

By: Representative Perry

To: Appropriations

HOUSE BILL NO. 779

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 ADD EXPLANATORY TITLES TO THE SUBSECTIONS AND PARAGRAPHS IN THE
3 SECTION; TO ALLOW COMPETITIVE WRITTEN BIDS TO BE SUBMITTED BY FAX,
4 E-MAIL OR OTHER GENERALLY ACCEPTED METHOD OF INFORMATION
5 DISTRIBUTION; TO PROVIDE THAT IF ALL PLANS OR SPECIFICATIONS ARE
6 NOT PUBLISHED IN THE NOTIFICATION FOR BIDS, THEN AMENDMENTS TO THE
7 PLANS OR SPECIFICATIONS OR TO THE BID OPENING DATE, TIME OR PLACE
8 MAY BE MADE, IF ALL PROSPECTIVE BIDDERS ARE SENT COPIES OF ALL
9 AMENDMENTS; TO MOVE LANGUAGE RELATING TO THE PURCHASE OF SINGLE
10 SOURCE ITEMS TO THE MORE APPROPRIATE LOCATION IN THE SECTION; AND
11 FOR RELATED PURPOSES.

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

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

15 31-7-13. All agencies and governing authorities shall
16 purchase their commodities and printing; contract for fire
17 insurance, automobile insurance, casualty insurance (other than
18 workers' compensation) and liability insurance; contract for
19 garbage collection or disposal; contract for solid waste
20 collection or disposal; contract for sewage collection or
21 disposal; and contract for public construction as herein provided.

22 (a) **Bidding procedure for purchases not over \$1,500.00.**
23 Purchases which do not involve an expenditure of more than One
24 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or
25 shipping charges, may be made without advertising or otherwise
26 requesting competitive bids. Provided, however, that nothing
27 contained in this paragraph (a) shall be construed to prohibit any
28 agency or governing authority from establishing procedures which
29 require competitive bids on purchases of One Thousand Five Hundred
30 Dollars (\$1,500.00) or less.

31 (b) **Bidding procedure for purchases over \$1,500.00 but**

32 **not over \$10,000.00.** Purchases which involve an expenditure of
33 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
34 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
35 and shipping charges may be made from the lowest and best bidder
36 without publishing or posting advertisement for bids, provided at
37 least two (2) competitive written bids have been obtained. Any
38 governing authority purchasing commodities pursuant to this
39 paragraph (b) may authorize its purchasing agent, or his designee,
40 with regard to governing authorities other than counties, or its
41 purchase clerk, or his designee, with regard to counties, to
42 accept the lowest and best competitive written bid. Such
43 authorization shall be made in writing by the governing authority
44 and shall be maintained on file in the primary office of the
45 agency and recorded in the official minutes of the governing
46 authority, as appropriate. The purchasing agent or the purchase
47 clerk, or their designee, as the case may be, and not the
48 governing authority, shall be liable for any penalties and/or
49 damages as may be imposed by law for any act or omission of the
50 purchasing agent or purchase clerk, or their designee,
51 constituting a violation of law in accepting any bid without
52 approval by the governing authority. The term "competitive
53 written bid" shall mean a bid submitted on a bid form furnished by
54 the buying agency or governing authority and signed by authorized
55 personnel representing the vendor, or a bid submitted on a
56 vendor's letterhead or identifiable bid form and signed by
57 authorized personnel representing the vendor. Bids may be
58 submitted by facsimile, electronic mail or other generally
59 accepted method of information distribution. Bids submitted by
60 electronic transmission shall not require the signature of the
61 vendor's representative.

