

By: Representative Henderson (9th)

To: Appropriations

HOUSE BILL NO. 1282

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 INCREASE THE MAXIMUM DOLLAR LIMITATION ON CONTRACTS THAT MAY BE
3 LET FOR A PERIOD OF UP TO TWENTY-FOUR MONTHS BY GOVERNING
4 AUTHORITIES FOR ASPHALT OVERLAY OF ROADS OR STREETS; AND FOR
5 RELATED PURPOSES.

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

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

9 31-7-13. All agencies and governing authorities shall
10 purchase their commodities and printing; contract for fire
11 insurance, automobile insurance, casualty insurance (other than
12 workers' compensation) and liability insurance; contract for
13 garbage collection or disposal; contract for solid waste
14 collection or disposal; contract for sewage collection or
15 disposal; and contract for public construction as herein provided.

16 (a) Purchases which do not involve an expenditure of
17 more than One Thousand Five Hundred Dollars (\$1,500.00), exclusive
18 of freight or shipping charges, may be made without advertising or
19 otherwise requesting competitive bids. Provided, however, that
20 nothing contained in this paragraph (a) shall be construed to
21 prohibit any agency or governing authority from establishing
22 procedures which require competitive bids on purchases of One
23 Thousand Five Hundred Dollars (\$1,500.00) or less.

24 (b) Purchases which involve an expenditure of more than
25 One Thousand Five Hundred Dollars (\$1,500.00) but not more than
26 Ten Thousand Dollars (\$10,000.00), exclusive of freight and
27 shipping charges may be made from the lowest and best bidder
28 without publishing or posting advertisement for bids, provided at

29 least two (2) competitive written bids have been obtained. Any
30 governing authority purchasing commodities pursuant to this
31 paragraph (b) may authorize its purchasing agent, or his designee,
32 with regard to governing authorities other than counties, or its
33 purchase clerk, or his designee, with regard to counties, to
34 accept the lowest and best competitive written bid. Such
35 authorization shall be made in writing by the governing authority
36 and shall be maintained on file in the primary office of the
37 agency and recorded in the official minutes of the governing
38 authority, as appropriate. The purchasing agent or the purchase
39 clerk, or their designee, as the case may be, and not the
40 governing authority, shall be liable for any penalties and/or
41 damages as may be imposed by law for any act or omission of the
42 purchasing agent or purchase clerk, or their designee,
43 constituting a violation of law in accepting any bid without
44 approval by the governing authority. The term "competitive
45 written bid" shall mean a bid submitted on a bid form furnished by
46 the buying agency or governing authority and signed by authorized
47 personnel representing the vendor, or a bid submitted on a
48 vendor's letterhead or identifiable bid form and signed by
49 authorized personnel representing the vendor.

50 (c) Purchases which involve an expenditure of more than
51 Ten Thousand Dollars (\$10,000.00), exclusive of freight and
52 shipping charges may be made from the lowest and best bidder after
53 advertising for competitive sealed bids once each week for two (2)
54 consecutive weeks in a regular newspaper published in the county
55 or municipality in which such agency or governing authority is
56 located. The date as published for the bid opening shall not be
57 less than seven (7) working days after the last published notice;
58 however, if the purchase involves a construction project in which
59 the estimated cost is in excess of Fifteen Thousand Dollars
60 (\$15,000.00), such bids shall not be opened in less than fifteen
61 (15) working days after the last notice is published and the
62 notice for the purchase of such construction shall be published
63 once each week for two (2) consecutive weeks. The notice of
64 intention to let contracts or purchase equipment shall state the
65 time and place at which bids shall be received, list the contracts
66 to be made or types of equipment or supplies to be purchased, and,

67 if all plans and/or specifications are not published, refer to the
68 plans and/or specifications on file. In all cases involving
69 governing authorities, before the notice shall be published or
70 posted, the plans or specifications for the construction or
71 equipment being sought shall be filed with the clerk of the board
72 of the governing authority, and there remain. If there is no
73 newspaper published in the county or municipality, then such
74 notice shall be given by posting same at the courthouse, or for
75 municipalities at the city hall, and at two (2) other public
76 places in the county or municipality, and also by publication once
77 each week for two (2) consecutive weeks in some newspaper having a
78 general circulation in the county or municipality in the above
79 provided manner. On the same date that the notice is submitted to
80 the newspaper for publication, the agency or governing authority
81 involved shall mail written notice to the main office of the
82 Mississippi Contract Procurement Center that contains the same
83 information as that in the published notice. In addition to these
84 requirements, agencies shall maintain a vendor file and vendors of
85 the equipment or commodities being sought may be mailed
86 solicitations and specifications, and a bid file shall be
87 established which shall indicate those vendors to whom such
88 solicitations and specifications were mailed, and such file shall
89 also contain such information as is pertinent to the bid.
90 Specifications pertinent to such bidding shall be written so as
91 not to exclude comparable equipment of domestic manufacture.
92 Provided, however, that should valid justification be presented,
93 the Department of Finance and Administration or the board of a
94 governing authority may approve a request for specific equipment
95 necessary to perform a specific job. Provided further, that a
96 registered professional engineer or architect may write
97 specifications for a governing authority to require a specific
98 item of equipment available only from limited sources or vendors
99 when such specifications conform with the rules and regulations
100 promulgated by an appropriate federal agency regulating such

