

By: Representatives Wallace, Thornton

To: Appropriations

HOUSE BILL NO. 1178

1 AN ACT TO REQUIRE ENTITIES THAT ENTER CONTRACTS WITH THE
2 STATE OR POLITICAL SUBDIVISIONS OF THE STATE FOR MORE THAN
3 \$100,000.00 OF BUSINESS IN ANY FISCAL YEAR TO FILE A
4 SUBCONTRACTING PLAN WITH THE STATE OUTLINING HOW THE ENTITY PLANS
5 TO UTILIZE MINORITY-OWNED BUSINESSES IN THE BUSINESS TO BE
6 CONDUCTED WITH THE STATE OR POLITICAL SUBDIVISION; TO PROHIBIT THE
7 STATE AND POLITICAL SUBDIVISIONS FROM CONDUCTING ANY BUSINESS
8 UNDER ANY SUCH CONTRACT UNTIL THE ENTITY HAS FILED THE REQUIRED
9 PLAN; TO AMEND SECTIONS 25-53-5, 25-53-125, 31-7-12, 31-7-13, AND
10 31-7-38, MISSISSIPPI CODE OF 1972, IN CONFORMITY WITH THE
11 PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

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

13 SECTION 1. (1) Each individual, corporation, partnership,
14 association, organization or other entity that enters a new
15 contract or renews an existing contract to conduct business with
16 the State of Mississippi or any agency, department, institution or
17 political subdivision of the state, in an amount that will or is
18 reasonably anticipated to exceed One Hundred Thousand Dollars
19 (\$100,000.00) in any fiscal year of the state or the political
20 subdivision with which the business is to be conducted, shall file
21 with the Department of Finance and Administration in the case a
22 contract with the state or with the State Auditor in the case a
23 contract with a political subdivision, a subcontracting plan that
24 outlines the manner in which the entity plans to utilize the
25 services of minority-owned businesses in the business to be
26 conducted with the state or political subdivision, and that
27 includes a goal for the utilization of the services of
28 minority-owned businesses expressed as a percentage of the total
29 business to be conducted under the contract. The entity shall
30 file the plan required by this section before it may conduct any
31 business under the contract with the state or political

32 subdivision with which the entity has the contract. The state and
33 each political subdivision of the state having a contract with an
34 entity for which the plan required by this section must be filed
35 shall be prohibited from conducting any business under the
36 contract until the entity has filed the plan.

37 (2) For the purposes of this section, the term
38 "minority-owned business" means a business that is owned by a
39 majority of persons who are United States citizens or permanent
40 resident aliens (as defined by the Immigration and Naturalization
41 Service) of the United States and who are:

42 (a) Asian, which means persons having origins in any of
43 the original people of the Far East, Southeast Asia, the Indian
44 subcontinent, or the Pacific Islands;

45 (b) Black, which means persons having origins in any
46 black racial group of Africa;

47 (c) Hispanic, which means persons of Spanish or
48 Portuguese culture with origins in Mexico, South or Central
49 America, or the Caribbean Islands, regardless of race;

50 (d) Native American, which means persons having origins
51 in any of the original people of North America, including American
52 Indians, Eskimos and Aleuts;

53 (e) Female; or

54 (f) Any combination of the persons listed in paragraphs
55 (a) through (e) of this subsection.

56 SECTION 2. Section 25-53-5, Mississippi Code of 1972, is
57 amended as follows:

58 25-53-5. The authority shall have the following powers,
59 duties, and responsibilities:

60 (a) The authority shall provide for the development of
61 plans for the efficient acquisition and utilization of computer
62 equipment and services by all agencies of state government, and
63 provide for their implementation. In so doing, the authority may
64 use the MDITS staff, at the discretion of the executive director
65 of the authority, or the authority may contract for the services
66 of qualified consulting firms in the field of information
67 technology and utilize the service of such consultants as may be
68 necessary for such purposes.

69 (b) The authority shall immediately institute

70 procedures for carrying out the purposes of this chapter and
71 supervise the efficient execution of the powers and duties of the
72 office of executive director of the authority. In the execution
73 of its functions under this chapter, the authority shall maintain
74 as a paramount consideration the successful internal organization
75 and operation of the several agencies so that efficiency existing
76 therein shall not be adversely affected or impaired. In executing
77 its functions in relation to the institutions of higher learning
78 and junior colleges in the state, the authority shall take into
79 consideration the special needs of such institutions in relation
80 to the fields of teaching and scientific research.

81 (c) Title of whatever nature of all computer equipment
82 now vested in any agency of the State of Mississippi is hereby
83 vested in the authority, and no such equipment shall be disposed
84 of in any manner except in accordance with the direction of the
85 authority or under the provisions of such rules and regulations as
86 may hereafter be adopted by the authority in relation thereto.

87 (d) The authority shall adopt rules, regulations, and
88 procedures governing the acquisition of computer and
89 telecommunications equipment and services which shall, to the
90 fullest extent practicable, insure the maximum of competition
91 between all manufacturers of supplies or equipment or services.
92 In the writing of specifications, in the making of contracts
93 relating to the acquisition of such equipment and services, and in
94 the performance of its other duties the authority shall provide
95 for the maximum compatibility of all information systems hereafter
96 installed or utilized by all state agencies and may require the
97 use of common computer languages where necessary to accomplish the
98 purposes of this chapter. The authority may establish by
99 regulation and charge reasonable fees on a nondiscriminatory basis
100 for the furnishing to bidders of copies of bid specifications and
101 other documents issued by the authority.

102 (e) The authority shall adopt rules and regulations
103 governing the sharing with, or the sale or lease of information

104 technology services to any nonstate agency or person. Such
105 regulations shall provide that any such sharing, sale, or lease
106 shall be restricted in that same shall be accomplished only where
107 such services are not readily available otherwise within the
108 state, and then only at a charge to the user not less than the
109 prevailing rate of charge for similar services by private
110 enterprise within this state.

