

By: Senator(s) Horhn

To: Accountability,  
Efficiency, Transparency

SENATE BILL NO. 2848

1 AN ACT TO AMEND SECTION 31-11-3, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT WHEN UTILIZING THE CONSTRUCTION MANAGER AT-RISK  
3 METHOD OF PROJECT DELIVERY, THE DEPARTMENT OF FINANCE AND  
4 ADMINISTRATION MAY REQUIRE THE MANAGER TO PROCURE ANY AND ALL  
5 RESULTING CONSTRUCTION CONTRACTS NECESSARY TO COMPLETE THE  
6 PROJECT; TO PROVIDE THAT ALL SUCH CONTRACTS SHALL BE BETWEEN THE  
7 MANAGER AND THE CONTRACTORS AND SHALL BE EXEMPT FROM THE  
8 PROVISIONS OF THE BID LAW; TO AMEND SECTION 31-7-13, MISSISSIPPI  
9 CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 31-11-3, Mississippi Code of 1972, is  
12 amended as follows:

13 31-11-3. (1) The Department of Finance and Administration,  
14 for the purposes of carrying out the provisions of this chapter,  
15 in addition to all other rights and powers granted by law, shall  
16 have full power and authority to employ and compensate architects  
17 or other employees necessary for the purpose of making  
18 inspections, preparing plans and specifications, supervising the  
19 erection of any buildings, and making any repairs or additions as  
20 may be determined by the Department of Finance and Administration  
21 to be necessary, pursuant to the rules and regulations of the



22 State Personnel Board. The department shall have entire control  
23 and supervision of, and determine what, if any, buildings,  
24 additions, repairs, demolitions or improvements are to be made  
25 under the provisions of this chapter, subject to the regulations  
26 adopted by the Public Procurement Review Board.

27 (2) The department shall have full power to erect buildings,  
28 make repairs, additions or improvements, demolitions, to grant or  
29 acquire easements or rights-of-way, and to buy materials, supplies  
30 and equipment for any of the institutions or departments of the  
31 state subject to the regulations adopted by the Public Procurement  
32 Review Board. In addition to other powers conferred, the  
33 department shall have full power and authority, as directed by the  
34 Legislature, or when funds have been appropriated for its use for  
35 these purposes, to:

36 (a) Build a state office building;

37 (b) Build suitable plants or buildings for the use and  
38 housing of any state schools or institutions, including the  
39 building of plants or buildings for new state schools or  
40 institutions, as provided for by the Legislature;

41 (c) Provide state aid for the construction of school  
42 buildings;

43 (d) Promote and develop the training of returned  
44 veterans of the United States in all sorts of educational and  
45 vocational learning to be supplied by the proper educational  
46 institution of the State of Mississippi, and in so doing allocate



monies appropriated to it for these purposes to the Governor for use by him or her in setting up, maintaining and operating an office and employing a state director of on-the-job training for veterans and the personnel necessary in carrying out Public Law No. 346 of the United States;

(e) Build and equip a hospital and administration building at the Mississippi State Penitentiary;

(f) Build and equip additional buildings and wards at the Boswell Retardation Center;

(g) Construct a sewage disposal and treatment plant at the Mississippi State Hospital, and in so doing acquire additional land as may be necessary, and to exercise the right of eminent domain in the acquisition of this land;

(h) Build and equip the Mississippi central market and purchase or acquire by eminent domain, if necessary, any lands needed for this purpose;

(i) Build and equip suitable facilities for a training and employing center for the blind;

(j) Build and equip a gymnasium at Columbia Training School;

(k) Approve or disapprove the expenditure of any money appropriated by the Legislature when authorized by the bill making the appropriation;

(l) Expend monies appropriated to it in paying the state's part of the cost of any street paving;



72 (m) Sell and convey state lands when authorized by the  
73 Legislature, cause said lands to be properly surveyed and platted,  
74 execute all deeds or other legal instruments, and do any and all  
75 other things required to effectively carry out the purpose and  
76 intent of the Legislature. Any transaction which involves state  
77 lands under the provisions of this paragraph shall be done in a  
78 manner consistent with the provisions of Section 29-1-1;

