

By: Guice

To: Appropriations

HOUSE BILL NO. 1116

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE PUBLIC PURCHASING LAWS TO PROHIBIT ADDENDUM TO BID
3 SPECIFICATIONS WITHIN FORTY-EIGHT HOURS OF RECEIPT OF BIDS; AND
4 FOR RELATED PURPOSES.

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

6 SECTION 1. Section 31-7-13, Mississippi Code of 1972, is
7 amended as follows:[LH1]

8 31-7-13. All agencies and governing authorities shall
9 purchase their commodities and printing; contract for fire
10 insurance, automobile insurance, casualty insurance (other than
11 workers' compensation) and liability insurance; contract for
12 garbage collection or disposal; contract for solid waste
13 collection or disposal; contract for sewage collection or
14 disposal; and contract for public construction as herein provided.

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

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

24 (b) **Bidding procedure for purchases over \$1,500.00 but**

25 **not over \$10,000.00.** Purchases which involve an expenditure of
26 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
27 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight

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

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

57 Purchases which involve an expenditure of more than Ten Thousand
58 Dollars (\$10,000.00), exclusive of freight and shipping charges
59 may be made from the lowest and best bidder after advertising for
60 competitive sealed bids once each week for two (2) consecutive
61 weeks in a regular newspaper published in the county or
62 municipality in which such agency or governing authority is
63 located. The date as published for the bid opening shall not be
64 less than seven (7) working days after the last published notice;

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

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

131 guaranteed buy-back provisions, provided that such bid
132 requirements shall be in compliance with regulations established
133 by the Department of Audit.

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

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

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

157 (iv) No addendum to bid specifications for such
158 projects may be issued by the agency or governing authority within
159 forty-eight (48) hours of the time established by the agency or
160 governing authority for the receipt of bids.

161 (e) **Lease-purchase authorization.** Any lease-purchase
162 of equipment which an agency is not required to lease-purchase
163 under the master lease-purchase program pursuant to Section

164 31-7-10 and any lease-purchase of equipment which a governing
165 authority elects to lease-purchase may be acquired by a
166 lease-purchase agreement under this paragraph (e). Lease-purchase
167 financing may also be obtained from the vendor or from a
168 third-party source after having solicited and obtained at least
169 two (2) written competitive bids, as defined in paragraph (b) of
170 this section, for such financing without advertising for such
171 bids. Solicitation for the bids for financing may occur before or
172 after acceptance of bids for the purchase of such equipment or,
173 where no such bids for purchase are required, at any time before
174 the purchase thereof. No such lease-purchase agreement shall be
175 for an annual rate of interest which is greater than the overall
176 maximum interest rate to maturity on general obligation
177 indebtedness permitted under Section 75-17-101, and the term of
178 such lease-purchase agreement shall not exceed the useful life of
179 property covered thereby as determined according to the upper
180 limit of the asset depreciation range (ADR) guidelines for the
181 Class Life Asset Depreciation Range System established by the
182 Internal Revenue Service pursuant to the United States Internal
183 Revenue Code and regulations thereunder as in effect on December
184 31, 1980, or comparable depreciation guidelines with respect to
185 any equipment not covered by ADR guidelines. Any lease-purchase
186 agreement entered into pursuant to this paragraph (e) may contain
187 any of the terms and conditions which a master lease-purchase
188 agreement may contain under the provisions of Section 31-7-10(5),
189 and shall contain an annual allocation dependency clause
190 substantially similar to that set forth in Section 31-7-10(8).
191 Each agency or governing authority entering into a lease-purchase
192 transaction pursuant to this paragraph (e) shall maintain with
193 respect to each such lease-purchase transaction the same
194 information as required to be maintained by the Department of
195 Finance and Administration pursuant to Section 31-7-10(13).
196 However, nothing contained in this section shall be construed to

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

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

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

230 authority, to authorize changes or modifications to the original
231 contract without the necessity of prior approval of the agency or
232 governing authority when any such change or modification is less
233 than one percent (1%) of the total contract amount. The agency or
234 governing authority may limit the number, manner or frequency of
235 such emergency changes or modifications.

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

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

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

284 (k) **Governing authority emergency purchase procedure.**
285 If the governing authority, or the governing authority acting
286 through its designee, shall determine that an emergency exists in
287 regard to the purchase of any commodities or repair contracts, so
288 that the delay incident to giving opportunity for competitive
289 bidding would be detrimental to the interest of the governing
290 authority, then the provisions herein for competitive bidding
291 shall not apply and any officer or agent of such governing
292 authority having general or special authority therefor in making
293 such purchase or repair shall approve the bill presented therefor,
294 and he shall certify in writing thereon from whom such purchase
295 was made, or with whom such a repair contract was made. At the

296 board meeting next following the emergency purchase or repair
297 contract, documentation of the purchase or repair contract,
298 including a description of the commodity purchased, the price
299 thereof and the nature of the emergency shall be presented to the
300 board and shall be placed on the minutes of the board of such
301 governing authority.

