

By: Wallace

To: Appropriations

## HOUSE BILL NO. 1016

1 AN ACT TO REQUIRE ENTITIES THAT ENTER CONTRACTS WITH THE  
2 STATE OR POLITICAL SUBDIVISIONS OF THE STATE FOR MORE THAN  
3 \$100,000.00 OF BUSINESS IN ANY FISCAL YEAR TO FILE A  
4 SUBCONTRACTING PLAN WITH THE STATE OUTLINING HOW THE ENTITY PLANS  
5 TO UTILIZE MINORITY-OWNED BUSINESSES IN THE BUSINESS TO BE  
6 CONDUCTED WITH THE STATE OR POLITICAL SUBDIVISION; TO PROHIBIT THE  
7 STATE AND POLITICAL SUBDIVISIONS FROM CONDUCTING ANY BUSINESS  
8 UNDER ANY SUCH CONTRACT UNTIL THE ENTITY HAS FILED THE REQUIRED  
9 PLAN; TO AMEND SECTIONS 25-53-5, 25-53-125, 31-7-12, 31-7-13 AND  
10 31-7-38, MISSISSIPPI CODE OF 1972, IN CONFORMITY WITH THE  
11 PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

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

13 SECTION 1. (1) Each individual, corporation, partnership,  
14 association, organization or other entity that enters a new  
15 contract or renews an existing contract to conduct business with  
16 the State of Mississippi or any agency, department, institution or  
17 political subdivision of the state, in an amount that will or is  
18 reasonably anticipated to exceed One Hundred Thousand Dollars  
19 (\$100,000.00) in any fiscal year of the state or the political  
20 subdivision with which the business is to be conducted, shall file  
21 with the Department of Finance and Administration in the case a  
22 contract with the state or with the State Auditor in the case a  
23 contract with a political subdivision, a subcontracting plan that  
24 outlines the manner in which the entity plans to utilize the  
25 services of minority-owned businesses in the business to be  
26 conducted with the state or political subdivision, and that  
27 includes a goal for the utilization of the services of  
28 minority-owned businesses expressed as a percentage of the total  
29 business to be conducted under the contract. The entity shall  
30 file the plan required by this section before it may conduct any

31 business under the contract with the state or political  
32 subdivision with which the entity has the contract. The state and  
33 each political subdivision of the state having a contract with an  
34 entity for which the plan required by this section must be filed  
35 shall be prohibited from conducting any business under the  
36 contract until the entity has filed the plan.

37 (2) For the purposes of this section, the term  
38 "minority-owned business" means a business that is owned by a  
39 majority of persons who are United States citizens or permanent  
40 resident aliens (as defined by the Immigration and Naturalization  
41 Service) of the United States and who are:

42 (a) Asian, which means persons having origins in any of  
43 the original people of the Far East, Southeast Asia, the Indian  
44 subcontinent, or the Pacific Islands;

45 (b) Black, which means persons having origins in any  
46 black racial group of Africa;

47 (c) Hispanic, which means persons of Spanish or  
48 Portuguese culture with origins in Mexico, South or Central  
49 America, or the Caribbean Islands, regardless of race;

50 (d) Native American, which means persons having origins  
51 in any of the original people of North America, including American  
52 Indians, Eskimos and Aleuts;

53 (e) Female; or

54 (f) Any combination of the persons listed in paragraphs  
55 (a) through (e) of this subsection.

56 SECTION 2. Section 25-53-5, Mississippi Code of 1972, is  
57 amended as follows:[RF1]

58 25-53-5. The authority shall have the following powers,  
59 duties, and responsibilities:

60 (a) The authority shall provide for the development of  
61 plans for the efficient acquisition and utilization of computer  
62 equipment and services by all agencies of state government, and  
63 provide for their implementation. In so doing, the authority may  
64 use the MDITS staff, at the discretion of the executive director  
65 of the authority, or the authority may contract for the services  
66 of qualified consulting firms in the field of information  
67 technology and utilize the service of such consultants as may be

68 necessary for such purposes.

69 (b) The authority shall immediately institute  
70 procedures for carrying out the purposes of this chapter and  
71 supervise the efficient execution of the powers and duties of the  
72 office of executive director of the authority. In the execution  
73 of its functions under this chapter, the authority shall maintain  
74 as a paramount consideration the successful internal organization  
75 and operation of the several agencies so that efficiency existing  
76 therein shall not be adversely affected or impaired. In executing  
77 its functions in relation to the institutions of higher learning  
78 and junior colleges in the state, the authority shall take into  
79 consideration the special needs of such institutions in relation  
80 to the fields of teaching and scientific research.

81 (c) Title of whatever nature of all computer equipment  
82 now vested in any agency of the State of Mississippi is hereby  
83 vested in the authority, and no such equipment shall be disposed  
84 of in any manner except in accordance with the direction of the  
85 authority or under the provisions of such rules and regulations as  
86 may hereafter be adopted by the authority in relation thereto.

87 (d) The authority shall adopt rules, regulations, and  
88 procedures governing the acquisition of computer and  
89 telecommunications equipment and services which shall, to the  
90 fullest extent practicable, insure the maximum of competition  
91 between all manufacturers of supplies or equipment or services.  
92 In the writing of specifications, in the making of contracts  
93 relating to the acquisition of such equipment and services, and in  
94 the performance of its other duties the authority shall provide  
95 for the maximum compatibility of all information systems hereafter  
96 installed or utilized by all state agencies and may require the  
97 use of common computer languages where necessary to accomplish the  
98 purposes of this chapter. The authority may establish by  
99 regulation and charge reasonable fees on a nondiscriminatory basis  
100 for the furnishing to bidders of copies of bid specifications and

101 other documents issued by the authority.