79 (n) Collect and receive from educational institutions  
80 of the State of Mississippi monies required to be paid by these  
81 institutions to the state in carrying out any veterans'  
82 educational programs;

83 (o) Purchase lands for building sites, or as additions  
84 to building sites, for the erection of buildings and other  
85 facilities which the department is authorized to erect, and  
86 demolish and dispose of old buildings, when necessary for the  
87 proper construction of new buildings. Any transaction which  
88 involves state lands under the provisions of this paragraph shall  
89 be done in a manner consistent with the provisions of Section  
90 29-1-1;

91 (p) Obtain business property insurance with a  
92 deductible of not less than One Hundred Thousand Dollars  
93 (\$100,000.00) on state-owned buildings under the management and  
94 control of the department; \* \* \*

95 (q) In consultation with and approval by the Chairmen  
96 of the Public Property Committees of the Senate and the House of



Representatives, enter into contracts for the purpose of providing parking spaces for state employees who work in the Woolfolk Building, the Carroll Gartin Justice Building or the Walter Sillers Office Building \* \* \*;

(r) \* \* \* Transfer up to One Million Dollars (\$1,000,000.00) of available bond funds to each community college requesting to be exempt from department control and supervision relating to the repair, renovation and improvement of existing facilities owned by the community colleges, including utility infrastructure projects; heating and air conditioning systems; and the replacement of furniture and equipment. The community colleges shall abide by all applicable statutes related to the purchase of the repair, renovation and improvement of such existing facilities \* \* \*; and

(s) Utilize the construction manager at-risk method of project delivery in accordance with Section 31-7-13.2. If the construction manager at-risk method is used for a project, the department shall procure construction management services pursuant to Section 31-7-13.2(5). After the department procures the construction manager, the department may require the manager to procure all resulting construction contracts necessary to complete the project. All such contracts shall be between the manager and the contractors and shall be exempt from the provisions of Section 31-7-13.



121           (3) The department shall survey state-owned and  
122 state-utilized buildings to establish an estimate of the costs of  
123 architectural alterations, pursuant to the Americans With  
124 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The  
125 department shall establish priorities for making the identified  
126 architectural alterations and shall make known to the Legislative  
127 Budget Office and to the Legislature the required cost to  
128 effectuate such alterations. To meet the requirements of this  
129 section, the department shall use standards of accessibility that  
130 are at least as stringent as any applicable federal requirements  
131 and may consider:

132           (a) Federal minimum guidelines and requirements issued  
133 by the United States Architectural and Transportation Barriers  
134 Compliance Board and standards issued by other federal agencies;

135           (b) The criteria contained in the American Standard  
136 Specifications for Making Buildings Accessible and Usable by the  
137 Physically Handicapped and any amendments thereto as approved by  
138 the American Standards Association, Incorporated (ANSI Standards);

139           (c) Design manuals;

140           (d) Applicable federal guidelines;

141           (e) Current literature in the field;

142           (f) Applicable safety standards; and

143           (g) Any applicable environmental impact statements.

144           (4) The department shall observe the provisions of Section  
145 31-5-23 in letting contracts and shall use Mississippi products,



including paint, varnish and lacquer which contain as vehicles tung oil and either ester gum or modified resin (with rosin as the principal base of constituents), and turpentine shall be used as a solvent or thinner, where these products are available at a cost not to exceed the cost of products grown, produced, prepared, made or manufactured outside of the State of Mississippi.

(5) The department shall have authority to accept grants, loans or donations from the United States government or from any other sources for the purpose of matching funds in carrying out the provisions of this chapter.

(6) The department shall build a wheelchair ramp at the War Memorial Building which complies with all applicable federal laws, regulations and specifications regarding wheelchair ramps.

