

By: Senator(s) Horhn

To: Finance

SENATE BILL NO. 2941

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:

11 31-7-13. All agencies and governing authorities shall
12 purchase their commodities and printing; contract for garbage
13 collection or disposal; contract for solid waste collection or
14 disposal; contract for sewage collection or disposal; contract for
15 public construction; and contract for rentals as herein provided.

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

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

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

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

58 (i) **Publication requirement.** Purchases which
59 involve an expenditure of more than Ten Thousand Dollars
60 (\$10,000.00), exclusive of freight and shipping charges may be
61 made from the lowest and best bidder after advertising for

62 competitive sealed bids once each week for two (2) consecutive
63 weeks in a regular newspaper published in the county or
64 municipality in which such agency or governing authority is
65 located. The date as published for the bid opening shall not be
66 less than seven (7) working days after the last published notice;
67 however, if the purchase involves a construction project in which
68 the estimated cost is in excess of Fifteen Thousand Dollars
69 (\$15,000.00), such bids shall not be opened in less than fifteen
70 (15) working days after the last notice is published and the
71 notice for the purchase of such construction shall be published
72 once each week for two (2) consecutive weeks. The notice of
73 intention to let contracts or purchase equipment shall state the
74 time and place at which bids shall be received, list the contracts
75 to be made or types of equipment or supplies to be purchased, and,
76 if all plans and/or specifications are not published, refer to the
77 plans and/or specifications on file. If there is no newspaper
78 published in the county or municipality, then such notice shall be
79 given by posting same at the courthouse, or for municipalities at
80 the city hall, and at two (2) other public places in the county or
81 municipality, and also by publication once each week for two (2)
82 consecutive weeks in some newspaper having a general circulation
83 in the county or municipality in the above provided manner. On
84 the same date that the notice is submitted to the newspaper for
85 publication, the agency or governing authority involved shall mail
86 written notice to, or provide electronic notification to the main
87 office of the Mississippi Contract Procurement Center that
88 contains the same information as that in the published notice.

89 (ii) **Bidding process amendment procedure.** If all
90 plans and/or specifications are published in the notification,
91 then the plans and/or specifications may not be amended. If all
92 plans and/or specifications are not published in the notification,
93 then amendments to the plans/specifications, bid opening date, bid
94 opening time and place may be made, provided that the agency or

95 governing authority maintains a list of all prospective bidders
96 who are known to have received a copy of the bid documents and all
97 such prospective bidders are sent copies of all amendments. This
98 notification of amendments may be made via mail, facsimile,
99 electronic mail or other generally accepted method of information
100 distribution. No addendum to bid specifications may be issued
101 within forty-eight (48) working hours of the time established for
102 the receipt of bids unless such addendum also amends the bid
103 opening to a date not less than five (5) working days after the
104 date of the addendum.

105 (iii) **Filing requirement.** In all cases involving
106 governing authorities, before the notice shall be published or
107 posted, the plans or specifications for the construction or
108 equipment being sought shall be filed with the clerk of the board
109 of the governing authority. In addition to these requirements, a
110 bid file shall be established which shall indicate those vendors
111 to whom such solicitations and specifications were issued, and
112 such file shall also contain such information as is pertinent to
113 the bid.

114 (iv) **Specification restrictions.** Specifications
115 pertinent to such bidding shall be written so as not to exclude
116 comparable equipment of domestic manufacture. Provided, however,
117 that should valid justification be presented, the Department of
118 Finance and Administration or the board of a governing authority
119 may approve a request for specific equipment necessary to perform
120 a specific job. Further, such justification, when placed on the
121 minutes of the board of a governing authority, may serve as
122 authority for that governing authority to write specifications to
123 require a specific item of equipment needed to perform a specific
124 job. In addition to these requirements, from and after July 1,
125 1990, vendors of relocatable classrooms and the specifications for
126 the purchase of such relocatable classrooms published by local
127 school boards shall meet all pertinent regulations of the State

128 Board of Education, including prior approval of such bid by the
129 State Department of Education.

130 (d) **Lowest and best bid decision procedure.**

131 (i) **Decision procedure.** Purchases may be made
132 from the lowest and best bidder. In determining the lowest and
133 best bid, freight and shipping charges shall be included.
134 Life-cycle costing, total cost bids, warranties, guaranteed
135 buy-back provisions and other relevant provisions may be included
136 in the best bid calculation. All best bid procedures for state
137 agencies must be in compliance with regulations established by the
138 Department of Finance and Administration. If any governing
139 authority accepts a bid other than the lowest bid actually
140 submitted, it shall place on its minutes detailed calculations and
141 narrative summary showing that the accepted bid was determined to
142 be the lowest and best bid, including the dollar amount of the
143 accepted bid and the dollar amount of the lowest bid. No agency
144 or governing authority shall accept a bid based on items not
145 included in the specifications.

