

By: Representative Janus

To: Appropriations

HOUSE BILL NO. 464

1 AN ACT TO AMEND SECTION 31-5-17, MISSISSIPPI CODE OF 1972, TO
 2 PROHIBIT THE AWARDING OF STATE CONTRACTS TO CONTRACTORS THAT HAVE
 3 PERSONS WHO ARE NOT AMERICAN CITIZENS OR LEGAL ALIENS WHO WILL
 4 WORK UNDER THE STATE CONTRACT; TO REQUIRE THAT EVERY PUBLIC
 5 OFFICER, CONTRACTOR, OR AGENT WHO ENGAGES IN OR IS IN CHARGE OF
 6 THE CONSTRUCTION OF ANY STATE BUILDING OR PUBLIC WORK FOR THE
 7 STATE EMPLOY ONLY WORKERS WHO ARE AMERICAN CITIZENS OR LEGAL
 8 ALIENS OR WHO HAVE SOME SPECIALTY FOR WHICH AMERICAN CITIZENS OR
 9 LEGAL ALIENS CANNOT BE FOUND; TO AMEND SECTION 25-53-5,
 10 MISSISSIPPI CODE OF 1972, TO PROHIBIT THE BOARD OF THE MISSISSIPPI
 11 DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES FROM ACCEPTING A BID
 12 FROM OR ENTERING INTO A CONTRACT WITH A CONTRACTOR OR VENDOR THAT
 13 HAS PERSONS WHO ARE NOT AMERICAN CITIZENS OR LEGAL ALIENS WHO WILL
 14 WORK UNDER THE CONTRACT; TO ALLOW CONTRACTORS OR VENDORS ENTERING
 15 INTO A CONTRACT WITH THE MISSISSIPPI DEPARTMENT OF INFORMATION
 16 TECHNOLOGY SERVICES TO HAVE PERSONS WHO WILL WORK UNDER THE
 17 CONTRACT WHO HAVE SOME SPECIALTY FOR WHICH AMERICAN CITIZENS OR
 18 LEGAL ALIENS CANNOT BE FOUND; TO AMEND SECTION 25-53-125,
 19 MISSISSIPPI CODE OF 1972, TO PROHIBIT THE BOARD OF THE MISSISSIPPI
 20 DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES FROM ACCEPTING BIDS
 21 FROM OR ENTERING INTO A CONTRACT FOR THE PROCUREMENT OF
 22 TELECOMMUNICATIONS EQUIPMENT, SYSTEMS OR RELATED SERVICES WITH A
 23 CONTRACTOR OR VENDOR THAT HAS PERSONS WHO ARE NOT AMERICAN
 24 CITIZENS OR LEGAL ALIENS WHO WILL WORK UNDER THE CONTRACT; TO
 25 ALLOW CONTRACTORS OR VENDORS ENTERING INTO A CONTRACT WITH THE
 26 MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES TO HAVE
 27 PERSONS WHO WILL WORK UNDER THE CONTRACT WHO HAVE SOME SPECIALTY
 28 FOR WHICH AMERICAN CITIZENS OR LEGAL ALIENS CANNOT BE FOUND; TO
 29 AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO PROHIBIT STATE
 30 AGENCIES FROM ACCEPTING BIDS FROM OR ENTERING INTO A CONTRACT WITH
 31 A CONTRACTOR OR VENDOR THAT HAS PERSONS WHO ARE NOT AMERICAN
 32 CITIZENS OR LEGAL ALIENS WHO WILL WORK UNDER THE CONTRACT; TO
 33 ALLOW CONTRACTORS OR VENDORS ENTERING INTO A CONTRACT WITH STATE
 34 AGENCIES TO HAVE PERSONS WHO WILL WORK UNDER THE CONTRACT WHO HAVE
 35 SOME SPECIALTY FOR WHICH AMERICAN CITIZENS OR LEGAL ALIENS CANNOT
 36 BE FOUND; AND FOR RELATED PURPOSES.

