

By: Representative Perry

To: Appropriations

HOUSE BILL NO. 779  
(As Sent to Governor)

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; TO  
11 AUTHORIZE CERTAIN COUNTIES AND MUNICIPALITIES TO CONTRACT FOR  
12 SOLID WASTE DISPOSAL SERVICES WITH OTHER COUNTIES OR  
13 MUNICIPALITIES THAT OWN OR OPERATE A SOLID WASTE LANDFILL THROUGH  
14 CONTRACT NEGOTIATION; AND FOR RELATED PURPOSES.

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

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

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

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

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

66           (c) **Bidding procedure for purchases over \$10,000.00.**  
67 Purchases which involve an expenditure of more than Ten Thousand

68 Dollars (\$10,000.00), exclusive of freight and shipping charges  
69 may be made from the lowest and best bidder after advertising for  
70 competitive sealed bids once each week for two (2) consecutive  
71 weeks in a regular newspaper published in the county or  
72 municipality in which such agency or governing authority is  
73 located. The date as published for the bid opening shall not be  
74 less than seven (7) working days after the last published notice;  
75 however, if the purchase involves a construction project in which  
76 the estimated cost is in excess of Fifteen Thousand Dollars  
77 (\$15,000.00), such bids shall not be opened in less than fifteen  
78 (15) working days after the last notice is published and the  
79 notice for the purchase of such construction shall be published  
80 once each week for two (2) consecutive weeks. The notice of  
81 intention to let contracts or purchase equipment shall state the  
82 time and place at which bids shall be received, list the contracts  
83 to be made or types of equipment or supplies to be purchased, and,  
84 if all plans and/or specifications are not published, refer to the  
85 plans and/or specifications on file. If all plans and/or  
86 specifications are published in the notification, then the plans  
87 and/or specifications may not be amended. If all plans and/or  
88 specifications are not published in the notification, then  
89 amendments to the plans/specifications, bid opening date, bid  
90 opening time and place may be made, provided that the agency or  
91 governing authority maintains a list of all prospective bidders  
92 who are known to have received a copy of the bid documents and all  
93 such prospective bidders are sent copies of all amendments. This  
94 notification of amendments may be made via mail, facsimile,  
95 electronic mail or other generally accepted method of information  
96 distribution. In all cases involving governing authorities,  
97 before the notice shall be published or posted, the plans or  
98 specifications for the construction or equipment being sought  
99 shall be filed with the clerk of the board of the governing  
100 authority, and there remain. If there is no newspaper published  
101 in the county or municipality, then such notice shall be given by

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

136 meet all pertinent regulations of the State Board of Education,  
137 including prior approval of such bid by the State Department of  
138 Education. Nothing in this section shall prohibit any agency or  
139 governing authority from writing specifications to include  
140 life-cycle costing, total cost bids, extended warranties or  
141 guaranteed buy-back provisions, provided that such bid  
142 requirements shall be in compliance with regulations established  
143 by the Department of Audit.

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

145 Purchases may be made from the lowest and best bidder. In  
146 determining the lowest and best bid, freight and shipping charges  
147 shall be included. If any governing authority accepts a bid other  
148 than the lowest bid actually submitted, it shall place on its  
149 minutes detailed calculations and narrative summary showing that  
150 the accepted bid was determined to be the lowest and best bid,  
151 including the dollar amount of the accepted bid and the dollar  
152 amount of the lowest bid. No agency or governing authority shall  
153 accept a bid based on items not included in the specifications.

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

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

167 (iv) No addendum to bid specifications for such  
168 projects may be issued by the agency or governing authority within  
169 twelve (12) hours of the time established by the agency or

170 governing authority for the receipt of bids.

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

204 information as required to be maintained by the Department of  
205 Finance and Administration pursuant to Section 31-7-10(13).  
206 However, nothing contained in this section shall be construed to  
207 permit agencies to acquire items of equipment with a total  
208 acquisition cost in the aggregate of less than Ten Thousand  
209 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
210 equipment, and the purchase thereof by any lessor, acquired by  
211 lease-purchase under this paragraph and all lease-purchase  
212 payments with respect thereto shall be exempt from all Mississippi  
213 sales, use and ad valorem taxes. Interest paid on any  
214 lease-purchase agreement under this section shall be exempt from  
215 State of Mississippi income taxation.

