

By: Senator(s) Harkins

To: Accountability,
Efficiency, Transparency

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2806

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY UNDER THE PUBLIC PURCHASING LAW THAT REVERSE AUCTION SHALL
3 NOT BE USED FOR THE IMPROVEMENT, REPAIR OR REMODELING OF ANY
4 PUBLIC FACILITIES, INCLUDING THE PURCHASE OF MATERIALS, SUPPLIES,
5 EQUIPMENT OR GOODS FOR SAME; AND FOR RELATED PURPOSES.

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

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

9 31-7-13. All agencies and governing authorities shall
10 purchase their commodities and printing; contract for garbage
11 collection or disposal; contract for solid waste collection or
12 disposal; contract for sewage collection or disposal; contract for
13 public construction; and contract for rentals as herein provided.

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

15 Purchases which do not involve an expenditure of more than Five
16 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
17 charges, may be made without advertising or otherwise requesting
18 competitive bids. However, nothing contained in this paragraph

19 (a) shall be construed to prohibit any agency or governing



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

22 (b) **Bidding procedure for purchases over \$5,000.00 but**
23 **not over \$50,000.00.** Purchases which involve an expenditure of
24 more than Five Thousand Dollars (\$5,000.00) but not more than
25 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
26 shipping charges, may be made from the lowest and best bidder
27 without publishing or posting advertisement for bids, provided at
28 least two (2) competitive written bids have been obtained. Any
29 state agency or community/junior college purchasing commodities or
30 procuring construction pursuant to this paragraph (b) may
31 authorize its purchasing agent, or his designee, to accept the
32 lowest competitive written bid under Fifty Thousand Dollars
33 (\$50,000.00). Any governing authority purchasing commodities
34 pursuant to this paragraph (b) may authorize its purchasing agent,
35 or his designee, with regard to governing authorities other than
36 counties, or its purchase clerk, or his designee, with regard to
37 counties, to accept the lowest and best competitive written bid.
38 Such authorization shall be made in writing by the governing
39 authority and shall be maintained on file in the primary office of
40 the agency and recorded in the official minutes of the governing
41 authority, as appropriate. The purchasing agent or the purchase
42 clerk, or his designee, as the case may be, and not the governing
43 authority, shall be liable for any penalties and/or damages as may
44 be imposed by law for any act or omission of the purchasing agent



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

65 (c) **Bidding procedure for purchases over \$50,000.00.**

66 (i) **Publication requirement.**

67 1. Purchases which involve an expenditure of
68 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
69 freight and shipping charges, may be made from the lowest and best



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

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



95 not be used for any public contract for design * * *,
96 construction, improvement, repair or remodeling of any public
97 facilities, including the purchase of materials, supplies,
98 equipment or goods for same and including buildings, roads and
99 bridges, and term contracts as provided in paragraph (n) of this
100 section. The Public Procurement Review Board must approve any
101 contract entered into by alternative process. The provisions of
102 this item 2 shall not apply to the individual state institutions
103 of higher learning.

104 3. The date as published for the bid opening
105 shall not be less than seven (7) working days after the last
106 published notice; however, if the purchase involves a construction
107 project in which the estimated cost is in excess of Fifty Thousand
108 Dollars (\$50,000.00), such bids shall not be opened in less than
109 fifteen (15) working days after the last notice is published and
110 the notice for the purchase of such construction shall be
111 published once each week for two (2) consecutive weeks. However,
112 all American Recovery and Reinvestment Act projects in excess of
113 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
114 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
115 under the American Recovery and Reinvestment Act, publication
116 shall be made one (1) time and the bid opening for construction
117 projects shall not be less than ten (10) working days after the
118 date of the published notice. The notice of intention to let
119 contracts or purchase equipment shall state the time and place at