(7) The department shall review and preapprove all architectural or engineering service contracts entered into by any state agency, institution, commission, board or authority, regardless of the source of funding used to defray the costs of the construction or renovation project, for which services are to be obtained to ensure compliance with purchasing regulations and to confirm that the contracts are procured by a competitive qualification-based selection process except where such appointment is for an emergency project or for a continuation of a previous appointment for a directly related project. The provisions of this subsection (7) shall not apply to:



170 (a) Any architectural or engineering contract fully  
171 paid for by self-generated funds of any of the state institutions  
172 of higher learning;

173 (b) Any architectural or engineering contract that is  
174 self-administered at a state institution of higher learning as  
175 provided under Section 27-104-7(2) (b) or 37-101-15(m);

176 (c) Community college projects that are fully funded  
177 from local funds or other nonstate sources which are outside the  
178 Department of Finance and Administration's appropriations or as  
179 directed by the Legislature;

180 (d) Any construction or design projects of the State  
181 Military Department that are fully or partially funded from  
182 federal funds or other nonstate sources; and

183 (e) Any project of the State Department of  
184 Transportation.

185 (8) (a) The department shall have the authority to obtain  
186 annually from the state institutions of higher learning, the state  
187 community colleges and junior colleges, the Department of Mental  
188 Health, the Department of Corrections and the Department of  
189 Wildlife, Fisheries and Parks information on all renovation and  
190 repair expenditures for buildings under their operation and  
191 control, including duties, responsibilities and costs of any  
192 architect or engineer hired by any such institutions, and shall  
193 annually report the same to the Legislative Budget Office, the





Chairman of the House Public Property Committee and the Chairman of the Senate Public Property Committee before September 1.

(b) All state agencies, departments and institutions are required to cooperate with the Department of Finance and Administration in carrying out the provisions of this subsection.

(c) Expenditures shall not include those amounts expended for janitorial, landscaping or administrative support, but shall include expenditures from both state and nonstate sources.

(d) Expenditures shall not include amounts expended by the department on behalf of state agencies, departments and institutions through the Department of Finance and Administration administered contracts, but shall include amounts transferred to the Department of Finance and Administration for support of such contracts.

(9) As an alternative to other methods of awarding contracts as prescribed by law, the department may elect to use the method of contracting for construction projects set out in Sections 31-7-13.1 and 31-7-13.2; however, the design-build method of construction contracting authorized under Section 31-7-13.1 may be used only when the Legislature has specifically required or authorized the use of this method in the legislation authorizing a project.

(10) The department shall have the authority, for the purposes of carrying out the provisions of this chapter, and in



219 addition to all other rights and powers granted by law, to create  
220 and maintain a list of suspended and debarred contractors and  
221 subcontractors. Consistent with this authority, the department  
222 may adopt regulations governing the suspension or debarment of  
223 contractors and subcontractors, which regulations shall be subject  
224 to the approval of the Public Procurement Review Board. A  
225 suspended or debarred contractor or subcontractor shall be  
226 disqualified from consideration for contracts with the department  
227 during the suspension or debarment period in accordance with the  
228 department's regulations.

229 (11) This section shall not apply to the Mississippi State  
230 Port Authority.

231 **SECTION 2.** Section 31-7-13, Mississippi Code of 1972, is  
232 amended as follows:

233 31-7-13. All agencies and governing authorities shall  
234 purchase their commodities and printing; contract for garbage  
235 collection or disposal; contract for solid waste collection or  
236 disposal; contract for sewage collection or disposal; contract for  
237 public construction; and contract for rentals as herein provided.

