

By: Representative Guice

To: Appropriations

HOUSE BILL NO. 5

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE PUBLIC PURCHASING LAWS TO PROHIBIT ANY ADDENDUMS TO BID  
3 SPECIFICATIONS WITHIN TWO WORKING DAYS OF THE 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:

8 31-7-13. All agencies and governing authorities shall  
9 purchase their commodities and printing; contract for garbage  
10 collection or disposal; contract for solid waste collection or  
11 disposal; contract for sewage collection or disposal; contract for  
12 public construction; and contract for rentals as herein provided.

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

22 (b) **Bidding procedure for purchases over \$1,500.00 but**  
23 **not over \$10,000.00.** Purchases which involve an expenditure of  
24 more than One Thousand Five Hundred Dollars (\$1,500.00) but not  
25 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight  
26 and shipping charges may be made from the lowest and best bidder  
27 without publishing or posting advertisement for bids, provided at  
28 least two (2) competitive written bids have been obtained. Any



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

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

55 (i) **Publication requirement.** Purchases which  
56 involve an expenditure of more than Ten Thousand Dollars  
57 (\$10,000.00), exclusive of freight and shipping charges may be  
58 made from the lowest and best bidder after advertising for  
59 competitive sealed bids once each week for two (2) consecutive  
60 weeks in a regular newspaper published in the county or  
61 municipality in which such agency or governing authority is



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

86 (ii) **Bidding process amendment procedure.** If all  
87 plans and/or specifications are published in the notification,  
88 then the plans and/or specifications may not be amended. If all  
89 plans and/or specifications are not published in the notification,  
90 then amendments to the plans/specifications, bid opening date, bid  
91 opening time and place may be made, provided that the agency or  
92 governing authority maintains a list of all prospective bidders  
93 who are known to have received a copy of the bid documents and all  
94 such prospective bidders are sent copies of all amendments. This



95 notification of amendments may be made via mail, facsimile,  
96 electronic mail or other generally accepted method of information  
97 distribution. No addendum to bid specifications may be issued  
98 within two (2) working days of the time established for the  
99 receipt of bids unless such addendum also amends the bid opening  
100 to a date not less than five (5) working days after the date of  
101 the addendum.

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

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

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



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

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

149                   (e) **Lease-purchase authorization.** For the purposes of  
150 this section, the term "equipment" shall mean equipment, furniture  
151 and, if applicable, associated software and other applicable  
152 direct costs associated with the acquisition. Any lease-purchase  
153 of equipment which an agency is not required to lease-purchase  
154 under the master lease-purchase program pursuant to Section  
155 31-7-10 and any lease-purchase of equipment which a governing  
156 authority elects to lease-purchase may be acquired by a  
157 lease-purchase agreement under this paragraph (e). Lease-purchase  
158 financing may also be obtained from the vendor or from a  
159 third-party source after having solicited and obtained at least  
160 two (2) written competitive bids, as defined in paragraph (b) of



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



194 sales, use and ad valorem taxes. Interest paid on any  
195 lease-purchase agreement under this section shall be exempt from  
196 State of Mississippi income taxation.

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

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



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

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





260 any additional profit or overhead as part of the adjustment. The  
261 bid proposals or document contract shall contain the basis and  
262 methods of adjusting unit prices for the change in the cost of  
263 such petroleum products.

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

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



293 authority having general or special authority therefor in making  
294 such purchase or repair shall approve the bill presented therefor,  
295 and he shall certify in writing thereon from whom such purchase  
296 was made, or with whom such a repair contract was made. At the  
297 board meeting next following the emergency purchase or repair  
298 contract, documentation of the purchase or repair contract,  
299 including a description of the commodity purchased, the price  
300 thereof and the nature of the emergency shall be presented to the  
301 board and shall be placed on the minutes of the board of such  
302 governing authority.

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

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

323                   (i) **Purchasing agreements approved by department.**  
324 Purchasing agreements, contracts and maximum price regulations



325 executed or approved by the Department of Finance and  
326 Administration.

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

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

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

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

356                   (vi) **Intergovernmental sales and transfers.**  
357 Purchases, sales, transfers or trades by governing authorities or



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

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

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



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

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

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

418 (xi) **Information technology products.** Purchases  
419 of information technology products made by governing authorities  
420 under the provisions of purchase schedules, or contracts executed  
421 or approved by the Mississippi Department of Information  
422 Technology Services and designated for use by governing  
423 authorities.



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

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

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

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

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

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



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

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

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

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

469 (xxi) **Certain school district purchases.**  
470 Purchases of commodities made by school districts from vendors  
471 with which any levying authority of the school district, as  
472 defined in Section 37-57-1, has contracted through competitive  
473 bidding procedures for purchases of the same commodities.

474 (xxii) **Garbage, solid waste and sewage contracts.**  
475 Contracts for garbage collection or disposal, contracts for solid  
476 waste collection or disposal and contracts for sewage collection  
477 or disposal.

478 (xxiii) **Municipal water tank maintenance**  
479 **contracts.** Professional maintenance program contracts for the  
480 repair or maintenance of municipal water tanks, which provide  
481 professional services needed to maintain municipal water storage  
482 tanks for a fixed annual fee for a duration of two (2) or more  
483 years.

484 (xxiv) **Purchases of Mississippi Industries for the**  
485 **Blind products.** Purchases made by state agencies or governing  
486 authorities involving any item that is manufactured, processed or  
487 produced by the Mississippi Industries for the Blind.