62 (c) **Bidding procedure for purchases over \$10,000.00.**

63 Purchases which involve an expenditure of more than Ten Thousand
64 Dollars (\$10,000.00), exclusive of freight and shipping charges
65 may be made from the lowest and best bidder after advertising for

66 competitive sealed bids once each week for two (2) consecutive
67 weeks in a regular newspaper published in the county or
68 municipality in which such agency or governing authority is
69 located. The date as published for the bid opening shall not be
70 less than seven (7) working days after the last published notice;
71 however, if the purchase involves a construction project in which
72 the estimated cost is in excess of Fifteen Thousand Dollars
73 (\$15,000.00), such bids shall not be opened in less than fifteen
74 (15) working days after the last notice is published and the
75 notice for the purchase of such construction shall be published
76 once each week for two (2) consecutive weeks. The notice of
77 intention to let contracts or purchase equipment shall state the
78 time and place at which bids shall be received, list the contracts
79 to be made or types of equipment or supplies to be purchased, and,
80 if all plans and/or specifications are not published, refer to the
81 plans and/or specifications on file. If all plans and/or
82 specifications are published in the notification, then the plans
83 and/or specifications may not be amended. If all plans and/or
84 specifications are not published in the notification, then
85 amendments to the plans/specifications, bid opening date, bid
86 opening time and place may be made, provided that the agency or
87 governing authority maintains a list of all prospective bidders
88 who are known to have received a copy of the bid documents and all
89 such prospective bidders are sent copies of all amendments. This
90 notification of amendments may be made via mail, facsimile,
91 electronic mail or other generally accepted method of information
92 distribution. In all cases involving governing authorities,
93 before the notice shall be published or posted, the plans or
94 specifications for the construction or equipment being sought
95 shall be filed with the clerk of the board of the governing
96 authority, and there remain. If there is no newspaper published
97 in the county or municipality, then such notice shall be given by
98 posting same at the courthouse, or for municipalities at the city
99 hall, and at two (2) other public places in the county or

100 municipality, and also by publication once each week for two (2)
101 consecutive weeks in some newspaper having a general circulation
102 in the county or municipality in the above provided manner. On
103 the same date that the notice is submitted to the newspaper for
104 publication, the agency or governing authority involved shall mail
105 written notice to the main office of the Mississippi Contract
106 Procurement Center that contains the same information as that in
107 the published notice. In addition to these requirements, agencies
108 shall maintain a vendor file and vendors of the equipment or
109 commodities being sought may be mailed solicitations and
110 specifications, and a bid file shall be established which shall
111 indicate those vendors to whom such solicitations and
112 specifications were mailed, and such file shall also contain such
113 information as is pertinent to the bid. Specifications pertinent
114 to such bidding shall be written so as not to exclude comparable
115 equipment of domestic manufacture. Provided, however, that should
116 valid justification be presented, the Department of Finance and
117 Administration or the board of a governing authority may approve a
118 request for specific equipment necessary to perform a specific
119 job. Provided further, that a registered professional engineer or
120 architect may write specifications for a governing authority to
121 require a specific item of equipment available only from limited
122 sources or vendors when such specifications conform with the rules
123 and regulations promulgated by an appropriate federal agency
124 regulating such matters under the federal procurement laws.
125 Further, such justification, when placed on the minutes of the
126 board of a governing authority, may serve as authority for that
127 governing authority to write specifications to require a specific
128 item of equipment needed to perform a specific job. In addition
129 to these requirements, from and after July 1, 1990, vendors of
130 relocatable classrooms and the specifications for the purchase of
131 such relocatable classrooms published by local school boards shall
132 meet all pertinent regulations of the State Board of Education,
133 including prior approval of such bid by the State Department of

134 Education. Nothing in this section shall prohibit any agency or
135 governing authority from writing specifications to include
136 life-cycle costing, total cost bids, extended warranties or
137 guaranteed buy-back provisions, provided that such bid
138 requirements shall be in compliance with regulations established
139 by the Department of Audit.

140 (d) **Lowest and best bid decision procedure.** (i)
141 Purchases may be made from the lowest and best bidder. In
142 determining the lowest and best bid, freight and shipping charges
143 shall be included. If any governing authority accepts a bid other
144 than the lowest bid actually submitted, it shall place on its
145 minutes detailed calculations and narrative summary showing that
146 the accepted bid was determined to be the lowest and best bid,
147 including the dollar amount of the accepted bid and the dollar
148 amount of the lowest bid. No agency or governing authority shall
149 accept a bid based on items not included in the specifications.