120 which bids shall be received, list the contracts to be made or
121 types of equipment or supplies to be purchased, and, if all plans
122 and/or specifications are not published, refer to the plans and/or
123 specifications on file. If there is no newspaper published in the
124 county or municipality, then such notice shall be given by posting
125 same at the courthouse, or for municipalities at the city hall,
126 and at two (2) other public places in the county or municipality,
127 and also by publication once each week for two (2) consecutive
128 weeks in some newspaper having a general circulation in the county
129 or municipality in the above-provided manner. On the same date
130 that the notice is submitted to the newspaper for publication, the
131 agency or governing authority involved shall mail written notice
132 to, or provide electronic notification to the main office of the
133 Mississippi Procurement Technical Assistance Program under the
134 Mississippi Development Authority that contains the same
135 information as that in the published notice. Submissions received
136 by the Mississippi Procurement Technical Assistance Program for
137 projects funded by the American Recovery and Reinvestment Act
138 shall be displayed on a separate and unique Internet web page
139 accessible to the public and maintained by the Mississippi
140 Development Authority for the Mississippi Procurement Technical
141 Assistance Program. Those American Recovery and Reinvestment Act
142 related submissions shall be publicly posted within twenty-four
143 (24) hours of receipt by the Mississippi Development Authority and
144 the bid opening shall not occur until the submission has been



145 posted for ten (10) consecutive days. The Department of Finance
146 and Administration shall maintain information regarding contracts
147 and other expenditures from the American Recovery and Reinvestment
148 Act, on a unique Internet web page accessible to the public. The
149 Department of Finance and Administration shall promulgate rules
150 regarding format, content and deadlines, unless otherwise
151 specified by law, of the posting of award notices, contract
152 execution and subsequent amendments, links to the contract
153 documents, expenditures against the awarded contracts and general
154 expenditures of funds from the American Recovery and Reinvestment
155 Act. Within one (1) working day of the contract award, the agency
156 or governing authority shall post to the designated web page
157 maintained by the Department of Finance and Administration, notice
158 of the award, including the award recipient, the contract amount,
159 and a brief summary of the contract in accordance with rules
160 promulgated by the department. Within one (1) working day of the
161 contract execution, the agency or governing authority shall post
162 to the designated web page maintained by the Department of Finance
163 and Administration a summary of the executed contract and make a
164 copy of the appropriately redacted contract documents available
165 for linking to the designated web page in accordance with the
166 rules promulgated by the department. The information provided by
167 the agency or governing authority shall be posted to the web page
168 for the duration of the American Recovery and Reinvestment Act
169 funding or until the project is completed, whichever is longer.



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

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



195 (iv) **Specification restrictions.**

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

212 2. Specifications for construction projects
213 may include an allowance for commodities, equipment, furniture,
214 construction materials or systems in which prospective bidders are
215 instructed to include in their bids specified amounts for such
216 items so long as the allowance items are acquired by the vendor in
217 a commercially reasonable manner and approved by the
218 agency/governing authority. Such acquisitions shall not be made
219 to circumvent the public purchasing laws.



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



245 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
246 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
247 deemed in compliance with by including same as an attachment with
248 the electronic bid submittal.

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

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

265 (ii) **Decision procedure for Certified Purchasing**
266 **Offices.** In addition to the decision procedure set forth in
267 subparagraph (i) of this paragraph (d), Certified Purchasing
268 Offices may also use the following procedure: Purchases may be
269 made from the bidder offering the best value. In determining the



270 best value bid, freight and shipping charges shall be included.
271 Life-cycle costing, total cost bids, warranties, guaranteed
272 buy-back provisions, documented previous experience, training
273 costs and other relevant provisions, including, but not limited
274 to, a bidder having a local office and inventory located within
275 the jurisdiction of the governing authority, may be included in
276 the best value calculation. This provision shall authorize
277 Certified Purchasing Offices to utilize a Request For Proposals
278 (RFP) process when purchasing commodities. All best value
279 procedures for state agencies must be in compliance with
280 regulations established by the Department of Finance and
281 Administration. No agency or governing authority shall accept a
282 bid based on items or criteria not included in the specifications.