101 matters under the federal procurement laws. Further, such
102 justification, when placed on the minutes of the board of a
103 governing authority, may serve as authority for that governing
104 authority to write specifications to require a specific item of
105 equipment needed to perform a specific job. In addition to these
106 requirements, from and after July 1, 1990, vendors of relocatable
107 classrooms and the specifications for the purchase of such
108 relocatable classrooms published by local school boards shall meet
109 all pertinent regulations of the State Board of Education,
110 including prior approval of such bid by the State Department of
111 Education. Nothing in this section shall prohibit any agency or
112 governing authority from writing specifications to include
113 life-cycle costing, total cost bids, extended warranties or
114 guaranteed buy-back provisions, provided that such bid
115 requirements shall be in compliance with regulations established
116 by the Department of Audit.

117 (d) (i) Purchases may be made from the lowest and best
118 bidder. In determining the lowest and best bid, freight and
119 shipping charges shall be included. If any governing authority
120 accepts a bid other than the lowest bid actually submitted, it
121 shall place on its minutes detailed calculations and narrative
122 summary showing that the accepted bid was determined to be the
123 lowest and best bid, including the dollar amount of the accepted
124 bid and the dollar amount of the lowest bid. No agency or
125 governing authority shall accept a bid based on items not included
126 in the specifications.

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

133 (iii) Whenever bids are solicited for a public
134 construction or renovation project and only one (1) bid is

received, the agency or the governing authority may accept such bid if the bid is opened, it is within the funds allocated for the project, it is responsive to the solicitation and the contractor is capable of performing the contract in accordance with the solicitation.

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

(e) Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of property covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to

169 this paragraph (e) may contain any of the terms and conditions
170 which a master lease-purchase agreement may contain under the
171 provisions of Section 31-7-10(5), and shall contain an annual
172 allocation dependency clause substantially similar to that set
173 forth in Section 31-7-10(8). Each agency or governing authority
174 entering into a lease-purchase transaction pursuant to this
175 paragraph (e) shall maintain with respect to each such
176 lease-purchase transaction the same information as required to be
177 maintained by the Department of Finance and Administration
178 pursuant to Section 31-7-10(13). However, nothing contained in
179 this section shall be construed to permit agencies to acquire
180 items of equipment with a total acquisition cost in the aggregate
181 of less than Ten Thousand Dollars (\$10,000.00) by a single
182 lease-purchase transaction. All equipment, and the purchase
183 thereof by any lessor, acquired by lease-purchase under this
184 paragraph and all lease-purchase payments with respect thereto
185 shall be exempt from all Mississippi sales, use and ad valorem
186 taxes. Interest paid on any lease-purchase agreement under this
187 section shall be exempt from State of Mississippi income taxation.

188 (f) When necessary to ensure ready availability of
189 commodities for public works and the timely completion of public
190 projects, no more than two (2) alternate bids may be accepted by a
191 governing authority for commodities. No purchases may be made
192 through use of such alternate bids procedure unless the lowest and
193 best bidder, for reasons beyond his control, cannot deliver the
194 commodities contained in his bid. In that event, purchases of
195 such commodities may be made from one (1) of the bidders whose bid
196 was accepted as an alternate.

197 (g) In the event a determination is made by an agency
198 or governing authority after a construction contract is let that
199 changes or modifications to the original contract are necessary or
200 would better serve the purpose of the agency or the governing
201 authority, such agency or governing authority may, in its
202 discretion, order such changes pertaining to the construction that

are necessary under the circumstances without the necessity of further public bids; provided that such change shall be made in a commercially reasonable manner and shall not be made to circumvent the public purchasing statutes. In addition to any other authorized person, the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original contract without the necessity of prior approval of the agency or governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

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

(i) Any agency or governing authority authorized to enter into contracts for the construction, maintenance, surfacing or repair of highways, roads or streets, may include in its bid proposal and contract documents a price adjustment clause with relation to the cost to the contractor, including taxes, based upon an industry-wide cost index, of petroleum products including asphalt used in the performance or execution of the contract or in the production or manufacture of materials for use in such performance. Such industry-wide index shall be established and published monthly by the State Department of Transportation with a copy thereof to be mailed, upon request, to the clerks of the governing authority of each municipality and the clerks of each board of supervisors throughout the state. The price adjustment clause shall be based on the cost of such petroleum products only

and shall not include any additional profit or overhead as part of the adjustment. The bid proposals or document contract shall contain the basis and methods of adjusting unit prices for the change in the cost of such petroleum products.