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

156 (iii) Whenever bids are solicited for a public
157 construction or renovation project and only one (1) bid is
158 received, the agency or the governing authority may accept such
159 bid if the bid is opened, it is within the funds allocated for the
160 project, it is responsive to the solicitation and the contractor
161 is capable of performing the contract in accordance with the
162 solicitation.

163 (iv) No addendum to bid specifications for such
164 projects may be issued by the agency or governing authority within
165 twelve (12) hours of the time established by the agency or
166 governing authority for the receipt of bids.

167 (e) **Lease-purchase authorization.** Any lease-purchase

168 of equipment which an agency is not required to lease-purchase
169 under the master lease-purchase program pursuant to Section
170 31-7-10 and any lease-purchase of equipment which a governing
171 authority elects to lease-purchase may be acquired by a
172 lease-purchase agreement under this paragraph (e). Lease-purchase
173 financing may also be obtained from the vendor or from a
174 third-party source after having solicited and obtained at least
175 two (2) written competitive bids, as defined in paragraph (b) of
176 this section, for such financing without advertising for such
177 bids. Solicitation for the bids for financing may occur before or
178 after acceptance of bids for the purchase of such equipment or,
179 where no such bids for purchase are required, at any time before
180 the purchase thereof. No such lease-purchase agreement shall be
181 for an annual rate of interest which is greater than the overall
182 maximum interest rate to maturity on general obligation
183 indebtedness permitted under Section 75-17-101, and the term of
184 such lease-purchase agreement shall not exceed the useful life of
185 property covered thereby as determined according to the upper
186 limit of the asset depreciation range (ADR) guidelines for the
187 Class Life Asset Depreciation Range System established by the
188 Internal Revenue Service pursuant to the United States Internal
189 Revenue Code and regulations thereunder as in effect on December
190 31, 1980, or comparable depreciation guidelines with respect to
191 any equipment not covered by ADR guidelines. Any lease-purchase
192 agreement entered into pursuant to this paragraph (e) may contain
193 any of the terms and conditions which a master lease-purchase
194 agreement may contain under the provisions of Section 31-7-10(5),
195 and shall contain an annual allocation dependency clause
196 substantially similar to that set forth in Section 31-7-10(8).
197 Each agency or governing authority entering into a lease-purchase
198 transaction pursuant to this paragraph (e) shall maintain with
199 respect to each such lease-purchase transaction the same
200 information as required to be maintained by the Department of
201 Finance and Administration pursuant to Section 31-7-10(13).

202 However, nothing contained in this section shall be construed to
203 permit agencies to acquire items of equipment with a total
204 acquisition cost in the aggregate of less than Ten Thousand
205 Dollars (\$10,000.00) by a single lease-purchase transaction. All
206 equipment, and the purchase thereof by any lessor, acquired by
207 lease-purchase under this paragraph and all lease-purchase
208 payments with respect thereto shall be exempt from all Mississippi
209 sales, use and ad valorem taxes. Interest paid on any
210 lease-purchase agreement under this section shall be exempt from
211 State of Mississippi income taxation.

212 (f) **Alternate bid authorization.** When necessary to
213 ensure ready availability of commodities for public works and the
214 timely completion of public projects, no more than two (2)
215 alternate bids may be accepted by a governing authority for
216 commodities. No purchases may be made through use of such
217 alternate bids procedure unless the lowest and best bidder, for
218 reasons beyond his control, cannot deliver the commodities
219 contained in his bid. In that event, purchases of such
220 commodities may be made from one (1) of the bidders whose bid was
221 accepted as an alternate.

