

By: Representatives Turner, Hughes

To: Accountability,  
Efficiency, Transparency

HOUSE BILL NO. 1109  
(As Sent to Governor)

1 AN ACT TO CREATE STANDARDS FOR PROCUREMENTS BY THE  
2 SOLICITATION OF REQUESTS FOR PROPOSALS OR REQUESTS FOR  
3 QUALIFICATIONS; TO PROVIDE THAT THE STANDARDS SHALL APPLY TO  
4 PROCUREMENTS BY STATE AGENCIES OF COMMODITIES, SUPPLIES,  
5 EQUIPMENT, CONSTRUCTION, TECHNOLOGY, PERSONAL AND PROFESSIONAL  
6 SERVICES, ANY TYPE OF STATE AGENCY PURCHASED EMPLOYEE BENEFITS AND  
7 STATE AGENCY PURCHASED SUPPLEMENTAL INSURANCE AND CAFETERIA PLANS;  
8 TO PROVIDE THE FACTORS THAT MUST BE CONSIDERED WHEN DETERMINING TO  
9 USE A REQUEST FOR PROPOSALS OR REQUESTS FOR QUALIFICATIONS; TO  
10 PROVIDE THE CONTENT TO INCLUDE IN A REQUEST FOR PROPOSALS OR  
11 REQUESTS FOR QUALIFICATIONS; TO PROVIDE THE REQUIREMENTS OF  
12 PRE-PROPOSAL CONFERENCES; TO PROVIDE THE METHOD TO PROPERLY DRAFT  
13 A REQUEST FOR PROPOSALS OR REQUEST FOR QUALIFICATIONS; TO PROVIDE  
14 THE EVALUATION FACTORS TO USE WHEN REVIEWING A REQUEST FOR  
15 PROPOSALS OR REQUESTS FOR QUALIFICATIONS; TO PROVIDE THE  
16 QUALIFICATIONS OF THE EVALUATION COMMITTEE THAT WILL EVALUATE EACH  
17 SUBMITTED PROPOSAL OR QUALIFICATION; TO PROVIDE THE GUIDELINES FOR  
18 DISCUSSIONS ONCE PROPOSALS OR QUALIFICATIONS HAVE BEEN SUBMITTED;  
19 TO PROVIDE FOR THE CONTENT TO BE INCLUDED IN THE BEST AND FINAL  
20 OFFER; TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972, TO  
21 RECONSTITUTE THE PUBLIC PROCUREMENT REVIEW BOARD; TO INCLUDE THE  
22 POWERS AND DUTIES OF THE PERSONAL SERVICE CONTRACT REVIEW BOARD  
23 UNDER THE PURVIEW OF THE PUBLIC PROCUREMENT REVIEW BOARD; TO AMEND  
24 SECTION 25-9-120, MISSISSIPPI CODE OF 1972, TO ABOLISH THE  
25 PERSONAL SERVICE CONTRACT REVIEW BOARD; TO PROVIDE THAT THE  
26 POWERS, DUTIES AND ALL RESOURCES OF THE PERSONAL SERVICE CONTRACT  
27 REVIEW BOARD SHALL BE TRANSFERRED TO THE PUBLIC PROCUREMENT REVIEW  
28 BOARD; TO AMEND SECTION 25-61-9, MISSISSIPPI CODE OF 1972, TO  
29 REQUIRE ANYONE SEEKING A PROTECTIVE ORDER FOR CERTAIN CONTRACT  
30 INFORMATION OTHERWISE REQUIRED TO BE PUBLIC UNDER THE PUBLIC  
31 RECORDS ACT TO POST NOTICE OF THE PETITION AND THE REASONS FOR THE  
32 PROTECTIVE ORDER ON THE MISSISSIPPI PROCUREMENT PORTAL FOR A  
33 MINIMUM OF SEVEN DAYS BEFORE FILING THE PETITION FOR THE  
34 PROTECTIVE ORDER IN CHANCERY COURT; TO AMEND SECTION 31-7-13,



35 MISSISSIPPI CODE OF 1972, TO REQUIRE REVERSE AUCTIONS TO BE THE  
36 PRIMARY METHOD FOR RECEIVING BIDS DURING THE COMPETITIVE BIDDING  
37 PROCESS; TO REQUIRE THE PUBLIC PROCUREMENT REVIEW BOARD TO APPROVE  
38 A PURCHASING ENTITY'S DECISION TO USE A METHOD OTHER THAN REVERSE  
39 AUCTION FOR SOLICITING BIDS; AND FOR RELATED PURPOSES.

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

41 **SECTION 1. Applicability.** Except as otherwise provided by  
42 law, the provisions of Sections 1 through 12 of this act shall  
43 apply to every procurement of commodities, supplies, equipment,  
44 construction, technology, personal and professional services other  
45 than those in Section 27-104-7(2)(f) and (8), state agency  
46 employee benefits, supplemental insurance and cafeteria plans,  
47 that are solicited by any state agency by a request for proposals  
48 or request for qualifications. The following provisions are  
49 intended to ensure that the best practices for soliciting requests  
50 for proposals or requests for qualifications are implemented. Any  
51 agency that is required to receive approval by the Public  
52 Procurement Review Board before entering into a personal or  
53 professional services contract as provided in subsection (2)(g) of  
54 Section 27-104-7 shall implement the best practices specified in  
55 Sections 1 through 12 of this act. The Public Procurement Review  
56 Board shall promulgate any necessary rules and regulations to  
57 administer the provisions of Sections 1 through 12 of this act.

58 **SECTION 2. Conditions for use.** (1) Competitive sealed  
59 bidding is the preferred method of procurement; however, if it is  
60 not practicable and advantageous, a request for proposals or  
61 request for qualifications may be used. The terms "practicable"  
62 and "advantageous" are to be given ordinary dictionary meanings.



63 The term "practicable" denotes what may be accomplished or put  
64 into practical application. "Advantageous" denotes a judgmental  
65 assessment of what is in the state's best interest.

66 (2) The following factors shall be considered when  
67 determining advantageousness:

68 (a) The need for flexibility;

69 (b) The type of evaluations that will be needed after  
70 offers are received;

71 (c) Whether the evaluation factors involve the relative  
72 abilities of offerers to perform, including degrees of technical  
73 or professional experience or expertise;

74 (d) Whether the type of need to be satisfied involves  
75 weighing artistic and aesthetic values to the extent that price is  
76 a secondary consideration;

77 (e) Whether the types of supplies, services or  
78 construction may require the use of comparative judgmental  
79 evaluations to evaluate them adequately; and

80 (f) Whether prior procurements indicate that a request  
81 for proposals may result in more beneficial contracts for the  
82 state.

83 (3) The following factors shall be considered when  
84 determining practicability:

85 (a) Whether the contract needs to be a contract other  
86 than a fixed-price type contract;



87 (b) Whether oral or written discussions may need to be  
88 conducted with offerers concerning technical and price aspects of  
89 their proposals;

90 (c) Whether offerers may need to be afforded the  
91 opportunity to revise their proposals, including price;

92 (d) Whether the award may need to be based upon a  
93 comparative evaluation of differing price and contractual factors  
94 as well as quality factors that include technical and performance  
95 capability and the content of the technical proposal; and

96 (e) Whether the primary consideration in determining  
97 award may not be price.

98 (4) On or before January 1 of each year, and every time a  
99 chief procurement officer is hired, each state agency shall  
100 provide to the state purchasing agent the name of the state  
101 agency's chief procurement officer and information identifying the  
102 state agency's central purchasing office, if applicable. If the  
103 chief procurement officer of an agency or his or her designee  
104 determines, in writing, that the use of competitive sealed bidding  
105 is either not practicable or not advantageous to the state, he or  
106 she shall submit a detailed explanation of the reasons for that  
107 determination to the Public Procurement Review Board. If the  
108 Public Procurement Review Board determines that competitive sealed  
109 bidding is either not practicable or not advantageous to the  
110 state, then a contract may be entered into for the procurement of  
111 commodities, supplies, equipment, construction, technology,



112 personal and professional services, state agency purchased  
113 employee benefits or state agency supplemental insurance and  
114 cafeteria plans, by a request for proposals or request for  
115 qualifications. However, these procurements contracted for  
116 through a request for proposals or request for qualifications may  
117 not be combined or included in a contract with other procurements  
118 that are required to be procured through competitive sealed  
119 bidding so as to avoid the statutory obligation for procurement  
120 through competitive sealed bidding. The board may modify or  
121 revoke its determination at any time, and the determination should  
122 be reviewed for current applicability from time to time.

123 In addition to determining whether a request for proposals or  
124 request for qualifications would be practicable and advantageous  
125 to the state, when making the decision to use a request for  
126 proposals or request for qualifications, the chief procurement  
127 officer shall consider the following factors:

128 (a) Whether quality, availability or capability is  
129 overriding in relation to price in procurements for research and  
130 development, technical supplies or services;

131 (b) Whether the initial installation needs to be  
132 evaluated together with later maintenance and service capabilities  
133 and what priority should be given to these requirements in the  
134 best interests of the state; and



135 (c) Whether the marketplace will respond better to a  
136 solicitation permitting not only a range of alternative proposals  
137 but evaluation and discussion of them before making the award.

138 **SECTION 3. Content of the request for proposals or request**  
139 **for qualifications.** (1) The request for proposals or request for  
140 qualifications shall include the following:

141 (a) Instructions and information to offerers concerning  
142 the request for proposals or request for qualifications submission  
143 requirements, including the time and date set for receipt of  
144 proposals or qualifications, the address of the office to which  
145 proposals or qualifications are to be delivered, the maximum time  
146 for proposal or qualification acceptance by the state, the manner  
147 in which proposals or qualifications are to be submitted,  
148 including any forms for that purpose and any other special  
149 information;

150 (b) The purchase description, evaluation factors,  
151 delivery or performance schedule and any inspection and acceptance  
152 requirements that are not included in the purchase description;

153 (c) The contract terms and conditions, including  
154 warranty and bonding or other security requirements, as  
155 applicable;

156 (d) A statement that discussions may be conducted with  
157 offerers who submit proposals or qualifications determined to be  
158 reasonably susceptible of being selected for the award, but that



159 proposals or qualifications may be accepted without such  
160 discussions; and

161 (e) A statement of when and how price should be  
162 submitted.

163 (2) The request for proposals or request for qualifications  
164 may incorporate documents by reference provided that the request  
165 for proposals or request for qualifications specifies where those  
166 documents can be obtained.

167 (3) Proposal or qualification preparation time shall be set  
168 to provide offerers a reasonable time to prepare their proposals  
169 or qualifications. A minimum of thirty (30) days shall be  
170 provided unless a shorter time is deemed necessary for a  
171 particular procurement as determined in writing by the chief  
172 procurement officer of the requesting agency.

173 **SECTION 4. Public notice.** (1) In addition to any method of  
174 public notice regarding the solicitation of requests for proposals  
175 or requests for qualifications currently being used by state  
176 agencies, the chief procurement officer shall also have posted on  
177 the Mississippi procurement portal and on the soliciting agency's  
178 website, public notification of a pending procurement through  
179 request for proposals or request for qualifications. The notice  
180 shall include the following:

181 (a) The due date for responses;

182 (b) The name and phone number of the officer conducting  
183 the procurement; and



184 (c) The means of obtaining the solicitation.

185 (2) The notice shall be posted at least thirty (30) days  
186 before the date that proposals or qualifications are to be  
187 submitted to the chief procurement officer, unless a shorter time  
188 is deemed necessary for a particular procurement as determined in  
189 writing by the chief procurement officer of the requesting agency.

190 (3) Each chief procurement officer may determine that other  
191 methods of public notification are best for that particular agency  
192 or that particular request for proposals or request for  
193 qualifications. If such a determination is made, the chief  
194 procurement officer may provide notice in an alternative manner  
195 about the request for proposals or request for qualifications in  
196 addition to the methods provided for in Sections 1 through 12 of  
197 this act.

198 (4) The Department of Finance and Administration (DFA) shall  
199 monitor agency websites and the Mississippi procurement portal to  
200 ensure that the agencies are posting the required notice. DFA  
201 shall audit agencies and report its findings to the Chairs of the  
202 House of Representatives and Senate Accountability, Efficiency and  
203 Transparency Committees and House of Representatives and Senate  
204 Appropriations Committees by December 31 of each year.

205 **SECTION 5. Pre-proposal conferences.** (1) Pre-proposal  
206 conferences may be conducted to explain the procurement  
207 requirements. If a chief procurement officer plans to hold such a  
208 conference, he or she shall prominently place the notification in





209 the request for proposals or request for qualifications  
210 solicitation. The notification shall include the date, time and  
211 location of the conference. If the chief procurement officer  
212 decides to hold a pre-proposal conference after the request for  
213 proposals or request for qualifications has been sent out, then he  
214 or she shall notify all prospective offerers known to have  
215 received a request for proposals or request for qualifications.

216 (2) If a pre-proposal conference is held, it shall be at  
217 least fourteen (14) days after the request for proposals or  
218 request for qualifications has been issued. In setting the time  
219 for the conference, the chief procurement officer shall consider  
220 the complexity of the procurement and the potential modifications  
221 that may need to be made after the conference and any amendments  
222 to the solicitation that the chief procurement officer may need to  
223 make after the conference.

224 (3) The chief procurement officer issuing the request for  
225 proposals or request for qualifications shall serve as chair of  
226 the conference. Offerers attending the conference shall be  
227 required to sign an attendance sheet provided by the soliciting  
228 agency. The chair shall announce at the beginning of the  
229 conference how the conference is to be handled. The conference  
230 shall be recorded. A chief procurement officer may mandate  
231 attendance at a conference if he or she feels it is critical to  
232 understanding the solicitation. Once the conference is over, the  
233 chief procurement officer shall put the recordings from the



234 conference and the questions and answers from the conference in  
235 writing and send them to the offerers who received the request for  
236 proposals or request for qualifications and post them on the  
237 Mississippi procurement portal and the soliciting agency's  
238 website.

239 **SECTION 6. Drafting the request for proposals or request for**  
240 **qualifications.** (1) In addition to the items listed in Sections  
241 1 through 12 of this act, the contents of a request for proposals  
242 or request for qualifications shall also include the following:

243 (a) A statement that discussions may be conducted with  
244 offerers who submit proposals or qualifications determined to be  
245 reasonably susceptible of being selected for the award, but that  
246 proposals or qualifications may also be accepted without those  
247 discussions; and

248 (b) A statement of when and how price should be  
249 submitted.

250 (2) The request for proposals or request for qualifications  
251 shall indicate, either by the order listed, weights or some other  
252 manner, the order of importance of the evaluation criteria.

253 (3) The request for proposals or request for qualifications,  
254 its amendments, the offerer's proposals or qualifications and the  
255 best and final offer shall constitute the contract.

