

By: Representative Ford (54th)

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 1421

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
 2 REVISE THE PUBLIC PURCHASING LAW TO PROVIDE THAT PURCHASES WHICH
 3 DO NOT INVOLVE AN EXPENDITURE OF MORE THAN \$10,000.00 MAY BE MADE
 4 WITHOUT ADVERTISING OR OTHERWISE REQUESTING COMPETITIVE BIDS; TO
 5 REVISE THE REVERSE AUCTION METHOD FOR RECEIVING BIDS TO
 6 DIFFERENTIATE BETWEEN AGENCIES AND GOVERNING AUTHORITIES; TO
 7 PROVIDE THAT IF AN AGENCY DETERMINES THAT A REVERSE AUCTION IS NOT
 8 IN THE BEST INTEREST OF THE AGENCY, THEN THAT DETERMINATION MUST
 9 BE APPROVED BY THE PUBLIC PROCUREMENT REVIEW BOARD; TO PROVIDE
 10 THAT IF A GOVERNING AUTHORITY DETERMINES THAT A REVERSE AUCTION IS
 11 NOT IN THE BEST INTEREST OF THE GOVERNING AUTHORITY, THEN THAT
 12 DETERMINATION MUST BE APPROVED BY THE GOVERNING BOARD OF THE
 13 GOVERNING AUTHORITY; TO PROVIDE THAT THE AGENCY AND GOVERNING
 14 AUTHORITY MUST SUBMIT AN EXPLANATION AS TO WHY A REVERSE AUCTION
 15 IS NOT IN THE BEST INTEREST OF THE AGENCY OR GOVERNING AUTHORITY;
 16 TO AMEND SECTIONS 31-3-1, 31-5-37 AND 31-5-51, MISSISSIPPI CODE OF
 17 1972, TO CONFORM; TO AMEND SECTION 31-7-103, MISSISSIPPI CODE OF
 18 1972, TO INCREASE THE COMPETITIVE PURCHASING THRESHOLD FOR CERTAIN
 19 COUNTY PURCHASES; TO BRING FORWARD SECTION 31-7-119, MISSISSIPPI
 20 CODE OF 1972, FOR THE PURPOSE OF POSSIBLE AMENDMENT; AND FOR
 21 RELATED PURPOSES.

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

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

25 31-7-13. All agencies and governing authorities shall
 26 purchase their commodities and printing; contract for garbage
 27 collection or disposal; contract for solid waste collection or



28 disposal; contract for sewage collection or disposal; contract for
29 public construction; and contract for rentals as herein provided.

30 (a) **Bidding procedure for purchases not over * * ***
31 **\$10,000.00**. Purchases which do not involve an expenditure of more
32 than * * * Ten Thousand Dollars (\$10,000.00), exclusive of freight
33 or shipping charges, may be made without advertising or otherwise
34 requesting competitive bids. However, nothing contained in this
35 paragraph (a) shall be construed to prohibit any agency or
36 governing authority from establishing procedures which require
37 competitive bids on purchases of * * * Ten Thousand Dollars
38 (\$10,000.00) or less.

39 (b) **Bidding procedure for purchases over * * ***
40 **\$10,000.00 but not over \$75,000.00**. Purchases which involve an
41 expenditure of more than * * * Ten Thousand Dollars (\$10,000.00)
42 but not more than Seventy-five Thousand Dollars (\$75,000.00),
43 exclusive of freight and shipping charges, may be made from the
44 lowest and best bidder without publishing or posting advertisement
45 for bids, provided at least two (2) competitive written bids have
46 been obtained. Any state agency or community or junior college
47 purchasing commodities or procuring construction pursuant to this
48 paragraph (b) may authorize its purchasing agent, or his designee,
49 to accept the lowest competitive written bid under Seventy-five
50 Thousand Dollars (\$75,000.00). Any governing authority purchasing
51 commodities pursuant to this paragraph (b) may authorize its
52 purchasing agent, or his designee, with regard to governing



53 authorities other than counties, or its purchase clerk, or his
54 designee, with regard to counties, to accept the lowest and best
55 competitive written bid. Such authorization shall be made in
56 writing by the governing authority and shall be maintained on file
57 in the primary office of the agency and recorded in the official
58 minutes of the governing authority, as appropriate. The
59 purchasing agent or the purchase clerk, or his designee, as the
60 case may be, and not the governing authority, shall be liable for
61 any penalties and/or damages as may be imposed by law for any act
62 or omission of the purchasing agent or purchase clerk, or his
63 designee, constituting a violation of law in accepting any bid
64 without approval by the governing authority. The term
65 "competitive written bid" shall mean a bid submitted on a bid form
66 furnished by the buying agency or governing authority and signed
67 by authorized personnel representing the vendor, or a bid
68 submitted on a vendor's letterhead or identifiable bid form and
69 signed by authorized personnel representing the vendor.
70 "Competitive" shall mean that the bids are developed based upon
71 comparable identification of the needs and are developed
72 independently and without knowledge of other bids or prospective
73 bids. Any bid item for construction in excess of * * * Ten
74 Thousand Dollars (\$10,000.00) shall be broken down by components
75 to provide detail of component description and pricing. These
76 details shall be submitted with the written bids and become part
77 of the bid evaluation criteria. Bids may be submitted by



78 facsimile, electronic mail or other generally accepted method of
79 information distribution. Bids submitted by electronic
80 transmission shall not require the signature of the vendor's
81 representative unless required by agencies or governing
82 authorities.

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

84 (i) **Publication requirement.**

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

97 2. Reverse auctions shall be the primary
98 method for receiving bids during the bidding process. If * * * an
99 agency or governing authority determines that a reverse auction is
100 not in the best interest of the * * * agency or governing
101 authority, then with respect to the agency, that determination
102 must be approved by the Public Procurement Review Board, and with



103 respect to the governing authority, that determination must be
104 approved by the governing body of the governing authority. * * *
105 An agency shall submit a detailed explanation of why a reverse
106 auction would not be in the best interest of the * * * agency and
107 present an alternative process to be approved by the Public
108 Procurement Review Board. A governing authority shall make
109 findings in its minutes of why a reverse auction would not be in
110 the best interest of the governing authority. If as to an agency,
111 the Public Procurement Review Board authorizes the purchasing
112 entity to solicit bids with a method other than reverse auction,
113 or if as to a governing authority, the governing board thereof
114 authorizes the purchasing entity to solicit bids with a method
115 other than reverse auction, then the purchasing entity may
116 designate the other methods by which the bids will be received,
117 including, but not limited to, bids sealed in an envelope, bids
118 received electronically in a secure system, or bids received by
119 any other method that promotes open competition and has been
120 approved by the Office of Purchasing and Travel. However, reverse
121 auction shall not be used for any public contract for design,
122 construction, improvement, repair or remodeling of any public
123 facilities, including the purchase of materials, supplies,
124 equipment or goods for same and including buildings, roads and
125 bridges. As to an agency, the Public Procurement Review Board
126 must approve any contract entered into by alternative process.
127 The provisions of this item 2 shall not apply to the individual