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

284 **Landmarks.** In addition to the decision procedure set forth in
285 subparagraph (i) of this paragraph (d), where purchase involves
286 renovation, restoration, or both, of the State Capitol Building or
287 any other historical building designated for at least five (5)
288 years as a Mississippi Landmark by the Board of Trustees of the
289 Department of Archives and History under the authority of Sections
290 39-7-7 and 39-7-11, the agency or governing authority may use the
291 following procedure: Purchases may be made from the lowest and
292 best prequalified bidder. Prequalification of bidders shall be
293 determined not less than fifteen (15) working days before the
294 first published notice of bid opening. Prequalification criteria



295 shall be limited to bidder's knowledge and experience in
296 historical restoration, preservation and renovation. In
297 determining the lowest and best bid, freight and shipping charges
298 shall be included. Life-cycle costing, total cost bids,
299 warranties, guaranteed buy-back provisions and other relevant
300 provisions may be included in the best bid calculation. All best
301 bid and prequalification procedures for state agencies must be in
302 compliance with regulations established by the Department of
303 Finance and Administration. If any governing authority accepts a
304 bid other than the lowest bid actually submitted, it shall place
305 on its minutes detailed calculations and narrative summary showing
306 that the accepted bid was determined to be the lowest and best
307 bid, including the dollar amount of the accepted bid and the
308 dollar amount of the lowest bid. No agency or governing authority
309 shall accept a bid based on items not included in the
310 specifications.

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

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

317 (e) **Lease-purchase authorization.** For the purposes of
318 this section, the term "equipment" shall mean equipment, furniture
319 and, if applicable, associated software and other applicable



320 direct costs associated with the acquisition. Any lease-purchase
321 of equipment which an agency is not required to lease-purchase
322 under the master lease-purchase program pursuant to Section
323 31-7-10 and any lease-purchase of equipment which a governing
324 authority elects to lease-purchase may be acquired by a
325 lease-purchase agreement under this paragraph (e). Lease-purchase
326 financing may also be obtained from the vendor or from a
327 third-party source after having solicited and obtained at least
328 two (2) written competitive bids, as defined in paragraph (b) of
329 this section, for such financing without advertising for such
330 bids. Solicitation for the bids for financing may occur before or
331 after acceptance of bids for the purchase of such equipment or,
332 where no such bids for purchase are required, at any time before
333 the purchase thereof. No such lease-purchase agreement shall be
334 for an annual rate of interest which is greater than the overall
335 maximum interest rate to maturity on general obligation
336 indebtedness permitted under Section 75-17-101, and the term of
337 such lease-purchase agreement shall not exceed the useful life of
338 equipment covered thereby as determined according to the upper
339 limit of the asset depreciation range (ADR) guidelines for the
340 Class Life Asset Depreciation Range System established by the
341 Internal Revenue Service pursuant to the United States Internal
342 Revenue Code and regulations thereunder as in effect on December
343 31, 1980, or comparable depreciation guidelines with respect to
344 any equipment not covered by ADR guidelines. Any lease-purchase



345 agreement entered into pursuant to this paragraph (e) may contain
346 any of the terms and conditions which a master lease-purchase
347 agreement may contain under the provisions of Section 31-7-10(5),
348 and shall contain an annual allocation dependency clause
349 substantially similar to that set forth in Section 31-7-10(8).
350 Each agency or governing authority entering into a lease-purchase
351 transaction pursuant to this paragraph (e) shall maintain with
352 respect to each such lease-purchase transaction the same
353 information as required to be maintained by the Department of
354 Finance and Administration pursuant to Section 31-7-10(13).
355 However, nothing contained in this section shall be construed to
356 permit agencies to acquire items of equipment with a total
357 acquisition cost in the aggregate of less than Ten Thousand
358 Dollars (\$10,000.00) by a single lease-purchase transaction. All
359 equipment, and the purchase thereof by any lessor, acquired by
360 lease-purchase under this paragraph and all lease-purchase
361 payments with respect thereto shall be exempt from all Mississippi
362 sales, use and ad valorem taxes. Interest paid on any
363 lease-purchase agreement under this section shall be exempt from
364 State of Mississippi income taxation.