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

38 **SECTION 1.** Section 31-5-17, Mississippi Code of 1972, is
 39 amended as follows:

40 31-5-17. (1) Every public officer, contractor,
 41 superintendent, or agent engaged in or in charge of the
 42 construction of any state or public building or public work of any
 43 kind for the State of Mississippi or for any board, city
 44 commission, governmental agency, or municipality of the State of

45 Mississippi shall employ only workmen and laborers who have
46 actually resided in Mississippi for two (2) years next preceding
47 such employment.

48 (2) No state contract shall be awarded to a contractor that
49 has persons who are not American citizens or legal aliens who will
50 work under the state contract. However, a state contract may be
51 awarded to a contractor that has persons who will work under the
52 state contract who have some specialty for which American citizens
53 or legal aliens cannot be found. Every public officer,
54 contractor, superintendent, or agent engaged in or in charge of
55 the construction of any state building or public work of any kind
56 for the State of Mississippi shall employ only workmen and
57 laborers who are American citizens or legal aliens or who have
58 some specialty for which American citizens or legal aliens cannot
59 be found.

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

62 25-53-5. The authority shall have the following powers,
63 duties, and responsibilities:

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

73 (b) The authority shall immediately institute
74 procedures for carrying out the purposes of this chapter and
75 supervise the efficient execution of the powers and duties of the
76 office of executive director of the authority. In the execution
77 of its functions under this chapter, the authority shall maintain

78 as a paramount consideration the successful internal organization
79 and operation of the several agencies so that efficiency existing
80 therein shall not be adversely affected or impaired. In executing
81 its functions in relation to the institutions of higher learning
82 and junior colleges in the state, the authority shall take into
83 consideration the special needs of such institutions in relation
84 to the fields of teaching and scientific research.

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

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

106 (e) The authority shall adopt rules and regulations
107 governing the sharing with, or the sale or lease of information
108 technology services to any nonstate agency or person. Such
109 regulations shall provide that any such sharing, sale, or lease
110 shall be restricted in that same shall be accomplished only where

111 such services are not readily available otherwise within the
112 state, and then only at a charge to the user not less than the
113 prevailing rate of charge for similar services by private
114 enterprise within this state.

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

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

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

141 (i) The authority shall require such adequate
142 documentation of information technology procedures utilized by the
143 various state agencies and may require the establishment of such

144 organizational structures within state agencies relating to
145 information technology operations as may be necessary to
146 effectuate the purposes of this chapter.

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

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

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

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

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

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

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

226 The authority shall not accept a bid from or enter into a
227 contract with a contractor or vendor that has persons who are not
228 American citizens or legal aliens who will work under the
229 contract. However, the authority may accept a bid from or enter
230 into a contract with a contractor or vendor that has persons who
231 will work under the contract who have some specialty for which
232 American citizens or legal aliens cannot be found. The authority
233 shall require contractors and vendors submitting bids to attach an
234 affidavit stating that all persons who will work under the
235 contract are American citizens or legal aliens or who have some
236 specialty for which American citizens or legal aliens cannot be
237 found.

238 (p) When applicable, the authority may procure
239 equipment, systems and related services in accordance with the law
240 or regulations, or both, which govern the Bureau of Purchasing of
241 the Office of General Services or which govern the Mississippi

242 Department of Information Technology Services procurement of
243 telecommunications equipment, software and services.

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

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

255 (s) The authority shall work closely with the council
256 to bring about effective coordination of policies, standards and
257 procedures relating to procurement of remote sensing and
258 geographic information systems (GIS) resources. In addition, the
259 authority is responsible for development, operation and
260 maintenance of a delivery system infrastructure for geographic
261 information systems data. The authority shall provide a warehouse
262 for Mississippi's geographic information systems data.

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

265 25-53-125. The following general provisions shall apply to
266 all procurements under Sections 25-53-101 through 25-53-125:

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

270 (b) All changes, modifications and amendments to any
271 contract hereunder shall be approved in advance by the board of
272 MDITS, in addition to any other approvals required by law.

