

By: Senator(s) Horhn

To: Finance

SENATE BILL NO. 2715

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

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

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

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

16 (a) **Bidding procedure for purchases not over \$3,500.00.**
17 Purchases which do not involve an expenditure of more than Three
18 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
19 shipping charges, may be made without advertising or otherwise
20 requesting competitive bids. Provided, however, that nothing
21 contained in this paragraph (a) shall be construed to prohibit any
22 agency or governing authority from establishing procedures which
23 require competitive bids on purchases of Three Thousand Five
24 Hundred Dollars (\$3,500.00) or less.

25 (b) **Bidding procedure for purchases over \$3,500.00 but**
26 **not over \$15,000.00.** Purchases which involve an expenditure of
27 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
28 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
29 freight and shipping charges may be made from the lowest and best



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

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

58 (i) **Publication requirement.** Purchases which
59 involve an expenditure of more than Fifteen Thousand Dollars
60 (\$15,000.00), exclusive of freight and shipping charges may be
61 made from the lowest and best bidder after advertising for
62 competitive sealed bids once each week for two (2) consecutive



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

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



96 who are known to have received a copy of the bid documents and all
97 such prospective bidders are sent copies of all amendments. This
98 notification of amendments may be made via mail, facsimile,
99 electronic mail or other generally accepted method of information
100 distribution. No addendum to bid specifications may be issued
101 within two (2) working days of the time established for the
102 receipt of bids unless such addendum also amends the bid opening
103 to a date not less than five (5) working days after the date of
104 the addendum.

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

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



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

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

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

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

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

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



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



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

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

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



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

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

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



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

267 (j) **State agency emergency purchase procedure.** If the
268 executive head of any agency of the state shall determine that an
269 emergency exists in regard to the purchase of any commodities or
270 repair contracts, so that the delay incident to giving opportunity
271 for competitive bidding would be detrimental to the interests of
272 the state, then the provisions herein for competitive bidding
273 shall not apply and the head of such agency shall be authorized to
274 make the purchase or repair. Total purchases so made shall only
275 be for the purpose of meeting needs created by the emergency
276 situation. In the event such executive head is responsible to an
277 agency board, at the meeting next following the emergency
278 purchase, documentation of the purchase, including a description
279 of the commodity purchased, the purchase price thereof and the
280 nature of the emergency shall be presented to the board and placed
281 on the minutes of the board of such agency. The head of such
282 agency shall, at the earliest possible date following such
283 emergency purchase, file with the Department of Finance and
284 Administration (i) a statement under oath certifying the
285 conditions and circumstances of the emergency, and (ii) a
286 certified copy of the appropriate minutes of the board of such
287 agency, if applicable. On or before September 1 of each year, the
288 State Auditor shall prepare and deliver to the Senate Fees,
289 Salaries and Administration Committee, the House Fees and Salaries
290 of Public Officers Committee and the Joint Legislative Budget
291 Committee a report containing a list of all state agency emergency



292 purchases and supporting documentation for each emergency
293 purchases.

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

295 If the governing authority, or the governing authority acting
296 through its designee, shall determine that an emergency exists in
297 regard to the purchase of any commodities or repair contracts, so
298 that the delay incident to giving opportunity for competitive
299 bidding would be detrimental to the interest of the governing
300 authority, then the provisions herein for competitive bidding
301 shall not apply and any officer or agent of such governing
302 authority having general or special authority therefor in making
303 such purchase or repair shall approve the bill presented therefor,
304 and he shall certify in writing thereon from whom such purchase
305 was made, or with whom such a repair contract was made. At the
306 board meeting next following the emergency purchase or repair
307 contract, documentation of the purchase or repair contract,
308 including a description of the commodity purchased, the price
309 thereof and the nature of the emergency shall be presented to the
310 board and shall be placed on the minutes of the board of such
311 governing authority.

312 (l) **Hospital purchase, lease-purchase and lease**
313 **authorization.**

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

319 (ii) In addition to the authority granted in
320 subparagraph (i) of this paragraph (l), the commissioners or board
321 of trustees is authorized to enter into contracts for the lease of
322 equipment or services, or both, which it considers necessary for
323 the proper care of patients if, in its opinion, it is not
324 financially feasible to purchase the necessary equipment or



325 services. Any such contract for the lease of equipment or
326 services executed by the commissioners or board shall not exceed a
327 maximum of five (5) years' duration and shall include a
328 cancellation clause based on unavailability of funds. If such
329 cancellation clause is exercised, there shall be no further
330 liability on the part of the lessee. Any such contract for the
331 lease of equipment or services executed on behalf of the
332 commissioners or board that complies with the provisions of this
333 subparagraph (ii) shall be excepted from the bid requirements set
334 forth in this section.

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

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

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

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



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

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

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



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

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

408 (ix) **Waste disposal facility construction**
409 **contracts.** Construction of incinerators and other facilities for
410 disposal of solid wastes in which products either generated
411 therein, such as steam, or recovered therefrom, such as materials
412 for recycling, are to be sold or otherwise disposed of; provided,
413 however, in constructing such facilities a governing authority or
414 agency shall publicly issue requests for proposals, advertised for
415 in the same manner as provided herein for seeking bids for public
416 construction projects, concerning the design, construction,
417 ownership, operation and/or maintenance of such facilities,
418 wherein such requests for proposals when issued shall contain
419 terms and conditions relating to price, financial responsibility,
420 technology, environmental compatibility, legal responsibilities
421 and such other matters as are determined by the governing
422 authority or agency to be appropriate for inclusion; and after



423 responses to the request for proposals have been duly received,
424 the governing authority or agency may select the most qualified
425 proposal or proposals on the basis of price, technology and other
426 relevant factors and from such proposals, but not limited to the
427 terms thereof, negotiate and enter contracts with one or more of
428 the persons or firms submitting proposals.

