

By: Senator(s) Burton

To: Fees, Salaries and Administration

SENATE BILL NO. 2176

1
2 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
3 CLARIFY THE PUBLIC BID REQUIREMENT PROVISION, TO ADD SUBTITLES TO
4 THIS SECTION, TO ALLOW COMPETITIVE WRITTEN BIDS TO INCLUDE
5 FACSIMILE, ELECTRONIC MAIL AND OTHER GENERALLY ACCEPTED METHODS OF
6 ELECTRONIC INFORMATION DISTRIBUTION, TO PROVIDE FOR AMENDMENTS TO
7 BID SPECIFICATIONS, BID OPENING DATE, TIME AND PLACE, AND TO
8 RECODIFY CERTAIN SOLE SOURCE PROCEDURE PROVISIONS; AND FOR RELATED
9 PURPOSES.

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

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

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

20 (a) **Bidding procedure for purchases to \$1,500.00.**

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

29 (b) **Bidding procedure for purchases more than \$1,500.00**
30 **to \$10,000.00.** Purchases which involve an expenditure of more

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

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

61 Purchases which involve an expenditure of more than Ten Thousand
62 Dollars (\$10,000.00), exclusive of freight and shipping charges
63 may be made from the lowest and best bidder after advertising for
64 competitive sealed bids once each week for two (2) consecutive

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

99 consecutive weeks in some newspaper having a general circulation
100 in the county or municipality in the above provided manner. On
101 the same date that the notice is submitted to the newspaper for
102 publication, the agency or governing authority involved shall mail
103 written notice to the main office of the Mississippi Contract
104 Procurement Center that contains the same information as that in
105 the published notice. In addition to these requirements, agencies
106 shall maintain a vendor file and vendors of the equipment or
107 commodities being sought may be mailed solicitations and
108 specifications, and a bid file shall be established which shall
109 indicate those vendors to whom such solicitations and
110 specifications were mailed, and such file shall also contain such
111 information as is pertinent to the bid. Specifications pertinent
112 to such bidding shall be written so as not to exclude comparable
113 equipment of domestic manufacture. Provided, however, that should
114 valid justification be presented, the Department of Finance and
115 Administration or the board of a governing authority may approve a
116 request for specific equipment necessary to perform a specific
117 job. Provided further, that a registered professional engineer or
118 architect may write specifications for a governing authority to
119 require a specific item of equipment available only from limited
120 sources or vendors when such specifications conform with the rules
121 and regulations promulgated by an appropriate federal agency
122 regulating such matters under the federal procurement laws.
123 Further, such justification, when placed on the minutes of the
124 board of a governing authority, may serve as authority for that
125 governing authority to write specifications to require a specific
126 item of equipment needed to perform a specific job. In addition
127 to these requirements, from and after July 1, 1990, vendors of
128 relocatable classrooms and the specifications for the purchase of
129 such relocatable classrooms published by local school boards shall
130 meet all pertinent regulations of the State Board of Education,
131 including prior approval of such bid by the State Department of
132 Education. Nothing in this section shall prohibit any agency or

133 governing authority from writing specifications to include
134 life-cycle costing, total cost bids, extended warranties or
135 guaranteed buy-back provisions, provided that such bid
136 requirements shall be in compliance with regulations established
137 by the Department of Audit.

138 (d) **Lowest and best bid decision procedure.**

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

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

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

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

166 (e) **Lease-purchase authority.** Any lease-purchase of

167 equipment which an agency is not required to lease-purchase under
168 the master lease-purchase program pursuant to Section 31-7-10 and
169 any lease-purchase of equipment which a governing authority elects
170 to lease-purchase may be acquired by a lease-purchase agreement
171 under this paragraph (e). Lease-purchase financing may also be
172 obtained from the vendor or from a third-party source after having
173 solicited and obtained at least two (2) written competitive bids,
174 as defined in paragraph (b) of this section, for such financing
175 without advertising for such bids. Solicitation for the bids for
176 financing may occur before or after acceptance of bids for the
177 purchase of such equipment or, where no such bids for purchase are
178 required, at any time before the purchase thereof. No such
179 lease-purchase agreement shall be for an annual rate of interest
180 which is greater than the overall maximum interest rate to
181 maturity on general obligation indebtedness permitted under
182 Section 75-17-101, and the term of such lease-purchase agreement
183 shall not exceed the useful life of property covered thereby as
184 determined according to the upper limit of the asset depreciation
185 range (ADR) guidelines for the Class Life Asset Depreciation Range
186 System established by the Internal Revenue Service pursuant to the
187 United States Internal Revenue Code and regulations thereunder as
188 in effect on December 31, 1980, or comparable depreciation
189 guidelines with respect to any equipment not covered by ADR
190 guidelines. Any lease-purchase agreement entered into pursuant to
191 this paragraph (e) may contain any of the terms and conditions
192 which a master lease-purchase agreement may contain under the
193 provisions of Section 31-7-10(5), and shall contain an annual
194 allocation dependency clause substantially similar to that set
195 forth in Section 31-7-10(8). Each agency or governing authority
196 entering into a lease-purchase transaction pursuant to this
197 paragraph (e) shall maintain with respect to each such
198 lease-purchase transaction the same information as required to be
199 maintained by the Department of Finance and Administration
200 pursuant to Section 31-7-10(13). However, nothing contained in

201 this section shall be construed to permit agencies to acquire
202 items of equipment with a total acquisition cost in the aggregate
203 of less than Ten Thousand Dollars (\$10,000.00) by a single
204 lease-purchase transaction. All equipment, and the purchase
205 thereof by any lessor, acquired by lease-purchase under this
206 paragraph and all lease-purchase payments with respect thereto
207 shall be exempt from all Mississippi sales, use and ad valorem
208 taxes. Interest paid on any lease-purchase agreement under this
209 section shall be exempt from State of Mississippi income taxation.