146 (ii) **Construction project negotiations authority.**

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

152 (e) **Lease-purchase authorization.** For the purposes of
153 this section, the term "equipment" shall mean equipment, furniture
154 and, if applicable, associated software and other applicable
155 direct costs associated with the acquisition. Any lease-purchase
156 of equipment which an agency is not required to lease-purchase
157 under the master lease-purchase program pursuant to Section
158 31-7-10 and any lease-purchase of equipment which a governing
159 authority elects to lease-purchase may be acquired by a
160 lease-purchase agreement under this paragraph (e). Lease-purchase

161 financing may also be obtained from the vendor or from a
162 third-party source after having solicited and obtained at least
163 two (2) written competitive bids, as defined in paragraph (b) of
164 this section, for such financing without advertising for such
165 bids. Solicitation for the bids for financing may occur before or
166 after acceptance of bids for the purchase of such equipment or,
167 where no such bids for purchase are required, at any time before
168 the purchase thereof. No such lease-purchase agreement shall be
169 for an annual rate of interest which is greater than the overall
170 maximum interest rate to maturity on general obligation
171 indebtedness permitted under Section 75-17-101, and the term of
172 such lease-purchase agreement shall not exceed the useful life of
173 equipment covered thereby as determined according to the upper
174 limit of the asset depreciation range (ADR) guidelines for the
175 Class Life Asset Depreciation Range System established by the
176 Internal Revenue Service pursuant to the United States Internal
177 Revenue Code and regulations thereunder as in effect on December
178 31, 1980, or comparable depreciation guidelines with respect to
179 any equipment not covered by ADR guidelines. Any lease-purchase
180 agreement entered into pursuant to this paragraph (e) may contain
181 any of the terms and conditions which a master lease-purchase
182 agreement may contain under the provisions of Section 31-7-10(5),
183 and shall contain an annual allocation dependency clause
184 substantially similar to that set forth in Section 31-7-10(8).
185 Each agency or governing authority entering into a lease-purchase
186 transaction pursuant to this paragraph (e) shall maintain with
187 respect to each such lease-purchase transaction the same
188 information as required to be maintained by the Department of
189 Finance and Administration pursuant to Section 31-7-10(13).
190 However, nothing contained in this section shall be construed to
191 permit agencies to acquire items of equipment with a total
192 acquisition cost in the aggregate of less than Ten Thousand
193 Dollars (\$10,000.00) by a single lease-purchase transaction. All

194 equipment, and the purchase thereof by any lessor, acquired by
195 lease-purchase under this paragraph and all lease-purchase
196 payments with respect thereto shall be exempt from all Mississippi
197 sales, use and ad valorem taxes. Interest paid on any
198 lease-purchase agreement under this section shall be exempt from
199 State of Mississippi income taxation.

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

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

227 than one percent (1%) of the total contract amount. The agency or
228 governing authority may limit the number, manner or frequency of
229 such emergency changes or modifications.

230 (h) **Petroleum purchase alternative.** In addition to
231 other methods of purchasing authorized in this chapter, when any
232 agency or governing authority shall have a need for gas, diesel
233 fuel, oils and/or other petroleum products in excess of the amount
234 set forth in paragraph (a) of this section, such agency or
235 governing authority may purchase the commodity after having
236 solicited and obtained at least two (2) competitive written bids,
237 as defined in paragraph (b) of this section. If two (2)
238 competitive written bids are not obtained the entity shall comply
239 with the procedures set forth in paragraph (c) of this section.
240 In the event any agency or governing authority shall have
241 advertised for bids for the purchase of gas, diesel fuel, oils and
242 other petroleum products and coal and no acceptable bids can be
243 obtained, such agency or governing authority is authorized and
244 directed to enter into any negotiations necessary to secure the
245 lowest and best contract available for the purchase of such
246 commodities.