365 (f) **Alternate bid authorization.** When necessary to
366 ensure ready availability of commodities for public works and the
367 timely completion of public projects, no more than two (2)
368 alternate bids may be accepted by a governing authority for
369 commodities. No purchases may be made through use of such



370 alternate bids procedure unless the lowest and best bidder cannot
371 deliver the commodities contained in his bid. In that event,
372 purchases of such commodities may be made from one (1) of the
373 bidders whose bid was accepted as an alternate.

374 (g) **Construction contract change authorization.** In the
375 event a determination is made by an agency or governing authority
376 after a construction contract is let that changes or modifications
377 to the original contract are necessary or would better serve the
378 purpose of the agency or the governing authority, such agency or
379 governing authority may, in its discretion, order such changes
380 pertaining to the construction that are necessary under the
381 circumstances without the necessity of further public bids;
382 provided that such change shall be made in a commercially
383 reasonable manner and shall not be made to circumvent the public
384 purchasing statutes. In addition to any other authorized person,
385 the architect or engineer hired by an agency or governing
386 authority with respect to any public construction contract shall
387 have the authority, when granted by an agency or governing
388 authority, to authorize changes or modifications to the original
389 contract without the necessity of prior approval of the agency or
390 governing authority when any such change or modification is less
391 than one percent (1%) of the total contract amount. The agency or
392 governing authority may limit the number, manner or frequency of
393 such emergency changes or modifications.



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

411 (i) **Road construction petroleum products price**
412 **adjustment clause authorization.** Any agency or governing
413 authority authorized to enter into contracts for the construction,
414 maintenance, surfacing or repair of highways, roads or streets,
415 may include in its bid proposal and contract documents a price
416 adjustment clause with relation to the cost to the contractor,
417 including taxes, based upon an industry-wide cost index, of
418 petroleum products including asphalt used in the performance or



419 execution of the contract or in the production or manufacture of
420 materials for use in such performance. Such industry-wide index
421 shall be established and published monthly by the Mississippi
422 Department of Transportation with a copy thereof to be mailed,
423 upon request, to the clerks of the governing authority of each
424 municipality and the clerks of each board of supervisors
425 throughout the state. The price adjustment clause shall be based
426 on the cost of such petroleum products only and shall not include
427 any additional profit or overhead as part of the adjustment. The
428 bid proposals or document contract shall contain the basis and
429 methods of adjusting unit prices for the change in the cost of
430 such petroleum products.

431 (j) **State agency emergency purchase procedure.** If the
432 governing board or the executive head, or his designees, of any
433 agency of the state shall determine that an emergency exists in
434 regard to the purchase of any commodities or repair contracts, so
435 that the delay incident to giving opportunity for competitive
436 bidding would be detrimental to the interests of the state, then
437 the head of such agency, or his designees, shall file with the
438 Department of Finance and Administration (i) a statement
439 explaining the conditions and circumstances of the emergency,
440 which shall include a detailed description of the events leading
441 up to the situation and the negative impact to the entity if the
442 purchase is made following the statutory requirements set forth in
443 paragraph (a), (b) or (c) of this section, and (ii) a certified



444 copy of the appropriate minutes of the board of such agency
445 requesting the emergency purchase, if applicable. Upon receipt of
446 the statement and applicable board certification, the State Fiscal
447 Officer, or his designees, may, in writing, authorize the purchase
448 or repair without having to comply with competitive bidding
449 requirements.