102           (e) The authority shall adopt rules and regulations  
103 governing the sharing with, or the sale or lease of information  
104 technology services to any nonstate agency or person. Such  
105 regulations shall provide that any such sharing, sale, or lease  
106 shall be restricted in that same shall be accomplished only where  
107 such services are not readily available otherwise within the  
108 state, and then only at a charge to the user not less than the  
109 prevailing rate of charge for similar services by private  
110 enterprise within this state.

111           (f) The authority may, in its discretion, establish a  
112 special technical advisory committee or committees to study and  
113 make recommendations on technology matters within the competence  
114 of the authority as the authority may see fit. Persons serving on  
115 the Information Resource Council, its task forces, or any such  
116 technical advisory committees shall be entitled to receive their  
117 actual and necessary expenses actually incurred in the performance  
118 of such duties, together with mileage as provided by law for state  
119 employees, provided the same has been authorized by a resolution  
120 duly adopted by the authority and entered on its minutes prior to  
121 the performance of such duties.

122           (g) The authority may provide for the development and  
123 require the adoption of standardized computer programs and may  
124 provide for the dissemination of information to and the  
125 establishment of training programs for the personnel of the  
126 various information technology centers of state agencies and  
127 personnel of the agencies utilizing the services thereof.

128           (h) The authority shall adopt reasonable rules and  
129 regulations requiring the reporting to the authority through the  
130 office of executive director of such information as may be  
131 required for carrying out the purposes of this chapter and may  
132 also establish such reasonable procedures to be followed in the  
133 presentation of bills for payment under the terms of all contracts

134 for the acquisition of computer equipment and services now or  
135 hereafter in force as may be required by the authority or by the  
136 executive director in the execution of their powers and duties.

137 (i) The authority shall require such adequate  
138 documentation of information technology procedures utilized by the  
139 various state agencies and may require the establishment of such  
140 organizational structures within state agencies relating to  
141 information technology operations as may be necessary to  
142 effectuate the purposes of this chapter.

143 (j) The authority may adopt such further reasonable  
144 rules and regulations as may be necessary to fully implement the  
145 purposes of this chapter. All rules and regulations adopted by  
146 the authority shall be published and disseminated in readily  
147 accessible form to all affected state agencies, and to all current  
148 suppliers of computer equipment and services to the state, and to  
149 all prospective suppliers requesting the same. Such rules and  
150 regulations shall be kept current, be periodically revised, and  
151 copies thereof shall be available at all times for inspection by  
152 the public at reasonable hours in the offices of the authority.  
153 Whenever possible no rule, regulation or any proposed amendment to  
154 such rules and regulations shall be finally adopted or enforced  
155 until copies of said proposed rules and regulations have been  
156 furnished to all interested parties for their comment and  
157 suggestions.

158 (k) The authority shall establish rules and regulations  
159 which shall provide for the submission of all contracts proposed  
160 to be executed by the executive director for computer equipment or  
161 services to the authority for approval before final execution, and  
162 the authority may provide that such contracts involving the  
163 expenditure of less than such specified amount as may be  
164 established by the authority may be finally executed by the  
165 executive director without first obtaining such approval by the  
166 authority.

167           (1) The authority is authorized to purchase, lease, or  
168 rent computer equipment or services and to operate said equipment  
169 and utilize said services in providing services to one or more  
170 state agencies when in its opinion such operation will provide  
171 maximum efficiency and economy in the functions of any such agency  
172 or agencies.

173           (m) The authority shall assist political subdivisions  
174 and instrumentalities in their development of plans for the  
175 efficient acquisition and utilization of computer equipment and  
176 services. An appropriate fee shall be charged the political  
177 subdivision by the authority for such assistance.

178           (n) The authority shall adopt rules and regulations  
179 governing the protest procedures to be followed by any actual or  
180 prospective bidder, offerer or contractor who is aggrieved in  
181 connection with the solicitation or award of a contract for the  
182 acquisition of computer equipment or services. Such rules and  
183 regulations shall prescribe the manner, time and procedure for  
184 making protests and may provide that a protest not timely filed  
185 shall be summarily denied. The authority may require the  
186 protesting party, at the time of filing the protest, to post a  
187 bond, payable to the state, in an amount that the authority  
188 determines sufficient to cover any expense or loss incurred by the  
189 state, the authority or any state agency as a result of the  
190 protest if the protest subsequently is determined by a court of  
191 competent jurisdiction to have been filed without any substantial  
192 basis or reasonable expectation to believe that the protest was  
193 meritorious; however, in no event may the amount of the bond  
194 required exceed a reasonable estimate of the total project cost.  
195 The authority, in its discretion, also may prohibit any  
196 prospective bidder, offerer or contractor who is a party to any  
197 litigation involving any such contract with the state, the  
198 authority or any agency of the state to participate in any other  
199 such bid, offer or contract, or to be awarded any such contract,

200 during the pendency of the litigation.

201 (o) The authority shall make a report in writing to the  
202 Legislature each year in the month of January. Such report shall  
203 contain a full and detailed account of the work of the authority  
204 for the preceding year as specified in Section 25-53-29(3).

205 All acquisitions of computer equipment and services involving  
206 the expenditure of funds in excess of the dollar amount  
207 established in Section 31-7-13(c), or rentals or leases in excess  
208 of the dollar amount established in Section 31-7-13(c) for the  
209 term of the contract, shall be based upon competitive and open  
210 specifications, and contracts therefor shall be entered into only  
211 after advertisements for bids are published in one or more daily  
212 newspapers having a general circulation in the state not less than  
213 fourteen (14) days prior to receiving sealed bids therefor. The  
214 authority may reserve the right to reject any or all bids, and if  
215 all bids are rejected, the authority may negotiate a contract  
216 within the limitations of the specifications so long as the terms  
217 of any such negotiated contract are equal to or better than the  
218 comparable terms submitted by the lowest and best bidder, and so  
219 long as the total cost to the State of Mississippi does not exceed  
220 the lowest bid. If the authority accepts one (1) of such bids, it  
221 shall be that which is the lowest and best.