111 (f) The authority may, in its discretion, establish a
112 special technical advisory committee or committees to study and
113 make recommendations on technology matters within the competence
114 of the authority as the authority may see fit. Persons serving on
115 the Information Resource Council, its task forces, or any such
116 technical advisory committees shall be entitled to receive their
117 actual and necessary expenses actually incurred in the performance
118 of such duties, together with mileage as provided by law for state
119 employees, provided the same has been authorized by a resolution
120 duly adopted by the authority and entered on its minutes prior to
121 the performance of such duties.

122 (g) The authority may provide for the development and
123 require the adoption of standardized computer programs and may
124 provide for the dissemination of information to and the
125 establishment of training programs for the personnel of the
126 various information technology centers of state agencies and
127 personnel of the agencies utilizing the services thereof.

128 (h) The authority shall adopt reasonable rules and
129 regulations requiring the reporting to the authority through the
130 office of executive director of such information as may be
131 required for carrying out the purposes of this chapter and may
132 also establish such reasonable procedures to be followed in the
133 presentation of bills for payment under the terms of all contracts
134 for the acquisition of computer equipment and services now or
135 hereafter in force as may be required by the authority or by the
136 executive director in the execution of their powers and duties.

137 (i) The authority shall require such adequate

138 documentation of information technology procedures utilized by the
139 various state agencies and may require the establishment of such
140 organizational structures within state agencies relating to
141 information technology operations as may be necessary to
142 effectuate the purposes of this chapter.

143 (j) The authority may adopt such further reasonable
144 rules and regulations as may be necessary to fully implement the
145 purposes of this chapter. All rules and regulations adopted by
146 the authority shall be published and disseminated in readily
147 accessible form to all affected state agencies, and to all current
148 suppliers of computer equipment and services to the state, and to
149 all prospective suppliers requesting the same. Such rules and
150 regulations shall be kept current, be periodically revised, and
151 copies thereof shall be available at all times for inspection by
152 the public at reasonable hours in the offices of the authority.
153 Whenever possible no rule, regulation or any proposed amendment to
154 such rules and regulations shall be finally adopted or enforced
155 until copies of said proposed rules and regulations have been
156 furnished to all interested parties for their comment and
157 suggestions.

158 (k) The authority shall establish rules and regulations
159 which shall provide for the submission of all contracts proposed
160 to be executed by the executive director for computer equipment or
161 services to the authority for approval before final execution, and
162 the authority may provide that such contracts involving the
163 expenditure of less than such specified amount as may be
164 established by the authority may be finally executed by the
165 executive director without first obtaining such approval by the
166 authority.

167 (l) The authority is authorized to purchase, lease, or
168 rent computer equipment or services and to operate said equipment
169 and utilize said services in providing services to one or more
170 state agencies when in its opinion such operation will provide
171 maximum efficiency and economy in the functions of any such agency

172 or agencies.

173 (m) The authority shall assist political subdivisions
174 and instrumentalities in their development of plans for the
175 efficient acquisition and utilization of computer equipment and
176 services. An appropriate fee shall be charged the political
177 subdivision by the authority for such assistance.

178 (n) The authority shall adopt rules and regulations
179 governing the protest procedures to be followed by any actual or
180 prospective bidder, offerer or contractor who is aggrieved in
181 connection with the solicitation or award of a contract for the
182 acquisition of computer equipment or services. Such rules and
183 regulations shall prescribe the manner, time and procedure for
184 making protests and may provide that a protest not timely filed
185 shall be summarily denied. The authority may require the
186 protesting party, at the time of filing the protest, to post a
187 bond, payable to the state, in an amount that the authority
188 determines sufficient to cover any expense or loss incurred by the
189 state, the authority or any state agency as a result of the
190 protest if the protest subsequently is determined by a court of
191 competent jurisdiction to have been filed without any substantial
192 basis or reasonable expectation to believe that the protest was
193 meritorious; however, in no event may the amount of the bond
194 required exceed a reasonable estimate of the total project cost.
195 The authority, in its discretion, also may prohibit any
196 prospective bidder, offerer or contractor who is a party to any
197 litigation involving any such contract with the state, the
198 authority or any agency of the state to participate in any other
199 such bid, offer or contract, or to be awarded any such contract,
200 during the pendency of the litigation.

201 (o) The authority shall make a report in writing to the
202 Legislature each year in the month of January. Such report shall
203 contain a full and detailed account of the work of the authority
204 for the preceding year as specified in Section 25-53-29(3).

205 All acquisitions of computer equipment and services involving

206 the expenditure of funds in excess of Five Thousand Dollars
207 (\$5,000.00) or rentals or leases, in excess of Five Thousand
208 Dollars (\$5,000.00) for the term of the contract shall be based
209 upon competitive and open specifications, and contracts therefor
210 shall be entered into only after advertisements for bids are
211 published in one or more daily newspapers having a general
212 circulation in the state not less than fourteen (14) days prior to
213 receiving sealed bids therefor. The authority may reserve the
214 right to reject any or all bids, and if all bids are rejected, the
215 authority may negotiate a contract within the limitations of the
216 specifications so long as the terms of any such negotiated
217 contract are equal to or better than the comparable terms
218 submitted by the lowest and best bidder, and so long as the total
219 cost to the State of Mississippi does not exceed the lowest bid.
220 If the authority accepts one (1) of such bids, it shall be that
221 which is the lowest and best.

222 Contracts for the acquisition of computer equipment and
223 services shall be subject to the provisions of Section 1 of this
224 act.

225 (p) When applicable, the authority may procure
226 equipment, systems and related services in accordance with the law
227 or regulations, or both, which govern the Bureau of Purchasing of
228 the Office of General Services or which govern the Mississippi
229 Department of Information Technology Services procurement of
230 telecommunications equipment, software and services.