222 (g) **Construction contract change authorization.** In the
223 event a determination is made by an agency or governing authority
224 after a construction contract is let that changes or modifications
225 to the original contract are necessary or would better serve the
226 purpose of the agency or the governing authority, such agency or
227 governing authority may, in its discretion, order such changes
228 pertaining to the construction that are necessary under the
229 circumstances without the necessity of further public bids;
230 provided that such change shall be made in a commercially
231 reasonable manner and shall not be made to circumvent the public
232 purchasing statutes. In addition to any other authorized person,
233 the architect or engineer hired by an agency or governing
234 authority with respect to any public construction contract shall
235 have the authority, when granted by an agency or governing

236 authority, to authorize changes or modifications to the original
237 contract without the necessity of prior approval of the agency or
238 governing authority when any such change or modification is less
239 than one percent (1%) of the total contract amount. The agency or
240 governing authority may limit the number, manner or frequency of
241 such emergency changes or modifications.

242 (h) **Petroleum purchase alternative.** In the event any
243 agency or governing authority shall have advertised for bids for
244 the purchase of gas, diesel fuel, oils and other petroleum
245 products and coal and no acceptable bids can be obtained, such
246 agency or governing authority is authorized and directed to enter
247 into any negotiations necessary to secure the lowest and best
248 contract available for the purchase of such commodities.

249 (i) **Road construction petroleum products price**
250 **adjustment clause authorization.** Any agency or governing
251 authority authorized to enter into contracts for the construction,
252 maintenance, surfacing or repair of highways, roads or streets,
253 may include in its bid proposal and contract documents a price
254 adjustment clause with relation to the cost to the contractor,
255 including taxes, based upon an industry-wide cost index, of
256 petroleum products including asphalt used in the performance or
257 execution of the contract or in the production or manufacture of
258 materials for use in such performance. Such industry-wide index
259 shall be established and published monthly by the State Department
260 of Transportation with a copy thereof to be mailed, upon request,
261 to the clerks of the governing authority of each municipality and
262 the clerks of each board of supervisors throughout the state. The
263 price adjustment clause shall be based on the cost of such
264 petroleum products only and shall not include any additional
265 profit or overhead as part of the adjustment. The bid proposals
266 or document contract shall contain the basis and methods of
267 adjusting unit prices for the change in the cost of such petroleum
268 products.

269 (j) **State agency emergency purchase procedure.** If the

270 executive head of any agency of the state shall determine that an
271 emergency exists in regard to the purchase of any commodities or
272 repair contracts, so that the delay incident to giving opportunity
273 for competitive bidding would be detrimental to the interests of
274 the state, then the provisions herein for competitive bidding
275 shall not apply and the head of such agency shall be authorized to
276 make the purchase or repair. Total purchases so made shall only
277 be for the purpose of meeting needs created by the emergency
278 situation. In the event such executive head is responsible to an
279 agency board, at the meeting next following the emergency
280 purchase, documentation of the purchase, including a description
281 of the commodity purchased, the purchase price thereof and the
282 nature of the emergency shall be presented to the board and placed
283 on the minutes of the board of such agency. The head of such
284 agency shall, at the earliest possible date following such
285 emergency purchase, file with the Department of Finance and
286 Administration (i) a statement under oath certifying the
287 conditions and circumstances of the emergency, and (ii) a
288 certified copy of the appropriate minutes of the board of such
289 agency, if applicable.

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

291 If the governing authority, or the governing authority acting
292 through its designee, shall determine that an emergency exists in
293 regard to the purchase of any commodities or repair contracts, so
294 that the delay incident to giving opportunity for competitive
295 bidding would be detrimental to the interest of the governing
296 authority, then the provisions herein for competitive bidding
297 shall not apply and any officer or agent of such governing
298 authority having general or special authority therefor in making
299 such purchase or repair shall approve the bill presented therefor,
300 and he shall certify in writing thereon from whom such purchase
301 was made, or with whom such a repair contract was made. At the
302 board meeting next following the emergency purchase or repair
303 contract, documentation of the purchase or repair contract,

304 including a description of the commodity purchased, the price
305 thereof and the nature of the emergency shall be presented to the
306 board and shall be placed on the minutes of the board of such
307 governing authority.

