

By: Senator(s) Dearing (By Request)

To: Highways and
Transportation; Public
Utilities

SENATE BILL NO. 2275

1 AN ACT TO AUTHORIZE THE MISSISSIPPI TRANSPORTATION COMMISSION
 2 TO ADOPT RULES, REGULATIONS AND ORDINANCES ALLOWING AND GOVERNING
 3 THE INSTALLATION OF UNDERGROUND FIBER OPTIC TRANSMISSION LINES ON
 4 THE RIGHTS-OF-WAY OF FREEWAYS IN THIS STATE; TO ALLOW THE RULES TO
 5 AUTHORIZE THE COMMISSION TO CHARGE A PERMIT FEE FOR SUCH
 6 RIGHTS-OF-WAY; TO PROVIDE THAT SUCH PERMIT FEE MAY BE PAID IN CASH
 7 OR BY THE PERMITTEE PROVIDING TO THE STATE SERVICES OR EQUIPMENT;
 8 TO PROVIDE THAT ALL SUCH PERMIT FEES COLLECTED IN THE FORM OF CASH
 9 SHALL BE DEPOSITED INTO THE STATE HIGHWAY FUND TO BE USED
 10 EXCLUSIVELY FOR THE RECONSTRUCTION AND MAINTENANCE OF STATE
 11 HIGHWAYS; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
 12 EXEMPT FROM BID REQUIREMENTS EQUIPMENT OR SERVICES PROVIDED TO THE
 13 STATE IN PAYMENT OF PERMIT FEES FOR FIBER OPTIC RIGHTS-OF-WAY; AND
 14 FOR RELATED PURPOSES.

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

16 **SECTION 1.** (1) The Mississippi Transportation Commission
 17 may enact rules, regulations and ordinances allowing and governing
 18 the installation and operation of fiber optic transmission lines
 19 on the rights-of-way of the freeways in this state. The rules may
 20 authorize the commission to charge initial and annual permit fees
 21 for the use of such rights-of-way. The permit fee may be paid in
 22 cash, negotiable instruments or, upon a finding by the commission
 23 spread upon its minutes that it would be to the benefit of the
 24 state, by the permittee providing to the state services or
 25 equipment.

26 (2) All permit fees collected in the form of cash or
 27 negotiable instrument shall be deposited into the State Highway
 28 Fund to be used exclusively for the reconstruction and maintenance
 29 of state highways.

30 (3) As used in this section, the term "freeway" shall have
 31 the same meaning ascribed to such term in Section 65-5-3.

32 **SECTION 2.** Section 31-7-13, Mississippi Code of 1972, is
 33 amended as follows:



34 31-7-13. All agencies and governing authorities shall
35 purchase their commodities and printing; contract for garbage
36 collection or disposal; contract for solid waste collection or
37 disposal; contract for sewage collection or disposal; contract for
38 public construction; and contract for rentals as herein provided.

39 (a) **Bidding procedure for purchases not over \$3,500.00.**
40 Purchases which do not involve an expenditure of more than Three
41 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
42 shipping charges, may be made without advertising or otherwise
43 requesting competitive bids. Provided, however, that nothing
44 contained in this paragraph (a) shall be construed to prohibit any
45 agency or governing authority from establishing procedures which
46 require competitive bids on purchases of Three Thousand Five
47 Hundred Dollars (\$3,500.00) or less.

48 (b) **Bidding procedure for purchases over \$3,500.00 but**
49 **not over \$15,000.00.** Purchases which involve an expenditure of
50 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
51 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
52 freight and shipping charges may be made from the lowest and best
53 bidder without publishing or posting advertisement for bids,
54 provided at least two (2) competitive written bids have been
55 obtained. Any governing authority purchasing commodities pursuant
56 to this paragraph (b) may authorize its purchasing agent, or his
57 designee, with regard to governing authorities other than
58 counties, or its purchase clerk, or his designee, with regard to
59 counties, to accept the lowest and best competitive written bid.
60 Such authorization shall be made in writing by the governing
61 authority and shall be maintained on file in the primary office of
62 the agency and recorded in the official minutes of the governing
63 authority, as appropriate. The purchasing agent or the purchase
64 clerk, or their designee, as the case may be, and not the
65 governing authority, shall be liable for any penalties and/or
66 damages as may be imposed by law for any act or omission of the



67 purchasing agent or purchase clerk, or their designee,
68 constituting a violation of law in accepting any bid without
69 approval by the governing authority. The term "competitive
70 written bid" shall mean a bid submitted on a bid form furnished by
71 the buying agency or governing authority and signed by authorized
72 personnel representing the vendor, or a bid submitted on a
73 vendor's letterhead or identifiable bid form and signed by
74 authorized personnel representing the vendor. Bids may be
75 submitted by facsimile, electronic mail or other generally
76 accepted method of information distribution. Bids submitted by
77 electronic transmission shall not require the signature of the
78 vendor's representative unless required by agencies or governing
79 authorities.