231 (q) The authority is authorized to purchase, lease, or
232 rent information technology and services for the purpose of
233 establishing pilot projects to investigate emerging technologies.
234 These acquisitions shall be limited to new technologies and shall
235 be limited to an amount set by annual appropriation of the
236 Legislature. These acquisitions shall be exempt from the
237 advertising and bidding requirement.

238 (r) All fees collected by the Mississippi Department of
239 Information Technology Services shall be deposited into the

240 Mississippi Department of Information Technology Services
241 Revolving Fund unless otherwise specified by the Legislature.

242 SECTION 3. Section 25-53-125, Mississippi Code of 1972, is
243 amended as follows:

244 25-53-125. The following general provisions shall apply to
245 all procurements under Sections 25-53-101 through 25-53-125:

246 (a) No contracts entered into hereunder shall have an
247 initial effective date earlier than the date on which such
248 contract receives approval as required herein.

249 (b) All changes, modifications and amendments to any
250 contract hereunder shall be approved in advance by the bureau, in
251 addition to any other approvals required by law.

252 (c) The bureau shall promulgate rules and regulations
253 in accordance with the Administrative Procedure Act, Section
254 25-43-1 et seq. for the establishment of contract format.

255 (d) Where written proposals or bids are submitted by
256 vendors, the proposal or bid of the successful vendor shall be
257 incorporated into the final contract consummated with that vendor.

258 (e) The provisions of Sections 25-53-101 through
259 25-53-125 shall, with respect to the procurement of
260 telecommunications equipment, systems or related services,
261 supersede specifications of any contradictory or conflicting
262 provisions of Chapter 7, Title 31, Mississippi Code of 1972, and
263 other laws with respect to awarding public contracts.

264 (f) Contracts for the procurement of telecommunications
265 equipment, systems or related services shall be subject to the
266 provisions of Section 1 of this act.

267 SECTION 4. Section 31-7-12, Mississippi Code of 1972, is
268 amended as follows:

269 31-7-12. (1) Except in regard to purchases of unmarked
270 vehicles made in accordance with purchasing regulations adopted by
271 the Department of Finance and Administration pursuant to Section
272 31-7-9(2), all agencies shall purchase commodities at the state
273 contract price from the approved source, unless approval is

274 granted by the Department of Finance and Administration to solicit
275 purchases outside the terms of the contracts. However, prices
276 accepted by an agency shall be less than the prices set by the
277 state contract. Prices accepted by an agency shall be obtained in
278 compliance with paragraph (a), (b) or (c) of Section 31-7-13. It
279 shall be the responsibility of the Department of Finance and
280 Administration to ascertain that the resulting prices shall
281 provide a cost effective alternative to the established state
282 contract.

283 (2) Governing authorities may purchase commodities without
284 regard to the state contract price established by the Department
285 of Finance and Administration when such purchase involves an
286 expenditure of Five Hundred Dollars (\$500.00) or less, exclusive
287 of freight or shipping charges, provided that such purchase is
288 made at the usual and customary price of such commodities within
289 the locality involved and such price is not excessive.

290 (3) Governing authorities may purchase commodities approved
291 by the Department of Finance and Administration from the state
292 contract vendor, or from any source offering the identical
293 commodity, at a price not exceeding the state contract price
294 established by the Department of Finance and Administration for
295 such commodity, without obtaining or advertising for competitive
296 bids, when such purchase involves an expenditure of more than Five
297 Hundred Dollars (\$500.00), exclusive of freight or shipping
298 charges. Governing authorities that do not exercise the option to
299 purchase such commodities from the state contract vendor or from
300 another source offering the identical commodity at a price not
301 exceeding the state contract price established by the Department
302 of Finance and Administration shall make such purchases pursuant
303 to the provisions of Section 31-7-13 without regard to state
304 contract prices established by the Department of Finance and
305 Administration, unless such purchases are authorized to be made
306 under subsection (6) of this section.

307 (4) Nothing in this section shall prohibit governing

308 authorities from purchasing, pursuant to subsections (2) and (3)
309 of this section, commodities approved by the Department of Finance
310 and Administration at a price not exceeding the state contract
311 price established by the Department of Finance and Administration.

312 (5) The Department of Finance and Administration shall
313 ensure that the prices of all commodities on the state contract
314 are the lowest and best prices available from any source offering
315 that commodity at the same level of quality or service, utilizing
316 the reasonable standards established therefor by the Department of
317 Finance and Administration. If the Department of Finance and
318 Administration does not list an approved price for the particular
319 item involved, purchase shall be made according to statutory
320 bidding and licensing requirements. To encourage prudent
321 purchasing practices, the Department of Finance and Administration
322 shall be authorized and empowered to exempt certain commodities
323 from the requirement that the lowest and best price be approved by
324 order placed on its minutes. Contracts between the Department of
325 Finance and Administration and state contract vendors shall be
326 subject to the provisions of Section 1 of this act.

327 (6) Any school district may purchase commodities from
328 vendors with which any levying authority of the school district,
329 as defined in Section 37-57-1, has contracted through competitive
330 bidding procedures pursuant to Section 31-7-13 for purchases of
331 the same commodities. Purchases authorized by this subsection may
332 be made by a school district without obtaining or advertising for
333 competitive bids, and such purchases shall be made at the same
334 prices and under the same conditions as purchases of the same
335 commodities are to be made by the levying authority of the school
336 district under the contract with the vendor.

337 SECTION 5. Section 31-7-13, Mississippi Code of 1972, is
338 amended as follows:

339 31-7-13. All agencies and governing authorities shall
340 purchase their commodities and printing; contract for fire
341 insurance, automobile insurance, casualty insurance (other than

342 workers' compensation) and liability insurance; contract for
343 garbage collection or disposal; contract for solid waste
344 collection or disposal; contract for sewage collection or
345 disposal; and contract for public construction as herein provided.