308 (1) **Hospital purchase or lease authorization.** The
309 commissioners or board of trustees of any hospital owned or owned
310 and operated separately or jointly by one or more counties,
311 cities, towns, supervisors districts or election districts, or
312 combinations thereof, may contract with such lowest and best
313 bidder for the purchase or lease of any commodity under a contract
314 of purchase or lease-purchase agreement whose obligatory terms do
315 not exceed five (5) years. In addition to the authority granted
316 herein, the commissioners or board of trustees are authorized to
317 enter into contracts for the lease of equipment or services, or
318 both, which it considers necessary for the proper care of patients
319 if, in its opinion, it is not financially feasible to purchase the
320 necessary equipment or services. Any such contract for the lease
321 of equipment or services executed by the commissioners or board
322 shall not exceed a maximum of five (5) years' duration and shall
323 include a cancellation clause based on unavailability of funds.
324 If such cancellation clause is exercised, there shall be no
325 further liability on the part of the lessee.

326 (m) **Exceptions from bidding requirements.** Excepted
327 from bid requirements are:

328 (i) **Purchasing agreements approved by department.**
329 Purchasing agreements, contracts and maximum price regulations
330 executed or approved by the Department of Finance and
331 Administration.

332 (ii) **Outside equipment repairs.** Repairs to
333 equipment, when such repairs are made by repair facilities in the
334 private sector; however, engines, transmissions, rear axles and/or
335 other such components shall not be included in this exemption when
336 replaced as a complete unit instead of being repaired and the need
337 for such total component replacement is known before disassembly

338 of the component; provided, however, that invoices identifying the
339 equipment, specific repairs made, parts identified by number and
340 name, supplies used in such repairs, and the number of hours of
341 labor and costs therefor shall be required for the payment for
342 such repairs.

343 (iii) **In-house equipment repairs.** Purchases of
344 parts for repairs to equipment, when such repairs are made by
345 personnel of the agency or governing authority; however, entire
346 assemblies, such as engines or transmissions, shall not be
347 included in this exemption when the entire assembly is being
348 replaced instead of being repaired.

349 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
350 of gravel or fill dirt which are to be removed and transported by
351 the purchaser.

352 (v) **Governmental equipment auctions.** Motor
353 vehicles or other equipment purchased from a federal or state
354 agency or a governing authority at a public auction held for the
355 purpose of disposing of such vehicles or other equipment. Any
356 purchase by a governing authority under the exemption authorized
357 by this paragraph (v) shall require advance authorization spread
358 upon the minutes of the governing authority to include the listing
359 of the item or items authorized to be purchased and the maximum
360 bid authorized to be paid for each item or items.

361 (vi) **Intergovernmental sales and transfers.**
362 Purchases, sales, transfers or trades by governing authorities or
363 state agencies when such purchases, sales, transfers or trades are
364 made by a private treaty agreement or through means of
365 negotiation, from any federal agency or authority, another
366 governing authority or state agency of the State of Mississippi,
367 or any state agency of another state. Nothing in this section
368 shall permit such purchases through public auction except as
369 provided for in paragraph (v) of this section. It is the intent
370 of this section to allow governmental entities to dispose of
371 and/or purchase commodities from other governmental entities at a

372 price that is agreed to by both parties. This shall allow for
373 purchases and/or sales at prices which may be determined to be
374 below the market value if the selling entity determines that the
375 sale at below market value is in the best interest of the
376 taxpayers of the state. Governing authorities shall place the
377 terms of the agreement and any justification on the minutes, and
378 state agencies shall obtain approval from the Department of
379 Finance and Administration, prior to releasing or taking
380 possession of the commodities.

381 (vii) **Perishable supplies or food.** Perishable
382 supplies or foods purchased for use in connection with hospitals,
383 the school lunch programs, homemaking programs and for the feeding
384 of county or municipal prisoners.