80 (c) **Bidding procedure for purchases over \$15,000.00.**

81 (i) **Publication requirement.** Purchases which
82 involve an expenditure of more than Fifteen Thousand Dollars
83 (\$15,000.00), exclusive of freight and shipping charges may be
84 made from the lowest and best bidder after advertising for
85 competitive sealed bids once each week for two (2) consecutive
86 weeks in a regular newspaper published in the county or
87 municipality in which such agency or governing authority is
88 located. The date as published for the bid opening shall not be
89 less than seven (7) working days after the last published notice;
90 however, if the purchase involves a construction project in which
91 the estimated cost is in excess of Fifteen Thousand Dollars
92 (\$15,000.00), such bids shall not be opened in less than fifteen
93 (15) working days after the last notice is published and the
94 notice for the purchase of such construction shall be published
95 once each week for two (2) consecutive weeks. The notice of
96 intention to let contracts or purchase equipment shall state the
97 time and place at which bids shall be received, list the contracts
98 to be made or types of equipment or supplies to be purchased, and,
99 if all plans and/or specifications are not published, refer to the



100 plans and/or specifications on file. If there is no newspaper
101 published in the county or municipality, then such notice shall be
102 given by posting same at the courthouse, or for municipalities at
103 the city hall, and at two (2) other public places in the county or
104 municipality, and also by publication once each week for two (2)
105 consecutive weeks in some newspaper having a general circulation
106 in the county or municipality in the above provided manner. On
107 the same date that the notice is submitted to the newspaper for
108 publication, the agency or governing authority involved shall mail
109 written notice to, or provide electronic notification to the main
110 office of the Mississippi Contract Procurement Center that
111 contains the same information as that in the published notice.

112 (ii) **Bidding process amendment procedure.** If all
113 plans and/or specifications are published in the notification,
114 then the plans and/or specifications may not be amended. If all
115 plans and/or specifications are not published in the notification,
116 then amendments to the plans/specifications, bid opening date, bid
117 opening time and place may be made, provided that the agency or
118 governing authority maintains a list of all prospective bidders
119 who are known to have received a copy of the bid documents and all
120 such prospective bidders are sent copies of all amendments. This
121 notification of amendments may be made via mail, facsimile,
122 electronic mail or other generally accepted method of information
123 distribution. No addendum to bid specifications may be issued
124 within two (2) working days of the time established for the
125 receipt of bids unless such addendum also amends the bid opening
126 to a date not less than five (5) working days after the date of
127 the addendum.

128 (iii) **Filing requirement.** In all cases involving
129 governing authorities, before the notice shall be published or
130 posted, the plans or specifications for the construction or
131 equipment being sought shall be filed with the clerk of the board
132 of the governing authority. In addition to these requirements, a



133 bid file shall be established which shall indicate those vendors
134 to whom such solicitations and specifications were issued, and
135 such file shall also contain such information as is pertinent to
136 the bid.

137 (iv) **Specification restrictions.** Specifications
138 pertinent to such bidding shall be written so as not to exclude
139 comparable equipment of domestic manufacture. Provided, however,
140 that should valid justification be presented, the Department of
141 Finance and Administration or the board of a governing authority
142 may approve a request for specific equipment necessary to perform
143 a specific job. Further, such justification, when placed on the
144 minutes of the board of a governing authority, may serve as
145 authority for that governing authority to write specifications to
146 require a specific item of equipment needed to perform a specific
147 job. In addition to these requirements, from and after July 1,
148 1990, vendors of relocatable classrooms and the specifications for
149 the purchase of such relocatable classrooms published by local
150 school boards shall meet all pertinent regulations of the State
151 Board of Education, including prior approval of such bid by the
152 State Department of Education.

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

154 (i) **Decision procedure.** Purchases may be made
155 from the lowest and best bidder. In determining the lowest and
156 best bid, freight and shipping charges shall be included.
157 Life-cycle costing, total cost bids, warranties, guaranteed
158 buy-back provisions and other relevant provisions may be included
159 in the best bid calculation. All best bid procedures for state
160 agencies must be in compliance with regulations established by the
161 Department of Finance and Administration. If any governing
162 authority accepts a bid other than the lowest bid actually
163 submitted, it shall place on its minutes detailed calculations and
164 narrative summary showing that the accepted bid was determined to
165 be the lowest and best bid, including the dollar amount of the



166 accepted bid and the dollar amount of the lowest bid. No agency
167 or governing authority shall accept a bid based on items not
168 included in the specifications.

