

By: Representative Fleming

To: Appropriations

HOUSE BILL NO. 258

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 PROHIBIT CONTRACTORS FROM BIDDING ON ANY PUBLIC CONSTRUCTION OR
3 RENOVATION PROJECT FOR ANY STATE AGENCY IF THE CONTRACTOR ALREADY
4 HAS OUTSTANDING CONTRACTS WITH STATE AGENCIES FOR PUBLIC
5 CONSTRUCTION OR RENOVATION PROJECTS OF WHICH THE TOTAL AMOUNT IS
6 \$30,000,000.00 OR MORE; AND FOR RELATED PURPOSES.

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

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

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

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

24 (b) **Bidding procedure for purchases over \$3,500.00 but**
25 **not over \$15,000.00.** Purchases which involve an expenditure of
26 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
27 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
28 freight and shipping charges may be made from the lowest and best
29 bidder without publishing or posting advertisement for bids,

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

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

60 (i) **Publication requirement.** Purchases which
61 involve an expenditure of more than Fifteen Thousand Dollars
62 (\$15,000.00), exclusive of freight and shipping charges, may be

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

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

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

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

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

129 boards shall meet all pertinent regulations of the State Board of
130 Education, including prior approval of such bid by the State
131 Department of Education.

132 (v) Agencies and governing authorities may
133 establish secure procedures by which bids may be submitted via
134 electronic means.

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

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

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

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

157 (e) **Lease-purchase authorization.** For the purposes of
158 this section, the term "equipment" shall mean equipment, furniture
159 and, if applicable, associated software and other applicable
160 direct costs associated with the acquisition. Any lease-purchase
161 of equipment which an agency is not required to lease-purchase

162 under the master lease-purchase program pursuant to Section
163 31-7-10 and any lease-purchase of equipment which a governing
164 authority elects to lease-purchase may be acquired by a
165 lease-purchase agreement under this paragraph (e). Lease-purchase
166 financing may also be obtained from the vendor or from a
167 third-party source after having solicited and obtained at least
168 two (2) written competitive bids, as defined in paragraph (b) of
169 this section, for such financing without advertising for such
170 bids. Solicitation for the bids for financing may occur before or
171 after acceptance of bids for the purchase of such equipment or,
172 where no such bids for purchase are required, at any time before
173 the purchase thereof. No such lease-purchase agreement shall be
174 for an annual rate of interest which is greater than the overall
175 maximum interest rate to maturity on general obligation
176 indebtedness permitted under Section 75-17-101, and the term of
177 such lease-purchase agreement shall not exceed the useful life of
178 equipment covered thereby as determined according to the upper
179 limit of the asset depreciation range (ADR) guidelines for the
180 Class Life Asset Depreciation Range System established by the
181 Internal Revenue Service pursuant to the United States Internal
182 Revenue Code and regulations thereunder as in effect on December
183 31, 1980, or comparable depreciation guidelines with respect to
184 any equipment not covered by ADR guidelines. Any lease-purchase
185 agreement entered into pursuant to this paragraph (e) may contain
186 any of the terms and conditions which a master lease-purchase
187 agreement may contain under the provisions of Section 31-7-10(5),
188 and shall contain an annual allocation dependency clause
189 substantially similar to that set forth in Section 31-7-10(8).
190 Each agency or governing authority entering into a lease-purchase
191 transaction pursuant to this paragraph (e) shall maintain with
192 respect to each such lease-purchase transaction the same
193 information as required to be maintained by the Department of
194 Finance and Administration pursuant to Section 31-7-10(13).

195 However, nothing contained in this section shall be construed to
196 permit agencies to acquire items of equipment with a total
197 acquisition cost in the aggregate of less than Ten Thousand
198 Dollars (\$10,000.00) by a single lease-purchase transaction. All
199 equipment, and the purchase thereof by any lessor, acquired by
200 lease-purchase under this paragraph and all lease-purchase
201 payments with respect thereto shall be exempt from all Mississippi
202 sales, use and ad valorem taxes. Interest paid on any
203 lease-purchase agreement under this section shall be exempt from
204 State of Mississippi income taxation.

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

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

228 authority, to authorize changes or modifications to the original
229 contract without the necessity of prior approval of the agency or
230 governing authority when any such change or modification is less
231 than one percent (1%) of the total contract amount. The agency or
232 governing authority may limit the number, manner or frequency of
233 such emergency changes or modifications.