128 state institutions of higher learning. The provisions of this
129 item 2 requiring reverse auction as the primary method of
130 receiving bids shall not apply to term contract purchases as
131 provided in paragraph (n) of this section; however, a purchasing
132 entity may, in its discretion, utilize reverse auction for such
133 purchases. The provisions of this item 2 shall not apply to
134 individual public schools, including public charter schools and
135 public school districts, only when purchasing copyrighted
136 educational supplemental materials and software as a service
137 product. For such purchases, a local school board may authorize a
138 purchasing entity in its jurisdiction to use a Request for
139 Qualifications which promotes open competition and meets the
140 requirements of the Office of Purchasing and Travel.

141 3. The date as published for the bid opening
142 shall not be less than seven (7) working days after the last
143 published notice; however, if the purchase involves a construction
144 project in which the estimated cost is in excess of Seventy-five
145 Thousand Dollars (\$75,000.00), such bids shall not be opened in
146 less than fifteen (15) working days after the last notice is
147 published and the notice for the purchase of such construction
148 shall be published once each week for two (2) consecutive weeks.
149 However, all American Recovery and Reinvestment Act projects in
150 excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid.
151 For any projects in excess of Twenty-five Thousand Dollars
152 (\$25,000.00) under the American Recovery and Reinvestment Act,



153 publication shall be made one (1) time and the bid opening for
154 construction projects shall not be less than ten (10) working days
155 after the date of the published notice. The notice of intention
156 to let contracts or purchase equipment shall state the time and
157 place at which bids shall be received, list the contracts to be
158 made or types of equipment or supplies to be purchased, and, if
159 all plans and/or specifications are not published, refer to the
160 plans and/or specifications on file. If there is no newspaper
161 published in the county or municipality, then such notice shall be
162 given by posting same at the courthouse, or for municipalities at
163 the city hall, and at two (2) other public places in the county or
164 municipality, and also by publication once each week for two (2)
165 consecutive weeks in some newspaper having a general circulation
166 in the county or municipality in the above-provided manner. On
167 the same date that the notice is submitted to the newspaper for
168 publication, the agency or governing authority involved shall mail
169 written notice to, or provide electronic notification to the main
170 office of the Mississippi Procurement Technical Assistance Program
171 under the Mississippi Development Authority that contains the same
172 information as that in the published notice. Submissions received
173 by the Mississippi Procurement Technical Assistance Program for
174 projects funded by the American Recovery and Reinvestment Act
175 shall be displayed on a separate and unique Internet web page
176 accessible to the public and maintained by the Mississippi
177 Development Authority for the Mississippi Procurement Technical



178 Assistance Program. Those American Recovery and Reinvestment Act
179 related submissions shall be publicly posted within twenty-four
180 (24) hours of receipt by the Mississippi Development Authority and
181 the bid opening shall not occur until the submission has been
182 posted for ten (10) consecutive days. The Department of Finance
183 and Administration shall maintain information regarding contracts
184 and other expenditures from the American Recovery and Reinvestment
185 Act, on a unique Internet web page accessible to the public. The
186 Department of Finance and Administration shall promulgate rules
187 regarding format, content and deadlines, unless otherwise
188 specified by law, of the posting of award notices, contract
189 execution and subsequent amendments, links to the contract
190 documents, expenditures against the awarded contracts and general
191 expenditures of funds from the American Recovery and Reinvestment
192 Act. Within one (1) working day of the contract award, the agency
193 or governing authority shall post to the designated web page
194 maintained by the Department of Finance and Administration, notice
195 of the award, including the award recipient, the contract amount,
196 and a brief summary of the contract in accordance with rules
197 promulgated by the department. Within one (1) working day of the
198 contract execution, the agency or governing authority shall post
199 to the designated web page maintained by the Department of Finance
200 and Administration a summary of the executed contract and make a
201 copy of the appropriately redacted contract documents available
202 for linking to the designated web page in accordance with the



203 rules promulgated by the department. The information provided by
204 the agency or governing authority shall be posted to the web page
205 for the duration of the American Recovery and Reinvestment Act
206 funding or until the project is completed, whichever is longer.

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

223 (iii) **Filing requirement.** In all cases involving
224 governing authorities, before the notice shall be published or
225 posted, the plans or specifications for the construction or
226 equipment being sought shall be filed with the clerk of the board
227 of the governing authority. In addition to these requirements, a



228 bid file shall be established which shall indicate those vendors
229 to whom such solicitations and specifications were issued, and
230 such file shall also contain such information as is pertinent to
231 the bid.

232 (iv) **Specification restrictions.**

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

249 2. Specifications for construction projects
250 may include an allowance for commodities, equipment, furniture,
251 construction materials or systems in which prospective bidders are
252 instructed to include in their bids specified amounts for such



253 items so long as the allowance items are acquired by the vendor in
254 a commercially reasonable manner and approved by the
255 agency/governing authority. Such acquisitions shall not be made
256 to circumvent the public purchasing laws.

257 (v) **Electronic bids.** Agencies and governing
258 authorities shall provide a secure electronic interactive system
259 for the submittal of bids requiring competitive bidding that shall
260 be an additional bidding option for those bidders who choose to
261 submit their bids electronically. The Department of Finance and
262 Administration shall provide, by regulation, the standards that
263 agencies must follow when receiving electronic bids. Agencies and
264 governing authorities shall make the appropriate provisions
265 necessary to accept electronic bids from those bidders who choose
266 to submit their bids electronically for all purchases requiring
267 competitive bidding under this section. Any special condition or
268 requirement for the electronic bid submission shall be specified
269 in the advertisement for bids required by this section. Agencies
270 or governing authorities that are currently without available high
271 speed Internet access shall be exempt from the requirement of this
272 subparagraph (v) until such time that high speed Internet access
273 becomes available. Any county having a population of less than
274 twenty thousand (20,000) shall be exempt from the provisions of
275 this subparagraph (v). Any municipality having a population of
276 less than ten thousand (10,000) shall be exempt from the
277 provisions of this subparagraph (v). The provisions of this



278 subparagraph (v) shall not require any bidder to submit bids
279 electronically. When construction bids are submitted
280 electronically, the requirement for including a certificate of
281 responsibility, or a statement that the bid enclosed does not
282 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
283 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
284 deemed in compliance with by including same as an attachment with
285 the electronic bid submittal.

