

By: Senator(s) Chassaniol, Fillingane,
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To: Accountability,
Efficiency, Transparency

SENATE BILL NO. 2382

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 EXEMPT THE MISSISSIPPI DEPARTMENT OF FINANCE AND ADMINISTRATION
3 FROM CERTAIN PUBLIC PURCHASING REQUIREMENTS FOR THE UNITED STATES
4 SEMIQUINCENTENNIAL COMMISSION EXPENSES; AND FOR RELATED PURPOSES.

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

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

8 31-7-13. All agencies and governing authorities shall
9 purchase their commodities and printing; contract for garbage
10 collection or disposal; contract for solid waste collection or
11 disposal; contract for sewage collection or disposal; contract for
12 public construction; and contract for rentals as herein provided.

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

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

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



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

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



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

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

65 (i) **Publication requirement.**

66 1. Purchases which involve an expenditure of
67 more than Seventy-five Thousand Dollars (\$75,000.00), exclusive of
68 freight and shipping charges, may be made from the lowest and best



69 bidder after advertising for competitive bids once each week for
70 two (2) consecutive weeks in a regular newspaper published in the
71 county or municipality in which such agency or governing authority
72 is located. However, all American Recovery and Reinvestment Act
73 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
74 shall be bid. All references to American Recovery and
75 Reinvestment Act projects in this section shall not apply to
76 programs identified in Division B of the American Recovery and
77 Reinvestment Act.

78 2. Reverse auctions shall be the primary
79 method for receiving bids during the bidding process. If a
80 purchasing entity determines that a reverse auction is not in the
81 best interest of the state, then that determination must be
82 approved by the Public Procurement Review Board. The purchasing
83 entity shall submit a detailed explanation of why a reverse
84 auction would not be in the best interest of the state and present
85 an alternative process to be approved by the Public Procurement
86 Review Board. If the Public Procurement Review Board authorizes
87 the purchasing entity to solicit bids with a method other than
88 reverse auction, then the purchasing entity may designate the
89 other methods by which the bids will be received, including, but
90 not limited to, bids sealed in an envelope, bids received
91 electronically in a secure system, or bids received by any other
92 method that promotes open competition and has been approved by the
93 Office of Purchasing and Travel. However, reverse auction shall



94 not be used for any public contract for design, construction,
95 improvement, repair or remodeling of any public facilities,
96 including the purchase of materials, supplies, equipment or goods
97 for same and including buildings, roads and bridges. The Public
98 Procurement Review Board must approve any contract entered into by
99 alternative process. The provisions of this item 2 shall not
100 apply to the individual state institutions of higher learning.
101 The provisions of this item 2 requiring reverse auction as the
102 primary method of receiving bids shall not apply to term contract
103 purchases as provided in paragraph (n) of this section; however, a
104 purchasing entity may, in its discretion, utilize reverse auction
105 for such purchases. The provisions of this item 2 shall not apply
106 to individual public schools, including public charter schools and
107 public school districts, only when purchasing copyrighted
108 educational supplemental materials and software as a service
109 product. For such purchases, a local school board may authorize a
110 purchasing entity in its jurisdiction to use a Request for
111 Qualifications which promotes open competition and meets the
112 requirements of the Office of Purchasing and Travel.

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



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



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

153 4. Agencies and governing authorities using
154 federal funds for the procurement of any good or service,
155 including exempt personal and professional services, must comply
156 with the Uniform Administrative Requirements, Cost Principles, and
157 Audit Requirements for Federal Awards - Subpart D - Post Federal
158 Award Requirements Procurement Standards, in accordance with 2 CFR
159 200.317 through 2 CFR 200.327.