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

251 (i) **Road construction petroleum products price**
252 **adjustment clause authorization.** Any agency or governing
253 authority authorized to enter into contracts for the construction,
254 maintenance, surfacing or repair of highways, roads or streets,
255 may include in its bid proposal and contract documents a price
256 adjustment clause with relation to the cost to the contractor,
257 including taxes, based upon an industry-wide cost index, of
258 petroleum products including asphalt used in the performance or
259 execution of the contract or in the production or manufacture of
260 materials for use in such performance. Such industry-wide index

261 shall be established and published monthly by the Mississippi
262 Department of Transportation with a copy thereof to be mailed,
263 upon request, to the clerks of the governing authority of each
264 municipality and the clerks of each board of supervisors
265 throughout the state. The price adjustment clause shall be based
266 on the cost of such petroleum products only and shall not include
267 any additional profit or overhead as part of the adjustment. The
268 bid proposals or document contract shall contain the basis and
269 methods of adjusting unit prices for the change in the cost of
270 such petroleum products.

271 (j) **State agency emergency purchase procedure.** If the
272 governing board or the executive head, or his designee, of any
273 agency of the state shall determine that an emergency exists in
274 regard to the purchase of any commodities or repair contracts, so
275 that the delay incident to giving opportunity for competitive
276 bidding would be detrimental to the interests of the state, then
277 the provisions herein for competitive bidding shall not apply and
278 the head of such agency shall be authorized to make the purchase
279 or repair. Total purchases so made shall only be for the purpose
280 of meeting needs created by the emergency situation. In the event
281 such executive head is responsible to an agency board, at the
282 meeting next following the emergency purchase, documentation of
283 the purchase, including a description of the commodity purchased,
284 the purchase price thereof and the nature of the emergency shall
285 be presented to the board and placed on the minutes of the board
286 of such agency. The head of such agency, or his designee, shall,
287 at the earliest possible date following such emergency purchase,
288 file with the Department of Finance and Administration (i) a
289 statement explaining the conditions and circumstances of the
290 emergency, which shall include a detailed description of the
291 events leading up to the situation and the negative impact to the
292 entity if the purchase is made following the statutory
293 requirements set forth in paragraph (a), (b) or (c) of this

294 section, and (ii) a certified copy of the appropriate minutes of
295 the board of such agency, if applicable. On or before September 1
296 of each year, the State Auditor shall prepare and deliver to the
297 Senate Fees, Salaries and Administration Committee, the House Fees
298 and Salaries of Public Officers Committee and the Joint
299 Legislative Budget Committee a report containing a list of all
300 state agency emergency purchases and supporting documentation for
301 each emergency purchases.

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

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

320 (l) **Hospital purchase, lease-purchase and lease**
321 **authorization.**

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

327 (ii) In addition to the authority granted in
328 subparagraph (i) of this paragraph (1), the commissioners or board
329 of trustees is authorized to enter into contracts for the lease of
330 equipment or services, or both, which it considers necessary for
331 the proper care of patients if, in its opinion, it is not
332 financially feasible to purchase the necessary equipment or
333 services. Any such contract for the lease of equipment or
334 services executed by the commissioners or board shall not exceed a
335 maximum of five (5) years' duration and shall include a
336 cancellation clause based on unavailability of funds. If such
337 cancellation clause is exercised, there shall be no further
338 liability on the part of the lessee. Any such contract for the
339 lease of equipment or services executed on behalf of the
340 commissioners or board that complies with the provisions of this
341 subparagraph (ii) shall be excepted from the bid requirements set
342 forth in this section.

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

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

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

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

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

369 (v) **Governmental equipment auctions.** Motor
370 vehicles or other equipment purchased from a federal agency or
371 authority, another governing authority or state agency of the
372 State of Mississippi, or any governing authority or state agency
373 of another state at a public auction held for the purpose of
374 disposing of such vehicles or other equipment. Any purchase by a
375 governing authority under the exemption authorized by this
376 subparagraph (v) shall require advance authorization spread upon
377 the minutes of the governing authority to include the listing of
378 the item or items authorized to be purchased and the maximum bid
379 authorized to be paid for each item or items.

380 (vi) **Intergovernmental sales and transfers.**
381 Purchases, sales, transfers or trades by governing authorities or
382 state agencies when such purchases, sales, transfers or trades are
383 made by a private treaty agreement or through means of
384 negotiation, from any federal agency or authority, another
385 governing authority or state agency of the State of Mississippi,
386 or any state agency or governing authority of another state.
387 Nothing in this section shall permit such purchases through public
388 auction except as provided for in subparagraph (v) of this
389 section. It is the intent of this section to allow governmental
390 entities to dispose of and/or purchase commodities from other
391 governmental entities at a price that is agreed to by both
392 parties. This shall allow for purchases and/or sales at prices

393 which may be determined to be below the market value if the
394 selling entity determines that the sale at below market value is
395 in the best interest of the taxpayers of the state. Governing
396 authorities shall place the terms of the agreement and any
397 justification on the minutes, and state agencies shall obtain
398 approval from the Department of Finance and Administration, prior
399 to releasing or taking possession of the commodities.