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

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



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

320 (iii) **Decision procedure for Mississippi**
321 **Landmarks.** In addition to the decision procedure set forth in
322 subparagraph (i) of this paragraph (d), where purchase involves
323 renovation, restoration, or both, of the State Capitol Building or
324 any other historical building designated for at least five (5)
325 years as a Mississippi Landmark by the Board of Trustees of the
326 Department of Archives and History under the authority of Sections



327 39-7-7 and 39-7-11, the agency or governing authority may use the
328 following procedure: Purchases may be made from the lowest and
329 best prequalified bidder. Prequalification of bidders shall be
330 determined not less than fifteen (15) working days before the
331 first published notice of bid opening. Prequalification criteria
332 shall be limited to bidder's knowledge and experience in
333 historical restoration, preservation and renovation. In
334 determining the lowest and best bid, freight and shipping charges
335 shall be included. Life-cycle costing, total cost bids,
336 warranties, guaranteed buy-back provisions and other relevant
337 provisions may be included in the best bid calculation. All best
338 bid and prequalification procedures for state agencies must be in
339 compliance with regulations established by the Department of
340 Finance and Administration. If any governing authority accepts a
341 bid other than the lowest bid actually submitted, it shall place
342 on its minutes detailed calculations and narrative summary showing
343 that the accepted bid was determined to be the lowest and best
344 bid, including the dollar amount of the accepted bid and the
345 dollar amount of the lowest bid. No agency or governing authority
346 shall accept a bid based on items not included in the
347 specifications.

348 (iv) **Construction project negotiations authority.**
349 If the lowest and best bid is not more than ten percent (10%)
350 above the amount of funds allocated for a public construction or
351 renovation project, then the agency or governing authority shall



352 be permitted to negotiate with the lowest bidder in order to enter
353 into a contract for an amount not to exceed the funds allocated.

354 (e) **Lease-purchase authorization.** For the purposes of
355 this section, the term "equipment" shall mean equipment, furniture
356 and, if applicable, associated software and other applicable
357 direct costs associated with the acquisition. Any lease-purchase
358 of equipment which an agency is not required to lease-purchase
359 under the master lease-purchase program pursuant to Section
360 31-7-10 and any lease-purchase of equipment which a governing
361 authority elects to lease-purchase may be acquired by a
362 lease-purchase agreement under this paragraph (e). Lease-purchase
363 financing may also be obtained from the vendor or from a
364 third-party source after having solicited and obtained at least
365 two (2) written competitive bids, as defined in paragraph (b) of
366 this section, for such financing without advertising for such
367 bids. Solicitation for the bids for financing may occur before or
368 after acceptance of bids for the purchase of such equipment or,
369 where no such bids for purchase are required, at any time before
370 the purchase thereof. No such lease-purchase agreement shall be
371 for an annual rate of interest which is greater than the overall
372 maximum interest rate to maturity on general obligation
373 indebtedness permitted under Section 75-17-101, and the term of
374 such lease-purchase agreement shall not exceed the useful life of
375 equipment covered thereby as determined according to the upper
376 limit of the asset depreciation range (ADR) guidelines for the



377 Class Life Asset Depreciation Range System established by the
378 Internal Revenue Service pursuant to the United States Internal
379 Revenue Code and regulations thereunder as in effect on December
380 31, 1980, or comparable depreciation guidelines with respect to
381 any equipment not covered by ADR guidelines. Any lease-purchase
382 agreement entered into pursuant to this paragraph (e) may contain
383 any of the terms and conditions which a master lease-purchase
384 agreement may contain under the provisions of Section 31-7-10(5),
385 and shall contain an annual allocation dependency clause
386 substantially similar to that set forth in Section 31-7-10(8).
387 Each agency or governing authority entering into a lease-purchase
388 transaction pursuant to this paragraph (e) shall maintain with
389 respect to each such lease-purchase transaction the same
390 information as required to be maintained by the Department of
391 Finance and Administration pursuant to Section 31-7-10(13).
392 However, nothing contained in this section shall be construed to
393 permit agencies to acquire items of equipment with a total
394 acquisition cost in the aggregate of less than Ten Thousand
395 Dollars (\$10,000.00) by a single lease-purchase transaction. All
396 equipment, and the purchase thereof by any lessor, acquired by
397 lease-purchase under this paragraph and all lease-purchase
398 payments with respect thereto shall be exempt from all Mississippi
399 sales, use and ad valorem taxes. Interest paid on any
400 lease-purchase agreement under this section shall be exempt from
401 State of Mississippi income taxation.



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

411 (g) **Construction contract change authorization.** In the
412 event a determination is made by an agency or governing authority
413 after a construction contract is let that changes or modifications
414 to the original contract are necessary or would better serve the
415 purpose of the agency or the governing authority, such agency or
416 governing authority may, in its discretion, order such changes
417 pertaining to the construction that are necessary under the
418 circumstances without the necessity of further public bids;
419 provided that such change shall be made in a commercially
420 reasonable manner and shall not be made to circumvent the public
421 purchasing statutes. In addition to any other authorized person,
422 the architect or engineer hired by an agency or governing
423 authority with respect to any public construction contract shall
424 have the authority, when granted by an agency or governing
425 authority, to authorize changes or modifications to the original
426 contract without the necessity of prior approval of the agency or



427 governing authority when any such change or modification is less
428 than one percent (1%) of the total contract amount. The agency or
429 governing authority may limit the number, manner or frequency of
430 such emergency changes or modifications.

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

448 (i) **Road construction petroleum products price**
449 **adjustment clause authorization.** Any agency or governing
450 authority authorized to enter into contracts for the construction,
451 maintenance, surfacing or repair of highways, roads or streets,



452 may include in its bid proposal and contract documents a price
453 adjustment clause with relation to the cost to the contractor,
454 including taxes, based upon an industry-wide cost index, of
455 petroleum products including asphalt used in the performance or
456 execution of the contract or in the production or manufacture of
457 materials for use in such performance. Such industry-wide index
458 shall be established and published monthly by the Mississippi
459 Department of Transportation with a copy thereof to be mailed,
460 upon request, to the clerks of the governing authority of each
461 municipality and the clerks of each board of supervisors
462 throughout the state. The price adjustment clause shall be based
463 on the cost of such petroleum products only and shall not include
464 any additional profit or overhead as part of the adjustment. The
465 bid proposals or document contract shall contain the basis and
466 methods of adjusting unit prices for the change in the cost of
467 such petroleum products.

