

By: Senator(s) Harkins

To: Accountability,
Efficiency, Transparency

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2860

1 AN ACT TO AMEND SECTION 31-7-13.2, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE CERTAIN ALTERNATIVE PROCEDURES FOR PROCUREMENTS BY
3 EXISTING OR FUTURE MISSISSIPPI INSTITUTIONS OF HIGHER LEARNING OR
4 THEIR RELATED ENTITIES, JOINT VENTURES OR SUBSIDIARIES GOVERNED BY
5 OR IN CONNECTION WITH THE NAMED INSTITUTIONS, UNDER THE
6 "CONSTRUCTION MANAGER AT RISK" METHOD OF PROJECT DELIVERY; TO
7 BRING FORWARD SECTION 31-7-13, MISSISSIPPI CODE OF 1972, FOR THE
8 PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 31-7-13.2, Mississippi Code of 1972, is
11 amended as follows:

12 31-7-13.2 (1) When used in this section, "construction
13 manager at risk" means a method of project delivery in which a
14 construction manager guarantees a maximum price for the
15 construction of a project and in which the governing authority or
16 board, before using this method of project delivery, shall include
17 a detailed explanation of why using the construction manager at
18 risk method of project delivery for a particular project satisfies
19 the public need better than that traditional design-bid-build
20 method based on the following criteria:



21 (a) The use of construction manager at risk for the
22 project provides a savings in time or cost over traditional
23 methods; and

24 (b) The size and type of the project is suitable for
25 use of the construction management at risk method of project
26 delivery.

27 (2) When the construction manager at risk method of project
28 delivery is used:

29 (a) There may be a separate contract for design
30 services and a separate contract for construction services;

31 (b) The contract for construction services may be
32 entered into at the same time as a contract for the design
33 services or later;

34 (c) Design and construction of the project may be in
35 sequential or concurrent phases; and

36 (d) Finance, maintenance, operation, reconstruction or
37 other related services may be included for a guaranteed maximum
38 price.

39 (3) When procuring design professional services under a
40 construction manager at risk project delivery method, the agency
41 or governing authority shall procure the services of a design
42 professional pursuant to qualifications-based selection
43 procedures.



44 (4) Before the substantial completion of the design
45 documents, the agency or governing authority may elect to hire a
46 construction manager.

47 (5) When procuring construction management services under
48 the "at risk" model of this section, the agency or governing
49 authority shall follow the qualifications-based selection
50 procedures as outlined in subsection (10) of this section * * * to
51 identify and select the construction manager.

52 (6) The agency or governing authority may require the
53 architect or engineer and the construction manager, by contract,
54 to cooperate in the design, planning and scheduling, and
55 construction process. The contract shall not make the primary
56 designer or construction manager a subcontractor or joint-venture
57 partner to the other or limit the primary designer's or
58 construction manager's independent obligations to the agency or
59 governing authority.

60 (7) Notwithstanding anything to the contrary in this
61 chapter:

62 (a) Each project for construction under a construction
63 manager at risk contract shall be a specific, single project with
64 a minimum construction cost of Twenty-five Million Dollars
65 (\$25,000,000.00).

66 (b) Each project under a construction manager at risk
67 contract shall be a specific, single project. For the purposes of
68 this paragraph, "specific, single project" means a project that is



69 constructed at a single location, at a common location or for a
70 common purpose.

71 (8) Agencies shall retain an independent architectural or
72 engineering firm to provide guidance and administration of the
73 professional engineering or professional architecture aspects of
74 the project throughout the development of the scope, design, and
75 construction of the project.

76 (9) The state shall, on an annual basis, compile and make
77 public all proceedings, records, contracts and other public
78 records relating to procurement transactions authorized under this
79 section.

80 (10) For purposes of this section, the "qualifications-based
81 selection procedure" shall include:

82 (a) Publicly announcing all requirements for
83 construction management at risk, architectural, engineering, and
84 land surveying services, to procure these services on the basis of
85 demonstrated competence and qualifications, and to negotiate
86 contracts at fair and reasonable prices after the most qualified
87 firm has been selected.

88 (b) Agencies or governing authorities shall establish
89 procedures to prequalify firms seeking to provide construction
90 management at risk, architectural, engineering, and land surveying
91 services or may use prequalification lists from other state
92 agencies or governing authorities to meet the requirements of this
93 section.