256 **SECTION 7. Evaluation factors in the request for proposals**  
257 **or request for qualifications.** (1) When the chief procurement  
258 officer submits the determination that the use of competitive



259 sealed bidding is either not practicable or not advantageous to  
260 the state to the Public Procurement Review Board for its approval,  
261 he or she shall include in that submission the evaluation factors  
262 that will be used in reviewing the submitted proposals or  
263 qualifications. The evaluation factors shall be approved by the  
264 Public Procurement Review Board in the same way that the decision  
265 to solicit procurements through a request for proposals or request  
266 for qualifications must be approved.

267 (2) (a) The request for proposals or request for  
268 qualifications shall state all of the approved evaluation factors,  
269 including price, and their relative importance. When the chief  
270 procurement officer is determining the weights and importance of  
271 each evaluation factor, price as an evaluation factor shall be  
272 given the highest criteria weighting and at least thirty-five  
273 percent (35%) out of the one hundred percent (100%) total weight  
274 of all the other evaluation factors. The evaluation shall be  
275 based on the evaluation factors set forth in the request for  
276 proposals or request for qualifications. The evaluation factors  
277 used and the weights given to each shall be decided and agreed to  
278 by the evaluation committee before the opening of any proposal or  
279 qualification. Numerical rating systems shall be used when  
280 determining the weight and importance of each evaluation factor.  
281 Factors not specified in the request for proposals or request for  
282 qualifications shall not be considered. Upon completion of the  
283 evaluation, the evaluation score sheets used to review the



284 submitted proposals or qualifications shall be made part of the  
285 report required under Section 12(1) of this act.

286 (b) The following, as appropriate to individual  
287 circumstances, shall be used as criteria for evaluating requests  
288 for proposals or requests for qualifications under the request for  
289 proposals or request for qualifications process described in  
290 Sections 1 through 12 of this act. These factors are not intended  
291 to be limiting or all-inclusive, and they may be adapted or  
292 supplemented in order to meet a soliciting agency's individual  
293 needs as the competitive procurement process requires.

294 (i) Technical factors (Proposed methodology):

295 a. Does the offerer's proposal or  
296 qualification demonstrate a clear understanding of the scope of  
297 work and related objectives?

298 b. Is the offerer's proposal or  
299 qualification complete and responsive to the specific request for  
300 proposals or request for qualifications requirements?

301 c. Has the past performance of the  
302 offerer's proposed methodology been documented?

303 d. Does the offerer's proposal or  
304 qualification use innovative technology and techniques?

305 (ii) Management factors (Factors that will require  
306 the identity of the offerer to be revealed must be submitted  
307 separately from other factors):

308 1. Project management:



309 a. How well does the proposed scheduling  
310 timeline meet the needs of the soliciting agency?

311 b. Is there a project management plan?

312 2. History and experience in performing the  
313 work:

314 a. Does the offerer document a record of  
315 reliability of timely delivery and on-time and on-budget  
316 implementation?

317 b. Does the offerer demonstrate a track  
318 record of service as evidenced by on-time, on-budget, and contract  
319 compliance performance?

320 c. Does the offerer document industry or  
321 program experience?

322 d. Does the offerer have a record of  
323 poor business ethics?

324 3. Availability of personnel, facilities,  
325 equipment and other resources:

326 a. To what extent does the offerer rely  
327 on in-house resources vs. contracted resources?

328 b. Are the availability of in-house and  
329 contract resources documented?

330 4. Qualification and experience of personnel:

331 a. Documentation of experience in  
332 performing similar work by employees and when appropriate,  
333 sub-contractors?



334                                   b. Does the offerer demonstrate cultural  
335 sensitivity in hiring and training staff?

336                                   (iii) Cost factors (Factors must be submitted  
337 separately from other factors unless specifically approved by the  
338 Public Procurement Review Board):

339                                   1. Cost of goods to be provided or services  
340 to be performed:

341                                   a. Relative cost: How does the cost  
342 compare to other similarly scored proposals or qualifications?

343                                   b. Full explanation: Is the price and  
344 its component charges, fees, etc. adequately explained or  
345 documented?

346                                   2. Assurances of performance:

347                                   a. If required, are suitable bonds,  
348 warranties or guarantees provided?

349                                   b. Does the proposal or qualification  
350 include quality control and assurance programs?

351                                   3. Offerer's financial stability and  
352 strength: Does the offerer have sufficient financial resources to  
353 meet its obligations?

354                    **SECTION 8. Evaluation committee.** (1) Evaluation committees  
355 shall be used to evaluate request for proposals or request for  
356 qualifications and award contracts. Persons appointed to an  
357 evaluation committee shall have the relevant experience necessary  
358 to evaluate the proposal or qualification. The members of the



359 evaluation committee shall have no personal, financial or familial  
360 interest in any of the contract offerers, or principals thereof,  
361 to be evaluated.

362 (2) The names of the members of the evaluation committee  
363 shall not be publicly disclosed until their evaluation report as  
364 required under Section 12(1) of this act. The members' names and  
365 job titles shall be made available to the public. Where  
366 evaluation committee members are not public employees, those  
367 members' names, educational and professional qualifications, and  
368 practical experience, that were the basis for the appointment,  
369 shall be made available to the public.

370 (3) Before evaluating proposals or qualifications, each  
371 individual participating in the evaluation of a proposal or  
372 qualification shall execute a statement in accordance with  
373 subsection (1) of this section certifying that he or she does not  
374 have a conflict of interest. The statement shall be filed with  
375 the chief procurement officer of the soliciting agency, before  
376 beginning the evaluation process. The certification shall be as  
377 follows:

378 "I hereby certify that I have reviewed the conflict of  
379 interest standards prescribed herein, and that I do not have a  
380 conflict of interest with respect to the evaluation of this  
381 proposal or qualification. I further certify that I am not  
382 engaged in any negotiations or arrangements for prospective  
383 employment or association with any of the offerers submitting



384 proposals or qualifications or their parent or subsidiary  
385 organization."

386 (4) Committee members may conduct their work separately or  
387 together.

388 (5) The committee may use advisors, as it deems necessary to  
389 give opinions on evaluating proposals or qualifications, except  
390 that such advisors shall be subject to the provisions of  
391 subsection (3) of this section. The names of the advisors shall  
392 be made public at the same time as members of the evaluation  
393 committee as provided in subsection (2) of this section. For the  
394 purposes of this section, the term "advisors" shall mean those  
395 individuals who provide such significant input to a member or  
396 members of the evaluation committee that the advisor's opinions  
397 are fundamental in shaping the committee member's evaluation of  
398 the submitted proposals or qualifications.

399 (6) The process of establishing weighting criteria and  
400 evaluating proposals or qualifications shall result in a finding  
401 that a specific proposal or qualification is the most practical  
402 and advantageous, price and other factors considered, or that all  
403 proposals or qualifications should be rejected.

404 **SECTION 9. Receipt and registration of proposals or**  
405 **qualifications.** (1) Submitted proposals or qualifications shall  
406 be opened at the time designated for opening in the request for  
407 proposals or request for qualifications. Proposals or  
408 qualifications and modifications shall be date-stamped or time and





409 date-stamped upon receipt and held in a secure place until the  
410 established due date. Electronic proposals or qualifications  
411 received will be stored in an electronic lockbox until the time  
412 designated for the opening of the proposal or qualification.

413 (2) As each proposal or qualification is submitted but  
414 before those proposals or qualifications are opened, the chief  
415 procurement officer shall designate a person to prepare a register  
416 of proposals or qualifications, which shall include the number of  
417 modifications received, if any, and a description sufficient to  
418 identify the supply, service, commodity or other item offered.  
419 The designated person shall assign each submitted proposal or  
420 qualification an identifying letter, number, or combination  
421 thereof, without revealing the name of the offerer who submitted  
422 each proposal or qualification to the chief procurement officer or  
423 any person named to the evaluation committee for that proposal or  
424 qualification. The designated person shall keep the names of the  
425 offerers and their identifying numbers or letters, or combination  
426 thereof, in a sealed envelope or other secure location until  
427 factors not requiring knowledge of the name of the offerer have  
428 been evaluated and scored. If the designated person reveals the  
429 names of the offerers and the corresponding identifying  
430 information before such time, the procurement process shall be  
431 terminated and the proposal or qualifications resolicited and the  
432 Public Procurement Review Board shall assess that person a fine of  
433 not less than One Thousand Dollars (\$1,000.00) and the chief



434 procurement officer who designated that person to establish the  
435 register of proposals or qualifications shall be removed from his  
436 or her office and assessed a fine of not less than One Thousand  
437 Dollars (\$1,000.00). The register of proposals or qualifications  
438 shall be made part of the report required under Section 12(1) of  
439 this act.

440 **SECTION 10. Evaluating submitted proposals or**

441 **qualifications.** (1) The evaluation committee shall evaluate  
442 proposals or qualifications only in accordance with the  
443 methodology and weighting criteria described in the request for  
444 proposals or request for qualifications. Proposals or  
445 qualifications shall be initially classified as: (a) acceptable;  
446 (b) potentially acceptable, which means reasonably susceptible of  
447 being made acceptable; or (c) unacceptable. Offerers whose  
448 proposals or qualifications are unacceptable shall be so notified  
449 promptly.

450 (2) Discussions may be held with offerers to:

451 (a) Promote understanding of the state's requirements  
452 and the offerer's proposals or qualifications; and

453 (b) Facilitate arriving at a contract that will be the  
454 most practicable and advantageous to the state taking into  
455 consideration price and the other evaluation factors set forth in  
456 the request for proposals or request for qualifications.

457 (3) Offerers shall be accorded fair and equal treatment with  
458 respect to any opportunity for discussions and revisions of



459 proposals or qualifications. Any discussions that take place  
460 under the provisions of this section shall be recorded and the  
461 recordings shall be made public upon award of the contract. The  
462 chief procurement officer shall establish procedures and schedules  
463 for conducting discussions. If, during discussions, there is a  
464 need for any substantial clarification of or change in the request  
465 for proposals or request for qualifications, the request shall be  
466 amended to incorporate the clarification or change. Auction  
467 techniques, revealing one offerer's price to another, and  
468 disclosure of any information derived from competing proposals is  
469 prohibited. Any substantial oral clarification of a proposal or  
470 qualification shall be reduced to writing by the offerer.

471 **SECTION 11. Best and final offers.** The chief procurement  
472 officer shall establish a common date and time for the submission  
473 of best and final offers. Best and final offers shall be  
474 submitted only once; however, the chief procurement officer may  
475 make a written determination that it is in the state's best  
476 interest to conduct additional discussions or change the state's  
477 requirements and require another submission of best and final  
478 offers. Otherwise, no discussion of or changes in the best and  
479 final offers shall be allowed before the award. Offerers shall  
480 also be informed that if they do not submit a notice of withdrawal  
481 or another best and final offer, their immediate previous offer  
482 will be construed as their best and final offer.



483           **SECTION 12.**   **Awarding the contract.**   (1) After proposals or  
484 qualifications have been evaluated, the evaluation committee shall  
485 prepare a report evaluating and recommending the award of a  
486 contract or contracts. The report shall list the names of all  
487 potential offerers who submitted a proposal or qualification and  
488 shall summarize the proposals or qualifications of each offerer.  
489 The report shall rank offerers in order of evaluation, shall  
490 recommend the selection of an offerer or offerers, as appropriate,  
491 for a contract, shall be clear in the reasons why the offerer or  
492 offerers have been selected among others considered, and shall  
493 detail the terms, conditions, scope of services, fees and other  
494 matters to be incorporated into the contract. The report shall be  
495 available to the public at least forty-eight (48) hours before the  
496 awarding of the contract.

497           (2) The chief procurement officer shall publish a notice on  
498 the agency's website and the Mississippi procurement portal  
499 summarizing the award of the contract, which shall include but not  
500 be limited to, the nature, duration and amount of the contract,  
501 the name of the offerer and a statement that the contract is on  
502 file and available for public inspection in the office of the  
503 chief procurement officer.

504           **SECTION 13.** Section 27-104-7, Mississippi Code of 1972, is  
505 amended as follows:

506           27-104-7. (1) (a) There is created \* \* \*~~within the~~  
507 ~~Department of Finance and Administration~~ the Public Procurement



508 Review Board, which shall be reconstituted on January 1, 2018, and  
509 shall be composed of the \* \* \*Executive Director of the Department  
510 of Finance and Administration, the head of the Office of Budget  
511 and Policy Development and an employee of the Office of General  
512 Services who is familiar with the purchasing laws of this state.  
513 following members:

514 (i) Three (3) individuals appointed by the  
515 Governor with the advice and consent of the Senate;

516 (ii) Two (2) individuals appointed by the  
517 Lieutenant Governor with the advice and consent of the Senate; and

518 (iii) The Executive Director of the Department of  
519 Finance and Administration, serving as an ex officio and nonvoting  
520 member.

521 (b) The initial terms of each appointee shall be as  
522 follows:

523 (i) One (1) member appointed by the Governor to  
524 serve for a term ending on June 30, 2019;

525 (ii) One (1) member appointed by the Governor to  
526 serve for a term ending on June 30, 2020;

527 (iii) One (1) member appointed by the Governor to  
528 serve for a term ending on June 30, 2021;

529 (iv) One (1) member appointed by the Lieutenant  
530 Governor to serve for a term ending on June 30, 2019; and

531 (v) One (1) member appointed by the Lieutenant  
532 Governor to serve for a term ending on June 30, 2020.



533 After the expiration of the initial terms, all appointed  
534 members' terms shall be for a period of four (4) years from the  
535 expiration date of the previous term, and until such time as the  
536 member's successor is duly appointed and qualified.

537 (c) When appointing members to the Public Procurement  
538 Review Board, the Governor and Lieutenant Governor shall take into  
539 consideration persons who possess at least five (5) years of  
540 management experience in general business, healthcare or finance  
541 for an organization, corporation or other public or private  
542 entity. Any person, or any employee or owner of a company, who  
543 receives any grants, procurements or contracts that are subject to  
544 approval under this section shall not be appointed to the Public  
545 Procurement Review Board. Any person, or any employee or owner of  
546 a company, who is a principal of the source providing a personal  
547 or professional service shall not be appointed to the Public  
548 Procurement Review Board if the principal owns or controls a  
549 greater than five percent (5%) interest or has an ownership value  
550 of One Million Dollars (\$1,000,000.00) in the source's business,  
551 whichever is smaller. No member shall be an officer or employee  
552 of the State of Mississippi while serving as a voting member on  
553 the Public Procurement Review Board.

554 (d) Members of the Public Procurement Review Board  
555 shall be entitled to per diem as authorized by Section 25-3-69 and  
556 travel reimbursement as authorized by Section 25-3-41.