238 (a) **Bidding procedure for purchases not over \$5,000.00.**  
239 Purchases which do not involve an expenditure of more than Five  
240 Thousand Dollars (\$5,000.00), exclusive of freight or shipping  
241 charges, may be made without advertising or otherwise requesting  
242 competitive bids. However, nothing contained in this paragraph  
243 (a) shall be construed to prohibit any agency or governing



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

246           (b) **Bidding procedure for purchases over \$5,000.00 but**  
247 **not over \$75,000.00.** Purchases which involve an expenditure of  
248 more than Five Thousand Dollars (\$5,000.00) but not more than  
249 Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight  
250 and shipping charges, may be made from the lowest and best bidder  
251 without publishing or posting advertisement for bids, provided at  
252 least two (2) competitive written bids have been obtained. Any  
253 state agency or community or junior college purchasing commodities  
254 or procuring construction pursuant to this paragraph (b) may  
255 authorize its purchasing agent, or his designee, to accept the  
256 lowest competitive written bid under Seventy-five Thousand Dollars  
257 (\$75,000.00). Any governing authority purchasing commodities  
258 pursuant to this paragraph (b) may authorize its purchasing agent,  
259 or his designee, with regard to governing authorities other than  
260 counties, or its purchase clerk, or his designee, with regard to  
261 counties, to accept the lowest and best competitive written bid.  
262 Such authorization shall be made in writing by the governing  
263 authority and shall be maintained on file in the primary office of  
264 the agency and recorded in the official minutes of the governing  
265 authority, as appropriate. The purchasing agent or the purchase  
266 clerk, or his designee, as the case may be, and not the governing  
267 authority, shall be liable for any penalties and/or damages as may  
268 be imposed by law for any act or omission of the purchasing agent



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

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

(i) **Publication requirement.**

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



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

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



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

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



344 published and the notice for the purchase of such construction  
345 shall be published once each week for two (2) consecutive weeks.  
346 The notice of intention to let contracts or purchase equipment  
347 shall state the time and place at which bids shall be received,  
348 list the contracts to be made or types of equipment or supplies to  
349 be purchased, and, if all plans and/or specifications are not  
350 published, refer to the plans and/or specifications on file. If  
351 there is no newspaper published in the county or municipality,  
352 then such notice shall be given by posting same at the courthouse,  
353 or for municipalities at the city hall, and at two (2) other  
354 public places in the county or municipality, and also by  
355 publication once each week for two (2) consecutive weeks in some  
356 newspaper having a general circulation in the county or  
357 municipality in the above-provided manner. On the same date that  
358 the notice is submitted to the newspaper for publication, the  
359 agency or governing authority involved shall mail written notice  
360 to, or provide electronic notification to the main office of the  
361 Mississippi Procurement Technical Assistance Program under the  
362 Mississippi Development Authority that contains the same  
363 information as that in the published notice. Within one (1)  
364 working day of the contract award, the agency or governing  
365 authority shall post to the designated web page maintained by the  
366 Department of Finance and Administration, notice of the award,  
367 including the award recipient, the contract amount, and a brief  
368 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



419 authority to write specifications to require a specific item of  
420 equipment needed to perform a specific job. In addition to these  
421 requirements, from and after July 1, 1990, vendors of relocatable  
422 classrooms and the specifications for the purchase of such  
423 relocatable classrooms published by local school boards shall meet  
424 all pertinent regulations of the State Board of Education,  
425 including prior approval of such bid by the State Department of  
426 Education.

427                   2. Specifications for construction projects  
428 may include an allowance for commodities, equipment, furniture,  
429 construction materials or systems in which prospective bidders are  
430 instructed to include in their bids specified amounts for such  
431 items so long as the allowance items are acquired by the vendor in  
432 a commercially reasonable manner and approved by the  
433 agency/governing authority. Such acquisitions shall not be made  
434 to circumvent the public purchasing laws.