94 (c) Whenever a project requiring construction
95 management at risk, architectural, engineering, or land surveying
96 services is proposed for an agency or governing authority, the
97 agency or governing authority shall provide advance notice
98 published in a professional services bulletin or advertised within
99 the official state newspaper setting forth the projects and
100 services to be procured for not less than fourteen (14) days. The
101 professional services bulletin shall be mailed to each firm that
102 has requested the information or is prequalified * * *. The
103 professional services bulletin shall include a description of each
104 project and shall state the time and place for interested firms to
105 submit a letter of interest and, if required by the public notice,
106 a statement of qualifications.

107 (d) The agency or governing authority shall evaluate
108 the firms submitting letters of interest and other prequalified
109 firms, taking into account qualifications. The agency or
110 governing authority may consider, but shall not be limited to,
111 considering:

- 112 (i) Ability of professional personnel;
- 113 (ii) Past record and experience;
- 114 (iii) Performance data on file;
- 115 (iv) Willingness to meet time requirements;
- 116 (v) Location;
- 117 (vi) Workload of the firm; and



(vii) Any other qualifications-based factors as the agency or governing authority may determine in writing are applicable.

The agency or governing authority may conduct discussions with and require public presentations by firms deemed to be the most qualified regarding their qualifications, approach to the project and ability to furnish the required services.

(e) The agency or governing authority shall establish a committee to select firms to provide construction management at risk, architectural, engineering, and land surveying services. A selection committee may include at least one (1) public member nominated by a statewide association of the profession affected. The public member may not be employed or associated with any firm holding a contract with the agency or governing authority nor may the public member's firm be considered for a contract with that agency or governing authority while serving as a public member of the committee. In no case shall the agency or governing authority, before selecting a firm for negotiation under paragraph (f) of this subsection (10), seek formal or informal submission of verbal or written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation.

(f) On the basis of evaluations, discussions, and any presentations, the agency or governing authority shall select no less than three (3) firms that it determines to be qualified to



provide services for the project and rank them in order of qualifications to provide services regarding the specific project. The agency or governing authority shall then contact the firm ranked most preferred to negotiate a contract at a fair and reasonable compensation. If fewer than three (3) firms submit letters of interest and the agency or governing authority determines that one (1) or both of those firms are so qualified, the agency or governing authority may proceed to negotiate a contract under paragraph (g) of this subsection (10).

(g) The agency or governing authority shall prepare a written description of the scope of the proposed services to be used as a basis for negotiations and shall negotiate a contract with the highest qualified firm at compensation that the agency or governing authority determines in writing to be fair and reasonable. In making this decision, the agency or governing authority shall take into account the estimated value, scope, complexity, and professional nature of the services to be rendered. In no case may the agency or governing authority establish a maximum overhead rate or other payment formula designed to eliminate firms from contention or restrict competition or negotiation of fees. If the agency or governing authority is unable to negotiate a satisfactory contract with the firm that is most preferred, negotiations with that firm shall be terminated. The agency or governing authority shall then begin negotiations with the firm that is next preferred. If the agency



or governing authority is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be terminated. The agency or governing authority shall then begin negotiations with the firm that is next preferred. If the agency or governing authority is unable to negotiate a satisfactory contract with any of the selected firms, the agency or governing authority shall reevaluate the construction management at risk, architectural, engineering, or land surveying services requested, including the estimated value, scope, complexity, and fee requirements. The agency or governing authority shall then compile a second list of not less than three (3) qualified firms and proceed in accordance with the provisions of this section. A firm negotiating a contract with an agency or governing authority shall negotiate subcontracts * * * at compensation that the firm determines in writing to be fair and reasonable based upon a written description of the scope of the proposed services.

(11) (a) The construction manager selected by the agency or governing authority to provide construction management at risk services shall solicit bids for construction on the project pursuant to Section 31-7-13. The construction manager shall be entitled to enter into contracts for construction with the lowest and best bidders, as determined in consultation with the agency or governing authority. Before soliciting bids or entering into any such contract, the construction manager, in consultation with the agency or governing authority, may prequalify any contractors or



vendors seeking to submit a bid on the project, taking into account defined qualifications which may include, but not be limited to, the following:

(i) Past experience and performance record on projects of similar size and scope;

(ii) Current financial status and ability to provide acceptable payment and performance bonds and meet defined insurance requirements;

(iii) Current workload and backlog of committed work for the period scheduled for the project under consideration;

(iv) Safety record to include prior citations and fines if applicable;

(v) History of legal disputes or performance defaults;

(vi) Identification and experience of project personnel and required manpower;

(vii) Plan for and ability to meet the applicable project schedule; and

(viii) Any other qualification-based factors as the agency, governing authority or construction manager may determine are applicable.