557           (e) The ~~\*\*\*Executive Director of the Department of~~  
558 ~~Finance and Administration~~ members of the Public Procurement  
559 Review Board shall ~~\*\*\*be chairman~~ elect a chair from among the  
560 membership, and he or she shall preside over the meetings of the  
561 board. The board shall annually elect a vice ~~\*\*\*chairman~~ chair,  
562 who shall serve in the absence of the ~~\*\*\*chairman~~ chair. No  
563 business shall be transacted, including adoption of rules of  
564 procedure, without the presence of a quorum of the board. ~~\*\*\*~~  
565 ~~Two (2)~~Three (3) members shall be a quorum. No action shall be  
566 valid unless approved by ~~\*\*\*the chairman and one (1) other of~~  
567 ~~those~~ a majority of the members present and voting, entered upon  
568 the minutes of the board and signed by the ~~\*\*\*chairman~~ chair.  
569 ~~\*\*\*The board shall meet on a monthly basis and at any other~~  
570 ~~time when notified by the chairman.~~ Necessary clerical and  
571 administrative support for the board shall be provided by the  
572 Department of Finance and Administration. Minutes shall be kept  
573 of the proceedings of each meeting, copies of which shall be filed  
574 on a monthly basis with the ~~\*\*\*Legislative Budget Office~~ chairs  
575 of the Accountability, Efficiency and Transparency Committees of  
576 the Senate and House of Representatives and the chairs of the  
577 Appropriations Committees of the Senate and House of  
578 Representatives.

579           (2) The Public Procurement Review Board shall have the  
580 following powers and responsibilities:



581 (a) Approve all purchasing regulations governing the  
582 purchase or lease by any agency, as defined in Section 31-7-1, of  
583 commodities and equipment, except computer equipment acquired  
584 pursuant to Sections 25-53-1 through 25-53-29;

585 (b) Adopt regulations governing the approval of  
586 contracts let for the construction and maintenance of state  
587 buildings and other state facilities as well as related contracts  
588 for architectural and engineering services;

589 (c) Adopt regulations governing any lease or rental  
590 agreement by any state agency or department, including any state  
591 agency financed entirely by federal funds, for space outside the  
592 buildings under the jurisdiction of the Department of Finance and  
593 Administration. These regulations shall require each agency  
594 requesting to lease such space to provide the following  
595 information that shall be published by the Department of Finance  
596 and Administration on its website: the agency to lease the space;  
597 the terms of the lease; the approximate square feet to be leased;  
598 the use for the space; a description of a suitable space; the  
599 general location desired for the leased space; the contact  
600 information for a person from the agency; the deadline date for  
601 the agency to have received a lease proposal; any other specific  
602 terms or conditions of the agency; and any other information  
603 deemed appropriate by the Division of Real Property Management of  
604 the Department of Finance and Administration or the Public  
605 Procurement Review Board. The information shall be provided





606 sufficiently in advance of the time the space is needed to allow  
607 the Division of Real Property Management of the Department of  
608 Finance and Administration to review and preapprove the lease  
609 before the time for advertisement begins;

610 (d) Adopt, in its discretion, regulations to set aside  
611 at least five percent (5%) of anticipated annual expenditures for  
612 the purchase of commodities from minority businesses; however, all  
613 such set-aside purchases shall comply with all purchasing  
614 regulations promulgated by the department and shall be subject to  
615 all bid requirements. Set-aside purchases for which competitive  
616 bids are required shall be made from the lowest and best minority  
617 business bidder; however, if no minority bid is available or if  
618 the minority bid is more than two percent (2%) higher than the  
619 lowest bid, then bids shall be accepted and awarded to the lowest  
620 and best bidder. However, the provisions in this paragraph shall  
621 not be construed to prohibit the rejection of a bid when only one  
622 (1) bid is received. Such rejection shall be placed in the  
623 minutes. For the purposes of this paragraph, the term "minority  
624 business" means a business which is owned by a person who is a  
625 citizen or lawful permanent resident of the United States and who  
626 is:

627 (i) Black: having origins in any of the black  
628 racial groups of Africa;



629 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,  
630 Central or South American, or other Spanish or Portuguese culture  
631 or origin regardless of race;

632 (iii) Asian-American: having origins in any of  
633 the original \* \* \* ~~peoples~~ people of the Far East, Southeast Asia,  
634 the Indian subcontinent, or the Pacific Islands;

635 (iv) American Indian or Alaskan Native: having  
636 origins in any of the original \* \* \* ~~peoples~~ people of North  
637 America; or

638 (v) Female;

639 (e) In consultation with and approval by  
640 the \* \* \* ~~Chairmen~~ Chairs of the Senate and House Public Property  
641 Committees, approve leases, for a term not to exceed eighteen (18)  
642 months, entered into by state agencies for the purpose of  
643 providing parking arrangements for state employees who work in the  
644 Woolfolk Building, the Carroll Gartin Justice Building or the  
645 Walter Sillers Office Building \* \* \* ~~;~~;

646 (f) Promulgate rules and regulations governing the  
647 solicitation and selection of contractual services personnel  
648 including personal and professional services contracts for any  
649 form of consulting, policy analysis, public relations, marketing,  
650 public affairs, legislative advocacy services or any other  
651 contract that the board deems appropriate for oversight, with the  
652 exception of any personal service contracts entered into by any  
653 agency that employs only nonstate service employees as defined in



654 Section 25-9-107(c), any personal service contracts entered into  
655 for computer or information technology-related services governed  
656 by the Mississippi Department of Information Technology Services,  
657 any personal service contracts entered into by the individual  
658 state institutions of higher learning, any personal service  
659 contracts entered into by the Mississippi Department of  
660 Transportation, any personal service contracts entered into by the  
661 Department of Human Services through June 30, 2019, which the  
662 Executive Director of the Department of Human Services determines  
663 would be useful in establishing and operating the Department of  
664 Child Protection Services, any personal service contracts entered  
665 into by the Department of Child Protection Services through June  
666 30, 2019, and any contract for attorney, accountant, actuary  
667 auditor, architect, engineer, and utility rate expert services.  
668 Any such rules and regulations shall provide for maintaining  
669 continuous internal audit covering the activities of such agency  
670 affecting its revenue and expenditures as required under Section  
671 7-7-3(6) (d). Any rules and regulation changes related to personal  
672 and professional services contracts that the Public Procurement  
673 Review Board may propose shall be submitted to the Chairs of the  
674 Accountability, Efficiency and Transparency Committees of the  
675 Senate and House of Representatives and the Chairs of the  
676 Appropriation Committees of the Senate and House of  
677 Representatives at least fifteen (15) days before the board votes  
678 on the proposed changes, and those rules and regulation changes,



679 if adopted, shall be promulgated in accordance with the  
680 Mississippi Administrative Procedures Act;

681 (g) Approve all personal and professional services  
682 contracts involving the expenditures of funds in excess of  
683 Seventy-five Thousand Dollars (\$75,000.00), except as provided in  
684 paragraph (f) of this subsection (2) and in subsection (8);

685 (h) Develop mandatory standards with respect to  
686 contractual services personnel that require invitations for public  
687 bid, requests for proposals, record keeping and financial  
688 responsibility of contractors. The Public Procurement Review  
689 Board shall, unless exempted under this paragraph (h) or under  
690 paragraph (i) or (o) of this subsection (2), require the agency  
691 involved to submit the procurement to a competitive procurement  
692 process, and may reserve the right to reject any or all resulting  
693 procurements;

694 (i) Prescribe certain circumstances by which agency  
695 heads may enter into contracts for personal and professional  
696 services without receiving prior approval from the Public  
697 Procurement Review Board. The Public Procurement Review Board may  
698 establish a preapproved list of providers of various personal and  
699 professional services for set prices with which state agencies may  
700 contract without bidding or prior approval from the board;

701 (i) Agency requirements may be fulfilled by  
702 procuring services performed incident to the state's own programs.  
703 The agency head shall determine in writing whether the price



704 represents a fair market value for the services. When the  
705 procurements are made from other governmental entities, the  
706 private sector need not be solicited; however, these contracts  
707 shall still be submitted for approval to the Public Procurement  
708 Review Board.

709 (ii) Contracts between two (2) state agencies,  
710 both under Public Procurement Review Board purview, shall not  
711 require Public Procurement Review Board approval. However, the  
712 contracts shall still be entered into the enterprise resource  
713 planning system.

714 (j) Provide standards for the issuance of requests for  
715 proposals, the evaluation of proposals received, consideration of  
716 costs and quality of services proposed, contract negotiations, the  
717 administrative monitoring of contract performance by the agency  
718 and successful steps in terminating a contract;

719 (k) Present recommendations for governmental  
720 privatization and to evaluate privatization proposals submitted by  
721 any state agency;

722 (l) Authorize personal and professional service  
723 contracts to be effective for more than one (1) year provided a  
724 funding condition is included in any such multiple year contract,  
725 except the State Board of Education, which shall have the  
726 authority to enter into contractual agreements for student  
727 assessment for a period up to ten (10) years. The State Board of



728 Education shall procure these services in accordance with the  
729 Public Procurement Review Board procurement regulations;

730 (m) Request the State Auditor to conduct a performance  
731 audit on any personal or professional service contract;

732 (n) Prepare an annual report to the Legislature  
733 concerning the issuance of personal and professional services  
734 contracts during the previous year, collecting any necessary  
735 information from state agencies in making such report;

736 (o) Develop and implement the following standards and  
737 procedures for the approval of any sole source contract for  
738 personal and professional services regardless of the value of the  
739 procurement:

740 (i) For the purposes of this paragraph (o), the  
741 term "sole source" means only one (1) source is available that can  
742 provide the required personal or professional service.

743 (ii) An agency that has been issued a binding,  
744 valid court order mandating that a particular source or provider  
745 must be used for the required service must include a copy of the  
746 applicable court order in all future sole source contract reviews  
747 for the particular personal or professional service referenced in  
748 the court order.

749 (iii) Any agency alleging to have a sole source  
750 for any personal or professional service, other than those  
751 exempted under Section 27-104-7(2)(f) and (8), shall publish on  
752 the procurement portal website established by Sections 25-53-151



753 and 27-104-165, for at least fourteen (14) days, the terms of the  
754 proposed contract for those services. In addition, the  
755 publication shall include, but is not limited to, the following  
756 information:

757 1. The personal or professional service  
758 offered in the contract;

759 2. An explanation of why the personal or  
760 professional service is the only one that can meet the needs of  
761 the agency;

762 3. An explanation of why the source is the  
763 only person or entity that can provide the required personal or  
764 professional service;

765 4. An explanation of why the amount to be  
766 expended for the personal or professional service is reasonable;  
767 and

768 5. The efforts that the agency went through  
769 to obtain the best possible price for the personal or professional  
770 service.

771 (iv) If any person or entity objects and proposes  
772 that the personal or professional service published under  
773 subparagraph (iii) of this paragraph (o) is not a sole source  
774 service and can be provided by another person or entity, then the  
775 objecting person or entity shall notify the Public Procurement  
776 Review Board and the agency that published the proposed sole



777 source contract with a detailed explanation of why the personal or  
778 professional service is not a sole source service.

779 (v) 1. If the agency determines after review that  
780 the personal or professional service in the proposed sole source  
781 contract can be provided by another person or entity, then the  
782 agency must withdraw the sole source contract publication from the  
783 procurement portal website and submit the procurement of the  
784 personal or professional service to an advertised competitive bid  
785 or selection process.

786 2. If the agency determines after review that  
787 there is only one (1) source for the required personal or  
788 professional service, then the agency may appeal to the Public  
789 Procurement Review Board. The agency has the burden of proving  
790 that the personal or professional service is only provided by one  
791 (1) source.

792 3. If the Public Procurement Review Board has  
793 any reasonable doubt as to whether the personal or professional  
794 service can only be provided by one (1) source, then the agency  
795 must submit the procurement of the personal or professional  
796 service to an advertised competitive bid or selection process. No  
797 action taken by the Public Procurement Review Board in this appeal  
798 process shall be valid unless approved by a majority of the  
799 members of the Public Procurement Review Board present and voting.

800 (vi) The Public Procurement Review Board shall  
801 prepare and submit a quarterly report to the House of





802 Representatives and Senate Accountability, Efficiency and  
803 Transparency Committees that details the sole source contracts  
804 presented to the Public Procurement Review Board and the reasons  
805 that the Public Procurement Review Board approved or rejected each  
806 contract. These quarterly reports shall also include the  
807 documentation and memoranda required in subsection (4) of this  
808 section. An agency that submitted a sole source contract shall be  
809 prepared to explain the sole source contract to each committee by  
810 December 15 of each year upon request by the committee.

811 (p) Assess any fines and administrative penalties  
812 provided for in Sections 1 through 12 of this act.

813 (3) All submissions shall be made sufficiently in advance of  
814 each monthly meeting of the Public Procurement Review Board as  
815 prescribed by the Public Procurement Review Board. If the Public  
816 Procurement Review Board rejects any contract submitted for review  
817 or approval, the Public Procurement Review Board shall clearly set  
818 out the reasons for its action, including, but not limited to, the  
819 policy that the agency has violated in its submitted contract and  
820 any corrective actions that the agency may take to amend the  
821 contract to comply with the rules and regulations of the Public  
822 Procurement Review Board.

823 (4) All sole source contracts for personal and professional  
824 services awarded by state agencies, other than those exempted  
825 under Section 27-104-7(2)(f) and (8), whether approved by an  
826 agency head or the Public Procurement Review Board, shall contain



827 in the procurement file a written determination for the approval,  
828 using a request form furnished by the Public Procurement Review  
829 Board. The written determination shall document the basis for the  
830 determination, including any market analysis conducted in order to  
831 ensure that the service required was practicably available from  
832 only one (1) source. A memorandum shall accompany the request  
833 form and address the following four (4) points:

834 (a) Explanation of why this service is the only service  
835 that can meet the needs of the purchasing agency;

836 (b) Explanation of why this vendor is the only  
837 practicably available source from which to obtain this service;

838 (c) Explanation of why the price is considered  
839 reasonable; and

840 (d) Description of the efforts that were made to  
841 conduct a noncompetitive negotiation to get the best possible  
842 price for the taxpayers.

843 (5) In conjunction with the State Personnel Board, the  
844 Public Procurement Review Board shall develop and promulgate rules  
845 and regulations to define the allowable legal relationship between  
846 contract employees and the contracting departments, agencies and  
847 institutions of state government under the jurisdiction of the  
848 State Personnel Board, in compliance with the applicable rules and  
849 regulations of the federal Internal Revenue Service (IRS) for  
850 federal employment tax purposes. Under these regulations, the  
851 usual common law rules are applicable to determine and require



852 that such worker is an independent contractor and not an employee,  
853 requiring evidence of lawful behavioral control, lawful financial  
854 control and lawful relationship of the parties. Any state  
855 department, agency or institution shall only be authorized to  
856 contract for personnel services in compliance with those  
857 regulations.

858 ( \* \* \*36) No member of the Public Procurement Review Board  
859 shall use his or her official authority or influence to coerce, by  
860 threat of discharge from employment, or otherwise, the purchase of  
861 commodities, the contracting for personal or professional  
862 services, or the contracting for public construction under this  
863 chapter.

864 ( \* \* \*47) Notwithstanding any other laws or rules to the  
865 contrary, the provisions of subsection (2) of this section shall  
866 not be applicable to the Mississippi State Port Authority at  
867 Gulfport.