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

(k) If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from

whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority.

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

(m) Excepted from bid requirements are:

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

(ii) Repairs to equipment, when such repairs are made by repair facilities in the private sector; however, engines, transmissions, rear axles and/or other such components shall not be included in this exemption when replaced as a complete unit instead of being repaired and the need for such total component

305 replacement is known before disassembly of the component;
306 provided, however, that invoices identifying the equipment,
307 specific repairs made, parts identified by number and name,
308 supplies used in such repairs, and the number of hours of labor
309 and costs therefor shall be required for the payment for such
310 repairs.

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

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

318 (v) Motor vehicles or other equipment purchased
319 from a federal or state agency or a governing authority at a
320 public auction held for the purpose of disposing of such vehicles
321 or other equipment. Any purchase by a governing authority under
322 the exemption authorized by this paragraph (v) shall require
323 advance authorization spread upon the minutes of the governing
324 authority to include the listing of the item or items authorized
325 to be purchased and the maximum bid authorized to be paid for each
326 item or items.

327 (vi) Purchases, sales, transfers or trades by
328 governing authorities or state agencies when such purchases,
329 sales, transfers or trades are made by a private treaty agreement
330 or through means of negotiation, from any federal agency or
331 authority, another governing authority or state agency of the
332 State of Mississippi, or any state agency of another state.
333 Nothing in this section shall permit such purchases through public
334 auction except as provided for in paragraph (v) of this section.
335 It is the intent of this section to allow governmental entities to
336 dispose of and/or purchase commodities from other governmental
337 entities at a price that is agreed to by both parties. This shall
338 allow for purchases and/or sales at prices which may be determined

to be below the market value if the selling entity determines that the sale at below market value is in the best interest of the taxpayers of the state. Governing authorities shall place the terms of the agreement and any justification on the minutes, and state agencies shall obtain approval from the Department of Finance and Administration, prior to releasing or taking possession of the commodities.

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

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

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

(x) Supplies, commodities and equipment purchased

373 by hospitals through group purchase programs pursuant to Section
374 31-7-38.

375 (xi) Purchases of data processing equipment made
376 by governing authorities under the provisions of purchase
377 agreements, contracts or maximum price regulations executed or
378 approved by the Mississippi Department of Information Technology
379 Services.

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

385 (xiii) Purchases of contracts for fire insurance,
386 automobile insurance, casualty insurance, health insurance and
387 liability insurance by governing authorities or agencies.

388 (xiv) Purchases of coal and/or natural gas by
389 municipally-owned electric power generating systems that have the
390 capacity to use both coal and natural gas for the generation of
391 electric power.

392 (xv) Purchases by libraries or for libraries of
393 books and periodicals; processed film, video cassette tapes,
394 filmstrips and slides; recorded audio tapes, cassettes and
395 diskettes; and any such items as would be used for teaching,
396 research or other information distribution; however, equipment
397 such as projectors, recorders, audio or video equipment, and
398 monitor televisions are not exempt under this paragraph.

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

403 (xvii) Sales, transfers or trades of any personal
404 property between governing authorities within a county or any such
405 transaction involving governing authorities of two (2) or more
406 counties.

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

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

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

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

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

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

(xxiv) Repealed.

(xxv) Contracts or purchases by the State Prison
Emergency Construction and Management Board when exercising its
emergency powers to remove two thousand (2,000) inmates from
county jails; however, exemptions under this subparagraph (xxv) do
not apply to contracts or purchases for private correctional
facilities, the South Mississippi Correctional Institution and the
Central Mississippi Correctional Facility. This subparagraph
shall stand repealed from and after July 1, 1997.

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

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

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

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

Upon receipt of such certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter. In such situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration.

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

(A) Commodities, equipment and public construction (including, but not limited to, repair and maintenance), and * * * water lines, sewer lines, storm drains, drainage ditches, asphalt milling, traffic striping, * * * and curb and gutter (not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00) per project listed in this item A) may be let for periods of not more than twenty-four (24) months in advance, subject to applicable statutory provisions prohibiting the letting of contracts during specified periods near the end of terms of office.

475 (B) Asphalt overlay of streets and roads (not
476 to exceed Five Hundred Thousand Dollars (\$500,000.00) for each
477 such project) may be let for periods of not more than twenty-four
478 (24) months in advance, subject to applicable statutory provisions
479 prohibiting the letting of contracts during specified periods near
480 the end of terms of office.

