

## HOUSE BILL NO. 329

1       AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE REVERSE AUCTION METHOD FOR RECEIVING BIDS TO  
3 DIFFERENTIATE BETWEEN AGENCIES AND GOVERNING AUTHORITIES; TO  
4 PROVIDE THAT IF AN AGENCY DETERMINES THAT A REVERSE AUCTION IS NOT  
5 IN THE BEST INTEREST OF THE AGENCY, THEN THAT DETERMINATION MUST  
6 BE APPROVED BY THE PUBLIC PROCUREMENT REVIEW BOARD; TO PROVIDE  
7 THAT IF A GOVERNING AUTHORITY DETERMINES THAT A REVERSE AUCTION IS  
8 NOT IN THE BEST INTEREST OF THE GOVERNING AUTHORITY, THEN THAT  
9 DETERMINATION MUST BE APPROVED BY THE GOVERNING BOARD OF THE  
10 GOVERNING AUTHORITY; TO REQUIRE THE AGENCY OR GOVERNING AUTHORITY  
11 TO SUBMIT AN EXPLANATION AS TO WHY A REVERSE AUCTION IS NOT IN THE  
12 BEST INTEREST OF THE AGENCY OR GOVERNING AUTHORITY; AND FOR  
13 RELATED PURPOSES.

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

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

17       31-7-13. All agencies and governing authorities shall  
18 purchase their commodities and printing; contract for garbage  
19 collection or disposal; contract for solid waste collection or  
20 disposal; contract for sewage collection or disposal; contract for  
21 public construction; and contract for rentals as herein provided.

22               (a) **Bidding procedure for purchases not over \$5,000.00.**  
23 Purchases which do not involve an expenditure of more than Five

24 Thousand Dollars (\$5,000.00), exclusive of freight or shipping  
25 charges, may be made without advertising or otherwise requesting  
26 competitive bids. However, nothing contained in this paragraph  
27 (a) shall be construed to prohibit any agency or governing  
28 authority from establishing procedures which require competitive  
29 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.



49 authority, as appropriate. The purchasing agent or the purchase  
50 clerk, or his designee, as the case may be, and not the governing  
51 authority, shall be liable for any penalties and/or damages as may  
52 be imposed by law for any act or omission of the purchasing agent  
53 or purchase clerk, or his designee, constituting a violation of  
54 law in accepting any bid without approval by the governing  
55 authority. The term "competitive written bid" shall mean a bid  
56 submitted on a bid form furnished by the buying agency or  
57 governing authority and signed by authorized personnel  
58 representing the vendor, or a bid submitted on a vendor's  
59 letterhead or identifiable bid form and signed by authorized  
60 personnel representing the vendor. "Competitive" shall mean that  
61 the bids are developed based upon comparable identification of the  
62 needs and are developed independently and without knowledge of  
63 other bids or prospective bids. Any bid item for construction in  
64 excess of Five Thousand Dollars (\$5,000.00) shall be broken down  
65 by components to provide detail of component description and  
66 pricing. These details shall be submitted with the written bids  
67 and become part of the bid evaluation criteria. Bids may be  
68 submitted by facsimile, electronic mail or other generally  
69 accepted method of information distribution. Bids submitted by  
70 electronic transmission shall not require the signature of the  
71 vendor's representative unless required by agencies or governing  
72 authorities.

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

74 (i) **Publication requirement.**

75 1. Purchases which involve an expenditure of  
76 more than Seventy-five Thousand Dollars (\$75,000.00), exclusive of  
77 freight and shipping charges, may be made from the lowest and best  
78 bidder after advertising for competitive bids once each week for  
79 two (2) consecutive weeks in a regular newspaper published in the  
80 county or municipality in which such agency or governing authority  
81 is located. However, all American Recovery and Reinvestment Act  
82 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
83 shall be bid. All references to American Recovery and  
84 Reinvestment Act projects in this section shall not apply to  
85 programs identified in Division B of the American Recovery and  
86 Reinvestment Act.