868 (8) Nothing in this section shall impair or limit the  
869 authority of the Board of Trustees of the Public Employees'  
870 Retirement System to enter into any personal or professional  
871 services contracts directly related to their constitutional  
872 obligation to manage the trust funds, including, but not limited  
873 to, actuarial, custodial banks, cash management, investment  
874 consultant and investment management contracts.

875 (9) Notwithstanding the exemption of personal and  
876 professional services contracts entered into by the Department of



877 Human Services and personal and professional services contracts  
878 entered into by the Department of Child Protection Services from  
879 the provisions of this section under subsection (2)(f), before the  
880 Department of Human Services or the Department of Child Protection  
881 Services may enter into a personal or professional service  
882 contract, the department(s) shall give notice of the proposed  
883 personal or professional service contract to the Public  
884 Procurement Review Board for any recommendations by the board.  
885 Upon receipt of the notice, the board shall post the notice on its  
886 website and on the procurement portal website established by  
887 Sections 25-53-151 and 27-104-165. If the board does not respond  
888 to the department(s) within seven (7) calendar days after  
889 receiving the notice, the department(s) may enter the proposed  
890 personal or professional service contract. If the board responds  
891 to the department(s) within seven (7) calendar days, then the  
892 board has seven (7) calendar days from the date of its initial  
893 response to provide any additional recommendations. After the end  
894 of the second seven-day period, the department(s) may enter the  
895 proposed personal or professional service contract. The board is  
896 not authorized to disapprove any proposed personal or professional  
897 services contracts. This subsection shall stand repealed on July  
898 1, 2019.

899       **SECTION 14.** Section 25-9-120, Mississippi Code of 1972, is  
900 amended as follows:



901           25-9-120. (1) Contract personnel, whether classified as  
902 contract workers or independent contractors shall not be deemed  
903 state service or nonstate service employees of the State of  
904 Mississippi, and shall not be eligible to participate in the  
905 Public Employees' Retirement System, or the State and School  
906 Employees' Health Insurance Plan, nor be allowed credit for  
907 personal and sick leave and other leave benefits as employees of  
908 the State of Mississippi, notwithstanding Sections 25-3-91 through  
909 25-3-101; 25-9-101 through 25-9-151; 25-11-1 through 25-11-126;  
910 25-11-128 through 25-11-131; 25-15-1 through 25-15-23 and for the  
911 purpose set forth herein. Contract workers, i.e., contract  
912 personnel who do not meet the criteria of independent contractors,  
913 shall be subject to the provisions of Section 25-11-127.

914   \* \* \*~~(2) (a) There is hereby created the Personal Service~~  
915 ~~Contract Review Board, which shall be composed of the following~~  
916 ~~members:~~

917   ~~\_\_\_\_\_ (i) The State Personnel Director;~~

918   ~~\_\_\_\_\_ (ii) Two (2) individuals appointed by the Governor~~  
919 ~~with the advice and consent of the Senate;~~

920   ~~\_\_\_\_\_ (iii) Two (2) individuals appointed by the~~  
921 ~~Lieutenant Governor with the advice and consent of the Senate; and~~

922   ~~\_\_\_\_\_ (iv) The Executive Director of the Department of~~  
923 ~~Finance and Administration, serving as an ex officio member;~~

924   ~~\_\_\_\_\_ (b) The initial terms of each appointee shall be as~~  
925 ~~follows:~~



926 ~~————— (i) One (1) member appointed by the Governor to~~  
927 ~~serve for a term ending June 30, 2017;~~

928 ~~————— (ii) One (1) member appointed by the Governor to~~  
929 ~~serve for a term ending June 30, 2020;~~

930 ~~————— (iii) One (1) member appointed by the Lieutenant~~  
931 ~~Governor to serve for a term ending June 30, 2018; and~~

932 ~~————— (iv) One (1) member appointed by the Lieutenant~~  
933 ~~Governor to serve for a term ending June 30, 2019.~~

934 ~~———— After the expiration of the initial terms, all appointed~~  
935 ~~members' terms shall be for a period of four (4) years from the~~  
936 ~~expiration date of the previous term, and until such time as the~~  
937 ~~member's successor is duly appointed and qualified;~~

938 ~~————— (c) When appointing members to the Personal Service~~  
939 ~~Contract Review Board, the Governor and Lieutenant Governor shall~~  
940 ~~take into consideration persons who possess at least five (5)~~  
941 ~~years of management experience in general business, health care,~~  
942 ~~or finance for an organization, corporation, or other public or~~  
943 ~~private entity. Any person, or any employee or owner of a~~  
944 ~~company, who receives any grants, procurements or contracts that~~  
945 ~~are subject to approval under this section shall not be appointed~~  
946 ~~to the Personal Service Contract Review Board. Any person, or any~~  
947 ~~employee or owner of a company, who is a principal of the source~~  
948 ~~providing the personal or professional service shall not be~~  
949 ~~appointed to the Personal Service Contract Review Board if the~~  
950 ~~principal owns or controls a greater than five percent (5%)~~



951 ~~interest or has an ownership value of One Million Dollars~~  
952  ~~(\$1,000,000.00) in the source's business, whichever is smaller;~~  
953  ~~(d) Members of the Personal Service Contract Review~~  
954  ~~Board shall be entitled to per diem as authorized by Section~~  
955  ~~25-3-69 and travel reimbursement as authorized by Section 25-3-41;~~  
956  ~~(e) The State Personnel Director shall be chairman and~~  
957  ~~shall preside over the meetings of the board. The board shall~~  
958  ~~annually elect a vice chairman, who shall serve in the absence of~~  
959  ~~the chairman. No business shall be transacted, including adoption~~  
960  ~~of rules of procedure, without the presence of a quorum of the~~  
961  ~~board. Three (3) members shall be a quorum. No action shall be~~  
962  ~~valid unless approved by the chairman and two (2) other of those~~  
963  ~~members present and voting, entered upon the minutes of the board~~  
964  ~~and signed by the chairman. Necessary clerical and administrative~~  
965  ~~support for the board shall be provided by the State Personnel~~  
966  ~~Board. Minutes shall be kept of the proceedings of each meeting,~~  
967  ~~copies of which shall be filed on a monthly basis with the~~  
968  ~~Chairmen of the Accountability, Efficiency and Transparency~~  
969  ~~Committees of the Senate and House of Representatives.~~  
970  ~~(3) The Personal Service Contract Review Board shall have~~  
971  ~~the following powers and responsibilities:~~  
972  ~~(a) Promulgate rules and regulations governing the~~  
973  ~~solicitation and selection of contractual services personnel~~  
974  ~~including personal and professional services contracts for any~~  
975  ~~form of consulting, policy analysis, public relations, marketing,~~



976 ~~public affairs, legislative advocacy services or any other~~  
977 ~~contract that the board deems appropriate for oversight, with the~~  
978 ~~exception of any personal service contracts entered into for~~  
979 ~~computer or information technology-related services governed by~~  
980 ~~the Mississippi Department of Information Technology Services, any~~  
981 ~~personal service contracts entered into by the Mississippi~~  
982 ~~Department of Transportation, any personal service contracts~~  
983 ~~entered into by the Department of Human Services through June 30,~~  
984 ~~2019, which the Executive Director of the Department of Human~~  
985 ~~Services determines would be useful in establishing and operating~~  
986 ~~the Department of Child Protection Services, any personal service~~  
987 ~~contracts entered into by the Department of Child Protection~~  
988 ~~Services through June 30, 2019, and any contract for attorney,~~  
989 ~~accountant, auditor, architect, engineer, and utility rate expert~~  
990 ~~services. Any such rules and regulations shall provide for~~  
991 ~~maintaining continuous internal audit covering the activities of~~  
992 ~~such agency affecting its revenue and expenditures as required~~  
993 ~~under Section 7-7-3(6)(d). Any rules and regulation changes~~  
994 ~~related to personal and professional services contracts that may~~  
995 ~~be proposed by the Personal Service Contract Review Board shall be~~  
996 ~~submitted to the Chairmen of the Accountability, Efficiency and~~  
997 ~~Transparency Committees of the Senate and House of Representatives~~  
998 ~~at least fifteen (15) days prior to the board voting on the~~  
999 ~~proposed changes, and such rules and regulation changes, if~~





1000 ~~adopted, shall be promulgated in accordance with the Mississippi~~  
1001 ~~Administrative Procedures Act;~~

1002 ~~————— (b) Approve all personal and professional services~~  
1003 ~~contracts involving the expenditures of funds in excess of~~  
1004 ~~Seventy-five Thousand Dollars (\$75,000.00);~~

1005 ~~————— (c) Develop mandatory standards with respect to~~  
1006 ~~contractual services personnel which require invitations for~~  
1007 ~~public bid, requests for proposals, record keeping and financial~~  
1008 ~~responsibility of contractors. The Personal Service Contract~~  
1009 ~~Review Board shall, unless exempted under this paragraph (c) or~~  
1010 ~~under paragraph (d) or (j) of this subsection (3), require the~~  
1011 ~~agency involved to advertise such contract for public bid, and may~~  
1012 ~~reserve the right to reject any or all bids;~~

1013 ~~————— (i) Any agency that seeks to procure personal or~~  
1014 ~~professional service contracts that are required to be approved by~~  
1015 ~~the Personal Service Contract Review Board may petition for relief~~  
1016 ~~from any requirement that the agency use competitive bidding as a~~  
1017 ~~procurement method. The agency shall be required to show to the~~  
1018 ~~Personal Service Contract Review Board's satisfaction one (1) of~~  
1019 ~~the following:~~

1020 ~~————— 1. Federal law or federal court order has~~  
1021 ~~established limitations on the use of competitive bidding for the~~  
1022 ~~personal or professional contracts the agency is seeking to~~  
1023 ~~procure; or~~



1024 ~~\_\_\_\_\_ 2. The agency is required to hire~~  
1025 ~~professionals whose members are prohibited from bidding by the~~  
1026 ~~rules of professional conduct promulgated by the regulating agency~~  
1027 ~~or agencies for that professional; or~~

1028 ~~\_\_\_\_\_ 3. The agency can establish that the use of~~  
1029 ~~competitive bidding will be counterproductive to the business of~~  
1030 ~~the agency.~~

1031 ~~\_\_\_\_\_ (ii) If the Personal Service Contract Review Board~~  
1032 ~~determines that competitive bidding shall not be required for the~~  
1033 ~~particular personal or professional service the agency seeks to~~  
1034 ~~procure, then the Personal Service Contract Review Board shall~~  
1035 ~~direct the agency to establish a competitive procurement procedure~~  
1036 ~~for selecting the personal or professional service contract that~~  
1037 ~~ensures open, transparent procedures for making a selection. Such~~  
1038 ~~procedures shall include, but not be limited to, qualifications~~  
1039 ~~based selection or requests for qualifications. The Personal~~  
1040 ~~Service Contract Review Board shall also have the authority to~~  
1041 ~~audit the records of any agency to ensure it has used competitive~~  
1042 ~~procedures to contract for the personal or professional service;~~

1043 ~~\_\_\_\_\_ (d) Prescribe certain circumstances whereby agency~~  
1044 ~~heads may enter into contracts for personal and professional~~  
1045 ~~services without receiving prior approval from the Personal~~  
1046 ~~Service Contract Review Board. The Personal Service Contract~~  
1047 ~~Review Board may establish a preapproved list of providers of~~  
1048 ~~various personal and professional services for set prices with~~



1049 ~~which state agencies may contract without bidding or prior~~  
1050 ~~approval from the board;~~

1051 ~~————— (c) To provide standards for the issuance of requests~~  
1052 ~~for proposals, the evaluation of proposals received, consideration~~  
1053 ~~of costs and quality of services proposed, contract negotiations,~~  
1054 ~~the administrative monitoring of contract performance by the~~  
1055 ~~agency and successful steps in terminating a contract;~~

1056 ~~————— (f) To present recommendations for governmental~~  
1057 ~~privatization and to evaluate privatization proposals submitted by~~  
1058 ~~any state agency;~~

1059 ~~————— (g) To authorize personal and professional service~~  
1060 ~~contracts to be effective for more than one (1) year provided a~~  
1061 ~~funding condition is included in any such multiple year contract,~~  
1062 ~~except the State Board of Education, which shall have the~~  
1063 ~~authority to enter into contractual agreements for student~~  
1064 ~~assessment for a period up to ten (10) years. The State Board of~~  
1065 ~~Education shall procure these services in accordance with the~~  
1066 ~~Personal Service Contract Review Board procurement regulations;~~

1067 ~~————— (h) To request the State Auditor to conduct a~~  
1068 ~~performance audit on any personal or professional service~~  
1069 ~~contract;~~

1070 ~~————— (i) Prepare an annual report to the Legislature~~  
1071 ~~concerning the issuance of personal service contracts during the~~  
1072 ~~previous year, collecting any necessary information from state~~  
1073 ~~agencies in making such report;~~



1074 ~~————— (j) Develop and implement the following standards and~~  
1075 ~~procedures for the approval of any sole source contract for~~  
1076 ~~personal and professional services regardless of the value of the~~  
1077 ~~procurement:~~

1078 ~~————— (i) For the purposes of this paragraph (j), the~~  
1079 ~~term "sole source" means only one (1) source is available that can~~  
1080 ~~provide the required personal or professional service.~~

1081 ~~————— (ii) An agency that has been issued a binding,~~  
1082 ~~valid court order mandating that a particular source or provider~~  
1083 ~~must be used for the required service must include a copy of the~~  
1084 ~~applicable court order in all future sole source contract reviews~~  
1085 ~~for the particular personal or professional service referenced in~~  
1086 ~~the court order.~~

1087 ~~————— (iii) Any agency alleging to have a sole source~~  
1088 ~~for any personal or professional service shall have published on~~  
1089 ~~the procurement portal website established by Sections 25-53-151~~  
1090 ~~and 27-104-165, for at least fourteen (14) days, the terms of the~~  
1091 ~~proposed contract for those services. In addition, the~~  
1092 ~~publication shall include, but is not limited to, the following~~  
1093 ~~information:~~

1094 ~~————— 1. The personal or professional service~~  
1095 ~~offered in the contract;~~

1096 ~~————— 2. An explanation of why the personal or~~  
1097 ~~professional service is the only one that can meet the needs of~~  
1098 ~~the agency;~~



1099 ~~\_\_\_\_\_ 3. An explanation of why the source is the~~  
1100 ~~only person or entity that can provide the required personal or~~  
1101 ~~professional service;~~

1102 ~~\_\_\_\_\_ 4. An explanation of why the amount to be~~  
1103 ~~expended for the personal or professional service is reasonable;~~  
1104 ~~and~~

1105 ~~\_\_\_\_\_ 5. The efforts that the agency went through~~  
1106 ~~to obtain the best possible price for the personal or professional~~  
1107 ~~service.~~

