made by the Department of Finance and Administration for the renovation, repair, restoration or improvements to the State Capitol building and grounds or any other historical buildings or sites under the general supervision and care of the department that are dually designated as both a National Historic Landmark and a Mississippi Landmark. This subparagraph shall stand repealed on June 30, 2028.

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

(i) All contracts for the purchase of commodities, equipment and public construction (including, but not limited to, repair and maintenance), may be let for periods of not more than sixty (60) months in advance, subject to applicable statutory provisions prohibiting the letting of contracts during specified periods near the end of terms of office. Term contracts for a



795 period exceeding twenty-four (24) months shall also be subject to
796 ratification or cancellation by governing authority boards taking
797 office subsequent to the governing authority board entering the
798 contract.

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

810 (o) **Purchase law violation prohibition and vendor**
811 **penalty.** No contract or purchase as herein authorized shall be
812 made for the purpose of circumventing the provisions of this
813 section requiring competitive bids, nor shall it be lawful for any
814 person or concern to submit individual invoices for amounts within
815 those authorized for a contract or purchase where the actual value
816 of the contract or commodity purchased exceeds the authorized
817 amount and the invoices therefor are split so as to appear to be
818 authorized as purchases for which competitive bids are not
819 required. Submission of such invoices shall constitute a



820 misdemeanor punishable by a fine of not less than Five Hundred
821 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
822 or by imprisonment for thirty (30) days in the county jail, or
823 both such fine and imprisonment. In addition, the claim or claims
824 submitted shall be forfeited.

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

832 (q) **Fuel management system bidding procedure.** Any
833 governing authority or agency of the state shall, before
834 contracting for the services and products of a fuel management or
835 fuel access system, enter into negotiations with not fewer than
836 two (2) sellers of fuel management or fuel access systems for
837 competitive written bids to provide the services and products for
838 the systems. In the event that the governing authority or agency
839 cannot locate two (2) sellers of such systems or cannot obtain
840 bids from two (2) sellers of such systems, it shall show proof
841 that it made a diligent, good-faith effort to locate and negotiate
842 with two (2) sellers of such systems. Such proof shall include,
843 but not be limited to, publications of a request for proposals and
844 letters soliciting negotiations and bids. For purposes of this



paragraph (q), a fuel management or fuel access system is an automated system of acquiring fuel for vehicles as well as management reports detailing fuel use by vehicles and drivers, and the term "competitive written bid" shall have the meaning as defined in paragraph (b) of this section. Governing authorities and agencies shall be exempt from this process when contracting for the services and products of fuel management or fuel access systems under the terms of a state contract established by the Office of Purchasing and Travel.

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



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

889 (s) **Minority set-aside authorization.** Notwithstanding
890 any provision of this section to the contrary, any agency or
891 governing authority, by order placed on its minutes, may, in its
892 discretion, set aside not more than twenty percent (20%) of its
893 anticipated annual expenditures for the purchase of commodities
894 from minority businesses; however, all such set-aside purchases



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

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

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

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

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

917 (t) **Construction punch list restriction.** The
918 architect, engineer or other representative designated by the
919 agency or governing authority that is contracting for public



920 construction or renovation may prepare and submit to the
921 contractor only one (1) preliminary punch list of items that do
922 not meet the contract requirements at the time of substantial
923 completion and one (1) final list immediately before final
924 completion and final payment.

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

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



insurance coverage shall be submitted within five (5) business days from bid acceptance.

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

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

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

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

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



969 (i) Three (3) individuals appointed by the
970 Governor with the advice and consent of the Senate;
971 (ii) Two (2) individuals appointed by the
972 Lieutenant Governor with the advice and consent of the Senate; and
973 (iii) The Executive Director of the Department of
974 Finance and Administration, serving as an ex officio and nonvoting
975 member.