87 2. Reverse auctions shall be the primary  
88 method for receiving bids during the bidding process. If \* \* \* an  
89 agency or governing authority determines that a reverse auction is  
90 not in the best interest of the \* \* \* agency or governing  
91 authority, then with respect to the agency, that determination  
92 must be approved by the Public Procurement Review Board, and with  
93 respect to the governing authority, that determination must be  
94 approved by the governing body of the governing authority. \* \* \*  
95 An agency shall submit a detailed explanation of why a reverse  
96 auction would not be in the best interest of the \* \* \* agency and  
97 present an alternative process to be approved by the Public  
98 Procurement Review Board. A governing authority shall make



99    findings in its minutes of why a reverse auction would not be in  
100    the best interest of the governing authority. If the Public  
101    Procurement Review Board authorizes the \* \* \* agency to solicit  
102    bids with a method other than reverse auction, or if the governing  
103    body of the governing authority authorizes the governing authority  
104    to solicit bids with a method other than reverse auction, then the  
105    purchasing entity may designate the other methods by which the  
106    bids will be received, including, but not limited to, bids sealed  
107    in an envelope, bids received electronically in a secure system,  
108    or bids received by any other method that promotes open  
109    competition and has been approved by the Office of Purchasing and  
110    Travel. However, reverse auction shall not be used for any public  
111    contract for design, construction, improvement, repair or  
112    remodeling of any public facilities, including the purchase of  
113    materials, supplies, equipment or goods for same and including  
114    buildings, roads and bridges. The Public Procurement Review Board  
115    must approve any contract of an agency entered into by alternative  
116    process. The provisions of this item 2 shall not apply to the  
117    individual state institutions of higher learning. The provisions  
118    of this item 2 requiring reverse auction as the primary method of  
119    receiving bids shall not apply to term contract purchases as  
120    provided in paragraph (n) of this section; however, a purchasing  
121    entity may, in its discretion, utilize reverse auction for such  
122    purchases. The provisions of this item 2 shall not apply to  
123    individual public schools, including public charter schools and



124 public school districts, only when purchasing copyrighted  
125 educational supplemental materials and software as a service  
126 product. For such purchases, a local school board may authorize a  
127 purchasing entity in its jurisdiction to use a Request for  
128 Qualifications which promotes open competition and meets the  
129 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.



174 Audit Requirements for Federal Awards - Subpart D - Post Federal  
175 Award Requirements Procurement Standards, in accordance with 2 CFR  
176 200.317 through 2 CFR 200.327.

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



199 to whom such solicitations and specifications were issued, and  
200 such file shall also contain such information as is pertinent to  
201 the bid.

202 (iv) **Specification restrictions.**

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

219 2. Specifications for construction projects  
220 may include an allowance for commodities, equipment, furniture,  
221 construction materials or systems in which prospective bidders are  
222 instructed to include in their bids specified amounts for such  
223 items so long as the allowance items are acquired by the vendor in



224 a commercially reasonable manner and approved by the  
225 agency/governing authority. Such acquisitions shall not be made  
226 to circumvent the public purchasing laws.

227 (v) **Electronic bids.** Agencies and governing  
228 authorities shall provide a secure electronic interactive system  
229 for the submittal of bids requiring competitive bidding that shall  
230 be an additional bidding option for those bidders who choose to  
231 submit their bids electronically. The Department of Finance and  
232 Administration shall provide, by regulation, the standards that  
233 agencies must follow when receiving electronic bids. Agencies and  
234 governing authorities shall make the appropriate provisions  
235 necessary to accept electronic bids from those bidders who choose  
236 to submit their bids electronically for all purchases requiring  
237 competitive bidding under this section. Any special condition or  
238 requirement for the electronic bid submission shall be specified  
239 in the advertisement for bids required by this section. Agencies  
240 or governing authorities that are currently without available high  
241 speed Internet access shall be exempt from the requirement of this  
242 subparagraph (v) until such time that high speed Internet access  
243 becomes available. Any county having a population of less than  
244 twenty thousand (20,000) shall be exempt from the provisions of  
245 this subparagraph (v). Any municipality having a population of  
246 less than ten thousand (10,000) shall be exempt from the  
247 provisions of this subparagraph (v). The provisions of this  
248 subparagraph (v) shall not require any bidder to submit bids



249 electronically. When construction bids are submitted  
250 electronically, the requirement for including a certificate of  
251 responsibility, or a statement that the bid enclosed does not  
252 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the  
253 bid envelope as indicated in Section 31-3-21(1) and (2) shall be  
254 deemed in compliance with by including same as an attachment with  
255 the electronic bid submittal.