468 (j) **State agency emergency purchase procedure.** If the
469 governing board or the executive head, or his designees, of any
470 agency of the state shall determine that an emergency exists in
471 regard to the purchase of any commodities or repair contracts, so
472 that the delay incident to giving opportunity for competitive
473 bidding would be detrimental to the interests of the state, then
474 the head of such agency, or his designees, shall file with the
475 Department of Finance and Administration (i) a statement
476 explaining the conditions and circumstances of the emergency,



477 which shall include a detailed description of the events leading
478 up to the situation and the negative impact to the entity if the
479 purchase is made following the statutory requirements set forth in
480 paragraph (a), (b) or (c) of this section, and (ii) a certified
481 copy of the appropriate minutes of the board of such agency
482 requesting the emergency purchase, if applicable. Upon receipt of
483 the statement and applicable board certification, the State Fiscal
484 Officer, or his designees, may, in writing, authorize the purchase
485 or repair without having to comply with competitive bidding
486 requirements.

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

499 Total purchases made under this paragraph (j) shall only be
500 for the purpose of meeting needs created by the emergency
501 situation. Following the emergency purchase, documentation of the



502 purchase, including a description of the commodity purchased, the
503 purchase price thereof and the nature of the emergency shall be
504 filed with the Department of Finance and Administration. Any
505 contract awarded pursuant to this paragraph (j) shall not exceed a
506 term of one (1) year.

507 Purchases under the grant program established under Section
508 37-68-7 in response to COVID-19 and the directive that school
509 districts create a distance learning plan and fulfill technology
510 needs expeditiously shall be deemed an emergency purchase for
511 purposes of this paragraph (j).

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

513 If the governing authority, or the governing authority acting
514 through its designee, shall determine that an emergency exists in
515 regard to the purchase of any commodities or repair contracts, so
516 that the delay incident to giving opportunity for competitive
517 bidding would be detrimental to the interest of the governing
518 authority, then the provisions herein for competitive bidding
519 shall not apply and any officer or agent of such governing
520 authority having general or special authority therefor in making
521 such purchase or repair shall approve the bill presented therefor,
522 and he shall certify in writing thereon from whom such purchase
523 was made, or with whom such a repair contract was made. At the
524 board meeting next following the emergency purchase or repair
525 contract, documentation of the purchase or repair contract,
526 including a description of the commodity purchased, the price



527 thereof and the nature of the emergency shall be presented to the
528 board and shall be placed on the minutes of the board of such
529 governing authority. Purchases under the grant program
530 established under Section 37-68-7 in response to COVID-19 and the
531 directive that school districts create a distance learning plan
532 and fulfill technology needs expeditiously shall be deemed an
533 emergency purchase for purposes of this paragraph (k).

534 (1) **Hospital purchase, lease-purchase and lease**
535 **authorization.**

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

541 (ii) In addition to the authority granted in
542 subparagraph (i) of this paragraph (1), the commissioners or board
543 of trustees is authorized to enter into contracts for the lease of
544 equipment or services, or both, which it considers necessary for
545 the proper care of patients if, in its opinion, it is not
546 financially feasible to purchase the necessary equipment or
547 services. Any such contract for the lease of equipment or
548 services executed by the commissioners or board shall not exceed a
549 maximum of five (5) years' duration and shall include a
550 cancellation clause based on unavailability of funds. If such
551 cancellation clause is exercised, there shall be no further



552 liability on the part of the lessee. Any such contract for the
553 lease of equipment or services executed on behalf of the
554 commissioners or board that complies with the provisions of this
555 subparagraph (ii) shall be excepted from the bid requirements set
556 forth in this section.

557 (m) **Exceptions from bidding requirements.** Excepted
558 from bid requirements are:

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

560 Purchasing agreements, contracts and maximum price regulations
561 executed or approved by the Department of Finance and
562 Administration.

563 (ii) **Outside equipment repairs.** Repairs to
564 equipment, when such repairs are made by repair facilities in the
565 private sector; however, engines, transmissions, rear axles and/or
566 other such components shall not be included in this exemption when
567 replaced as a complete unit instead of being repaired and the need
568 for such total component replacement is known before disassembly
569 of the component; however, invoices identifying the equipment,
570 specific repairs made, parts identified by number and name,
571 supplies used in such repairs, and the number of hours of labor
572 and costs therefor shall be required for the payment for such
573 repairs.

574 (iii) **In-house equipment repairs.** Purchases of
575 parts for repairs to equipment, when such repairs are made by
576 personnel of the agency or governing authority; however, entire



577 assemblies, such as engines or transmissions, shall not be
578 included in this exemption when the entire assembly is being
579 replaced instead of being repaired.

580 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
581 of gravel or fill dirt which are to be removed and transported by
582 the purchaser.

583 (v) **Governmental equipment auctions.** Motor
584 vehicles or other equipment purchased from a federal agency or
585 authority, another governing authority or state agency of the
586 State of Mississippi, or any governing authority or state agency
587 of another state at a public auction held for the purpose of
588 disposing of such vehicles or other equipment. Any purchase by a
589 governing authority under the exemption authorized by this
590 subparagraph (v) shall require advance authorization spread upon
591 the minutes of the governing authority to include the listing of
592 the item or items authorized to be purchased and the maximum bid
593 authorized to be paid for each item or items.

594 (vi) **Intergovernmental sales and transfers.**
595 Purchases, sales, transfers or trades by governing authorities or
596 state agencies when such purchases, sales, transfers or trades are
597 made by a private treaty agreement or through means of
598 negotiation, from any federal agency or authority, another
599 governing authority or state agency of the State of Mississippi,
600 or any state agency or governing authority of another state.
601 Nothing in this section shall permit such purchases through public



602 auction except as provided for in subparagraph (v) of this
603 paragraph (m). It is the intent of this section to allow
604 governmental entities to dispose of and/or purchase commodities
605 from other governmental entities at a price that is agreed to by
606 both parties. This shall allow for purchases and/or sales at
607 prices which may be determined to be below the market value if the
608 selling entity determines that the sale at below market value is
609 in the best interest of the taxpayers of the state. Governing
610 authorities shall place the terms of the agreement and any
611 justification on the minutes, and state agencies shall obtain
612 approval from the Department of Finance and Administration, prior
613 to releasing or taking possession of the commodities.

614 (vii) **Perishable supplies or food.** Perishable
615 supplies or food purchased for use in connection with hospitals,
616 the school lunch programs, homemaking programs and for the feeding
617 of county or municipal prisoners.

618 (viii) **Single-source items.** Noncompetitive items
619 available from one (1) source only. In connection with the
620 purchase of noncompetitive items only available from one (1)
621 source, a certification of the conditions and circumstances
622 requiring the purchase shall be filed by the agency with the
623 Department of Finance and Administration and by the governing
624 authority with the board of the governing authority. Upon receipt
625 of that certification the Department of Finance and Administration
626 or the board of the governing authority, as the case may be, may,



627 in writing, authorize the purchase, which authority shall be noted
628 on the minutes of the body at the next regular meeting thereafter.
629 In those situations, a governing authority is not required to
630 obtain the approval of the Department of Finance and
631 Administration. Following the purchase, the executive head of the
632 state agency, or his designees, shall file with the Department of
633 Finance and Administration, documentation of the purchase,
634 including a description of the commodity purchased, the purchase
635 price thereof and the source from whom it was purchased.