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

462 Total purchases made under this paragraph (j) shall only be
463 for the purpose of meeting needs created by the emergency
464 situation. Following the emergency purchase, documentation of the
465 purchase, including a description of the commodity purchased, the
466 purchase price thereof and the nature of the emergency shall be
467 filed with the Department of Finance and Administration. Any



468 contract awarded pursuant to this paragraph (j) shall not exceed a
469 term of one (1) year.

470 Purchases under the grant program established under Section
471 37-68-7 in response to COVID-19 and the directive that school
472 districts create a distance learning plan and fulfill technology
473 needs expeditiously shall be deemed an emergency purchase for
474 purposes of this paragraph (j).

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

476 If the governing authority, or the governing authority acting
477 through its designee, shall determine that an emergency exists in
478 regard to the purchase of any commodities or repair contracts, so
479 that the delay incident to giving opportunity for competitive
480 bidding would be detrimental to the interest of the governing
481 authority, then the provisions herein for competitive bidding
482 shall not apply and any officer or agent of such governing
483 authority having general or special authority therefor in making
484 such purchase or repair shall approve the bill presented therefor,
485 and he shall certify in writing thereon from whom such purchase
486 was made, or with whom such a repair contract was made. At the
487 board meeting next following the emergency purchase or repair
488 contract, documentation of the purchase or repair contract,
489 including a description of the commodity purchased, the price
490 thereof and the nature of the emergency shall be presented to the
491 board and shall be placed on the minutes of the board of such
492 governing authority. Purchases under the grant program



493 established under Section 37-68-7 in response to COVID-19 and the
494 directive that school districts create a distance learning plan
495 and fulfill technology needs expeditiously shall be deemed an
496 emergency purchase for purposes of this paragraph (k).

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

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

504 (ii) In addition to the authority granted in
505 subparagraph (i) of this paragraph (1), the commissioners or board
506 of trustees is authorized to enter into contracts for the lease of
507 equipment or services, or both, which it considers necessary for
508 the proper care of patients if, in its opinion, it is not
509 financially feasible to purchase the necessary equipment or
510 services. Any such contract for the lease of equipment or
511 services executed by the commissioners or board shall not exceed a
512 maximum of five (5) years' duration and shall include a
513 cancellation clause based on unavailability of funds. If such
514 cancellation clause is exercised, there shall be no further
515 liability on the part of the lessee. Any such contract for the
516 lease of equipment or services executed on behalf of the
517 commissioners or board that complies with the provisions of this



518 subparagraph (ii) shall be excepted from the bid requirements set
519 forth in this section.

520 (m) **Exceptions from bidding requirements.** Excepted
521 from bid requirements are:

522 (i) **Purchasing agreements approved by department.**

523 Purchasing agreements, contracts and maximum price regulations
524 executed or approved by the Department of Finance and
525 Administration.

526 (ii) **Outside equipment repairs.** Repairs to
527 equipment, when such repairs are made by repair facilities in the
528 private sector; however, engines, transmissions, rear axles and/or
529 other such components shall not be included in this exemption when
530 replaced as a complete unit instead of being repaired and the need
531 for such total component replacement is known before disassembly
532 of the component; however, invoices identifying the equipment,
533 specific repairs made, parts identified by number and name,
534 supplies used in such repairs, and the number of hours of labor
535 and costs therefor shall be required for the payment for such
536 repairs.

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



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

546 (v) **Governmental equipment auctions.** Motor
547 vehicles or other equipment purchased from a federal agency or
548 authority, another governing authority or state agency of the
549 State of Mississippi, or any governing authority or state agency
550 of another state at a public auction held for the purpose of
551 disposing of such vehicles or other equipment. Any purchase by a
552 governing authority under the exemption authorized by this
553 subparagraph (v) shall require advance authorization spread upon
554 the minutes of the governing authority to include the listing of
555 the item or items authorized to be purchased and the maximum bid
556 authorized to be paid for each item or items.

