

Senate Amendments to House Bill No. 1505

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

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

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

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

29 (2) When the construction manager at-risk method of project
30 delivery is used:

31 (a) There may be a separate contract for design
32 services and a separate contract for construction services;

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

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

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

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

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

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

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

62 (7) Notwithstanding anything to the contrary in this
63 chapter:

64 (a) Each project for construction under a construction
65 manager at-risk contract shall be a specific, single project with
66 a minimum construction cost of Twenty-five Million Dollars
67 (\$25,000,000.00).

68 (b) Each project under a construction manager at-risk
69 contract shall be a specific, single project. For the purposes of
70 this paragraph, "specific, single project" means a project that is
71 constructed at a single location, at a common location or for a
72 common purpose.

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

78 (9) The state shall, on an annual basis, compile and make
79 public all proceedings, records, contracts and other public

80 records relating to procurement transactions authorized under this
81 section.

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

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

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

96 (c) Whenever a project requiring construction
97 management atrisk, architectural, engineering, or land surveying
98 services is proposed for an agency or governing authority, the
99 agency or governing authority shall provide advance notice
100 published in a professional services bulletin or advertised within
101 the official state newspaper setting forth the projects and
102 services to be procured for not less than fourteen (14) days. The
103 professional services bulletin shall be mailed to each firm that
104 has requested the information or is prequalified * * *. The
105 professional services bulletin shall include a description of each

project and shall state the time and place for interested firms to submit a letter of interest and, if required by the public notice, a statement of qualifications.

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

- (i) Ability of professional personnel;
- (ii) Past record and experience;
- (iii) Performance data on file;
- (iv) Willingness to meet time requirements;
- (v) Location;
- (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.

132 The public member may not be employed or associated with any firm
133 holding a contract with the agency or governing authority nor may
134 the public member's firm be considered for a contract with that
135 agency or governing authority while serving as a public member of
136 the committee. In no case shall the agency or governing
137 authority, before selecting a firm for negotiation under paragraph
138 (f) of this subsection (10), seek formal or informal submission of
139 verbal or written estimates of costs or proposals in terms of
140 dollars, hours required, percentage of construction cost, or any
141 other measure of compensation.

142 (f) On the basis of evaluations, discussions, and any
143 presentations, the agency or governing authority shall select no
144 less than three (3) firms that it determines to be qualified to
145 provide services for the project and rank them in order of
146 qualifications to provide services regarding the specific project.
147 The agency or governing authority shall then contact the firm
148 ranked most preferred to negotiate a contract at a fair and
149 reasonable compensation. If fewer than three (3) firms submit
150 letters of interest and the agency or governing authority
151 determines that one (1) or both of those firms are so qualified,
152 the agency or governing authority may proceed to negotiate a
153 contract under paragraph (g) of this subsection (10).

154 (g) The agency or governing authority shall prepare a
155 written description of the scope of the proposed services to be
156 used as a basis for negotiations and shall negotiate a contract
157 with the highest qualified firm at compensation that the agency or

158 governing authority determines in writing to be fair and
159 reasonable. In making this decision, the agency or governing
160 authority shall take into account the estimated value, scope,
161 complexity, and professional nature of the services to be
162 rendered. In no case may the agency or governing authority
163 establish a maximum overhead rate or other payment formula
164 designed to eliminate firms from contention or restrict
165 competition or negotiation of fees. If the agency or governing
166 authority is unable to negotiate a satisfactory contract with the
167 firm that is most preferred, negotiations with that firm shall be
168 terminated. The agency or governing authority shall then begin
169 negotiations with the firm that is next preferred. If the agency
170 or governing authority is unable to negotiate a satisfactory
171 contract with that firm, negotiations with that firm shall be
172 terminated. The agency or governing authority shall then begin
173 negotiations with the firm that is next preferred. If the agency
174 or governing authority is unable to negotiate a satisfactory
175 contract with any of the selected firms, the agency or governing
176 authority shall reevaluate the construction management atrisk,
177 architectural, engineering, or land surveying services requested,
178 including the estimated value, scope, complexity, and fee
179 requirements. The agency or governing authority shall then
180 compile a second list of not less than three (3) qualified firms
181 and proceed in accordance with the provisions of this section. A
182 firm negotiating a contract with an agency or governing authority
183 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