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



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

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

185 (iv) **Specification restrictions.**

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



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

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

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



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

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

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



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

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



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

273 (iii) **Decision procedure for Mississippi**

274 **Landmarks.** In addition to the decision procedure set forth in
275 subparagraph (i) of this paragraph (d), where purchase involves
276 renovation, restoration, or both, of the State Capitol Building or
277 any other historical building designated for at least five (5)
278 years as a Mississippi Landmark by the Board of Trustees of the
279 Department of Archives and History under the authority of Sections
280 39-7-7 and 39-7-11, the agency or governing authority may use the
281 following procedure: Purchases may be made from the lowest and
282 best prequalified bidder. Prequalification of bidders shall be
283 determined not less than fifteen (15) working days before the
284 first published notice of bid opening. Prequalification criteria
285 shall be limited to bidder's knowledge and experience in
286 historical restoration, preservation and renovation. In
287 determining the lowest and best bid, freight and shipping charges
288 shall be included. Life-cycle costing, total cost bids,
289 warranties, guaranteed buy-back provisions and other relevant
290 provisions may be included in the best bid calculation. All best
291 bid and prequalification procedures for state agencies must be in
292 compliance with regulations established by the Department of
293 Finance and Administration. If any governing authority accepts a



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

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

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

307 (e) **Lease-purchase authorization.** For the purposes of
308 this section, the term "equipment" shall mean equipment, furniture
309 and, if applicable, associated software and other applicable
310 direct costs associated with the acquisition. Any lease-purchase
311 of equipment which an agency is not required to lease-purchase
312 under the master lease-purchase program pursuant to Section
313 31-7-10 and any lease-purchase of equipment which a governing
314 authority elects to lease-purchase may be acquired by a
315 lease-purchase agreement under this paragraph (e). Lease-purchase
316 financing may also be obtained from the vendor or from a
317 third-party source after having solicited and obtained at least
318 two (2) written competitive bids, as defined in paragraph (b) of



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



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

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

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



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

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



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

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



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

421 (j) **State agency emergency purchase procedure.** If the
422 governing board or the executive head, or his or her designees, of
423 any agency of the state shall determine that an emergency exists
424 in regard to the purchase of any commodities or repair contracts,
425 so that the delay incident to giving opportunity for competitive
426 bidding would be detrimental to the interests of the state, then
427 the head of such agency, or his or her designees, shall file with
428 the Department of Finance and Administration (i) a statement
429 explaining the conditions and circumstances of the emergency,
430 which shall include a detailed description of the events leading
431 up to the situation and the negative impact to the entity if the
432 purchase is made following the statutory requirements set forth in
433 paragraph (a), (b) or (c) of this section, and (ii) a certified
434 copy of the appropriate minutes of the board of such agency
435 requesting the emergency purchase, if applicable. Upon receipt of
436 the statement and applicable board certification, the State Fiscal
437 Officer, or his or her designees, may, in writing, authorize the
438 purchase or repair without having to comply with competitive
439 bidding requirements.

440 If the governing board or the executive head, or his or her
441 designees, of any agency determines that an emergency exists in
442 regard to the purchase of any commodities or repair contracts, so
443 that the delay incident to giving opportunity for competitive



444 bidding would threaten the health or safety of any person, or the
445 preservation or protection of property, then the provisions in
446 this section for competitive bidding shall not apply, and any
447 officer or agent of the agency having general or specific
448 authority for making the purchase or repair contract shall approve
449 the bill presented for payment, and he or she shall certify in
450 writing from whom the purchase was made, or with whom the repair
451 contract was made.

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

460 Purchases under the grant program established under Section
461 37-68-7 in response to COVID-19 and the directive that school
462 districts create a distance learning plan and fulfill technology
463 needs expeditiously shall be deemed an emergency purchase for
464 purposes of this paragraph (j).

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

466 If the governing authority, or the governing authority acting
467 through its designee, shall determine that an emergency exists in
468 regard to the purchase of any commodities or repair contracts, so



469 that the delay incident to giving opportunity for competitive
470 bidding would be detrimental to the interest of the governing
471 authority, then the provisions herein for competitive bidding
472 shall not apply and any officer or agent of such governing
473 authority having general or special authority therefor in making
474 such purchase or repair shall approve the bill presented therefor,
475 and he or she shall certify in writing thereon from whom such
476 purchase was made, or with whom such a repair contract was made.
477 At the board meeting next following the emergency purchase or
478 repair contract, documentation of the purchase or repair contract,
479 including a description of the commodity purchased, the price
480 thereof and the nature of the emergency shall be presented to the
481 board and shall be placed on the minutes of the board of such
482 governing authority. Purchases under the grant program
483 established under Section 37-68-7 in response to COVID-19 and the
484 directive that school districts create a distance learning plan
485 and fulfill technology needs expeditiously shall be deemed an
486 emergency purchase for purposes of this paragraph (k).