636 (ix) **Waste disposal facility construction**
637 **contracts.** Construction of incinerators and other facilities for
638 disposal of solid wastes in which products either generated
639 therein, such as steam, or recovered therefrom, such as materials
640 for recycling, are to be sold or otherwise disposed of; however,
641 in constructing such facilities, a governing authority or agency
642 shall publicly issue requests for proposals, advertised for in the
643 same manner as provided herein for seeking bids for public
644 construction projects, concerning the design, construction,
645 ownership, operation and/or maintenance of such facilities,
646 wherein such requests for proposals when issued shall contain
647 terms and conditions relating to price, financial responsibility,
648 technology, environmental compatibility, legal responsibilities
649 and such other matters as are determined by the governing
650 authority or agency to be appropriate for inclusion; and after
651 responses to the request for proposals have been duly received,



652 the governing authority or agency may select the most qualified
653 proposal or proposals on the basis of price, technology and other
654 relevant factors and from such proposals, but not limited to the
655 terms thereof, negotiate and enter contracts with one or more of
656 the persons or firms submitting proposals.

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

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

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

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



676 (xiv) **Library books and other reference materials.**
677 Purchases by libraries or for libraries of books and periodicals;
678 processed film, videocassette tapes, filmstrips and slides;
679 recorded audiotapes, cassettes and diskettes; and any such items
680 as would be used for teaching, research or other information
681 distribution; however, equipment such as projectors, recorders,
682 audio or video equipment, and monitor televisions are not exempt
683 under this subparagraph.

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

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

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

698 (xviii) **Purchases of prison industry products by**
699 **the Department of Corrections, regional correctional facilities or**
700 **privately owned prisons.** Purchases made by the Mississippi



701 Department of Corrections, regional correctional facilities or
702 privately owned prisons involving any item that is manufactured,
703 processed, grown or produced from the state's prison industries.

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

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

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

718 (xxii) **Garbage, solid waste and sewage contracts.**
719 Contracts for garbage collection or disposal, contracts for solid
720 waste collection or disposal and contracts for sewage collection
721 or disposal.

722 (xxiii) **Municipal water tank maintenance**
723 **contracts.** Professional maintenance program contracts for the
724 repair or maintenance of municipal water tanks, which provide
725 professional services needed to maintain municipal water storage



726 tanks for a fixed annual fee for a duration of two (2) or more
727 years.

728 (xxiv) **Purchases of Mississippi Industries for the**
729 **Blind products or services.** Purchases made by state agencies or
730 governing authorities involving any item that is manufactured,
731 processed or produced by, or any services provided by, the
732 Mississippi Industries for the Blind.

733 (xxv) **Purchases of state-adopted textbooks.**
734 Purchases of state-adopted textbooks by public school districts.

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

738 (xxvii) **Used heavy or specialized machinery or**
739 **equipment for installation of soil and water conservation**
740 **practices purchased at auction.** Used heavy or specialized
741 machinery or equipment used for the installation and
742 implementation of soil and water conservation practices or
743 measures purchased subject to the restrictions provided in
744 Sections 69-27-331 through 69-27-341. Any purchase by the State
745 Soil and Water Conservation Commission under the exemption
746 authorized by this subparagraph shall require advance
747 authorization spread upon the minutes of the commission to include
748 the listing of the item or items authorized to be purchased and
749 the maximum bid authorized to be paid for each item or items.



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

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

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

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



773 (xxxii) **Toll roads and bridge construction**
774 **projects.** Contracts entered into under the provisions of Section
775 65-43-1 or 65-43-3.

776 (xxxiii) **Certain purchases under Section 57-1-221.**
777 Contracts entered into pursuant to the provisions of Section
778 57-1-221.

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

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

786 (xxxvi) **Certain purchases by an academic medical**
787 **center or health sciences school.** Purchases by an academic
788 medical center or health sciences school, as defined in Section
789 37-115-50, of commodities that are used for clinical purposes and
790 1. intended for use in the diagnosis of disease or other
791 conditions or in the cure, mitigation, treatment or prevention of
792 disease, and 2. medical devices, biological, drugs and
793 radiation-emitting devices as defined by the United States Food
794 and Drug Administration.

795 (xxxvii) **Certain purchases made under the Alyce G.**
796 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi



797 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
798 Lottery Law.

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

805 (n) **Term contract authorization.** All contracts for the
806 purchase of:

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

817 (ii) Bid proposals and contracts may include price
818 adjustment clauses with relation to the cost to the contractor
819 based upon a nationally published industry-wide or nationally
820 published and recognized cost index. The cost index used in a
821 price adjustment clause shall be determined by the Department of



822 Finance and Administration for the state agencies and by the
823 governing board for governing authorities. The bid proposal and
824 contract documents utilizing a price adjustment clause shall
825 contain the basis and method of adjusting unit prices for the
826 change in the cost of such commodities, equipment and public
827 construction.

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

843 (p) **Electrical utility petroleum-based equipment**
844 **purchase procedure.** When in response to a proper advertisement
845 therefor, no bid firm as to price is submitted to an electric
846 utility for power transformers, distribution transformers, power



847 breakers, reclosers or other articles containing a petroleum
848 product, the electric utility may accept the lowest and best bid
849 therefor although the price is not firm.

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



872 (r) **Solid waste contract proposal procedure.** Before
873 entering into any contract for garbage collection or disposal,
874 contract for solid waste collection or disposal or contract for
875 sewage collection or disposal, which involves an expenditure of
876 more than Seventy-five Thousand Dollars (\$75,000.00), a governing
877 authority or agency shall issue publicly a request for proposals
878 concerning the specifications for such services which shall be
879 advertised for in the same manner as provided in this section for
880 seeking bids for purchases which involve an expenditure of more
881 than the amount provided in paragraph (c) of this section. Any
882 request for proposals when issued shall contain terms and
883 conditions relating to price, financial responsibility,
884 technology, legal responsibilities and other relevant factors as
885 are determined by the governing authority or agency to be
886 appropriate for inclusion; all factors determined relevant by the
887 governing authority or agency or required by this paragraph (r)
888 shall be duly included in the advertisement to elicit proposals.
889 After responses to the request for proposals have been duly
890 received, the governing authority or agency shall select the most
891 qualified proposal or proposals on the basis of price, technology
892 and other relevant factors and from such proposals, but not
893 limited to the terms thereof, negotiate and enter into contracts
894 with one or more of the persons or firms submitting proposals. If
895 the governing authority or agency deems none of the proposals to
896 be qualified or otherwise acceptable, the request for proposals



897 process may be reinitiated. Notwithstanding any other provisions
898 of this paragraph, where a county with at least thirty-five
899 thousand (35,000) nor more than forty thousand (40,000)
900 population, according to the 1990 federal decennial census, owns
901 or operates a solid waste landfill, the governing authorities of
902 any other county or municipality may contract with the governing
903 authorities of the county owning or operating the landfill,
904 pursuant to a resolution duly adopted and spread upon the minutes
905 of each governing authority involved, for garbage or solid waste
906 collection or disposal services through contract negotiations.