273 (c) The board of MDITS shall promulgate rules and
274 regulations in accordance with the Administrative Procedures Law,

275 Section 25-43-1 et seq., * * * for the establishment of contract
276 format.

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

280 (e) The provisions of Sections 25-53-101 through
281 25-53-125 shall, with respect to the procurement of
282 telecommunications equipment, systems or related services,
283 supersede specifications of any contradictory or conflicting
284 provisions of Chapter 7, Title 31, Mississippi Code of 1972, and
285 other laws with respect to awarding public contracts.

286 (f) The board of MDITS shall not accept a bid from or enter
287 into a contract for the procurement of telecommunications
288 equipment, systems or related services with a contractor or vendor
289 that has persons who are not American citizens or legal aliens who
290 will work under the contract. However, the board of MDITS may
291 accept a bid from or enter into a contract for the procurement of
292 telecommunications equipment, systems or related services with a
293 contractor or vendor that has persons who will work under the
294 contract who have some specialty for which American citizens or
295 legal aliens cannot be found. The board of MDITS shall require
296 contractors and vendors submitting bids to attach an affidavit
297 stating that all persons who will work under the contract are
298 American citizens or legal aliens or have some specialty for which
299 American citizens or legal aliens cannot be found.

300 **SECTION 4.** Section 31-7-13, Mississippi Code of 1972, is
301 amended as follows:

302 31-7-13. All agencies and governing authorities shall
303 purchase their commodities and printing; contract for garbage
304 collection or disposal; contract for solid waste collection or
305 disposal; contract for sewage collection or disposal; contract for
306 public construction; and contract for rentals as herein provided.

307 (a) **Bidding procedure for purchases not over \$3,500.00.**
308 Purchases which do not involve an expenditure of more than Three
309 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
310 shipping charges, may be made without advertising or otherwise
311 requesting competitive bids. However, nothing contained in this
312 paragraph (a) shall be construed to prohibit any agency or
313 governing authority from establishing procedures which require
314 competitive bids on purchases of Three Thousand Five Hundred
315 Dollars (\$3,500.00) or less.

316 (b) **Bidding procedure for purchases over \$3,500.00 but**
317 **not over \$15,000.00.** Purchases which involve an expenditure of
318 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
319 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
320 freight and shipping charges may be made from the lowest and best
321 bidder without publishing or posting advertisement for bids,
322 provided at least two (2) competitive written bids have been
323 obtained. Any governing authority purchasing commodities pursuant
324 to this paragraph (b) may authorize its purchasing agent, or his
325 designee, with regard to governing authorities other than
326 counties, or its purchase clerk, or his designee, with regard to
327 counties, to accept the lowest and best competitive written bid.
328 Such authorization shall be made in writing by the governing
329 authority and shall be maintained on file in the primary office of
330 the agency and recorded in the official minutes of the governing
331 authority, as appropriate. The purchasing agent or the purchase
332 clerk, or their designee, as the case may be, and not the
333 governing authority, shall be liable for any penalties and/or
334 damages as may be imposed by law for any act or omission of the
335 purchasing agent or purchase clerk, or their designee,
336 constituting a violation of law in accepting any bid without
337 approval by the governing authority. The term "competitive
338 written bid" shall mean a bid submitted on a bid form furnished by
339 the buying agency or governing authority and signed by authorized

340 personnel representing the vendor, or a bid submitted on a
341 vendor's letterhead or identifiable bid form and signed by
342 authorized personnel representing the vendor. "Competitive" shall
343 mean that the bids are developed based upon comparable
344 identification of the needs and are developed independently and
345 without knowledge of other bids or prospective bids. Bids may be
346 submitted by facsimile, electronic mail or other generally
347 accepted method of information distribution. Bids submitted by
348 electronic transmission shall not require the signature of the
349 vendor's representative unless required by agencies or governing
350 authorities.

