MISSISSIPPI LEGISLATURE  
REGULAR SESSION 2002  

By: Representative Wallace  
To: Appropriations  

HOUSE BILL NO. 1039  

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

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

SECTION 1. (1) Each individual, corporation, partnership,  
association, organization or other entity that enters a new  
contract or renews an existing contract to conduct business with  
the State of Mississippi or any agency, department, institution or  
political subdivision of the state, in an amount that will or is  
reasonably anticipated to exceed One Hundred Thousand Dollars  
($100,000.00) in any fiscal year of the state or the political  
subdivision with which the business is to be conducted, shall file  
with the Department of Finance and Administration in the case a  
contract with the state or with the State Auditor in the case a  
contract with a political subdivision, a subcontracting plan that  
outlines the manner in which the entity plans to utilize the  
services of minority-owned businesses in the business to be  
conducted with the state or political subdivision, and that  
includes a goal for the utilization of the services of  
minority-owned businesses expressed as a percentage of the total  
business to be conducted under the contract. The entity shall  
file the plan required by this section before it may conduct any  
business under the contract with the state or political
subdivision with which the entity has the contract. The state and
each political subdivision of the state having a contract with an
entity for which the plan required by this section must be filed
shall be prohibited from conducting any business under the
contract until the entity has filed the plan.

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

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

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

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

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

(e) Female; or

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

SECTION 2. Section 25-53-5, Mississippi Code of 1972, is
amended as follows:

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

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

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

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

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

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

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

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

(h) The authority shall adopt reasonable rules and
regulations requiring the reporting to the authority through the
office of executive director of such information as may be
required for carrying out the purposes of this chapter and may also establish such reasonable procedures to be followed in the presentation of bills for payment under the terms of all contracts for the acquisition of computer equipment and services now or hereafter in force as may be required by the authority or by the executive director in the execution of their powers and duties.

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

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

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

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

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

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

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

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

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

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

(q) The authority is authorized to purchase, lease, or rent information technology and services for the purpose of establishing pilot projects to investigate emerging technologies. These acquisitions shall be limited to new technologies and shall be limited to an amount set by annual appropriation of the Legislature. These acquisitions shall be exempt from the advertising and bidding requirement.

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

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

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

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

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

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

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

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

(f) Contracts for the procurement of telecommunications
equipment, systems or related services shall be subject to the
provisions of Section 1 of this act.

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

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

(2) Governing authorities may purchase commodities approved
by the Department of Finance and Administration from the state
contract vendor, or from any source offering the identical
commodity, at a price not exceeding the state contract price
established by the Department of Finance and Administration for
such commodity, without obtaining or advertising for competitive
bids. Governing authorities that do not exercise the option to
purchase such commodities from the state contract vendor or from
another source offering the identical commodity at a price not
exceeding the state contract price established by the Department
of Finance and Administration shall make such purchases pursuant
to the provisions of Section 31-7-13 without regard to state
contract prices established by the Department of Finance and Administration, unless such purchases are authorized to be made under subsection (5) of this section.

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

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

(5) Any school district may purchase commodities from vendors with which any levying authority of the school district, as defined in Section 37-57-1, has contracted through competitive bidding procedures pursuant to Section 31-7-13 for purchases of the same commodities. Purchases authorized by this subsection may be made by a school district without obtaining or advertising for competitive bids, and such purchases shall be made at the same prices and under the same conditions as purchases of the same commodities are to be made by the levying authority of the school district under the contract with the vendor.
SECTION 5. Section 31-7-13, Mississippi Code of 1972, is amended as follows:

