

By: Senator(s) McMahan

To: Accountability,
Efficiency, Transparency

SENATE BILL NO. 2830

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 INCREASE THRESHOLD EXPENDITURE AMOUNTS FOR PUBLIC BID REQUIREMENTS
3 BY LOCAL GOVERNING AUTHORITIES AND STATE AGENCIES; AND FOR RELATED
4 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 * * ***
14 **\$15,000.00**. Purchases which do not involve an expenditure of more
15 than * * * Fifteen Thousand Dollars (\$15,000.00), exclusive of
16 freight or shipping charges, may be made without advertising or
17 otherwise requesting competitive bids. However, nothing contained
18 in this paragraph (a) shall be construed to prohibit any agency or
19 governing authority from establishing procedures which require



competitive bids on purchases of * * * Fifteen Thousand Dollars
(\$15,000.00) or less.

(b) **Bidding procedure for purchases over * * ***
\$15,000.00 but not over \$75,000.00. Purchases which involve an
expenditure of more than * * * Fifteen Thousand Dollars
(\$15,000.00) 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 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 designee, with regard
to governing authorities other than counties, or its purchase
clerk, or his 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
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 act or omission of the purchasing agent or purchase clerk, or his designee, constituting a violation of law in accepting any bid without approval by the governing authority.

The term "competitive written bid" shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor.

"Competitive" shall mean that the bids are developed based upon comparable identification of the needs and are developed independently and without knowledge of other bids or prospective bids. Any bid item for construction in excess of * * * Fifteen Thousand Dollars (\$15,000.00) shall be broken down by components to provide detail of component description and pricing. These details shall be submitted with the written bids and become part of the bid evaluation criteria. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing authorities.

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

(i) **Publication requirement.**

1. Purchases which involve an expenditure of more than Seventy-five Thousand Dollars (\$75,000.00), exclusive of



freight and shipping charges, may be made from the lowest and best bidder after advertising for competitive bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid. All references to American Recovery and Reinvestment Act projects in this section shall not apply to programs identified in Division B of the American Recovery and Reinvestment Act.

2. Reverse auctions shall be the primary method for receiving bids during the bidding process. If a purchasing entity determines that a reverse auction is not in the best interest of the state, then that determination must be approved by the Public Procurement Review Board. The purchasing entity shall submit a detailed explanation of why a reverse auction would not be in the best interest of the state and present an alternative process to be approved by the Public Procurement Review Board. If the Public Procurement Review Board authorizes the purchasing entity to solicit bids with a method other than reverse auction, then the purchasing entity may designate the other methods by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids received electronically in a secure system, or bids received by any other method that promotes open competition and has been approved by the



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

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



less than fifteen (15) working days after the last notice is 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 Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8). Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same



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

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

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



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

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



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

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



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

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

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



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

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

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

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

If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in



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

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

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



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

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

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

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



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

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

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

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



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

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

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



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

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

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



(ix) **Waste disposal facility construction**

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

(x) **Hospital group purchase contracts.** Supplies,

commodities and equipment purchased by hospitals through group purchase programs pursuant to Section 31-7-38.



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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

696 machinery or equipment used for the installation and

697 implementation of soil and water conservation practices or

698 measures purchased subject to the restrictions provided in

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

700 Soil and Water Conservation Commission under the exemption

701 authorized by this subparagraph shall require advance

702 authorization spread upon the minutes of the commission to include

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

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

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

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

707 compliance with paragraph (1)(ii).

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

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

710 purchasing offices of state agencies or governing authorities

711 under cooperative purchasing agreements previously approved by the

712 Office of Purchasing and Travel and established by or for any



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

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

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

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

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

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



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

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

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

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

(xxxix) **Purchases made by state agencies related to museum exhibits.** Purchases made by an agency related to the fabrication, construction, installation or refurbishing of museum



exhibits. An agency making a purchase under this exemption in excess of the bid threshold set forth in paragraph (c) of this section shall publicly advertise a Request for Qualifications or Request for Proposals in which price as an evaluation factor is at least twenty percent (20%) out of the one hundred percent (100%) total weight, but shall be otherwise exempt. Any contract arising from a purchase using this exemption must be approved by the Public Procurement Review Board prior to execution by the agency. The agency shall submit a written report on December 1 of each year to the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Accountability, Efficiency and Transparency Committees and the Chair of the Public Procurement Review Board, identifying all purchases made by the agency using this exemption in which the cost of the option selected by the agency was more than twenty-five percent (25%) higher than the lowest cost option available.

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

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



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

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

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



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

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

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



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

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



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

881 (s) **Minority set-aside authorization.** Notwithstanding
882 any provision of this section to the contrary, any agency or
883 governing authority, by order placed on its minutes, may, in its
884 discretion, set aside not more than twenty percent (20%) of its
885 anticipated annual expenditures for the purchase of commodities
886 from minority businesses; however, all such set-aside purchases
887 shall comply with all purchasing regulations promulgated by the



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

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

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

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

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

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



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

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

926 (v) **Insurability of bidders for public construction or**
927 **other public contracts.** In any solicitation for bids to perform
928 public construction or other public contracts to which this
929 section applies, including, but not limited to, contracts for
930 repair and maintenance, for which the contract will require
931 insurance coverage in an amount of not less than One Million
932 Dollars (\$1,000,000.00), bidders shall be permitted to either
933 submit proof of current insurance coverage in the specified amount
934 or demonstrate ability to obtain the required coverage amount of
935 insurance if the contract is awarded to the bidder. Proof of
936 insurance coverage shall be submitted within five (5) business
937 days from bid acceptance.



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

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

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

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