222 Contracts for the acquisition of computer equipment and  
223 services shall be subject to the provisions of Section 1 of this  
224 act.

225 (p) When applicable, the authority may procure  
226 equipment, systems and related services in accordance with the law  
227 or regulations, or both, which govern the Bureau of Purchasing of  
228 the Office of General Services or which govern the Mississippi  
229 Department of Information Technology Services procurement of  
230 telecommunications equipment, software and services.

231 (q) The authority is authorized to purchase, lease, or  
232 rent information technology and services for the purpose of

233 establishing pilot projects to investigate emerging technologies.

234 These acquisitions shall be limited to new technologies and shall  
235 be limited to an amount set by annual appropriation of the  
236 Legislature. These acquisitions shall be exempt from the  
237 advertising and bidding requirement.

238 (r) All fees collected by the Mississippi Department of  
239 Information Technology Services shall be deposited into the  
240 Mississippi Department of Information Technology Services  
241 Revolving Fund unless otherwise specified by the Legislature.

242 SECTION 3. Section 25-53-125, Mississippi Code of 1972, is  
243 amended as follows:

244 25-53-125. The following general provisions shall apply to  
245 all procurements under Sections 25-53-101 through 25-53-125:

246 (a) No contracts entered into hereunder shall have an  
247 initial effective date earlier than the date on which such  
248 contract receives approval as required herein.

249 (b) All changes, modifications and amendments to any  
250 contract hereunder shall be approved in advance by the bureau, in  
251 addition to any other approvals required by law.

252 (c) The bureau shall promulgate rules and regulations  
253 in accordance with the Administrative Procedure Act, Section  
254 25-43-1 et seq. for the establishment of contract format.

255 (d) Where written proposals or bids are submitted by  
256 vendors, the proposal or bid of the successful vendor shall be  
257 incorporated into the final contract consummated with that vendor.

258 (e) The provisions of Sections 25-53-101 through  
259 25-53-125 shall, with respect to the procurement of  
260 telecommunications equipment, systems or related services,  
261 supersede specifications of any contradictory or conflicting  
262 provisions of Chapter 7, Title 31, Mississippi Code of 1972, and  
263 other laws with respect to awarding public contracts.

264 (f) Contracts for the procurement of telecommunications  
265 equipment, systems or related services shall be subject to the



266 provisions of Section 1 of this act.

267 SECTION 4. Section 31-7-12, Mississippi Code of 1972, is  
268 amended as follows:

269 31-7-12. (1) Except in regard to purchases of unmarked  
270 vehicles made in accordance with purchasing regulations adopted by  
271 the Department of Finance and Administration pursuant to Section  
272 31-7-9(2), all agencies shall purchase commodities at the state  
273 contract price from the approved source, unless approval is  
274 granted by the Department of Finance and Administration to solicit  
275 purchases outside the terms of the contracts. However, prices  
276 accepted by an agency shall be less than the prices set by the  
277 state contract. Prices accepted by an agency shall be obtained in  
278 compliance with paragraph (a), (b) or (c) of Section 31-7-13. It  
279 shall be the responsibility of the Department of Finance and  
280 Administration to ascertain that the resulting prices shall  
281 provide a cost effective alternative to the established state  
282 contract.

283 (2) Governing authorities may purchase commodities without  
284 regard to the state contract price established by the Department  
285 of Finance and Administration when such purchase involves an  
286 expenditure of Five Hundred Dollars (\$500.00) or less, exclusive  
287 of freight or shipping charges, provided that such purchase is  
288 made at the usual and customary price of such commodities within  
289 the locality involved and such price is not excessive.

290 (3) Governing authorities may purchase commodities approved  
291 by the Department of Finance and Administration from the state  
292 contract vendor, or from any source offering the identical  
293 commodity, at a price not exceeding the state contract price  
294 established by the Department of Finance and Administration for  
295 such commodity, without obtaining or advertising for competitive  
296 bids, when such purchase involves an expenditure of more than Five  
297 Hundred Dollars (\$500.00), exclusive of freight or shipping  
298 charges. Governing authorities that do not exercise the option to

299 purchase such commodities from the state contract vendor or from  
300 another source offering the identical commodity at a price not  
301 exceeding the state contract price established by the Department  
302 of Finance and Administration shall make such purchases pursuant  
303 to the provisions of Section 31-7-13 without regard to state  
304 contract prices established by the Department of Finance and  
305 Administration, unless such purchases are authorized to be made  
306 under subsection (6) of this section.

307 (4) Nothing in this section shall prohibit governing  
308 authorities from purchasing, pursuant to subsections (2) and (3)  
309 of this section, commodities approved by the Department of Finance  
310 and Administration at a price not exceeding the state contract  
311 price established by the Department of Finance and Administration.

312 (5) The Department of Finance and Administration shall  
313 ensure that the prices of all commodities on the state contract  
314 are the lowest and best prices available from any source offering  
315 that commodity at the same level of quality or service, utilizing  
316 the reasonable standards established therefor by the Department of  
317 Finance and Administration. If the Department of Finance and  
318 Administration does not list an approved price for the particular  
319 item involved, purchase shall be made according to statutory  
320 bidding and licensing requirements. To encourage prudent  
321 purchasing practices, the Department of Finance and Administration  
322 shall be authorized and empowered to exempt certain commodities  
323 from the requirement that the lowest and best price be approved by  
324 order placed on its minutes. Contracts between the Department of  
325 Finance and Administration and state contract vendors shall be  
326 subject to the provisions of Section 1 of this act.