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

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

(b) Bidding procedure for purchases over $1,500.00 but not over $10,000.00. Purchases which involve an expenditure of more than One Thousand Five Hundred Dollars ($1,500.00) but not more than Ten Thousand Dollars ($10,000.00), exclusive of freight and shipping charges may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. Any governing authority purchasing commodities pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, with regard to governing authorities other than counties, or its purchase clerk, or his designee, with regard to counties, to accept the lowest and best competitive written bid. Such authorization shall be made in writing by the governing authority and shall be maintained on file in the primary office of the agency and recorded in the official minutes of the governing authority, as appropriate. The purchasing agent or the purchase clerk, or their designee, as the case may be, and not the
governing authority, shall be liable for any penalties and/or
damages as may be imposed by law for any act or omission of the
purchasing agent or purchase clerk, or their designee, constituting a violation of law in accepting any bid without
approval by the governing authority. The term "competitive
written bid" shall mean a bid submitted on a bid form furnished by
the buying agency or governing authority and signed by authorized
personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by
authorized personnel representing the vendor. Bids may be
submitted by facsimile, electronic mail or other generally
accepted method of information distribution. Bids submitted by
electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing
authorities.

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

(i) **Publication requirement.** Purchases which involve an expenditure of more than Ten Thousand Dollars ($10,000.00), exclusive of freight and shipping charges may be made from the lowest and best bidder after advertising for competitive sealed bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Fifteen Thousand Dollars ($15,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts
to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Contract Procurement Center that contains the same information as that in the published notice.

(ii) **Bidding process amendment procedure.** If all plans and/or specifications are published in the notification, then the plans and/or specifications may not be amended. If all plans and/or specifications are not published in the notification, then amendments to the plans/specifications, bid opening date, bid opening time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments. This notification of amendments may be made via mail, facsimile, electronic mail or other generally accepted method of information distribution. No addendum to bid specifications may be issued within forty-eight (48) working hours of the time established for the receipt of bids unless such addendum also amends the bid opening to a date not less than five (5) working days after the date of the addendum.

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

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

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

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

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

(e) Lease-purchase authorization. For the purposes of this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of equipment covered thereby as determined according to the upper
limit of the asset depreciation range (ADR) guidelines for the
Class Life Asset Depreciation Range System established by the
Internal Revenue Service pursuant to the United States Internal
Revenue Code and regulations thereunder as in effect on December
31, 1980, or comparable depreciation guidelines with respect to
any equipment not covered by ADR guidelines. Any lease-purchase
agreement entered into pursuant to this paragraph (e) may contain
any of the terms and conditions which a master lease-purchase
agreement may contain under the provisions of Section 31-7-10(5),
and shall contain an annual allocation dependency clause
substantially similar to that set forth in Section 31-7-10(8).
Each agency or governing authority entering into a lease-purchase
transaction pursuant to this paragraph (e) shall maintain with
respect to each such lease-purchase transaction the same
information as required to be maintained by the Department of
Finance and Administration pursuant to Section 31-7-10(13).
However, nothing contained in this section shall be construed to
permit agencies to acquire items of equipment with a total
acquisition cost in the aggregate of less than Ten Thousand
Dollars ($10,000.00) by a single lease-purchase transaction. All
equipment, and the purchase thereof by any lessor, acquired by
lease-purchase under this paragraph and all lease-purchase
payments with respect thereto shall be exempt from all Mississippi
sales, use and ad valorem taxes. Interest paid on any
lease-purchase agreement under this section shall be exempt from
State of Mississippi income taxation.

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

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

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

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

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

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

If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority.
(l) Hospital purchase or lease authorization. The commissioners or board of trustees of any hospital owned or owned and operated separately or jointly by one or more counties, cities, towns, supervisors districts or election districts, or combinations thereof, may contract with such lowest and best bidder for the purchase or lease of any commodity under a contract of purchase or lease-purchase agreement whose obligatory terms do not exceed five (5) years. In addition to the authority granted herein, the commissioners or board of trustees are authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee.

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

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

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

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

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

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

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

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

(viii) **Single source items.** Noncompetitive items
available from one (1) source only. In connection with the
purchase of noncompetitive items only available from one (1)
source, a certification of the conditions and circumstances
requiring the purchase shall be filed by the agency with the
Department of Finance and Administration and by the governing
authority with the board of the governing authority. Upon receipt
of that certification the Department of Finance and Administration
or the board of the governing authority, as the case may be, may,
in writing, authorize the purchase, which authority shall be noted
on the minutes of the body at the next regular meeting thereafter.
In those situations, a governing authority is not required to
obtain the approval of the Department of Finance and
Administration.

