

By: Representative Holland

To: Appropriations

HOUSE BILL NO. 743
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 31-9-5, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE ANY STATE AGENCY TO DONATE GOODS AND SERVICES FOR THE
3 SUPPORT OF THE LOCAL CHAPTER OF THE AMERICAN RED CROSS; TO AMEND
4 SECTION 31-7-13, MISSISSIPPI CODE OF 1972, AS AMENDED BY SENATE
5 BILL NO. 2299, 2004 REGULAR SESSION, TO EXEMPT THE PURCHASES OF
6 SCHOOL YEARBOOKS BY STATE AGENCIES AND GOVERNING AUTHORITIES FROM
7 THE PUBLIC PURCHASING LAW; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 31-9-5, Mississippi Code of 1972, is
10 amended as follows:

11 31-9-5. (1) The Office of General Services with the
12 approval of the Public Procurement Review Board shall negotiate
13 and contract with any appropriate agency or commission of the
14 United States government or of the State of Mississippi for the
15 purpose of purchasing or otherwise securing surplus material or
16 property in bulk lots or quantities, and for the purpose of
17 assisting all agencies, departments, institutions and
18 instrumentalities of the State of Mississippi, the boards of
19 supervisors of the various counties, and the governing authorities
20 of the various municipalities, drainage districts and other taxing
21 units in purchasing, leasing or otherwise securing surplus
22 material or property. After ascertaining the needs of the various
23 state departments and institutions, counties, municipalities,
24 drainage districts and other taxing units, the Office of General
25 Services may enter into contracts with the governing authorities
26 of such governmental entities as will enable them to carry out the
27 provisions of this section.

28 (2) The Office of General Services also may acquire state or
29 federal government surplus property for nonprofit and tax exempt

30 health and educational institutions, Boy Scouts, Girl Scouts, Camp
31 Fire Girls, military academies, volunteer fire departments,
32 nonprofit cooperative water associations, Boys Clubs of America
33 and Girls Clubs of America; however, deliveries to these
34 institutions shall be made only after they have established their
35 eligibility by meeting the requirements of the federal government,
36 have requested the Office of General Services to act for them in
37 acquiring government surplus property, and have agreed to comply
38 with both the state and federal laws pertaining to acquisition and
39 utilization of the property.

40 (3) Any state agency, with the approval of the Office of
41 General Services, is authorized and empowered, in the discretion
42 of the governing board or authority of the state agency, to donate
43 goods or services for the support of any local chapter of the
44 American Red Cross. This subsection (3) shall stand repealed from
45 and after July 1, 2005.

46 (4) The Office of General Services may do all other things
47 which may be necessary to effectuate the purposes of this section.

48 **SECTION 2.** Section 31-7-13, Mississippi Code of 1972, as
49 amended by Senate Bill No. 2299, 2004 Regular Session, is amended
50 as follows:

51 31-7-13. All agencies and governing authorities shall
52 purchase their commodities and printing; contract for garbage
53 collection or disposal; contract for solid waste collection or
54 disposal; contract for sewage collection or disposal; contract for
55 public construction; and contract for rentals as herein provided.

56 (a) **Bidding procedure for purchases not over \$3,500.00.**
57 Purchases which do not involve an expenditure of more than Three
58 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
59 shipping charges, may be made without advertising or otherwise
60 requesting competitive bids. However, nothing contained in this
61 paragraph (a) shall be construed to prohibit any agency or
62 governing authority from establishing procedures which require

63 competitive bids on purchases of Three Thousand Five Hundred
64 Dollars (\$3,500.00) or less.

65 (b) **Bidding procedure for purchases over \$3,500.00 but**
66 **not over \$15,000.00.** Purchases which involve an expenditure of
67 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
68 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
69 freight and shipping charges may be made from the lowest and best
70 bidder without publishing or posting advertisement for bids,
71 provided at least two (2) competitive written bids have been
72 obtained. Any governing authority purchasing commodities pursuant
73 to this paragraph (b) may authorize its purchasing agent, or his
74 designee, with regard to governing authorities other than
75 counties, or its purchase clerk, or his designee, with regard to
76 counties, to accept the lowest and best competitive written bid.
77 Such authorization shall be made in writing by the governing
78 authority and shall be maintained on file in the primary office of
79 the agency and recorded in the official minutes of the governing
80 authority, as appropriate. The purchasing agent or the purchase
81 clerk, or their designee, as the case may be, and not the
82 governing authority, shall be liable for any penalties and/or
83 damages as may be imposed by law for any act or omission of the
84 purchasing agent or purchase clerk, or their designee,
85 constituting a violation of law in accepting any bid without
86 approval by the governing authority. The term "competitive
87 written bid" shall mean a bid submitted on a bid form furnished by
88 the buying agency or governing authority and signed by authorized
89 personnel representing the vendor, or a bid submitted on a
90 vendor's letterhead or identifiable bid form and signed by
91 authorized personnel representing the vendor. "Competitive" shall
92 mean that the bids are developed based upon comparable
93 identification of the needs and are developed independently and
94 without knowledge of other bids or prospective bids. Bids may be
95 submitted by facsimile, electronic mail or other generally