(b) The construction manager, in consultation with the agency or governing authority, shall publish the defined qualifications that shall be considered in the prequalification process at least two (2) weeks in advance of any prequalification



of contractors or vendors seeking to submit a bid on the project. Publication shall be in a regular newspaper published in the county or municipality in which the agency or governing authority is located. The agency or governing authority shall also post the defined prequalification requirements on its website.

(c) The failure of a bidder to provide information in a timely and complete manner in response to any prequalification process may result in the disqualification of such bidder in the discretion of the agency, governing authority, and construction manager.

(d) Except as otherwise provided in Section 25-61-9, confidential and proprietary information furnished by a bidder pursuant to this section shall not be disclosed outside of the agency, governing authority, or construction manager without the prior written consent of the bidder. The bidder shall identify and label any information considered to be confidential and proprietary at the time of submission of the same to the agency, governing authority, or construction manager.

(12) The provisions of this section shall not affect any procurement by the Mississippi Transportation Commission.

(13) For procurements by existing or future Mississippi Institutions of Higher Learning or their related entities, joint ventures or subsidiaries governed by or in connection with the named institutions, the provisions of this subsection (13) shall



apply in lieu of the provisions of subsection (11) of this
section.

(a) The construction manager shall be permitted to
obtain proposals from contractors or vendors, with such proposals
being based on the qualifications and criteria set forth in
paragraph (b) of this subsection, for contracts for the various
scopes of work for the project, and the construction manager shall
not be required to follow the public bid process of Section
31-7-13 for such contracts.

(b) The construction manager selected by the agency or
governing authority to provide construction management at risk
services shall obtain proposals from contractors or vendors for
construction of the project on terms that the construction
management firm, in consultation with the agency or governing
authority, deems to be fair and reasonable based upon a written
description of the scope of the proposed work or services. The
construction manager shall then be entitled to enter into
contracts for construction with contractors or vendors that the
construction manager deems to be the preferred contractor or
vendor, taking into account various qualifications and criteria
which may include, but not be limited to, the following:

(i) Cost of the work or services to be performed
or supplied by the contractor or vendor to the construction
manager;



(ii) Past experience and performance record on projects of similar size and scope;

(iii) Current financial status and ability to provide acceptable payment and performance bonds and meet defined insurance requirements;

(iv) Current workload and backlog of committed work for the period scheduled for the project under consideration;

(v) Safety record, to include prior citations and fines, if applicable;

(vi) History of legal disputes or performance defaults;

(vii) Identification and experience of project personnel and required manpower;

(viii) Planning for and ability to meet the applicable project schedule; and

(ix) Any other factors as the agency, governing authority or construction manager may deem applicable.

(c) The construction manager, in consultation with the agency or governing authority, shall publish the qualifications and criteria in paragraph (b) of this subsection that shall be considered in the process for selecting contractors and vendors that will contract with the construction manager to construct the project at least four (4) weeks in advance of any award of contract to such contractors or vendors. Publication shall be in a regular newspaper published in the county or municipality in



291 which the agency or governing authority is located. The agency or
292 governing authority shall also post the defined prequalification
293 requirements on its website.

294 (d) The failure of a contractor or vendor to provide
295 information requested by the construction manager or the agency or
296 governing authority in a timely and complete manner in connection
297 with the selection process may result in the disqualification of
298 such contractor or vendor from being considered for a contract, as
299 determined in the discretion of the agency, governing authority
300 and construction manager.

301 (e) Except as otherwise provided in Section 25-61-9,
302 confidential and proprietary information furnished by a
303 construction manager or a contractor or vendor under this section
304 shall not be disclosed outside of the agency, governing authority
305 or construction manager without the prior written consent of all
306 parties. The construction manager, contractor or vendor shall
307 identify and label any information considered to be confidential
308 and proprietary at the time of submission of the same to the
309 agency, governing authority or construction manager.

310 (f) The construction manager selected by the agency or
311 governing authority shall not be required to submit a proposed
312 guaranteed maximum price for the construction of a project, or for
313 a phase or component of the project, until after the construction
314 manager obtains the contemplated proposals from potential
315 contractors or vendors for that project, phase or component, and



the agency or governing authority has issued a completed set of construction drawings and specifications for the project, phase or component.

(g) Nothing in this section prevents a construction manager or its affiliates from self-performing construction work on a project, so long as the construction manager or affiliate submits a proposal for a specific scope of work, as would other contractors or vendors, and the proposals are reviewed by the agency or governing authority, deemed to be fair and reasonable as compared to other proposals for the same or similar scope of work, and an award to the construction manager or its affiliate is determined to be in the overall best interests of the project as a whole.