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



922 Black, Hispanic or Native American, according to the following
923 definitions:

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

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

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

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

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

943 (u) **Procurement of construction services by state**
944 **institutions of higher learning.** Contracts for privately financed
945 construction of auxiliary facilities on the campus of a state
946 institution of higher learning may be awarded by the Board of



947 Trustees of State Institutions of Higher Learning to the lowest
948 and best bidder, where sealed bids are solicited, or to the
949 offeror whose proposal is determined to represent the best value
950 to the citizens of the State of Mississippi, where requests for
951 proposals are solicited.

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

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

967 (x) **Mississippi Regional Pre-Need Disaster Clean Up**
968 **Act.** (i) The Department of Finance and Administration shall
969 enter into nine (9) contracts for the pre-need purchase of labor,
970 services, work, materials, equipment, supplies or other personal
971 property for disaster-related solid waste collection, disposal or



972 monitoring. One (1) contract shall be entered into for each of
973 the nine (9) Mississippi Emergency Management Association
974 districts:

975 1. Coahoma, DeSoto, Grenada, Panola, Quitman,
976 Tallahatchie, Tate, Tunica and Yalobusha Counties;

977 2. Alcorn, Benton, Itawamba, Lafayette, Lee,
978 Marshall, Pontotoc, Prentiss, Tippah, Tishomingo and Union
979 Counties;

980 3. Attala, Bolivar, Carroll, Holmes,
981 Humphreys, Leflore, Montgomery, Sunflower and Washington Counties;

982 4. Calhoun, Chickasaw, Choctaw, Clay,
983 Lowndes, Monroe, Noxubee, Oktibbeha, Webster and Winston Counties;

984 5. Claiborne, Copiah, Hinds, Issaquena,
985 Madison, Rankin, Sharkey, Simpson, Warren and Yazoo Counties;

986 6. Clarke, Jasper, Kemper, Lauderdale, Leake,
987 Neshoba, Newton, Scott, and Smith Counties and the Mississippi
988 Band of Choctaw Indians;

989 7. Adams, Amite, Franklin, Jefferson,
990 Lawrence, Lincoln, Pike, Walthall and Wilkinson Counties;

991 8. Covington, Forrest, Greene, Jefferson
992 Davis, Jones, Lamar, Marion, Perry and Wayne Counties; and

993 9. George, Hancock, Harrison, Jackson, Pearl
994 River and Stone Counties.

995 Any such contract shall set forth the manner of awarding such
996 a contract, the method of payment, and any other matter deemed



997 necessary to carry out the purposes of the agreement. Such
998 contract may be entered into only for a term of one (1) year, with
999 an option for an additional one-year extension after the
1000 conclusion of the first year of the contract, and only after
1001 having solicited bids or proposals, as appropriate, which shall be
1002 publicly advertised by posting on a web page maintained by the
1003 Department of Finance and Administration through submission of
1004 such advertisement to the Mississippi Procurement Technical
1005 Assistance Program under the Mississippi Development Authority.
1006 The bid opening shall not occur until after the submission has
1007 been posted for at least ten (10) consecutive days. The state's
1008 share of expenditures for solid waste collection, disposal or
1009 monitoring under any contract shall be appropriated and paid in
1010 the manner set forth in the contract and in the same manner as for
1011 other solid waste collection, disposal, or monitoring expenses of
1012 the state. Any contract entered into under this paragraph shall
1013 not be subject to the provisions of Section 17-13-11.

1014 (ii) Any board of supervisors of any county or any
1015 governing authority of any municipality may opt in to the benefits
1016 and services provided under the appropriate and relevant contract
1017 established in subparagraph (i) of this paragraph at the time of a
1018 disaster event in that county or municipality. At the time of opt
1019 in, the county or municipality shall assume responsibility for
1020 payment in full to the contractor for the disaster-related solid
1021 waste collection, disposal or monitoring services provided.



1022 Nothing in this subparagraph (ii) shall be construed as requiring
1023 a county or municipality to opt in to any such contract
1024 established in subparagraph (i) of this paragraph.

1025 **SECTION 2.** Section 31-3-1, Mississippi Code of 1972, is
1026 amended as follows:

1027 31-3-1. The following words, as used in this chapter, shall
1028 have the meanings specified below:

1029 "Board": The State Board of Contractors created under this
1030 chapter.

1031 "Contractor": Any person contracting or undertaking as prime
1032 contractor, subcontractor or sub-subcontractor of any tier to do
1033 any erection, building, construction, reconstruction, demolition,
1034 repair, maintenance or related work on any public or private
1035 project; however, "contractor" shall not include any owner of a
1036 dwelling or other structure to be constructed, altered, repaired
1037 or improved and not for sale, lease, public use or assembly, or
1038 any person duly permitted by the Mississippi State Oil and Gas
1039 Board, pursuant to Section 53-3-11, Mississippi Code of 1972, to
1040 conduct operations within the state, and acting pursuant to said
1041 permit. It is further provided that nothing herein shall apply
1042 to:

1043 (a) Any contract or undertaking on a public or private
1044 project by a prime contractor, subcontractor or sub-subcontractor
1045 of any tier involving erection, building, construction,
1046 reconstruction, repair, maintenance or related work where such



1047 contract, subcontract or undertaking is less than Fifty Thousand
1048 Dollars (\$50,000.00);

1049 (b) Highway construction, highway bridges, overpasses
1050 and any other project incidental to the construction of highways
1051 which are designated as federal aid projects and in which federal
1052 funds are involved;

1053 (c) A residential project to be occupied by fifty (50)
1054 or fewer families and not more than three (3) stories in height;

1055 (d) A residential subdivision where the contractor is
1056 developing either single-family or multifamily lots;

1057 (e) A new commercial construction project not exceeding
1058 seventy-five hundred (7500) square feet and not more than two (2)
1059 stories in height undertaken by an individual or entity licensed
1060 under the provisions of Section 73-59-1 et seq.;

