

By: Senator(s) Horhn

To: Labor; Accountability,
Efficiency, Transparency

SENATE BILL NO. 2799

1 AN ACT TO ESTABLISH THE OPPORTUNITIES FOR DIVERSITY IN
2 CONTRACTING PROGRAM (ODC) TO BE ADMINISTERED BY THE MISSISSIPPI
3 DEVELOPMENT AUTHORITY TO REDUCE THE NUMBER OF SOCIALLY AND
4 ECONOMICALLY DISADVANTAGED SMALL BUSINESSES THAT DO BUSINESS WITH
5 THE STATE BY FACILITATING AND IMPROVING ACCESS TO GOVERNMENT
6 CONTRACTS; TO REQUIRE EACH STATE AGENCY TO APPOINT AN ODC
7 COMPLIANCE OFFICER WHO WILL BE RESPONSIBLE FOR MONITORING
8 COMPLIANCE WITH THE ODC PROGRAM AND FOR REPORTING COMPLIANCE OR
9 NONCOMPLIANCE FOR THEIR RESPECTIVE AGENCIES TO THE MDA; TO
10 ESTABLISH THE RESPONSIBILITIES OF ODC COMPLIANCE OFFICERS; TO
11 REQUIRE STATE AGENCIES TO INCLUDE CERTAIN LANGUAGE IN CONTRACTS
12 FOR GOODS AND SERVICES; TO ESTABLISH A PROCESS FOR ISSUING ODC
13 WAIVERS; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, IN
14 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** This act shall be known and may be cited as the
17 "Opportunities for Diversity in Contracting Act."

18 **SECTION 2.** The State of Mississippi is committed to reducing
19 the number of concerns related to socially and economically
20 disadvantaged small businesses that do business with the state by
21 facilitating and improving access to government contracts.
22 Facilitating this access is not only the right thing to do but
23 will foster an environment in which all Mississippi businesses
24 have access to and compete fairly in the procurement process.



25 **SECTION 3.** As used in this section:

26 (a) "ODC business enterprise" means a socially and
27 economically disadvantaged small business concern certified as a
28 participant in the Opportunities for Diversity in Contracting
29 Program by the Mississippi Development Authority under this
30 section.

31 (b) "MDA" means the Mississippi Development Authority.

32 (c) "Socially and economically disadvantaged small
33 business concern" means a socially and economically disadvantaged
34 small business concern as defined under the Small Business Act (15
35 USC § 637(a)), except that the net worth of the business may not
36 be greater than Seven Hundred Fifty Thousand Dollars
37 (\$750,000.00).

38 **SECTION 4.** (1) The MDA shall establish a business
39 assistance program known as the Opportunities for Diversity in
40 Contracting Program (ODC Program) with the goal of improving the
41 number of socially and economically disadvantaged small business
42 concerns that do business with the state by facilitating and
43 improving access to government contracts. MDA shall adopt rules
44 to administer the program that do all of the following:

45 (a) Establish procedures by which a sole
46 proprietorship, association, partnership, corporation, limited
47 liability corporation, or joint venture may apply for
48 certification as an ODC business enterprise;



49 (b) Except as provided in paragraph (n) of this
50 subsection, establish agency procurement goals for contracting
51 with ODC business enterprises in the award of contracts based on
52 the availability of eligible program participants as determined by
53 the MDA;

54 (i) Goals established under this paragraph shall
55 be based on a percentage level of participation and a percentage
56 of contractor availability;

57 (ii) Goals established under this paragraph shall
58 be applied at the contract level, relative to an overall dollar
59 goal for each state agency, in accordance with the following
60 certification categories: construction, architecture, and
61 engineering; professional services; goods and services; and
62 information technology services;

63 (c) Establish a system of certifying ODC business
64 enterprises;

65 (d) Establish standards to determine when an ODC
66 business enterprise no longer qualifies for ODC business
67 enterprise certification;