385 (viii) **Single source items.** Noncompetitive items
386 available from one (1) source only. In connection with the
387 purchase of noncompetitive items only available from one (1)
388 source, a certification of the conditions and circumstances
389 requiring the purchase shall be filed by the agency with the
390 Department of finance and Administration and by the governing
391 authority with the board of the governing authority. Upon receipt
392 of that certification the Department of Finance and Administration
393 or the board of the governing authority, as the case may be, may,
394 in writing, authorize the purchase, which authority shall be noted
395 on the minutes of the body at the next regular meeting thereafter.
396 In those situations, a governing authority is not required to
397 obtain the approval of the Department of Finance and
398 Administration.

399 (ix) **Waste disposal facility construction**
400 **contracts.** Construction of incinerators and other facilities for
401 disposal of solid wastes in which products either generated
402 therein, such as steam, or recovered therefrom, such as materials
403 for recycling, are to be sold or otherwise disposed of; provided,
404 however, in constructing such facilities a governing authority or
405 agency shall publicly issue requests for proposals, advertised for

406 in the same manner as provided herein for seeking bids for public
407 construction projects, concerning the design, construction,
408 ownership, operation and/or maintenance of such facilities,
409 wherein such requests for proposals when issued shall contain
410 terms and conditions relating to price, financial responsibility,
411 technology, environmental compatibility, legal responsibilities
412 and such other matters as are determined by the governing
413 authority or agency to be appropriate for inclusion; and after
414 responses to the request for proposals have been duly received,
415 the governing authority or agency may select the most qualified
416 proposal or proposals on the basis of price, technology and other
417 relevant factors and from such proposals, but not limited to the
418 terms thereof, negotiate and enter contracts with one or more of
419 the persons or firms submitting proposals.

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

423 (xi) **Data processing equipment.** Purchases of data
424 processing equipment made by governing authorities under the
425 provisions of purchase agreements, contracts or maximum price
426 regulations executed or approved by the Mississippi Department of
427 Information Technology Services.

428 (xii) **Energy efficiency services and equipment.**
429 Energy efficiency services and equipment acquired by school
430 districts, junior colleges, institutions of higher learning and
431 state agencies or other applicable governmental entities on a
432 shared-savings, lease or lease-purchase basis pursuant to Section
433 31-7-14.

434 (xiii) **Insurance contracts.** Purchases of
435 contracts for fire insurance, automobile insurance, casualty
436 insurance, health insurance and liability insurance by governing
437 authorities or agencies.

438 (xiv) **Municipal electrical utility system fuel.**
439 Purchases of coal and/or natural gas by municipally-owned electric

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

442 (xv) **Library books and other reference materials.**

443 Purchases by libraries or for libraries of books and periodicals;
444 processed film, video cassette tapes, filmstrips and slides;
445 recorded audio tapes, cassettes and diskettes; and any such items
446 as would be used for teaching, research or other information
447 distribution; however, equipment such as projectors, recorders,
448 audio or video equipment, and monitor televisions are not exempt
449 under this paragraph.

450 (xvi) **Unmarked vehicles.** Purchases of unmarked
451 vehicles when such purchases are made in accordance with
452 purchasing regulations adopted by the Department of Finance and
453 Administration pursuant to Section 31-7-9(2).

454 (xvii) **Sales and transfers between governing
455 authorities.** Sales, transfers or trades of any personal property
456 between governing authorities within a county or any such
457 transaction involving governing authorities of two (2) or more
458 counties.

459 (xviii) **Election ballots.** Purchases of ballots
460 printed pursuant to Section 23-15-351.

461 (xix) **Educational television contracts.** From and
462 after July 1, 1990, contracts by Mississippi Authority for
463 Educational Television with any private educational institution or
464 private nonprofit organization whose purposes are educational in
465 regard to the construction, purchase, lease or lease-purchase of
466 facilities and equipment and the employment of personnel for
467 providing multichannel interactive video systems (ITSF) in the
468 school districts of this state.

469 (xx) **Prison industry products.** From and after
470 January 1, 1991, purchases made by state agencies involving any
471 item that is manufactured, processed, grown or produced from the
472 state's prison industries.

473 (xxi) **Undercover operations equipment.** Purchases

474 of surveillance equipment or any other high-tech equipment to be
475 used by narcotics agents in undercover operations, provided that
476 any such purchase shall be in compliance with regulations
477 established by the Department of Finance and Administration.