346 (a) Purchases which do not involve an expenditure of
347 more than One Thousand Five Hundred Dollars (\$1,500.00), exclusive
348 of freight or shipping charges, may be made without advertising or
349 otherwise requesting competitive bids. Provided, however, that
350 nothing contained in this paragraph (a) shall be construed to
351 prohibit any agency or governing authority from establishing
352 procedures which require competitive bids on purchases of One
353 Thousand Five Hundred Dollars (\$1,500.00) or less.

354 (b) Purchases which involve an expenditure of more than
355 One Thousand Five Hundred Dollars (\$1,500.00) but not more than
356 Ten Thousand Dollars (\$10,000.00), exclusive of freight and
357 shipping charges may be made from the lowest and best bidder
358 without publishing or posting advertisement for bids, provided at
359 least two (2) competitive written bids have been obtained. Any
360 governing authority purchasing commodities pursuant to this
361 paragraph (b) may authorize its purchasing agent, or his designee,
362 with regard to governing authorities other than counties, or its
363 purchase clerk, or his designee, with regard to counties, to
364 accept the lowest and best competitive written bid. Such
365 authorization shall be made in writing by the governing authority
366 and shall be maintained on file in the primary office of the
367 agency and recorded in the official minutes of the governing
368 authority, as appropriate. The purchasing agent or the purchase
369 clerk, or their designee, as the case may be, and not the
370 governing authority, shall be liable for any penalties and/or
371 damages as may be imposed by law for any act or omission of the
372 purchasing agent or purchase clerk, or their designee,
373 constituting a violation of law in accepting any bid without
374 approval by the governing authority. The term "competitive
375 written bid" shall mean a bid submitted on a bid form furnished by

376 the buying agency or governing authority and signed by authorized
377 personnel representing the vendor, or a bid submitted on a
378 vendor's letterhead or identifiable bid form and signed by
379 authorized personnel representing the vendor.

380 (c) Purchases which involve an expenditure of more than
381 Ten Thousand Dollars (\$10,000.00), exclusive of freight and
382 shipping charges may be made from the lowest and best bidder after
383 advertising for competitive sealed bids once each week for two (2)
384 consecutive weeks in a regular newspaper published in the county
385 or municipality in which such agency or governing authority is
386 located. The date as published for the bid opening shall not be
387 less than seven (7) working days after the last published notice;
388 however, if the purchase involves a construction project in which
389 the estimated cost is in excess of Fifteen Thousand Dollars
390 (\$15,000.00), such bids shall not be opened in less than fifteen
391 (15) working days after the last notice is published and the
392 notice for the purchase of such construction shall be published
393 once each week for two (2) consecutive weeks. The notice of
394 intention to let contracts or purchase equipment shall state the
395 time and place at which bids shall be received, list the contracts
396 to be made or types of equipment or supplies to be purchased, and,
397 if all plans and/or specifications are not published, refer to the
398 plans and/or specifications on file. In all cases involving
399 governing authorities, before the notice shall be published or
400 posted, the plans or specifications for the construction or
401 equipment being sought shall be filed with the clerk of the board
402 of the governing authority, and there remain. If there is no
403 newspaper published in the county or municipality, then such
404 notice shall be given by posting same at the courthouse, or for
405 municipalities at the city hall, and at two (2) other public
406 places in the county or municipality, and also by publication once
407 each week for two (2) consecutive weeks in some newspaper having a
408 general circulation in the county or municipality in the above
409 provided manner. On the same date that the notice is submitted to

410 the newspaper for publication, the agency or governing authority
411 involved shall mail written notice to the main office of the
412 Mississippi Contract Procurement Center that contains the same
413 information as that in the published notice. In addition to these
414 requirements, agencies shall maintain a vendor file and vendors of
415 the equipment or commodities being sought may be mailed
416 solicitations and specifications, and a bid file shall be
417 established which shall indicate those vendors to whom such
418 solicitations and specifications were mailed, and such file shall
419 also contain such information as is pertinent to the bid.
420 Specifications pertinent to such bidding shall be written so as
421 not to exclude comparable equipment of domestic manufacture.
422 Provided, however, that should valid justification be presented,
423 the Department of Finance and Administration or the board of a
424 governing authority may approve a request for specific equipment
425 necessary to perform a specific job. Provided further, that a
426 registered professional engineer or architect may write
427 specifications for a governing authority to require a specific
428 item of equipment available only from limited sources or vendors
429 when such specifications conform with the rules and regulations
430 promulgated by an appropriate federal agency regulating such
431 matters under the federal procurement laws. Further, such
432 justification, when placed on the minutes of the board of a
433 governing authority, may serve as authority for that governing
434 authority to write specifications to require a specific item of
435 equipment needed to perform a specific job. In addition to these
436 requirements, from and after July 1, 1990, vendors of relocatable
437 classrooms and the specifications for the purchase of such
438 relocatable classrooms published by local school boards shall meet
439 all pertinent regulations of the State Board of Education,
440 including prior approval of such bid by the State Department of
441 Education. Nothing in this section shall prohibit any agency or
442 governing authority from writing specifications to include
443 life-cycle costing, total cost bids, extended warranties or

444 guaranteed buy-back provisions, provided that such bid
445 requirements shall be in compliance with regulations established
446 by the Department of Audit.

447 (d) (i) Purchases may be made from the lowest and best
448 bidder. In determining the lowest and best bid, freight and
449 shipping charges shall be included. If any governing authority
450 accepts a bid other than the lowest bid actually submitted, it
451 shall place on its minutes detailed calculations and narrative
452 summary showing that the accepted bid was determined to be the
453 lowest and best bid, including the dollar amount of the accepted
454 bid and the dollar amount of the lowest bid. No agency or
455 governing authority shall accept a bid based on items not included
456 in the specifications.