327 (6) Any school district may purchase commodities from  
328 vendors with which any levying authority of the school district,  
329 as defined in Section 37-57-1, has contracted through competitive  
330 bidding procedures pursuant to Section 31-7-13 for purchases of  
331 the same commodities. Purchases authorized by this subsection may

332 be made by a school district without obtaining or advertising for  
333 competitive bids, and such purchases shall be made at the same  
334 prices and under the same conditions as purchases of the same  
335 commodities are to be made by the levying authority of the school  
336 district under the contract with the vendor.

337 SECTION 5. Section 31-7-13, Mississippi Code of 1972, is  
338 amended as follows:

339 31-7-13. All agencies and governing authorities shall  
340 purchase their commodities and printing; contract for fire  
341 insurance, automobile insurance, casualty insurance (other than  
342 workers' compensation) and liability insurance; contract for  
343 garbage collection or disposal; contract for solid waste  
344 collection or disposal; contract for sewage collection or  
345 disposal; and contract for public construction as herein provided.

346 (a) **Bidding procedure for purchases not over \$1,500.00.**

347 Purchases which do not involve an expenditure of more than One  
348 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or  
349 shipping charges, may be made without advertising or otherwise  
350 requesting competitive bids. Provided, however, that nothing  
351 contained in this paragraph (a) shall be construed to prohibit any  
352 agency or governing authority from establishing procedures which  
353 require competitive bids on purchases of One Thousand Five Hundred  
354 Dollars (\$1,500.00) or less.

355 (b) **Bidding procedure for purchases over \$1,500.00 but  
356 not over \$10,000.00.** Purchases which involve an expenditure of

357 more than One Thousand Five Hundred Dollars (\$1,500.00) but not  
358 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight  
359 and shipping charges may be made from the lowest and best bidder  
360 without publishing or posting advertisement for bids, provided at  
361 least two (2) competitive written bids have been obtained. Any  
362 governing authority purchasing commodities pursuant to this  
363 paragraph (b) may authorize its purchasing agent, or his designee,  
364 with regard to governing authorities other than counties, or its

365 purchase clerk, or his designee, with regard to counties, to  
366 accept the lowest and best competitive written bid. Such  
367 authorization shall be made in writing by the governing authority  
368 and shall be maintained on file in the primary office of the  
369 agency and recorded in the official minutes of the governing  
370 authority, as appropriate. The purchasing agent or the purchase  
371 clerk, or their designee, as the case may be, and not the  
372 governing authority, shall be liable for any penalties and/or  
373 damages as may be imposed by law for any act or omission of the  
374 purchasing agent or purchase clerk, or their designee,  
375 constituting a violation of law in accepting any bid without  
376 approval by the governing authority. The term "competitive  
377 written bid" shall mean a bid submitted on a bid form furnished by  
378 the buying agency or governing authority and signed by authorized  
379 personnel representing the vendor, or a bid submitted on a  
380 vendor's letterhead or identifiable bid form and signed by  
381 authorized personnel representing the vendor. Bids may be  
382 submitted by facsimile, electronic mail or other generally  
383 accepted method of information distribution. Bids submitted by  
384 electronic transmission shall not require the signature of the  
385 vendor's representative unless required by agencies or governing  
386 authorities.

387           (c) **Bidding procedure for purchases over \$10,000.00.**  
388 Purchases which involve an expenditure of more than Ten Thousand  
389 Dollars (\$10,000.00), exclusive of freight and shipping charges  
390 may be made from the lowest and best bidder after advertising for  
391 competitive sealed bids once each week for two (2) consecutive  
392 weeks in a regular newspaper published in the county or  
393 municipality in which such agency or governing authority is  
394 located. The date as published for the bid opening shall not be  
395 less than seven (7) working days after the last published notice;  
396 however, if the purchase involves a construction project in which  
397 the estimated cost is in excess of Fifteen Thousand Dollars

398 (\$15,000.00), such bids shall not be opened in less than fifteen  
399 (15) working days after the last notice is published and the  
400 notice for the purchase of such construction shall be published  
401 once each week for two (2) consecutive weeks. The notice of  
402 intention to let contracts or purchase equipment shall state the  
403 time and place at which bids shall be received, list the contracts  
404 to be made or types of equipment or supplies to be purchased, and,  
405 if all plans and/or specifications are not published, refer to the  
406 plans and/or specifications on file. If all plans and/or  
407 specifications are published in the notification, then the plans  
408 and/or specifications may not be amended. If all plans and/or  
409 specifications are not published in the notification, then  
410 amendments to the plans/specifications, bid opening date, bid  
411 opening time and place may be made, provided that the agency or  
412 governing authority maintains a list of all prospective bidders  
413 who are known to have received a copy of the bid documents and all  
414 such prospective bidders are sent copies of all amendments. This  
415 notification of amendments may be made via mail, facsimile,  
416 electronic mail or other generally accepted method of information  
417 distribution. In all cases involving governing authorities,  
418 before the notice shall be published or posted, the plans or  
419 specifications for the construction or equipment being sought  
420 shall be filed with the clerk of the board of the governing  
421 authority, and there remain. If there is no newspaper published  
422 in the county or municipality, then such notice shall be given by  
423 posting same at the courthouse, or for municipalities at the city  
424 hall, and at two (2) other public places in the county or  
425 municipality, and also by publication once each week for two (2)  
426 consecutive weeks in some newspaper having a general circulation  
427 in the county or municipality in the above provided manner. On  
428 the same date that the notice is submitted to the newspaper for  
429 publication, the agency or governing authority involved shall mail  
430 written notice to the main office of the Mississippi Contract