478 (xxii) **Junior college books for rent.** Purchases
479 by community or junior colleges of textbooks which are obtained
480 for the purpose of renting such books to students as part of a
481 book service system.

482 (xxiii) **School purchases from county/municipal**
483 **contracts.** Purchases of commodities made by school districts from
484 vendors with which any levying authority of the school district,
485 as defined in Section 37-57-1, has contracted through competitive
486 bidding procedures for purchases of the same commodities.

487 (xxiv) **Emergency purchases by retirement system.**
488 Emergency purchases made by the Public Employees' Retirement
489 System pursuant to Section 25-11-15(7).

490 (xxv) Repealed.

491 (xxvi) **Garbage, solid waste and sewage contracts.**

492 Contracts for garbage collection or disposal, contracts for solid
493 waste collection or disposal and contracts for sewage collection
494 or disposal.

495 (xxvii) **Municipal water tank maintenance**
496 **contracts.** Professional maintenance program contracts for the
497 repair or maintenance of municipal water tanks, which provide
498 professional services needed to maintain municipal water storage
499 tanks for a fixed annual fee for a duration of two (2) or more
500 years.

501 (xxviii) **Industries for the Blind products.**

502 Purchases made by state agencies involving any item that is
503 manufactured, processed or produced by the Mississippi Industries
504 for the Blind.

505 * * *

506 (n) (i) **Term contract authorization.** All contracts
507 for the purchase of:

508 (A) Commodities, equipment and public
509 construction (including, but not limited to, repair and
510 maintenance), and

511 (B) Water lines, sewer lines, storm drains,
512 drainage ditches, asphalt milling, traffic striping, asphalt
513 overlay of streets, and curb and gutter (not to exceed One Hundred
514 Fifty Thousand Dollars (\$150,000.00) per project listed in this
515 item B) may be let for periods of not more than twenty-four (24)
516 months in advance, subject to applicable statutory provisions
517 prohibiting the letting of contracts during specified periods near
518 the end of terms of office.

519 (ii) All purchases made by governing authorities,
520 including purchases made pursuant to the provisions of
521 subparagraph (i) of this paragraph (n), may be made upon one (1)
522 purchase order issued per month to each individual vendor prior to
523 delivery of such commodities provided that each individual
524 delivery, load or shipment purchased is properly requisitioned and
525 is properly received and receipted by signed ticket, receipt or
526 invoice, indicating thereon the point of delivery, and provided
527 that, with respect to counties, such commodities are properly
528 accounted for by the receiving clerk or an assistant receiving
529 clerk as provided by Section 31-7-109. Such purchase order shall
530 be invalid on the first calendar day of the month immediately
531 following the month in which it was issued. Purchases in such
532 month immediately following may be made only if a purchase order
533 is issued for such month. Each monthly purchase order shall be
534 retained in the records of the governing authority. Agencies may
535 make purchases as authorized under this subparagraph (ii) in
536 accordance with such regulations, policies and procedures as are
537 promulgated by the Department of Finance and Administration.

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

542 person or concern to submit individual invoices for amounts within
543 those authorized for a contract or purchase where the actual value
544 of the contract or commodity purchased exceeds the authorized
545 amount and the invoices therefor are split so as to appear to be
546 authorized as purchases for which competitive bids are not
547 required. Submission of such invoices shall constitute a
548 misdemeanor punishable by a fine of not less than Five Hundred
549 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
550 or by imprisonment for thirty (30) days in the county jail, or
551 both such fine and imprisonment. In addition, the claim or claims
552 submitted shall be forfeited.

553 (p) **Electrical utility petroleum-based equipment**
554 **purchase procedure.** When in response to a proper advertisement
555 therefor, no bid firm as to price is submitted to an electric
556 utility for power transformers, distribution transformers, power
557 breakers, reclosers or other articles containing a petroleum
558 product, the electric utility may accept the lowest and best bid
559 therefor although the price is not firm.