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

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

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

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

(xiii) Municipal electrical utility system fuel. Purchases of coal and/or natural gas by municipally-owned electric power generating systems that have the capacity to use both coal and natural gas for the generation of electric power.
(xiv) **Library books and other reference materials.**

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

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

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

(xvii) **Multichannel interactive video systems.**

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

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

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

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

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

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

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

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

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

(xxv) **Purchases of state-adopted textbooks.**
Purchases of state-adopted textbooks by public school districts.

(xxvi) **Certain purchases under the Mississippi Major Economic Impact Act.** Contracts entered into pursuant to the provisions of Section 57-75-9(2) and (3).

(xxvii) **Used heavy or specialized machinery or equipment for installation of soil and water conservation practices purchased at auction.** Used heavy or specialized machinery or equipment used for the installation and implementation of soil and water conservation practices or measures purchased subject to the restrictions provided in Sections 69-27-331 through 69-27-341. Any purchase by the State
Soil and Water Conservation Commission under the exemption authorized by this subparagraph shall require advance authorization spread upon the minutes of the commission to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

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

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

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

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

(p) Electrical utility petroleum-based equipment

purchase procedure. When in response to a proper advertisement
therefor, no bid firm as to price is submitted to an electric
utility for power transformers, distribution transformers, power
breakers, reclosers or other articles containing a petroleum
product, the electric utility may accept the lowest and best bid
therefor although the price is not firm.

(q) Fuel management system bidding procedure. Any
governing authority or agency of the state shall, before
contracting for the services and products of a fuel management or
fuel access system, enter into negotiations with not fewer than
two (2) sellers of fuel management or fuel access systems for
competitive written bids to provide the services and products for
the systems. In the event that the governing authority or agency
cannot locate two (2) sellers of such systems or cannot obtain
bids from two (2) sellers of such systems, it shall show proof
that it made a diligent, good-faith effort to locate and negotiate
with two (2) sellers of such systems. Such proof shall include,
but not be limited to, publications of a request for proposals and
letters soliciting negotiations and bids. For purposes of this
paragraph (q), a fuel management or fuel access system is an
automated system of acquiring fuel for vehicles as well as
management reports detailing fuel use by vehicles and drivers, and
the term "competitive written bid" shall have the meaning as defined in paragraph (b) of this section. Governing authorities and agencies shall be exempt from this process when contracting for the services and products of a fuel management or fuel access systems under the terms of a state contract established by the Office of Purchasing and Travel.

(r) Solid waste contract proposal procedure. Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars ($50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than Ten Thousand Dollars ($10,000.00). Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (r) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated. Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand
(40,000) population, according to the 1990 federal decennial census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.

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

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

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

(iii) "Hispanic" means persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race.
(iv) "Native American" means persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

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

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

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

**SECTION 6.** Section 31-7-38, Mississippi Code of 1972, is amended as follows:

31-7-38. The board of trustees or governing board of any hospital or regional mental health center owned or owned and operated separately or jointly by the State of Mississippi or any of its branches, agencies, departments or subdivisions, or by one or more counties, cities, towns, supervisors districts or election districts, or combinations thereof, may authorize by resolution the organization and operation of, or the participation in, a group purchasing program with other hospitals or regional mental health centers, for the purchase of supplies, commodities and equipment when it appears to the board of trustees or governing board that such a group purchasing program could or would affect economy or efficiency in their operations. Purchases by hospitals or regional mental health centers participating in group purchasing programs of supplies, commodities and equipment through
such programs shall be exempt from the provisions of Sections 31-7-9, 31-7-10, 31-7-11, 31-7-12 and 31-7-13. However, group purchase program contracts shall be subject to the provisions of Section 1 of this act. The Mississippi Department of Mental health shall develop and submit to the Chairmen of the Senate and House Appropriations Committees a report analyzing the savings and economic benefits of the group purchasing program authorized under this section for state hospitals or regional mental health centers compared to the purchasing procedures authorized prior to passage of Laws, 2001, Chapter 473. This section shall stand repealed on July 1, 2005.

SECTION 7. This act shall take effect and be in force from and after July 1, 2002.