287 and criteria in paragraph (b) of this subsection that shall be
288 considered in the process for selecting contractors and vendors
289 that will contract with the construction manager to construct the
290 project at least four (4) weeks in advance of any award of
291 contract to such contractors or vendors. Publication shall be in
292 a regular newspaper published in the county or municipality in
293 which the agency or governing authority is located. The agency or
294 governing authority shall also post the defined prequalification
295 requirements on its website.

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

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

312 (f) The construction manager selected by the agency or
313 governing authority shall not be required to submit a proposed
314 guaranteed maximum price for the construction of a project, or for
315 a phase or component of the project, until after the construction
316 manager obtains the contemplated proposals from potential
317 contractors or vendors for that project, phase or component, and
318 the agency or governing authority has issued a completed set of
319 construction drawings and specifications for the project, phase or
320 component.

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

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

333 31-7-13. All agencies and governing authorities shall
334 purchase their commodities and printing; contract for garbage
335 collection or disposal; contract for solid waste collection or
336 disposal; contract for sewage collection or disposal; contract for
337 public construction; and contract for rentals as herein provided.

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

339 Purchases which do not involve an expenditure of more than Five
340 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
341 charges, may be made without advertising or otherwise requesting
342 competitive bids. However, nothing contained in this paragraph
343 (a) shall be construed to prohibit any agency or governing
344 authority from establishing procedures which require competitive
345 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

346 (b) **Bidding procedure for purchases over \$5,000.00 but**

347 **not over \$75,000.00.** Purchases which involve an expenditure of
348 more than Five Thousand Dollars (\$5,000.00) but not more than
349 Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight
350 and shipping charges, may be made from the lowest and best bidder
351 without publishing or posting advertisement for bids, provided at
352 least two (2) competitive written bids have been obtained. Any
353 state agency or community or junior college purchasing commodities
354 or procuring construction pursuant to this paragraph (b) may
355 authorize its purchasing agent, or his designee, to accept the
356 lowest competitive written bid under Seventy-five Thousand Dollars
357 (\$75,000.00). Any governing authority purchasing commodities
358 pursuant to this paragraph (b) may authorize its purchasing agent,
359 or his designee, with regard to governing authorities other than
360 counties, or its purchase clerk, or his designee, with regard to
361 counties, to accept the lowest and best competitive written bid.
362 Such authorization shall be made in writing by the governing
363 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, electronic devices such as laptops, tablets, computer peripherals and software as a service product. For such purchases, a local school board may authorize a purchasing entity in its jurisdiction to use a Request for Qualifications which promotes open competition and meets the requirements of the Office of Purchasing and Travel.

3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction

project in which the estimated cost is in excess of Seventy-five
Thousand Dollars (\$75,000.00), such bids shall not be opened in
less than fifteen (15) working days after the last notice is
published and the notice for the purchase of such construction
shall be published once each week for two (2) consecutive weeks.
The notice of intention to let contracts or purchase equipment
shall state the time and place at which bids shall be received,
list the contracts to be made or types of equipment or supplies to
be purchased, and, if all plans and/or specifications are not
published, refer to the plans and/or specifications on file. If
there is no newspaper published in the county or municipality,
then such notice shall be given by posting same at the courthouse,
or for municipalities at the city hall, and at two (2) other
public places in the county or municipality, and also by
publication once each week for two (2) consecutive weeks in some
newspaper having a general circulation in the county or
municipality in the above-provided manner. On the same date that
the notice is submitted to the newspaper for publication, the
agency or governing authority involved shall mail written notice
to, or provide electronic notification to the main office of the
Mississippi Procurement Technical Assistance Program under the
Mississippi Development Authority that contains the same
information as that in the published notice. Within one (1)
working day of the contract award, the agency or governing
authority shall post to the designated web page maintained by the
Department of Finance and Administration, notice of the award,

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

4. Agencies and governing authorities using federal funds for the procurement of any good or service, including exempt personal and professional services, must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards - Subpart D - Post Federal Award Requirements Procurement Standards, in accordance with 2 CFR 200.317 through 2 CFR 200.327.