435                   (v) **Electronic bids.** Agencies and governing  
436 authorities shall provide a secure electronic interactive system  
437 for the submittal of bids requiring competitive bidding that shall  
438 be an additional bidding option for those bidders who choose to  
439 submit their bids electronically. The Department of Finance and  
440 Administration shall provide, by regulation, the standards that  
441 agencies must follow when receiving electronic bids. Agencies and  
442 governing authorities shall make the appropriate provisions  
443 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



544 this section, for such financing without advertising for such  
545 bids. Solicitation for the bids for financing may occur before or  
546 after acceptance of bids for the purchase of such equipment or,  
547 where no such bids for purchase are required, at any time before  
548 the purchase thereof. No such lease-purchase agreement shall be  
549 for an annual rate of interest which is greater than the overall  
550 maximum interest rate to maturity on general obligation  
551 indebtedness permitted under Section 75-17-101, and the term of  
552 such lease-purchase agreement shall not exceed the useful life of  
553 equipment covered thereby as determined according to the upper  
554 limit of the asset depreciation range (ADR) guidelines for the  
555 Class Life Asset Depreciation Range System established by the  
556 Internal Revenue Service pursuant to the United States Internal  
557 Revenue Code and regulations thereunder as in effect on December  
558 31, 1980, or comparable depreciation guidelines with respect to  
559 any equipment not covered by ADR guidelines. Any lease-purchase  
560 agreement entered into pursuant to this paragraph (e) may contain  
561 any of the terms and conditions which a master lease-purchase  
562 agreement may contain under the provisions of Section 31-7-10(5),  
563 and shall contain an annual allocation dependency clause  
564 substantially similar to that set forth in Section 31-7-10(8).  
565 Each agency or governing authority entering into a lease-purchase  
566 transaction pursuant to this paragraph (e) shall maintain with  
567 respect to each such lease-purchase transaction the same  
568 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





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

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



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

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



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

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

665           If the governing board or the executive head, or his  
666 designees, of any agency determines that an emergency exists in  
667 regard to the purchase of any commodities or repair contracts, so  
668 that the delay incident to giving opportunity for competitive



669 bidding would threaten the health or safety of any person, or the  
670 preservation or protection of property, then the provisions in  
671 this section for competitive bidding shall not apply, and any  
672 officer or agent of the agency having general or specific  
673 authority for making the purchase or repair contract shall approve  
674 the bill presented for payment, and he shall certify in writing  
675 from whom the purchase was made, or with whom the repair contract  
676 was made.

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

685       Purchases under the grant program established under Section  
686 37-68-7 in response to COVID-19 and the directive that school  
687 districts create a distance learning plan and fulfill technology  
688 needs expeditiously shall be deemed an emergency purchase for  
689 purposes of this paragraph (j).

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

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



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

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

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



(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.

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



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

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

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

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



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

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

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

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

supplies or food purchased for use in connection with hospitals,





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

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

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



819 in constructing such facilities, a governing authority or agency  
820 shall publicly issue requests for proposals, advertised for in the  
821 same manner as provided herein for seeking bids for public  
822 construction projects, concerning the design, construction,  
823 ownership, operation and/or maintenance of such facilities,  
824 wherein such requests for proposals when issued shall contain  
825 terms and conditions relating to price, financial responsibility,  
826 technology, environmental compatibility, legal responsibilities  
827 and such other matters as are determined by the governing  
828 authority or agency to be appropriate for inclusion; and after  
829 responses to the request for proposals have been duly received,  
830 the governing authority or agency may select the most qualified  
831 proposal or proposals on the basis of price, technology and other  
832 relevant factors and from such proposals, but not limited to the  
833 terms thereof, negotiate and enter contracts with one or more of  
834 the persons or firms submitting proposals.

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

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



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

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

854 (xiv) **Library books and other reference materials.**  
855 Purchases by libraries or for libraries of books and periodicals;  
856 processed film, videocassette tapes, filmstrips and slides;  
857 recorded audiotapes, cassettes and diskettes; and any such items  
858 as would be used for teaching, research or other information  
859 distribution; however, equipment such as projectors, recorders,  
860 audio or video equipment, and monitor televisions are not exempt  
861 under this subparagraph.

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

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



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

869 From and after July 1, 1990, contracts by Mississippi Authority  
870 for Educational Television with any private educational  
871 institution or private nonprofit organization whose purposes are  
872 educational in regard to the construction, purchase, lease or  
873 lease-purchase of facilities and equipment and the employment of  
874 personnel for providing multichannel interactive video systems  
875 (ITSF) in the school districts of this state.