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

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

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

491 **Major Economic Impact Act.** Contracts entered into pursuant to the

492 provisions of Section 57-75-9(2) and (3).

493 (xxvii) **Used heavy or specialized machinery or**

494 **equipment for installation of soil and water conservation**

495 **practices purchased at auction.** Used heavy or specialized

496 machinery or equipment used for the installation and

497 implementation of soil and water conservation practices or

498 measures purchased subject to the restrictions provided in

499 Sections 69-27-331 through 69-27-341. Any purchase by the State

500 Soil and Water Conservation Commission under the exemption

501 authorized by this subparagraph shall require advance

502 authorization spread upon the minutes of the commission to include

503 the listing of the item or items authorized to be purchased and

504 the maximum bid authorized to be paid for each item or items.

505 (n) **Term contract authorization.** All contracts for the

506 purchase of:

507 (i) All contracts for the purchase of commodities,

508 equipment and public construction (including, but not limited to,

509 repair and maintenance), may be let for periods of not more than

510 sixty (60) months in advance, subject to applicable statutory

511 provisions prohibiting the letting of contracts during specified

512 periods near the end of terms of office. Term contracts for a

513 period exceeding twenty-four (24) months shall also be subject to

514 ratification or cancellation by governing authority boards taking

515 office subsequent to the governing authority board entering the

516 contract.

517 (ii) Bid proposals and contracts may include price

518 adjustment clauses with relation to the cost to the contractor

519 based upon a nationally published industry-wide or nationally

520 published and recognized cost index. The cost index used in a





521 price adjustment clause shall be determined by the Department of  
522 Finance and Administration for the state agencies and by the  
523 governing board for governing authorities. The bid proposal and  
524 contract documents utilizing a price adjustment clause shall  
525 contain the basis and method of adjusting unit prices for the  
526 change in the cost of such commodities, equipment and public  
527 construction.

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

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

550           (q) **Fuel management system bidding procedure.** Any  
551 governing authority or agency of the state shall, before  
552 contracting for the services and products of a fuel management or  
553 fuel access system, enter into negotiations with not fewer than



554 two (2) sellers of fuel management or fuel access systems for  
555 competitive written bids to provide the services and products for  
556 the systems. In the event that the governing authority or agency  
557 cannot locate two (2) sellers of such systems or cannot obtain  
558 bids from two (2) sellers of such systems, it shall show proof  
559 that it made a diligent, good-faith effort to locate and negotiate  
560 with two (2) sellers of such systems. Such proof shall include,  
561 but not be limited to, publications of a request for proposals and  
562 letters soliciting negotiations and bids. For purposes of this  
563 paragraph (q), a fuel management or fuel access system is an  
564 automated system of acquiring fuel for vehicles as well as  
565 management reports detailing fuel use by vehicles and drivers, and  
566 the term "competitive written bid" shall have the meaning as  
567 defined in paragraph (b) of this section. Governing authorities  
568 and agencies shall be exempt from this process when contracting  
569 for the services and products of a fuel management or fuel access  
570 systems under the terms of a state contract established by the  
571 Office of Purchasing and Travel.

572 (r) **Solid waste contract proposal procedure.** Before  
573 entering into any contract for garbage collection or disposal,  
574 contract for solid waste collection or disposal or contract for  
575 sewage collection or disposal, which involves an expenditure of  
576 more than Fifty Thousand Dollars (\$50,000.00), a governing  
577 authority or agency shall issue publicly a request for proposals  
578 concerning the specifications for such services which shall be  
579 advertised for in the same manner as provided in this section for  
580 seeking bids for purchases which involve an expenditure of more  
581 than Ten Thousand Dollars (\$10,000.00). Any request for proposals  
582 when issued shall contain terms and conditions relating to price,  
583 financial responsibility, technology, legal responsibilities and  
584 other relevant factors as are determined by the governing  
585 authority or agency to be appropriate for inclusion; all factors  
586 determined relevant by the governing authority or agency or



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

607           (s) **Minority set aside authorization.** Notwithstanding  
608 any provision of this section to the contrary, any agency or  
609 governing authority, by order placed on its minutes, may, in its  
610 discretion, set aside not more than twenty percent (20%) of its  
611 anticipated annual expenditures for the purchase of commodities  
612 from minority businesses; however, all such set-aside purchases  
613 shall comply with all purchasing regulations promulgated by the  
614 Department of Finance and Administration and shall be subject to  
615 bid requirements under this section. Set-aside purchases for  
616 which competitive bids are required shall be made from the lowest  
617 and best minority business bidder. For the purposes of this  
618 paragraph, the term "minority business" means a business which is  
619 owned by a majority of persons who are United States citizens or



620 permanent resident aliens (as defined by the Immigration and  
621 Naturalization Service) of the United States, and who are Asian,  
622 Black, Hispanic or Native American, according to the following  
623 definitions:

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

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

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

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

635 (t) **Construction punch list restriction.** The  
636 architect, engineer or other representative designated by the  
637 agency or governing authority that is contracting for public  
638 construction or renovation may prepare and submit to the  
639 contractor only one (1) preliminary punch list of items that do  
640 not meet the contract requirements at the time of substantial  
641 completion and one (1) final list immediately before final  
642 completion and final payment.

643 (u) **Purchase authorization clarification.** Nothing in  
644 this section shall be construed as authorizing any purchase not  
645 authorized by law.

646 **SECTION 2.** This act shall take effect and be in force from  
647 and after July 1, 2002.