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

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

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

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

448 (xiv) **Library books and other reference materials.**
449 Purchases by libraries or for libraries of books and periodicals;
450 processed film, video cassette tapes, filmstrips and slides;
451 recorded audio tapes, cassettes and diskettes; and any such items
452 as would be used for teaching, research or other information
453 distribution; however, equipment such as projectors, recorders,
454 audio or video equipment, and monitor televisions are not exempt
455 under this subparagraph.



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

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

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

470 (xviii) **Purchases of prison industry products.**
471 From and after January 1, 1991, purchases made by state agencies
472 or governing authorities involving any item that is manufactured,
473 processed, grown or produced from the state's prison industries.

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

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

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



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

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

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

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

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

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



519 (xxviii) **Hospital lease of equipment or services.**

520 Leases by hospitals of equipment or services if the leases are in
521 compliance with paragraph (l)(ii).

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

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

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

545 (o) **Purchase law violation prohibition and vendor**
546 **penalty.** No contract or purchase as herein authorized shall be
547 made for the purpose of circumventing the provisions of this
548 section requiring competitive bids, nor shall it be lawful for any
549 person or concern to submit individual invoices for amounts within
550 those authorized for a contract or purchase where the actual value
551 of the contract or commodity purchased exceeds the authorized



552 amount and the invoices therefor are split so as to appear to be
553 authorized as purchases for which competitive bids are not
554 required. Submission of such invoices shall constitute a
555 misdemeanor punishable by a fine of not less than Five Hundred
556 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
557 or by imprisonment for thirty (30) days in the county jail, or
558 both such fine and imprisonment. In addition, the claim or claims
559 submitted shall be forfeited.

560 (p) **Electrical utility petroleum-based equipment**
561 **purchase procedure.** When in response to a proper advertisement
562 therefor, no bid firm as to price is submitted to an electric
563 utility for power transformers, distribution transformers, power
564 breakers, reclosers or other articles containing a petroleum
565 product, the electric utility may accept the lowest and best bid
566 therefor although the price is not firm.

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



585 and agencies shall be exempt from this process when contracting
586 for the services and products of a fuel management or fuel access
587 systems under the terms of a state contract established by the
588 Office of Purchasing and Travel.

589 (r) **Solid waste contract proposal procedure.** Before
590 entering into any contract for garbage collection or disposal,
591 contract for solid waste collection or disposal or contract for
592 sewage collection or disposal, which involves an expenditure of
593 more than Fifty Thousand Dollars (\$50,000.00), a governing
594 authority or agency shall issue publicly a request for proposals
595 concerning the specifications for such services which shall be
596 advertised for in the same manner as provided in this section for
597 seeking bids for purchases which involve an expenditure of more
598 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
599 when issued shall contain terms and conditions relating to price,
600 financial responsibility, technology, legal responsibilities and
601 other relevant factors as are determined by the governing
602 authority or agency to be appropriate for inclusion; all factors
603 determined relevant by the governing authority or agency or
604 required by this paragraph (r) shall be duly included in the
605 advertisement to elicit proposals. After responses to the request
606 for proposals have been duly received, the governing authority or
607 agency shall select the most qualified proposal or proposals on
608 the basis of price, technology and other relevant factors and from
609 such proposals, but not limited to the terms thereof, negotiate
610 and enter contracts with one or more of the persons or firms
611 submitting proposals. If the governing authority or agency deems
612 none of the proposals to be qualified or otherwise acceptable, the
613 request for proposals process may be reinitiated. Notwithstanding
614 any other provisions of this paragraph, where a county with at
615 least thirty-five thousand (35,000) nor more than forty thousand
616 (40,000) population, according to the 1990 federal decennial
617 census, owns or operates a solid waste landfill, the governing



618 authorities of any other county or municipality may contract with
619 the governing authorities of the county owning or operating the
620 landfill, pursuant to a resolution duly adopted and spread upon
621 the minutes of each governing authority involved, for garbage or
622 solid waste collection or disposal services through contract
623 negotiations.

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

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

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

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



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

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

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

663 (v) **Small contractor set aside requirement.**
664 Notwithstanding any provision of this section to the contrary, the
665 Department of Finance and Administration shall set aside twenty
666 percent (20%) of the amount expended for any public construction
667 project that such department manages, not to exceed Five Million
668 Dollars (\$5,000,000.00), for small contractors. The set-aside
669 portion of such contract shall comply with regulations promulgated
670 by the Department of Finance and Administration and shall be
671 subject to bid requirements under this section. Set-aside
672 contracts for which competitive bids are required shall be made
673 from the lowest and best small contractor bidder. For purposes of
674 this paragraph, the term "small contractor" means a contractor
675 whose bonding capacity, as determined by the Department of Finance
676 and Administration, does not exceed Five Million Dollars
677 (\$5,000,000.00).

678 **SECTION 2.** This act shall take effect and be in force from
679 and after July 1, 2003.