876 (xviii) **Purchases of prison industry products by**  
877 **the Department of Corrections, regional correctional facilities or**  
878 **privately owned prisons.** Purchases made by the Mississippi  
879 Department of Corrections, regional correctional facilities or  
880 privately owned prisons involving any item that is manufactured,  
881 processed, grown or produced from the state's prison industries.

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

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

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



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

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

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

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

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

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

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



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

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

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

(xxix) **Purchases made pursuant to qualified cooperative purchasing agreements.** Purchases made by certified purchasing offices of state agencies or governing authorities under cooperative purchasing agreements previously approved by the 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.



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

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

951                    (xxxii)   **Toll roads and bridge construction**  
952   **projects.**   Contracts entered into under the provisions of Section  
953   65-43-1 or 65-43-3.

954                    (xxxiii)   **Certain purchases under Section 57-1-221.**  
955   Contracts entered into pursuant to the provisions of Section  
956   57-1-221.

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

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

964                    (xxxvi)   **Certain purchases by an academic medical**  
965   **center or health sciences school.**   Purchases by an academic  
966   medical center or health sciences school, as defined in Section  
967   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





993 Public Procurement Review Board prior to execution by the agency.  
994 The agency shall submit a written report on December 1 of each  
995 year to the Chairs of the Senate and House Appropriations  
996 Committees, the Chairs of the Senate and House Accountability,  
997 Efficiency and Transparency Committees and the Chair of the Public  
998 Procurement Review Board, identifying all purchases made by the  
999 agency using this exemption in which the cost of the option  
1000 selected by the agency was more than twenty-five percent (25%)  
1001 higher than the lowest cost option available.

1002 (xxxx) **Certain construction manager at-risk**  
1003 **contracts.** Construction manager at-risk contracts entered into  
1004 under Section 31-11-3(1)(s).

1005 (n) **Term contract authorization.** All contracts for the  
1006 purchase of:

1007 (i) All contracts for the purchase of commodities,  
1008 equipment and public construction (including, but not limited to,  
1009 repair and maintenance), may be let for periods of not more than  
1010 sixty (60) months in advance, subject to applicable statutory  
1011 provisions prohibiting the letting of contracts during specified  
1012 periods near the end of terms of office. Term contracts for a  
1013 period exceeding twenty-four (24) months shall also be subject to  
1014 ratification or cancellation by governing authority boards taking  
1015 office subsequent to the governing authority board entering the  
1016 contract.



1017 (ii) Bid proposals and contracts may include price  
1018 adjustment clauses with relation to the cost to the contractor  
1019 based upon a nationally published industry-wide or nationally  
1020 published and recognized cost index. The cost index used in a  
1021 price adjustment clause shall be determined by the Department of  
1022 Finance and Administration for the state agencies and by the  
1023 governing board for governing authorities. The bid proposal and  
1024 contract documents utilizing a price adjustment clause shall  
1025 contain the basis and method of adjusting unit prices for the  
1026 change in the cost of such commodities, equipment and public  
1027 construction.

1028 (o) **Purchase law violation prohibition and vendor**  
1029 **penalty.** No contract or purchase as herein authorized shall be  
1030 made for the purpose of circumventing the provisions of this  
1031 section requiring competitive bids, nor shall it be lawful for any  
1032 person or concern to submit individual invoices for amounts within  
1033 those authorized for a contract or purchase where the actual value  
1034 of the contract or commodity purchased exceeds the authorized  
1035 amount and the invoices therefor are split so as to appear to be  
1036 authorized as purchases for which competitive bids are not  
1037 required. Submission of such invoices shall constitute a  
1038 misdemeanor punishable by a fine of not less than Five Hundred  
1039 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
1040 or by imprisonment for thirty (30) days in the county jail, or



1041 both such fine and imprisonment. In addition, the claim or claims  
1042 submitted shall be forfeited.