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

352 (i) **Publication requirement.** Purchases which
353 involve an expenditure of more than Fifteen Thousand Dollars
354 (\$15,000.00), exclusive of freight and shipping charges, may be
355 made from the lowest and best bidder after advertising for
356 competitive sealed bids once each week for two (2) consecutive
357 weeks in a regular newspaper published in the county or
358 municipality in which such agency or governing authority is
359 located. The date as published for the bid opening shall not be
360 less than seven (7) working days after the last published notice;
361 however, if the purchase involves a construction project in which
362 the estimated cost is in excess of Fifteen Thousand Dollars
363 (\$15,000.00), such bids shall not be opened in less than fifteen
364 (15) working days after the last notice is published and the
365 notice for the purchase of such construction shall be published
366 once each week for two (2) consecutive weeks. The notice of
367 intention to let contracts or purchase equipment shall state the
368 time and place at which bids shall be received, list the contracts
369 to be made or types of equipment or supplies to be purchased, and,
370 if all plans and/or specifications are not published, refer to the
371 plans and/or specifications on file. If there is no newspaper
372 published in the county or municipality, then such notice shall be

373 given by posting same at the courthouse, or for municipalities at
374 the city hall, and at two (2) other public places in the county or
375 municipality, and also by publication once each week for two (2)
376 consecutive weeks in some newspaper having a general circulation
377 in the county or municipality in the above provided manner. On
378 the same date that the notice is submitted to the newspaper for
379 publication, the agency or governing authority involved shall mail
380 written notice to, or provide electronic notification to the main
381 office of the Mississippi Contract Procurement Center that
382 contains the same information as that in the published notice.

383 (ii) **Bidding process amendment procedure.** If all
384 plans and/or specifications are published in the notification,
385 then the plans and/or specifications may not be amended. If all
386 plans and/or specifications are not published in the notification,
387 then amendments to the plans/specifications, bid opening date, bid
388 opening time and place may be made, provided that the agency or
389 governing authority maintains a list of all prospective bidders
390 who are known to have received a copy of the bid documents and all
391 such prospective bidders are sent copies of all amendments. This
392 notification of amendments may be made via mail, facsimile,
393 electronic mail or other generally accepted method of information
394 distribution. No addendum to bid specifications may be issued
395 within two (2) working days of the time established for the
396 receipt of bids unless such addendum also amends the bid opening
397 to a date not less than five (5) working days after the date of
398 the addendum.

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

406 such file shall also contain such information as is pertinent to
407 the bid.

408 (iv) **Specification restrictions.** Specifications
409 pertinent to such bidding shall be written so as not to exclude
410 comparable equipment of domestic manufacture. However, if valid
411 justification is presented, the Department of Finance and
412 Administration or the board of a governing authority may approve a
413 request for specific equipment necessary to perform a specific
414 job. Further, such justification, when placed on the minutes of
415 the board of a governing authority, may serve as authority for
416 that governing authority to write specifications to require a
417 specific item of equipment needed to perform a specific job. In
418 addition to these requirements, from and after July 1, 1990,
419 vendors of relocatable classrooms and the specifications for the
420 purchase of such relocatable classrooms published by local school
421 boards shall meet all pertinent regulations of the State Board of
422 Education, including prior approval of such bid by the State
423 Department of Education.

424 (v) Agencies and governing authorities may
425 establish secure procedures by which bids may be submitted via
426 electronic means.

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

428 (i) **Decision procedure.** Purchases may be made
429 from the lowest and best bidder. In determining the lowest and
430 best bid, freight and shipping charges shall be included.
431 Life-cycle costing, total cost bids, warranties, guaranteed
432 buy-back provisions and other relevant provisions may be included
433 in the best bid calculation. All best bid procedures for state
434 agencies must be in compliance with regulations established by the
435 Department of Finance and Administration. If any governing
436 authority accepts a bid other than the lowest bid actually
437 submitted, it shall place on its minutes detailed calculations and
438 narrative summary showing that the accepted bid was determined to

439 be the lowest and best bid, including the dollar amount of the
440 accepted bid and the dollar amount of the lowest bid. No agency
441 or governing authority shall accept a bid based on items not
442 included in the specifications.