1061 (f) Erection of a microwave tower built for the purpose
1062 of telecommunication transmissions;

1063 (g) Any contract or undertaking on a public project by
1064 a prime contractor, subcontractor or sub-subcontractor of any tier
1065 involving the construction, reconstruction, repair or maintenance
1066 of fire protection systems where such contract, subcontract or
1067 undertaking is less than * * * Ten Thousand Dollars (\$10,000.00);

1068 (h) Any contract or undertaking on a private project by
1069 a prime contractor, subcontractor or sub-subcontractor of any tier
1070 involving the construction, reconstruction, repair or maintenance
1071 of fire protection systems where such contract, subcontract or



1072 undertaking is less than * * * Fifteen Thousand Dollars
1073 (\$15,000.00);

1074 (i) Any contract or undertaking on a private or public
1075 project by a prime contractor, subcontractor or sub-subcontractor
1076 of any tier involving the construction, reconstruction, repair or
1077 maintenance of technically specialized installations if performed
1078 by a Mississippi contractor who has been in the business of
1079 installing fire protection sprinkler systems on or before July 1,
1080 2000; or

1081 (j) Any contractor undertaking to build, construct,
1082 reconstruct, repair, demolish, perform maintenance on, or other
1083 related work, whether on the surface or subsurface, on oil or gas
1084 wells, pipelines, processing plants, or treatment facilities or
1085 other structures of facilities. Nothing herein shall be construed
1086 to limit the application or effect of Section 31-5-41.

1087 "Certificate of responsibility": A certificate numbered and
1088 held by a contractor issued by the board under the provisions of
1089 this chapter after payment of the special privilege license tax
1090 therefor levied under this chapter.

1091 "Person": Any person, firm, corporation, joint venture or
1092 partnership, association or other type of business entity.

1093 "Private project": Any project for erection, building,
1094 construction, reconstruction, repair, maintenance or related work
1095 which is not funded in whole or in part with public funds.



1096 "Public agency": Any board, commission, council or agency of
1097 the State of Mississippi or any district, county or municipality
1098 thereof, including school, hospital, airport and all other types
1099 of governing agencies created by or operating under the laws of
1100 this state.

1101 "Public funds": Monies of public agencies, whether obtained
1102 from taxation, donation or otherwise; or monies being expended by
1103 public agencies for the purposes for which such public agencies
1104 exist.

1105 "Public project": Any project for erection, building,
1106 construction, reconstruction, repair, maintenance or related work
1107 which is funded in whole or in part with public funds.

1108 **SECTION 3.** Section 31-5-37, Mississippi Code of 1972, is
1109 amended as follows:

1110 31-5-37. (1) All public works projects utilizing funds
1111 received by state or local governmental entities resulting from a
1112 federally declared disaster or a spill of national significance,
1113 including damages, penalties, fines or supplemental projects paid
1114 or financed by responsible parties pursuant to a court order,
1115 negotiated settlement, or other instrument, including under any
1116 law distributing such fines and penalties including the federal
1117 Resources and Ecosystems Sustainability, Tourist Opportunities and
1118 Revived Economy of the Gulf Coast Act of 2011 (R.E.S.T.O.R.E.),
1119 the Oil Pollution Act of 1990 or the Federal Water Pollution



1120 Control Act or similar legislation, shall be subject to the hiring
1121 policies established by this section.

1122 (2) Contractors submitting bids for public works projects
1123 that involve an expenditure of * * * Ten Thousand Dollars
1124 (\$10,000.00) or more and that are financed, in whole or in part,
1125 through the use of funds described in subsection (1) of this
1126 section shall submit with their bid a certification that they will
1127 comply with the provisions of this section if they are awarded a
1128 contract. The contractor shall submit to the agency or governing
1129 authority that solicited the bid and the Mississippi Department of
1130 Employment Security an employment plan within seven (7) days after
1131 the award of the contract which shall include the following:

1132 (a) The types of jobs involved in the public works
1133 project;

1134 (b) The skill level of the jobs involved in the
1135 project;

1136 (c) Wage information on the jobs involved in the
1137 project;

1138 (d) The number of vacant positions that the contractor
1139 and any subcontractor needs to fill;

1140 (e) How the contractor and any subcontractor will
1141 recruit, low-wage and unemployed individuals for job vacancies;

1142 (f) Such other information as may be required by the
1143 Mississippi Department of Employment Security; and



1144 (g) Proof of registration with the Mississippi
1145 Department of Employment Security for taxation in accordance with
1146 the provisions of Title 71.

1147 (3) From the date written notice of the contract award is
1148 received and until ten (10) business days after the receipt of the
1149 employment plan by the Mississippi Department of Employment
1150 Security, the contractor and any subcontractor shall not hire any
1151 personnel to fill vacant positions necessary for the public works
1152 project except residents of the State of Mississippi who are to be
1153 verified by the Mississippi Department of Employment Security
1154 and/or those qualified individuals who are submitted by the
1155 Mississippi Department of Employment Security. For purposes of
1156 this subsection, the contractor or subcontractor is authorized to
1157 employ Mississippi residents to begin work immediately, and such
1158 persons are to be verified by the Mississippi Department of
1159 Employment Security after employment by the contractor or
1160 subcontractor. During the ten-day period, the Mississippi
1161 Department of Employment Security shall submit qualified
1162 individuals to the contractor to consider for the vacant
1163 positions. The contractor shall review the individuals submitted
1164 by the department before hiring individuals who are not submitted
1165 by the department. The contract award shall be vacated if the
1166 contractor fails to comply with the provisions of this subsection.

1167 **SECTION 4.** Section 31-5-51, Mississippi Code of 1972, is
1168 amended as follows:



1169 31-5-51. (1) Any person entering into a formal contract
1170 with the state or any county, city or political subdivision
1171 thereof, or other public authority for the construction,
1172 alteration, or repair of any public building or public work,
1173 before entering into such contract, shall furnish to such public
1174 body, except as provided in subsection (5) of this section, bonds
1175 with good and sufficient surety as follows:

1176 (a) A performance bond payable to, in favor of or for
1177 the protection of such public body, as owner, for the work to be
1178 done in an amount not less than the amount of the contract,
1179 conditioned for the full and faithful performance of the contract;

1180 (b) A payment bond payable to such public body but
1181 conditioned for the prompt payment of all persons supplying labor
1182 or material used in the prosecution of the work under said
1183 contract, for the use of each such person, in an amount not less
1184 than the amount of the contract; and

1185 (c) The bonds herein provided for may be made by any
1186 surety company which is authorized to do business in the State of
1187 Mississippi and listed on the United States Treasury Department's
1188 list of acceptable sureties, or such bonds may be guaranteed by a
1189 personal surety as provided for herein. The personal surety shall
1190 deposit with the State Treasurer cash or certificates of deposit
1191 in an amount not less than the amount of the contract, and the
1192 State Treasurer shall hold same in trust and on deposit for the
1193 benefit of the public body that is a party to the contract



1194 providing for the construction, alteration or repair of the public
1195 building or for the public work.