96 accepted method of information distribution. Bids submitted by
97 electronic transmission shall not require the signature of the
98 vendor's representative unless required by agencies or governing
99 authorities.

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

101 (i) **Publication requirement.** Purchases which
102 involve an expenditure of more than Fifteen Thousand Dollars
103 (\$15,000.00), exclusive of freight and shipping charges, may be
104 made from the lowest and best bidder after advertising for
105 competitive sealed bids once each week for two (2) consecutive
106 weeks in a regular newspaper published in the county or
107 municipality in which such agency or governing authority is
108 located. The date as published for the bid opening shall not be
109 less than seven (7) working days after the last published notice;
110 however, if the purchase involves a construction project in which
111 the estimated cost is in excess of Fifteen Thousand Dollars
112 (\$15,000.00), such bids shall not be opened in less than fifteen
113 (15) working days after the last notice is published and the
114 notice for the purchase of such construction shall be published
115 once each week for two (2) consecutive weeks. The notice of
116 intention to let contracts or purchase equipment shall state the
117 time and place at which bids shall be received, list the contracts
118 to be made or types of equipment or supplies to be purchased, and,
119 if all plans and/or specifications are not published, refer to the
120 plans and/or specifications on file. If there is no newspaper
121 published in the county or municipality, then such notice shall be
122 given by posting same at the courthouse, or for municipalities at
123 the city hall, and at two (2) other public places in the county or
124 municipality, and also by publication once each week for two (2)
125 consecutive weeks in some newspaper having a general circulation
126 in the county or municipality in the above provided manner. On
127 the same date that the notice is submitted to the newspaper for
128 publication, the agency or governing authority involved shall mail

129 written notice to, or provide electronic notification to the main
130 office of the Mississippi Contract Procurement Center that
131 contains the same information as that in the published notice.

132 (ii) **Bidding process amendment procedure.** If all
133 plans and/or specifications are published in the notification,
134 then the plans and/or specifications may not be amended. If all
135 plans and/or specifications are not published in the notification,
136 then amendments to the plans/specifications, bid opening date, bid
137 opening time and place may be made, provided that the agency or
138 governing authority maintains a list of all prospective bidders
139 who are known to have received a copy of the bid documents and all
140 such prospective bidders are sent copies of all amendments. This
141 notification of amendments may be made via mail, facsimile,
142 electronic mail or other generally accepted method of information
143 distribution. No addendum to bid specifications may be issued
144 within two (2) working days of the time established for the
145 receipt of bids unless such addendum also amends the bid opening
146 to a date not less than five (5) working days after the date of
147 the addendum.

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

157 (iv) **Specification restrictions.** Specifications
158 pertinent to such bidding shall be written so as not to exclude
159 comparable equipment of domestic manufacture. However, if valid
160 justification is presented, the Department of Finance and
161 Administration or the board of a governing authority may approve a

162 request for specific equipment necessary to perform a specific
163 job. Further, such justification, when placed on the minutes of
164 the board of a governing authority, may serve as authority for
165 that governing authority to write specifications to require a
166 specific item of equipment needed to perform a specific job. In
167 addition to these requirements, from and after July 1, 1990,
168 vendors of relocatable classrooms and the specifications for the
169 purchase of such relocatable classrooms published by local school
170 boards shall meet all pertinent regulations of the State Board of
171 Education, including prior approval of such bid by the State
172 Department of Education.

173 (v) Agencies and governing authorities may
174 establish secure procedures by which bids may be submitted via
175 electronic means.