1043 (p) **Electrical utility petroleum-based equipment**  
1044 **purchase procedure.** When in response to a proper advertisement  
1045 therefor, no bid firm as to price is submitted to an electric  
1046 utility for power transformers, distribution transformers, power  
1047 breakers, reclosers or other articles containing a petroleum  
1048 product, the electric utility may accept the lowest and best bid  
1049 therefor although the price is not firm.

1050 (q) **Fuel management system bidding procedure.** Any  
1051 governing authority or agency of the state shall, before  
1052 contracting for the services and products of a fuel management or  
1053 fuel access system, enter into negotiations with not fewer than  
1054 two (2) sellers of fuel management or fuel access systems for  
1055 competitive written bids to provide the services and products for  
1056 the systems. In the event that the governing authority or agency  
1057 cannot locate two (2) sellers of such systems or cannot obtain  
1058 bids from two (2) sellers of such systems, it shall show proof  
1059 that it made a diligent, good-faith effort to locate and negotiate  
1060 with two (2) sellers of such systems. Such proof shall include,  
1061 but not be limited to, publications of a request for proposals and  
1062 letters soliciting negotiations and bids. For purposes of this  
1063 paragraph (q), a fuel management or fuel access system is an  
1064 automated system of acquiring fuel for vehicles as well as  
1065 management reports detailing fuel use by vehicles and drivers, and



1066 the term "competitive written bid" shall have the meaning as  
1067 defined in paragraph (b) of this section. Governing authorities  
1068 and agencies shall be exempt from this process when contracting  
1069 for the services and products of fuel management or fuel access  
1070 systems under the terms of a state contract established by the  
1071 Office of Purchasing and Travel.

1072 (r) **Solid waste contract proposal procedure.** Before  
1073 entering into any contract for garbage collection or disposal,  
1074 contract for solid waste collection or disposal or contract for  
1075 sewage collection or disposal, which involves an expenditure of  
1076 more than Seventy-five Thousand Dollars (\$75,000.00), a governing  
1077 authority or agency shall issue publicly a request for proposals  
1078 concerning the specifications for such services which shall be  
1079 advertised for in the same manner as provided in this section for  
1080 seeking bids for purchases which involve an expenditure of more  
1081 than the amount provided in paragraph (c) of this section. Any  
1082 request for proposals when issued shall contain terms and  
1083 conditions relating to price, financial responsibility,  
1084 technology, legal responsibilities and other relevant factors as  
1085 are determined by the governing authority or agency to be  
1086 appropriate for inclusion; all factors determined relevant by the  
1087 governing authority or agency or required by this paragraph (r)  
1088 shall be duly included in the advertisement to elicit proposals.  
1089 After responses to the request for proposals have been duly  
1090 received, the governing authority or agency shall select the most



1091 qualified proposal or proposals on the basis of price, technology  
1092 and other relevant factors and from such proposals, but not  
1093 limited to the terms thereof, negotiate and enter into contracts  
1094 with one or more of the persons or firms submitting proposals. If  
1095 the governing authority or agency deems none of the proposals to  
1096 be qualified or otherwise acceptable, the request for proposals  
1097 process may be reinitiated. Notwithstanding any other provisions  
1098 of this paragraph, where a county with at least thirty-five  
1099 thousand (35,000) nor more than forty thousand (40,000)  
1100 population, according to the 1990 federal decennial census, owns  
1101 or operates a solid waste landfill, the governing authorities of  
1102 any other county or municipality may contract with the governing  
1103 authorities of the county owning or operating the landfill,  
1104 pursuant to a resolution duly adopted and spread upon the minutes  
1105 of each governing authority involved, for garbage or solid waste  
1106 collection or disposal services through contract negotiations.