1108 ~~\_\_\_\_\_ (iv) If any person or entity objects and proposes~~  
1109 ~~that the personal or professional service published under~~  
1110 ~~subparagraph (iii) of this paragraph (j) is not a sole source~~  
1111 ~~service and can be provided by another person or entity, then the~~  
1112 ~~objecting person or entity shall notify the Personal Service~~  
1113 ~~Contract Review Board and the agency that published the proposed~~  
1114 ~~sole source contract with a detailed explanation of why the~~  
1115 ~~personal or professional service is not a sole source service.~~

1116 ~~\_\_\_\_\_ (v) 1. If the agency determines after review that~~  
1117 ~~the personal or professional service in the proposed sole source~~  
1118 ~~contract can be provided by another person or entity, then the~~  
1119 ~~agency must withdraw the sole source contract publication from the~~  
1120 ~~procurement portal website and submit the procurement of the~~  
1121 ~~personal or professional service to an advertised competitive bid~~  
1122 ~~or selection process.~~



1123 ~~\_\_\_\_\_ 2. If the agency determines after review that~~  
1124 ~~there is only one (1) source for the required personal or~~  
1125 ~~professional service, then the agency may appeal to the Personal~~  
1126 ~~Service Contract Review Board. The agency has the burden of~~  
1127 ~~proving that the personal or professional service is only provided~~  
1128 ~~by one (1) source.~~

1129 ~~\_\_\_\_\_ 3. If the Personal Service Contract Review~~  
1130 ~~Board has any reasonable doubt as to whether the personal or~~  
1131 ~~professional service can only be provided by one (1) source, then~~  
1132 ~~the agency must submit the procurement of the personal or~~  
1133 ~~professional service to an advertised competitive bid or selection~~  
1134 ~~process. No action taken by the Personal Service Contract Review~~  
1135 ~~Board in this appeal process shall be valid unless approved by the~~  
1136 ~~chairman and two (2) other members of the Personal Service~~  
1137 ~~Contract Review Board present and voting.~~

1138 ~~\_\_\_\_\_ (vi) The Personal Service Contract Review Board~~  
1139 ~~shall prepare and submit a quarterly report to the House of~~  
1140 ~~Representatives and Senate Committees on Accountability,~~  
1141 ~~Efficiency and Transparency that details the sole source contracts~~  
1142 ~~presented to the Personal Service Contract Review Board and the~~  
1143 ~~reasons that the Personal Service Contract Review Board approved~~  
1144 ~~or rejected each contract. Such quarterly reports shall also~~  
1145 ~~include the documentation and memoranda required in subsection (5)~~  
1146 ~~of this section. An agency that submitted a sole source contract~~  
1147 ~~shall be prepared to explain the sole source contract to each~~



1148 ~~committee by December 15 of each year upon request by the~~  
1149 ~~committee.~~

1150 ~~—— (4) Any contract submitted to the Personal Service Contract~~  
1151 ~~Review Board for review and approval shall be presumed to be~~  
1152 ~~approved if the Personal Service Contract Review Board does not~~  
1153 ~~object to the contract within thirty (30) days of the agency's~~  
1154 ~~submission of the contract. All submissions shall be made thirty~~  
1155 ~~(30) days before the monthly meeting of the Personal Service~~  
1156 ~~Contract Review Board or as prescribed by the Personal Service~~  
1157 ~~Contract Review Board. If the Personal Service Contract Review~~  
1158 ~~Board rejects any contract submitted for review or approval, the~~  
1159 ~~Personal Service Contract Review Board shall clearly set out the~~  
1160 ~~reasons for its action, including, but not limited to, the policy~~  
1161 ~~that the agency has violated in its submitted contract and any~~  
1162 ~~corrective actions that the agency may take to amend the contract~~  
1163 ~~to comply with the rules and regulations of the Personal Service~~  
1164 ~~Contract Review Board.~~

1165 ~~—— (5) All sole source contracts for personal and professional~~  
1166 ~~services awarded by state agencies, whether approved by an agency~~  
1167 ~~head or the Personal Service Contract Review Board, shall contain~~  
1168 ~~in the procurement file a written determination for the approval,~~  
1169 ~~using a request form furnished by the Personal Service Contract~~  
1170 ~~Review Board. The written determination shall document the basis~~  
1171 ~~for the determination, including any market analysis conducted in~~  
1172 ~~order to ensure that the service required was practicably~~



1173 ~~available from only one (1) source. A memorandum shall accompany~~  
1174 ~~the request form and address the following four (4) points:~~  
1175 ~~————— (a) Explanation of why this service is the only service~~  
1176 ~~that can meet the needs of the purchasing agency;~~  
1177 ~~————— (b) Explanation of why this vendor is the only~~  
1178 ~~practicably available source from which to obtain this service;~~  
1179 ~~————— (c) Explanation of why the price is considered~~  
1180 ~~reasonable; and~~  
1181 ~~————— (d) Description of the efforts that were made to~~  
1182 ~~conduct a noncompetitive negotiation to get the best possible~~  
1183 ~~price for the taxpayers.~~  
1184 ~~————— (6) The Personal Service Contract Review Board shall develop~~  
1185 ~~and promulgate rules and regulations to define the allowable legal~~  
1186 ~~relationship between contract employees and the contracting~~  
1187 ~~departments, agencies and institutions of state government under~~  
1188 ~~the jurisdiction of the State Personnel Board, in compliance with~~  
1189 ~~the applicable rules and regulations of the federal Internal~~  
1190 ~~Revenue Service (IRS) for federal employment tax purposes. Under~~  
1191 ~~these regulations, the usual common law rules are applicable to~~  
1192 ~~determine and require that such worker is an independent~~  
1193 ~~contractor and not an employee, requiring evidence of lawful~~  
1194 ~~behavioral control, lawful financial control and lawful~~  
1195 ~~relationship of the parties. Any state department, agency or~~  
1196 ~~institution shall only be authorized to contract for personnel~~  
1197 ~~services in compliance with those regulations.~~





1198 ~~—— (7) No member of the Personal Service Contract Review Board~~  
1199 ~~shall use his official authority or influence to coerce, by threat~~  
1200 ~~of discharge from employment, or otherwise, the purchase of~~  
1201 ~~commodities or the contracting for personal or professional~~  
1202 ~~services under this section.~~

1203 ~~—— (8) Nothing in this section shall impair or limit the~~  
1204 ~~authority of the Board of Trustees of the Public Employees'~~  
1205 ~~Retirement System to enter into any personal or professional~~  
1206 ~~services contracts directly related to their constitutional~~  
1207 ~~obligation to manage the trust funds, including, but not limited~~  
1208 ~~to, actuarial, custodial banks, cash management, investment~~  
1209 ~~consultant, and investment management contracts.~~

1210 ~~—— (9) Notwithstanding the exemption of personal service~~  
1211 ~~contracts entered into by the Department of Human Services and~~  
1212 ~~personal service contracts entered into by the Department of Child~~  
1213 ~~Protection Services from the provisions of this section under~~  
1214 ~~subsection (3) (a), before the Department of Human Services or the~~  
1215 ~~Department of Child Protection Services may enter into a personal~~  
1216 ~~service contract, the department(s) shall give notice of the~~  
1217 ~~proposed personal service contract to the Personal Service~~  
1218 ~~Contract Review Board for any recommendations by the board. Upon~~  
1219 ~~receipt of the notice, the board shall post the notice on its~~  
1220 ~~website and on the procurement portal website established by~~  
1221 ~~Sections 25-53-151 and 27-104-165. If the board does not respond~~  
1222 ~~to the department(s) within seven (7) calendar days after~~



1223 ~~receiving the notice, the department(s) may enter the proposed~~  
1224 ~~personal service contract. If the board responds to the~~  
1225 ~~department(s) within seven (7) calendar days, then the board has~~  
1226 ~~seven (7) calendar days from the date of its initial response to~~  
1227 ~~provide any additional recommendations. After the end of the~~  
1228 ~~second seven-day period, the department(s) may enter the proposed~~  
1229 ~~personal service contract. The board is not authorized to~~  
1230 ~~disapprove any proposed personal service contracts. This~~  
1231 ~~subsection shall stand repealed on July 1, 2019.~~

1232       (2) The Personal Service Contract Review Board is abolished.  
1233 The Public Procurement Review Board shall be the Personal Service  
1234 Contract Review Board and shall retain all powers and duties  
1235 granted by law to the Personal Service Contract Review Board. All  
1236 equipment, inventories, records, personnel, resources and other  
1237 property, real or personal, tangible or intangible, of the  
1238 Personal Service Contract Review Board shall be transferred to the  
1239 Public Procurement Review Board as provided in Section 27-104-7.  
1240 The transfer of personnel shall be commensurate with the number  
1241 and classification of positions (PINS) allocated to the Personal  
1242 Service Contract Review Board on June 30, 2017. Wherever the  
1243 terms "Personal Service Contract Review Board" or "board," when  
1244 referring to the Personal Service Contract Review Board, appear in  
1245 any law, rule, regulation or document the same shall be construed  
1246 to mean the Public Procurement Review Board.



1247           **SECTION 15.** Section 25-61-9, Mississippi Code of 1972, is  
1248 amended as follows:

1249           25-61-9. (1) Records furnished to public bodies by third  
1250 parties which contain trade secrets or confidential commercial or  
1251 financial information shall not be subject to inspection,  
1252 examination, copying or reproduction under this chapter until  
1253 notice to third parties has been given, but the records shall be  
1254 released no later than twenty-one (21) days from the date the  
1255 third parties are given notice by the public body unless the third  
1256 parties have filed in chancery court a petition seeking a  
1257 protective order on or before the expiration of the twenty-one-day  
1258 time period. Any party seeking the protective order shall give  
1259 notice to the party requesting the information in accordance with  
1260 the Mississippi Rules of Civil Procedure.

1261           (2) If any public record which is held to be exempt from  
1262 disclosure pursuant to this chapter contains material which is not  
1263 exempt pursuant to this chapter, the public body shall separate  
1264 the exempt material and make the nonexempt material available for  
1265 examination or copying, or both, as provided for in this chapter.

1266           (3) Trade secrets and confidential commercial and financial  
1267 information of a proprietary nature developed by a college,  
1268 university or public hospital under contract with a firm,  
1269 business, partnership, association, corporation, individual or  
1270 other like entity shall not be subject to inspection, examination,  
1271 copying or reproduction under this chapter.



1272 (4) Misappropriation of a trade secret shall be governed by  
1273 the provisions of the Mississippi Uniform Trade Secrets Act,  
1274 Sections 75-26-1 through 75-26-19.

1275 (5) A waste minimization plan and any updates developed by  
1276 generators and facility operators under the Mississippi  
1277 Comprehensive Multimedia Waste Minimization Act of 1990 shall be  
1278 retained at the facility and shall not be subject to inspection,  
1279 examination, copying or reproduction under this chapter.

1280 (6) Data processing software obtained by an agency under a  
1281 licensing agreement that prohibits its disclosure and which  
1282 software is a trade secret, as defined in Section 75-26-3, and  
1283 data processing software produced by a public body which is  
1284 sensitive must not be subject to inspection, copying or  
1285 reproduction under this chapter.

1286 As used in this subsection, "sensitive" means only those  
1287 portions of data processing software, including the specifications  
1288 and documentation, used to:

1289 (a) Collect, process, store, and retrieve information  
1290 which is exempt under this chapter.

1291 (b) Control and direct access authorizations and  
1292 security measures for automated systems.

1293 (c) Collect, process, store, and retrieve information,  
1294 disclosure of which would require a significant intrusion into the  
1295 business of the public body.



1296 (7) For all procurement contracts awarded by state agencies,  
1297 the provisions of the contract which contain the commodities  
1298 purchased or the personal or professional services provided, the  
1299 price to be paid, and the term of the contract shall not be deemed  
1300 to be a trade secret or confidential commercial or financial  
1301 information under this section, and shall be available for  
1302 examination, copying or reproduction as provided for in this  
1303 chapter. Any party seeking a protective order for a procurement  
1304 contract awarded by state agencies shall give notice to and  
1305 provide the reasons for the protective order to the party  
1306 requesting the information in accordance with the Mississippi  
1307 Rules of Civil Procedure. The notice and reasons for the  
1308 protective order must be posted on the Mississippi procurement  
1309 portal for a minimum of seven (7) days before filing the petition  
1310 seeking the protective order in chancery court. Any party seeking  
1311 a protective order in violation of this subsection may be barred  
1312 by a state agency from submitting bids, proposals or  
1313 qualifications for procurement for a period not to exceed five (5)  
1314 years.

1315 **SECTION 16.** Section 31-7-13, Mississippi Code of 1972, is  
1316 amended as follows:

1317 31-7-13. All agencies and governing authorities shall  
1318 purchase their commodities and printing; contract for garbage  
1319 collection or disposal; contract for solid waste collection or



1320 disposal; contract for sewage collection or disposal; contract for  
1321 public construction; and contract for rentals as herein provided.

1322 (a) **Bidding procedure for purchases not over \$5,000.00.**

1323 Purchases which do not involve an expenditure of more than Five  
1324 Thousand Dollars (\$5,000.00), exclusive of freight or shipping  
1325 charges, may be made without advertising or otherwise requesting  
1326 competitive bids. However, nothing contained in this paragraph

1327 (a) shall be construed to prohibit any agency or governing  
1328 authority from establishing procedures which require competitive  
1329 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

1330 (b) **Bidding procedure for purchases over \$5,000.00 but**

1331 **not over \$50,000.00.** Purchases which involve an expenditure of  
1332 more than Five Thousand Dollars (\$5,000.00) but not more than  
1333 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and  
1334 shipping charges may be made from the lowest and best bidder  
1335 without publishing or posting advertisement for bids, provided at  
1336 least two (2) competitive written bids have been obtained. Any  
1337 state agency or community/junior college purchasing commodities or  
1338 procuring construction pursuant to this paragraph (b) may  
1339 authorize its purchasing agent, or his designee, to accept the  
1340 lowest competitive written bid under Fifty Thousand Dollars  
1341 (\$50,000.00). Any governing authority purchasing commodities  
1342 pursuant to this paragraph (b) may authorize its purchasing agent,  
1343 or his designee, with regard to governing authorities other than  
1344 counties, or its purchase clerk, or his designee, with regard to



1345 counties, to accept the lowest and best competitive written bid.  
1346 Such authorization shall be made in writing by the governing  
1347 authority and shall be maintained on file in the primary office of  
1348 the agency and recorded in the official minutes of the governing  
1349 authority, as appropriate. The purchasing agent or the purchase  
1350 clerk, or their designee, as the case may be, and not the  
1351 governing authority, shall be liable for any penalties and/or  
1352 damages as may be imposed by law for any act or omission of the  
1353 purchasing agent or purchase clerk, or their designee,  
1354 constituting a violation of law in accepting any bid without  
1355 approval by the governing authority. The term "competitive  
1356 written bid" shall mean a bid submitted on a bid form furnished by  
1357 the buying agency or governing authority and signed by authorized  
1358 personnel representing the vendor, or a bid submitted on a  
1359 vendor's letterhead or identifiable bid form and signed by  
1360 authorized personnel representing the vendor. "Competitive" shall  
1361 mean that the bids are developed based upon comparable  
1362 identification of the needs and are developed independently and  
1363 without knowledge of other bids or prospective bids. Any bid item  
1364 for construction in excess of Five Thousand Dollars (\$5,000.00)  
1365 shall be broken down by components to provide detail of component  
1366 description and pricing. These details shall be submitted with  
1367 the written bids and become part of the bid evaluation criteria.  
1368 Bids may be submitted by facsimile, electronic mail or other  
1369 generally accepted method of information distribution. Bids



1370 submitted by electronic transmission shall not require the  
1371 signature of the vendor's representative unless required by  
1372 agencies or governing authorities.