68 (e) Develop a process for evaluating and adjusting
69 goals established by this section to determine what adjustments
70 are necessary to achieve participation goals established by the
71 executive director;

72 (f) Establish a point system or comparable system to
73 evaluate bid proposals to encourage ODC business enterprises to



participate in the procurement of professional services and
information technology services;

(g) Establish a system to track data and analyze each
certification category established under paragraph (b)(ii) of this
subsection;

(h) Establish a process to mediate complaints and to
review ODC business enterprise certification appeals;

(i) Implement an outreach program to educate potential
participants about the Opportunities for Diversity in Contracting
Program;

(j) Establish a system to assist state agencies in
identifying and utilizing ODC business enterprises in their
contracting processes;

(k) Implement a system of self-reporting by ODC
business enterprises as well as an on-site inspection process to
validate the qualifications of an ODC business enterprise;

(l) Establish a waiver mechanism to waive program goals
or participation requirements for those companies that, despite
their documented best efforts, are unable to contract with
certified ODC business enterprises;

(m) Establish a process for monitoring overall program
compliance in which equal employment opportunity officers
primarily are responsible for monitoring their respective
agencies; and



98 (n) Establish guidelines for institutions of higher
99 learning to allow the institutions of higher learning to establish
100 agency procurement goals for contracting with ODC business
101 enterprises.

102 (2) Business and personal financial information and trade
103 secrets submitted by Opportunities for Diversity in Contracting
104 Program applicants pursuant to this section shall be exempt from
105 the provisions of the Mississippi Public Records Act of 1983,
106 unless the executive director presents the financial information
107 or trade secrets at a public hearing or public proceeding
108 regarding the applicant's eligibility to participate in the
109 program.

110 **SECTION 5.** (1) Each state agency shall appoint an ODC
111 compliance officer who will be responsible for monitoring
112 compliance with the ODC Program and for reporting compliance or
113 noncompliance for their respective agencies to the MDA. The ODC
114 compliance officer shall also be responsible for:

115 (a) Analyzing spending on goods, services and
116 construction projects for his agency and determining missed
117 opportunities for the inclusion of ODC vendors;

118 (b) Analyzing the spending of the state agency with ODC
119 vendors, as well as ODC vendor availability by regions of the
120 state so the MDA may determine the appropriate ODC goal for each
121 contract;



122 (c) Reporting ODC enrollment for all contracts issued
123 by each state agency to the MDA;

124 (d) Implementing a scorecard system that will be
125 developed by MDA, which tracks each state agency's ODC Program
126 expenditures;

127 (e) Implementing an outreach and training plan that
128 will be developed by MDA, to ensure compliance with ODC Program
129 requirements;

130 (f) Attending semiannual training conducted by MDA on
131 ODC Program requirements; and

132 (g) Participating in an annual compliance review
133 conducted by MDA and implementing recommendations made by MDA as a
134 result of the review process.

135 (2) State agencies shall ensure that all contracts for the
136 purchase of goods and services contain language that:

137 (a) Prohibits contractors and subcontractors from
138 engaging in discriminatory employment practices;

139 (b) Certifies that contractors and subcontractors are
140 in compliance with all applicable state and federal law governing
141 fair labor and employment practices; and

142 (c) Encourages contractors and subcontractors to
143 purchase goods and services from certified ODC vendors.

144 (3) State agencies shall not issue ODC waivers without
145 undertaking the following:



(a) Having all ODC waivers reviewed by the agency's procurement officer, in collaboration with its ODC compliance officer, who will certify that each ODC waiver issued by the agency complies with criteria for granting an ODC waiver;

(b) Submitting quarterly reports to MDA that list each ODC waiver granted by the agency; and

(c) Permitting MDA to complete its review of each state agency's quarterly reports and to conduct periodic audits of each state agency's administration of the ODC waiver process.