481 (ii) All purchases made by governing authorities,
482 including purchases made pursuant to the provisions of
483 subparagraph (i) of this paragraph (n), may be made upon one (1)
484 purchase order issued per month to each individual vendor prior to
485 delivery of such commodities provided that each individual
486 delivery, load or shipment purchased is properly requisitioned and
487 is properly received and receipted by signed ticket, receipt or
488 invoice, indicating thereon the point of delivery, and provided
489 that, with respect to counties, such commodities are properly
490 accounted for by the receiving clerk or an assistant receiving
491 clerk as provided by Section 31-7-109. Such purchase order shall
492 be invalid on the first calendar day of the month immediately
493 following the month in which it was issued. Purchases in such
494 month immediately following may be made only if a purchase order
495 is issued for such month. Each monthly purchase order shall be
496 retained in the records of the governing authority. Agencies may
497 make purchases as authorized under this subparagraph (ii) in
498 accordance with such regulations, policies and procedures as are
499 promulgated by the Department of Finance and Administration.

500 (o) No contract or purchase as herein authorized shall
501 be made for the purpose of circumventing the provisions of this
502 section requiring competitive bids, nor shall it be lawful for any
503 person or concern to submit individual invoices for amounts within
504 those authorized for a contract or purchase where the actual value
505 of the contract or commodity purchased exceeds the authorized
506 amount and the invoices therefor are split so as to appear to be
507 authorized as purchases for which competitive bids are not
508 required. Submission of such invoices shall constitute a

509 misdemeanor punishable by a fine of not less than Five Hundred
510 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
511 or by imprisonment for thirty (30) days in the county jail, or
512 both such fine and imprisonment. In addition, the claim or claims
513 submitted shall be forfeited.

514 (p) When in response to a proper advertisement
515 therefor, no bid firm as to price is submitted to an electric
516 utility for power transformers, distribution transformers, power
517 breakers, reclosers or other articles containing a petroleum
518 product, the electric utility may accept the lowest and best bid
519 therefor although the price is not firm.

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

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

527 (s) Any governing authority or agency of the state
528 shall, before contracting for the services and products of a fuel
529 management or fuel access system, enter into negotiations with not
530 fewer than two (2) sellers of fuel management or fuel access
531 systems for competitive written bids to provide the services and
532 products for the systems. In the event that the governing
533 authority or agency cannot locate two (2) sellers of such systems
534 or cannot obtain bids from two (2) sellers of such systems, it
535 shall show proof that it made a diligent, good-faith effort to
536 locate and negotiate with two (2) sellers of such systems. Such
537 proof shall include, but not be limited to, publications of a
538 request for proposals and letters soliciting negotiations and
539 bids. For purposes of this paragraph (s), a fuel management or
540 fuel access system is an automated system of acquiring fuel for
541 vehicles as well as management reports detailing fuel use by
542 vehicles and drivers, and the term "competitive written bid" shall

543 have the meaning as defined in paragraph (b) of this section.

544 (t) Before entering into any contract for garbage
545 collection or disposal, contract for solid waste collection or
546 disposal or contract for sewage collection or disposal, which
547 involves an expenditure of more than Fifty Thousand Dollars
548 (\$50,000.00), a governing authority or agency shall issue publicly
549 a request for proposals concerning the specifications for such
550 services which shall be advertised for in the same manner as
551 provided in this section for seeking bids for purchases which
552 involve an expenditure of more than Ten Thousand Dollars
553 (\$10,000.00). Any request for proposals when issued shall contain
554 terms and conditions relating to price, financial responsibility,
555 technology, legal responsibilities and other relevant factors as
556 are determined by the governing authority or agency to be
557 appropriate for inclusion; all factors determined relevant by the
558 governing authority or agency or required by this paragraph (t)
559 shall be duly included in the advertisement to elicit proposals.
560 After responses to the request for proposals have been duly
561 received, the governing authority or agency shall select the most
562 qualified proposal or proposals on the basis of price, technology
563 and other relevant factors and from such proposals, but not
564 limited to the terms thereof, negotiate and enter contracts with
565 one or more of the persons or firms submitting proposals. If the
566 governing authority or agency deems none of the proposals to be
567 qualified or otherwise acceptable, the request for proposals
568 process may be reinitiated.

569 (u) Notwithstanding any provision of this section to
570 the contrary, any agency or governing authority, by order placed
571 on its minutes, may, in its discretion, set aside not more than
572 twenty percent (20%) of its anticipated annual expenditures for
573 the purchase of commodities from minority businesses; however, all
574 such set-aside purchases shall comply with all purchasing
575 regulations promulgated by the Department of Finance and
576 Administration and shall be subject to bid requirements under this

section. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder. For the purposes of this paragraph, the term "minority business" means a business which is owned by a majority of persons who are United States citizens or permanent resident aliens (as defined by the Immigration and Naturalization Service) of the United States, and who are Asian, Black, Hispanic or Native American, according to the following definitions:

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

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

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

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

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

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

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