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

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

449 (e) **Lease-purchase authorization.** For the purposes of
450 this section, the term "equipment" shall mean equipment, furniture
451 and, if applicable, associated software and other applicable
452 direct costs associated with the acquisition. Any lease-purchase
453 of equipment which an agency is not required to lease-purchase
454 under the master lease-purchase program pursuant to Section
455 31-7-10 and any lease-purchase of equipment which a governing
456 authority elects to lease-purchase may be acquired by a
457 lease-purchase agreement under this paragraph (e). Lease-purchase
458 financing may also be obtained from the vendor or from a
459 third-party source after having solicited and obtained at least
460 two (2) written competitive bids, as defined in paragraph (b) of
461 this section, for such financing without advertising for such
462 bids. Solicitation for the bids for financing may occur before or
463 after acceptance of bids for the purchase of such equipment or,
464 where no such bids for purchase are required, at any time before
465 the purchase thereof. No such lease-purchase agreement shall be
466 for an annual rate of interest which is greater than the overall
467 maximum interest rate to maturity on general obligation
468 indebtedness permitted under Section 75-17-101, and the term of
469 such lease-purchase agreement shall not exceed the useful life of
470 equipment covered thereby as determined according to the upper
471 limit of the asset depreciation range (ADR) guidelines for the

472 Class Life Asset Depreciation Range System established by the
473 Internal Revenue Service pursuant to the United States Internal
474 Revenue Code and regulations thereunder as in effect on December
475 31, 1980, or comparable depreciation guidelines with respect to
476 any equipment not covered by ADR guidelines. Any lease-purchase
477 agreement entered into pursuant to this paragraph (e) may contain
478 any of the terms and conditions which a master lease-purchase
479 agreement may contain under the provisions of Section 31-7-10(5),
480 and shall contain an annual allocation dependency clause
481 substantially similar to that set forth in Section 31-7-10(8).
482 Each agency or governing authority entering into a lease-purchase
483 transaction pursuant to this paragraph (e) shall maintain with
484 respect to each such lease-purchase transaction the same
485 information as required to be maintained by the Department of
486 Finance and Administration pursuant to Section 31-7-10(13).
487 However, nothing contained in this section shall be construed to
488 permit agencies to acquire items of equipment with a total
489 acquisition cost in the aggregate of less than Ten Thousand
490 Dollars (\$10,000.00) by a single lease-purchase transaction. All
491 equipment, and the purchase thereof by any lessor, acquired by
492 lease-purchase under this paragraph and all lease-purchase
493 payments with respect thereto shall be exempt from all Mississippi
494 sales, use and ad valorem taxes. Interest paid on any
495 lease-purchase agreement under this section shall be exempt from
496 State of Mississippi income taxation.

497 (f) **Alternate bid authorization.** When necessary to
498 ensure ready availability of commodities for public works and the
499 timely completion of public projects, no more than two (2)
500 alternate bids may be accepted by a governing authority for
501 commodities. No purchases may be made through use of such
502 alternate bids procedure unless the lowest and best bidder cannot
503 deliver the commodities contained in his bid. In that event,

504 purchases of such commodities may be made from one (1) of the
505 bidders whose bid was accepted as an alternate.

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

526 (h) **Petroleum purchase alternative.** In addition to
527 other methods of purchasing authorized in this chapter, when any
528 agency or governing authority shall have a need for gas, diesel
529 fuel, oils and/or other petroleum products in excess of the amount
530 set forth in paragraph (a) of this section, such agency or
531 governing authority may purchase the commodity after having
532 solicited and obtained at least two (2) competitive written bids,
533 as defined in paragraph (b) of this section. If two (2)
534 competitive written bids are not obtained, the entity shall comply
535 with the procedures set forth in paragraph (c) of this section.
536 In the event any agency or governing authority shall have

537 advertised for bids for the purchase of gas, diesel fuel, oils and
538 other petroleum products and coal and no acceptable bids can be
539 obtained, such agency or governing authority is authorized and
540 directed to enter into any negotiations necessary to secure the
541 lowest and best contract available for the purchase of such
542 commodities.