247 (i) **Road construction petroleum products price**
248 **adjustment clause authorization.** Any agency or governing
249 authority authorized to enter into contracts for the construction,
250 maintenance, surfacing or repair of highways, roads or streets,
251 may include in its bid proposal and contract documents a price
252 adjustment clause with relation to the cost to the contractor,
253 including taxes, based upon an industry-wide cost index, of
254 petroleum products including asphalt used in the performance or
255 execution of the contract or in the production or manufacture of
256 materials for use in such performance. Such industry-wide index
257 shall be established and published monthly by the Mississippi
258 Department of Transportation with a copy thereof to be mailed,
259 upon request, to the clerks of the governing authority of each

260 municipality and the clerks of each board of supervisors
261 throughout the state. The price adjustment clause shall be based
262 on the cost of such petroleum products only and shall not include
263 any additional profit or overhead as part of the adjustment. The
264 bid proposals or document contract shall contain the basis and
265 methods of adjusting unit prices for the change in the cost of
266 such petroleum products.

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

288 (k) **Governing authority emergency purchase procedure.**
289 If the governing authority, or the governing authority acting
290 through its designee, shall determine that an emergency exists in
291 regard to the purchase of any commodities or repair contracts, so
292 that the delay incident to giving opportunity for competitive

293 bidding would be detrimental to the interest of the governing
294 authority, then the provisions herein for competitive bidding
295 shall not apply and any officer or agent of such governing
296 authority having general or special authority therefor in making
297 such purchase or repair shall approve the bill presented therefor,
298 and he shall certify in writing thereon from whom such purchase
299 was made, or with whom such a repair contract was made. At the
300 board meeting next following the emergency purchase or repair
301 contract, documentation of the purchase or repair contract,
302 including a description of the commodity purchased, the price
303 thereof and the nature of the emergency shall be presented to the
304 board and shall be placed on the minutes of the board of such
305 governing authority.

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

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

326 (i) **Purchasing agreements approved by department.**

327 Purchasing agreements, contracts and maximum price regulations
328 executed or approved by the Department of Finance and
329 Administration.

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

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

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

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

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

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

383 (viii) **Single source items.** Noncompetitive items
384 available from one (1) source only. In connection with the
385 purchase of noncompetitive items only available from one (1)
386 source, a certification of the conditions and circumstances
387 requiring the purchase shall be filed by the agency with the
388 Department of Finance and Administration and by the governing
389 authority with the board of the governing authority. Upon receipt
390 of that certification the Department of Finance and Administration
391 or the board of the governing authority, as the case may be, may,

392 in writing, authorize the purchase, which authority shall be noted
393 on the minutes of the body at the next regular meeting thereafter.
394 In those situations, a governing authority is not required to
395 obtain the approval of the Department of Finance and
396 Administration.

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

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

421 (xi) **Information technology products.** Purchases
422 of information technology products made by governing authorities
423 under the provisions of purchase schedules, or contracts executed
424 or approved by the Mississippi Department of Information

425 Technology Services and designated for use by governing
426 authorities.

427 (xii) **Energy efficiency services and equipment.**
428 Energy efficiency services and equipment acquired by school
429 districts, community and junior colleges, institutions of higher
430 learning and state agencies or other applicable governmental
431 entities on a shared-savings, lease or lease-purchase basis
432 pursuant to Section 31-7-14.

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

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

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

449 (xvi) **Election ballots.** Purchases of ballots
450 printed pursuant to Section 23-15-351.

451 (xvii) **Multichannel interactive video systems.**
452 From and after July 1, 1990, contracts by Mississippi Authority
453 for Educational Television with any private educational
454 institution or private nonprofit organization whose purposes are
455 educational in regard to the construction, purchase, lease or
456 lease-purchase of facilities and equipment and the employment of

457 personnel for providing multichannel interactive video systems
458 (ITSF) in the school districts of this state.

459 (xviii) **Purchases of prison industry products.**

460 From and after January 1, 1991, purchases made by state agencies
461 or governing authorities involving any item that is manufactured,
462 processed, grown or produced from the state's prison industries.

463 (xix) **Undercover operations equipment.** Purchases
464 of surveillance equipment or any other high-tech equipment to be
465 used by law enforcement agents in undercover operations, provided
466 that any such purchase shall be in compliance with regulations
467 established by the Department of Finance and Administration.

468 (xx) **Junior college books for rent.** Purchases by
469 community or junior colleges of textbooks which are obtained for
470 the purpose of renting such books to students as part of a book
471 service system.