SECTION 2. Section 31-7-13, Mississippi Code of 1972, is brought forward as follows:

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

(a) **Bidding procedure for purchases not over \$5,000.00.** Purchases which do not involve an expenditure of more than Five Thousand Dollars (\$5,000.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. However, nothing contained in this paragraph



(a) shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

(b) **Bidding procedure for purchases over \$5,000.00 but not over \$75,000.00.** Purchases which involve an expenditure of more than Five Thousand Dollars (\$5,000.00) but not more than Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. 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 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



441 less than fifteen (15) working days after the last notice is
442 published and the notice for the purchase of such construction
443 shall be published once each week for two (2) consecutive weeks.
444 The notice of intention to let contracts or purchase equipment
445 shall state the time and place at which bids shall be received,
446 list the contracts to be made or types of equipment or supplies to
447 be purchased, and, if all plans and/or specifications are not
448 published, refer to the plans and/or specifications on file. If
449 there is no newspaper published in the county or municipality,
450 then such notice shall be given by posting same at the courthouse,
451 or for municipalities at the city hall, and at two (2) other
452 public places in the county or municipality, and also by
453 publication once each week for two (2) consecutive weeks in some
454 newspaper having a general circulation in the county or
455 municipality in the above-provided manner. On the same date that
456 the notice is submitted to the newspaper for publication, the
457 agency or governing authority involved shall mail written notice
458 to, or provide electronic notification to the main office of the
459 Mississippi Procurement Technical Assistance Program under the
460 Mississippi Development Authority that contains the same
461 information as that in the published notice. Within one (1)
462 working day of the contract award, the agency or governing
463 authority shall post to the designated web page maintained by the
464 Department of Finance and Administration, notice of the award,
465 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



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

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

597 **Landmarks.** In addition to the decision procedure set forth in
598 subparagraph (i) of this paragraph (d), where purchase involves
599 renovation, restoration, or both, of the State Capitol Building or
600 any other historical building designated for at least five (5)
601 years as a Mississippi Landmark by the Board of Trustees of the
602 Department of Archives and History under the authority of Sections
603 39-7-7 and 39-7-11, the agency or governing authority may use the
604 following procedure: Purchases may be made from the lowest and
605 best prequalified bidder. Prequalification of bidders shall be
606 determined not less than fifteen (15) working days before the
607 first published notice of bid opening. Prequalification criteria
608 shall be limited to bidder's knowledge and experience in
609 historical restoration, preservation and renovation. In
610 determining the lowest and best bid, freight and shipping charges
611 shall be included. Life-cycle costing, total cost bids,
612 warranties, guaranteed buy-back provisions and other relevant
613 provisions may be included in the best bid calculation. All best
614 bid and prequalification procedures for state agencies must be in
615 compliance with regulations established by the Department of



616 Finance and Administration. If any governing authority accepts a
617 bid other than the lowest bid actually submitted, it shall place
618 on its minutes detailed calculations and narrative summary showing
619 that the accepted bid was determined to be the lowest and best
620 bid, including the dollar amount of the accepted bid and the
621 dollar amount of the lowest bid. No agency or governing authority
622 shall accept a bid based on items not included in the
623 specifications.

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

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

630 (e) **Lease-purchase authorization.** For the purposes of
631 this section, the term "equipment" shall mean equipment, furniture
632 and, if applicable, associated software and other applicable
633 direct costs associated with the acquisition. Any lease-purchase
634 of equipment which an agency is not required to lease-purchase
635 under the master lease-purchase program pursuant to Section
636 31-7-10 and any lease-purchase of equipment which a governing
637 authority elects to lease-purchase may be acquired by a
638 lease-purchase agreement under this paragraph (e). Lease-purchase
639 financing may also be obtained from the vendor or from a
640 third-party source after having solicited and obtained at least



641 two (2) written competitive bids, as defined in paragraph (b) of
642 this section, for such financing without advertising for such
643 bids. Solicitation for the bids for financing may occur before or
644 after acceptance of bids for the purchase of such equipment or,
645 where no such bids for purchase are required, at any time before
646 the purchase thereof. No such lease-purchase agreement shall be
647 for an annual rate of interest which is greater than the overall
648 maximum interest rate to maturity on general obligation
649 indebtedness permitted under Section 75-17-101, and the term of
650 such lease-purchase agreement shall not exceed the useful life of
651 equipment covered thereby as determined according to the upper
652 limit of the asset depreciation range (ADR) guidelines for the
653 Class Life Asset Depreciation Range System established by the
654 Internal Revenue Service pursuant to the United States Internal
655 Revenue Code and regulations thereunder as in effect on December
656 31, 1980, or comparable depreciation guidelines with respect to
657 any equipment not covered by ADR guidelines. Any lease-purchase
658 agreement entered into pursuant to this paragraph (e) may contain
659 any of the terms and conditions which a master lease-purchase
660 agreement may contain under the provisions of Section 31-7-10(5),
661 and shall contain an annual allocation dependency clause
662 substantially similar to that set forth in Section 31-7-10(8).
663 Each agency or governing authority entering into a lease-purchase
664 transaction pursuant to this paragraph (e) shall maintain with
665 respect to each such lease-purchase transaction the same