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

463 (iii) Whenever bids are solicited for a public
464 construction or renovation project and only one (1) bid is
465 received, the agency or the governing authority may accept such
466 bid if the bid is opened, it is within the funds allocated for the
467 project, it is responsive to the solicitation and the contractor
468 is capable of performing the contract in accordance with the
469 solicitation.

470 (iv) No addendum to bid specifications for such
471 projects may be issued by the agency or governing authority within
472 twelve (12) hours of the time established by the agency or
473 governing authority for the receipt of bids.

474 (e) Any lease-purchase of equipment which an agency is
475 not required to lease-purchase under the master lease-purchase
476 program pursuant to Section 31-7-10 and any lease-purchase of
477 equipment which a governing authority elects to lease-purchase may

478 be acquired by a lease-purchase agreement under this paragraph
479 (e). Lease-purchase financing may also be obtained from the
480 vendor or from a third-party source after having solicited and
481 obtained at least two (2) written competitive bids, as defined in
482 paragraph (b) of this section, for such financing without
483 advertising for such bids. Solicitation for the bids for
484 financing may occur before or after acceptance of bids for the
485 purchase of such equipment or, where no such bids for purchase are
486 required, at any time before the purchase thereof. No such
487 lease-purchase agreement shall be for an annual rate of interest
488 which is greater than the overall maximum interest rate to
489 maturity on general obligation indebtedness permitted under
490 Section 75-17-101, and the term of such lease-purchase agreement
491 shall not exceed the useful life of property covered thereby as
492 determined according to the upper limit of the asset depreciation
493 range (ADR) guidelines for the Class Life Asset Depreciation Range
494 System established by the Internal Revenue Service pursuant to the
495 United States Internal Revenue Code and regulations thereunder as
496 in effect on December 31, 1980, or comparable depreciation
497 guidelines with respect to any equipment not covered by ADR
498 guidelines. Any lease-purchase agreement entered into pursuant to
499 this paragraph (e) may contain any of the terms and conditions
500 which a master lease-purchase agreement may contain under the
501 provisions of Section 31-7-10(5), and shall contain an annual
502 allocation dependency clause substantially similar to that set
503 forth in Section 31-7-10(8). Each agency or governing authority
504 entering into a lease-purchase transaction pursuant to this
505 paragraph (e) shall maintain with respect to each such
506 lease-purchase transaction the same information as required to be
507 maintained by the Department of Finance and Administration
508 pursuant to Section 31-7-10(13). However, nothing contained in
509 this section shall be construed to permit agencies to acquire
510 items of equipment with a total acquisition cost in the aggregate
511 of less than Ten Thousand Dollars (\$10,000.00) by a single

512 lease-purchase transaction. All equipment, and the purchase
513 thereof by any lessor, acquired by lease-purchase under this
514 paragraph and all lease-purchase payments with respect thereto
515 shall be exempt from all Mississippi sales, use and ad valorem
516 taxes. Interest paid on any lease-purchase agreement under this
517 section shall be exempt from State of Mississippi income taxation.

518 (f) When necessary to ensure ready availability of
519 commodities for public works and the timely completion of public
520 projects, no more than two (2) alternate bids may be accepted by a
521 governing authority for commodities. No purchases may be made
522 through use of such alternate bids procedure unless the lowest and
523 best bidder, for reasons beyond his control, cannot deliver the
524 commodities contained in his bid. In that event, purchases of
525 such commodities may be made from one (1) of the bidders whose bid
526 was accepted as an alternate.

527 (g) In the event a determination is made by an agency
528 or governing authority after a construction contract is let that
529 changes or modifications to the original contract are necessary or
530 would better serve the purpose of the agency or the governing
531 authority, such agency or governing authority may, in its
532 discretion, order such changes pertaining to the construction that
533 are necessary under the circumstances without the necessity of
534 further public bids; provided that such change shall be made in a
535 commercially reasonable manner and shall not be made to circumvent
536 the public purchasing statutes. In addition to any other
537 authorized person, the architect or engineer hired by an agency or
538 governing authority with respect to any public construction
539 contract shall have the authority, when granted by an agency or
540 governing authority, to authorize changes or modifications to the
541 original contract without the necessity of prior approval of the
542 agency or governing authority when any such change or modification
543 is less than one percent (1%) of the total contract amount. The
544 agency or governing authority may limit the number, manner or
545 frequency of such emergency changes or modifications.

546 (h) In the event any agency or governing authority
547 shall have advertised for bids for the purchase of gas, diesel
548 fuel, oils and other petroleum products and coal and no acceptable
549 bids can be obtained, such agency or governing authority is
550 authorized and directed to enter into any negotiations necessary
551 to secure the lowest and best contract available for the purchase
552 of such commodities.

553 (i) Any agency or governing authority authorized to
554 enter into contracts for the construction, maintenance, surfacing
555 or repair of highways, roads or streets, may include in its bid
556 proposal and contract documents a price adjustment clause with
557 relation to the cost to the contractor, including taxes, based
558 upon an industry-wide cost index, of petroleum products including
559 asphalt used in the performance or execution of the contract or in
560 the production or manufacture of materials for use in such
561 performance. Such industry-wide index shall be established and
562 published monthly by the State Department of Transportation with a
563 copy thereof to be mailed, upon request, to the clerks of the
564 governing authority of each municipality and the clerks of each
565 board of supervisors throughout the state. The price adjustment
566 clause shall be based on the cost of such petroleum products only
567 and shall not include any additional profit or overhead as part of
568 the adjustment. The bid proposals or document contract shall
569 contain the basis and methods of adjusting unit prices for the
570 change in the cost of such petroleum products.

