

By: Senator(s) Burton

To: Fees, Salaries and Administration

SENATE BILL NO. 2176
(As Sent to Governor)

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.

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

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

68 Dollars (\$10,000.00), exclusive of freight and shipping charges
69 may be made from the lowest and best bidder after advertising for
70 competitive sealed bids once each week for two (2) consecutive
71 weeks in a regular newspaper published in the county or
72 municipality in which such agency or governing authority is
73 located. The date as published for the bid opening shall not be
74 less than seven (7) working days after the last published notice;
75 however, if the purchase involves a construction project in which
76 the estimated cost is in excess of Fifteen Thousand Dollars
77 (\$15,000.00), such bids shall not be opened in less than fifteen
78 (15) working days after the last notice is published and the
79 notice for the purchase of such construction shall be published
80 once each week for two (2) consecutive weeks. The notice of
81 intention to let contracts or purchase equipment shall state the
82 time and place at which bids shall be received, list the contracts
83 to be made or types of equipment or supplies to be purchased, and,
84 if all plans and/or specifications are not published, refer to the
85 plans and/or specifications on file. If all plans and/or
86 specifications are published in the notification, then the plans
87 and/or specifications may not be amended. If all plans and/or
88 specifications are not published in the notification, then
89 amendments to the plans/specifications, bid opening date, bid
90 opening time and place may be made, provided that the agency or
91 governing authority maintains a list of all prospective bidders
92 who are known to have received a copy of the bid documents and all
93 such prospective bidders are sent copies of all amendments. This
94 notification of amendments may be made via mail, facsimile,
95 electronic mail or other generally accepted method of information
96 distribution. In all cases involving governing authorities,
97 before the notice shall be published or posted, the plans or
98 specifications for the construction or equipment being sought
99 shall be filed with the clerk of the board of the governing
100 authority, and there remain. If there is no newspaper published
101 in the county or municipality, then such notice shall be given by

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

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

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

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

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

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

170 governing authority for the receipt of bids.

171 (e) **Lease-purchase authorization.** Any lease-purchase
172 of equipment which an agency is not required to lease-purchase
173 under the master lease-purchase program pursuant to Section
174 31-7-10 and any lease-purchase of equipment which a governing
175 authority elects to lease-purchase may be acquired by a
176 lease-purchase agreement under this paragraph (e). Lease-purchase
177 financing may also be obtained from the vendor or from a
178 third-party source after having solicited and obtained at least
179 two (2) written competitive bids, as defined in paragraph (b) of
180 this section, for such financing without advertising for such
181 bids. Solicitation for the bids for financing may occur before or
182 after acceptance of bids for the purchase of such equipment or,
183 where no such bids for purchase are required, at any time before
184 the purchase thereof. No such lease-purchase agreement shall be
185 for an annual rate of interest which is greater than the overall
186 maximum interest rate to maturity on general obligation
187 indebtedness permitted under Section 75-17-101, and the term of
188 such lease-purchase agreement shall not exceed the useful life of
189 property covered thereby as determined according to the upper
190 limit of the asset depreciation range (ADR) guidelines for the
191 Class Life Asset Depreciation Range System established by the
192 Internal Revenue Service pursuant to the United States Internal
193 Revenue Code and regulations thereunder as in effect on December
194 31, 1980, or comparable depreciation guidelines with respect to
195 any equipment not covered by ADR guidelines. Any lease-purchase
196 agreement entered into pursuant to this paragraph (e) may contain
197 any of the terms and conditions which a master lease-purchase
198 agreement may contain under the provisions of Section 31-7-10(5),
199 and shall contain an annual allocation dependency clause
200 substantially similar to that set forth in Section 31-7-10(8).
201 Each agency or governing authority entering into a lease-purchase
202 transaction pursuant to this paragraph (e) shall maintain with
203 respect to each such lease-purchase transaction the same

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

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

226 (g) **Construction contract change authorization.** In the
227 event a determination is made by an agency or governing authority
228 after a construction contract is let that changes or modifications
229 to the original contract are necessary or would better serve the
230 purpose of the agency or the governing authority, such agency or
231 governing authority may, in its discretion, order such changes
232 pertaining to the construction that are necessary under the
233 circumstances without the necessity of further public bids;
234 provided that such change shall be made in a commercially
235 reasonable manner and shall not be made to circumvent the public
236 purchasing statutes. In addition to any other authorized person,
237 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

306 board meeting next following the emergency purchase or repair
307 contract, documentation of the purchase or repair contract,
308 including a description of the commodity purchased, the price
309 thereof and the nature of the emergency shall be presented to the
310 board and shall be placed on the minutes of the board of such
311 governing authority.

