

By: Horhn

To: Finance

## SENATE BILL NO. 3172

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

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

9 SECTION 1. Section 31-7-13, Mississippi Code of 1972, is  
10 amended as follows:[WAN1]

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

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

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

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

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

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

60 Purchases which involve an expenditure of more than Ten Thousand  
61 Dollars (\$10,000.00), exclusive of freight and shipping charges  
62 may be made from the lowest and best bidder after advertising for  
63 competitive sealed bids once each week for two (2) consecutive  
64 weeks in a regular newspaper published in the county or  
65 municipality in which such agency or governing authority is

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

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

132 governing authority from writing specifications to include  
133 life-cycle costing, total cost bids, extended warranties or  
134 guaranteed buy-back provisions, provided that such bid  
135 requirements shall be in compliance with regulations established  
136 by the Department of Audit.

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

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

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

160           (iv) No addendum to bid specifications for such  
161 projects may be issued by the agency or governing authority within  
162 twelve (12) hours of the time established by the agency or  
163 governing authority for the receipt of bids.

164           (e) **Lease-purchase authorization.** Any lease-purchase

165 of equipment which an agency is not required to lease-purchase  
166 under the master lease-purchase program pursuant to Section  
167 31-7-10 and any lease-purchase of equipment which a governing  
168 authority elects to lease-purchase may be acquired by a  
169 lease-purchase agreement under this paragraph (e). Lease-purchase  
170 financing may also be obtained from the vendor or from a  
171 third-party source after having solicited and obtained at least  
172 two (2) written competitive bids, as defined in paragraph (b) of  
173 this section, for such financing without advertising for such  
174 bids. Solicitation for the bids for financing may occur before or  
175 after acceptance of bids for the purchase of such equipment or,  
176 where no such bids for purchase are required, at any time before  
177 the purchase thereof. No such lease-purchase agreement shall be  
178 for an annual rate of interest which is greater than the overall  
179 maximum interest rate to maturity on general obligation  
180 indebtedness permitted under Section 75-17-101, and the term of  
181 such lease-purchase agreement shall not exceed the useful life of  
182 property covered thereby as determined according to the upper  
183 limit of the asset depreciation range (ADR) guidelines for the  
184 Class Life Asset Depreciation Range System established by the  
185 Internal Revenue Service pursuant to the United States Internal  
186 Revenue Code and regulations thereunder as in effect on December  
187 31, 1980, or comparable depreciation guidelines with respect to  
188 any equipment not covered by ADR guidelines. Any lease-purchase  
189 agreement entered into pursuant to this paragraph (e) may contain  
190 any of the terms and conditions which a master lease-purchase  
191 agreement may contain under the provisions of Section 31-7-10(5),  
192 and shall contain an annual allocation dependency clause  
193 substantially similar to that set forth in Section 31-7-10(8).  
194 Each agency or governing authority entering into a lease-purchase  
195 transaction pursuant to this paragraph (e) shall maintain with  
196 respect to each such lease-purchase transaction the same  
197 information as required to be maintained by the Department of

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

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

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

231 authority with respect to any public construction contract shall  
232 have the authority, when granted by an agency or governing  
233 authority, to authorize changes or modifications to the original  
234 contract without the necessity of prior approval of the agency or  
235 governing authority when any such change or modification is less  
236 than one percent (1%) of the total contract amount. The agency or  
237 governing authority may limit the number, manner or frequency of  
238 such emergency changes or modifications.

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

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

264 adjusting unit prices for the change in the cost of such petroleum  
265 products.

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

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

297 and he shall certify in writing thereon from whom such purchase  
298 was made, or with whom such a repair contract was made. At the  
299 board meeting next following the emergency purchase or repair  
300 contract, documentation of the purchase or repair contract,  
301 including a description of the commodity purchased, the price  
302 thereof and the nature of the emergency shall be presented to the  
303 board and shall be placed on the minutes of the board of such  
304 governing authority.