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

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

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



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

707 (h) **Petroleum purchase alternative.** In addition to
708 other methods of purchasing authorized in this chapter, when any
709 agency or governing authority shall have a need for gas, diesel
710 fuel, oils and/or other petroleum products in excess of the amount
711 set forth in paragraph (a) of this section, such agency or
712 governing authority may purchase the commodity after having
713 solicited and obtained at least two (2) competitive written bids,
714 as defined in paragraph (b) of this section. If two (2)
715 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



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

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

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



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

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

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

835 (i) **Purchasing agreements approved by department.**
836 Purchasing agreements, contracts and maximum price regulations
837 executed or approved by the Department of Finance and
838 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



864 disposing of such vehicles or other equipment. Any purchase by a
865 governing authority under the exemption authorized by this
866 subparagraph (v) shall require advance authorization spread upon
867 the minutes of the governing authority to include the listing of
868 the item or items authorized to be purchased and the maximum bid
869 authorized to be paid for each item or items.

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

871 Purchases, sales, transfers or trades by governing authorities or
872 state agencies when such purchases, sales, transfers or trades are
873 made by a private treaty agreement or through means of
874 negotiation, from any federal agency or authority, another
875 governing authority or state agency of the State of Mississippi,
876 or any state agency or governing authority of another state.
877 Nothing in this section shall permit such purchases through public
878 auction except as provided for in subparagraph (v) of this
879 paragraph (m). It is the intent of this section to allow
880 governmental entities to dispose of and/or purchase commodities
881 from other governmental entities at a price that is agreed to by
882 both parties. This shall allow for purchases and/or sales at
883 prices which may be determined to be below the market value if the
884 selling entity determines that the sale at below market value is
885 in the best interest of the taxpayers of the state. Governing
886 authorities shall place the terms of the agreement and any
887 justification on the minutes, and state agencies shall obtain



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

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

894 (viii) **Single-source items.** Noncompetitive items
895 available from one (1) source only. In connection with the
896 purchase of noncompetitive items only available from one (1)
897 source, a certification of the conditions and circumstances
898 requiring the purchase shall be filed by the agency with the
899 Department of Finance and Administration and by the governing
900 authority with the board of the governing authority. Upon receipt
901 of that certification the Department of Finance and Administration
902 or the board of the governing authority, as the case may be, may,
903 in writing, authorize the purchase, which authority shall be noted
904 on the minutes of the body at the next regular meeting thereafter.
905 In those situations, a governing authority is not required to
906 obtain the approval of the Department of Finance and
907 Administration. Following the purchase, the executive head of the
908 state agency, or his designees, shall file with the Department of
909 Finance and Administration, documentation of the purchase,
910 including a description of the commodity purchased, the purchase
911 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.



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

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

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

952 (xiv) **Library books and other reference materials.**
953 Purchases by libraries or for libraries of books and periodicals;
954 processed film, videocassette tapes, filmstrips and slides;
955 recorded audiotapes, cassettes and diskettes; and any such items
956 as would be used for teaching, research or other information
957 distribution; however, equipment such as projectors, recorders,
958 audio or video equipment, and monitor televisions are not exempt
959 under this subparagraph.



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

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

966 (xvii) **Multichannel interactive video systems.**
967 From and after July 1, 1990, contracts by Mississippi Authority
968 for Educational Television with any private educational
969 institution or private nonprofit organization whose purposes are
970 educational in regard to the construction, purchase, lease or
971 lease-purchase of facilities and equipment and the employment of
972 personnel for providing multichannel interactive video systems
973 (ITSF) in the school districts of this state.

974 (xviii) **Purchases of prison industry products by**
975 **the Department of Corrections, regional correctional facilities or**
976 **privately owned prisons.** Purchases made by the Mississippi
977 Department of Corrections, regional correctional facilities or
978 privately owned prisons involving any item that is manufactured,
979 processed, grown or produced from the state's prison industries.