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

330 (m) **Exceptions from bidding requirements.** Excepted
331 from bid requirements are:

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

336 (ii) **Outside equipment repairs.** Repairs to
337 equipment, when such repairs are made by repair facilities in the
338 private sector; however, engines, transmissions, rear axles and/or
339 other such components shall not be included in this exemption when

340 replaced as a complete unit instead of being repaired and the need
341 for such total component replacement is known before disassembly
342 of the component; provided, however, that invoices identifying the
343 equipment, specific repairs made, parts identified by number and
344 name, supplies used in such repairs, and the number of hours of
345 labor and costs therefor shall be required for the payment for
346 such repairs.

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

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

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

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

374 of this section to allow governmental entities to dispose of
375 and/or purchase commodities from other governmental entities at a
376 price that is agreed to by both parties. This shall allow for
377 purchases and/or sales at prices which may be determined to be
378 below the market value if the selling entity determines that the
379 sale at below market value is in the best interest of the
380 taxpayers of the state. Governing authorities shall place the
381 terms of the agreement and any justification on the minutes, and
382 state agencies shall obtain approval from the Department of
383 Finance and Administration, prior to releasing or taking
384 possession of the commodities.

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

389 (viii) **Single source items.** Noncompetitive items
390 available from one (1) source only. In connection with the
391 purchase of noncompetitive items only available from one (1)
392 source, a certification of the conditions and circumstances
393 requiring the purchase shall be filed by the agency with the
394 Department of finance and Administration and by the governing
395 authority with the board of the governing authority. Upon receipt
396 of that certification the Department of Finance and Administration
397 or the board of the governing authority, as the case may be, may,
398 in writing, authorize the purchase, which authority shall be noted
399 on the minutes of the body at the next regular meeting thereafter.
400 In those situations, a governing authority is not required to
401 obtain the approval of the Department of Finance and
402 Administration.

403 (ix) **Waste disposal facility construction**
404 **contracts.** Construction of incinerators and other facilities for
405 disposal of solid wastes in which products either generated
406 therein, such as steam, or recovered therefrom, such as materials
407 for recycling, are to be sold or otherwise disposed of; provided,

408 however, in constructing such facilities a governing authority or
409 agency shall publicly issue requests for proposals, advertised for
410 in the same manner as provided herein for seeking bids for public
411 construction projects, concerning the design, construction,
412 ownership, operation and/or maintenance of such facilities,
413 wherein such requests for proposals when issued shall contain
414 terms and conditions relating to price, financial responsibility,
415 technology, environmental compatibility, legal responsibilities
416 and such other matters as are determined by the governing
417 authority or agency to be appropriate for inclusion; and after
418 responses to the request for proposals have been duly received,
419 the governing authority or agency may select the most qualified
420 proposal or proposals on the basis of price, technology and other
421 relevant factors and from such proposals, but not limited to the
422 terms thereof, negotiate and enter contracts with one or more of
423 the persons or firms submitting proposals.

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

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

432 (xii) **Energy efficiency services and equipment.**
433 Energy efficiency services and equipment acquired by school
434 districts, junior colleges, institutions of higher learning and
435 state agencies or other applicable governmental entities on a
436 shared-savings, lease or lease-purchase basis pursuant to Section
437 31-7-14.

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

442 (xiv) **Municipal electrical utility system fuel.**

443 Purchases of coal and/or natural gas by municipally-owned electric
444 power generating systems that have the capacity to use both coal
445 and natural gas for the generation of electric power.

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

447 Purchases by libraries or for libraries of books and periodicals;
448 processed film, video cassette tapes, filmstrips and slides;
449 recorded audio tapes, cassettes and diskettes; and any such items
450 as would be used for teaching, research or other information
451 distribution; however, equipment such as projectors, recorders,
452 audio or video equipment, and monitor televisions are not exempt
453 under this paragraph.

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

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

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

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

473 (xx) **Prison industry products.** From and after
474 January 1, 1991, purchases made by state agencies involving any
475 item that is manufactured, processed, grown or produced from the

476 state's prison industries.

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

482 (xxx) **Junior college books for rent.** Purchases
483 by community or junior colleges of textbooks which are obtained
484 for the purpose of renting such books to students as part of a
485 book service system.