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

563 (j) **State agency emergency purchase procedure.** If the
564 governing board or the executive head, or his designee, of any
565 agency of the state shall determine that an emergency exists in
566 regard to the purchase of any commodities or repair contracts, so
567 that the delay incident to giving opportunity for competitive
568 bidding would be detrimental to the interests of the state, then
569 the provisions herein for competitive bidding shall not apply and

570 the head of such agency shall be authorized to make the purchase
571 or repair. Total purchases so made shall only be for the purpose
572 of meeting needs created by the emergency situation. In the event
573 such executive head is responsible to an agency board, at the
574 meeting next following the emergency purchase, documentation of
575 the purchase, including a description of the commodity purchased,
576 the purchase price thereof and the nature of the emergency shall
577 be presented to the board and placed on the minutes of the board
578 of such agency. The head of such agency, or his designee, shall,
579 at the earliest possible date following such emergency purchase,
580 file with the Department of Finance and Administration (i) a
581 statement explaining the conditions and circumstances of the
582 emergency, which shall include a detailed description of the
583 events leading up to the situation and the negative impact to the
584 entity if the purchase is made following the statutory
585 requirements set forth in paragraph (a), (b) or (c) of this
586 section, and (ii) a certified copy of the appropriate minutes of
587 the board of such agency, if applicable. On or before September 1
588 of each year, the State Auditor shall prepare and deliver to the
589 Senate Fees, Salaries and Administration Committee, the House Fees
590 and Salaries of Public Officers Committee and the Joint
591 Legislative Budget Committee a report containing a list of all
592 state agency emergency purchases and supporting documentation for
593 each emergency purchases.

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

595 If the governing authority, or the governing authority acting
596 through its designee, shall determine that an emergency exists in
597 regard to the purchase of any commodities or repair contracts, so
598 that the delay incident to giving opportunity for competitive
599 bidding would be detrimental to the interest of the governing
600 authority, then the provisions herein for competitive bidding
601 shall not apply and any officer or agent of such governing
602 authority having general or special authority therefor in making

603 such purchase or repair shall approve the bill presented therefor,
604 and he shall certify in writing thereon from whom such purchase
605 was made, or with whom such a repair contract was made. At the
606 board meeting next following the emergency purchase or repair
607 contract, documentation of the purchase or repair contract,
608 including a description of the commodity purchased, the price
609 thereof and the nature of the emergency shall be presented to the
610 board and shall be placed on the minutes of the board of such
611 governing authority.

612 (1) **Hospital purchase, lease-purchase and lease**
613 **authorization.**

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

619 (ii) In addition to the authority granted in
620 subparagraph (i) of this paragraph (1), the commissioners or board
621 of trustees is authorized to enter into contracts for the lease of
622 equipment or services, or both, which it considers necessary for
623 the proper care of patients if, in its opinion, it is not
624 financially feasible to purchase the necessary equipment or
625 services. Any such contract for the lease of equipment or
626 services executed by the commissioners or board shall not exceed a
627 maximum of five (5) years' duration and shall include a
628 cancellation clause based on unavailability of funds. If such
629 cancellation clause is exercised, there shall be no further
630 liability on the part of the lessee. Any such contract for the
631 lease of equipment or services executed on behalf of the
632 commissioners or board that complies with the provisions of this
633 subparagraph (ii) shall be excepted from the bid requirements set
634 forth in this section.