557 (vi) **Intergovernmental sales and transfers.**
558 Purchases, sales, transfers or trades by governing authorities or
559 state agencies when such purchases, sales, transfers or trades are
560 made by a private treaty agreement or through means of
561 negotiation, from any federal agency or authority, another
562 governing authority or state agency of the State of Mississippi,
563 or any state agency or governing authority of another state.
564 Nothing in this section shall permit such purchases through public
565 auction except as provided for in subparagraph (v) of this
566 paragraph (m). It is the intent of this section to allow
567 governmental entities to dispose of and/or purchase commodities



568 from other governmental entities at a price that is agreed to by
569 both parties. This shall allow for purchases and/or sales at
570 prices which may be determined to be below the market value if the
571 selling entity determines that the sale at below market value is
572 in the best interest of the taxpayers of the state. Governing
573 authorities shall place the terms of the agreement and any
574 justification on the minutes, and state agencies shall obtain
575 approval from the Department of Finance and Administration, prior
576 to releasing or taking possession of the commodities.

577 (vii) **Perishable supplies or food.** Perishable
578 supplies or food purchased for use in connection with hospitals,
579 the school lunch programs, homemaking programs and for the feeding
580 of county or municipal prisoners.

581 (viii) **Single-source items.** Noncompetitive items
582 available from one (1) source only. In connection with the
583 purchase of noncompetitive items only available from one (1)
584 source, a certification of the conditions and circumstances
585 requiring the purchase shall be filed by the agency with the
586 Department of Finance and Administration and by the governing
587 authority with the board of the governing authority. Upon receipt
588 of that certification the Department of Finance and Administration
589 or the board of the governing authority, as the case may be, may,
590 in writing, authorize the purchase, which authority shall be noted
591 on the minutes of the body at the next regular meeting thereafter.
592 In those situations, a governing authority is not required to



593 obtain the approval of the Department of Finance and
594 Administration. Following the purchase, the executive head of the
595 state agency, or his designees, shall file with the Department of
596 Finance and Administration, documentation of the purchase,
597 including a description of the commodity purchased, the purchase
598 price thereof and the source from whom it was purchased.

599 (ix) **Waste disposal facility construction**

600 **contracts.** Construction of incinerators and other facilities for
601 disposal of solid wastes in which products either generated
602 therein, such as steam, or recovered therefrom, such as materials
603 for recycling, are to be sold or otherwise disposed of; however,
604 in constructing such facilities, a governing authority or agency
605 shall publicly issue requests for proposals, advertised for in the
606 same manner as provided herein for seeking bids for public
607 construction projects, concerning the design, construction,
608 ownership, operation and/or maintenance of such facilities,
609 wherein such requests for proposals when issued shall contain
610 terms and conditions relating to price, financial responsibility,
611 technology, environmental compatibility, legal responsibilities
612 and such other matters as are determined by the governing
613 authority or agency to be appropriate for inclusion; and after
614 responses to the request for proposals have been duly received,
615 the governing authority or agency may select the most qualified
616 proposal or proposals on the basis of price, technology and other
617 relevant factors and from such proposals, but not limited to the



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

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

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

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

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

639 (xiv) **Library books and other reference materials.**
640 Purchases by libraries or for libraries of books and periodicals;
641 processed film, videocassette tapes, filmstrips and slides;
642 recorded audiotapes, cassettes and diskettes; and any such items



643 as would be used for teaching, research or other information
644 distribution; however, equipment such as projectors, recorders,
645 audio or video equipment, and monitor televisions are not exempt
646 under this subparagraph.

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

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

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

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



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

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

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

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

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



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

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

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

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

712 (xxviii) **Hospital lease of equipment or services.**
713 Leases by hospitals of equipment or services if the leases are in
714 compliance with paragraph (1)(ii).



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

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

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

736 (xxxii) **Toll roads and bridge construction**
737 **projects.** Contracts entered into under the provisions of Section
738 65-43-1 or 65-43-3.



739 (xxxiii) **Certain purchases under Section 57-1-221.**
740 Contracts entered into pursuant to the provisions of Section
741 57-1-221.