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

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

238 authority with respect to any public construction contract shall  
239 have the authority, when granted by an agency or governing  
240 authority, to authorize changes or modifications to the original  
241 contract without the necessity of prior approval of the agency or  
242 governing authority when any such change or modification is less  
243 than one percent (1%) of the total contract amount. The agency or  
244 governing authority may limit the number, manner or frequency of  
245 such emergency changes or modifications.

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

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



272 products.

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

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

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

306 board meeting next following the emergency purchase or repair  
307 contract, documentation of the purchase or repair contract,  
308 including a description of the commodity purchased, the price  
309 thereof and the nature of the emergency shall be presented to the  
310 board and shall be placed on the minutes of the board of such  
311 governing authority.

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

330           (m) **Exceptions from bidding requirements.** Excepted  
331 from bid requirements are:

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

333 Purchasing agreements, contracts and maximum price regulations  
334 executed or approved by the Department of Finance and  
335 Administration.

336                   (ii) **Outside equipment repairs.** Repairs to  
337 equipment, when such repairs are made by repair facilities in the  
338 private sector; however, engines, transmissions, rear axles and/or  
339 other such components shall not be included in this exemption when

340 replaced as a complete unit instead of being repaired and the need  
341 for such total component replacement is known before disassembly  
342 of the component; provided, however, that invoices identifying the  
343 equipment, specific repairs made, parts identified by number and  
344 name, supplies used in such repairs, and the number of hours of  
345 labor and costs therefor shall be required for the payment for  
346 such repairs.

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

353           (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
354 of gravel or fill dirt which are to be removed and transported by  
355 the purchaser.

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

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

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

385 (vii) **Perishable supplies or food.** Perishable  
386 supplies or foods purchased for use in connection with hospitals,  
387 the school lunch programs, homemaking programs and for the feeding  
388 of county or municipal prisoners.

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

403 (ix) **Waste disposal facility construction**  
404 **contracts.** Construction of incinerators and other facilities for  
405 disposal of solid wastes in which products either generated  
406 therein, such as steam, or recovered therefrom, such as materials  
407 for recycling, are to be sold or otherwise disposed of; provided,

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

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

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

432           (xii) **Energy efficiency services and equipment.**  
433 Energy efficiency services and equipment acquired by school  
434 districts, junior colleges, institutions of higher learning and  
435 state agencies or other applicable governmental entities on a  
436 shared-savings, lease or lease-purchase basis pursuant to Section  
437 31-7-14.

438           (xiii) **Insurance contracts.** Purchases of  
439 contracts for fire insurance, automobile insurance, casualty  
440 insurance, health insurance and liability insurance by governing  
441 authorities or agencies.

442 (xiv) **Municipal electrical utility system fuel.**

443 Purchases of coal and/or natural gas by municipally-owned electric  
444 power generating systems that have the capacity to use both coal  
445 and natural gas for the generation of electric power.

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

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

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

458 (xvii) **Sales and transfers between governing**  
459 **authorities.** Sales, transfers or trades of any personal property  
460 between governing authorities within a county or any such  
461 transaction involving governing authorities of two (2) or more  
462 counties.

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

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

473 (xx) **Prison industry products.** From and after  
474 January 1, 1991, purchases made by state agencies involving any  
475 item that is manufactured, processed, grown or produced from the

476 state's prison industries.

477                   (xxix) **Undercover operations equipment.** Purchases  
478 of surveillance equipment or any other high-tech equipment to be  
479 used by narcotics agents in undercover operations, provided that  
480 any such purchase shall be in compliance with regulations  
481 established by the Department of Finance and Administration.

482                   (xxx) **Junior college books for rent.** Purchases  
483 by community or junior colleges of textbooks which are obtained  
484 for the purpose of renting such books to students as part of a  
485 book service system.

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

491                   (xxxii) **Emergency purchases by retirement system.**  
492 Emergency purchases made by the Public Employees' Retirement  
493 System pursuant to Section 25-11-15(7).