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

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

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

(iv) **Specification restrictions.**

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

520 authority to write specifications to require a specific item of
521 equipment needed to perform a specific job. In addition to these
522 requirements, from and after July 1, 1990, vendors of relocatable
523 classrooms and the specifications for the purchase of such
524 relocatable classrooms published by local school boards shall meet
525 all pertinent regulations of the State Board of Education,
526 including prior approval of such bid by the State Department of
527 Education.

528 2. Specifications for construction projects
529 may include an allowance for commodities, equipment, furniture,
530 construction materials or systems in which prospective bidders are
531 instructed to include in their bids specified amounts for such
532 items so long as the allowance items are acquired by the vendor in
533 a commercially reasonable manner and approved by the
534 agency/governing authority. Such acquisitions shall not be made
535 to circumvent the public purchasing laws.

536 (v) **Electronic bids.** Agencies and governing
537 authorities shall provide a secure electronic interactive system
538 for the submittal of bids requiring competitive bidding that shall
539 be an additional bidding option for those bidders who choose to
540 submit their bids electronically. The Department of Finance and
541 Administration shall provide, by regulation, the standards that
542 agencies must follow when receiving electronic bids. Agencies and
543 governing authorities shall make the appropriate provisions
544 necessary to accept electronic bids from those bidders who choose
545 to submit their bids electronically for all purchases requiring

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

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

(i) **Decision procedure.** Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid procedures for state

agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

(ii) **Decision procedure for Certified Purchasing Offices.** In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), Certified Purchasing Offices may also use the following procedure: Purchases may be made from the bidder offering the best value. In determining the best value bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions, documented previous experience, training costs and other relevant provisions, including, but not limited to, a bidder having a local office and inventory located within the jurisdiction of the governing authority, may be included in the best value calculation. This provision shall authorize Certified Purchasing Offices to utilize a Request For Proposals (RFP) process when purchasing commodities. All best value procedures for state agencies must be in compliance with regulations established by the Department of Finance and

Administration. No agency or governing authority shall accept a bid based on items or criteria not included in the specifications.

(iii) **Decision procedure for Mississippi**

Landmarks. In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), where purchase involves renovation, restoration, or both, of the State Capitol Building or any other historical building designated for at least five (5) years as a Mississippi Landmark by the Board of Trustees of the Department of Archives and History under the authority of Sections 39-7-7 and 39-7-11, the agency or governing authority may use the following procedure: Purchases may be made from the lowest and best prequalified bidder. Prequalification of bidders shall be determined not less than fifteen (15) working days before the first published notice of bid opening. Prequalification criteria shall be limited to bidder's knowledge and experience in historical restoration, preservation and renovation. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid and prequalification procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best

bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

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

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

(e) **Lease-purchase authorization.** For the purposes of this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before