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

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

749 (xxxvi) **Certain purchases by an academic medical**
750 **center or health sciences school.** Purchases by an academic
751 medical center or health sciences school, as defined in Section
752 37-115-50, of commodities that are used for clinical purposes and
753 1. intended for use in the diagnosis of disease or other
754 conditions or in the cure, mitigation, treatment or prevention of
755 disease, and 2. medical devices, biological, drugs and
756 radiation-emitting devices as defined by the United States Food
757 and Drug Administration.

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

762 (n) **Term contract authorization.** All contracts for the
763 purchase of:



764 (i) All contracts for the purchase of commodities,
765 equipment and public construction (including, but not limited to,
766 repair and maintenance), may be let for periods of not more than
767 sixty (60) months in advance, subject to applicable statutory
768 provisions prohibiting the letting of contracts during specified
769 periods near the end of terms of office. Term contracts for a
770 period exceeding twenty-four (24) months shall also be subject to
771 ratification or cancellation by governing authority boards taking
772 office subsequent to the governing authority board entering the
773 contract.

774 (ii) Bid proposals and contracts may include price
775 adjustment clauses with relation to the cost to the contractor
776 based upon a nationally published industry-wide or nationally
777 published and recognized cost index. The cost index used in a
778 price adjustment clause shall be determined by the Department of
779 Finance and Administration for the state agencies and by the
780 governing board for governing authorities. The bid proposal and
781 contract documents utilizing a price adjustment clause shall
782 contain the basis and method of adjusting unit prices for the
783 change in the cost of such commodities, equipment and public
784 construction.

785 (o) **Purchase law violation prohibition and vendor**
786 **penalty.** No contract or purchase as herein authorized shall be
787 made for the purpose of circumventing the provisions of this
788 section requiring competitive bids, nor shall it be lawful for any



789 person or concern to submit individual invoices for amounts within
790 those authorized for a contract or purchase where the actual value
791 of the contract or commodity purchased exceeds the authorized
792 amount and the invoices therefor are split so as to appear to be
793 authorized as purchases for which competitive bids are not
794 required. Submission of such invoices shall constitute a
795 misdemeanor punishable by a fine of not less than Five Hundred
796 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
797 or by imprisonment for thirty (30) days in the county jail, or
798 both such fine and imprisonment. In addition, the claim or claims
799 submitted shall be forfeited.

800 (p) **Electrical utility petroleum-based equipment**
801 **purchase procedure.** When in response to a proper advertisement
802 therefor, no bid firm as to price is submitted to an electric
803 utility for power transformers, distribution transformers, power
804 breakers, reclosers or other articles containing a petroleum
805 product, the electric utility may accept the lowest and best bid
806 therefor although the price is not firm.

807 (q) **Fuel management system bidding procedure.** Any
808 governing authority or agency of the state shall, before
809 contracting for the services and products of a fuel management or
810 fuel access system, enter into negotiations with not fewer than
811 two (2) sellers of fuel management or fuel access systems for
812 competitive written bids to provide the services and products for
813 the systems. In the event that the governing authority or agency



814 cannot locate two (2) sellers of such systems or cannot obtain
815 bids from two (2) sellers of such systems, it shall show proof
816 that it made a diligent, good-faith effort to locate and negotiate
817 with two (2) sellers of such systems. Such proof shall include,
818 but not be limited to, publications of a request for proposals and
819 letters soliciting negotiations and bids. For purposes of this
820 paragraph (q), a fuel management or fuel access system is an
821 automated system of acquiring fuel for vehicles as well as
822 management reports detailing fuel use by vehicles and drivers, and
823 the term "competitive written bid" shall have the meaning as
824 defined in paragraph (b) of this section. Governing authorities
825 and agencies shall be exempt from this process when contracting
826 for the services and products of fuel management or fuel access
827 systems under the terms of a state contract established by the
828 Office of Purchasing and Travel.