431 Procurement Center that contains the same information as that in  
432 the published notice. In addition to these requirements, agencies  
433 shall maintain a vendor file and vendors of the equipment or  
434 commodities being sought may be mailed solicitations and  
435 specifications, and a bid file shall be established which shall  
436 indicate those vendors to whom such solicitations and  
437 specifications were mailed, and such file shall also contain such  
438 information as is pertinent to the bid. Specifications pertinent  
439 to such bidding shall be written so as not to exclude comparable  
440 equipment of domestic manufacture. Provided, however, that should  
441 valid justification be presented, the Department of Finance and  
442 Administration or the board of a governing authority may approve a  
443 request for specific equipment necessary to perform a specific  
444 job. Provided further, that a registered professional engineer or  
445 architect may write specifications for a governing authority to  
446 require a specific item of equipment available only from limited  
447 sources or vendors when such specifications conform with the rules  
448 and regulations promulgated by an appropriate federal agency  
449 regulating such matters under the federal procurement laws.  
450 Further, such justification, when placed on the minutes of the  
451 board of a governing authority, may serve as authority for that  
452 governing authority to write specifications to require a specific  
453 item of equipment needed to perform a specific job. In addition  
454 to these requirements, from and after July 1, 1990, vendors of  
455 relocatable classrooms and the specifications for the purchase of  
456 such relocatable classrooms published by local school boards shall  
457 meet all pertinent regulations of the State Board of Education,  
458 including prior approval of such bid by the State Department of  
459 Education. Nothing in this section shall prohibit any agency or  
460 governing authority from writing specifications to include  
461 life-cycle costing, total cost bids, extended warranties or  
462 guaranteed buy-back provisions, provided that such bid  
463 requirements shall be in compliance with regulations established

464 by the Department of Audit.

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

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

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

481 (iii) Whenever bids are solicited for a public  
482 construction or renovation project and only one (1) bid is  
483 received, the agency or the governing authority may accept such  
484 bid if the bid is opened, it is within the funds allocated for the  
485 project, it is responsive to the solicitation and the contractor  
486 is capable of performing the contract in accordance with the  
487 solicitation.

488 (iv) No addendum to bid specifications for such  
489 projects may be issued by the agency or governing authority within  
490 twelve (12) hours of the time established by the agency or  
491 governing authority for the receipt of bids.

492 (e) **Lease-purchase authorization.** Any lease-purchase  
493 of equipment which an agency is not required to lease-purchase  
494 under the master lease-purchase program pursuant to Section  
495 31-7-10 and any lease-purchase of equipment which a governing  
496 authority elects to lease-purchase may be acquired by a

497 lease-purchase agreement under this paragraph (e). Lease-purchase  
498 financing may also be obtained from the vendor or from a  
499 third-party source after having solicited and obtained at least  
500 two (2) written competitive bids, as defined in paragraph (b) of  
501 this section, for such financing without advertising for such  
502 bids. Solicitation for the bids for financing may occur before or  
503 after acceptance of bids for the purchase of such equipment or,  
504 where no such bids for purchase are required, at any time before  
505 the purchase thereof. No such lease-purchase agreement shall be  
506 for an annual rate of interest which is greater than the overall  
507 maximum interest rate to maturity on general obligation  
508 indebtedness permitted under Section 75-17-101, and the term of  
509 such lease-purchase agreement shall not exceed the useful life of  
510 property covered thereby as determined according to the upper  
511 limit of the asset depreciation range (ADR) guidelines for the  
512 Class Life Asset Depreciation Range System established by the  
513 Internal Revenue Service pursuant to the United States Internal  
514 Revenue Code and regulations thereunder as in effect on December  
515 31, 1980, or comparable depreciation guidelines with respect to  
516 any equipment not covered by ADR guidelines. Any lease-purchase  
517 agreement entered into pursuant to this paragraph (e) may contain  
518 any of the terms and conditions which a master lease-purchase  
519 agreement may contain under the provisions of Section 31-7-10(5),  
520 and shall contain an annual allocation dependency clause  
521 substantially similar to that set forth in Section 31-7-10(8).  
522 Each agency or governing authority entering into a lease-purchase  
523 transaction pursuant to this paragraph (e) shall maintain with  
524 respect to each such lease-purchase transaction the same  
525 information as required to be maintained by the Department of  
526 Finance and Administration pursuant to Section 31-7-10(13).  
527 However, nothing contained in this section shall be construed to  
528 permit agencies to acquire items of equipment with a total  
529 acquisition cost in the aggregate of less than Ten Thousand



530 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
531 equipment, and the purchase thereof by any lessor, acquired by  
532 lease-purchase under this paragraph and all lease-purchase  
533 payments with respect thereto shall be exempt from all Mississippi  
534 sales, use and ad valorem taxes. Interest paid on any  
535 lease-purchase agreement under this section shall be exempt from  
536 State of Mississippi income taxation.

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

547           (g) **Construction contract change authorization.** In the  
548 event a determination is made by an agency or governing authority  
549 after a construction contract is let that changes or modifications  
550 to the original contract are necessary or would better serve the  
551 purpose of the agency or the governing authority, such agency or  
552 governing authority may, in its discretion, order such changes  
553 pertaining to the construction that are necessary under the  
554 circumstances without the necessity of further public bids;  
555 provided that such change shall be made in a commercially  
556 reasonable manner and shall not be made to circumvent the public  
557 purchasing statutes. In addition to any other authorized person,  
558 the architect or engineer hired by an agency or governing  
559 authority with respect to any public construction contract shall  
560 have the authority, when granted by an agency or governing  
561 authority, to authorize changes or modifications to the original  
562 contract without the necessity of prior approval of the agency or

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

567           (h) **Petroleum purchase alternative.** In the event any  
568 agency or governing authority shall have advertised for bids for  
569 the purchase of gas, diesel fuel, oils and other petroleum  
570 products and coal and no acceptable bids can be obtained, such  
571 agency or governing authority is authorized and directed to enter  
572 into any negotiations necessary to secure the lowest and best  
573 contract available for the purchase of such commodities.