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

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



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

510 (m) **Exceptions from bidding requirements.** Excepted
511 from bid requirements are:

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

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



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

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

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

536 (v) **Governmental equipment auctions.** Motor
537 vehicles or other equipment purchased from a federal agency or
538 authority, another governing authority or state agency of the
539 State of Mississippi, or any governing authority or state agency
540 of another state at a public auction held for the purpose of
541 disposing of such vehicles or other equipment. Any purchase by a
542 governing authority under the exemption authorized by this
543 subparagraph (v) shall require advance authorization spread upon



544 the minutes of the governing authority to include the listing of
545 the item or items authorized to be purchased and the maximum bid
546 authorized to be paid for each item or items.

547 (vi) **Intergovernmental sales and transfers.**

548 Purchases, sales, transfers or trades by governing authorities or
549 state agencies when such purchases, sales, transfers or trades are
550 made by a private treaty agreement or through means of
551 negotiation, from any federal agency or authority, another
552 governing authority or state agency of the State of Mississippi,
553 or any state agency or governing authority of another state.
554 Nothing in this section shall permit such purchases through public
555 auction except as provided for in subparagraph (v) of this
556 paragraph (m). It is the intent of this section to allow
557 governmental entities to dispose of and/or purchase commodities
558 from other governmental entities at a price that is agreed to by
559 both parties. This shall allow for purchases and/or sales at
560 prices which may be determined to be below the market value if the
561 selling entity determines that the sale at below market value is
562 in the best interest of the taxpayers of the state. Governing
563 authorities shall place the terms of the agreement and any
564 justification on the minutes, and state agencies shall obtain
565 approval from the Department of Finance and Administration, prior
566 to releasing or taking possession of the commodities.

567 (vii) **Perishable supplies or food.** Perishable
568 supplies or food purchased for use in connection with hospitals,



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

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

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



594 in constructing such facilities, a governing authority or agency
595 shall publicly issue requests for proposals, advertised for in the
596 same manner as provided herein for seeking bids for public
597 construction projects, concerning the design, construction,
598 ownership, operation and/or maintenance of such facilities,
599 wherein such requests for proposals when issued shall contain
600 terms and conditions relating to price, financial responsibility,
601 technology, environmental compatibility, legal responsibilities
602 and such other matters as are determined by the governing
603 authority or agency to be appropriate for inclusion; and after
604 responses to the request for proposals have been duly received,
605 the governing authority or agency may select the most qualified
606 proposal or proposals on the basis of price, technology and other
607 relevant factors and from such proposals, but not limited to the
608 terms thereof, negotiate and enter contracts with one or more of
609 the persons or firms submitting proposals.

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

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



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

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

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

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

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



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

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

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

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

666 (xxi) **Certain school district purchases.**
667 Purchases of commodities made by school districts from vendors



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

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

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

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

686 (xxv) **Purchases of state-adopted textbooks.**
687 Purchases of state-adopted textbooks by public school districts.

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

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



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

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

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

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

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



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

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

726 (xxxiii) **Toll roads and bridge construction**
727 **projects.** Contracts entered into under the provisions of Section
728 65-43-1 or 65-43-3.

729 (xxxiiii) **Certain purchases under Section 57-1-221.**
730 Contracts entered into pursuant to the provisions of Section
731 57-1-221.

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

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

739 (xxxvi) **Certain purchases by an academic medical**
740 **center or health sciences school.** Purchases by an academic
741 medical center or health sciences school, as defined in Section
742 37-115-50, of commodities that are used for clinical purposes and



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

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

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

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



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

777 (xxxx) Purchases made by the Department of Finance
778 and Administration on behalf of the United States

779 Semiquincentennial Commission. Purchases made by the Department
780 of Finance and Administration solely for the purpose of fulfilling
781 their respective responsibilities to expend the funds in the
782 Mississippi Semiquincentennial Celebration Fund after receiving
783 requisition requests from the commission. This subparagraph shall
784 stand repealed on June 30, 2027.

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

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



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

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

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



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

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

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



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

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



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

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



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

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

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

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

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

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



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

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

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



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

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

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

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

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