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

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

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

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

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

661 (v) **Governmental equipment auctions.** Motor
662 vehicles or other equipment purchased from a federal agency or
663 authority, another governing authority or state agency of the
664 State of Mississippi, or any governing authority or state agency
665 of another state at a public auction held for the purpose of
666 disposing of such vehicles or other equipment. Any purchase by a
667 governing authority under the exemption authorized by this

668 subparagraph (v) shall require advance authorization spread upon
669 the minutes of the governing authority to include the listing of
670 the item or items authorized to be purchased and the maximum bid
671 authorized to be paid for each item or items.

672 (vi) **Intergovernmental sales and transfers.**

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

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

696 (viii) **Single source items.** Noncompetitive items
697 available from one (1) source only. In connection with the
698 purchase of noncompetitive items only available from one (1)
699 source, a certification of the conditions and circumstances
700 requiring the purchase shall be filed by the agency with the

701 Department of Finance and Administration and by the governing
702 authority with the board of the governing authority. Upon receipt
703 of that certification the Department of Finance and Administration
704 or the board of the governing authority, as the case may be, may,
705 in writing, authorize the purchase, which authority shall be noted
706 on the minutes of the body at the next regular meeting thereafter.
707 In those situations, a governing authority is not required to
708 obtain the approval of the Department of Finance and
709 Administration.

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

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

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

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

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

750 (xiv) **Library books and other reference materials.**
751 Purchases by libraries or for libraries of books and periodicals;
752 processed film, video cassette tapes, filmstrips and slides;
753 recorded audio tapes, cassettes and diskettes; and any such items
754 as would be used for teaching, research or other information
755 distribution; however, equipment such as projectors, recorders,
756 audio or video equipment, and monitor televisions are not exempt
757 under this subparagraph.

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

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

764 (xvii) **Multichannel interactive video systems.**
765 From and after July 1, 1990, contracts by Mississippi Authority
766 for Educational Television with any private educational

767 institution or private nonprofit organization whose purposes are
768 educational in regard to the construction, purchase, lease or
769 lease-purchase of facilities and equipment and the employment of
770 personnel for providing multichannel interactive video systems
771 (ITSF) in the school districts of this state.

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

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

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

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

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

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

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

791 Contracts for garbage collection or disposal, contracts for solid
792 waste collection or disposal and contracts for sewage collection
793 or disposal.

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

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

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

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

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

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

821 (xxviii) **Hospital lease of equipment or services.**
822 Leases by hospitals of equipment or services if the leases are in
823 compliance with subparagraph (1)(ii).

824 (xxix) **Purchases made pursuant to qualified**
825 **cooperative purchasing agreements.** Purchases made by certified
826 purchasing offices of state agencies or governing authorities
827 under cooperative purchasing agreements previously approved by the
828 Office of Purchasing and Travel and established by or for any
829 municipality, county, parish or state government or the federal
830 government, provided that the notification to potential
831 contractors includes a clause that sets forth the availability of
832 the cooperative purchasing agreement to other governmental

833 entities. Such purchases shall only be made if the use of the
834 cooperative purchasing agreements is determined to be in the best
835 interest of the government entity.

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

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

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

859 (o) **Purchase law violation prohibition and vendor**
860 **penalty.** No contract or purchase as herein authorized shall be
861 made for the purpose of circumventing the provisions of this
862 section requiring competitive bids, nor shall it be lawful for any
863 person or concern to submit individual invoices for amounts within
864 those authorized for a contract or purchase where the actual value
865 of the contract or commodity purchased exceeds the authorized

866 amount and the invoices therefor are split so as to appear to be
867 authorized as purchases for which competitive bids are not
868 required. Submission of such invoices shall constitute a
869 misdemeanor punishable by a fine of not less than Five Hundred
870 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
871 or by imprisonment for thirty (30) days in the county jail, or
872 both such fine and imprisonment. In addition, the claim or claims
873 submitted shall be forfeited.