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

320 (m) **Exceptions from bidding requirements.** Excepted
321 from bid requirements are:

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

326 (ii) **Outside equipment repairs.** Repairs to
327 equipment, when such repairs are made by repair facilities in the
328 private sector; however, engines, transmissions, rear axles and/or

329 other such components shall not be included in this exemption when
330 replaced as a complete unit instead of being repaired and the need
331 for such total component replacement is known before disassembly
332 of the component; provided, however, that invoices identifying the
333 equipment, specific repairs made, parts identified by number and
334 name, supplies used in such repairs, and the number of hours of
335 labor and costs therefor shall be required for the payment for
336 such repairs.

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

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

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

355 (vi) **Intergovernmental sales and transfers.**
356 Purchases, sales, transfers or trades by governing authorities or
357 state agencies when such purchases, sales, transfers or trades are
358 made by a private treaty agreement or through means of
359 negotiation, from any federal agency or authority, another
360 governing authority or state agency of the State of Mississippi,
361 or any state agency of another state. Nothing in this section

362 shall permit such purchases through public auction except as
363 provided for in paragraph (v) of this section. It is the intent
364 of this section to allow governmental entities to dispose of
365 and/or purchase commodities from other governmental entities at a
366 price that is agreed to by both parties. This shall allow for
367 purchases and/or sales at prices which may be determined to be
368 below the market value if the selling entity determines that the
369 sale at below market value is in the best interest of the
370 taxpayers of the state. Governing authorities shall place the
371 terms of the agreement and any justification on the minutes, and
372 state agencies shall obtain approval from the Department of
373 Finance and Administration, prior to releasing or taking
374 possession of the commodities.

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

379 (viii) **Single source items.** Noncompetitive items
380 available from one (1) source only. In connection with the
381 purchase of noncompetitive items only available from one (1)
382 source, a certification of the conditions and circumstances
383 requiring the purchase shall be filed by the agency with the
384 Department of Finance and Administration and by the governing
385 authority with the board of the governing authority. Upon receipt
386 of that certification the Department of Finance and Administration
387 or the board of the governing authority, as the case may be, may,
388 in writing, authorize the purchase, which authority shall be noted
389 on the minutes of the body at the next regular meeting thereafter.

390 In those situations, a governing authority is not required to
391 obtain the approval of the Department of Finance and
392 Administration.

393 (ix) **Waste disposal facility construction**
394 **contracts.** Construction of incinerators and other facilities for

395 disposal of solid wastes in which products either generated
396 therein, such as steam, or recovered therefrom, such as materials
397 for recycling, are to be sold or otherwise disposed of; provided,
398 however, in constructing such facilities a governing authority or
399 agency shall publicly issue requests for proposals, advertised for
400 in the same manner as provided herein for seeking bids for public
401 construction projects, concerning the design, construction,
402 ownership, operation and/or maintenance of such facilities,
403 wherein such requests for proposals when issued shall contain
404 terms and conditions relating to price, financial responsibility,
405 technology, environmental compatibility, legal responsibilities
406 and such other matters as are determined by the governing
407 authority or agency to be appropriate for inclusion; and after
408 responses to the request for proposals have been duly received,
409 the governing authority or agency may select the most qualified
410 proposal or proposals on the basis of price, technology and other
411 relevant factors and from such proposals, but not limited to the
412 terms thereof, negotiate and enter contracts with one or more of
413 the persons or firms submitting proposals.

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

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

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

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

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

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

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

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

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

455 (xix) **Educational television contracts.** From and
456 after July 1, 1990, contracts by Mississippi Authority for
457 Educational Television with any private educational institution or
458 private nonprofit organization whose purposes are educational in
459 regard to the construction, purchase, lease or lease-purchase of
460 facilities and equipment and the employment of personnel for

461 providing multichannel interactive video systems (ITSF) in the
462 school districts of this state.

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

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

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

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

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

484 (xxv) Repealed.

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

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

494 years.

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

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

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

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

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

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

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

514 (ii) All purchases made by governing authorities,
515 including purchases made pursuant to the provisions of
516 subparagraph (i) of this paragraph (n), may be made upon one (1)
517 purchase order issued per month to each individual vendor prior to
518 delivery of such commodities provided that each individual
519 delivery, load or shipment purchased is properly requisitioned and
520 is properly received and receipted by signed ticket, receipt or
521 invoice, indicating thereon the point of delivery, and provided
522 that, with respect to counties, such commodities are properly
523 accounted for by the receiving clerk or an assistant receiving
524 clerk as provided by Section 31-7-109. Such purchase order shall
525 be invalid on the first calendar day of the month immediately
526 following the month in which it was issued. Purchases in such

527 month immediately following may be made only if a purchase order
528 is issued for such month. Each monthly purchase order shall be
529 retained in the records of the governing authority. Agencies may
530 make purchases as authorized under this subparagraph (ii) in
531 accordance with such regulations, policies and procedures as are
532 promulgated by the Department of Finance and Administration.