(4) If MDA determines that a state agency has not properly administered the issuance of ODC waivers, subsequent ODC waivers shall not be issued without the approval of MDA. MDA may release a state agency from the approval process once MDA has determined that an agency has the ability to consistently administer the waiver process.

SECTION 6. The MDA shall file an annual report with the Governor, Lieutenant Governor and Speaker of the House of Representatives regarding describing progress in advancing the ODC Program as well as any initiatives that are implemented to increase the number of certified ODC vendors doing business with the state.

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

31-7-13. All agencies and governing authorities shall purchase their commodities and printing; contract for garbage



collection or disposal; contract for solid waste collection or disposal; contract for sewage collection or disposal; contract for public construction; and contract for rentals as herein provided.

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

Purchases which do not involve an expenditure of more than Five Thousand Dollars (\$5,000.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. However, nothing contained in this paragraph (a) shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive 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. In determining the lowest and best bidder, a point system or comparable system established under the Opportunities for Diversity in Contracting Act shall be utilized. 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 designee, to accept the lowest competitive written bid under Seventy-five Thousand Dollars



196 (\$75,000.00). Any governing authority purchasing commodities
197 pursuant to this paragraph (b) may authorize its purchasing agent,
198 or his designee, with regard to governing authorities other than
199 counties, or its purchase clerk, or his designee, with regard to
200 counties, to accept the lowest and best competitive written bid.
201 Such authorization shall be made in writing by the governing
202 authority and shall be maintained on file in the primary office of
203 the agency and recorded in the official minutes of the governing
204 authority, as appropriate. The purchasing agent or the purchase
205 clerk, or his designee, as the case may be, and not the governing
206 authority, shall be liable for any penalties and/or damages as may
207 be imposed by law for any act or omission of the purchasing agent
208 or purchase clerk, or his designee, constituting a violation of
209 law in accepting any bid without approval by the governing
210 authority. The term "competitive written bid" shall mean a bid
211 submitted on a bid form furnished by the buying agency or
212 governing authority and signed by authorized personnel
213 representing the vendor, or a bid submitted on a vendor's
214 letterhead or identifiable bid form and signed by authorized
215 personnel representing the vendor. "Competitive" shall mean that
216 the bids are developed based upon comparable identification of the
217 needs and are developed independently and without knowledge of
218 other bids or prospective bids. Any bid item for construction in
219 excess of Five Thousand Dollars (\$5,000.00) shall be broken down
220 by components to provide detail of component description and



pricing. These details shall be submitted with the written bids and become part of the bid evaluation criteria. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing authorities.

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

(i) **Publication requirement.**

1. Purchases which involve an expenditure of more than Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder after advertising for competitive bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. In determining the lowest and best bidder, a point system or comparable system established under the Opportunities for Diversity in Contracting Act shall be utilized. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid. All references to American Recovery and Reinvestment Act projects in this section shall not apply to programs identified in Division B of the American Recovery and Reinvestment Act.

2. Reverse auctions shall be the primary method for receiving bids during the bidding process. If a



246 purchasing entity determines that a reverse auction is not in the
247 best interest of the state, then that determination must be
248 approved by the Public Procurement Review Board. The purchasing
249 entity shall submit a detailed explanation of why a reverse
250 auction would not be in the best interest of the state and present
251 an alternative process to be approved by the Public Procurement
252 Review Board. If the Public Procurement Review Board authorizes
253 the purchasing entity to solicit bids with a method other than
254 reverse auction, then the purchasing entity may designate the
255 other methods by which the bids will be received, including, but
256 not limited to, bids sealed in an envelope, bids received
257 electronically in a secure system, or bids received by any other
258 method that promotes open competition and has been approved by the
259 Office of Purchasing and Travel. However, reverse auction shall
260 not be used for any public contract for design, construction,
261 improvement, repair or remodeling of any public facilities,
262 including the purchase of materials, supplies, equipment or goods
263 for same and including buildings, roads and bridges. The Public
264 Procurement Review Board must approve any contract entered into by
265 alternative process. The provisions of this item 2 shall not
266 apply to the individual state institutions of higher learning.
267 The provisions of this item 2 requiring reverse auction as the
268 primary method of receiving bids shall not apply to term contract
269 purchases as provided in paragraph (n) of this section; however, a
270 purchasing entity may, in its discretion, utilize reverse auction