571 (j) If the executive head of any agency of the state
572 shall determine that an emergency exists in regard to the purchase
573 of any commodities or repair contracts, so that the delay incident
574 to giving opportunity for competitive bidding would be detrimental
575 to the interests of the state, then the provisions herein for
576 competitive bidding shall not apply and the head of such agency
577 shall be authorized to make the purchase or repair. Total
578 purchases so made shall only be for the purpose of meeting needs
579 created by the emergency situation. In the event such executive

580 head is responsible to an agency board, at the meeting next
581 following the emergency purchase, documentation of the purchase,
582 including a description of the commodity purchased, the purchase
583 price thereof and the nature of the emergency shall be presented
584 to the board and placed on the minutes of the board of such
585 agency. The head of such agency shall, at the earliest possible
586 date following such emergency purchase, file with the Department
587 of Finance and Administration (i) a statement under oath
588 certifying the conditions and circumstances of the emergency, and
589 (ii) a certified copy of the appropriate minutes of the board of
590 such agency, if applicable.

591 (k) If the governing authority, or the governing
592 authority acting through its designee, shall determine that an
593 emergency exists in regard to the purchase of any commodities or
594 repair contracts, so that the delay incident to giving opportunity
595 for competitive bidding would be detrimental to the interest of
596 the governing authority, then the provisions herein for
597 competitive bidding shall not apply and any officer or agent of
598 such governing authority having general or special authority
599 therefor in making such purchase or repair shall approve the bill
600 presented therefor, and he shall certify in writing thereon from
601 whom such purchase was made, or with whom such a repair contract
602 was made. At the board meeting next following the emergency
603 purchase or repair contract, documentation of the purchase or
604 repair contract, including a description of the commodity
605 purchased, the price thereof and the nature of the emergency shall
606 be presented to the board and shall be placed on the minutes of
607 the board of such governing authority.

608 (l) The commissioners or board of trustees of any
609 hospital owned or owned and operated separately or jointly by one
610 or more counties, cities, towns, supervisors districts or election
611 districts, or combinations thereof, may contract with such lowest
612 and best bidder for the purchase or lease of any commodity under a
613 contract of purchase or lease-purchase agreement whose obligatory

614 terms do not exceed five (5) years. In addition to the authority
615 granted herein, the commissioners or board of trustees are
616 authorized to enter into contracts for the lease of equipment or
617 services, or both, which it considers necessary for the proper
618 care of patients if, in its opinion, it is not financially
619 feasible to purchase the necessary equipment or services. Any
620 such contract for the lease of equipment or services executed by
621 the commissioners or board shall not exceed a maximum of five (5)
622 years' duration and shall include a cancellation clause based on
623 unavailability of funds. If such cancellation clause is
624 exercised, there shall be no further liability on the part of the
625 lessee.

626 (m) Excepted from bid requirements are:

627 (i) Purchasing agreements, contracts and maximum
628 price regulations executed or approved by the Department of
629 Finance and Administration.

630 (ii) Repairs to equipment, when such repairs are
631 made by repair facilities in the private sector; however, engines,
632 transmissions, rear axles and/or other such components shall not
633 be included in this exemption when replaced as a complete unit
634 instead of being repaired and the need for such total component
635 replacement is known before disassembly of the component;
636 provided, however, that invoices identifying the equipment,
637 specific repairs made, parts identified by number and name,
638 supplies used in such repairs, and the number of hours of labor
639 and costs therefor shall be required for the payment for such
640 repairs.

641 (iii) Purchases of parts for repairs to equipment,
642 when such repairs are made by personnel of the agency or governing
643 authority; however, entire assemblies, such as engines or
644 transmissions, shall not be included in this exemption when the
645 entire assembly is being replaced instead of being repaired.

646 (iv) Raw unprocessed deposits of gravel or fill
647 dirt which are to be removed and transported by the purchaser.

648 (v) Motor vehicles or other equipment purchased
649 from a federal or state agency or a governing authority at a
650 public auction held for the purpose of disposing of such vehicles
651 or other equipment. Any purchase by a governing authority under
652 the exemption authorized by this paragraph (v) shall require
653 advance authorization spread upon the minutes of the governing
654 authority to include the listing of the item or items authorized
655 to be purchased and the maximum bid authorized to be paid for each
656 item or items.

657 (vi) Purchases, sales, transfers or trades by
658 governing authorities or state agencies when such purchases,
659 sales, transfers or trades are made by a private treaty agreement
660 or through means of negotiation, from any federal agency or
661 authority, another governing authority or state agency of the
662 State of Mississippi, or any state agency of another state.
663 Nothing in this section shall permit such purchases through public
664 auction except as provided for in paragraph (v) of this section.
665 It is the intent of this section to allow governmental entities to
666 dispose of and/or purchase commodities from other governmental
667 entities at a price that is agreed to by both parties. This shall
668 allow for purchases and/or sales at prices which may be determined
669 to be below the market value if the selling entity determines that
670 the sale at below market value is in the best interest of the
671 taxpayers of the state. Governing authorities shall place the
672 terms of the agreement and any justification on the minutes, and
673 state agencies shall obtain approval from the Department of
674 Finance and Administration, prior to releasing or taking
675 possession of the commodities.

676 (vii) Perishable supplies or foods purchased for
677 use in connection with hospitals, the school lunch programs,
678 homemaking programs and for the feeding of county or municipal
679 prisoners.

680 (viii) Noncompetitive items available from one (1)
681 source only.

682 (ix) Construction of incinerators and other
683 facilities for disposal of solid wastes in which products either
684 generated therein, such as steam, or recovered therefrom, such as
685 materials for recycling, are to be sold or otherwise disposed of;
686 provided, however, in constructing such facilities a governing
687 authority or agency shall publicly issue requests for proposals,
688 advertised for in the same manner as provided herein for seeking
689 bids for public construction projects, concerning the design,
690 construction, ownership, operation and/or maintenance of such
691 facilities, wherein such requests for proposals when issued shall
692 contain terms and conditions relating to price, financial
693 responsibility, technology, environmental compatibility, legal
694 responsibilities and such other matters as are determined by the
695 governing authority or agency to be appropriate for inclusion; and
696 after responses to the request for proposals have been duly
697 received, the governing authority or agency may select the most
698 qualified proposal or proposals on the basis of price, technology
699 and other relevant factors and from such proposals, but not
700 limited to the terms thereof, negotiate and enter contracts with
701 one or more of the persons or firms submitting proposals.