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

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

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

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

563 (s) **Fuel management system bidding procedure.** Any
564 governing authority or agency of the state shall, before
565 contracting for the services and products of a fuel management or
566 fuel access system, enter into negotiations with not fewer than
567 two (2) sellers of fuel management or fuel access systems for
568 competitive written bids to provide the services and products for
569 the systems. In the event that the governing authority or agency
570 cannot locate two (2) sellers of such systems or cannot obtain
571 bids from two (2) sellers of such systems, it shall show proof
572 that it made a diligent, good-faith effort to locate and negotiate
573 with two (2) sellers of such systems. Such proof shall include,
574 but not be limited to, publications of a request for proposals and
575 letters soliciting negotiations and bids. For purposes of this
576 paragraph (s), a fuel management or fuel access system is an
577 automated system of acquiring fuel for vehicles as well as
578 management reports detailing fuel use by vehicles and drivers, and
579 the term "competitive written bid" shall have the meaning as
580 defined in paragraph (b) of this section.

581 (t) **Solid waste contract proposal procedure.** Before
582 entering into any contract for garbage collection or disposal,
583 contract for solid waste collection or disposal or contract for
584 sewage collection or disposal, which involves an expenditure of
585 more than Fifty Thousand Dollars (\$50,000.00), a governing
586 authority or agency shall issue publicly a request for proposals
587 concerning the specifications for such services which shall be
588 advertised for in the same manner as provided in this section for
589 seeking bids for purchases which involve an expenditure of more
590 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
591 when issued shall contain terms and conditions relating to price,
592 financial responsibility, technology, legal responsibilities and

593 other relevant factors as are determined by the governing
594 authority or agency to be appropriate for inclusion; all factors
595 determined relevant by the governing authority or agency or
596 required by this paragraph (t) shall be duly included in the
597 advertisement to elicit proposals. After responses to the request
598 for proposals have been duly received, the governing authority or
599 agency shall select the most qualified proposal or proposals on
600 the basis of price, technology and other relevant factors and from
601 such proposals, but not limited to the terms thereof, negotiate
602 and enter contracts with one or more of the persons or firms
603 submitting proposals. If the governing authority or agency deems
604 none of the proposals to be qualified or otherwise acceptable, the
605 request for proposals process may be reinitiated. Notwithstanding
606 any other provisions of this paragraph, where a county with at
607 least thirty-five thousand (35,000) nor more than forty thousand
608 (40,000) population, according to the 1990 federal decennial
609 census, owns or operates a solid waste landfill, the governing
610 authorities of any other county or municipality may contract with
611 the governing authorities of the county owning or operating the
612 landfill, pursuant to a resolution duly adopted and spread upon
613 the minutes of each governing authority involved, for garbage or
614 solid waste collection or disposal services through contract
615 negotiations.

616 (u) **Minority set aside authorization.** Notwithstanding
617 any provision of this section to the contrary, any agency or
618 governing authority, by order placed on its minutes, may, in its
619 discretion, set aside not more than twenty percent (20%) of its
620 anticipated annual expenditures for the purchase of commodities
621 from minority businesses; however, all such set-aside purchases
622 shall comply with all purchasing regulations promulgated by the
623 Department of Finance and Administration and shall be subject to
624 bid requirements under this section. Set-aside purchases for
625 which competitive bids are required shall be made from the lowest

626 and best minority business bidder. For the purposes of this
627 paragraph, the term "minority business" means a business which is
628 owned by a majority of persons who are United States citizens or
629 permanent resident aliens (as defined by the Immigration and
630 Naturalization Service) of the United States, and who are Asian,
631 Black, Hispanic or Native American, according to the following
632 definitions:

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

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

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

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

644 (v) **Construction punch list restriction.** The
645 architect, engineer or other representative designated by the
646 agency or governing authority that is contracting for public
647 construction or renovation may prepare and submit to the
648 contractor only one (1) preliminary punch list of items that do
649 not meet the contract requirements at the time of substantial
650 completion and one (1) final list immediately before final
651 completion and final payment.

652 (w) **Purchase authorization clarification.** Nothing in
653 this section shall be construed as authorizing any purchase not
654 authorized by law.

655 SECTION 2. This act shall take effect and be in force from
656 and after July 1, 2000.