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

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

192 (ii) **Decision procedure for Certified Purchasing**
193 **Offices.** In addition to the decision procedure set forth in
194 paragraph (d)(i), Certified Purchasing Offices may also use the

195 following procedure: Purchases may be made from the bidder
196 offering the best value. In determining the best value bid,
197 freight and shipping charges shall be included. Life-cycle
198 costing, total cost bids, warranties, guaranteed buy-back
199 provisions, documented previous experience, training costs and
200 other relevant provisions may be included in the best value
201 calculation. This provision shall authorize Certified Purchasing
202 Offices to utilize a Request For Proposals (RFP) process when
203 purchasing commodities. All best value procedures for state
204 agencies must be in compliance with regulations established by the
205 Department of Finance and Administration. No agency or governing
206 authority shall accept a bid based on items or criteria not
207 included in the specifications.

208 (iii) **Construction project negotiations authority.**

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

214 (e) **Lease-purchase authorization.** For the purposes of
215 this section, the term "equipment" shall mean equipment, furniture
216 and, if applicable, associated software and other applicable
217 direct costs associated with the acquisition. Any lease-purchase
218 of equipment which an agency is not required to lease-purchase
219 under the master lease-purchase program pursuant to Section
220 31-7-10 and any lease-purchase of equipment which a governing
221 authority elects to lease-purchase may be acquired by a
222 lease-purchase agreement under this paragraph (e). Lease-purchase
223 financing may also be obtained from the vendor or from a
224 third-party source after having solicited and obtained at least
225 two (2) written competitive bids, as defined in paragraph (b) of
226 this section, for such financing without advertising for such
227 bids. Solicitation for the bids for financing may occur before or

228 after acceptance of bids for the purchase of such equipment or,
229 where no such bids for purchase are required, at any time before
230 the purchase thereof. No such lease-purchase agreement shall be
231 for an annual rate of interest which is greater than the overall
232 maximum interest rate to maturity on general obligation
233 indebtedness permitted under Section 75-17-101, and the term of
234 such lease-purchase agreement shall not exceed the useful life of
235 equipment covered thereby as determined according to the upper
236 limit of the asset depreciation range (ADR) guidelines for the
237 Class Life Asset Depreciation Range System established by the
238 Internal Revenue Service pursuant to the United States Internal
239 Revenue Code and regulations thereunder as in effect on December
240 31, 1980, or comparable depreciation guidelines with respect to
241 any equipment not covered by ADR guidelines. Any lease-purchase
242 agreement entered into pursuant to this paragraph (e) may contain
243 any of the terms and conditions which a master lease-purchase
244 agreement may contain under the provisions of Section 31-7-10(5),
245 and shall contain an annual allocation dependency clause
246 substantially similar to that set forth in Section 31-7-10(8).
247 Each agency or governing authority entering into a lease-purchase
248 transaction pursuant to this paragraph (e) shall maintain with
249 respect to each such lease-purchase transaction the same
250 information as required to be maintained by the Department of
251 Finance and Administration pursuant to Section 31-7-10(13).
252 However, nothing contained in this section shall be construed to
253 permit agencies to acquire items of equipment with a total
254 acquisition cost in the aggregate of less than Ten Thousand
255 Dollars (\$10,000.00) by a single lease-purchase transaction. All
256 equipment, and the purchase thereof by any lessor, acquired by
257 lease-purchase under this paragraph and all lease-purchase
258 payments with respect thereto shall be exempt from all Mississippi
259 sales, use and ad valorem taxes. Interest paid on any

260 lease-purchase agreement under this section shall be exempt from
261 State of Mississippi income taxation.

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

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

291 (h) **Petroleum purchase alternative.** In addition to
292 other methods of purchasing authorized in this chapter, when any

293 agency or governing authority shall have a need for gas, diesel
294 fuel, oils and/or other petroleum products in excess of the amount
295 set forth in paragraph (a) of this section, such agency or
296 governing authority may purchase the commodity after having
297 solicited and obtained at least two (2) competitive written bids,
298 as defined in paragraph (b) of this section. If two (2)
299 competitive written bids are not obtained, the entity shall comply
300 with the procedures set forth in paragraph (c) of this section.
301 In the event any agency or governing authority shall have
302 advertised for bids for the purchase of gas, diesel fuel, oils and
303 other petroleum products and coal and no acceptable bids can be
304 obtained, such agency or governing authority is authorized and
305 directed to enter into any negotiations necessary to secure the
306 lowest and best contract available for the purchase of such
307 commodities.