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



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

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

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

998 (xxiii) **Municipal water tank maintenance**
999 **contracts.** Professional maintenance program contracts for the
1000 repair or maintenance of municipal water tanks, which provide
1001 professional services needed to maintain municipal water storage
1002 tanks for a fixed annual fee for a duration of two (2) or more
1003 years.

1004 (xxiv) **Purchases of Mississippi Industries for the**
1005 **Blind products or services.** Purchases made by state agencies or
1006 governing authorities involving any item that is manufactured,
1007 processed or produced by, or any services provided by, the
1008 Mississippi Industries for the Blind.



1009 (xxv) **Purchases of state-adopted textbooks.**
1010 Purchases of state-adopted textbooks by public school districts.
1011 (xxvi) **Certain purchases under the Mississippi**
1012 **Major Economic Impact Act.** Contracts entered into pursuant to the
1013 provisions of Section 57-75-9(2), (3) and (4).
1014 (xxvii) **Used heavy or specialized machinery or**
1015 **equipment for installation of soil and water conservation**
1016 **practices purchased at auction.** Used heavy or specialized
1017 machinery or equipment used for the installation and
1018 implementation of soil and water conservation practices or
1019 measures purchased subject to the restrictions provided in
1020 Sections 69-27-331 through 69-27-341. Any purchase by the State
1021 Soil and Water Conservation Commission under the exemption
1022 authorized by this subparagraph shall require advance
1023 authorization spread upon the minutes of the commission to include
1024 the listing of the item or items authorized to be purchased and
1025 the maximum bid authorized to be paid for each item or items.
1026 (xxviii) **Hospital lease of equipment or services.**
1027 Leases by hospitals of equipment or services if the leases are in
1028 compliance with paragraph (1)(ii).
1029 (xxix) **Purchases made pursuant to qualified**
1030 **cooperative purchasing agreements.** Purchases made by certified
1031 purchasing offices of state agencies or governing authorities
1032 under cooperative purchasing agreements previously approved by the
1033 Office of Purchasing and Travel and established by or for any



1034 municipality, county, parish or state government or the federal
1035 government, provided that the notification to potential
1036 contractors includes a clause that sets forth the availability of
1037 the cooperative purchasing agreement to other governmental
1038 entities. Such purchases shall only be made if the use of the
1039 cooperative purchasing agreements is determined to be in the best
1040 interest of the governmental entity.

1041 (xxx) **School yearbooks.** Purchases of school
1042 yearbooks by state agencies or governing authorities; however,
1043 state agencies and governing authorities shall use for these
1044 purchases the RFP process as set forth in the Mississippi
1045 Procurement Manual adopted by the Office of Purchasing and Travel.

1046 (xxxi) **Design-build method of contracting and**
1047 **certain other contracts.** Contracts entered into under the
1048 provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

1049 (xxxii) **Toll roads and bridge construction**
1050 **projects.** Contracts entered into under the provisions of Section
1051 65-43-1 or 65-43-3.

1052 (xxxiii) **Certain purchases under Section 57-1-221.**
1053 Contracts entered into pursuant to the provisions of Section
1054 57-1-221.

1055 (xxxiv) **Certain transfers made pursuant to the**
1056 **provisions of Section 57-105-1(7).** Transfers of public property
1057 or facilities under Section 57-105-1(7) and construction related
1058 to such public property or facilities.



1059 (xxxv) **Certain purchases or transfers entered into**
1060 **with local electrical power associations.** Contracts or agreements
1061 entered into under the provisions of Section 55-3-33.

1062 (xxxvi) **Certain purchases by an academic medical**
1063 **center or health sciences school.** Purchases by an academic
1064 medical center or health sciences school, as defined in Section
1065 37-115-50, of commodities that are used for clinical purposes and
1066 1. intended for use in the diagnosis of disease or other
1067 conditions or in the cure, mitigation, treatment or prevention of
1068 disease, and 2. medical devices, biological, drugs and
1069 radiation-emitting devices as defined by the United States Food
1070 and Drug Administration.

1071 (xxxvii) **Certain purchases made under the Alyce G.**
1072 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi
1073 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
1074 Lottery Law.

1075 (xxxviii) **Certain purchases made by the Department**
1076 **of Health and the Department of Revenue.** Purchases made by the
1077 Department of Health and the Department of Revenue solely for the
1078 purpose of fulfilling their respective responsibilities under the
1079 Mississippi Medical Cannabis Act. This subparagraph shall stand
1080 repealed on June 30, 2026.