874 (p) **Electrical utility petroleum-based equipment**
875 **purchase procedure.** When in response to a proper advertisement
876 therefor, no bid firm as to price is submitted to an electric
877 utility for power transformers, distribution transformers, power
878 breakers, reclosers or other articles containing a petroleum
879 product, the electric utility may accept the lowest and best bid
880 therefor although the price is not firm.

881 (q) **Fuel management system bidding procedure.** Any
882 governing authority or agency of the state shall, before
883 contracting for the services and products of a fuel management or
884 fuel access system, enter into negotiations with not fewer than
885 two (2) sellers of fuel management or fuel access systems for
886 competitive written bids to provide the services and products for
887 the systems. In the event that the governing authority or agency
888 cannot locate two (2) sellers of such systems or cannot obtain
889 bids from two (2) sellers of such systems, it shall show proof
890 that it made a diligent, good-faith effort to locate and negotiate
891 with two (2) sellers of such systems. Such proof shall include,
892 but not be limited to, publications of a request for proposals and
893 letters soliciting negotiations and bids. For purposes of this
894 paragraph (q), a fuel management or fuel access system is an
895 automated system of acquiring fuel for vehicles as well as
896 management reports detailing fuel use by vehicles and drivers, and
897 the term "competitive written bid" shall have the meaning as
898 defined in paragraph (b) of this section. Governing authorities

899 and agencies shall be exempt from this process when contracting
900 for the services and products of a fuel management or fuel access
901 systems under the terms of a state contract established by the
902 Office of Purchasing and Travel.

903 (r) **Solid waste contract proposal procedure.** Before
904 entering into any contract for garbage collection or disposal,
905 contract for solid waste collection or disposal or contract for
906 sewage collection or disposal, which involves an expenditure of
907 more than Fifty Thousand Dollars (\$50,000.00), a governing
908 authority or agency shall issue publicly a request for proposals
909 concerning the specifications for such services which shall be
910 advertised for in the same manner as provided in this section for
911 seeking bids for purchases which involve an expenditure of more
912 than the amount provided in paragraph (c) of this section. Any
913 request for proposals when issued shall contain terms and
914 conditions relating to price, financial responsibility,
915 technology, legal responsibilities and other relevant factors as
916 are determined by the governing authority or agency to be
917 appropriate for inclusion; all factors determined relevant by the
918 governing authority or agency or required by this paragraph (r)
919 shall be duly included in the advertisement to elicit proposals.
920 After responses to the request for proposals have been duly
921 received, the governing authority or agency shall select the most
922 qualified proposal or proposals on the basis of price, technology
923 and other relevant factors and from such proposals, but not
924 limited to the terms thereof, negotiate and enter contracts with
925 one or more of the persons or firms submitting proposals. If the
926 governing authority or agency deems none of the proposals to be
927 qualified or otherwise acceptable, the request for proposals
928 process may be reinitiated. Notwithstanding any other provisions
929 of this paragraph, where a county with at least thirty-five
930 thousand (35,000) nor more than forty thousand (40,000)
931 population, according to the 1990 federal decennial census, owns

932 or operates a solid waste landfill, the governing authorities of
933 any other county or municipality may contract with the governing
934 authorities of the county owning or operating the landfill,
935 pursuant to a resolution duly adopted and spread upon the minutes
936 of each governing authority involved, for garbage or solid waste
937 collection or disposal services through contract negotiations.

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

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

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

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

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

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

974 (u) **Contract restrictions.** No agency shall accept a
975 bid from or enter into a contract with a contractor or vendor that
976 has persons who are not American citizens or legal aliens who will
977 work under the contract. However, an agency may accept a bid from
978 or enter into a contract with a contractor or vendor that has
979 persons who will work under the contract who have some specialty
980 for which American citizens or legal aliens cannot be found. The
981 agency shall require contractors and vendors submitting bids to
982 attach an affidavit stating that all persons who will work under
983 the contract are American citizens or legal aliens or have some
984 specialty for which American citizens or legal aliens cannot be
985 found.

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

989 **SECTION 5.** This act shall take effect and be in force from
990 and after July 1, 2004.