649 the purchase thereof. No such lease-purchase agreement shall be
650 for an annual rate of interest which is greater than the overall
651 maximum interest rate to maturity on general obligation
652 indebtedness permitted under Section 75-17-101, and the term of
653 such lease-purchase agreement shall not exceed the useful life of
654 equipment covered thereby as determined according to the upper
655 limit of the asset depreciation range (ADR) guidelines for the
656 Class Life Asset Depreciation Range System established by the
657 Internal Revenue Service pursuant to the United States Internal
658 Revenue Code and regulations thereunder as in effect on December
659 31, 1980, or comparable depreciation guidelines with respect to
660 any equipment not covered by ADR guidelines. Any lease-purchase
661 agreement entered into pursuant to this paragraph (e) may contain
662 any of the terms and conditions which a master lease-purchase
663 agreement may contain under the provisions of Section 31-7-10(5),
664 and shall contain an annual allocation dependency clause
665 substantially similar to that set forth in Section 31-7-10(8).
666 Each agency or governing authority entering into a lease-purchase
667 transaction pursuant to this paragraph (e) shall maintain with
668 respect to each such lease-purchase transaction the same
669 information as required to be maintained by the Department of
670 Finance and Administration pursuant to Section 31-7-10(13).
671 However, nothing contained in this section shall be construed to
672 permit agencies to acquire items of equipment with a total
673 acquisition cost in the aggregate of less than Ten Thousand
674 Dollars (\$10,000.00) by a single lease-purchase transaction. All

equipment, and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

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

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

the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original contract without the necessity of prior approval of the agency or governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

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

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

(j) **State agency emergency purchase procedure.** If the governing board or the executive head, or his designees, of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then

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

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

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

786 Purchases under the grant program established under Section
787 37-68-7 in response to COVID-19 and the directive that school
788 districts create a distance learning plan and fulfill technology
789 needs expeditiously shall be deemed an emergency purchase for
790 purposes of this paragraph (j).

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

792 If the governing authority, or the governing authority acting
793 through its designee, shall determine that an emergency exists in
794 regard to the purchase of any commodities or repair contracts, so
795 that the delay incident to giving opportunity for competitive
796 bidding would be detrimental to the interest of the governing
797 authority, then the provisions herein for competitive bidding
798 shall not apply and any officer or agent of such governing
799 authority having general or special authority therefor in making
800 such purchase or repair shall approve the bill presented therefor,
801 and he shall certify in writing thereon from whom such purchase
802 was made, or with whom such a repair contract was made. At the
803 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, in constructing such facilities, a governing authority or agency shall publicly issue requests for proposals, advertised for in the same manner as provided herein for seeking bids for public construction projects, concerning the design, construction, ownership, operation and/or maintenance of such facilities, wherein such requests for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, environmental compatibility, legal responsibilities and such other matters as are determined by the governing authority or agency to be appropriate for inclusion; and after responses to the request for proposals have been duly received, the governing authority or agency may select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the

terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals.

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

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

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

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

(xiv) **Library books and other reference materials.** Purchases by libraries or for libraries of books and periodicals; processed film, videocassette tapes, filmstrips and slides; recorded audiotapes, cassettes and diskettes; and any such items as would be used for teaching, research or other information

distribution; however, equipment such as projectors, recorders, audio or video equipment, and monitor televisions are not exempt under this subparagraph.

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

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

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

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

(xix) **Undercover operations equipment.** Purchases of surveillance equipment or any other high-tech equipment to be used by law enforcement agents in undercover operations, provided

that any such purchase shall be in compliance with regulations established by the Department of Finance and Administration.

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

(xxi) **Certain school district purchases.** 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.

1012 (xxv) **Purchases of state-adopted textbooks.**

1013 Purchases of state-adopted textbooks by public school districts.

1014 (xxvi) **Certain purchases under the Mississippi**

1015 **Major Economic Impact Act.** Contracts entered into pursuant to the
1016 provisions of Section 57-75-9(2), (3) and (4).

1017 (xxvii) **Used heavy or specialized machinery or**
1018 **equipment for installation of soil and water conservation**

1019 **practices purchased at auction.** Used heavy or specialized

1020 machinery or equipment used for the installation and

1021 implementation of soil and water conservation practices or

1022 measures purchased subject to the restrictions provided in

1023 Sections 69-27-331 through 69-27-341. Any purchase by the State

1024 Soil and Water Conservation Commission under the exemption

1025 authorized by this subparagraph shall require advance

1026 authorization spread upon the minutes of the commission to include

1027 the listing of the item or items authorized to be purchased and

1028 the maximum bid authorized to be paid for each item or items.