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

326 methods of adjusting unit prices for the change in the cost of
327 such petroleum products.

328 (j) **State agency emergency purchase procedure.** If the
329 governing board or the executive head, or his designee, of any
330 agency of the state shall determine that an emergency exists in
331 regard to the purchase of any commodities or repair contracts, so
332 that the delay incident to giving opportunity for competitive
333 bidding would be detrimental to the interests of the state, then
334 the provisions herein for competitive bidding shall not apply and
335 the head of such agency shall be authorized to make the purchase
336 or repair. Total purchases so made shall only be for the purpose
337 of meeting needs created by the emergency situation. In the event
338 such executive head is responsible to an agency board, at the
339 meeting next following the emergency purchase, documentation of
340 the purchase, including a description of the commodity purchased,
341 the purchase price thereof and the nature of the emergency shall
342 be presented to the board and placed on the minutes of the board
343 of such agency. The head of such agency, or his designee, shall,
344 at the earliest possible date following such emergency purchase,
345 file with the Department of Finance and Administration (i) a
346 statement explaining the conditions and circumstances of the
347 emergency, which shall include a detailed description of the
348 events leading up to the situation and the negative impact to the
349 entity if the purchase is made following the statutory
350 requirements set forth in paragraph (a), (b) or (c) of this
351 section, and (ii) a certified copy of the appropriate minutes of
352 the board of such agency, if applicable. On or before September 1
353 of each year, the State Auditor shall prepare and deliver to the
354 Senate Fees, Salaries and Administration Committee, the House Fees
355 and Salaries of Public Officers Committee and the Joint
356 Legislative Budget Committee a report containing a list of all
357 state agency emergency purchases and supporting documentation for
358 each emergency purchases.

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

360 If the governing authority, or the governing authority acting
361 through its designee, shall determine that an emergency exists in
362 regard to the purchase of any commodities or repair contracts, so
363 that the delay incident to giving opportunity for competitive
364 bidding would be detrimental to the interest of the governing
365 authority, then the provisions herein for competitive bidding
366 shall not apply and any officer or agent of such governing
367 authority having general or special authority therefor in making
368 such purchase or repair shall approve the bill presented therefor,
369 and he shall certify in writing thereon from whom such purchase
370 was made, or with whom such a repair contract was made. At the
371 board meeting next following the emergency purchase or repair
372 contract, documentation of the purchase or repair contract,
373 including a description of the commodity purchased, the price
374 thereof and the nature of the emergency shall be presented to the
375 board and shall be placed on the minutes of the board of such
376 governing authority.

377 (l) **Hospital purchase, lease-purchase and lease**
378 **authorization.**

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

384 (ii) In addition to the authority granted in
385 subparagraph (i) of this paragraph (l), the commissioners or board
386 of trustees is authorized to enter into contracts for the lease of
387 equipment or services, or both, which it considers necessary for
388 the proper care of patients if, in its opinion, it is not
389 financially feasible to purchase the necessary equipment or
390 services. Any such contract for the lease of equipment or
391 services executed by the commissioners or board shall not exceed a

392 maximum of five (5) years' duration and shall include a
393 cancellation clause based on unavailability of funds. If such
394 cancellation clause is exercised, there shall be no further
395 liability on the part of the lessee. Any such contract for the
396 lease of equipment or services executed on behalf of the
397 commissioners or board that complies with the provisions of this
398 subparagraph (ii) shall be excepted from the bid requirements set
399 forth in this section.

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

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

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

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

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

426 (v) **Governmental equipment auctions.** Motor
427 vehicles or other equipment purchased from a federal agency or
428 authority, another governing authority or state agency of the
429 State of Mississippi, or any governing authority or state agency
430 of another state at a public auction held for the purpose of
431 disposing of such vehicles or other equipment. Any purchase by a
432 governing authority under the exemption authorized by this
433 subparagraph (v) shall require advance authorization spread upon
434 the minutes of the governing authority to include the listing of
435 the item or items authorized to be purchased and the maximum bid
436 authorized to be paid for each item or items.