1373 (c) **Bidding procedure for purchases over \$50,000.00.**

1374 (i) **Publication requirement.**

1375 1. Purchases which involve an expenditure of  
1376 more than Fifty Thousand Dollars (\$50,000.00), exclusive of  
1377 freight and shipping charges, may be made from the lowest and best  
1378 bidder after advertising for competitive bids once each week for  
1379 two (2) consecutive weeks in a regular newspaper published in the  
1380 county or municipality in which such agency or governing authority  
1381 is located. However, all American Recovery and Reinvestment Act  
1382 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
1383 shall be bid. All references to American Recovery and  
1384 Reinvestment Act projects in this section shall not apply to  
1385 programs identified in Division B of the American Recovery and  
1386 Reinvestment Act.

1387 2. Reverse auctions shall be the primary  
1388 method for receiving bids during the bidding process. If a  
1389 purchasing entity determines that a reverse auction is not in the  
1390 best interest of the state, then that determination must be  
1391 approved by the Public Procurement Review Board. The purchasing  
1392 entity shall submit a detailed explanation of why a reverse  
1393 auction would not be in the best interest of the state and present  
1394 alternative process to be approved by Public Procurement Review





1395 Board. If the Public Procurement Review Board authorizes the  
1396 purchasing entity to solicit bids with a method other than reverse  
1397 auction, then the purchasing entity may designate the other  
1398 methods by which the bids will be received, including, but not  
1399 limited to, bids sealed in an envelope, bids received  
1400 electronically in a secure system, \* \* \*~~bids received via a~~  
1401 ~~reverse auction,~~ or bids received by any other method that  
1402 promotes open competition and has been approved by the Office of  
1403 Purchasing and Travel. However, reverse auction shall not be used  
1404 for any public contract for design or construction of public  
1405 facilities, including buildings, roads and bridges. The Public  
1406 Procurement Review Board must approve any contract entered into by  
1407 alternative processes. The provisions of this subparagraph 2  
1408 shall not apply to the individual state institutions of higher  
1409 learning.

1410                   3. The date as published for the bid opening  
1411 shall not be less than seven (7) working days after the last  
1412 published notice; however, if the purchase involves a construction  
1413 project in which the estimated cost is in excess of Fifty Thousand  
1414 Dollars (\$50,000.00), such bids shall not be opened in less than  
1415 fifteen (15) working days after the last notice is published and  
1416 the notice for the purchase of such construction shall be  
1417 published once each week for two (2) consecutive weeks. However,  
1418 all American Recovery and Reinvestment Act projects in excess of  
1419 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any



1420 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
1421 under the American Recovery and Reinvestment Act, publication  
1422 shall be made one (1) time and the bid opening for construction  
1423 projects shall not be less than ten (10) working days after the  
1424 date of the published notice. The notice of intention to let  
1425 contracts or purchase equipment shall state the time and place at  
1426 which bids shall be received, list the contracts to be made or  
1427 types of equipment or supplies to be purchased, and, if all plans  
1428 and/or specifications are not published, refer to the plans and/or  
1429 specifications on file. If there is no newspaper published in the  
1430 county or municipality, then such notice shall be given by posting  
1431 same at the courthouse, or for municipalities at the city hall,  
1432 and at two (2) other public places in the county or municipality,  
1433 and also by publication once each week for two (2) consecutive  
1434 weeks in some newspaper having a general circulation in the county  
1435 or municipality in the above-provided manner. On the same date  
1436 that the notice is submitted to the newspaper for publication, the  
1437 agency or governing authority involved shall mail written notice  
1438 to, or provide electronic notification to the main office of the  
1439 Mississippi Procurement Technical Assistance Program under the  
1440 Mississippi Development Authority that contains the same  
1441 information as that in the published notice. Submissions received  
1442 by the Mississippi Procurement Technical Assistance Program for  
1443 projects funded by the American Recovery and Reinvestment Act  
1444 shall be displayed on a separate and unique Internet web page



1445 accessible to the public and maintained by the Mississippi  
1446 Development Authority for the Mississippi Procurement Technical  
1447 Assistance Program. Those American Recovery and Reinvestment Act  
1448 related submissions shall be publicly posted within twenty-four  
1449 (24) hours of receipt by the Mississippi Development Authority and  
1450 the bid opening shall not occur until the submission has been  
1451 posted for ten (10) consecutive days. The Department of Finance  
1452 and Administration shall maintain information regarding contracts  
1453 and other expenditures from the American Recovery and Reinvestment  
1454 Act, on a unique Internet web page accessible to the public. The  
1455 Department of Finance and Administration shall promulgate rules  
1456 regarding format, content and deadlines, unless otherwise  
1457 specified by law, of the posting of award notices, contract  
1458 execution and subsequent amendments, links to the contract  
1459 documents, expenditures against the awarded contracts and general  
1460 expenditures of funds from the American Recovery and Reinvestment  
1461 Act. Within one (1) working day of the contract award, the agency  
1462 or governing authority shall post to the designated web page  
1463 maintained by the Department of Finance and Administration, notice  
1464 of the award, including the award recipient, the contract amount,  
1465 and a brief summary of the contract in accordance with rules  
1466 promulgated by the department. Within one (1) working day of the  
1467 contract execution, the agency or governing authority shall post  
1468 to the designated web page maintained by the Department of Finance  
1469 and Administration a summary of the executed contract and make a



1470 copy of the appropriately redacted contract documents available  
1471 for linking to the designated web page in accordance with the  
1472 rules promulgated by the department. The information provided by  
1473 the agency or governing authority shall be posted to the web page  
1474 for the duration of the American Recovery and Reinvestment Act  
1475 funding or until the project is completed, whichever is longer.

1476 (ii) **Bidding process amendment procedure.** If all  
1477 plans and/or specifications are published in the notification,  
1478 then the plans and/or specifications may not be amended. If all  
1479 plans and/or specifications are not published in the notification,  
1480 then amendments to the plans/specifications, bid opening date, bid  
1481 opening time and place may be made, provided that the agency or  
1482 governing authority maintains a list of all prospective bidders  
1483 who are known to have received a copy of the bid documents and all  
1484 such prospective bidders are sent copies of all amendments. This  
1485 notification of amendments may be made via mail, facsimile,  
1486 electronic mail or other generally accepted method of information  
1487 distribution. No addendum to bid specifications may be issued  
1488 within two (2) working days of the time established for the  
1489 receipt of bids unless such addendum also amends the bid opening  
1490 to a date not less than five (5) working days after the date of  
1491 the addendum.

1492 (iii) **Filing requirement.** In all cases involving  
1493 governing authorities, before the notice shall be published or  
1494 posted, the plans or specifications for the construction or



1495 equipment being sought shall be filed with the clerk of the board  
1496 of the governing authority. In addition to these requirements, a  
1497 bid file shall be established which shall indicate those vendors  
1498 to whom such solicitations and specifications were issued, and  
1499 such file shall also contain such information as is pertinent to  
1500 the bid.

1501 (iv) **Specification restrictions.**

1502 1. Specifications pertinent to such bidding  
1503 shall be written so as not to exclude comparable equipment of  
1504 domestic manufacture. However, if valid justification is  
1505 presented, the Department of Finance and Administration or the  
1506 board of a governing authority may approve a request for specific  
1507 equipment necessary to perform a specific job. Further, such  
1508 justification, when placed on the minutes of the board of a  
1509 governing authority, may serve as authority for that governing  
1510 authority to write specifications to require a specific item of  
1511 equipment needed to perform a specific job. In addition to these  
1512 requirements, from and after July 1, 1990, vendors of relocatable  
1513 classrooms and the specifications for the purchase of such  
1514 relocatable classrooms published by local school boards shall meet  
1515 all pertinent regulations of the State Board of Education,  
1516 including prior approval of such bid by the State Department of  
1517 Education.

1518 2. Specifications for construction projects  
1519 may include an allowance for commodities, equipment, furniture,



1520 construction materials or systems in which prospective bidders are  
1521 instructed to include in their bids specified amounts for such  
1522 items so long as the allowance items are acquired by the vendor in  
1523 a commercially reasonable manner and approved by the  
1524 agency/governing authority. Such acquisitions shall not be made  
1525 to circumvent the public purchasing laws.

1526 (v) **Electronic bids.** Agencies and governing  
1527 authorities *may establish secure procedures by which bids may be*  
1528 *submitted via electronic means.*

1529 (d) **Lowest and best bid decision procedure.**

1530 (i) **Decision procedure.** Purchases may be made  
1531 from the lowest and best bidder. In determining the lowest and  
1532 best bid, freight and shipping charges shall be included.  
1533 Life-cycle costing, total cost bids, warranties, guaranteed  
1534 buy-back provisions and other relevant provisions may be included  
1535 in the best bid calculation. All best bid procedures for state  
1536 agencies must be in compliance with regulations established by the  
1537 Department of Finance and Administration. If any governing  
1538 authority accepts a bid other than the lowest bid actually  
1539 submitted, it shall place on its minutes detailed calculations and  
1540 narrative summary showing that the accepted bid was determined to  
1541 be the lowest and best bid, including the dollar amount of the  
1542 accepted bid and the dollar amount of the lowest bid. No agency  
1543 or governing authority shall accept a bid based on items not  
1544 included in the specifications.



1545 (ii) **Decision procedure for Certified Purchasing**  
1546 **Offices.** In addition to the decision procedure set forth in \* \* \*  
1547 ~~paragraph (d)(i)~~ subparagraph (i) of this paragraph (d), Certified  
1548 Purchasing Offices may also use the following procedure:  
1549 Purchases may be made from the bidder offering the best value. In  
1550 determining the best value bid, freight and shipping charges shall  
1551 be included. Life-cycle costing, total cost bids, warranties,  
1552 guaranteed buy-back provisions, documented previous experience,  
1553 training costs and other relevant provisions, including, but not  
1554 limited to, a bidder having a local office and inventory located  
1555 within the jurisdiction of the governing authority, may be  
1556 included in the best value calculation. This provision shall  
1557 authorize Certified Purchasing Offices to utilize a Request For  
1558 Proposals (RFP) process when purchasing commodities. All best  
1559 value procedures for state agencies must be in compliance with  
1560 regulations established by the Department of Finance and  
1561 Administration. No agency or governing authority shall accept a  
1562 bid based on items or criteria not included in the specifications.

1563 (iii) **Decision procedure for Mississippi**  
1564 **Landmarks.** In addition to the decision procedure set forth  
1565 in \* \* \* ~~paragraph (d)(i)~~ subparagraph (i) of this paragraph (d),  
1566 where purchase involves renovation, restoration, or both, of the  
1567 State Capitol Building or any other historical building designated  
1568 for at least five (5) years as a Mississippi Landmark by the Board  
1569 of Trustees of the Department of Archives and History under the



1570 authority of Sections 39-7-7 and 39-7-11, the agency or governing  
1571 authority may use the following procedure: Purchases may be made  
1572 from the lowest and best prequalified bidder. Prequalification of  
1573 bidders shall be determined not less than fifteen (15) working  
1574 days before the first published notice of bid opening.  
1575 Prequalification criteria shall be limited to bidder's knowledge  
1576 and experience in historical restoration, preservation and  
1577 renovation. In determining the lowest and best bid, freight and  
1578 shipping charges shall be included. Life-cycle costing, total  
1579 cost bids, warranties, guaranteed buy-back provisions and other  
1580 relevant provisions may be included in the best bid calculation.  
1581 All best bid and prequalification procedures for state agencies  
1582 must be in compliance with regulations established by the  
1583 Department of Finance and Administration. If any governing  
1584 authority accepts a bid other than the lowest bid actually  
1585 submitted, it shall place on its minutes detailed calculations and  
1586 narrative summary showing that the accepted bid was determined to  
1587 be the lowest and best bid, including the dollar amount of the  
1588 accepted bid and the dollar amount of the lowest bid. No agency  
1589 or governing authority shall accept a bid based on items not  
1590 included in the specifications.

1591 (iv) **Construction project negotiations authority.**  
1592 If the lowest and best bid is not more than ten percent (10%)  
1593 above the amount of funds allocated for a public construction or  
1594 renovation project, then the agency or governing authority shall





1595 be permitted to negotiate with the lowest bidder in order to enter  
1596 into a contract for an amount not to exceed the funds allocated.

1597           (e) **Lease-purchase authorization.** For the purposes of  
1598 this section, the term "equipment" shall mean equipment, furniture  
1599 and, if applicable, associated software and other applicable  
1600 direct costs associated with the acquisition. Any lease-purchase  
1601 of equipment which an agency is not required to lease-purchase  
1602 under the master lease-purchase program pursuant to Section  
1603 31-7-10 and any lease-purchase of equipment which a governing  
1604 authority elects to lease-purchase may be acquired by a  
1605 lease-purchase agreement under this paragraph (e). Lease-purchase  
1606 financing may also be obtained from the vendor or from a  
1607 third-party source after having solicited and obtained at least  
1608 two (2) written competitive bids, as defined in paragraph (b) of  
1609 this section, for such financing without advertising for such  
1610 bids. Solicitation for the bids for financing may occur before or  
1611 after acceptance of bids for the purchase of such equipment or,  
1612 where no such bids for purchase are required, at any time before  
1613 the purchase thereof. No such lease-purchase agreement shall be  
1614 for an annual rate of interest which is greater than the overall  
1615 maximum interest rate to maturity on general obligation  
1616 indebtedness permitted under Section 75-17-101, and the term of  
1617 such lease-purchase agreement shall not exceed the useful life of  
1618 equipment covered thereby as determined according to the upper  
1619 limit of the asset depreciation range (ADR) guidelines for the



1620 Class Life Asset Depreciation Range System established by the  
1621 Internal Revenue Service pursuant to the United States Internal  
1622 Revenue Code and regulations thereunder as in effect on December  
1623 31, 1980, or comparable depreciation guidelines with respect to  
1624 any equipment not covered by ADR guidelines. Any lease-purchase  
1625 agreement entered into pursuant to this paragraph (e) may contain  
1626 any of the terms and conditions which a master lease-purchase  
1627 agreement may contain under the provisions of Section 31-7-10(5),  
1628 and shall contain an annual allocation dependency clause  
1629 substantially similar to that set forth in Section 31-7-10(8).  
1630 Each agency or governing authority entering into a lease-purchase  
1631 transaction pursuant to this paragraph (e) shall maintain with  
1632 respect to each such lease-purchase transaction the same  
1633 information as required to be maintained by the Department of  
1634 Finance and Administration pursuant to Section 31-7-10(13).  
1635 However, nothing contained in this section shall be construed to  
1636 permit agencies to acquire items of equipment with a total  
1637 acquisition cost in the aggregate of less than Ten Thousand  
1638 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
1639 equipment, and the purchase thereof by any lessor, acquired by  
1640 lease-purchase under this paragraph and all lease-purchase  
1641 payments with respect thereto shall be exempt from all Mississippi  
1642 sales, use and ad valorem taxes. Interest paid on any  
1643 lease-purchase agreement under this section shall be exempt from  
1644 State of Mississippi income taxation.