1029 (xxviii) **Hospital lease of equipment or services.**

1030 Leases by hospitals of equipment or services if the leases are in

1031 compliance with paragraph (1)(ii).

1032 (xxix) **Purchases made pursuant to qualified**

1033 **cooperative purchasing agreements.** Purchases made by certified

1034 purchasing offices of state agencies or governing authorities

1035 under cooperative purchasing agreements previously approved by the

1036 Office of Purchasing and Travel and established by or for any

1037 municipality, county, parish or state government or the federal

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

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

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

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

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

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

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

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

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

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

(xxxix) **Purchases made by state agencies related to museum exhibits.** Purchases made by an agency related to the fabrication, construction, installation or refurbishing of museum exhibits. An agency making a purchase under this exemption in

1088 excess of the bid threshold set forth in paragraph (c) of this
1089 section shall publicly advertise a Request for Qualifications or
1090 Request for Proposals in which price as an evaluation factor is at
1091 least twenty percent (20%) out of the one hundred percent (100%)
1092 total weight, but shall be otherwise exempt. Any contract arising
1093 from a purchase using this exemption must be approved by the
1094 Public Procurement Review Board prior to execution by the agency.
1095 The agency shall submit a written report on December 1 of each
1096 year to the Chairs of the Senate and House Appropriations
1097 Committees, the Chairs of the Senate and House Accountability,
1098 Efficiency and Transparency Committees and the Chair of the Public
1099 Procurement Review Board, identifying all purchases made by the
1100 agency using this exemption in which the cost of the option
1101 selected by the agency was more than twenty-five percent (25%)
1102 higher than the lowest cost option available.

1103 (n) **Term contract authorization.** All contracts for the
1104 purchase of:

1105 (i) All contracts for the purchase of commodities,
1106 equipment and public construction (including, but not limited to,
1107 repair and maintenance), may be let for periods of not more than
1108 sixty (60) months in advance, subject to applicable statutory
1109 provisions prohibiting the letting of contracts during specified
1110 periods near the end of terms of office. Term contracts for a
1111 period exceeding twenty-four (24) months shall also be subject to
1112 ratification or cancellation by governing authority boards taking

1113 office subsequent to the governing authority board entering the
1114 contract.

1115 (ii) Bid proposals and contracts may include price
1116 adjustment clauses with relation to the cost to the contractor
1117 based upon a nationally published industry-wide or nationally
1118 published and recognized cost index. The cost index used in a
1119 price adjustment clause shall be determined by the Department of
1120 Finance and Administration for the state agencies and by the
1121 governing board for governing authorities. The bid proposal and
1122 contract documents utilizing a price adjustment clause shall
1123 contain the basis and method of adjusting unit prices for the
1124 change in the cost of such commodities, equipment and public
1125 construction.

1126 (o) **Purchase law violation prohibition and vendor**
1127 **penalty.** No contract or purchase as herein authorized shall be
1128 made for the purpose of circumventing the provisions of this
1129 section requiring competitive bids, nor shall it be lawful for any
1130 person or concern to submit individual invoices for amounts within
1131 those authorized for a contract or purchase where the actual value
1132 of the contract or commodity purchased exceeds the authorized
1133 amount and the invoices therefor are split so as to appear to be
1134 authorized as purchases for which competitive bids are not
1135 required. Submission of such invoices shall constitute a
1136 misdemeanor punishable by a fine of not less than Five Hundred
1137 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1138 or by imprisonment for thirty (30) days in the county jail, or

1139 both such fine and imprisonment. In addition, the claim or claims
1140 submitted shall be forfeited.

1141 (p) **Electrical utility petroleum-based equipment**
1142 **purchase procedure.** When in response to a proper advertisement
1143 therefor, no bid firm as to price is submitted to an electric
1144 utility for power transformers, distribution transformers, power
1145 breakers, reclosers or other articles containing a petroleum
1146 product, the electric utility may accept the lowest and best bid
1147 therefor although the price is not firm.