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

323           (m) **Exceptions from bidding requirements.** Excepted  
324 from bid requirements are:

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

329           (ii) **Outside equipment repairs.** Repairs to

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

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

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

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

358                   (vi) **Intergovernmental sales and transfers.**  
359 Purchases, sales, transfers or trades by governing authorities or  
360 state agencies when such purchases, sales, transfers or trades are  
361 made by a private treaty agreement or through means of  
362 negotiation, from any federal agency or authority, another

363 governing authority or state agency of the State of Mississippi,  
364 or any state agency of another state. Nothing in this section  
365 shall permit such purchases through public auction except as  
366 provided for in paragraph (v) of this section. It is the intent  
367 of this section to allow governmental entities to dispose of  
368 and/or purchase commodities from other governmental entities at a  
369 price that is agreed to by both parties. This shall allow for  
370 purchases and/or sales at prices which may be determined to be  
371 below the market value if the selling entity determines that the  
372 sale at below market value is in the best interest of the  
373 taxpayers of the state. Governing authorities shall place the  
374 terms of the agreement and any justification on the minutes, and  
375 state agencies shall obtain approval from the Department of  
376 Finance and Administration, prior to releasing or taking  
377 possession of the commodities.

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

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

393 In those situations, a governing authority is not required to  
394 obtain the approval of the Department of Finance and  
395 Administration.

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

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

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

425                   (xii) **Energy efficiency services and equipment.**  
426 Energy efficiency services and equipment acquired by school  
427 districts, junior colleges, institutions of higher learning and  
428 state agencies or other applicable governmental entities on a

429 shared-savings, lease or lease-purchase basis pursuant to Section  
430 31-7-14.

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

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

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

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

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

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

458 (xix) **Educational television contracts.** From and  
459 after July 1, 1990, contracts by Mississippi Authority for  
460 Educational Television with any private educational institution or  
461 private nonprofit organization whose purposes are educational in

462 regard to the construction, purchase, lease or lease-purchase of  
463 facilities and equipment and the employment of personnel for  
464 providing multichannel interactive video systems (ITSF) in the  
465 school districts of this state.

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

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

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

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

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

487                   (xxv) Repealed.

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

492                   (xxvii) **Municipal water tank maintenance**  
493 **contracts.** Professional maintenance program contracts for the  
494 repair or maintenance of municipal water tanks, which provide

495 professional services needed to maintain municipal water storage  
496 tanks for a fixed annual fee for a duration of two (2) or more  
497 years.

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

499 Purchases made by state agencies involving any item that is  
500 manufactured, processed or produced by the Mississippi Industries  
501 for the Blind.

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

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

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

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

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

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

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

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

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

558           (q) **Exception to county/municipal budget limitations.**  
559 The prohibitions and restrictions set forth in Sections 19-11-27,  
560 21-35-27 and 31-7-49 shall not apply to a contract, lease or

561 lease-purchase agreement entered pursuant to the requirements of  
562 this chapter.

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

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

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

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

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

627 bid requirements under this section. Set-aside purchases for  
628 which competitive bids are required shall be made from the lowest  
629 and best minority business bidder. For the purposes of this  
630 paragraph, the term "minority business" means a business which is  
631 owned by a majority of persons who are United States citizens or  
632 permanent resident aliens (as defined by the Immigration and  
633 Naturalization Service) of the United States, and who are Asian,  
634 Black, Hispanic or Native American, according to the following  
635 definitions:

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

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

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

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

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

655 (w) **Purchase authorization clarification.** Nothing in  
656 this section shall be construed as authorizing any purchase not  
657 authorized by law.

658 (x) **Small contractor set aside requirement.**

659 Notwithstanding any provision of this section to the contrary, the

660 Department of Finance and Administration shall set aside twenty  
661 percent (20%) of the amount expended for any public construction  
662 project that such department manages, not to exceed Five Million  
663 Dollars (\$5,000,000.00), for small contractors. The set-aside  
664 portion of such contract shall comply with regulations promulgated  
665 by the Department of Finance and Administration and shall be  
666 subject to bid requirements under this section. Set-aside  
667 contracts for which competitive bids are required shall be made  
668 from the lowest and best small contractor bidder. For purposes of  
669 this paragraph, the term "small contractor" means a contractor  
670 whose bonding capacity, as determined by the Department of Finance  
671 and Administration, does not exceed Five Million Dollars  
672 (\$5,000,000.00).

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