1107           (s) **Minority set-aside authorization.** Notwithstanding  
1108 any provision of this section to the contrary, any agency or  
1109 governing authority, by order placed on its minutes, may, in its  
1110 discretion, set aside not more than twenty percent (20%) of its  
1111 anticipated annual expenditures for the purchase of commodities  
1112 from minority businesses; however, all such set-aside purchases  
1113 shall comply with all purchasing regulations promulgated by the  
1114 Department of Finance and Administration and shall be subject to  
1115 bid requirements under this section. Set-aside purchases for



1116 which competitive bids are required shall be made from the lowest  
1117 and best minority business bidder. For the purposes of this  
1118 paragraph, the term "minority business" means a business which is  
1119 owned by a majority of persons who are United States citizens or  
1120 permanent resident aliens (as defined by the Immigration and  
1121 Naturalization Service) of the United States, and who are Asian,  
1122 Black, Hispanic or Native American, according to the following  
1123 definitions:

1124 (i) "Asian" means persons having origins in any of  
1125 the original people of the Far East, Southeast Asia, the Indian  
1126 subcontinent, or the Pacific Islands.

1127 (ii) "Black" means persons having origins in any  
1128 black racial group of Africa.

1129 (iii) "Hispanic" means persons of Spanish or  
1130 Portuguese culture with origins in Mexico, South or Central  
1131 America, or the Caribbean Islands, regardless of race.

1132 (iv) "Native American" means persons having  
1133 origins in any of the original people of North America, including  
1134 American Indians, Eskimos and Aleuts.

1135 (t) **Construction punch list restriction.** The  
1136 architect, engineer or other representative designated by the  
1137 agency or governing authority that is contracting for public  
1138 construction or renovation may prepare and submit to the  
1139 contractor only one (1) preliminary punch list of items that do  
1140 not meet the contract requirements at the time of substantial



1141 completion and one (1) final list immediately before final  
1142 completion and final payment.

1143           (u)   **Procurement of construction services by state**  
1144 **institutions of higher learning.** Contracts for privately financed  
1145 construction of auxiliary facilities on the campus of a state  
1146 institution of higher learning may be awarded by the Board of  
1147 Trustees of State Institutions of Higher Learning to the lowest  
1148 and best bidder, where sealed bids are solicited, or to the  
1149 offeror whose proposal is determined to represent the best value  
1150 to the citizens of the State of Mississippi, where requests for  
1151 proposals are solicited.

1152           (v)   **Insurability of bidders for public construction or**  
1153 **other public contracts.** In any solicitation for bids to perform  
1154 public construction or other public contracts to which this  
1155 section applies, including, but not limited to, contracts for  
1156 repair and maintenance, for which the contract will require  
1157 insurance coverage in an amount of not less than One Million  
1158 Dollars (\$1,000,000.00), bidders shall be permitted to either  
1159 submit proof of current insurance coverage in the specified amount  
1160 or demonstrate ability to obtain the required coverage amount of  
1161 insurance if the contract is awarded to the bidder. Proof of  
1162 insurance coverage shall be submitted within five (5) business  
1163 days from bid acceptance.



1164                   (w)   **Purchase authorization clarification.**   Nothing in  
1165 this section shall be construed as authorizing any purchase not  
1166 authorized by law.

1167                   (x)   **Mississippi Regional Pre-Need Disaster Clean Up**  
1168 **Act.**   (i)   The Department of Finance and Administration shall  
1169 develop and implement a process that creates a preferred vendor  
1170 list for both disaster debris removal and monitoring.

1171                               (ii)   Any board of supervisors of any county or any  
1172 governing authority of any municipality may opt in to the benefits  
1173 and services provided under the appropriate and relevant contract  
1174 established in subparagraph (i) of this paragraph at the time of a  
1175 disaster event in that county or municipality. At the time of opt  
1176 in, the county or municipality shall assume responsibility for  
1177 payment in full to the contractor for the disaster-related solid  
1178 waste collection, disposal or monitoring services provided.  
1179 Nothing in this subparagraph (ii) shall be construed as requiring  
1180 a county or municipality to opt in to any such contract  
1181 established in subparagraph (i) of this paragraph.

1182                   **SECTION 3.** This act shall take effect and be in force from  
1183 and after July 1, 2025.