574           (i) **Road construction petroleum products price**  
575 **adjustment clause authorization.** Any agency or governing  
576 authority authorized to enter into contracts for the construction,  
577 maintenance, surfacing or repair of highways, roads or streets,  
578 may include in its bid proposal and contract documents a price  
579 adjustment clause with relation to the cost to the contractor,  
580 including taxes, based upon an industry-wide cost index, of  
581 petroleum products including asphalt used in the performance or  
582 execution of the contract or in the production or manufacture of  
583 materials for use in such performance. Such industry-wide index  
584 shall be established and published monthly by the State Department  
585 of Transportation with a copy thereof to be mailed, upon request,  
586 to the clerks of the governing authority of each municipality and  
587 the clerks of each board of supervisors throughout the state. The  
588 price adjustment clause shall be based on the cost of such  
589 petroleum products only and shall not include any additional  
590 profit or overhead as part of the adjustment. The bid proposals  
591 or document contract shall contain the basis and methods of  
592 adjusting unit prices for the change in the cost of such petroleum  
593 products.

594           (j) **State agency emergency purchase procedure.** If the  
595 executive head of any agency of the state shall determine that an

596 emergency exists in regard to the purchase of any commodities or  
597 repair contracts, so that the delay incident to giving opportunity  
598 for competitive bidding would be detrimental to the interests of  
599 the state, then the provisions herein for competitive bidding  
600 shall not apply and the head of such agency shall be authorized to  
601 make the purchase or repair. Total purchases so made shall only  
602 be for the purpose of meeting needs created by the emergency  
603 situation. In the event such executive head is responsible to an  
604 agency board, at the meeting next following the emergency  
605 purchase, documentation of the purchase, including a description  
606 of the commodity purchased, the purchase price thereof and the  
607 nature of the emergency shall be presented to the board and placed  
608 on the minutes of the board of such agency. The head of such  
609 agency shall, at the earliest possible date following such  
610 emergency purchase, file with the Department of Finance and  
611 Administration (i) a statement under oath certifying the  
612 conditions and circumstances of the emergency, and (ii) a  
613 certified copy of the appropriate minutes of the board of such  
614 agency, if applicable.

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

616 If the governing authority, or the governing authority acting  
617 through its designee, shall determine that an emergency exists in  
618 regard to the purchase of any commodities or repair contracts, so  
619 that the delay incident to giving opportunity for competitive  
620 bidding would be detrimental to the interest of the governing  
621 authority, then the provisions herein for competitive bidding  
622 shall not apply and any officer or agent of such governing  
623 authority having general or special authority therefor in making  
624 such purchase or repair shall approve the bill presented therefor,  
625 and he shall certify in writing thereon from whom such purchase  
626 was made, or with whom such a repair contract was made. At the  
627 board meeting next following the emergency purchase or repair  
628 contract, documentation of the purchase or repair contract,

629 including a description of the commodity purchased, the price  
630 thereof and the nature of the emergency shall be presented to the  
631 board and shall be placed on the minutes of the board of such  
632 governing authority.

633           (1) **Hospital purchase or lease authorization.** The  
634 commissioners or board of trustees of any hospital owned or owned  
635 and operated separately or jointly by one or more counties,  
636 cities, towns, supervisors districts or election districts, or  
637 combinations thereof, may contract with such lowest and best  
638 bidder for the purchase or lease of any commodity under a contract  
639 of purchase or lease-purchase agreement whose obligatory terms do  
640 not exceed five (5) years. In addition to the authority granted  
641 herein, the commissioners or board of trustees are authorized to  
642 enter into contracts for the lease of equipment or services, or  
643 both, which it considers necessary for the proper care of patients  
644 if, in its opinion, it is not financially feasible to purchase the  
645 necessary equipment or services. Any such contract for the lease  
646 of equipment or services executed by the commissioners or board  
647 shall not exceed a maximum of five (5) years' duration and shall  
648 include a cancellation clause based on unavailability of funds.  
649 If such cancellation clause is exercised, there shall be no  
650 further liability on the part of the lessee.

651           (m) **Exceptions from bidding requirements.** Excepted  
652 from bid requirements are:

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

657                   (ii) **Outside equipment repairs.** Repairs to  
658 equipment, when such repairs are made by repair facilities in the  
659 private sector; however, engines, transmissions, rear axles and/or  
660 other such components shall not be included in this exemption when  
661 replaced as a complete unit instead of being repaired and the need

662 for such total component replacement is known before disassembly  
663 of the component; provided, however, that invoices identifying the  
664 equipment, specific repairs made, parts identified by number and  
665 name, supplies used in such repairs, and the number of hours of  
666 labor and costs therefor shall be required for the payment for  
667 such repairs.

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

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

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

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

695 of this section to allow governmental entities to dispose of  
696 and/or purchase commodities from other governmental entities at a  
697 price that is agreed to by both parties. This shall allow for  
698 purchases and/or sales at prices which may be determined to be  
699 below the market value if the selling entity determines that the  
700 sale at below market value is in the best interest of the  
701 taxpayers of the state. Governing authorities shall place the  
702 terms of the agreement and any justification on the minutes, and  
703 state agencies shall obtain approval from the Department of  
704 Finance and Administration, prior to releasing or taking  
705 possession of the commodities.

706 (vii) **Perishable supplies or food.** Perishable  
707 supplies or foods purchased for use in connection with hospitals,  
708 the school lunch programs, homemaking programs and for the feeding  
709 of county or municipal prisoners.