472 (xxi) **Certain school district purchases.**

473 Purchases of commodities made by school districts from vendors
474 with which any levying authority of the school district, as
475 defined in Section 37-57-1, has contracted through competitive
476 bidding procedures for purchases of the same commodities.

477 (xxii) **Garbage, solid waste and sewage contracts.**

478 Contracts for garbage collection or disposal, contracts for solid
479 waste collection or disposal and contracts for sewage collection
480 or disposal.

481 (xxiii) **Municipal water tank maintenance**

482 **contracts.** Professional maintenance program contracts for the
483 repair or maintenance of municipal water tanks, which provide
484 professional services needed to maintain municipal water storage
485 tanks for a fixed annual fee for a duration of two (2) or more
486 years.

487 (xxiv) **Purchases of Mississippi Industries for the**

488 **Blind products.** Purchases made by state agencies or governing

489 authorities involving any item that is manufactured, processed or
490 produced by the Mississippi Industries for the Blind.

491 (xxv) **Purchases of state-adopted textbooks.**

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

493 (xxvi) **Certain purchases under the Mississippi**

494 **Major Economic Impact Act.** Contracts entered into pursuant to the
495 provisions of Section 57-75-9(2) and (3).

496 (n) **Term contract authorization.** All contracts for the
497 purchase of:

498 (i) All contracts for the purchase of commodities,
499 equipment and public construction (including, but not limited to,
500 repair and maintenance), may be let for periods of not more than
501 sixty (60) months in advance, subject to applicable statutory
502 provisions prohibiting the letting of contracts during specified
503 periods near the end of terms of office. Term contracts for a
504 period exceeding twenty-four (24) months shall also be subject to
505 ratification or cancellation by governing authority boards taking
506 office subsequent to the governing authority board entering the
507 contract.

508 (ii) Bid proposals and contracts may include price
509 adjustment clauses with relation to the cost to the contractor
510 based upon a nationally published industry-wide or nationally
511 published and recognized cost index. The cost index used in a
512 price adjustment clause shall be determined by the Department of
513 Finance and Administration for the state agencies and by the
514 governing board for governing authorities. The bid proposal and
515 contract documents utilizing a price adjustment clause shall
516 contain the basis and method of adjusting unit prices for the
517 change in the cost of such commodities, equipment and public
518 construction.

519 (o) **Purchase law violation prohibition and vendor**
520 **penalty.** No contract or purchase as herein authorized shall be
521 made for the purpose of circumventing the provisions of this

522 section requiring competitive bids, nor shall it be lawful for any
523 person or concern to submit individual invoices for amounts within
524 those authorized for a contract or purchase where the actual value
525 of the contract or commodity purchased exceeds the authorized
526 amount and the invoices therefor are split so as to appear to be
527 authorized as purchases for which competitive bids are not
528 required. Submission of such invoices shall constitute a
529 misdemeanor punishable by a fine of not less than Five Hundred
530 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
531 or by imprisonment for thirty (30) days in the county jail, or
532 both such fine and imprisonment. In addition, the claim or claims
533 submitted shall be forfeited.

534 (p) **Electrical utility petroleum-based equipment**
535 **purchase procedure.** When in response to a proper advertisement
536 therefor, no bid firm as to price is submitted to an electric
537 utility for power transformers, distribution transformers, power
538 breakers, reclosers or other articles containing a petroleum
539 product, the electric utility may accept the lowest and best bid
540 therefor although the price is not firm.

541 (q) **Fuel management system bidding procedure.** Any
542 governing authority or agency of the state shall, before
543 contracting for the services and products of a fuel management or
544 fuel access system, enter into negotiations with not fewer than
545 two (2) sellers of fuel management or fuel access systems for
546 competitive written bids to provide the services and products for
547 the systems. In the event that the governing authority or agency
548 cannot locate two (2) sellers of such systems or cannot obtain
549 bids from two (2) sellers of such systems, it shall show proof
550 that it made a diligent, good-faith effort to locate and negotiate
551 with two (2) sellers of such systems. Such proof shall include,
552 but not be limited to, publications of a request for proposals and
553 letters soliciting negotiations and bids. For purposes of this
554 paragraph (q), a fuel management or fuel access system is an

555 automated system of acquiring fuel for vehicles as well as
556 management reports detailing fuel use by vehicles and drivers, and
557 the term "competitive written bid" shall have the meaning as
558 defined in paragraph (b) of this section. Governing authorities
559 and agencies shall be exempt from this process when contracting
560 for the services and products of a fuel management or fuel access
561 systems under the terms of a state contract established by the
562 Office of Purchasing and Travel.