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

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

272 (ii) **Decision procedure for Certified Purchasing  
273 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 Prequalified**

291 **Construction.** In addition to the decision procedure set forth in  
292 subparagraph (i) of this paragraph (d), where purchase involves  
293 renovation, restoration, or both, of the State Capitol Building or  
294 any other historical building designated for at least five (5)  
295 years as a Mississippi Landmark by the Board of Trustees of the  
296 Department of Archives and History under the authority of Sections  
297 39-7-7 and 39-7-11, or for any other construction procurement with  
298 a minimum construction cost of Ten Million Dollars



(\$10,000,000.00) where the agency or governing authority has determined that prequalification of bidders is in the best interest of the state, the agency or governing authority may use the following procedure: Purchases may be made from the lowest and best prequalified bidder. Solicitation of the prequalification of bidders shall be in accordance with paragraph (c) of this section and shall be determined not less than fifteen (15) working days before the prequalified bidders are invited to submit bids. Prequalification criteria shall be limited to bidder's and proposed sub-contractor's knowledge and experience on projects of similar size and scope, past performance, project management team and financial stability. 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.

322 If the lowest and best bid is not more than ten percent (10%)  
323 above the amount of funds allocated for a public construction or



324 renovation project, then the agency or governing authority shall  
325 be permitted to negotiate with the lowest bidder in order to enter  
326 into a contract for an amount not to exceed the funds allocated.

327 (e) **Lease-purchase authorization.** For the purposes of  
328 this section, the term "equipment" shall mean equipment, furniture  
329 and, if applicable, associated software and other applicable  
330 direct costs associated with the acquisition. Any lease-purchase  
331 of equipment which an agency is not required to lease-purchase  
332 under the master lease-purchase program pursuant to Section  
333 31-7-10 and any lease-purchase of equipment which a governing  
334 authority elects to lease-purchase may be acquired by a  
335 lease-purchase agreement under this paragraph (e). Lease-purchase  
336 financing may also be obtained from the vendor or from a  
337 third-party source after having solicited and obtained at least  
338 two (2) written competitive bids, as defined in paragraph (b) of  
339 this section, for such financing without advertising for such  
340 bids. Solicitation for the bids for financing may occur before or  
341 after acceptance of bids for the purchase of such equipment or,  
342 where no such bids for purchase are required, at any time before  
343 the purchase thereof. No such lease-purchase agreement shall be  
344 for an annual rate of interest which is greater than the overall  
345 maximum interest rate to maturity on general obligation  
346 indebtedness permitted under Section 75-17-101, and the term of  
347 such lease-purchase agreement shall not exceed the useful life of  
348 equipment covered thereby as determined according to the upper



349 limit of the asset depreciation range (ADR) guidelines for the  
350 Class Life Asset Depreciation Range System established by the  
351 Internal Revenue Service pursuant to the United States Internal  
352 Revenue Code and regulations thereunder as in effect on December  
353 31, 1980, or comparable depreciation guidelines with respect to  
354 any equipment not covered by ADR guidelines. Any lease-purchase  
355 agreement entered into pursuant to this paragraph (e) may contain  
356 any of the terms and conditions which a master lease-purchase  
357 agreement may contain under the provisions of Section 31-7-10(5),  
358 and shall contain an annual allocation dependency clause  
359 substantially similar to that set forth in Section 31-7-10(8).  
360 Each agency or governing authority entering into a lease-purchase  
361 transaction pursuant to this paragraph (e) shall maintain with  
362 respect to each such lease-purchase transaction the same  
363 information as required to be maintained by the Department of  
364 Finance and Administration pursuant to Section 31-7-10(13).  
365 However, nothing contained in this section shall be construed to  
366 permit agencies to acquire items of equipment with a total  
367 acquisition cost in the aggregate of less than Ten Thousand  
368 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
369 equipment, and the purchase thereof by any lessor, acquired by  
370 lease-purchase under this paragraph and all lease-purchase  
371 payments with respect thereto shall be exempt from all Mississippi  
372 sales, use and ad valorem taxes. Interest paid on any

373 lease-purchase agreement under this section shall be exempt from  
374 State of Mississippi income taxation.