710 (viii) **Single source items.** Noncompetitive items  
711 available from one (1) source only. In connection with the  
712 purchase of noncompetitive items only available from one (1)  
713 source, a certification of the conditions and circumstances  
714 requiring the purchase shall be filed by the agency with the  
715 Department of Finance and Administration and by the governing  
716 authority with the board of the governing authority. Upon receipt  
717 of that certification the Department of Finance and Administration  
718 or the board of the governing authority, as the case may be, may,  
719 in writing, authorize the purchase, which authority shall be noted  
720 on the minutes of the body at the next regular meeting thereafter.

721 In those situations, a governing authority is not required to  
722 obtain the approval of the Department of Finance and  
723 Administration.

724 (ix) **Waste disposal facility construction**  
725 **contracts.** Construction of incinerators and other facilities for  
726 disposal of solid wastes in which products either generated  
727 therein, such as steam, or recovered therefrom, such as materials

728 for recycling, are to be sold or otherwise disposed of; provided,  
729 however, in constructing such facilities a governing authority or  
730 agency shall publicly issue requests for proposals, advertised for  
731 in the same manner as provided herein for seeking bids for public  
732 construction projects, concerning the design, construction,  
733 ownership, operation and/or maintenance of such facilities,  
734 wherein such requests for proposals when issued shall contain  
735 terms and conditions relating to price, financial responsibility,  
736 technology, environmental compatibility, legal responsibilities  
737 and such other matters as are determined by the governing  
738 authority or agency to be appropriate for inclusion; and after  
739 responses to the request for proposals have been duly received,  
740 the governing authority or agency may select the most qualified  
741 proposal or proposals on the basis of price, technology and other  
742 relevant factors and from such proposals, but not limited to the  
743 terms thereof, negotiate and enter contracts with one or more of  
744 the persons or firms submitting proposals.

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

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

753                   (xii) **Energy efficiency services and equipment.**  
754 Energy efficiency services and equipment acquired by school  
755 districts, junior colleges, institutions of higher learning and  
756 state agencies or other applicable governmental entities on a  
757 shared-savings, lease or lease-purchase basis pursuant to Section  
758 31-7-14.

759                   (xiii) **Insurance contracts.** Purchases of  
760 contracts for fire insurance, automobile insurance, casualty

761 insurance, health insurance and liability insurance by governing  
762 authorities or agencies.

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

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

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

768 Purchases by libraries or for libraries of books and periodicals;  
769 processed film, video cassette tapes, filmstrips and slides;  
770 recorded audio tapes, cassettes and diskettes; and any such items  
771 as would be used for teaching, research or other information  
772 distribution; however, equipment such as projectors, recorders,  
773 audio or video equipment, and monitor televisions are not exempt  
774 under this paragraph.

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

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

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

786 (xix) **Educational television contracts.** From and  
787 after July 1, 1990, contracts by Mississippi Authority for  
788 Educational Television with any private educational institution or  
789 private nonprofit organization whose purposes are educational in  
790 regard to the construction, purchase, lease or lease-purchase of  
791 facilities and equipment and the employment of personnel for  
792 providing multichannel interactive video systems (ITSF) in the  
793 school districts of this state.



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

798                   (xxi) **Undercover operations equipment.** Purchases  
799 of surveillance equipment or any other high-tech equipment to be  
800 used by narcotics agents in undercover operations, provided that  
801 any such purchase shall be in compliance with regulations  
802 established by the Department of Finance and Administration.

803                   (xxii) **Junior college books for rent.** Purchases  
804 by community or junior colleges of textbooks which are obtained  
805 for the purpose of renting such books to students as part of a  
806 book service system.

807                   (xxiii) **School purchases from county/municipal**  
808 **contracts.** Purchases of commodities made by school districts from  
809 vendors with which any levying authority of the school district,  
810 as defined in Section 37-57-1, has contracted through competitive  
811 bidding procedures for purchases of the same commodities.

812                   (xxiv) **Emergency purchases by retirement system.**  
813 Emergency purchases made by the Public Employees' Retirement  
814 System pursuant to Section 25-11-15(7).

815                   (xxv) Repealed.

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

820                   (xxvii) **Municipal water tank maintenance**  
821 **contracts.** Professional maintenance program contracts for the  
822 repair or maintenance of municipal water tanks, which provide  
823 professional services needed to maintain municipal water storage  
824 tanks for a fixed annual fee for a duration of two (2) or more  
825 years.

826                   (xxviii) **Industries for the Blind products.**

827 Purchases made by state agencies involving any item that is  
828 manufactured, processed or produced by the Mississippi Industries  
829 for the Blind.

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

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

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

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

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

845 (ii) All purchases made by governing authorities,  
846 including purchases made pursuant to the provisions of  
847 subparagraph (i) of this paragraph (n), may be made upon one (1)  
848 purchase order issued per month to each individual vendor prior to  
849 delivery of such commodities provided that each individual  
850 delivery, load or shipment purchased is properly requisitioned and  
851 is properly received and receipted by signed ticket, receipt or  
852 invoice, indicating thereon the point of delivery, and provided  
853 that, with respect to counties, such commodities are properly  
854 accounted for by the receiving clerk or an assistant receiving  
855 clerk as provided by Section 31-7-109. Such purchase order shall  
856 be invalid on the first calendar day of the month immediately  
857 following the month in which it was issued. Purchases in such  
858 month immediately following may be made only if a purchase order  
859 is issued for such month. Each monthly purchase order shall be

860 retained in the records of the governing authority. Agencies may  
861 make purchases as authorized under this subparagraph (ii) in  
862 accordance with such regulations, policies and procedures as are  
863 promulgated by the Department of Finance and Administration.

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

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

886           (q) **Exception to county/municipal budget limitations.**  
887 The prohibitions and restrictions set forth in Sections 19-11-27,  
888 21-35-27 and 31-7-49 shall not apply to a contract, lease or  
889 lease-purchase agreement entered pursuant to the requirements of  
890 this chapter.