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

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

175 (e) **Lease-purchase authorization.** For the purposes of
176 this section, the term "equipment" shall mean equipment, furniture
177 and, if applicable, associated software and other applicable
178 direct costs associated with the acquisition. Any lease-purchase
179 of equipment which an agency is not required to lease-purchase
180 under the master lease-purchase program pursuant to Section
181 31-7-10 and any lease-purchase of equipment which a governing
182 authority elects to lease-purchase may be acquired by a
183 lease-purchase agreement under this paragraph (e). Lease-purchase
184 financing may also be obtained from the vendor or from a
185 third-party source after having solicited and obtained at least
186 two (2) written competitive bids, as defined in paragraph (b) of
187 this section, for such financing without advertising for such
188 bids. Solicitation for the bids for financing may occur before or
189 after acceptance of bids for the purchase of such equipment or,
190 where no such bids for purchase are required, at any time before
191 the purchase thereof. No such lease-purchase agreement shall be
192 for an annual rate of interest which is greater than the overall
193 maximum interest rate to maturity on general obligation
194 indebtedness permitted under Section 75-17-101, and the term of
195 such lease-purchase agreement shall not exceed the useful life of
196 equipment covered thereby as determined according to the upper
197 limit of the asset depreciation range (ADR) guidelines for the
198 Class Life Asset Depreciation Range System established by the



199 Internal Revenue Service pursuant to the United States Internal
200 Revenue Code and regulations thereunder as in effect on December
201 31, 1980, or comparable depreciation guidelines with respect to
202 any equipment not covered by ADR guidelines. Any lease-purchase
203 agreement entered into pursuant to this paragraph (e) may contain
204 any of the terms and conditions which a master lease-purchase
205 agreement may contain under the provisions of Section 31-7-10(5),
206 and shall contain an annual allocation dependency clause
207 substantially similar to that set forth in Section 31-7-10(8).
208 Each agency or governing authority entering into a lease-purchase
209 transaction pursuant to this paragraph (e) shall maintain with
210 respect to each such lease-purchase transaction the same
211 information as required to be maintained by the Department of
212 Finance and Administration pursuant to Section 31-7-10(13).
213 However, nothing contained in this section shall be construed to
214 permit agencies to acquire items of equipment with a total
215 acquisition cost in the aggregate of less than Ten Thousand
216 Dollars (\$10,000.00) by a single lease-purchase transaction. All
217 equipment, and the purchase thereof by any lessor, acquired by
218 lease-purchase under this paragraph and all lease-purchase
219 payments with respect thereto shall be exempt from all Mississippi
220 sales, use and ad valorem taxes. Interest paid on any
221 lease-purchase agreement under this section shall be exempt from
222 State of Mississippi income taxation.

223 (f) **Alternate bid authorization.** When necessary to
224 ensure ready availability of commodities for public works and the
225 timely completion of public projects, no more than two (2)
226 alternate bids may be accepted by a governing authority for
227 commodities. No purchases may be made through use of such
228 alternate bids procedure unless the lowest and best bidder, for
229 reasons beyond his control, cannot deliver the commodities
230 contained in his bid. In that event, purchases of such



231 commodities may be made from one (1) of the bidders whose bid was
232 accepted as an alternate.

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

253 (h) **Petroleum purchase alternative.** In addition to
254 other methods of purchasing authorized in this chapter, when any
255 agency or governing authority shall have a need for gas, diesel
256 fuel, oils and/or other petroleum products in excess of the amount
257 set forth in paragraph (a) of this section, such agency or
258 governing authority may purchase the commodity after having
259 solicited and obtained at least two (2) competitive written bids,
260 as defined in paragraph (b) of this section. If two (2)
261 competitive written bids are not obtained the entity shall comply
262 with the procedures set forth in paragraph (c) of this section.
263 In the event any agency or governing authority shall have



264 advertised for bids for the purchase of gas, diesel fuel, oils and
265 other petroleum products and coal and no acceptable bids can be
266 obtained, such agency or governing authority is authorized and
267 directed to enter into any negotiations necessary to secure the
268 lowest and best contract available for the purchase of such
269 commodities.