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



398 authority, to authorize changes or modifications to the original  
399 contract without the necessity of prior approval of the agency or  
400 governing authority when any such change or modification is less  
401 than one percent (1%) of the total contract amount. The agency or  
402 governing authority may limit the number, manner or frequency of  
403 such emergency changes or modifications.

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

421 (i) Road construction petroleum products price  
422 adjustment clause authorization. Any agency or governing



423 authority authorized to enter into contracts for the construction,  
424 maintenance, surfacing or repair of highways, roads or streets,  
425 may include in its bid proposal and contract documents a price  
426 adjustment clause with relation to the cost to the contractor,  
427 including taxes, based upon an industry-wide cost index, of  
428 petroleum products including asphalt used in the performance or  
429 execution of the contract or in the production or manufacture of  
430 materials for use in such performance. Such industry-wide index  
431 shall be established and published monthly by the Mississippi  
432 Department of Transportation with a copy thereof to be mailed,  
433 upon request, to the clerks of the governing authority of each  
434 municipality and the clerks of each board of supervisors  
435 throughout the state. The price adjustment clause shall be based  
436 on the cost of such petroleum products only and shall not include  
437 any additional profit or overhead as part of the adjustment. The  
438 bid proposals or document contract shall contain the basis and  
439 methods of adjusting unit prices for the change in the cost of  
440 such petroleum products.



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

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

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

480        Purchases under the grant program established under Section  
481        37-68-7 in response to COVID-19 and the directive that school  
482        districts create a distance learning plan and fulfill technology  
483        needs expeditiously shall be deemed an emergency purchase for  
484        purposes of this paragraph (j).

485                **(k) Governing authority emergency purchase procedure.**  
486        If the governing authority, or the governing authority acting  
487        through its designee, shall determine that an emergency exists in  
488        regard to the purchase of any commodities or repair contracts, so  
489        that the delay incident to giving opportunity for competitive  
490        bidding would be detrimental to the interest of the governing  
491        authority, then the provisions herein for competitive bidding  
492        shall not apply and any officer or agent of such governing  
493        authority having general or special authority therefor in making  
494        such purchase or repair shall approve the bill presented therefor,  
495        and he shall certify in writing thereon from whom such purchase  
496        was made, or with whom such a repair contract was made. At the



497 board meeting next following the emergency purchase or repair  
498 contract, documentation of the purchase or repair contract,  
499 including a description of the commodity purchased, the price  
500 thereof and the nature of the emergency shall be presented to the  
501 board and shall be placed on the minutes of the board of such  
502 governing authority. Purchases under the grant program  
503 established under Section 37-68-7 in response to COVID-19 and the  
504 directive that school districts create a distance learning plan  
505 and fulfill technology needs expeditiously shall be deemed an  
506 emergency purchase for purposes of this paragraph (k).

507 (1) Hospital purchase, lease-purchase and lease  
508 authorization.

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



522 maximum of five (5) years' duration and shall include a  
523 cancellation clause based on unavailability of funds. If such  
524 cancellation clause is exercised, there shall be no further  
525 liability on the part of the lessee. Any such contract for the  
526 lease of equipment or services executed on behalf of the  
527 commissioners or board that complies with the provisions of this  
528 subparagraph (ii) shall be excepted from the bid requirements set  
529 forth in this section.

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

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

536 (ii) **Outside equipment repairs.** Repairs to  
537 equipment, when such repairs are made by repair facilities in the  
538 private sector; however, engines, transmissions, rear axles and/or  
539 other such components shall not be included in this exemption when  
540 replaced as a complete unit instead of being repaired and the need  
541 for such total component replacement is known before disassembly  
542 of the component; however, invoices identifying the equipment,  
543 specific repairs made, parts identified by number and name,  
544 supplies used in such repairs, and the number of hours of labor  
545 and costs therefor shall be required for the payment for such  
546 repairs.