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

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

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

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

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

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

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

992 (c) When appointing members to the Public Procurement
993 Review Board, the Governor and Lieutenant Governor shall take into



994 consideration persons who possess at least five (5) years of
995 management experience in general business, health care or finance
996 for an organization, corporation or other public or private
997 entity. Any person, or any employee or owner of a company, who
998 receives any grants, procurements or contracts that are subject to
999 approval under this section shall not be appointed to the Public
1000 Procurement Review Board. Any person, or any employee or owner of
1001 a company, who is a principal of the source providing a personal
1002 or professional service shall not be appointed to the Public
1003 Procurement Review Board if the principal owns or controls a
1004 greater than five percent (5%) interest or has an ownership value
1005 of One Million Dollars (\$1,000,000.00) in the source's business,
1006 whichever is smaller. No member shall be an officer or employee
1007 of the State of Mississippi while serving as a voting member on
1008 the Public Procurement Review Board.

1009 (d) Members of the Public Procurement Review Board
1010 shall be entitled to per diem as authorized by Section 25-3-69 and
1011 travel reimbursement as authorized by Section 25-3-41.

1012 (e) The members of the Public Procurement Review Board
1013 shall elect a chair from among the membership, and he or she shall
1014 preside over the meetings of the board. The board shall annually
1015 elect a vice chair, who shall serve in the absence of the chair.
1016 No business shall be transacted, including adoption of rules of
1017 procedure, without the presence of a quorum of the board. Three
1018 (3) members shall be a quorum. No action shall be valid unless



1019 approved by a majority of the members present and voting, entered
1020 upon the minutes of the board and signed by the chair. Necessary
1021 clerical and administrative support for the board shall be
1022 provided by the Department of Finance and Administration. Minutes
1023 shall be kept of the proceedings of each meeting, copies of which
1024 shall be filed on a monthly basis with the chairs of the
1025 Accountability, Efficiency and Transparency Committees of the
1026 Senate and House of Representatives and the chairs of the
1027 Appropriations Committees of the Senate and House of
1028 Representatives.

1029 (2) The Public Procurement Review Board shall have the
1030 following powers and responsibilities:

1031 (a) Approve all purchasing regulations governing the
1032 purchase or lease by any agency, as defined in Section 31-7-1, of
1033 commodities and equipment, except computer equipment acquired
1034 pursuant to Sections 25-53-1 through 25-53-29;

1035 (b) Adopt regulations governing the approval of
1036 contracts let for the construction and maintenance of state
1037 buildings and other state facilities as well as related contracts
1038 for architectural and engineering services.

1039 The provisions of this paragraph (b) shall not apply to such
1040 contracts involving buildings and other facilities of state
1041 institutions of higher learning which are self-administered as
1042 provided under this paragraph (b) or Section 37-101-15(m);



1043 (c) Adopt regulations governing any lease or rental
1044 agreement by any state agency or department, including any state
1045 agency financed entirely by federal funds, for space outside the
1046 buildings under the jurisdiction of the Department of Finance and
1047 Administration. These regulations shall require each agency
1048 requesting to lease such space to provide the following
1049 information that shall be published by the Department of Finance
1050 and Administration on its website: the agency to lease the space;
1051 the terms of the lease; the approximate square feet to be leased;
1052 the use for the space; a description of a suitable space; the
1053 general location desired for the leased space; the contact
1054 information for a person from the agency; the deadline date for
1055 the agency to have received a lease proposal; any other specific
1056 terms or conditions of the agency; and any other information
1057 deemed appropriate by the Division of Real Property Management of
1058 the Department of Finance and Administration or the Public
1059 Procurement Review Board. The information shall be provided
1060 sufficiently in advance of the time the space is needed to allow
1061 the Division of Real Property Management of the Department of
1062 Finance and Administration to review and preapprove the lease
1063 before the time for advertisement begins;

1064 (d) Adopt, in its discretion, regulations to set aside
1065 at least five percent (5%) of anticipated annual expenditures for
1066 the purchase of commodities from minority businesses; however, all
1067 such set-aside purchases shall comply with all purchasing



1068 regulations promulgated by the department and shall be subject to
1069 all bid requirements. Set-aside purchases for which competitive
1070 bids are required shall be made from the lowest and best minority
1071 business bidder; however, if no minority bid is available or if
1072 the minority bid is more than two percent (2%) higher than the
1073 lowest bid, then bids shall be accepted and awarded to the lowest
1074 and best bidder. However, the provisions in this paragraph shall
1075 not be construed to prohibit the rejection of a bid when only one
1076 (1) bid is received. Such rejection shall be placed in the
1077 minutes. For the purposes of this paragraph, the term "minority
1078 business" means a business which is owned by a person who is a
1079 citizen or lawful permanent resident of the United States and who
1080 is:

1081 (i) Black: having origins in any of the black
1082 racial groups of Africa;

1083 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
1084 Central or South American, or other Spanish or Portuguese culture
1085 or origin regardless of race;

1086 (iii) Asian-American: having origins in any of
1087 the original people of the Far East, Southeast Asia, the Indian
1088 subcontinent, or the Pacific Islands;

1089 (iv) American Indian or Alaskan Native: having
1090 origins in any of the original people of North America; or

1091 (v) Female;



1092 (e) In consultation with and approval by the Chairs of
1093 the Senate and House Public Property Committees, approve leases,
1094 for a term not to exceed eighteen (18) months, entered into by
1095 state agencies for the purpose of providing parking arrangements
1096 for state employees who work in the Woolfolk Building, the Carroll
1097 Gartin Justice Building or the Walter Sillers Office Building;

1098 (f) (i) Except as otherwise provided in subparagraph
1099 (ii) of this paragraph, promulgate rules and regulations governing
1100 the solicitation and selection of contractual services personnel,
1101 including personal and professional services contracts for any
1102 form of consulting, policy analysis, public relations, marketing,
1103 public affairs, legislative advocacy services or any other
1104 contract that the board deems appropriate for oversight, with the
1105 exception of:

1106 1. Any personal service contracts entered
1107 into by any agency that employs only nonstate service employees as
1108 defined in Section 25-9-107(c);

1109 2. Any personal service contracts entered
1110 into for computer or information technology-related services
1111 governed by the Mississippi Department of Information Technology
1112 Services;

1113 3. Any personal service contracts entered
1114 into by the individual state institutions of higher learning;

1115 4. Any personal service contracts entered
1116 into by the Mississippi Department of Transportation;



1117 5. Any personal service contracts entered
1118 into by the Department of Human Services through June 30, 2019,
1119 which the Executive Director of the Department of Human Services
1120 determines would be useful in establishing and operating the
1121 Department of Child Protection Services;

1122 6. Any personal service contracts entered
1123 into by the Department of Child Protection Services through June
1124 30, 2019;

1125 7. Any contracts for entertainers and/or
1126 performers at the Mississippi State Fairgrounds entered into by
1127 the Mississippi Fair Commission;

1128 8. Any contracts entered into by the
1129 Department of Finance and Administration when procuring aircraft
1130 maintenance, parts, equipment and/or services;

1131 9. Any contract entered into by the
1132 Department of Public Safety for service on specialized equipment
1133 and/or software required for the operation of such specialized
1134 equipment for use by the Office of Forensics Laboratories;

1135 10. Any personal or professional service
1136 contract entered into by the Mississippi Department of Health or
1137 the Department of Revenue solely in connection with their
1138 respective responsibilities under the Mississippi Medical Cannabis
1139 Act from February 2, 2022, through June 30, 2026;



1140 11. Any contract for attorney, accountant,
1141 actuary auditor, architect, engineer, anatomical pathologist, or
1142 utility rate expert services;

1143 12. Any personal service contracts approved
1144 by the Executive Director of the Department of Finance and
1145 Administration and entered into by the Coordinator of Mental
1146 Health Accessibility through June 30, 2022;

1147 13. Any personal or professional services
1148 contract entered into by the State Department of Health in
1149 carrying out its responsibilities under the ARPA Rural Water
1150 Associations Infrastructure Grant Program through June 30, 2026;

1151 14. And any personal or professional services
1152 contract entered into by the Mississippi Department of
1153 Environmental Quality in carrying out its responsibilities under
1154 the Mississippi Municipality and County Water Infrastructure Grant
1155 Program Act of 2022, through June 30, 2026;

1156 15. Any personal or professional services
1157 contract entered into by an agency for the design, operation or
1158 maintenance of museum exhibits. An agency making a purchase under
1159 this exemption shall publicly advertise a Request for
1160 Qualifications but shall be otherwise exempt. Any contracts
1161 arising from the use of this exemption must be approved by the
1162 Public Procurement Review Board prior to execution by the
1163 agency; * * *



1164 16. Any personal or professional services
1165 contract entered into by the Mississippi Department of
1166 Environmental Quality in carrying out its responsibilities under
1167 Section 49-2-13(1). This item * * * 16 shall stand repealed on
1168 July 1, 2028 * * *;
and

1169 17. Any personal or professional services
1170 contract entered into by the Department of Finance and
1171 Administration for architectural, engineering, operation or
1172 maintenance services at the State Capitol building and grounds or
1173 any other historical buildings or sites under the general
1174 supervision and care of the department that are dually designated
1175 as both a National Historic Landmark and a Mississippi Landmark.
1176 This item 17 shall stand repealed on June 30, 2028.