560 (q) **Exception to county/municipal budget limitations.**
561 The prohibitions and restrictions set forth in Sections 19-11-27,
562 21-35-27 and 31-7-49 shall not apply to a contract, lease or
563 lease-purchase agreement entered pursuant to the requirements of
564 this chapter.

565 (r) **Definition of purchase.** For the purposes of this
566 section, the term "purchase" shall mean the total amount of money
567 encumbered by a single purchase order.

568 (s) **Fuel management system bidding procedure.** Any
569 governing authority or agency of the state shall, before
570 contracting for the services and products of a fuel management or
571 fuel access system, enter into negotiations with not fewer than
572 two (2) sellers of fuel management or fuel access systems for
573 competitive written bids to provide the services and products for
574 the systems. In the event that the governing authority or agency
575 cannot locate two (2) sellers of such systems or cannot obtain

576 bids from two (2) sellers of such systems, it shall show proof
577 that it made a diligent, good-faith effort to locate and negotiate
578 with two (2) sellers of such systems. Such proof shall include,
579 but not be limited to, publications of a request for proposals and
580 letters soliciting negotiations and bids. For purposes of this
581 paragraph (s), a fuel management or fuel access system is an
582 automated system of acquiring fuel for vehicles as well as
583 management reports detailing fuel use by vehicles and drivers, and
584 the term "competitive written bid" shall have the meaning as
585 defined in paragraph (b) of this section.

586 (t) **Solid waste contract proposal procedure.** Before
587 entering into any contract for garbage collection or disposal,
588 contract for solid waste collection or disposal or contract for
589 sewage collection or disposal, which involves an expenditure of
590 more than Fifty Thousand Dollars (\$50,000.00), a governing
591 authority or agency shall issue publicly a request for proposals
592 concerning the specifications for such services which shall be
593 advertised for in the same manner as provided in this section for
594 seeking bids for purchases which involve an expenditure of more
595 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
596 when issued shall contain terms and conditions relating to price,
597 financial responsibility, technology, legal responsibilities and
598 other relevant factors as are determined by the governing
599 authority or agency to be appropriate for inclusion; all factors
600 determined relevant by the governing authority or agency or
601 required by this paragraph (t) shall be duly included in the
602 advertisement to elicit proposals. After responses to the request
603 for proposals have been duly received, the governing authority or
604 agency shall select the most qualified proposal or proposals on
605 the basis of price, technology and other relevant factors and from
606 such proposals, but not limited to the terms thereof, negotiate
607 and enter contracts with one or more of the persons or firms
608 submitting proposals. If the governing authority or agency deems
609 none of the proposals to be qualified or otherwise acceptable, the

610 request for proposals process may be reinitiated.

611 (u) **Minority set aside authorization.** Notwithstanding
612 any provision of this section to the contrary, any agency or
613 governing authority, by order placed on its minutes, may, in its
614 discretion, set aside not more than twenty percent (20%) of its
615 anticipated annual expenditures for the purchase of commodities
616 from minority businesses; however, all such set-aside purchases
617 shall comply with all purchasing regulations promulgated by the
618 Department of Finance and Administration and shall be subject to
619 bid requirements under this section. Set-aside purchases for
620 which competitive bids are required shall be made from the lowest
621 and best minority business bidder. For the purposes of this
622 paragraph, the term "minority business" means a business which is
623 owned by a majority of persons who are United States citizens or
624 permanent resident aliens (as defined by the Immigration and
625 Naturalization Service) of the United States, and who are Asian,
626 Black, Hispanic or Native American, according to the following
627 definitions:

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

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

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

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

639 (v) **Construction punch list restriction.** The
640 architect, engineer or other representative designated by the
641 agency or governing authority that is contracting for public
642 construction or renovation may prepare and submit to the
643 contractor only one (1) preliminary punch list of items that do

644 not meet the contract requirements at the time of substantial
645 completion and one (1) final list immediately before final
646 completion and final payment.

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

650 SECTION 2. This act shall take effect and be in force from
651 and after July 1, 1999.