891           (r) **Definition of purchase.** For the purposes of this  
892 section, the term "purchase" shall mean the total amount of money

893 encumbered by a single purchase order.

894           (s) **Fuel management system bidding procedure.** Any  
895 governing authority or agency of the state shall, before  
896 contracting for the services and products of a fuel management or  
897 fuel access system, enter into negotiations with not fewer than  
898 two (2) sellers of fuel management or fuel access systems for  
899 competitive written bids to provide the services and products for  
900 the systems. In the event that the governing authority or agency  
901 cannot locate two (2) sellers of such systems or cannot obtain  
902 bids from two (2) sellers of such systems, it shall show proof  
903 that it made a diligent, good-faith effort to locate and negotiate  
904 with two (2) sellers of such systems. Such proof shall include,  
905 but not be limited to, publications of a request for proposals and  
906 letters soliciting negotiations and bids. For purposes of this  
907 paragraph (s), a fuel management or fuel access system is an  
908 automated system of acquiring fuel for vehicles as well as  
909 management reports detailing fuel use by vehicles and drivers, and  
910 the term "competitive written bid" shall have the meaning as  
911 defined in paragraph (b) of this section.

912           (t) **Solid waste contract proposal procedure.** Before  
913 entering into any contract for garbage collection or disposal,  
914 contract for solid waste collection or disposal or contract for  
915 sewage collection or disposal, which involves an expenditure of  
916 more than Fifty Thousand Dollars (\$50,000.00), a governing  
917 authority or agency shall issue publicly a request for proposals  
918 concerning the specifications for such services which shall be  
919 advertised for in the same manner as provided in this section for  
920 seeking bids for purchases which involve an expenditure of more  
921 than Ten Thousand Dollars (\$10,000.00). Any request for proposals  
922 when issued shall contain terms and conditions relating to price,  
923 financial responsibility, technology, legal responsibilities and  
924 other relevant factors as are determined by the governing  
925 authority or agency to be appropriate for inclusion; all factors

926 determined relevant by the governing authority or agency or  
927 required by this paragraph (t) shall be duly included in the  
928 advertisement to elicit proposals. After responses to the request  
929 for proposals have been duly received, the governing authority or  
930 agency shall select the most qualified proposal or proposals on  
931 the basis of price, technology and other relevant factors and from  
932 such proposals, but not limited to the terms thereof, negotiate  
933 and enter contracts with one or more of the persons or firms  
934 submitting proposals. If the governing authority or agency deems  
935 none of the proposals to be qualified or otherwise acceptable, the  
936 request for proposals process may be reinitiated. Notwithstanding  
937 any other provisions of this paragraph, where a county with at  
938 least thirty-five thousand (35,000) nor more than forty thousand  
939 (40,000) population, according to the 1990 federal decennial  
940 census, owns or operates a solid waste landfill, the governing  
941 authorities of any other county or municipality may contract with  
942 the governing authorities of the county owning or operating the  
943 landfill, pursuant to a resolution duly adopted and spread upon  
944 the minutes of each governing authority involved, for garbage or  
945 solid waste collection or disposal services through contract  
946 negotiations.

947           (u) **Minority set aside authorization.** Notwithstanding  
948 any provision of this section to the contrary, any agency or  
949 governing authority, by order placed on its minutes, may, in its  
950 discretion, set aside not more than twenty percent (20%) of its  
951 anticipated annual expenditures for the purchase of commodities  
952 from minority businesses; however, all such set-aside purchases  
953 shall comply with all purchasing regulations promulgated by the  
954 Department of Finance and Administration and shall be subject to  
955 bid requirements under this section. Set-aside purchases for  
956 which competitive bids are required shall be made from the lowest  
957 and best minority business bidder. For the purposes of this  
958 paragraph, the term "minority business" means a business which is

959 owned by a majority of persons who are United States citizens or  
960 permanent resident aliens (as defined by the Immigration and  
961 Naturalization Service) of the United States, and who are Asian,  
962 Black, Hispanic or Native American, according to the following  
963 definitions:

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

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

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

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

975 (v) **Construction punch list restriction.** The  
976 architect, engineer or other representative designated by the  
977 agency or governing authority that is contracting for public  
978 construction or renovation may prepare and submit to the  
979 contractor only one (1) preliminary punch list of items that do  
980 not meet the contract requirements at the time of substantial  
981 completion and one (1) final list immediately before final  
982 completion and final payment.

983 (w) **Contracts subject to Section 1 of this act.**  
984 Contracts by agencies and governing authorities under this chapter  
985 shall be subject to the provisions of Section 1 of this act.

986 (x) **Purchase authorization clarification.** Nothing in  
987 this section shall be construed as authorizing any purchase not  
988 authorized by law.

989 SECTION 6. Section 31-7-38, Mississippi Code of 1972, is  
990 amended as follows:[RF2]

991 31-7-38. The commissioners or board of trustees of any

992 hospital owned or owned and operated separately or jointly by one  
993 or more counties, cities, towns, supervisors districts or election  
994 districts, or combinations thereof, may authorize by resolution  
995 the organization and operation of, or the participation in, a  
996 group purchase program with other hospitals, for the purchase of  
997 supplies, commodities and equipment when it appears to the board  
998 of trustees that such a group purchase program could or would  
999 affect economy or efficiency in their operations. Purchases by  
1000 hospitals participating in group purchasing programs of supplies,  
1001 commodities and equipment through such programs shall be exempt  
1002 from the provisions of Sections 31-7-12 and 31-7-13. However,  
1003 group purchase program contracts shall be subject to the  
1004 provisions of Section 1 of this act. This section shall stand  
1005 repealed on July 1, 2005.

1006 SECTION 7. This act shall take effect and be in force from  
1007 and after July 1, 2000.