563 (r) **Solid waste contract proposal procedure.** Before
564 entering into any contract for garbage collection or disposal,
565 contract for solid waste collection or disposal or contract for
566 sewage collection or disposal, which involves an expenditure of
567 more than Fifty Thousand Dollars (\$50,000.00), a governing
568 authority or agency shall issue publicly a request for proposals
569 concerning the specifications for such services which shall be
570 advertised for in the same manner as provided in this section for
571 seeking bids for purchases which involve an expenditure of more
572 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
573 when issued shall contain terms and conditions relating to price,
574 financial responsibility, technology, legal responsibilities and
575 other relevant factors as are determined by the governing
576 authority or agency to be appropriate for inclusion; all factors
577 determined relevant by the governing authority or agency or
578 required by this paragraph (r) shall be duly included in the
579 advertisement to elicit proposals. After responses to the request
580 for proposals have been duly received, the governing authority or
581 agency shall select the most qualified proposal or proposals on
582 the basis of price, technology and other relevant factors and from
583 such proposals, but not limited to the terms thereof, negotiate
584 and enter contracts with one or more of the persons or firms
585 submitting proposals. If the governing authority or agency deems
586 none of the proposals to be qualified or otherwise acceptable, the
587 request for proposals process may be reinitiated. Notwithstanding

588 any other provisions of this paragraph, where a county with at
589 least thirty-five thousand (35,000) nor more than forty thousand
590 (40,000) population, according to the 1990 federal decennial
591 census, owns or operates a solid waste landfill, the governing
592 authorities of any other county or municipality may contract with
593 the governing authorities of the county owning or operating the
594 landfill, pursuant to a resolution duly adopted and spread upon
595 the minutes of each governing authority involved, for garbage or
596 solid waste collection or disposal services through contract
597 negotiations.

598 (s) **Minority set aside authorization.** Notwithstanding
599 any provision of this section to the contrary, any agency or
600 governing authority, by order placed on its minutes, may, in its
601 discretion, set aside not more than twenty percent (20%) of its
602 anticipated annual expenditures for the purchase of commodities
603 from minority businesses; however, all such set-aside purchases
604 shall comply with all purchasing regulations promulgated by the
605 Department of Finance and Administration and shall be subject to
606 bid requirements under this section. Set-aside purchases for
607 which competitive bids are required shall be made from the lowest
608 and best minority business bidder. For the purposes of this
609 paragraph, the term "minority business" means a business which is
610 owned by a majority of persons who are United States citizens or
611 permanent resident aliens (as defined by the Immigration and
612 Naturalization Service) of the United States, and who are Asian,
613 Black, Hispanic or Native American, according to the following
614 definitions:

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

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

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

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

626 (t) **Construction punch list restriction.** The
627 architect, engineer or other representative designated by the
628 agency or governing authority that is contracting for public
629 construction or renovation may prepare and submit to the
630 contractor only one (1) preliminary punch list of items that do
631 not meet the contract requirements at the time of substantial
632 completion and one (1) final list immediately before final
633 completion and final payment.

634 (u) **Purchase authorization clarification.** Nothing in
635 this section shall be construed as authorizing any purchase not
636 authorized by law.

637 (v) **Small contractor set aside requirement.**
638 Notwithstanding any provision of this section to the contrary, the
639 Department of Finance and Administration shall set aside twenty
640 percent (20%) of the amount expended for any public construction
641 project that such department manages, not to exceed Five Million
642 Dollars (\$5,000,000.00), for small contractors. The set-aside
643 portion of such contract shall comply with regulations promulgated
644 by the Department of Finance and Administration and shall be
645 subject to bid requirements under this section. Set-aside
646 contracts for which competitive bids are required shall be made
647 from the lowest and best small contractor bidder. For purposes of
648 this paragraph, the term "small contractor" means a contractor
649 whose bonding capacity, as determined by the Department of Finance
650 and Administration, does not exceed Five Million Dollars
651 (\$5,000,000.00).

652 SECTION 2. This act shall take effect and be in force from
653 and after July 1, 2001.