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

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

556 (v) **Governmental equipment auctions.** Motor  
557 vehicles or other equipment purchased from a federal agency or  
558 authority, another governing authority or state agency of the  
559 State of Mississippi, or any governing authority or state agency  
560 of another state at a public auction held for the purpose of  
561 disposing of such vehicles or other equipment. Any purchase by a  
562 governing authority under the exemption authorized by this  
563 subparagraph (v) shall require advance authorization spread upon  
564 the minutes of the governing authority to include the listing of  
565 the item or items authorized to be purchased and the maximum bid  
566 authorized to be paid for each item or items.

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

568 Purchases, sales, transfers or trades by governing authorities or  
569 state agencies when such purchases, sales, transfers or trades are  
570 made by a private treaty agreement or through means of  
571 negotiation, from any federal agency or authority, another



572 governing authority or state agency of the State of Mississippi,  
573 or any state agency or governing authority of another state.  
574 Nothing in this section shall permit such purchases through public  
575 auction except as provided for in subparagraph (v) of this  
576 paragraph (m). It is the intent of this section to allow  
577 governmental entities to dispose of and/or purchase commodities  
578 from other governmental entities at a price that is agreed to by  
579 both parties. This shall allow for purchases and/or sales at  
580 prices which may be determined to be below the market value if the  
581 selling entity determines that the sale at below market value is  
582 in the best interest of the taxpayers of the state. Governing  
583 authorities shall place the terms of the agreement and any  
584 justification on the minutes, and state agencies shall obtain  
585 approval from the Department of Finance and Administration, prior  
586 to releasing or taking possession of the commodities.

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

591 (viii) **Single-source items.** Noncompetitive items  
592 available from one (1) source only. In connection with the  
593 purchase of noncompetitive items only available from one (1)  
594 source, a certification of the conditions and circumstances  
595 requiring the purchase shall be filed by the agency with the  
596 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

610 **contracts.** Construction of incinerators and other facilities for  
611 disposal of solid wastes in which products either generated  
612 therein, such as steam, or recovered therefrom, such as materials  
613 for recycling, are to be sold or otherwise disposed of; however,  
614 in constructing such facilities, a governing authority or agency  
615 shall publicly issue requests for proposals, advertised for in the  
616 same manner as provided herein for seeking bids for public  
617 construction projects, concerning the design, construction,  
618 ownership, operation and/or maintenance of such facilities,  
619 wherein such requests for proposals when issued shall contain  
620 terms and conditions relating to price, financial responsibility,  
621 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.

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

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

639 (xi) Energy efficiency services and equipment.

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

645 (xiii) Municipal electrical utility system fuel.

#### 646 Purchases of coal and/or natural gas by municipally owned electric



647 power generating systems that have the capacity to use both coal  
648 and natural gas for the generation of electric power.

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

650 Purchases by libraries or for libraries of books and periodicals;  
651 processed film, videocassette tapes, filmstrips and slides;  
652 recorded audiotapes, cassettes and diskettes; and any such items  
653 as would be used for teaching, research or other information  
654 distribution; however, equipment such as projectors, recorders,  
655 audio or video equipment, and monitor televisions are not exempt  
656 under this subparagraph.

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

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

663 (xvii) **Multichannel interactive video systems.**  
664 From and after July 1, 1990, contracts by Mississippi Authority  
665 for Educational Television with any private educational  
666 institution or private nonprofit organization whose purposes are  
667 educational in regard to the construction, purchase, lease or  
668 lease-purchase of facilities and equipment and the employment of  
669 personnel for providing multichannel interactive video systems  
670 (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.**

(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.



695 (xxiii) **Municipal water tank maintenance**

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

701 (xxiv) **Purchases of Mississippi Industries for the**

702 **Blind products or services.** Purchases made by state agencies or  
703 governing authorities involving any item that is manufactured,  
704 processed or produced by, or any services provided by, the  
705 Mississippi Industries for the Blind.

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

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

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

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

711 (xxvii) **Used heavy or specialized machinery or**

712 **equipment for installation of soil and water conservation**

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

714 machinery or equipment used for the installation and

715 implementation of soil and water conservation practices or

716 measures purchased subject to the restrictions provided in

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

718 Soil and Water Conservation Commission under the exemption

719 authorized by this subparagraph shall require advance

720 authorization spread upon the minutes of the commission to include  
721 the listing of the item or items authorized to be purchased and  
722 the maximum bid authorized to be paid for each item or items.