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

290 (j) **State agency emergency purchase procedure.** If the
291 executive head of any agency of the state shall determine that an
292 emergency exists in regard to the purchase of any commodities or
293 repair contracts, so that the delay incident to giving opportunity
294 for competitive bidding would be detrimental to the interests of
295 the state, then the provisions herein for competitive bidding
296 shall not apply and the head of such agency shall be authorized to



297 make the purchase or repair. Total purchases so made shall only
298 be for the purpose of meeting needs created by the emergency
299 situation. In the event such executive head is responsible to an
300 agency board, at the meeting next following the emergency
301 purchase, documentation of the purchase, including a description
302 of the commodity purchased, the purchase price thereof and the
303 nature of the emergency shall be presented to the board and placed
304 on the minutes of the board of such agency. The head of such
305 agency shall, at the earliest possible date following such
306 emergency purchase, file with the Department of Finance and
307 Administration (i) a statement under oath certifying the
308 conditions and circumstances of the emergency, and (ii) a
309 certified copy of the appropriate minutes of the board of such
310 agency, if applicable. On or before September 1 of each year, the
311 State Auditor shall prepare and deliver to the Senate Fees,
312 Salaries and Administration Committee, the House Fees and Salaries
313 of Public Officers Committee and the Joint Legislative Budget
314 Committee a report containing a list of all state agency emergency
315 purchases and supporting documentation for each emergency
316 purchases.

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

318 If the governing authority, or the governing authority acting
319 through its designee, shall determine that an emergency exists in
320 regard to the purchase of any commodities or repair contracts, so
321 that the delay incident to giving opportunity for competitive
322 bidding would be detrimental to the interest of the governing
323 authority, then the provisions herein for competitive bidding
324 shall not apply and any officer or agent of such governing
325 authority having general or special authority therefor in making
326 such purchase or repair shall approve the bill presented therefor,
327 and he shall certify in writing thereon from whom such purchase
328 was made, or with whom such a repair contract was made. At the
329 board meeting next following the emergency purchase or repair



330 contract, documentation of the purchase or repair contract,
331 including a description of the commodity purchased, the price
332 thereof and the nature of the emergency shall be presented to the
333 board and shall be placed on the minutes of the board of such
334 governing authority.

335 (1) **Hospital purchase, lease-purchase and lease**
336 **authorization.**

337 (i) The commissioners or board of trustees of any
338 public hospital may contract with such lowest and best bidder for
339 the purchase or lease-purchase of any commodity under a contract
340 of purchase or lease-purchase agreement whose obligatory payment
341 terms do not exceed five (5) years.

342 (ii) In addition to the authority granted in
343 subparagraph (i) of this paragraph (1), the commissioners or board
344 of trustees is authorized to enter into contracts for the lease of
345 equipment or services, or both, which it considers necessary for
346 the proper care of patients if, in its opinion, it is not
347 financially feasible to purchase the necessary equipment or
348 services. Any such contract for the lease of equipment or
349 services executed by the commissioners or board shall not exceed a
350 maximum of five (5) years' duration and shall include a
351 cancellation clause based on unavailability of funds. If such
352 cancellation clause is exercised, there shall be no further
353 liability on the part of the lessee. Any such contract for the
354 lease of equipment or services executed on behalf of the
355 commissioners or board that complies with the provisions of this
356 subparagraph (ii) shall be excepted from the bid requirements set
357 forth in this section.

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

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



362 executed or approved by the Department of Finance and
363 Administration.

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

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

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

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

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



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

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

417 (viii) **Single source items.** Noncompetitive items
418 available from one (1) source only. In connection with the
419 purchase of noncompetitive items only available from one (1)
420 source, a certification of the conditions and circumstances
421 requiring the purchase shall be filed by the agency with the
422 Department of Finance and Administration and by the governing
423 authority with the board of the governing authority. Upon receipt
424 of that certification the Department of Finance and Administration
425 or the board of the governing authority, as the case may be, may,
426 in writing, authorize the purchase, which authority shall be noted
427 on the minutes of the body at the next regular meeting thereafter.



428 In those situations, a governing authority is not required to
429 obtain the approval of the Department of Finance and
430 Administration.

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

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

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



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

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

471 (xiv) **Library books and other reference materials.**
472 Purchases by libraries or for libraries of books and periodicals;
473 processed film, video cassette tapes, filmstrips and slides;
474 recorded audio tapes, cassettes and diskettes; and any such items
475 as would be used for teaching, research or other information
476 distribution; however, equipment such as projectors, recorders,
477 audio or video equipment, and monitor televisions are not exempt
478 under this subparagraph.

