

By: Representative Bell (21st)

To: Workforce Development

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.

30 (b) **Bidding procedure for purchases over \$5,000.00 but**
31 **not over \$75,000.00.** Purchases which involve an expenditure of
32 more than Five Thousand Dollars (\$5,000.00) but not more than
33 Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight
34 and shipping charges, may be made from the lowest and best bidder
35 without publishing or posting advertisement for bids, provided at
36 least two (2) competitive written bids have been obtained. Any
37 state agency or community or junior college purchasing commodities
38 or procuring construction pursuant to this paragraph (b) may
39 authorize its purchasing agent, or his designee, to accept the
40 lowest competitive written bid under Seventy-five Thousand Dollars
41 (\$75,000.00). Any governing authority purchasing commodities
42 pursuant to this paragraph (b) may authorize its purchasing agent,
43 or his designee, with regard to governing authorities other than
44 counties, or its purchase clerk, or his designee, with regard to
45 counties, to accept the lowest and best competitive written bid.
46 Such authorization shall be made in writing by the governing
47 authority and shall be maintained on file in the primary office of
48 the agency and recorded in the official minutes of the governing



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.**



(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 * * * an agency or governing authority determines that a reverse auction is not in the best interest of the * * * agency or governing authority, then with respect to the agency, that determination must be approved by the Public Procurement Review Board, and with respect to the governing authority, that determination must be approved by the governing body of the governing authority. * * * An agency shall submit a detailed explanation of why a reverse auction would not be in the best interest of the * * * agency and present an alternative process to be approved by the Public 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



public school districts, only when purchasing copyrighted educational supplemental materials and software as a service product. For such purchases, a local school board may authorize a purchasing entity in its jurisdiction to use a Request for Qualifications which promotes open competition and meets the requirements of the Office of Purchasing and Travel.

3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Seventy-five Thousand Dollars (\$75,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or



municipality in the above-provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice. Within one (1) working day of the contract award, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration, notice of the award, including the award recipient, the contract amount, and a brief summary of the contract in accordance with rules promulgated by the department. Within one (1) working day of the contract execution, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration a summary of the executed contract and make a copy of the appropriately redacted contract documents available for linking to the designated web page in accordance with the rules promulgated by the department. The information provided by the agency or governing authority shall be posted to the web page until the project is completed.

4. Agencies and governing authorities using federal funds for the procurement of any good or service, including exempt personal and professional services, must comply with the Uniform Administrative Requirements, Cost Principles, and



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

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

(iii) **Filing requirement.** In all cases involving
governing authorities, before the notice shall be published or
posted, the plans or specifications for the construction or
equipment being sought shall be filed with the clerk of the board
of the governing authority. In addition to these requirements, a
bid file shall be established which shall indicate those vendors



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

(iv) **Specification restrictions.**

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

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



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

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



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

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

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

(ii) **Decision procedure for Certified Purchasing Offices.** In addition to the decision procedure set forth in



subparagraph (i) of this paragraph (d), Certified Purchasing Offices may also use the following procedure: Purchases may be made from the bidder offering the best value. In determining the best value bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions, documented previous experience, training costs and other relevant provisions, including, but not limited to, a bidder having a local office and inventory located within the jurisdiction of the governing authority, may be included in the best value calculation. This provision shall authorize Certified Purchasing Offices to utilize a Request For Proposals (RFP) process when purchasing commodities. All best value procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. No agency or governing authority shall accept a bid based on items or criteria not included in the specifications.

(iii) **Decision procedure for Prequalified**

Construction. 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, or for any other construction procurement with a minimum construction cost of Ten Million Dollars



299 (\$10,000,000.00) where the agency or governing authority has
300 determined that prequalification of bidders is in the best
301 interest of the state, the agency or governing authority may use
302 the following procedure: Purchases may be made from the lowest
303 and best prequalified bidder. Solicitation of the
304 prequalification of bidders shall be in accordance with paragraph
305 (c) of this section and shall be determined not less than fifteen
306 (15) working days before the prequalified bidders are invited to
307 submit bids. Prequalification criteria shall be limited to
308 bidder's and proposed sub-contractor's knowledge and experience on
309 projects of similar size and scope, past performance, project
310 management team and financial stability. All best bid and
311 prequalification procedures for state agencies must be in
312 compliance with regulations established by the Department of
313 Finance and Administration. If any governing authority accepts a
314 bid other than the lowest bid actually submitted, it shall place
315 on its minutes detailed calculations and narrative summary showing
316 that the accepted bid was determined to be the lowest and best
317 bid, including the dollar amount of the accepted bid and the
318 dollar amount of the lowest bid. No agency or governing authority
319 shall accept a bid based on items not included in the
320 specifications.

321 (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



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

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



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



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



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.

441 (j) **State agency emergency purchase procedure.** If the
442 governing board or the executive head, or his designees, of any
443 agency of the state shall determine that an emergency exists in
444 regard to the purchase of any commodities or repair contracts, so
445 that the delay incident to giving opportunity for competitive
446 bidding would be detrimental to the interests of the state, then
447 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.



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



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.



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



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



597 authority with the board of the governing authority. Upon receipt
598 of that certification the Department of Finance and Administration
599 or the board of the governing authority, as the case may be, may,
600 in writing, authorize the purchase, which authority shall be noted
601 on the minutes of the body at the next regular meeting thereafter.
602 In those situations, a governing authority is not required to
603 obtain the approval of the Department of Finance and
604 Administration. Following the purchase, the executive head of the
605 state agency, or his designees, shall file with the Department of
606 Finance and Administration, documentation of the purchase,
607 including a description of the commodity purchased, the purchase
608 price thereof and the source from whom it was purchased.

609 (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.

(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



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.



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

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

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

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

691 (xxii) **Garbage, solid waste and sewage contracts.**
692 Contracts for garbage collection or disposal, contracts for solid
693 waste collection or disposal and contracts for sewage collection
694 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



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

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

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

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

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



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

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

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

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

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

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



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

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

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



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.

820 (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.

835 (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.



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

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



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

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

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

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

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

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



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

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

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

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

(ii) Any board of supervisors of any county or any governing authority of any municipality may opt in to the benefits 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.