for such purchases. The provisions of this item 2 shall not apply to individual public schools, including public charter schools and public school districts, only when purchasing copyrighted educational supplemental materials and software as a service product. For such purchases, a local school board may authorize a purchasing entity in its jurisdiction to use a Request for Qualifications which promotes open competition and meets the requirements of the Office of Purchasing and Travel.

3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Seventy-five Thousand Dollars (\$75,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by



publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above-provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice. Within one (1) working day of the contract award, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration, notice of the award, including the award recipient, the contract amount, and a brief summary of the contract in accordance with rules promulgated by the department. Within one (1) working day of the contract execution, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration a summary of the executed contract and make a copy of the appropriately redacted contract documents available for linking to the designated web page in accordance with the rules promulgated by the department. The information provided by the agency or governing authority shall be posted to the web page until the project is completed.

4. Agencies and governing authorities using federal funds for the procurement of any good or service,



including exempt personal and professional services, must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards - Subpart D - Post Federal Award Requirements Procurement Standards, in accordance with 2 CFR 200.317 through 2 CFR 200.327.

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

(iii) **Filing requirement.** In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board



of the governing authority. In addition to these requirements, a bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were issued, and such file shall also contain such information as is pertinent to the bid.

(iv) **Specification restrictions.**

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

2. Specifications for construction projects may include an allowance for commodities, equipment, furniture, construction materials or systems in which prospective bidders are



instructed to include in their bids specified amounts for such items so long as the allowance items are acquired by the vendor in a commercially reasonable manner and approved by the agency/governing authority. Such acquisitions shall not be made to circumvent the public purchasing laws.

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



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

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

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



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

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



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

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

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



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

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



496 Class Life Asset Depreciation Range System established by the
497 Internal Revenue Service pursuant to the United States Internal
498 Revenue Code and regulations thereunder as in effect on December
499 31, 1980, or comparable depreciation guidelines with respect to
500 any equipment not covered by ADR guidelines. Any lease-purchase
501 agreement entered into pursuant to this paragraph (e) may contain
502 any of the terms and conditions which a master lease-purchase
503 agreement may contain under the provisions of Section 31-7-10(5),
504 and shall contain an annual allocation dependency clause
505 substantially similar to that set forth in Section 31-7-10(8).
506 Each agency or governing authority entering into a lease-purchase
507 transaction pursuant to this paragraph (e) shall maintain with
508 respect to each such lease-purchase transaction the same
509 information as required to be maintained by the Department of
510 Finance and Administration pursuant to Section 31-7-10(13).
511 However, nothing contained in this section shall be construed to
512 permit agencies to acquire items of equipment with a total
513 acquisition cost in the aggregate of less than Ten Thousand
514 Dollars (\$10,000.00) by a single lease-purchase transaction. All
515 equipment, and the purchase thereof by any lessor, acquired by
516 lease-purchase under this paragraph and all lease-purchase
517 payments with respect thereto shall be exempt from all Mississippi
518 sales, use and ad valorem taxes. Interest paid on any
519 lease-purchase agreement under this section shall be exempt from
520 State of Mississippi income taxation.