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

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

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



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

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

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

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

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

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

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

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



525 (xxv) **Purchases of state-adopted textbooks.**
526 Purchases of state-adopted textbooks by public school districts.
527 (xxvi) **Certain purchases under the Mississippi**
528 **Major Economic Impact Act.** Contracts entered into pursuant to the
529 provisions of Section 57-75-9(2) and (3).

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

542 (xxviii) **Hospital lease of equipment or services.**
543 Leases by hospitals of equipment or services if the leases are in
544 compliance with paragraph (1)(ii).

545 (xxix) **Fiber optic right-of-way permit fees paid**
546 **by providing equipment or services in lieu of cash or negotiable**
547 **instrument.** Permit fees paid by providing equipment or services
548 pursuant to Section 1 of Senate Bill No. 2275, 2003 Regular
549 Session.

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

552 (i) All contracts for the purchase of commodities,
553 equipment and public construction (including, but not limited to,
554 repair and maintenance), may be let for periods of not more than
555 sixty (60) months in advance, subject to applicable statutory
556 provisions prohibiting the letting of contracts during specified
557 periods near the end of terms of office. Term contracts for a



558 period exceeding twenty-four (24) months shall also be subject to
559 ratification or cancellation by governing authority boards taking
560 office subsequent to the governing authority board entering the
561 contract.

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

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

588 (p) **Electrical utility petroleum-based equipment**
589 **purchase procedure.** When in response to a proper advertisement
590 therefor, no bid firm as to price is submitted to an electric



591 utility for power transformers, distribution transformers, power
592 breakers, reclosers or other articles containing a petroleum
593 product, the electric utility may accept the lowest and best bid
594 therefor although the price is not firm.

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

617 (r) **Solid waste contract proposal procedure.** Before
618 entering into any contract for garbage collection or disposal,
619 contract for solid waste collection or disposal or contract for
620 sewage collection or disposal, which involves an expenditure of
621 more than Fifty Thousand Dollars (\$50,000.00), a governing
622 authority or agency shall issue publicly a request for proposals
623 concerning the specifications for such services which shall be



624 advertised for in the same manner as provided in this section for
625 seeking bids for purchases which involve an expenditure of more
626 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
627 when issued shall contain terms and conditions relating to price,
628 financial responsibility, technology, legal responsibilities and
629 other relevant factors as are determined by the governing
630 authority or agency to be appropriate for inclusion; all factors
631 determined relevant by the governing authority or agency or
632 required by this paragraph (r) shall be duly included in the
633 advertisement to elicit proposals. After responses to the request
634 for proposals have been duly received, the governing authority or
635 agency shall select the most qualified proposal or proposals on
636 the basis of price, technology and other relevant factors and from
637 such proposals, but not limited to the terms thereof, negotiate
638 and enter contracts with one or more of the persons or firms
639 submitting proposals. If the governing authority or agency deems
640 none of the proposals to be qualified or otherwise acceptable, the
641 request for proposals process may be reinitiated. Notwithstanding
642 any other provisions of this paragraph, where a county with at
643 least thirty-five thousand (35,000) nor more than forty thousand
644 (40,000) population, according to the 1990 federal decennial
645 census, owns or operates a solid waste landfill, the governing
646 authorities of any other county or municipality may contract with
647 the governing authorities of the county owning or operating the
648 landfill, pursuant to a resolution duly adopted and spread upon
649 the minutes of each governing authority involved, for garbage or
650 solid waste collection or disposal services through contract
651 negotiations.

652 (s) **Minority set aside authorization.** Notwithstanding
653 any provision of this section to the contrary, any agency or
654 governing authority, by order placed on its minutes, may, in its
655 discretion, set aside not more than twenty percent (20%) of its
656 anticipated annual expenditures for the purchase of commodities



657 from minority businesses; however, all such set-aside purchases
658 shall comply with all purchasing regulations promulgated by the
659 Department of Finance and Administration and shall be subject to
660 bid requirements under this section. Set-aside purchases for
661 which competitive bids are required shall be made from the lowest
662 and best minority business bidder. For the purposes of this
663 paragraph, the term "minority business" means a business which is
664 owned by a majority of persons who are United States citizens or
665 permanent resident aliens (as defined by the Immigration and
666 Naturalization Service) of the United States, and who are Asian,
667 Black, Hispanic or Native American, according to the following
668 definitions:

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

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

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

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

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



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

691 **SECTION 3.** This act shall take effect and be in force from
692 and after July 1, 2003.