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

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

235 governing authority when any such change or modification is less
236 than one percent (1%) of the total contract amount. The agency or
237 governing authority may limit the number, manner or frequency of
238 such emergency changes or modifications.

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

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

266 (j) **State agency emergency purchase procedure.** If the
267 executive head of any agency of the state shall determine that an
268 emergency exists in regard to the purchase of any commodities or

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

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

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

303 board and shall be placed on the minutes of the board of such
304 governing authority.

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

323 (m) **Exceptions from bidding requirements.** Excepted
324 from bid requirements are:

325 (i) **Purchases on Office of Purchasing and Travel**
326 **state contracts.** Purchasing agreements, contracts and maximum
327 price regulations executed or approved by the Department of
328 Finance and Administration.

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

337 name, supplies used in such repairs, and the number of hours of
338 labor and costs therefor shall be required for the payment for
339 such repairs.

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

346 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
347 of gravel or fill dirt which are to be removed and transported by
348 the purchaser.

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

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

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

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

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

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

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

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

420 (xi) **Purchases on Information Technology Services**
421 **(ITS) contracts.** Purchases of data processing equipment made by
422 governing authorities under the provisions of purchase agreements,
423 contracts or maximum price regulations executed or approved by the
424 Mississippi Department of Information Technology Services.

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

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

435 (xiv) **Municipal electrical utility system fuel.**
436 Purchases of coal and/or natural gas by municipally-owned electric
437 power generating systems that have the capacity to use both coal
438 and natural gas for the generation of electric power.

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

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

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

451 (xvii) **Purchases from governing authorities.**
452 Sales, transfers or trades of any personal property between
453 governing authorities within a county or any such transaction
454 involving governing authorities of two (2) or more counties.

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

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

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

469 (xxi) **Undercover equipment.** Purchases of
470 surveillance equipment or any other high-tech equipment to be used
471 by narcotics agents in undercover operations, provided that any
472 such purchase shall be in compliance with regulations established

473 by the Department of Finance and Administration.

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

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

483 (xxiv) Emergency computer purchases. Emergency
484 purchases made by the Public Employees' Retirement System pursuant
485 to Section 25-11-15(7).

486 (xxv) Repealed.

487 (xxvi) Garbage, solid waste & sewage contracts.
488 Contracts for garbage collection or disposal, contracts for solid
489 waste collection or disposal and contracts for sewage collection
490 or disposal.

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

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

500 * * *

501 (n) Term contract authority.

502 (i) All contracts for the purchase of:

503 (A) Commodities, equipment and public
504 construction (including, but not limited to, repair and
505 maintenance), and

506 (B) Water lines, sewer lines, storm drains,

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

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

533 (o) **Purchase law violation prohibition and vendor**
534 **penalty.** No contract or purchase as herein authorized shall be
535 made for the purpose of circumventing the provisions of this
536 section requiring competitive bids, nor shall it be lawful for any
537 person or concern to submit individual invoices for amounts within
538 those authorized for a contract or purchase where the actual value
539 of the contract or commodity purchased exceeds the authorized
540 amount and the invoices therefor are split so as to appear to be

541 authorized as purchases for which competitive bids are not
542 required. Submission of such invoices shall constitute a
543 misdemeanor punishable by a fine of not less than Five Hundred
544 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
545 or by imprisonment for thirty (30) days in the county jail, or
546 both such fine and imprisonment. In addition, the claim or claims
547 submitted shall be forfeited.

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

555 (q) **Exception to county/municipal budget limitations.**
556 The prohibitions and restrictions set forth in Sections 19-11-27,
557 21-35-27 and 31-7-49 shall not apply to a contract, lease or
558 lease-purchase agreement entered pursuant to the requirements of
559 this chapter.

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

563 (s) **Fuel management systems bidding procedure.** Any
564 governing authority or agency of the state shall, before
565 contracting for the services and products of a fuel management or
566 fuel access system, enter into negotiations with not fewer than
567 two (2) sellers of fuel management or fuel access systems for
568 competitive written bids to provide the services and products for
569 the systems. In the event that the governing authority or agency
570 cannot locate two (2) sellers of such systems or cannot obtain
571 bids from two (2) sellers of such systems, it shall show proof
572 that it made a diligent, good-faith effort to locate and negotiate
573 with two (2) sellers of such systems. Such proof shall include,
574 but not be limited to, publications of a request for proposals and

575 letters soliciting negotiations and bids. For purposes of this
576 paragraph (s), a fuel management or fuel access system is an
577 automated system of acquiring fuel for vehicles as well as
578 management reports detailing fuel use by vehicles and drivers, and
579 the term "competitive written bid" shall have the meaning as
580 defined in paragraph (b) of this section.

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

606 (u) **Minority set-aside authority.** Notwithstanding any
607 provision of this section to the contrary, any agency or governing
608 authority, by order placed on its minutes, may, in its discretion,

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

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

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

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

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

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

642 (w) **Expenditure authority clarification.** Nothing in

643 this section shall be construed as authorizing any purchase not
644 authorized by law.

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