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

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



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

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

(i) **Road construction petroleum products price adjustment clause authorization.** Any agency or governing authority authorized to enter into contracts for the construction, maintenance, surfacing or repair of highways, roads or streets,



may include in its bid proposal and contract documents a price adjustment clause with relation to the cost to the contractor, including taxes, based upon an industry-wide cost index, of petroleum products including asphalt used in the performance or execution of the contract or in the production or manufacture of materials for use in such performance. Such industry-wide index shall be established and published monthly by the Mississippi Department of Transportation with a copy thereof to be mailed, upon request, to the clerks of the governing authority of each municipality and the clerks of each board of supervisors throughout the state. The price adjustment clause shall be based on the cost of such petroleum products only and shall not include any additional profit or overhead as part of the adjustment. The bid proposals or document contract shall contain the basis and methods of adjusting unit prices for the change in the cost of such petroleum products.

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



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

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

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



621 purchase, including a description of the commodity purchased, the
622 purchase price thereof and the nature of the emergency shall be
623 filed with the Department of Finance and Administration. Any
624 contract awarded pursuant to this paragraph (j) shall not exceed a
625 term of one (1) year.

626 Purchases under the grant program established under Section
627 37-68-7 in response to COVID-19 and the directive that school
628 districts create a distance learning plan and fulfill technology
629 needs expeditiously shall be deemed an emergency purchase for
630 purposes of this paragraph (j).

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

632 If the governing authority, or the governing authority acting
633 through its designee, shall determine that an emergency exists in
634 regard to the purchase of any commodities or repair contracts, so
635 that the delay incident to giving opportunity for competitive
636 bidding would be detrimental to the interest of the governing
637 authority, then the provisions herein for competitive bidding
638 shall not apply and any officer or agent of such governing
639 authority having general or special authority therefor in making
640 such purchase or repair shall approve the bill presented therefor,
641 and he shall certify in writing thereon from whom such purchase
642 was made, or with whom such a repair contract was made. At the
643 board meeting next following the emergency purchase or repair
644 contract, documentation of the purchase or repair contract,
645 including a description of the commodity purchased, the price



thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority. Purchases under the grant program established under Section 37-68-7 in response to COVID-19 and the directive that school districts create a distance learning plan and fulfill technology needs expeditiously shall be deemed an emergency purchase for purposes of this paragraph (k).

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

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

(ii) In addition to the authority granted in subparagraph (i) of this paragraph (1), the commissioners or board of trustees is authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further



671 liability on the part of the lessee. Any such contract for the
672 lease of equipment or services executed on behalf of the
673 commissioners or board that complies with the provisions of this
674 subparagraph (ii) shall be excepted from the bid requirements set
675 forth in this section.

676 (m) **Exceptions from bidding requirements.** Excepted
677 from bid requirements are:

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

679 Purchasing agreements, contracts and maximum price regulations
680 executed or approved by the Department of Finance and
681 Administration.

682 (ii) **Outside equipment repairs.** Repairs to
683 equipment, when such repairs are made by repair facilities in the
684 private sector; however, engines, transmissions, rear axles and/or
685 other such components shall not be included in this exemption when
686 replaced as a complete unit instead of being repaired and the need
687 for such total component replacement is known before disassembly
688 of the component; however, invoices identifying the equipment,
689 specific repairs made, parts identified by number and name,
690 supplies used in such repairs, and the number of hours of labor
691 and costs therefor shall be required for the payment for such
692 repairs.

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



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

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

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

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



721 auction except as provided for in subparagraph (v) of this
722 paragraph (m). It is the intent of this section to allow
723 governmental entities to dispose of and/or purchase commodities
724 from other governmental entities at a price that is agreed to by
725 both parties. This shall allow for purchases and/or sales at
726 prices which may be determined to be below the market value if the
727 selling entity determines that the sale at below market value is
728 in the best interest of the taxpayers of the state. Governing
729 authorities shall place the terms of the agreement and any
730 justification on the minutes, and state agencies shall obtain
731 approval from the Department of Finance and Administration, prior
732 to releasing or taking possession of the commodities.

733 (vii) **Perishable supplies or food.** Perishable
734 supplies or food purchased for use in connection with hospitals,
735 the school lunch programs, homemaking programs and for the feeding
736 of county or municipal prisoners.

