

By: Senator(s) Horhn, Simmons, Walls

To: Fees, Salaries and
Administration

SENATE BILL NO. 2857

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO SET ASIDE
3 20% OF THE AMOUNT EXPENDED FOR ANY PUBLIC CONSTRUCTION PROJECT
4 THAT THE DEPARTMENT MANAGES, NOT TO EXCEED \$5,000,000.00, TO SMALL
5 CONTRACTORS; TO AWARD SUCH SET-ASIDE CONTRACTS TO THE LOWEST AND
6 BEST SMALL CONTRACTOR BIDDER; TO DEFINE THE TERM "SMALL
7 CONTRACTOR"; AND FOR RELATED PURPOSES. BE IT ENACTED BY THE
8 LEGISLATURE OF THE STATE OF MISSISSIPPI:
9

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

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

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

27 (b) Purchases which involve an expenditure of more than
28 One Thousand Five Hundred Dollars (\$1,500.00) but not more than
29 Ten Thousand Dollars (\$10,000.00), exclusive of freight and
30 shipping charges may be made from the lowest and best bidder

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

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

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

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

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

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

136 (iii) Whenever bids are solicited for a public

137 construction or renovation project and only one (1) bid is
138 received, the agency or the governing authority may accept such
139 bid if the bid is opened, it is within the funds allocated for the
140 project, it is responsive to the solicitation and the contractor
141 is capable of performing the contract in accordance with the
142 solicitation.

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

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

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

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

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

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

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

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

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

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

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

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

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

299 (m) Excepted from bid requirements are:

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

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

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

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

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

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

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

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

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

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

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

375 (x) Supplies, commodities and equipment purchased
376 by hospitals through group purchase programs pursuant to Section
377 31-7-38.

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

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

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

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

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

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

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

409 counties.

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

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

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

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

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

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

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

437 (xxv) Repealed.

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

441 (xxvii) Professional maintenance program contracts
442 for the repair or maintenance of municipal water tanks, which

443 provide professional services needed to maintain municipal water
444 storage tanks for a fixed annual fee for a duration of two (2) or
445 more years.

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

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

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

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

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

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

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

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

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

506 (p) When in response to a proper advertisement
507 therefor, no bid firm as to price is submitted to an electric
508 utility for power transformers, distribution transformers, power
509 breakers, reclosers or other articles containing a petroleum
510 product, the electric utility may accept the lowest and best bid

511 therefor although the price is not firm.

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

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

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

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

545 (\$10,000.00). Any request for proposals when issued shall contain
546 terms and conditions relating to price, financial responsibility,
547 technology, legal responsibilities and other relevant factors as
548 are determined by the governing authority or agency to be
549 appropriate for inclusion; all factors determined relevant by the
550 governing authority or agency or required by this paragraph (t)
551 shall be duly included in the advertisement to elicit proposals.
552 After responses to the request for proposals have been duly
553 received, the governing authority or agency shall select the most
554 qualified proposal or proposals on the basis of price, technology
555 and other relevant factors and from such proposals, but not
556 limited to the terms thereof, negotiate and enter contracts with
557 one or more of the persons or firms submitting proposals. If the
558 governing authority or agency deems none of the proposals to be
559 qualified or otherwise acceptable, the request for proposals
560 process may be reinitiated.

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

577 (i) "Asian" means persons having origins in any of
578 the original people of the Far East, Southeast Asia, the Indian

579 subcontinent, or the Pacific Islands.

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

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

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

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

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

597 (x) Notwithstanding any provision of this section to
598 the contrary, the Department of Finance and Administration shall
599 set aside twenty percent (20%) of the amount expended for any
600 public construction project that such department manages, not to
601 exceed Five Million Dollars (\$5,000,000.00), for small
602 contractors. The set-aside portion of such contract shall comply
603 with regulations promulgated by the Department of Finance and
604 Administration and shall be subject to bid requirements under this
605 section. Set-aside contracts for which competitive bids are
606 required shall be made from the lowest and best small contractor
607 bidder. For purposes of this paragraph, the term "small
608 contractor" means a contractor whose bonding capacity, as
609 determined by the Department of Finance and Administration, does
610 not exceed Five Million Dollars (\$5,000,000.00).

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