1148 (q) **Fuel management system bidding procedure.** Any
1149 governing authority or agency of the state shall, before
1150 contracting for the services and products of a fuel management or
1151 fuel access system, enter into negotiations with not fewer than
1152 two (2) sellers of fuel management or fuel access systems for
1153 competitive written bids to provide the services and products for
1154 the systems. In the event that the governing authority or agency
1155 cannot locate two (2) sellers of such systems or cannot obtain
1156 bids from two (2) sellers of such systems, it shall show proof
1157 that it made a diligent, good-faith effort to locate and negotiate
1158 with two (2) sellers of such systems. Such proof shall include,
1159 but not be limited to, publications of a request for proposals and
1160 letters soliciting negotiations and bids. For purposes of this
1161 paragraph (q), a fuel management or fuel access system is an
1162 automated system of acquiring fuel for vehicles as well as
1163 management reports detailing fuel use by vehicles and drivers, and
1164 the term "competitive written bid" shall have the meaning as

1165 defined in paragraph (b) of this section. Governing authorities
1166 and agencies shall be exempt from this process when contracting
1167 for the services and products of fuel management or fuel access
1168 systems under the terms of a state contract established by the
1169 Office of Purchasing and Travel.

1170 (r) **Solid waste contract proposal procedure.** Before
1171 entering into any contract for garbage collection or disposal,
1172 contract for solid waste collection or disposal or contract for
1173 sewage collection or disposal, which involves an expenditure of
1174 more than Seventy-five Thousand Dollars (\$75,000.00), a governing
1175 authority or agency shall issue publicly a request for proposals
1176 concerning the specifications for such services which shall be
1177 advertised for in the same manner as provided in this section for
1178 seeking bids for purchases which involve an expenditure of more
1179 than the amount provided in paragraph (c) of this section. Any
1180 request for proposals when issued shall contain terms and
1181 conditions relating to price, financial responsibility,
1182 technology, legal responsibilities and other relevant factors as
1183 are determined by the governing authority or agency to be
1184 appropriate for inclusion; all factors determined relevant by the
1185 governing authority or agency or required by this paragraph (r)
1186 shall be duly included in the advertisement to elicit proposals.
1187 After responses to the request for proposals have been duly
1188 received, the governing authority or agency shall select the most
1189 qualified proposal or proposals on the basis of price, technology
1190 and other relevant factors and from such proposals, but not

1191 limited to the terms thereof, negotiate and enter into contracts
1192 with one or more of the persons or firms submitting proposals. If
1193 the governing authority or agency deems none of the proposals to
1194 be qualified or otherwise acceptable, the request for proposals
1195 process may be reinitiated. Notwithstanding any other provisions
1196 of this paragraph, where a county with at least thirty-five
1197 thousand (35,000) nor more than forty thousand (40,000)
1198 population, according to the 1990 federal decennial census, owns
1199 or operates a solid waste landfill, the governing authorities of
1200 any other county or municipality may contract with the governing
1201 authorities of the county owning or operating the landfill,
1202 pursuant to a resolution duly adopted and spread upon the minutes
1203 of each governing authority involved, for garbage or solid waste
1204 collection or disposal services through contract negotiations.

1205 (s) **Minority set-aside authorization.** Notwithstanding
1206 any provision of this section to the contrary, any agency or
1207 governing authority, by order placed on its minutes, may, in its
1208 discretion, set aside not more than twenty percent (20%) of its
1209 anticipated annual expenditures for the purchase of commodities
1210 from minority businesses; however, all such set-aside purchases
1211 shall comply with all purchasing regulations promulgated by the
1212 Department of Finance and Administration and shall be subject to
1213 bid requirements under this section. Set-aside purchases for
1214 which competitive bids are required shall be made from the lowest
1215 and best minority business bidder. For the purposes of this
1216 paragraph, the term "minority business" means a business which is

1217 owned by a majority of persons who are United States citizens or
1218 permanent resident aliens (as defined by the Immigration and
1219 Naturalization Service) of the United States, and who are Asian,
1220 Black, Hispanic or Native American, according to the following
1221 definitions:

1222 (i) "Asian" means persons having origins in any of
1223 the original people of the Far East, Southeast Asia, the Indian
1224 subcontinent, or the Pacific Islands.