1177 Any such rules and regulations shall provide for maintaining
1178 continuous internal audit covering the activities of such agency
1179 affecting its revenue and expenditures as required under Section
1180 7-7-3(6)(d). Any rules and regulation changes related to personal
1181 and professional services contracts that the Public Procurement
1182 Review Board may propose shall be submitted to the Chairs of the
1183 Accountability, Efficiency and Transparency Committees of the
1184 Senate and House of Representatives and the Chairs of the
1185 Appropriation Committees of the Senate and House of
1186 Representatives at least fifteen (15) days before the board votes
1187 on the proposed changes, and those rules and regulation changes,



1188 if adopted, shall be promulgated in accordance with the
1189 Mississippi Administrative Procedures Act.

1190 (ii) From and after July 1, 2024, the Public
1191 Procurement Review Board shall promulgate rules and regulations
1192 that require the Department of Finance and Administration to
1193 conduct personal and professional services solicitations as
1194 provided in subparagraph (i) of this paragraph for those services
1195 in excess of Seventy-five Thousand Dollars (\$75,000.00) for the
1196 Department of Marine Resources, the Department of Wildlife,
1197 Fisheries and Parks, the Mississippi Emergency Management Agency
1198 and the Mississippi Development Authority, with assistance to be
1199 provided from these entities. Any powers that have been conferred
1200 upon agencies in order to comply with the provisions of this
1201 section for personal and professional services solicitations shall
1202 be conferred upon the Department of Finance and Administration to
1203 conduct personal and professional services solicitations for the
1204 Department of Marine Resources, the Department of Wildlife,
1205 Fisheries and Parks, the Mississippi Emergency Management Agency
1206 and the Mississippi Development Authority for those services in
1207 excess of Seventy-five Thousand Dollars (\$75,000.00). The
1208 Department of Finance and Administration shall make any
1209 submissions that are required to be made by other agencies to the
1210 Public Procurement Review Board for the Department of Marine
1211 Resources, the Department of Wildlife, Fisheries and Parks, the



1212 Mississippi Emergency Management Agency and the Mississippi
1213 Development Authority.

1214 The provisions of this subparagraph (ii) shall stand repealed
1215 on June 30, 2027;

1216 (g) Approve all personal and professional services
1217 contracts involving the expenditures of funds in excess of
1218 Seventy-five Thousand Dollars (\$75,000.00), except as provided in
1219 paragraph (f) of this subsection (2) and in subsection (8);

1220 (h) Develop mandatory standards with respect to
1221 contractual services personnel that require invitations for public
1222 bid, requests for proposals, record keeping and financial
1223 responsibility of contractors. The Public Procurement Review
1224 Board shall, unless exempted under this paragraph (h) or under
1225 paragraph (i) or (o) of this subsection (2), require the agency
1226 involved to submit the procurement to a competitive procurement
1227 process, and may reserve the right to reject any or all resulting
1228 procurements;

1229 (i) Prescribe certain circumstances by which agency
1230 heads may enter into contracts for personal and professional
1231 services without receiving prior approval from the Public
1232 Procurement Review Board. The Public Procurement Review Board may
1233 establish a preapproved list of providers of various personal and
1234 professional services for set prices with which state agencies may
1235 contract without bidding or prior approval from the board;



1236 (i) Agency requirements may be fulfilled by
1237 procuring services performed incident to the state's own programs.
1238 The agency head shall determine in writing whether the price
1239 represents a fair market value for the services. When the
1240 procurements are made from other governmental entities, the
1241 private sector need not be solicited; however, these contracts
1242 shall still be submitted for approval to the Public Procurement
1243 Review Board.