737 (viii) **Single-source items.** Noncompetitive items
738 available from one (1) source only. In connection with the
739 purchase of noncompetitive items only available from one (1)
740 source, a certification of the conditions and circumstances
741 requiring the purchase shall be filed by the agency with the
742 Department of Finance and Administration and by the governing
743 authority with the board of the governing authority. Upon receipt
744 of that certification the Department of Finance and Administration
745 or the board of the governing authority, as the case may be, may,



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

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



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

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

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

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

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



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

796 Purchases by libraries or for libraries of books and periodicals;
797 processed film, videocassette tapes, filmstrips and slides;
798 recorded audiotapes, cassettes and diskettes; and any such items
799 as would be used for teaching, research or other information
800 distribution; however, equipment such as projectors, recorders,
801 audio or video equipment, and monitor televisions are not exempt
802 under this subparagraph.

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

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

809 (xvii) **Multichannel interactive video systems.**
810 From and after July 1, 1990, contracts by Mississippi Authority
811 for Educational Television with any private educational
812 institution or private nonprofit organization whose purposes are
813 educational in regard to the construction, purchase, lease or
814 lease-purchase of facilities and equipment and the employment of
815 personnel for providing multichannel interactive video systems
816 (ITSF) in the school districts of this state.

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



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

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

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

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

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

841 (xxiii) **Municipal water tank maintenance**
842 **contracts.** Professional maintenance program contracts for the
843 repair or maintenance of municipal water tanks, which provide
844 professional services needed to maintain municipal water storage



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

847 (xxiv) **Purchases of Mississippi Industries for the**
848 **Blind products or services.** Purchases made by state agencies or
849 governing authorities involving any item that is manufactured,
850 processed or produced by, or any services provided by, the
851 Mississippi Industries for the Blind.

852 (xxv) **Purchases of state-adopted textbooks.**
853 Purchases of state-adopted textbooks by public school districts.

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

857 (xxvii) **Used heavy or specialized machinery or**
858 **equipment for installation of soil and water conservation**
859 **practices purchased at auction.** Used heavy or specialized
860 machinery or equipment used for the installation and
861 implementation of soil and water conservation practices or
862 measures purchased subject to the restrictions provided in
863 Sections 69-27-331 through 69-27-341. Any purchase by the State
864 Soil and Water Conservation Commission under the exemption
865 authorized by this subparagraph shall require advance
866 authorization spread upon the minutes of the commission to include
867 the listing of the item or items authorized to be purchased and
868 the maximum bid authorized to be paid for each item or items.



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

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

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

873 **cooperative purchasing agreements.** Purchases made by certified
874 purchasing offices of state agencies or governing authorities
875 under cooperative purchasing agreements previously approved by the
876 Office of Purchasing and Travel and established by or for any
877 municipality, county, parish or state government or the federal
878 government, provided that the notification to potential
879 contractors includes a clause that sets forth the availability of
880 the cooperative purchasing agreement to other governmental
881 entities. Such purchases shall only be made if the use of the
882 cooperative purchasing agreements is determined to be in the best
883 interest of the governmental entity.

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

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



892 (xxxii) **Toll roads and bridge construction**
893 **projects.** Contracts entered into under the provisions of Section
894 65-43-1 or 65-43-3.

895 (xxxiii) **Certain purchases under Section 57-1-221.**
896 Contracts entered into pursuant to the provisions of Section
897 57-1-221.

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

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

905 (xxxvi) **Certain purchases by an academic medical**
906 **center or health sciences school.** Purchases by an academic
907 medical center or health sciences school, as defined in Section
908 37-115-50, of commodities that are used for clinical purposes and
909 1. intended for use in the diagnosis of disease or other
910 conditions or in the cure, mitigation, treatment or prevention of
911 disease, and 2. medical devices, biological, drugs and
912 radiation-emitting devices as defined by the United States Food
913 and Drug Administration.