1081 (xxxix) **Purchases made by state agencies related**
1082 **to museum exhibits.** Purchases made by an agency related to the
1083 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



1109 ratification or cancellation by governing authority boards taking
1110 office subsequent to the governing authority board entering the
1111 contract.

1112 (ii) Bid proposals and contracts may include price
1113 adjustment clauses with relation to the cost to the contractor
1114 based upon a nationally published industry-wide or nationally
1115 published and recognized cost index. The cost index used in a
1116 price adjustment clause shall be determined by the Department of
1117 Finance and Administration for the state agencies and by the
1118 governing board for governing authorities. The bid proposal and
1119 contract documents utilizing a price adjustment clause shall
1120 contain the basis and method of adjusting unit prices for the
1121 change in the cost of such commodities, equipment and public
1122 construction.

1123 (o) **Purchase law violation prohibition and vendor**
1124 **penalty.** No contract or purchase as herein authorized shall be
1125 made for the purpose of circumventing the provisions of this
1126 section requiring competitive bids, nor shall it be lawful for any
1127 person or concern to submit individual invoices for amounts within
1128 those authorized for a contract or purchase where the actual value
1129 of the contract or commodity purchased exceeds the authorized
1130 amount and the invoices therefor are split so as to appear to be
1131 authorized as purchases for which competitive bids are not
1132 required. Submission of such invoices shall constitute a
1133 misdemeanor punishable by a fine of not less than Five Hundred



1134 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1135 or by imprisonment for thirty (30) days in the county jail, or
1136 both such fine and imprisonment. In addition, the claim or claims
1137 submitted shall be forfeited.

1138 (p) **Electrical utility petroleum-based equipment**
1139 **purchase procedure.** When in response to a proper advertisement
1140 therefor, no bid firm as to price is submitted to an electric
1141 utility for power transformers, distribution transformers, power
1142 breakers, reclosers or other articles containing a petroleum
1143 product, the electric utility may accept the lowest and best bid
1144 therefor although the price is not firm.

1145 (q) **Fuel management system bidding procedure.** Any
1146 governing authority or agency of the state shall, before
1147 contracting for the services and products of a fuel management or
1148 fuel access system, enter into negotiations with not fewer than
1149 two (2) sellers of fuel management or fuel access systems for
1150 competitive written bids to provide the services and products for
1151 the systems. In the event that the governing authority or agency
1152 cannot locate two (2) sellers of such systems or cannot obtain
1153 bids from two (2) sellers of such systems, it shall show proof
1154 that it made a diligent, good-faith effort to locate and negotiate
1155 with two (2) sellers of such systems. Such proof shall include,
1156 but not be limited to, publications of a request for proposals and
1157 letters soliciting negotiations and bids. For purposes of this
1158 paragraph (q), a fuel management or fuel access system is an



1159 automated system of acquiring fuel for vehicles as well as
1160 management reports detailing fuel use by vehicles and drivers, and
1161 the term "competitive written bid" shall have the meaning as
1162 defined in paragraph (b) of this section. Governing authorities
1163 and agencies shall be exempt from this process when contracting
1164 for the services and products of fuel management or fuel access
1165 systems under the terms of a state contract established by the
1166 Office of Purchasing and Travel.

1167 (r) **Solid waste contract proposal procedure.** Before
1168 entering into any contract for garbage collection or disposal,
1169 contract for solid waste collection or disposal or contract for
1170 sewage collection or disposal, which involves an expenditure of
1171 more than Seventy-five Thousand Dollars (\$75,000.00), a governing
1172 authority or agency shall issue publicly a request for proposals
1173 concerning the specifications for such services which shall be
1174 advertised for in the same manner as provided in this section for
1175 seeking bids for purchases which involve an expenditure of more
1176 than the amount provided in paragraph (c) of this section. Any
1177 request for proposals when issued shall contain terms and
1178 conditions relating to price, financial responsibility,
1179 technology, legal responsibilities and other relevant factors as
1180 are determined by the governing authority or agency to be
1181 appropriate for inclusion; all factors determined relevant by the
1182 governing authority or agency or required by this paragraph (r)
1183 shall be duly included in the advertisement to elicit proposals.



1184 After responses to the request for proposals have been duly
1185 received, the governing authority or agency shall select the most
1186 qualified proposal or proposals on the basis of price, technology
1187 and other relevant factors and from such proposals, but not
1188 limited to the terms thereof, negotiate and enter into contracts
1189 with one or more of the persons or firms submitting proposals. If
1190 the governing authority or agency deems none of the proposals to
1191 be qualified or otherwise acceptable, the request for proposals
1192 process may be reinitiated. Notwithstanding any other provisions
1193 of this paragraph, where a county with at least thirty-five
1194 thousand (35,000) nor more than forty thousand (40,000)
1195 population, according to the 1990 federal decennial census, owns
1196 or operates a solid waste landfill, the governing authorities of
1197 any other county or municipality may contract with the governing
1198 authorities of the county owning or operating the landfill,
1199 pursuant to a resolution duly adopted and spread upon the minutes
1200 of each governing authority involved, for garbage or solid waste
1201 collection or disposal services through contract negotiations.

