

SENATE BILL NO. 2591

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 EXEMPT SCHOOL DISTRICTS FROM CERTAIN BID PROCUREMENT REQUIREMENTS
3 FOR THE PURCHASE OF ELECTRONIC DEVICES SUCH AS LAPTOPS, TABLETS
4 AND COMPUTER PERIPHERALS; 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.

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

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.

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.



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, electronic devices such as
109 laptops, tablets, computer peripherals and software as a service
110 product. For such purchases, a local school board may authorize a
111 purchasing entity in its jurisdiction to use a Request for
112 Qualifications which promotes open competition and meets the
113 requirements of the Office of Purchasing and Travel.

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



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

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



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

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

186 (iv) **Specification restrictions.**

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



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

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



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

(d) Lowest and best bid decision procedure.

241 (i) **Decision procedure.** Purchases may be made
242 from the lowest and best bidder. In determining the lowest and
243 best bid, freight and shipping charges shall be included.



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

256 (ii) **Decision procedure for Certified Purchasing**

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



269 (RFP) process when purchasing commodities. All best value
270 procedures for state agencies must be in compliance with
271 regulations established by the Department of Finance and
272 Administration. No agency or governing authority shall accept a
273 bid based on items or criteria not included in the specifications.

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

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



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

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

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



319 two (2) written competitive bids, as defined in paragraph (b) of
320 this section, for such financing without advertising for such
321 bids. Solicitation for the bids for financing may occur before or
322 after acceptance of bids for the purchase of such equipment or,
323 where no such bids for purchase are required, at any time before
324 the purchase thereof. No such lease-purchase agreement shall be
325 for an annual rate of interest which is greater than the overall
326 maximum interest rate to maturity on general obligation
327 indebtedness permitted under Section 75-17-101, and the term of
328 such lease-purchase agreement shall not exceed the useful life of
329 equipment covered thereby as determined according to the upper
330 limit of the asset depreciation range (ADR) guidelines for the
331 Class Life Asset Depreciation Range System established by the
332 Internal Revenue Service pursuant to the United States Internal
333 Revenue Code and regulations thereunder as in effect on December
334 31, 1980, or comparable depreciation guidelines with respect to
335 any equipment not covered by ADR guidelines. Any lease-purchase
336 agreement entered into pursuant to this paragraph (e) may contain
337 any of the terms and conditions which a master lease-purchase
338 agreement may contain under the provisions of Section 31-7-10(5),
339 and shall contain an annual allocation dependency clause
340 substantially similar to that set forth in Section 31-7-10(8).
341 Each agency or governing authority entering into a lease-purchase
342 transaction pursuant to this paragraph (e) shall maintain with
343 respect to each such lease-purchase transaction the same



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

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

365 (g) **Construction contract change authorization.** In the
366 event a determination is made by an agency or governing authority
367 after a construction contract is let that changes or modifications
368 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.



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

402 (i) **Road construction petroleum products price**

403 **adjustment clause authorization.** Any agency or governing

404 authority authorized to enter into contracts for the construction,

405 maintenance, surfacing or repair of highways, roads or streets,

406 may include in its bid proposal and contract documents a price

407 adjustment clause with relation to the cost to the contractor,

408 including taxes, based upon an industry-wide cost index, of

409 petroleum products including asphalt used in the performance or

410 execution of the contract or in the production or manufacture of

411 materials for use in such performance. Such industry-wide index

412 shall be established and published monthly by the Mississippi

413 Department of Transportation with a copy thereof to be mailed,

414 upon request, to the clerks of the governing authority of each

415 municipality and the clerks of each board of supervisors

416 throughout the state. The price adjustment clause shall be based

417 on the cost of such petroleum products only and shall not include

418 any additional profit or overhead as part of the adjustment. The



419 bid proposals or document contract shall contain the basis and
420 methods of adjusting unit prices for the change in the cost of
421 such petroleum products.