494                   (xxxiii) Repealed.

495                   (xxxiv) **Garbage, solid waste and sewage contracts.**  
496 Contracts for garbage collection or disposal, contracts for solid  
497 waste collection or disposal and contracts for sewage collection  
498 or disposal.

499                   (xxxv) **Municipal water tank maintenance**  
500 **contracts.** Professional maintenance program contracts for the  
501 repair or maintenance of municipal water tanks, which provide  
502 professional services needed to maintain municipal water storage  
503 tanks for a fixed annual fee for a duration of two (2) or more  
504 years.

505                   (xxxvi) **Industries for the Blind products.**  
506 Purchases made by state agencies involving any item that is  
507 manufactured, processed or produced by the Mississippi Industries  
508 for the Blind.

509 \* \* \*

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

512 (A) Commodities, equipment and public  
513 construction (including, but not limited to, repair and  
514 maintenance), and

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

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

542 (o) **Purchase law violation prohibition and vendor**  
543 **penalty.** No contract or purchase as herein authorized shall be



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

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

564           (q) **Exception to county/municipal budget limitations.**  
565 The prohibitions and restrictions set forth in Sections 19-11-27,  
566 21-35-27 and 31-7-49 shall not apply to a contract, lease or  
567 lease-purchase agreement entered pursuant to the requirements of  
568 this chapter.

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

572           (s) **Fuel management system bidding procedure.** Any  
573 governing authority or agency of the state shall, before  
574 contracting for the services and products of a fuel management or  
575 fuel access system, enter into negotiations with not fewer than  
576 two (2) sellers of fuel management or fuel access systems for  
577 competitive written bids to provide the services and products for

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

590 (t) **Solid waste contract proposal procedure.** Before  
591 entering into any contract for garbage collection or disposal,  
592 contract for solid waste collection or disposal or contract for  
593 sewage collection or disposal, which involves an expenditure of  
594 more than Fifty Thousand Dollars (\$50,000.00), a governing  
595 authority or agency shall issue publicly a request for proposals  
596 concerning the specifications for such services which shall be  
597 advertised for in the same manner as provided in this section for  
598 seeking bids for purchases which involve an expenditure of more  
599 than Ten Thousand Dollars (\$10,000.00). Any request for proposals  
600 when issued shall contain terms and conditions relating to price,  
601 financial responsibility, technology, legal responsibilities and  
602 other relevant factors as are determined by the governing  
603 authority or agency to be appropriate for inclusion; all factors  
604 determined relevant by the governing authority or agency or  
605 required by this paragraph (t) shall be duly included in the  
606 advertisement to elicit proposals. After responses to the request  
607 for proposals have been duly received, the governing authority or  
608 agency shall select the most qualified proposal or proposals on  
609 the basis of price, technology and other relevant factors and from  
610 such proposals, but not limited to the terms thereof, negotiate  
611 and enter contracts with one or more of the persons or firms

612 submitting proposals. If the governing authority or agency deems  
613 none of the proposals to be qualified or otherwise acceptable, the  
614 request for proposals process may be reinitiated. Notwithstanding  
615 any other provisions of this paragraph, where a county with at  
616 least thirty-five thousand (35,000) nor more than forty thousand  
617 (40,000) population, according to the 1990 federal decennial  
618 census, owns or operates a solid waste landfill, the governing  
619 authorities of any other county or municipality may contract with  
620 the governing authorities of the county owning or operating the  
621 landfill, pursuant to a resolution duly adopted and spread upon  
622 the minutes of each governing authority involved, for garbage or  
623 solid waste collection or disposal services through contract  
624 negotiations.

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

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

645 (ii) "Black" means persons having origins in any

646 black racial group of Africa.

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

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

653 (v) **Construction punch list restriction.** The  
654 architect, engineer or other representative designated by the  
655 agency or governing authority that is contracting for public  
656 construction or renovation may prepare and submit to the  
657 contractor only one (1) preliminary punch list of items that do  
658 not meet the contract requirements at the time of substantial  
659 completion and one (1) final list immediately before final  
660 completion and final payment.

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

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