702 (x) Supplies, commodities and equipment purchased
703 by hospitals through group purchase programs pursuant to Section
704 31-7-38.

705 (xi) Purchases of data processing equipment made
706 by governing authorities under the provisions of purchase
707 agreements, contracts or maximum price regulations executed or
708 approved by the Mississippi Department of Information Technology
709 Services.

710 (xii) Energy efficiency services and equipment
711 acquired by school districts, junior colleges, institutions of
712 higher learning and state agencies or other applicable
713 governmental entities on a shared-savings, lease or lease-purchase
714 basis pursuant to Section 31-7-14.

715 (xiii) Purchases of contracts for fire insurance,

716 automobile insurance, casualty insurance, health insurance and
717 liability insurance by governing authorities or agencies.

718 (xiv) Purchases of coal and/or natural gas by
719 municipally-owned electric power generating systems that have the
720 capacity to use both coal and natural gas for the generation of
721 electric power.

722 (xv) Purchases by libraries or for libraries of
723 books and periodicals; processed film, video cassette tapes,
724 filmstrips and slides; recorded audio tapes, cassettes and
725 diskettes; and any such items as would be used for teaching,
726 research or other information distribution; however, equipment
727 such as projectors, recorders, audio or video equipment, and
728 monitor televisions are not exempt under this paragraph.

729 (xvi) Purchases of unmarked vehicles when such
730 purchases are made in accordance with purchasing regulations
731 adopted by the Department of Finance and Administration pursuant
732 to Section 31-7-9(2).

733 (xvii) Sales, transfers or trades of any personal
734 property between governing authorities within a county or any such
735 transaction involving governing authorities of two (2) or more
736 counties.

737 (xviii) Purchases of ballots printed pursuant to
738 Section 23-15-351.

739 (xix) From and after July 1, 1990, contracts by
740 Mississippi Authority for Educational Television with any private
741 educational institution or private nonprofit organization whose
742 purposes are educational in regard to the construction, purchase,
743 lease or lease-purchase of facilities and equipment and the
744 employment of personnel for providing multichannel interactive
745 video systems (ITSF) in the school districts of this state.

746 (xx) From and after January 1, 1991, purchases
747 made by state agencies involving any item that is manufactured,
748 processed, grown or produced from the state's prison industries.

749 (xxi) Purchases of surveillance equipment or any

750 other high-tech equipment to be used by narcotics agents in
751 undercover operations, provided that any such purchase shall be in
752 compliance with regulations established by the Department of
753 Finance and Administration.

754 (xxii) Purchases by community or junior colleges
755 of textbooks which are obtained for the purpose of renting such
756 books to students as part of a book service system.

757 (xxiii) Purchases of commodities made by school
758 districts from vendors with which any levying authority of the
759 school district, as defined in Section 37-57-1, has contracted
760 through competitive bidding procedures for purchases of the same
761 commodities.

762 (xxiv) Emergency purchases made by the Public
763 Employees' Retirement System pursuant to Section 25-11-15(7).

764 (xxv) Repealed.

765 (xxvi) Contracts for garbage collection or
766 disposal, contracts for solid waste collection or disposal and
767 contracts for sewage collection or disposal.

768 (xxvii) Professional maintenance program contracts
769 for the repair or maintenance of municipal water tanks, which
770 provide professional services needed to maintain municipal water
771 storage tanks for a fixed annual fee for a duration of two (2) or
772 more years.

773 (xxviii) Purchases made by state agencies
774 involving any item that is manufactured, processed or produced by
775 the Mississippi Industries for the Blind.

776 In connection with the purchase of noncompetitive items only
777 available from one (1) source, a certification of the conditions
778 and circumstances requiring the purchase shall be filed by the
779 agency with the Department of Finance and Administration and by
780 the governing authority with the board of the governing authority.

781 Upon receipt of such certification the Department of Finance and
782 Administration or the board of the governing authority, as the
783 case may be, may, in writing, authorize the purchase, which

784 authority shall be noted on the minutes of the body at the next
785 regular meeting thereafter. In such situations, a governing
786 authority is not required to obtain the approval of the Department
787 of Finance and Administration.

788 (n) (i) All contracts for the purchase of:

789 (A) Commodities, equipment and public
790 construction (including, but not limited to, repair and
791 maintenance), and

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

800 (ii) All purchases made by governing authorities,
801 including purchases made pursuant to the provisions of
802 subparagraph (i) of this paragraph (n), may be made upon one (1)
803 purchase order issued per month to each individual vendor prior to
804 delivery of such commodities provided that each individual
805 delivery, load or shipment purchased is properly requisitioned and
806 is properly received and receipted by signed ticket, receipt or
807 invoice, indicating thereon the point of delivery, and provided
808 that, with respect to counties, such commodities are properly
809 accounted for by the receiving clerk or an assistant receiving
810 clerk as provided by Section 31-7-109. Such purchase order shall
811 be invalid on the first calendar day of the month immediately
812 following the month in which it was issued. Purchases in such
813 month immediately following may be made only if a purchase order
814 is issued for such month. Each monthly purchase order shall be
815 retained in the records of the governing authority. Agencies may
816 make purchases as authorized under this subparagraph (ii) in
817 accordance with such regulations, policies and procedures as are

818 promulgated by the Department of Finance and Administration.