1196 (2) Every person who has furnished labor or material used in
1197 the prosecution of the work provided for in such contract, in
1198 respect of which a payment bond is furnished and who has not been
1199 paid in full therefor before the expiration of a period of ninety
1200 (90) days after the date on which the last of the labor was
1201 performed by him or the last of the materials was furnished by him
1202 and for which such claim is made, provided the same has been
1203 approved, where required, by the public authority or its architect
1204 or engineers, or such approval is being withheld as a result of
1205 unreasonable acts of the contractor, shall have the right to sue
1206 on such payment bond for the amount, or the balance thereof that
1207 is due and payable, but unpaid at the time of institution of such
1208 suit and to prosecute said action to final execution and judgment.
1209 Notwithstanding anything to the contrary contained herein, if the
1210 amount claimed in such action is subject to contractual provisions
1211 or conditions, between the parties involved in such action, the
1212 action shall be abated pending the performance of such provisions
1213 and the fulfillment of such conditions.

1214 (3) Any person having direct contractual relationship with a
1215 subcontractor but no contractual relationship express or implied
1216 with the contractor furnishing said payment bond shall have a
1217 right of action upon the said payment bond upon giving written
1218 notice to said contractor within ninety (90) days from the date on



1219 which such person did or performed the last of the labor or
1220 furnished or supplied the last of the material for which such
1221 claim is made, stating with substantial accuracy the amount
1222 claimed and the name of the party to whom the material was
1223 furnished or supplied or for whom the labor was done or performed.
1224 Such notice shall be given in writing by the claimant to the
1225 contractor or surety at any place where the contractor or surety
1226 maintains an office or conducts business. Such notice may be
1227 personally delivered by the claimant to the contractor or surety,
1228 or it may be mailed by certified mail, return receipt requested,
1229 postage prepaid, to the contractor or surety. No such action may
1230 be maintained by any person not having a direct contractual
1231 relationship with the contractor-principal, unless the notice
1232 required by this section shall have been given.

1233 (4) The only persons protected by such payment bond, subject
1234 to the notice provisions of this section are:

1235 (a) Subcontractors and material suppliers of the
1236 contractor;

1237 (b) Sub-subcontractors and material suppliers of those
1238 subcontractors named in subsection (4)(a) of this section; and

1239 (c) Laborers who have performed work on the project
1240 site.

1241 (5) Whenever a contract is less than Twenty-five Thousand
1242 Dollars (\$25,000.00) the owners may elect to make a lump sum
1243 payment at the completion of the job. Lump sum payments will not



1244 be made until completion and acceptance by the governing agency.
1245 In such a case a performance bond or payment bond will not be
1246 required.

1247 (6) Except as otherwise provided in subsection (1)(c) for a
1248 personal surety, no surety or surety company shall be allowed to
1249 guarantee or write bonds for the benefit of the public body that
1250 is a party to a contract providing for the construction,
1251 alteration or repair of a public building or for public work,
1252 unless that surety is listed on the United States Treasury
1253 Department's list of acceptable sureties. If the surety is not
1254 listed on the United States Treasury Department's list of
1255 acceptable sureties, the public body for which the public work is
1256 being performed shall be liable to the extent that the surety
1257 would be liable.

1258 (7) Any person entering into a formal contract with the
1259 state which exceeds * * * Ten Thousand Dollars (\$10,000.00), or
1260 with a county, city or other public authority which exceeds
1261 Twenty-five Thousand dollars (\$25,000.00), for the construction,
1262 alteration, or repair of any public building or public work,
1263 before entering into such contract, shall furnish to the public
1264 body proof of general liability insurance coverage in an amount
1265 not less than One Million Dollars (\$1,000,000.00) for bodily
1266 injury and property damage. Exempted from the provisions of this
1267 subsection are any persons who enter into a contract with the
1268 Mississippi Department of Rehabilitation Services for the



1269 construction, alteration or repair of the home of a disabled
1270 individual who has been determined eligible for services by the
1271 Mississippi Department of Rehabilitation Services.

1272 **SECTION 5.** Section 31-7-103, Mississippi Code of 1972, is
1273 amended as follows:

1274 31-7-103. The purchase clerk shall be responsible as
1275 hereinafter provided for the purchase and acquisition of all
1276 equipment, heavy equipment, machinery, supplies, commodities,
1277 materials and services to be acquired for the county from
1278 successful bidders or other vendors, as authorized by law. The
1279 central purchase system shall comply with the requirements
1280 prescribed by the State Department of Audit under the authority of
1281 Section 7-7-211 and in accordance with Section 31-7-113, and the
1282 purchase clerk shall be responsible for the maintenance of such
1283 system. No requisition to purchase, purchase order or receiving
1284 report shall be required for the purchase of any item or services
1285 with an acquisition cost of not more than * * * Five Thousand
1286 Dollars (\$5,000.00) in the aggregate; however, the invoice for
1287 every such purchase shall be signed by the department head or his
1288 or her designee, or a receipt signed by the person making the
1289 purchase shall be attached to the invoice and forwarded to the
1290 purchase clerk. No claim based on any such purchase shall be
1291 approved except after compliance with the provisions of this
1292 section.



1293 **SECTION 6.** Section 31-7-119, Mississippi Code of 1972, is
1294 brought forward as follows:

1295 31-7-119. (1) Except as provided in subsection (2) of this
1296 section, neither the board of supervisors nor any member thereof
1297 shall individually purchase, order or receive any equipment, heavy
1298 equipment, machinery, supplies, commodities, materials or services
1299 for the use or benefit of the county.

1300 (2) In any county in which the board of supervisors is not
1301 required to operate on a countywide system of road administration,
1302 the prohibition as provided in subsection (1) of this section
1303 shall not apply (a) to purchases of not more than Two Thousand
1304 Dollars (\$2,000.00) in the aggregate; or (b) to the purchase of
1305 parts or repair services in emergency situations, which purchases
1306 are exempt from bid requirements pursuant to Section
1307 31-7-13(m) (ii) and (iii). Any supervisor who purchases any item
1308 or services in accordance with this subsection (2) shall sign the
1309 invoice or receipt and forward it to the purchase clerk in the
1310 manner provided by Section 31-7-103. No claim based on any such
1311 purchase shall be approved unless the purchase was made in
1312 compliance with the provisions of this subsection.

1313 **SECTION 7.** This act shall take effect and be in force from
1314 and after July 1, 2024.