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

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



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

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

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

466 (k) **Governing authority emergency purchase procedure.**
467 If the governing authority, or the governing authority acting
468 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 or she 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).

490 (i) The commissioners or board of trustees of any
491 public hospital may contract with such lowest and best bidder for
492 the purchase or lease-purchase of any commodity under a contract



493 of purchase or lease-purchase agreement whose obligatory payment
494 terms do not exceed five (5) years.

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

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

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

514 Purchasing agreements, contracts and maximum price regulations

515 executed or approved by the Department of Finance and

516 Administration.



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

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

537 (v) **Governmental equipment auctions.** Motor
538 vehicles or other equipment purchased from a federal agency or
539 authority, another governing authority or state agency of the
540 State of Mississippi, or any governing authority or state agency
541 of another state at a public auction held for the purpose of



542 disposing of such vehicles or other equipment. Any purchase by a
543 governing authority under the exemption authorized by this
544 subparagraph (v) shall require advance authorization spread upon
545 the minutes of the governing authority to include the listing of
546 the item or items authorized to be purchased and the maximum bid
547 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



566 approval from the Department of Finance and Administration, prior
567 to releasing or taking possession of the commodities.

568 (vii) **Perishable supplies or food.** Perishable
569 supplies or food purchased for use in connection with hospitals,
570 the school lunch programs, homemaking programs and for the feeding
571 of county or municipal prisoners.

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



(ix) Waste disposal facility construction

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

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



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

620 (xi) **Energy efficiency services and equipment.**

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

626 (xiii) Municipal electrical utility system fuel.

627 Purchases of coal and/or natural gas by municipally owned electric
628 power generating systems that have the capacity to use both coal
629 and natural gas for the generation of electric power.

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

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



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

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

644 (xvii) Multichannel interactive video systems.

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

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

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



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

667 (xxi) Certain school district purchases.

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

672 (xxii) Garbage, solid waste and sewage contracts.

673 Contracts for garbage collection or disposal, contracts for solid
674 waste collection or disposal and contracts for sewage collection
675 or disposal.

676 (xxiiii) Municipal water tank maintenance

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

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



(xxv) Purchases of state-adopted textbooks.

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

689 (xxvi) Certain purchases under the Mississippi

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

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

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

695 machinery or equipment used for the installation and

696 implementation of soil and water conservation practi

697 measures purchased subject to the restrictions provided in

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

699 Soil and Water Conservation Commission under the exemption

700 authorized by this subparagraph shall require advance

701 authorization spread upon the minutes of the commission.

702 the listing of the item or items authorized to be purchased and
703 the maximum bid authorized to be paid for each item or items.

(xxviii.) Hospital lease of equipment or services

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

(xxix) Purchases made pursuant to qualified

⁷⁰⁸ **cooperative purchasing agreements.** Purchases made by certified

⁷⁰² purchasing offices of state agencies or governing authorities.



712 municipality, county, parish or state government or the federal
713 government, provided that the notification to potential
714 contractors includes a clause that sets forth the availability of
715 the cooperative purchasing agreement to other governmental
716 entities. Such purchases shall only be made if the use of the
717 cooperative purchasing agreements is determined to be in the best
718 interest of the governmental entity.

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

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

727 (xxxii) **Toll roads and bridge construction**
728 **projects.** Contracts entered into under the provisions of Section
729 65-43-1 or 65-43-3.

730 (xxxiii) **Certain purchases under Section 57-1-221.**
731 Contracts entered into pursuant to the provisions of Section
732 57-1-221.

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

737 (xxxv) **Certain purchases or transfers entered into**
738 **with local electrical power associations.** Contracts or agreements
739 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.

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

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

759 (xxxix) **Purchases made by state agencies related**
760 **to museum exhibits.** Purchases made by an agency related to the
761 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.