829 (r) **Solid waste contract proposal procedure.** Before
830 entering into any contract for garbage collection or disposal,
831 contract for solid waste collection or disposal or contract for
832 sewage collection or disposal, which involves an expenditure of
833 more than Fifty Thousand Dollars (\$50,000.00), a governing
834 authority or agency shall issue publicly a request for proposals
835 concerning the specifications for such services which shall be
836 advertised for in the same manner as provided in this section for
837 seeking bids for purchases which involve an expenditure of more
838 than the amount provided in paragraph (c) of this section. Any



839 request for proposals when issued shall contain terms and
840 conditions relating to price, financial responsibility,
841 technology, legal responsibilities and other relevant factors as
842 are determined by the governing authority or agency to be
843 appropriate for inclusion; all factors determined relevant by the
844 governing authority or agency or required by this paragraph (r)
845 shall be duly included in the advertisement to elicit proposals.
846 After responses to the request for proposals have been duly
847 received, the governing authority or agency shall select the most
848 qualified proposal or proposals on the basis of price, technology
849 and other relevant factors and from such proposals, but not
850 limited to the terms thereof, negotiate and enter into contracts
851 with one or more of the persons or firms submitting proposals. If
852 the governing authority or agency deems none of the proposals to
853 be qualified or otherwise acceptable, the request for proposals
854 process may be reinitiated. Notwithstanding any other provisions
855 of this paragraph, where a county with at least thirty-five
856 thousand (35,000) nor more than forty thousand (40,000)
857 population, according to the 1990 federal decennial census, owns
858 or operates a solid waste landfill, the governing authorities of
859 any other county or municipality may contract with the governing
860 authorities of the county owning or operating the landfill,
861 pursuant to a resolution duly adopted and spread upon the minutes
862 of each governing authority involved, for garbage or solid waste
863 collection or disposal services through contract negotiations.



864 (s) **Minority set-aside authorization.** Notwithstanding
865 any provision of this section to the contrary, any agency or
866 governing authority, by order placed on its minutes, may, in its
867 discretion, set aside not more than twenty percent (20%) of its
868 anticipated annual expenditures for the purchase of commodities
869 from minority businesses; however, all such set-aside purchases
870 shall comply with all purchasing regulations promulgated by the
871 Department of Finance and Administration and shall be subject to
872 bid requirements under this section. Set-aside purchases for
873 which competitive bids are required shall be made from the lowest
874 and best minority business bidder. For the purposes of this
875 paragraph, the term "minority business" means a business which is
876 owned by a majority of persons who are United States citizens or
877 permanent resident aliens (as defined by the Immigration and
878 Naturalization Service) of the United States, and who are Asian,
879 Black, Hispanic or Native American, according to the following
880 definitions:

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

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

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



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

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

900 (u) **Procurement of construction services by state**
901 **institutions of higher learning.** Contracts for privately financed
902 construction of auxiliary facilities on the campus of a state
903 institution of higher learning may be awarded by the Board of
904 Trustees of State Institutions of Higher Learning to the lowest
905 and best bidder, where sealed bids are solicited, or to the
906 offeror whose proposal is determined to represent the best value
907 to the citizens of the State of Mississippi, where requests for
908 proposals are solicited.

909 (v) **Insurability of bidders for public construction or**
910 **other public contracts.** In any solicitation for bids to perform
911 public construction or other public contracts to which this
912 section applies, including, but not limited to, contracts for
913 repair and maintenance, for which the contract will require



914 insurance coverage in an amount of not less than One Million
915 Dollars (\$1,000,000.00), bidders shall be permitted to either
916 submit proof of current insurance coverage in the specified amount
917 or demonstrate ability to obtain the required coverage amount of
918 insurance if the contract is awarded to the bidder. Proof of
919 insurance coverage shall be submitted within five (5) business
920 days from bid acceptance.

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

924 **SECTION 2.** This act shall take effect and be in force from
925 and after July 1, 2022.