1645           (f) **Alternate bid authorization.** When necessary to  
1646 ensure ready availability of commodities for public works and the  
1647 timely completion of public projects, no more than two (2)  
1648 alternate bids may be accepted by a governing authority for  
1649 commodities. No purchases may be made through use of such  
1650 alternate bids procedure unless the lowest and best bidder cannot  
1651 deliver the commodities contained in his bid. In that event,  
1652 purchases of such commodities may be made from one (1) of the  
1653 bidders whose bid was accepted as an alternate.

1654           (g) **Construction contract change authorization.** In the  
1655 event a determination is made by an agency or governing authority  
1656 after a construction contract is let that changes or modifications  
1657 to the original contract are necessary or would better serve the  
1658 purpose of the agency or the governing authority, such agency or  
1659 governing authority may, in its discretion, order such changes  
1660 pertaining to the construction that are necessary under the  
1661 circumstances without the necessity of further public bids;  
1662 provided that such change shall be made in a commercially  
1663 reasonable manner and shall not be made to circumvent the public  
1664 purchasing statutes. In addition to any other authorized person,  
1665 the architect or engineer hired by an agency or governing  
1666 authority with respect to any public construction contract shall  
1667 have the authority, when granted by an agency or governing  
1668 authority, to authorize changes or modifications to the original  
1669 contract without the necessity of prior approval of the agency or



1670 governing authority when any such change or modification is less  
1671 than one percent (1%) of the total contract amount. The agency or  
1672 governing authority may limit the number, manner or frequency of  
1673 such emergency changes or modifications.

1674 (h) **Petroleum purchase alternative.** In addition to  
1675 other methods of purchasing authorized in this chapter, when any  
1676 agency or governing authority shall have a need for gas, diesel  
1677 fuel, oils and/or other petroleum products in excess of the amount  
1678 set forth in paragraph (a) of this section, such agency or  
1679 governing authority may purchase the commodity after having  
1680 solicited and obtained at least two (2) competitive written bids,  
1681 as defined in paragraph (b) of this section. If two (2)  
1682 competitive written bids are not obtained, the entity shall comply  
1683 with the procedures set forth in paragraph (c) of this section.  
1684 In the event any agency or governing authority shall have  
1685 advertised for bids for the purchase of gas, diesel fuel, oils and  
1686 other petroleum products and coal and no acceptable bids can be  
1687 obtained, such agency or governing authority is authorized and  
1688 directed to enter into any negotiations necessary to secure the  
1689 lowest and best contract available for the purchase of such  
1690 commodities.

1691 (i) **Road construction petroleum products price**  
1692 **adjustment clause authorization.** Any agency or governing  
1693 authority authorized to enter into contracts for the construction,  
1694 maintenance, surfacing or repair of highways, roads or streets,



1695 may include in its bid proposal and contract documents a price  
1696 adjustment clause with relation to the cost to the contractor,  
1697 including taxes, based upon an industry-wide cost index, of  
1698 petroleum products including asphalt used in the performance or  
1699 execution of the contract or in the production or manufacture of  
1700 materials for use in such performance. Such industry-wide index  
1701 shall be established and published monthly by the Mississippi  
1702 Department of Transportation with a copy thereof to be mailed,  
1703 upon request, to the clerks of the governing authority of each  
1704 municipality and the clerks of each board of supervisors  
1705 throughout the state. The price adjustment clause shall be based  
1706 on the cost of such petroleum products only and shall not include  
1707 any additional profit or overhead as part of the adjustment. The  
1708 bid proposals or document contract shall contain the basis and  
1709 methods of adjusting unit prices for the change in the cost of  
1710 such petroleum products.

1711 (j) **State agency emergency purchase procedure.** If the  
1712 governing board or the executive head, or his designees, of any  
1713 agency of the state shall determine that an emergency exists in  
1714 regard to the purchase of any commodities or repair contracts, so  
1715 that the delay incident to giving opportunity for competitive  
1716 bidding would be detrimental to the interests of the state, then  
1717 the head of such agency, or his designees, shall file with the  
1718 Department of Finance and Administration (i) a statement  
1719 explaining the conditions and circumstances of the emergency,



1720 which shall include a detailed description of the events leading  
1721 up to the situation and the negative impact to the entity if the  
1722 purchase is made following the statutory requirements set forth in  
1723 paragraph (a), (b) or (c) of this section, and (ii) a certified  
1724 copy of the appropriate minutes of the board of such agency  
1725 requesting the emergency purchase, if applicable. Upon receipt of  
1726 the statement and applicable board certification, the State Fiscal  
1727 Officer, or his designees, may, in writing, authorize the purchase  
1728 or repair without having to comply with competitive bidding  
1729 requirements.

1730         If the governing board or the executive head, or his  
1731 designees, of any agency determines that an emergency exists in  
1732 regard to the purchase of any commodities or repair contracts, so  
1733 that the delay incident to giving opportunity for competitive  
1734 bidding would threaten the health or safety of any person, or the  
1735 preservation or protection of property, then the provisions in  
1736 this section for competitive bidding shall not apply, and any  
1737 officer or agent of the agency having general or specific  
1738 authority for making the purchase or repair contract shall approve  
1739 the bill presented for payment, and he shall certify in writing  
1740 from whom the purchase was made, or with whom the repair contract  
1741 was made.

1742         Total purchases made under this paragraph (j) shall only be  
1743 for the purpose of meeting needs created by the emergency  
1744 situation. Following the emergency purchase, documentation of the



1745 purchase, including a description of the commodity purchased, the  
1746 purchase price thereof and the nature of the emergency shall be  
1747 filed with the Department of Finance and Administration. Any  
1748 contract awarded pursuant to this paragraph (j) shall not exceed a  
1749 term of one (1) year.

1750 (k) **Governing authority emergency purchase procedure.**

1751 If the governing authority, or the governing authority acting  
1752 through its designee, shall determine that an emergency exists in  
1753 regard to the purchase of any commodities or repair contracts, so  
1754 that the delay incident to giving opportunity for competitive  
1755 bidding would be detrimental to the interest of the governing  
1756 authority, then the provisions herein for competitive bidding  
1757 shall not apply and any officer or agent of such governing  
1758 authority having general or special authority therefor in making  
1759 such purchase or repair shall approve the bill presented therefor,  
1760 and he shall certify in writing thereon from whom such purchase  
1761 was made, or with whom such a repair contract was made. At the  
1762 board meeting next following the emergency purchase or repair  
1763 contract, documentation of the purchase or repair contract,  
1764 including a description of the commodity purchased, the price  
1765 thereof and the nature of the emergency shall be presented to the  
1766 board and shall be placed on the minutes of the board of such  
1767 governing authority.

1768 (l) **Hospital purchase, lease-purchase and lease**  
1769 **authorization.**



1770 (i) The commissioners or board of trustees of any  
1771 public hospital may contract with such lowest and best bidder for  
1772 the purchase or lease-purchase of any commodity under a contract  
1773 of purchase or lease-purchase agreement whose obligatory payment  
1774 terms do not exceed five (5) years.

1775 (ii) In addition to the authority granted in  
1776 subparagraph (i) of this paragraph (1), the commissioners or board  
1777 of trustees is authorized to enter into contracts for the lease of  
1778 equipment or services, or both, which it considers necessary for  
1779 the proper care of patients if, in its opinion, it is not  
1780 financially feasible to purchase the necessary equipment or  
1781 services. Any such contract for the lease of equipment or  
1782 services executed by the commissioners or board shall not exceed a  
1783 maximum of five (5) years' duration and shall include a  
1784 cancellation clause based on unavailability of funds. If such  
1785 cancellation clause is exercised, there shall be no further  
1786 liability on the part of the lessee. Any such contract for the  
1787 lease of equipment or services executed on behalf of the  
1788 commissioners or board that complies with the provisions of this  
1789 subparagraph (ii) shall be excepted from the bid requirements set  
1790 forth in this section.

1791 (m) **Exceptions from bidding requirements.** Excepted  
1792 from bid requirements are:

1793 (i) **Purchasing agreements approved by department.**  
1794 Purchasing agreements, contracts and maximum price regulations





1795 executed or approved by the Department of Finance and  
1796 Administration.

1797                   (ii) **Outside equipment repairs.** Repairs to  
1798 equipment, when such repairs are made by repair facilities in the  
1799 private sector; however, engines, transmissions, rear axles and/or  
1800 other such components shall not be included in this exemption when  
1801 replaced as a complete unit instead of being repaired and the need  
1802 for such total component replacement is known before disassembly  
1803 of the component; however, invoices identifying the equipment,  
1804 specific repairs made, parts identified by number and name,  
1805 supplies used in such repairs, and the number of hours of labor  
1806 and costs therefor shall be required for the payment for such  
1807 repairs.

1808                   (iii) **In-house equipment repairs.** Purchases of  
1809 parts for repairs to equipment, when such repairs are made by  
1810 personnel of the agency or governing authority; however, entire  
1811 assemblies, such as engines or transmissions, shall not be  
1812 included in this exemption when the entire assembly is being  
1813 replaced instead of being repaired.

1814                   (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
1815 of gravel or fill dirt which are to be removed and transported by  
1816 the purchaser.

1817                   (v) **Governmental equipment auctions.** Motor  
1818 vehicles or other equipment purchased from a federal agency or  
1819 authority, another governing authority or state agency of the



1820 State of Mississippi, or any governing authority or state agency  
1821 of another state at a public auction held for the purpose of  
1822 disposing of such vehicles or other equipment. Any purchase by a  
1823 governing authority under the exemption authorized by this  
1824 subparagraph (v) shall require advance authorization spread upon  
1825 the minutes of the governing authority to include the listing of  
1826 the item or items authorized to be purchased and the maximum bid  
1827 authorized to be paid for each item or items.

1828 (vi) **Intergovernmental sales and transfers.**

1829 Purchases, sales, transfers or trades by governing authorities or  
1830 state agencies when such purchases, sales, transfers or trades are  
1831 made by a private treaty agreement or through means of  
1832 negotiation, from any federal agency or authority, another  
1833 governing authority or state agency of the State of Mississippi,  
1834 or any state agency or governing authority of another state.  
1835 Nothing in this section shall permit such purchases through public  
1836 auction except as provided for in subparagraph (v) of  
1837 this ~~section~~ paragraph (m). It is the intent of this section  
1838 to allow governmental entities to dispose of and/or purchase  
1839 commodities from other governmental entities at a price that is  
1840 agreed to by both parties. This shall allow for purchases and/or  
1841 sales at prices which may be determined to be below the market  
1842 value if the selling entity determines that the sale at below  
1843 market value is in the best interest of the taxpayers of the  
1844 state. Governing authorities shall place the terms of the



1845 agreement and any justification on the minutes, and state agencies  
1846 shall obtain approval from the Department of Finance and  
1847 Administration, prior to releasing or taking possession of the  
1848 commodities.

1849 (vii) **Perishable supplies or food.** Perishable  
1850 supplies or food purchased for use in connection with hospitals,  
1851 the school lunch programs, homemaking programs and for the feeding  
1852 of county or municipal prisoners.

1853 (viii) **Single source items.** Noncompetitive items  
1854 available from one (1) source only. In connection with the  
1855 purchase of noncompetitive items only available from one (1)  
1856 source, a certification of the conditions and circumstances  
1857 requiring the purchase shall be filed by the agency with the  
1858 Department of Finance and Administration and by the governing  
1859 authority with the board of the governing authority. Upon receipt  
1860 of that certification the Department of Finance and Administration  
1861 or the board of the governing authority, as the case may be, may,  
1862 in writing, authorize the purchase, which authority shall be noted  
1863 on the minutes of the body at the next regular meeting thereafter.  
1864 In those situations, a governing authority is not required to  
1865 obtain the approval of the Department of Finance and  
1866 Administration. Following the purchase, the executive head of the  
1867 state agency, or his designees, shall file with the Department of  
1868 Finance and Administration, documentation of the purchase,



1869 including a description of the commodity purchased, the purchase  
1870 price thereof and the source from whom it was purchased.

1871 (ix) **Waste disposal facility construction**  
1872 **contracts.** Construction of incinerators and other facilities for  
1873 disposal of solid wastes in which products either generated  
1874 therein, such as steam, or recovered therefrom, such as materials  
1875 for recycling, are to be sold or otherwise disposed of; however,  
1876 in constructing such facilities, a governing authority or agency  
1877 shall publicly issue requests for proposals, advertised for in the  
1878 same manner as provided herein for seeking bids for public  
1879 construction projects, concerning the design, construction,  
1880 ownership, operation and/or maintenance of such facilities,  
1881 wherein such requests for proposals when issued shall contain  
1882 terms and conditions relating to price, financial responsibility,  
1883 technology, environmental compatibility, legal responsibilities  
1884 and such other matters as are determined by the governing  
1885 authority or agency to be appropriate for inclusion; and after  
1886 responses to the request for proposals have been duly received,  
1887 the governing authority or agency may select the most qualified  
1888 proposal or proposals on the basis of price, technology and other  
1889 relevant factors and from such proposals, but not limited to the  
1890 terms thereof, negotiate and enter contracts with one or more of  
1891 the persons or firms submitting proposals.



1892                   (x)   **Hospital group purchase contracts.**  Supplies,  
1893 commodities and equipment purchased by hospitals through group  
1894 purchase programs pursuant to Section 31-7-38.

1895                   (xi)   **Information technology products.**  Purchases  
1896 of information technology products made by governing authorities  
1897 under the provisions of purchase schedules, or contracts executed  
1898 or approved by the Mississippi Department of Information  
1899 Technology Services and designated for use by governing  
1900 authorities.

1901                   (xii)   **Energy efficiency services and equipment.**  
1902 Energy efficiency services and equipment acquired by school  
1903 districts, community and junior colleges, institutions of higher  
1904 learning and state agencies or other applicable governmental  
1905 entities on a shared-savings, lease or lease-purchase basis  
1906 pursuant to Section 31-7-14.

1907                   (xiii)   **Municipal electrical utility system fuel.**  
1908 Purchases of coal and/or natural gas by municipally owned electric  
1909 power generating systems that have the capacity to use both coal  
1910 and natural gas for the generation of electric power.