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

780 (i) All contracts for the purchase of commodities,
781 equipment and public construction (including, but not limited to,
782 repair and maintenance), may be let for periods of not more than
783 sixty (60) months in advance, subject to applicable statutory
784 provisions prohibiting the letting of contracts during specified
785 periods near the end of terms of office. Term contracts for a
786 period exceeding twenty-four (24) months shall also be subject to



787 ratification or cancellation by governing authority boards taking
788 office subsequent to the governing authority board entering the
789 contract.

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

801 (o) **Purchase law violation prohibition and vendor**
802 **penalty.** No contract or purchase as herein authorized shall be
803 made for the purpose of circumventing the provisions of this
804 section requiring competitive bids, nor shall it be lawful for any
805 person or concern to submit individual invoices for amounts within
806 those authorized for a contract or purchase where the actual value
807 of the contract or commodity purchased exceeds the authorized
808 amount and the invoices therefor are split so as to appear to be
809 authorized as purchases for which competitive bids are not
810 required. Submission of such invoices shall constitute a
811 misdemeanor punishable by a fine of not less than Five Hundred



812 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
813 or by imprisonment for thirty (30) days in the county jail, or
814 both such fine and imprisonment. In addition, the claim or claims
815 submitted shall be forfeited.

816 (p) **Electrical utility petroleum-based equipment**

817 **purchase procedure.** When in response to a proper advertisement
818 therefor, no bid firm as to price is submitted to an electric
819 utility for power transformers, distribution transformers, power
820 breakers, reclosers or other articles containing a petroleum
821 product, the electric utility may accept the lowest and best bid
822 therefor although the price is not firm.

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



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



After responses to the request for proposals have been duly received, the governing authority or agency shall 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 into contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated. Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand (40,000) population, according to the 1990 federal decennial census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.



887 Department of Finance and Administration and shall be subject to
888 bid requirements under this section. Set-aside purchases for
889 which competitive bids are required shall be made from the lowest
890 and best minority business bidder. For the purposes of this
891 paragraph, the term "minority business" means a business which is
892 owned by a majority of persons who are United States citizens or
893 permanent resident aliens (as defined by the Immigration and
894 Naturalization Service) of the United States, and who are Asian,
895 Black, Hispanic or Native American, according to the following
896 definitions:

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

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

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

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

908 (t) **Construction punch list restriction.** The
909 architect, engineer or other representative designated by the
910 agency or governing authority that is contracting for public
911 construction or renovation may prepare and submit to the



912 contractor only one (1) preliminary punch list of items that do
913 not meet the contract requirements at the time of substantial
914 completion and one (1) final list immediately before final
915 completion and final payment.

916 (u) **Procurement of construction services by state**

917 **institutions of higher learning.** Contracts for privately financed

918 construction of auxiliary facilities on the campus of a state

919 institution of higher learning may be awarded by the Board of

920 Trustees of State Institutions of Higher Learning to the lowest

921 and best bidder, where sealed bids are solicited, or to the

922 offeror whose proposal is determined to represent the best value

923 to the citizens of the State of Mississippi, where requests for

924 proposals are solicited.



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

940 (x) Mississippi Regional Pre-Need Disaster Clean Up

941 **Act.** (i) The Department of Finance and Administration shall
942 develop and implement a process that creates a preferred vendor
943 list for both disaster debris removal and monitoring.

944 (ii) Any board of supervisors of any county or any
945 governing authority of any municipality may opt in to the benefits
946 and services provided under the appropriate and relevant contract
947 established in subparagraph (i) of this paragraph at the time of a
948 disaster event in that county or municipality. At the time of opt
949 in, the county or municipality shall assume responsibility for
950 payment in full to the contractor for the disaster-related solid
951 waste collection, disposal or monitoring services provided.

952 Nothing in this subparagraph (ii) shall be construed as requiring
953 a county or municipality to opt in to any such contract
954 established in subparagraph (i) of this paragraph.

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