1225 (ii) "Black" means persons having origins in any
1226 black racial group of Africa.

1227 (iii) "Hispanic" means persons of Spanish or
1228 Portuguese culture with origins in Mexico, South or Central
1229 America, or the Caribbean Islands, regardless of race.

1230 (iv) "Native American" means persons having
1231 origins in any of the original people of North America, including
1232 American Indians, Eskimos and Aleuts.

1233 (t) **Construction punch list restriction.** The
1234 architect, engineer or other representative designated by the
1235 agency or governing authority that is contracting for public
1236 construction or renovation may prepare and submit to the
1237 contractor only one (1) preliminary punch list of items that do
1238 not meet the contract requirements at the time of substantial
1239 completion and one (1) final list immediately before final
1240 completion and final payment.

1241 (u) **Procurement of construction services by state**
1242 **institutions of higher learning.** Contracts for privately financed

1243 construction of auxiliary facilities on the campus of a state
1244 institution of higher learning may be awarded by the Board of
1245 Trustees of State Institutions of Higher Learning to the lowest
1246 and best bidder, where sealed bids are solicited, or to the
1247 offeror whose proposal is determined to represent the best value
1248 to the citizens of the State of Mississippi, where requests for
1249 proposals are solicited.

1250 (v) **Insurability of bidders for public construction or**
1251 **other public contracts.** In any solicitation for bids to perform
1252 public construction or other public contracts to which this
1253 section applies, including, but not limited to, contracts for
1254 repair and maintenance, for which the contract will require
1255 insurance coverage in an amount of not less than One Million
1256 Dollars (\$1,000,000.00), bidders shall be permitted to either
1257 submit proof of current insurance coverage in the specified amount
1258 or demonstrate ability to obtain the required coverage amount of
1259 insurance if the contract is awarded to the bidder. Proof of
1260 insurance coverage shall be submitted within five (5) business
1261 days from bid acceptance.

1262 (w) **Purchase authorization clarification.** Nothing in
1263 this section shall be construed as authorizing any purchase not
1264 authorized by law.

1265 (x) **Mississippi Regional Pre-Need Disaster Clean Up**
1266 **Act.** (i) The Department of Finance and Administration shall
1267 develop and implement a process that creates a preferred vendor
1268 list for both disaster debris removal and monitoring.

1269 (ii) Any board of supervisors of any county or any
1270 governing authority of any municipality may opt in to the benefits
1271 and services provided under the appropriate and relevant contract
1272 established in subparagraph (i) of this paragraph at the time of a
1273 disaster event in that county or municipality. At the time of opt
1274 in, the county or municipality shall assume responsibility for
1275 payment in full to the contractor for the disaster-related solid
1276 waste collection, disposal or monitoring services provided.
1277 Nothing in this subparagraph (ii) shall be construed as requiring
1278 a county or municipality to opt in to any such contract
1279 established in subparagraph (i) of this paragraph.

1280 **SECTION 3.** This act shall take effect and be in force from
1281 and after July 1, 2025.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO PROVIDE PUBLIC
8 AND PUBLIC CHARTER SCHOOLS WITH AN EXEMPTION FOR THE PURCHASE OF
9 ELECTRONIC DEVICES SUCH AS LAPTOPS, TABLETS AND COMPUTER
10 PERIPHERALS; AND FOR RELATED PURPOSES.

SS36\HB1505A.1J

Amanda White
Secretary of the Senate