1244 (ii) Contracts between two (2) state agencies,
1245 both under Public Procurement Review Board purview, shall not
1246 require Public Procurement Review Board approval. However, the
1247 contracts shall still be entered into the enterprise resource
1248 planning system;

1249 (j) Provide standards for the issuance of requests for
1250 proposals, the evaluation of proposals received, consideration of
1251 costs and quality of services proposed, contract negotiations, the
1252 administrative monitoring of contract performance by the agency
1253 and successful steps in terminating a contract;

1254 (k) Present recommendations for governmental
1255 privatization and to evaluate privatization proposals submitted by
1256 any state agency;

1257 (l) Authorize personal and professional service
1258 contracts to be effective for more than one (1) year provided a
1259 funding condition is included in any such multiple year contract,
1260 except the State Board of Education, which shall have the



1261 authority to enter into contractual agreements for student
1262 assessment for a period up to ten (10) years. The State Board of
1263 Education shall procure these services in accordance with the
1264 Public Procurement Review Board procurement regulations;

1265 (m) Request the State Auditor to conduct a performance
1266 audit on any personal or professional service contract;

1267 (n) Prepare an annual report to the Legislature
1268 concerning the issuance of personal and professional services
1269 contracts during the previous year, collecting any necessary
1270 information from state agencies in making such report;

1271 (o) Develop and implement the following standards and
1272 procedures for the approval of any sole source contract for
1273 personal and professional services regardless of the value of the
1274 procurement:

1275 (i) For the purposes of this paragraph (o), the
1276 term "sole source" means only one (1) source is available that can
1277 provide the required personal or professional service.

1278 (ii) An agency that has been issued a binding,
1279 valid court order mandating that a particular source or provider
1280 must be used for the required service must include a copy of the
1281 applicable court order in all future sole source contract reviews
1282 for the particular personal or professional service referenced in
1283 the court order.

1284 (iii) Any agency alleging to have a sole source
1285 for any personal or professional service, other than those



1286 exempted under paragraph (f) of this subsection (2) and subsection
1287 (8), shall publish on the procurement portal website established
1288 by Sections 25-53-151 and 27-104-165, for at least fourteen (14)
1289 days, the terms of the proposed contract for those services. In
1290 addition, the publication shall include, but is not limited to,
1291 the following information:

1292 1. The personal or professional service
1293 offered in the contract;

1294 2. An explanation of why the personal or
1295 professional service is the only one that can meet the needs of
1296 the agency;

1297 3. An explanation of why the source is the
1298 only person or entity that can provide the required personal or
1299 professional service;

1300 4. An explanation of why the amount to be
1301 expended for the personal or professional service is reasonable;
1302 and

1303 5. The efforts that the agency went through
1304 to obtain the best possible price for the personal or professional
1305 service.

1306 (iv) If any person or entity objects and proposes
1307 that the personal or professional service published under
1308 subparagraph (iii) of this paragraph (o) is not a sole source
1309 service and can be provided by another person or entity, then the
1310 objecting person or entity shall notify the Public Procurement



1311 Review Board and the agency that published the proposed sole
1312 source contract with a detailed explanation of why the personal or
1313 professional service is not a sole source service.

1314 (v) 1. If the agency determines after review that
1315 the personal or professional service in the proposed sole source
1316 contract can be provided by another person or entity, then the
1317 agency must withdraw the sole source contract publication from the
1318 procurement portal website and submit the procurement of the
1319 personal or professional service to an advertised competitive bid
1320 or selection process.

1321 2. If the agency determines after review that
1322 there is only one (1) source for the required personal or
1323 professional service, then the agency may appeal to the Public
1324 Procurement Review Board. The agency has the burden of proving
1325 that the personal or professional service is only provided by one
1326 (1) source.

1327 3. If the Public Procurement Review Board has
1328 any reasonable doubt as to whether the personal or professional
1329 service can only be provided by one (1) source, then the agency
1330 must submit the procurement of the personal or professional
1331 service to an advertised competitive bid or selection process. No
1332 action taken by the Public Procurement Review Board in this appeal
1333 process shall be valid unless approved by a majority of the
1334 members of the Public Procurement Review Board present and voting.