486 (xxxi) **School purchases from county/municipal**
487 **contracts.** Purchases of commodities made by school districts from
488 vendors with which any levying authority of the school district,
489 as defined in Section 37-57-1, has contracted through competitive
490 bidding procedures for purchases of the same commodities.

491 (xxxii) **Emergency purchases by retirement system.**
492 Emergency purchases made by the Public Employees' Retirement
493 System pursuant to Section 25-11-15(7).

494 (xxxiii) Repealed.

495 (xxxiv) **Garbage, solid waste and sewage contracts.**
496 Contracts for garbage collection or disposal, contracts for solid
497 waste collection or disposal and contracts for sewage collection
498 or disposal.

499 (xxxv) **Municipal water tank maintenance**
500 **contracts.** Professional maintenance program contracts for the
501 repair or maintenance of municipal water tanks, which provide
502 professional services needed to maintain municipal water storage
503 tanks for a fixed annual fee for a duration of two (2) or more
504 years.

505 (xxxvi) **Industries for the Blind products.**
506 Purchases made by state agencies involving any item that is
507 manufactured, processed or produced by the Mississippi Industries
508 for the Blind.

509 (xxxvii) **Purchases of state-adopted textbooks.**

510 Purchases of state-adopted textbooks by public school districts.

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

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

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

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

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

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

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

565 (q) **Exception to county/municipal budget limitations.**
566 The prohibitions and restrictions set forth in Sections 19-11-27,
567 21-35-27 and 31-7-49 shall not apply to a contract, lease or
568 lease-purchase agreement entered pursuant to the requirements of
569 this chapter.

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

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

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

591 (t) **Solid waste contract proposal procedure.** Before
592 entering into any contract for garbage collection or disposal,
593 contract for solid waste collection or disposal or contract for
594 sewage collection or disposal, which involves an expenditure of
595 more than Fifty Thousand Dollars (\$50,000.00), a governing
596 authority or agency shall issue publicly a request for proposals
597 concerning the specifications for such services which shall be
598 advertised for in the same manner as provided in this section for
599 seeking bids for purchases which involve an expenditure of more
600 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
601 when issued shall contain terms and conditions relating to price,
602 financial responsibility, technology, legal responsibilities and
603 other relevant factors as are determined by the governing
604 authority or agency to be appropriate for inclusion; all factors
605 determined relevant by the governing authority or agency or
606 required by this paragraph (t) shall be duly included in the
607 advertisement to elicit proposals. After responses to the request
608 for proposals have been duly received, the governing authority or
609 agency shall select the most qualified proposal or proposals on
610 the basis of price, technology and other relevant factors and from
611 such proposals, but not limited to the terms thereof, negotiate

612 and enter contracts with one or more of the persons or firms
613 submitting proposals. If the governing authority or agency deems
614 none of the proposals to be qualified or otherwise acceptable, the
615 request for proposals process may be reinitiated. Notwithstanding
616 any other provisions of this paragraph, where a county with at
617 least thirty-five thousand (35,000) nor more than forty thousand
618 (40,000) population, according to the 1990 federal decennial
619 census, owns or operates a solid waste landfill, the governing
620 authorities of any other county or municipality may contract with
621 the governing authorities of the county owning or operating the
622 landfill, pursuant to a resolution duly adopted and spread upon
623 the minutes of each governing authority involved, for garbage or
624 solid waste collection or disposal services through contract
625 negotiations.

626 (u) **Minority set aside authorization.** Notwithstanding
627 any provision of this section to the contrary, any agency or
628 governing authority, by order placed on its minutes, may, in its
629 discretion, set aside not more than twenty percent (20%) of its
630 anticipated annual expenditures for the purchase of commodities
631 from minority businesses; however, all such set-aside purchases
632 shall comply with all purchasing regulations promulgated by the
633 Department of Finance and Administration and shall be subject to
634 bid requirements under this section. Set-aside purchases for
635 which competitive bids are required shall be made from the lowest
636 and best minority business bidder. For the purposes of this
637 paragraph, the term "minority business" means a business which is
638 owned by a majority of persons who are United States citizens or
639 permanent resident aliens (as defined by the Immigration and
640 Naturalization Service) of the United States, and who are Asian,
641 Black, Hispanic or Native American, according to the following
642 definitions:

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

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

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

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

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

662 (w) **Purchase authorization clarification.** Nothing in
663 this section shall be construed as authorizing any purchase not
664 authorized by law.

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