819 (o) No contract or purchase as herein authorized shall
820 be made for the purpose of circumventing the provisions of this
821 section requiring competitive bids, nor shall it be lawful for any
822 person or concern to submit individual invoices for amounts within
823 those authorized for a contract or purchase where the actual value
824 of the contract or commodity purchased exceeds the authorized
825 amount and the invoices therefor are split so as to appear to be
826 authorized as purchases for which competitive bids are not
827 required. Submission of such invoices shall constitute a
828 misdemeanor punishable by a fine of not less than Five Hundred
829 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
830 or by imprisonment for thirty (30) days in the county jail, or
831 both such fine and imprisonment. In addition, the claim or claims
832 submitted shall be forfeited.

833 (p) When in response to a proper advertisement
834 therefor, no bid firm as to price is submitted to an electric
835 utility for power transformers, distribution transformers, power
836 breakers, reclosers or other articles containing a petroleum
837 product, the electric utility may accept the lowest and best bid
838 therefor although the price is not firm.

839 (q) The prohibitions and restrictions set forth in
840 Sections 19-11-27, 21-35-27 and 31-7-49 shall not apply to a
841 contract, lease or lease-purchase agreement entered pursuant to
842 the requirements of this chapter.

843 (r) For the purposes of this section, the term
844 "purchase" shall mean the total amount of money encumbered by a
845 single purchase order.

846 (s) Any governing authority or agency of the state
847 shall, before contracting for the services and products of a fuel
848 management or fuel access system, enter into negotiations with not
849 fewer than two (2) sellers of fuel management or fuel access
850 systems for competitive written bids to provide the services and
851 products for the systems. In the event that the governing

852 authority or agency cannot locate two (2) sellers of such systems
853 or cannot obtain bids from two (2) sellers of such systems, it
854 shall show proof that it made a diligent, good-faith effort to
855 locate and negotiate with two (2) sellers of such systems. Such
856 proof shall include, but not be limited to, publications of a
857 request for proposals and letters soliciting negotiations and
858 bids. For purposes of this paragraph (s), a fuel management or
859 fuel access system is an automated system of acquiring fuel for
860 vehicles as well as management reports detailing fuel use by
861 vehicles and drivers, and the term "competitive written bid" shall
862 have the meaning as defined in paragraph (b) of this section.

863 (t) Before entering into any contract for garbage
864 collection or disposal, contract for solid waste collection or
865 disposal or contract for sewage collection or disposal, which
866 involves an expenditure of more than Fifty Thousand Dollars
867 (\$50,000.00), a governing authority or agency shall issue publicly
868 a request for proposals concerning the specifications for such
869 services which shall be advertised for in the same manner as
870 provided in this section for seeking bids for purchases which
871 involve an expenditure of more than Ten Thousand Dollars
872 (\$10,000.00). Any request for proposals when issued shall contain
873 terms and conditions relating to price, financial responsibility,
874 technology, legal responsibilities and other relevant factors as
875 are determined by the governing authority or agency to be
876 appropriate for inclusion; all factors determined relevant by the
877 governing authority or agency or required by this paragraph (t)
878 shall be duly included in the advertisement to elicit proposals.
879 After responses to the request for proposals have been duly
880 received, the governing authority or agency shall select the most
881 qualified proposal or proposals on the basis of price, technology
882 and other relevant factors and from such proposals, but not
883 limited to the terms thereof, negotiate and enter contracts with
884 one or more of the persons or firms submitting proposals. If the
885 governing authority or agency deems none of the proposals to be

886 qualified or otherwise acceptable, the request for proposals
887 process may be reinitiated.

888 (u) Notwithstanding any provision of this section to
889 the contrary, any agency or governing authority, by order placed
890 on its minutes, may, in its discretion, set aside not more than
891 twenty percent (20%) of its anticipated annual expenditures for
892 the purchase of commodities from minority businesses; however, all
893 such set-aside purchases shall comply with all purchasing
894 regulations promulgated by the Department of Finance and
895 Administration and shall be subject to bid requirements under this
896 section. Set-aside purchases for which competitive bids are
897 required shall be made from the lowest and best minority business
898 bidder. For the purposes of this paragraph, the term "minority
899 business" means a business which is owned by a majority of persons
900 who are United States citizens or permanent resident aliens (as
901 defined by the Immigration and Naturalization Service) of the
902 United States, and who are Asian, Black, Hispanic or Native
903 American, according to the following definitions:

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

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

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

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

915 (v) The architect, engineer or other representative
916 designated by the agency or governing authority that is
917 contracting for public construction or renovation may prepare and
918 submit to the contractor only one (1) preliminary punch list of
919 items that do not meet the contract requirements at the time of

920 substantial completion and one (1) final list immediately before
921 final completion and final payment.

922 (w) Contracts by agencies and governing authorities
923 under this chapter shall be subject to the provisions of Section 1
924 of this act.

925 (x) Nothing in this section shall be construed as
926 authorizing any purchase not authorized by law.

927 SECTION 6. Section 31-7-38, Mississippi Code of 1972, is
928 amended as follows:

929 31-7-38. The commissioners or board of trustees of any
930 hospital owned or owned and operated separately or jointly by one
931 or more counties, cities, towns, supervisors districts or election
932 districts, or combinations thereof, may authorize by resolution
933 the organization and operation of, or the participation in, a
934 group purchase program with other hospitals, for the purchase of
935 supplies, commodities and equipment when it appears to the board
936 of trustees that such a group purchase program could or would
937 affect economy or efficiency in their operations. Purchases by
938 hospitals participating in group purchasing programs of supplies,
939 commodities and equipment through such programs shall be exempt
940 from the provisions of Sections 31-7-12 and 31-7-13. However,
941 group purchase program contracts shall be subject to the
942 provisions of Section 1 of this act. This section shall stand
943 repealed on July 1, 1999.

944 SECTION 7. This act shall take effect and be in force from
945 and after July 1, 1999.