

By: Representatives Perry, Horne

To: Appropriations

HOUSE BILL NO. 1419

1 AN ACT TO AMEND SECTION 31-7-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE PUBLIC PURCHASING LAWS TO LOWER THE MAXIMUM AMOUNT OF A
3 PURCHASE THAT A GOVERNMENTAL ENTITY MAY MAKE WITHOUT ADVERTISING
4 FOR COMPETITIVE BIDS FROM \$10,000.00 TO \$5,000.00, WHICH WAS THE
5 MAXIMUM AMOUNT BEFORE IT WAS INCREASED DURING THE 1998 LEGISLATIVE
6 SESSION; AND FOR RELATED PURPOSES.

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

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

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

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

25 (b) Purchases which involve an expenditure of more than
26 One Thousand Five Hundred Dollars (\$1,500.00) but not more than
27 Five Thousand Dollars (\$5,000.00), exclusive of freight and
28 shipping charges may be made from the lowest and best bidder
29 without publishing or posting advertisement for bids, provided at

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

51 (c) Purchases which involve an expenditure of more than
52 Five Thousand Dollars (\$5,000.00), exclusive of freight and
53 shipping charges may be made from the lowest and best bidder after
54 advertising for competitive sealed bids once each week for two (2)
55 consecutive weeks in a regular newspaper published in the county
56 or municipality in which such agency or governing authority is
57 located. The date as published for the bid opening shall not be
58 less than seven (7) working days after the last published notice;
59 however, if the purchase involves a construction project in which
60 the estimated cost is in excess of Ten Thousand Dollars
61 (\$10,000.00), such bids shall not be opened in less than fifteen
62 (15) working days after the last notice is published and the
63 notice for the purchase of such construction shall be published
64 once each week for two (2) consecutive weeks. The notice of
65 intention to let contracts or purchase equipment shall state the
66 time and place at which bids shall be received, list the contracts
67 to be made or types of equipment or supplies to be purchased, and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

297 (m) Excepted from bid requirements are:

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

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

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

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

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

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

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

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

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

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

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

373 (x) Supplies, commodities and equipment purchased

374 by hospitals through group purchase programs pursuant to Section
375 31-7-38.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

435 (xxv) Repealed.

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

439 (xxvii) Professional maintenance program contracts
440 for the repair or maintenance of municipal water tanks, which
441 provide professional services needed to maintain municipal water

442 storage tanks for a fixed annual fee for a duration of two (2) or
443 more years.

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

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

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

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

460 (A) Commodities, equipment and public
461 construction (including, but not limited to, repair and
462 maintenance), and

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

471 (ii) All purchases made by governing authorities,
472 including purchases made pursuant to the provisions of
473 subparagraph (i) of this paragraph (n), may be made upon one (1)
474 purchase order issued per month to each individual vendor prior to
475 delivery of such commodities provided that each individual

476 delivery, load or shipment purchased is properly requisitioned and
477 is properly received and receipted by signed ticket, receipt or
478 invoice, indicating thereon the point of delivery, and provided
479 that, with respect to counties, such commodities are properly
480 accounted for by the receiving clerk or an assistant receiving
481 clerk as provided by Section 31-7-109. Such purchase order shall
482 be invalid on the first calendar day of the month immediately
483 following the month in which it was issued. Purchases in such
484 month immediately following may be made only if a purchase order
485 is issued for such month. Each monthly purchase order shall be
486 retained in the records of the governing authority. Agencies may
487 make purchases as authorized under this subparagraph (ii) in
488 accordance with such regulations, policies and procedures as are
489 promulgated by the Department of Finance and Administration.

490 (o) No contract or purchase as herein authorized shall
491 be made for the purpose of circumventing the provisions of this
492 section requiring competitive bids, nor shall it be lawful for any
493 person or concern to submit individual invoices for amounts within
494 those authorized for a contract or purchase where the actual value
495 of the contract or commodity purchased exceeds the authorized
496 amount and the invoices therefor are split so as to appear to be
497 authorized as purchases for which competitive bids are not
498 required. Submission of such invoices shall constitute a
499 misdemeanor punishable by a fine of not less than Five Hundred
500 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
501 or by imprisonment for thirty (30) days in the county jail, or
502 both such fine and imprisonment. In addition, the claim or claims
503 submitted shall be forfeited.

504 (p) When in response to a proper advertisement
505 therefor, no bid firm as to price is submitted to an electric
506 utility for power transformers, distribution transformers, power
507 breakers, reclosers or other articles containing a petroleum
508 product, the electric utility may accept the lowest and best bid
509 therefor although the price is not firm.

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

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

517 (s) Any governing authority or agency of the state
518 shall, before contracting for the services and products of a fuel
519 management or fuel access system, enter into negotiations with not
520 fewer than two (2) sellers of fuel management or fuel access
521 systems for competitive written bids to provide the services and
522 products for the systems. In the event that the governing
523 authority or agency cannot locate two (2) sellers of such systems
524 or cannot obtain bids from two (2) sellers of such systems, it
525 shall show proof that it made a diligent, good-faith effort to
526 locate and negotiate with two (2) sellers of such systems. Such
527 proof shall include, but not be limited to, publications of a
528 request for proposals and letters soliciting negotiations and
529 bids. For purposes of this paragraph (s), a fuel management or
530 fuel access system is an automated system of acquiring fuel for
531 vehicles as well as management reports detailing fuel use by
532 vehicles and drivers, and the term "competitive written bid" shall
533 have the meaning as defined in paragraph (b) of this section.

534 (t) Before entering into any contract for garbage
535 collection or disposal, contract for solid waste collection or
536 disposal or contract for sewage collection or disposal, which
537 involves an expenditure of more than Fifty Thousand Dollars
538 (\$50,000.00), a governing authority or agency shall issue publicly
539 a request for proposals concerning the specifications for such
540 services which shall be advertised for in the same manner as
541 provided in this section for seeking bids for purchases which
542 involve an expenditure of more than Ten Thousand Dollars
543 (\$10,000.00). Any request for proposals when issued shall contain

544 terms and conditions relating to price, financial responsibility,
545 technology, legal responsibilities and other relevant factors as
546 are determined by the governing authority or agency to be
547 appropriate for inclusion; all factors determined relevant by the
548 governing authority or agency or required by this paragraph (t)
549 shall be duly included in the advertisement to elicit proposals.
550 After responses to the request for proposals have been duly
551 received, the governing authority or agency shall select the most
552 qualified proposal or proposals on the basis of price, technology
553 and other relevant factors and from such proposals, but not
554 limited to the terms thereof, negotiate and enter contracts with
555 one or more of the persons or firms submitting proposals. If the
556 governing authority or agency deems none of the proposals to be
557 qualified or otherwise acceptable, the request for proposals
558 process may be reinitiated.

559 (u) Notwithstanding any provision of this section to
560 the contrary, any agency or governing authority, by order placed
561 on its minutes, may, in its discretion, set aside not more than
562 twenty percent (20%) of its anticipated annual expenditures for
563 the purchase of commodities from minority businesses; however, all
564 such set-aside purchases shall comply with all purchasing
565 regulations promulgated by the Department of Finance and
566 Administration and shall be subject to bid requirements under this
567 section. Set-aside purchases for which competitive bids are
568 required shall be made from the lowest and best minority business
569 bidder. For the purposes of this paragraph, the term "minority
570 business" means a business which is owned by a majority of persons
571 who are United States citizens or permanent resident aliens (as
572 defined by the Immigration and Naturalization Service) of the
573 United States, and who are Asian, Black, Hispanic or Native
574 American, according to the following definitions:

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

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

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

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

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

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

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