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

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

418 (ix) **Waste disposal facility construction**
419 **contracts.** Construction of incinerators and other facilities for
420 disposal of solid wastes in which products either generated
421 therein, such as steam, or recovered therefrom, such as materials
422 for recycling, are to be sold or otherwise disposed of; however,
423 in constructing such facilities, a governing authority or agency
424 shall publicly issue requests for proposals, advertised for in the
425 same manner as provided herein for seeking bids for public

426 construction projects, concerning the design, construction,
427 ownership, operation and/or maintenance of such facilities,
428 wherein such requests for proposals when issued shall contain
429 terms and conditions relating to price, financial responsibility,
430 technology, environmental compatibility, legal responsibilities
431 and such other matters as are determined by the governing
432 authority or agency to be appropriate for inclusion; and after
433 responses to the request for proposals have been duly received,
434 the governing authority or agency may select the most qualified
435 proposal or proposals on the basis of price, technology and other
436 relevant factors and from such proposals, but not limited to the
437 terms thereof, negotiate and enter contracts with one or more of
438 the persons or firms submitting proposals.

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

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

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

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

458 (xiv) **Library books and other reference materials.**

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

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

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

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

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

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

489 (xx) **Junior college books for rent.** Purchases by
490 community or junior colleges of textbooks which are obtained for

491 the purpose of renting such books to students as part of a book
492 service system.

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

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

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

499 Contracts for garbage collection or disposal, contracts for solid
500 waste collection or disposal and contracts for sewage collection
501 or disposal.

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

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

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

509 **Blind products.** Purchases made by state agencies or governing
510 authorities involving any item that is manufactured, processed or
511 produced by the Mississippi Industries for the Blind.

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

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

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

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

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

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

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

520 machinery or equipment used for the installation and

521 implementation of soil and water conservation practices or

522 measures purchased subject to the restrictions provided in

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

524 Soil and Water Conservation Commission under the exemption
525 authorized by this subparagraph shall require advance
526 authorization spread upon the minutes of the commission to include
527 the listing of the item or items authorized to be purchased and
528 the maximum bid authorized to be paid for each item or items.

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

530 Leases by hospitals of equipment or services if the leases are in
531 compliance with subparagraph (1)(ii).

532 (xxix) **Purchases made pursuant to qualified**

533 **cooperative purchasing agreements.** Purchases made by certified
534 purchasing offices of state agencies or governing authorities
535 under cooperative purchasing agreements previously approved by the
536 Office of Purchasing and Travel and established by or for any
537 municipality, county, parish or state government or the federal
538 government, provided that the notification to potential
539 contractors includes a clause that sets forth the availability of
540 the cooperative purchasing agreement to other governmental
541 entities. Such purchases shall only be made if the use of the
542 cooperative purchasing agreements is determined to be in the best
543 interest of the government entity.

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

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

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

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

582 (p) **Electrical utility petroleum-based equipment**
583 **purchase procedure.** When in response to a proper advertisement
584 therefor, no bid firm as to price is submitted to an electric
585 utility for power transformers, distribution transformers, power
586 breakers, reclosers or other articles containing a petroleum
587 product, the electric utility may accept the lowest and best bid
588 therefor although the price is not firm.

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

611 (r) **Solid waste contract proposal procedure.** Before
612 entering into any contract for garbage collection or disposal,
613 contract for solid waste collection or disposal or contract for
614 sewage collection or disposal, which involves an expenditure of
615 more than Fifty Thousand Dollars (\$50,000.00), a governing
616 authority or agency shall issue publicly a request for proposals
617 concerning the specifications for such services which shall be
618 advertised for in the same manner as provided in this section for
619 seeking bids for purchases which involve an expenditure of more
620 than the amount provided in paragraph (c) of this section. Any
621 request for proposals when issued shall contain terms and

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

646 (s) **Minority set aside authorization.** Notwithstanding
647 any provision of this section to the contrary, any agency or
648 governing authority, by order placed on its minutes, may, in its
649 discretion, set aside not more than twenty percent (20%) of its
650 anticipated annual expenditures for the purchase of commodities
651 from minority businesses; however, all such set-aside purchases
652 shall comply with all purchasing regulations promulgated by the
653 Department of Finance and Administration and shall be subject to
654 bid requirements under this section. Set-aside purchases for

655 which competitive bids are required shall be made from the lowest
656 and best minority business bidder. For the purposes of this
657 paragraph, the term "minority business" means a business which is
658 owned by a majority of persons who are United States citizens or
659 permanent resident aliens (as defined by the Immigration and
660 Naturalization Service) of the United States, and who are Asian,
661 Black, Hispanic or Native American, according to the following
662 definitions:

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

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

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

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

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

682 (u) **Contractor bidding prohibition.** A contractor is
683 prohibited from bidding on any public construction or renovation
684 project for any agency if the contractor already has an
685 outstanding contract or contracts with any agency or agencies for
686 public construction or renovation projects of which the total
687 amount is Thirty Million Dollars (\$30,000,000.00) or more.

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

691 **SECTION 2.** This act shall take effect and be in force from
692 and after July 1, 2004.