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

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

726 (xxix) **Purchases made pursuant to qualified**  
727 **cooperative purchasing agreements.** Purchases made by certified  
728 purchasing offices of state agencies or governing authorities  
729 under cooperative purchasing agreements previously approved by the  
730 Office of Purchasing and Travel and established by or for any  
731 municipality, county, parish or state government or the federal  
732 government, provided that the notification to potential  
733 contractors includes a clause that sets forth the availability of  
734 the cooperative purchasing agreement to other governmental  
735 entities. Such purchases shall only be made if the use of the  
736 cooperative purchasing agreements is determined to be in the best  
737 interest of the governmental entity.

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

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

746 (xxxii) **Toll roads and bridge construction**

747 **projects.** Contracts entered into under the provisions of Section

748 65-43-1 or 65-43-3.

749 (xxxiii) **Certain purchases under Section 57-1-221.**  
750 Contracts entered into pursuant to the provisions of Section  
751 57-1-221.

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

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

759 (xxxvi) **Certain purchases by an academic medical**  
760 **center or health sciences school.** Purchases by an academic  
761 medical center or health sciences school, as defined in Section  
762 37-115-50, of commodities that are used for clinical purposes and  
763 1. intended for use in the diagnosis of disease or other  
764 conditions or in the cure, mitigation, treatment or prevention of  
765 disease, and 2. medical devices, biological, drugs and  
766 radiation-emitting devices as defined by the United States Food  
767 and Drug Administration.



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

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

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



793 Procurement Review Board, identifying all purchases made by the  
794 agency using this exemption in which the cost of the option  
795 selected by the agency was more than twenty-five percent (25%)  
796 higher than the lowest cost option available.

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

799 (i) All contracts for the purchase of commodities,  
800 equipment and public construction (including, but not limited to,  
801 repair and maintenance), may be let for periods of not more than  
802 sixty (60) months in advance, subject to applicable statutory  
803 provisions prohibiting the letting of contracts during specified  
804 periods near the end of terms of office. Term contracts for a  
805 period exceeding twenty-four (24) months shall also be subject to  
806 ratification or cancellation by governing authority boards taking  
807 office subsequent to the governing authority board entering the  
808 contract.

809 (ii) Bid proposals and contracts may include price  
810 adjustment clauses with relation to the cost to the contractor  
811 based upon a nationally published industry-wide or nationally  
812 published and recognized cost index. The cost index used in a  
813 price adjustment clause shall be determined by the Department of  
814 Finance and Administration for the state agencies and by the  
815 governing board for governing authorities. The bid proposal and  
816 contract documents utilizing a price adjustment clause shall  
817 contain the basis and method of adjusting unit prices for the



818 change in the cost of such commodities, equipment and public  
819 construction.

(o) Purchase law violation prohibition and vendor

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

(p) Electrical utility petroleum-based equipment

836 **purchase procedure.** When in response to a proper advertisement  
837 therefor, no bid firm as to price is submitted to an electric  
838 utility for power transformers, distribution transformers, power  
839 breakers, reclosers or other articles containing a petroleum  
840 product, the electric utility may accept the lowest and best bid  
841 therefor although the price is not firm.



842 (q) **Fuel management system bidding procedure.** Any  
843 governing authority or agency of the state shall, before  
844 contracting for the services and products of a fuel management or  
845 fuel access system, enter into negotiations with not fewer than  
846 two (2) sellers of fuel management or fuel access systems for  
847 competitive written bids to provide the services and products for  
848 the systems. In the event that the governing authority or agency  
849 cannot locate two (2) sellers of such systems or cannot obtain  
850 bids from two (2) sellers of such systems, it shall show proof  
851 that it made a diligent, good-faith effort to locate and negotiate  
852 with two (2) sellers of such systems. Such proof shall include,  
853 but not be limited to, publications of a request for proposals and  
854 letters soliciting negotiations and bids. For purposes of this  
855 paragraph (q), a fuel management or fuel access system is an  
856 automated system of acquiring fuel for vehicles as well as  
857 management reports detailing fuel use by vehicles and drivers, and  
858 the term "competitive written bid" shall have the meaning as  
859 defined in paragraph (b) of this section. Governing authorities  
860 and agencies shall be exempt from this process when contracting  
861 for the services and products of fuel management or fuel access  
862 systems under the terms of a state contract established by the  
863 Office of Purchasing and Travel.

