

By: Senator(s) Burton

To: Fees, Salaries and
AdministrationSENATE BILL NO. 2176
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 ADD EXPLANATORY TITLES TO THE SUBSECTIONS AND PARAGRAPHS IN THE
3 SECTION; TO ALLOW COMPETITIVE WRITTEN BIDS TO BE SUBMITTED BY FAX,
4 E-MAIL OR OTHER GENERALLY ACCEPTED METHOD OF INFORMATION
5 DISTRIBUTION; TO PROVIDE THAT IF ALL PLANS OR SPECIFICATIONS ARE
6 NOT PUBLISHED IN THE NOTIFICATION FOR BIDS, THEN AMENDMENTS TO THE
7 PLANS OR SPECIFICATIONS OR TO THE BID OPENING DATE, TIME OR PLACE
8 MAY BE MADE, IF ALL PROSPECTIVE BIDDERS ARE SENT COPIES OF ALL
9 AMENDMENTS; TO MOVE LANGUAGE RELATING TO THE PURCHASE OF SINGLE
10 SOURCE ITEMS TO THE MORE APPROPRIATE LOCATION IN THE SECTION; TO
11 AUTHORIZE CERTAIN COUNTIES AND MUNICIPALITIES TO CONTRACT FOR
12 SOLID WASTE DISPOSAL SERVICES WITH OTHER COUNTIES OR
13 MUNICIPALITIES THAT OWN OR OPERATE A SOLID WASTE LANDFILL THROUGH
14 CONTRACT NEGOTIATION; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Whenever bids are solicited for a public 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) **Lease-purchase authorization.** 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 this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8). Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same

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

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

(g) **Construction contract change authorization.** In the event a determination is made by an agency or governing authority after a construction contract is let that changes or modifications to the original contract are necessary or would better serve the purpose of the agency or the governing authority, such agency or governing authority may, in its 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

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

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

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

272 products.

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

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

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

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.

(l) **Hospital purchase or lease authorization.** 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) **Exceptions from bidding requirements.** Excepted from bid requirements are:

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

(ii) **Outside equipment repairs.** 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 replacement is known before disassembly of the component; provided, however, that invoices identifying the equipment, specific repairs made, parts identified by number and name, supplies used in such repairs, and the number of hours of labor and costs therefor shall be required for the payment for such repairs.

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

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

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

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

of this section to allow governmental entities to dispose of and/or purchase commodities from other governmental entities at a price that is agreed to by both parties. This shall 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 food.** 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) **Single source items.** Noncompetitive items available from one (1) source only. 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 that 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 those situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration.

(ix) **Waste disposal facility construction contracts.** 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) **Hospital group purchase contracts.** Supplies, commodities and equipment purchased by hospitals through group purchase programs pursuant to Section 31-7-38.

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

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

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

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

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

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

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

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

(xix) **Educational television contracts.** 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) **Prison industry products.** 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) **Undercover operations equipment.** 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) **Junior college books for rent.** 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) **School purchases from county/municipal contracts.** 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) **Emergency purchases by retirement system.** Emergency purchases made by the Public Employees' Retirement System pursuant to Section 25-11-15(7).

(xxv) Repealed.

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

(xxvii) **Municipal water tank maintenance contracts.** 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) **Industries for the Blind products.** Purchases made by state agencies involving any item that is manufactured, processed or produced by the Mississippi Industries for the Blind.

(xxix) **Purchases of state-adopted textbooks.**

Purchases of state-adopted textbooks by public school districts.

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

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

(B) Water lines, sewer lines, storm drains, drainage ditches, asphalt milling, traffic striping, asphalt overlay of streets, and curb and gutter (not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00) per project listed in this item B) 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.

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

(o) **Purchase law violation prohibition and vendor**

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

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

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

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

(s) **Fuel management system bidding procedure.** Any governing authority or agency of the state shall, before contracting for the services and products of a fuel management or fuel access system, enter into negotiations with not fewer than two (2) sellers of fuel management or fuel access systems for

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

(t) **Solid waste contract proposal procedure.** Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars (\$50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than Ten Thousand Dollars (\$10,000.00). Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (t) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall 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. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated. Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand (40,000) population, according to the 1990 federal decennial census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.

(u) **Minority set aside authorization.** Notwithstanding any provision of this section to the contrary, any agency or governing authority, by order placed on its minutes, may, in its discretion, set aside not more than twenty percent (20%) of its anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the Department of Finance and 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) **Construction punch list restriction.** 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) **Purchase authorization clarification.** 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.