1911                   (xiv)   **Library books and other reference materials.**  
1912 Purchases by libraries or for libraries of books and periodicals;  
1913 processed film, videocassette tapes, filmstrips and slides;  
1914 recorded audiotapes, cassettes and diskettes; and any such items  
1915 as would be used for teaching, research or other information  
1916 distribution; however, equipment such as projectors, recorders,



1917 audio or video equipment, and monitor televisions are not exempt  
1918 under this subparagraph.

1919 (xv) **Unmarked vehicles.** Purchases of unmarked  
1920 vehicles when such purchases are made in accordance with  
1921 purchasing regulations adopted by the Department of Finance and  
1922 Administration pursuant to Section 31-7-9(2).

1923 (xvi) **Election ballots.** Purchases of ballots  
1924 printed pursuant to Section 23-15-351.

1925 (xvii) **Multichannel interactive video systems.**  
1926 From and after July 1, 1990, contracts by Mississippi Authority  
1927 for Educational Television with any private educational  
1928 institution or private nonprofit organization whose purposes are  
1929 educational in regard to the construction, purchase, lease or  
1930 lease-purchase of facilities and equipment and the employment of  
1931 personnel for providing multichannel interactive video systems  
1932 (ITSF) in the school districts of this state.

1933 (xviii) **Purchases of prison industry products by**  
1934 **the Department of Corrections, regional correctional facilities or**  
1935 **privately owned prisons.** Purchases made by the Mississippi  
1936 Department of Corrections, regional correctional facilities or  
1937 privately owned prisons involving any item that is manufactured,  
1938 processed, grown or produced from the state's prison industries.

1939 (xix) **Undercover operations equipment.** Purchases  
1940 of surveillance equipment or any other high-tech equipment to be  
1941 used by law enforcement agents in undercover operations, provided



1942 that any such purchase shall be in compliance with regulations  
1943 established by the Department of Finance and Administration.

1944 (xx) **Junior college books for rent.** Purchases by  
1945 community or junior colleges of textbooks which are obtained for  
1946 the purpose of renting such books to students as part of a book  
1947 service system.

1948 (xxi) **Certain school district purchases.**  
1949 Purchases of commodities made by school districts from vendors  
1950 with which any levying authority of the school district, as  
1951 defined in Section 37-57-1, has contracted through competitive  
1952 bidding procedures for purchases of the same commodities.

1953 (xxii) **Garbage, solid waste and sewage contracts.**  
1954 Contracts for garbage collection or disposal, contracts for solid  
1955 waste collection or disposal and contracts for sewage collection  
1956 or disposal.

1957 (xxiii) **Municipal water tank maintenance**  
1958 **contracts.** Professional maintenance program contracts for the  
1959 repair or maintenance of municipal water tanks, which provide  
1960 professional services needed to maintain municipal water storage  
1961 tanks for a fixed annual fee for a duration of two (2) or more  
1962 years.

1963 (xxiv) **Purchases of Mississippi Industries for the**  
1964 **Blind products.** Purchases made by state agencies or governing  
1965 authorities involving any item that is manufactured, processed or  
1966 produced by the Mississippi Industries for the Blind.



1967 (xxv) **Purchases of state-adopted textbooks.**  
1968 Purchases of state-adopted textbooks by public school districts.  
1969 (xxvi) **Certain purchases under the Mississippi**  
1970 **Major Economic Impact Act.** Contracts entered into pursuant to the  
1971 provisions of Section 57-75-9(2), (3) and (4).  
1972 (xxvii) **Used heavy or specialized machinery or**  
1973 **equipment for installation of soil and water conservation**  
1974 **practices purchased at auction.** Used heavy or specialized  
1975 machinery or equipment used for the installation and  
1976 implementation of soil and water conservation practices or  
1977 measures purchased subject to the restrictions provided in  
1978 Sections 69-27-331 through 69-27-341. Any purchase by the State  
1979 Soil and Water Conservation Commission under the exemption  
1980 authorized by this subparagraph shall require advance  
1981 authorization spread upon the minutes of the commission to include  
1982 the listing of the item or items authorized to be purchased and  
1983 the maximum bid authorized to be paid for each item or items.  
1984 (xxviii) **Hospital lease of equipment or services.**  
1985 Leases by hospitals of equipment or services if the leases are in  
1986 compliance with paragraph (1)(ii).  
1987 (xxix) **Purchases made pursuant to qualified**  
1988 **cooperative purchasing agreements.** Purchases made by certified  
1989 purchasing offices of state agencies or governing authorities  
1990 under cooperative purchasing agreements previously approved by the  
1991 Office of Purchasing and Travel and established by or for any





1992 municipality, county, parish or state government or the federal  
1993 government, provided that the notification to potential  
1994 contractors includes a clause that sets forth the availability of  
1995 the cooperative purchasing agreement to other governmental  
1996 entities. Such purchases shall only be made if the use of the  
1997 cooperative purchasing agreements is determined to be in the best  
1998 interest of the governmental entity.

1999 (xxx) **School yearbooks.** Purchases of school  
2000 yearbooks by state agencies or governing authorities; provided,  
2001 however, that state agencies and governing authorities shall use  
2002 for these purchases the RFP process as set forth in the  
2003 Mississippi Procurement Manual adopted by the Office of Purchasing  
2004 and Travel.

2005 (xxxix) **Design-build method and dual-phase**  
2006 **design-build method of contracting.** Contracts entered into under  
2007 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

2008 (xxxix) **Toll roads and bridge construction**  
2009 **projects.** Contracts entered into under the provisions of Section  
2010 65-43-1 or 65-43-3.

2011 (xxxix) **Certain purchases under Section 57-1-221.**  
2012 Contracts entered into pursuant to the provisions of Section  
2013 57-1-221.

2014 (xxxix) **Certain transfers made pursuant to the**  
2015 **provisions of Section 57-105-1(7).** Transfers of public property



2016 or facilities under Section 57-105-1(7) and construction related  
2017 to such public property or facilities.

2018 (xxxv) **Certain purchases or transfers entered into**  
2019 **with local electrical power associations.** Contracts or agreements  
2020 entered into under the provisions of Section 55-3-33.

2021 (n) **Term contract authorization.** All contracts for the  
2022 purchase of:

2023 (i) All contracts for the purchase of commodities,  
2024 equipment and public construction (including, but not limited to,  
2025 repair and maintenance), may be let for periods of not more than  
2026 sixty (60) months in advance, subject to applicable statutory  
2027 provisions prohibiting the letting of contracts during specified  
2028 periods near the end of terms of office. Term contracts for a  
2029 period exceeding twenty-four (24) months shall also be subject to  
2030 ratification or cancellation by governing authority boards taking  
2031 office subsequent to the governing authority board entering the  
2032 contract.

2033 (ii) Bid proposals and contracts may include price  
2034 adjustment clauses with relation to the cost to the contractor  
2035 based upon a nationally published industry-wide or nationally  
2036 published and recognized cost index. The cost index used in a  
2037 price adjustment clause shall be determined by the Department of  
2038 Finance and Administration for the state agencies and by the  
2039 governing board for governing authorities. The bid proposal and  
2040 contract documents utilizing a price adjustment clause shall



2041 contain the basis and method of adjusting unit prices for the  
2042 change in the cost of such commodities, equipment and public  
2043 construction.

2044           (o) **Purchase law violation prohibition and vendor**  
2045 **penalty.** No contract or purchase as herein authorized shall be  
2046 made for the purpose of circumventing the provisions of this  
2047 section requiring competitive bids, nor shall it be lawful for any  
2048 person or concern to submit individual invoices for amounts within  
2049 those authorized for a contract or purchase where the actual value  
2050 of the contract or commodity purchased exceeds the authorized  
2051 amount and the invoices therefor are split so as to appear to be  
2052 authorized as purchases for which competitive bids are not  
2053 required. Submission of such invoices shall constitute a  
2054 misdemeanor punishable by a fine of not less than Five Hundred  
2055 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
2056 or by imprisonment for thirty (30) days in the county jail, or  
2057 both such fine and imprisonment. In addition, the claim or claims  
2058 submitted shall be forfeited.

2059           (p) **Electrical utility petroleum-based equipment**  
2060 **purchase procedure.** When in response to a proper advertisement  
2061 therefor, no bid firm as to price is submitted to an electric  
2062 utility for power transformers, distribution transformers, power  
2063 breakers, reclosers or other articles containing a petroleum  
2064 product, the electric utility may accept the lowest and best bid  
2065 therefor although the price is not firm.



2066                   (q) **Fuel management system bidding procedure.** Any  
2067 governing authority or agency of the state shall, before  
2068 contracting for the services and products of a fuel management or  
2069 fuel access system, enter into negotiations with not fewer than  
2070 two (2) sellers of fuel management or fuel access systems for  
2071 competitive written bids to provide the services and products for  
2072 the systems. In the event that the governing authority or agency  
2073 cannot locate two (2) sellers of such systems or cannot obtain  
2074 bids from two (2) sellers of such systems, it shall show proof  
2075 that it made a diligent, good-faith effort to locate and negotiate  
2076 with two (2) sellers of such systems. Such proof shall include,  
2077 but not be limited to, publications of a request for proposals and  
2078 letters soliciting negotiations and bids. For purposes of this  
2079 paragraph (q), a fuel management or fuel access system is an  
2080 automated system of acquiring fuel for vehicles as well as  
2081 management reports detailing fuel use by vehicles and drivers, and  
2082 the term "competitive written bid" shall have the meaning as  
2083 defined in paragraph (b) of this section. Governing authorities  
2084 and agencies shall be exempt from this process when contracting  
2085 for the services and products of fuel management or fuel access  
2086 systems under the terms of a state contract established by the  
2087 Office of Purchasing and Travel.

2088                   (r) **Solid waste contract proposal procedure.** Before  
2089 entering into any contract for garbage collection or disposal,  
2090 contract for solid waste collection or disposal or contract for



2091 sewage collection or disposal, which involves an expenditure of  
2092 more than Fifty Thousand Dollars (\$50,000.00), a governing  
2093 authority or agency shall issue publicly a request for proposals  
2094 concerning the specifications for such services which shall be  
2095 advertised for in the same manner as provided in this section for  
2096 seeking bids for purchases which involve an expenditure of more  
2097 than the amount provided in paragraph (c) of this section. Any  
2098 request for proposals when issued shall contain terms and  
2099 conditions relating to price, financial responsibility,  
2100 technology, legal responsibilities and other relevant factors as  
2101 are determined by the governing authority or agency to be  
2102 appropriate for inclusion; all factors determined relevant by the  
2103 governing authority or agency or required by this paragraph (r)  
2104 shall be duly included in the advertisement to elicit proposals.  
2105 After responses to the request for proposals have been duly  
2106 received, the governing authority or agency shall select the most  
2107 qualified proposal or proposals on the basis of price, technology  
2108 and other relevant factors and from such proposals, but not  
2109 limited to the terms thereof, negotiate and enter into contracts  
2110 with one or more of the persons or firms submitting proposals. If  
2111 the governing authority or agency deems none of the proposals to  
2112 be qualified or otherwise acceptable, the request for proposals  
2113 process may be reinitiated. Notwithstanding any other provisions  
2114 of this paragraph, where a county with at least thirty-five  
2115 thousand (35,000) nor more than forty thousand (40,000)



2116 population, according to the 1990 federal decennial census, owns  
2117 or operates a solid waste landfill, the governing authorities of  
2118 any other county or municipality may contract with the governing  
2119 authorities of the county owning or operating the landfill,  
2120 pursuant to a resolution duly adopted and spread upon the minutes  
2121 of each governing authority involved, for garbage or solid waste  
2122 collection or disposal services through contract negotiations.

2123           (s) **Minority set-aside authorization.** Notwithstanding  
2124 any provision of this section to the contrary, any agency or  
2125 governing authority, by order placed on its minutes, may, in its  
2126 discretion, set aside not more than twenty percent (20%) of its  
2127 anticipated annual expenditures for the purchase of commodities  
2128 from minority businesses; however, all such set-aside purchases  
2129 shall comply with all purchasing regulations promulgated by the  
2130 Department of Finance and Administration and shall be subject to  
2131 bid requirements under this section. Set-aside purchases for  
2132 which competitive bids are required shall be made from the lowest  
2133 and best minority business bidder. For the purposes of this  
2134 paragraph, the term "minority business" means a business which is  
2135 owned by a majority of persons who are United States citizens or  
2136 permanent resident aliens (as defined by the Immigration and  
2137 Naturalization Service) of the United States, and who are Asian,  
2138 Black, Hispanic or Native American, according to the following  
2139 definitions:



2140 (i) "Asian" means persons having origins in any of  
2141 the original people of the Far East, Southeast Asia, the Indian  
2142 subcontinent, or the Pacific Islands.

2143 (ii) "Black" means persons having origins in any  
2144 black racial group of Africa.

2145 (iii) "Hispanic" means persons of Spanish or  
2146 Portuguese culture with origins in Mexico, South or Central  
2147 America, or the Caribbean Islands, regardless of race.

2148 (iv) "Native American" means persons having  
2149 origins in any of the original people of North America, including  
2150 American Indians, Eskimos and Aleuts.

2151 (t) **Construction punch list restriction.** The  
2152 architect, engineer or other representative designated by the  
2153 agency or governing authority that is contracting for public  
2154 construction or renovation may prepare and submit to the  
2155 contractor only one (1) preliminary punch list of items that do  
2156 not meet the contract requirements at the time of substantial  
2157 completion and one (1) final list immediately before final  
2158 completion and final payment.

2159 (u) **Procurement of construction services by state**  
2160 **institutions of higher learning.** Contracts for privately financed  
2161 construction of auxiliary facilities on the campus of a state  
2162 institution of higher learning may be awarded by the Board of  
2163 Trustees of State Institutions of Higher Learning to the lowest  
2164 and best bidder, where sealed bids are solicited, or to the



2165 offeror whose proposal is determined to represent the best value  
2166 to the citizens of the State of Mississippi, where requests for  
2167 proposals are solicited.

2168 (v) **Insurability of bidders for public construction or**  
2169 **other public contracts.** In any solicitation for bids to perform  
2170 public construction or other public contracts to which this  
2171 section applies including, but not limited to, contracts for  
2172 repair and maintenance, for which the contract will require  
2173 insurance coverage in an amount of not less than One Million  
2174 Dollars (\$1,000,000.00), bidders shall be permitted to either  
2175 submit proof of current insurance coverage in the specified amount  
2176 or demonstrate ability to obtain the required coverage amount of  
2177 insurance if the contract is awarded to the bidder. Proof of  
2178 insurance coverage shall be submitted within five (5) business  
2179 days from bid acceptance.

2180 (w) **Purchase authorization clarification.** Nothing in  
2181 this section shall be construed as authorizing any purchase not  
2182 authorized by law.

2183 **SECTION 17.** This act shall take effect and be in force from  
2184 and after January 1, 2018.