864 (r) **Solid waste contract proposal procedure.** Before  
865 entering into any contract for garbage collection or disposal,  
866 contract for solid waste collection or disposal or contract for



867 sewage collection or disposal, which involves an expenditure of  
868 more than Seventy-five Thousand Dollars (\$75,000.00), a governing  
869 authority or agency shall issue publicly a request for proposals  
870 concerning the specifications for such services which shall be  
871 advertised for in the same manner as provided in this section for  
872 seeking bids for purchases which involve an expenditure of more  
873 than the amount provided in paragraph (c) of this section. Any  
874 request for proposals when issued shall contain terms and  
875 conditions relating to price, financial responsibility,  
876 technology, legal responsibilities and other relevant factors as  
877 are determined by the governing authority or agency to be  
878 appropriate for inclusion; all factors determined relevant by the  
879 governing authority or agency or required by this paragraph (r)  
880 shall be duly included in the advertisement to elicit proposals.  
881 After responses to the request for proposals have been duly  
882 received, the governing authority or agency shall select the most  
883 qualified proposal or proposals on the basis of price, technology  
884 and other relevant factors and from such proposals, but not  
885 limited to the terms thereof, negotiate and enter into contracts  
886 with one or more of the persons or firms submitting proposals. If  
887 the governing authority or agency deems none of the proposals to  
888 be qualified or otherwise acceptable, the request for proposals  
889 process may be reinitiated. Notwithstanding any other provisions  
890 of this paragraph, where a county with at least thirty-five  
891 thousand (35,000) nor more than forty thousand (40,000)



892 population, according to the 1990 federal decennial census, owns  
893 or operates a solid waste landfill, the governing authorities of  
894 any other county or municipality may contract with the governing  
895 authorities of the county owning or operating the landfill,  
896 pursuant to a resolution duly adopted and spread upon the minutes  
897 of each governing authority involved, for garbage or solid waste  
898 collection or disposal services through contract negotiations.

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

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

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

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

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

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

(u) **Procurement of construction services by state institutions of higher learning.** Contracts for privately financed construction of auxiliary facilities on the campus of a state institution of higher learning may be awarded by the Board of Trustees of State Institutions of Higher Learning to the lowest and best bidder, where sealed bids are solicited, or to the



941 offeror whose proposal is determined to represent the best value  
942 to the citizens of the State of Mississippi, where requests for  
943 proposals are solicited.

944 (v) **Insurability of bidders for public construction or**  
945 **other public contracts.** In any solicitation for bids to perform  
946 public construction or other public contracts to which this  
947 section applies, including, but not limited to, contracts for  
948 repair and maintenance, for which the contract will require  
949 insurance coverage in an amount of not less than One Million  
950 Dollars (\$1,000,000.00), bidders shall be permitted to either  
951 submit proof of current insurance coverage in the specified amount  
952 or demonstrate ability to obtain the required coverage amount of  
953 insurance if the contract is awarded to the bidder. Proof of  
954 insurance coverage shall be submitted within five (5) business  
955 days from bid acceptance.

956 (w) **Purchase authorization clarification.** Nothing in  
957 this section shall be construed as authorizing any purchase not  
958 authorized by law.

963 (ii) Any board of supervisors of any county or any  
964 governing authority of any municipality may opt in to the benefits  
965 and services provided under the appropriate and relevant contract.



966 established in subparagraph (i) of this paragraph at the time of a  
967 disaster event in that county or municipality. At the time of opt  
968 in, the county or municipality shall assume responsibility for  
969 payment in full to the contractor for the disaster-related solid  
970 waste collection, disposal or monitoring services provided.  
971 Nothing in this subparagraph (ii) shall be construed as requiring  
972 a county or municipality to opt in to any such contract  
973 established in subparagraph (i) of this paragraph.

974       **SECTION 2.** This act shall take effect and be in force from  
975 and after July 1, 2026.