1202 (s) **Minority set-aside authorization.** Notwithstanding
1203 any provision of this section to the contrary, any agency or
1204 governing authority, by order placed on its minutes, may, in its
1205 discretion, set aside not more than twenty percent (20%) of its
1206 anticipated annual expenditures for the purchase of commodities
1207 from minority businesses; however, all such set-aside purchases
1208 shall comply with all purchasing regulations promulgated by the



1209 Department of Finance and Administration and shall be subject to
1210 bid requirements under this section. Set-aside purchases for
1211 which competitive bids are required shall be made from the lowest
1212 and best minority business bidder. For the purposes of this
1213 paragraph, the term "minority business" means a business which is
1214 owned by a majority of persons who are United States citizens or
1215 permanent resident aliens (as defined by the Immigration and
1216 Naturalization Service) of the United States, and who are Asian,
1217 Black, Hispanic or Native American, according to the following
1218 definitions:

1219 (i) "Asian" means persons having origins in any of
1220 the original people of the Far East, Southeast Asia, the Indian
1221 subcontinent, or the Pacific Islands.

1222 (ii) "Black" means persons having origins in any
1223 black racial group of Africa.

1224 (iii) "Hispanic" means persons of Spanish or
1225 Portuguese culture with origins in Mexico, South or Central
1226 America, or the Caribbean Islands, regardless of race.

1227 (iv) "Native American" means persons having
1228 origins in any of the original people of North America, including
1229 American Indians, Eskimos and Aleuts.

1230 (t) **Construction punch list restriction.** The
1231 architect, engineer or other representative designated by the
1232 agency or governing authority that is contracting for public
1233 construction or renovation may prepare and submit to the



1234 contractor only one (1) preliminary punch list of items that do
1235 not meet the contract requirements at the time of substantial
1236 completion and one (1) final list immediately before final
1237 completion and final payment.

1238 (u) **Procurement of construction services by state**
1239 **institutions of higher learning.** Contracts for privately financed
1240 construction of auxiliary facilities on the campus of a state
1241 institution of higher learning may be awarded by the Board of
1242 Trustees of State Institutions of Higher Learning to the lowest
1243 and best bidder, where sealed bids are solicited, or to the
1244 offeror whose proposal is determined to represent the best value
1245 to the citizens of the State of Mississippi, where requests for
1246 proposals are solicited.

1247 (v) **Insurability of bidders for public construction or**
1248 **other public contracts.** In any solicitation for bids to perform
1249 public construction or other public contracts to which this
1250 section applies, including, but not limited to, contracts for
1251 repair and maintenance, for which the contract will require
1252 insurance coverage in an amount of not less than One Million
1253 Dollars (\$1,000,000.00), bidders shall be permitted to either
1254 submit proof of current insurance coverage in the specified amount
1255 or demonstrate ability to obtain the required coverage amount of
1256 insurance if the contract is awarded to the bidder. Proof of
1257 insurance coverage shall be submitted within five (5) business
1258 days from bid acceptance.



1259 (w) **Purchase authorization clarification.** Nothing in
1260 this section shall be construed as authorizing any purchase not
1261 authorized by law.

1262 (x) **Mississippi Regional Pre-Need Disaster Clean Up**

1263 **Act.** (i) The Department of Finance and Administration shall
1264 develop and implement a process that creates a preferred vendor
1265 list for both disaster debris removal and monitoring.

1266 (ii) Any board of supervisors of any county or any
1267 governing authority of any municipality may opt in to the benefits
1268 and services provided under the appropriate and relevant contract
1269 established in subparagraph (i) of this paragraph at the time of a
1270 disaster event in that county or municipality. At the time of opt
1271 in, the county or municipality shall assume responsibility for
1272 payment in full to the contractor for the disaster-related solid
1273 waste collection, disposal or monitoring services provided.
1274 Nothing in this subparagraph (ii) shall be construed as requiring
1275 a county or municipality to opt in to any such contract
1276 established in subparagraph (i) of this paragraph.

1277 **SECTION 3.** This act shall take effect and be in force from
1278 and after July 1, 2025.