1335 (vi) The Public Procurement Review Board shall
1336 prepare and submit a quarterly report to the House of
1337 Representatives and Senate Accountability, Efficiency and
1338 Transparency Committees that details the sole source contracts
1339 presented to the Public Procurement Review Board and the reasons
1340 that the Public Procurement Review Board approved or rejected each
1341 contract. These quarterly reports shall also include the
1342 documentation and memoranda required in subsection (4) of this
1343 section. An agency that submitted a sole source contract shall be
1344 prepared to explain the sole source contract to each committee by
1345 December 15 of each year upon request by the committee;

1346 (p) Assess any fines and administrative penalties
1347 provided for in Sections 31-7-401 through 31-7-423.

1348 (3) All submissions shall be made sufficiently in advance of
1349 each monthly meeting of the Public Procurement Review Board as
1350 prescribed by the Public Procurement Review Board. If the Public
1351 Procurement Review Board rejects any contract submitted for review
1352 or approval, the Public Procurement Review Board shall clearly set
1353 out the reasons for its action, including, but not limited to, the
1354 policy that the agency has violated in its submitted contract and
1355 any corrective actions that the agency may take to amend the
1356 contract to comply with the rules and regulations of the Public
1357 Procurement Review Board.

1358 (4) All sole source contracts for personal and professional
1359 services awarded by state agencies, other than those exempted



1360 under Section 27-104-7(2) (f) and (8), whether approved by an
1361 agency head or the Public Procurement Review Board, shall contain
1362 in the procurement file a written determination for the approval,
1363 using a request form furnished by the Public Procurement Review
1364 Board. The written determination shall document the basis for the
1365 determination, including any market analysis conducted in order to
1366 ensure that the service required was practicably available from
1367 only one (1) source. A memorandum shall accompany the request
1368 form and address the following four (4) points:

1369 (a) Explanation of why this service is the only service
1370 that can meet the needs of the purchasing agency;

1371 (b) Explanation of why this vendor is the only
1372 practicably available source from which to obtain this service;

1373 (c) Explanation of why the price is considered
1374 reasonable; and

1375 (d) Description of the efforts that were made to
1376 conduct a noncompetitive negotiation to get the best possible
1377 price for the taxpayers.

1378 (5) In conjunction with the State Personnel Board, the
1379 Public Procurement Review Board shall develop and promulgate rules
1380 and regulations to define the allowable legal relationship between
1381 contract employees and the contracting departments, agencies and
1382 institutions of state government under the jurisdiction of the
1383 State Personnel Board, in compliance with the applicable rules and
1384 regulations of the federal Internal Revenue Service (IRS) for



1385 federal employment tax purposes. Under these regulations, the
1386 usual common law rules are applicable to determine and require
1387 that such worker is an independent contractor and not an employee,
1388 requiring evidence of lawful behavioral control, lawful financial
1389 control and lawful relationship of the parties. Any state
1390 department, agency or institution shall only be authorized to
1391 contract for personnel services in compliance with those
1392 regulations.

1393 (6) No member of the Public Procurement Review Board shall
1394 use his or her official authority or influence to coerce, by
1395 threat of discharge from employment, or otherwise, the purchase of
1396 commodities, the contracting for personal or professional
1397 services, or the contracting for public construction under this
1398 chapter.

1399 (7) Notwithstanding any other laws or rules to the contrary,
1400 the provisions of subsection (2) of this section shall not be
1401 applicable to the Mississippi State Port Authority at Gulfport.

1402 (8) Nothing in this section shall impair or limit the
1403 authority of the Board of Trustees of the Public Employees'
1404 Retirement System to enter into any personal or professional
1405 services contracts directly related to their constitutional
1406 obligation to manage the trust funds, including, but not limited
1407 to, actuarial, custodial banks, cash management, investment
1408 consultant and investment management contracts. Nothing in this
1409 section shall impair or limit the authority of the State Treasurer



1410 to enter into any personal or professional services contracts
1411 involving the management of trust funds, including, but not
1412 limited to, actuarial, custodial banks, cash management,
1413 investment consultant and investment management contracts.

1414 (9) Through December 31, 2026, the provisions of this
1415 section related to rental agreements or leasing of real property
1416 for the purpose of conducting agency business shall not apply to
1417 the Office of Workforce Development created in Section 37-153-7.

1418 **SECTION 3.** This act shall take effect and be in force from
1419 and after July 1, 2025.