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



916 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
917 Lottery Law.

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

924 (xxxix) **Purchases made by state agencies related**
925 **to museum exhibits.** Purchases made by an agency related to the
926 fabrication, construction, installation or refurbishing of museum
927 exhibits. An agency making a purchase under this exemption in
928 excess of the bid threshold set forth in paragraph (c) of this
929 section shall publicly advertise a Request for Qualifications or
930 Request for Proposals in which price as an evaluation factor is at
931 least twenty percent (20%) out of the one hundred percent (100%)
932 total weight, but shall be otherwise exempt. Any contract arising
933 from a purchase using this exemption must be approved by the
934 Public Procurement Review Board prior to execution by the agency.
935 The agency shall submit a written report on December 1 of each
936 year to the Chairs of the Senate and House Appropriations
937 Committees, the Chairs of the Senate and House Accountability,
938 Efficiency and Transparency Committees and the Chair of the Public
939 Procurement Review Board, identifying all purchases made by the
940 agency using this exemption in which the cost of the option



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

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

945 (i) All contracts for the purchase of commodities,
946 equipment and public construction (including, but not limited to,
947 repair and maintenance), may be let for periods of not more than
948 sixty (60) months in advance, subject to applicable statutory
949 provisions prohibiting the letting of contracts during specified
950 periods near the end of terms of office. Term contracts for a
951 period exceeding twenty-four (24) months shall also be subject to
952 ratification or cancellation by governing authority boards taking
953 office subsequent to the governing authority board entering the
954 contract.

955 (ii) Bid proposals and contracts may include price
956 adjustment clauses with relation to the cost to the contractor
957 based upon a nationally published industry-wide or nationally
958 published and recognized cost index. The cost index used in a
959 price adjustment clause shall be determined by the Department of
960 Finance and Administration for the state agencies and by the
961 governing board for governing authorities. The bid proposal and
962 contract documents utilizing a price adjustment clause shall
963 contain the basis and method of adjusting unit prices for the
964 change in the cost of such commodities, equipment and public
965 construction.



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

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

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



991 fuel access system, enter into negotiations with not fewer than
992 two (2) sellers of fuel management or fuel access systems for
993 competitive written bids to provide the services and products for
994 the systems. In the event that the governing authority or agency
995 cannot locate two (2) sellers of such systems or cannot obtain
996 bids from two (2) sellers of such systems, it shall show proof
997 that it made a diligent, good-faith effort to locate and negotiate
998 with two (2) sellers of such systems. Such proof shall include,
999 but not be limited to, publications of a request for proposals and
1000 letters soliciting negotiations and bids. For purposes of this
1001 paragraph (q), a fuel management or fuel access system is an
1002 automated system of acquiring fuel for vehicles as well as
1003 management reports detailing fuel use by vehicles and drivers, and
1004 the term "competitive written bid" shall have the meaning as
1005 defined in paragraph (b) of this section. Governing authorities
1006 and agencies shall be exempt from this process when contracting
1007 for the services and products of fuel management or fuel access
1008 systems under the terms of a state contract established by the
1009 Office of Purchasing and Travel.

1010 (r) **Solid waste contract proposal procedure.** Before
1011 entering into any contract for garbage collection or disposal,
1012 contract for solid waste collection or disposal or contract for
1013 sewage collection or disposal, which involves an expenditure of
1014 more than Seventy-five Thousand Dollars (\$75,000.00), a governing
1015 authority or agency shall issue publicly a request for proposals



1016 concerning the specifications for such services which shall be
1017 advertised for in the same manner as provided in this section for
1018 seeking bids for purchases which involve an expenditure of more
1019 than the amount provided in paragraph (c) of this section. Any
1020 request for proposals when issued shall contain terms and
1021 conditions relating to price, financial responsibility,
1022 technology, legal responsibilities and other relevant factors as
1023 are determined by the governing authority or agency to be
1024 appropriate for inclusion; all factors determined relevant by the
1025 governing authority or agency or required by this paragraph (r)
1026 shall be duly included in the advertisement to elicit proposals.
1027 After responses to the request for proposals have been duly
1028 received, the governing authority or agency shall select the most
1029 qualified proposal or proposals on the basis of price, technology
1030 and other relevant factors and from such proposals, but not
1031 limited to the terms thereof, negotiate and enter into contracts
1032 with one or more of the persons or firms submitting proposals. If
1033 the governing authority or agency deems none of the proposals to
1034 be qualified or otherwise acceptable, the request for proposals
1035 process may be reinitiated. Notwithstanding any other provisions
1036 of this paragraph, where a county with at least thirty-five
1037 thousand (35,000) nor more than forty thousand (40,000)
1038 population, according to the 1990 federal decennial census, owns
1039 or operates a solid waste landfill, the governing authorities of
1040 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.

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

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



1065 (ii) "Black" means persons having origins in any
1066 black racial group of Africa.

1067 (iii) "Hispanic" means persons of Spanish or
1068 Portuguese culture with origins in Mexico, South or Central
1069 America, or the Caribbean Islands, regardless of race.

1070 (iv) "Native American" means persons having
1071 origins in any of the original people of North America, including
1072 American Indians, Eskimos and Aleuts.

1073 (t) **Construction punch list restriction.** The
1074 architect, engineer or other representative designated by the
1075 agency or governing authority that is contracting for public
1076 construction or renovation may prepare and submit to the
1077 contractor only one (1) preliminary punch list of items that do
1078 not meet the contract requirements at the time of substantial
1079 completion and one (1) final list immediately before final
1080 completion and final payment.

1081 (u) **Procurement of construction services by state**
1082 **institutions of higher learning.** Contracts for privately financed
1083 construction of auxiliary facilities on the campus of a state
1084 institution of higher learning may be awarded by the Board of
1085 Trustees of State Institutions of Higher Learning to the lowest
1086 and best bidder, where sealed bids are solicited, or to the
1087 offeror whose proposal is determined to represent the best value
1088 to the citizens of the State of Mississippi, where requests for
1089 proposals are solicited.



1090 (v) **Insurability of bidders for public construction or**
1091 **other public contracts.** In any solicitation for bids to perform
1092 public construction or other public contracts to which this
1093 section applies, including, but not limited to, contracts for
1094 repair and maintenance, for which the contract will require
1095 insurance coverage in an amount of not less than One Million
1096 Dollars (\$1,000,000.00), bidders shall be permitted to either
1097 submit proof of current insurance coverage in the specified amount
1098 or demonstrate ability to obtain the required coverage amount of
1099 insurance if the contract is awarded to the bidder. Proof of
1100 insurance coverage shall be submitted within five (5) business
1101 days from bid acceptance.

1102 (w) **Purchase authorization clarification.** Nothing in
1103 this section shall be construed as authorizing any purchase not
1104 authorized by law.

1105 (x) **Mississippi Regional Pre-Need Disaster Clean Up**
1106 **Act.** (i) The Department of Finance and Administration shall
1107 develop and implement a process that creates a preferred vendor
1108 list for both disaster debris removal and monitoring.
1109 (ii) Any board of supervisors of any county or any
1110 governing authority of any municipality may opt in to the benefits
1111 and services provided under the appropriate and relevant contract
1112 established in subparagraph (i) of this paragraph at the time of a
1113 disaster event in that county or municipality. At the time of opt
1114 in, the county or municipality shall assume responsibility for



1115 payment in full to the contractor for the disaster-related solid
1116 waste collection, disposal or monitoring services provided.
1117 Nothing in this subparagraph (ii) shall be construed as requiring
1118 a county or municipality to opt in to any such contract
1119 established in subparagraph (i) of this paragraph.

1120 **SECTION 8.** This act shall take effect and be in force from
1121 and after July 1, 2025.