437 (vi) **Intergovernmental sales and transfers.**
438 Purchases, sales, transfers or trades by governing authorities or
439 state agencies when such purchases, sales, transfers or trades are
440 made by a private treaty agreement or through means of
441 negotiation, from any federal agency or authority, another
442 governing authority or state agency of the State of Mississippi,
443 or any state agency or governing authority of another state.
444 Nothing in this section shall permit such purchases through public
445 auction except as provided for in subparagraph (v) of this
446 section. It is the intent of this section to allow governmental
447 entities to dispose of and/or purchase commodities from other
448 governmental entities at a price that is agreed to by both
449 parties. This shall allow for purchases and/or sales at prices
450 which may be determined to be below the market value if the
451 selling entity determines that the sale at below market value is
452 in the best interest of the taxpayers of the state. Governing
453 authorities shall place the terms of the agreement and any
454 justification on the minutes, and state agencies shall obtain

455 approval from the Department of Finance and Administration, prior
456 to releasing or taking possession of the commodities.

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

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

475 (ix) **Waste disposal facility construction**
476 **contracts.** Construction of incinerators and other facilities for
477 disposal of solid wastes in which products either generated
478 therein, such as steam, or recovered therefrom, such as materials
479 for recycling, are to be sold or otherwise disposed of; however,
480 in constructing such facilities, a governing authority or agency
481 shall publicly issue requests for proposals, advertised for in the
482 same manner as provided herein for seeking bids for public
483 construction projects, concerning the design, construction,
484 ownership, operation and/or maintenance of such facilities,
485 wherein such requests for proposals when issued shall contain
486 terms and conditions relating to price, financial responsibility,
487 technology, environmental compatibility, legal responsibilities

488 and such other matters as are determined by the governing
489 authority or agency to be appropriate for inclusion; and after
490 responses to the request for proposals have been duly received,
491 the governing authority or agency may select the most qualified
492 proposal or proposals on the basis of price, technology and other
493 relevant factors and from such proposals, but not limited to the
494 terms thereof, negotiate and enter contracts with one or more of
495 the persons or firms submitting proposals.

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

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

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

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

515 (xiv) **Library books and other reference materials.**
516 Purchases by libraries or for libraries of books and periodicals;
517 processed film, video cassette tapes, filmstrips and slides;
518 recorded audio tapes, cassettes and diskettes; and any such items
519 as would be used for teaching, research or other information
520 distribution; however, equipment such as projectors, recorders,

521 audio or video equipment, and monitor televisions are not exempt
522 under this subparagraph.

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

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

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

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

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

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

550 (xxi) **Certain school district purchases.**
551 Purchases of commodities made by school districts from vendors
552 with which any levying authority of the school district, as

553 defined in Section 37-57-1, has contracted through competitive
554 bidding procedures for purchases of the same commodities.

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

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

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

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

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

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

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

589 (xxix) **Purchases made pursuant to qualified**
590 **cooperative purchasing agreements.** Purchases made by certified
591 purchasing offices of state agencies or governing authorities
592 under cooperative purchasing agreements previously approved by the
593 Office of Purchasing and Travel and established by or for any
594 municipality, county, parish or state government or the federal
595 government, provided that the notification to potential
596 contractors includes a clause that sets forth the availability of
597 the cooperative purchasing agreement to other governmental
598 entities. Such purchases shall only be made if the use of the
599 cooperative purchasing agreements is determined to be in the best
600 interest of the government entity.

601 (xxx) **School yearbooks.** Purchases of school
602 yearbooks by state agencies or governing authorities; provided,
603 however, that state agencies and governing authorities shall use
604 for these purchases the RFP process as set forth in the
605 Mississippi Procurement Manual adopted by the Office of Purchase
606 and Travel.

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

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

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

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

645 (p) **Electrical utility petroleum-based equipment**
646 **purchase procedure.** When in response to a proper advertisement
647 therefor, no bid firm as to price is submitted to an electric
648 utility for power transformers, distribution transformers, power
649 breakers, reclosers or other articles containing a petroleum
650 product, the electric utility may accept the lowest and best bid
651 therefor although the price is not firm.

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

674 (r) **Solid waste contract proposal procedure.** Before
675 entering into any contract for garbage collection or disposal,
676 contract for solid waste collection or disposal or contract for
677 sewage collection or disposal, which involves an expenditure of
678 more than Fifty Thousand Dollars (\$50,000.00), a governing
679 authority or agency shall issue publicly a request for proposals
680 concerning the specifications for such services which shall be
681 advertised for in the same manner as provided in this section for
682 seeking bids for purchases which involve an expenditure of more
683 than the amount provided in paragraph (c) of this section. Any
684 request for proposals when issued shall contain terms and

685 conditions relating to price, financial responsibility,
686 technology, legal responsibilities and other relevant factors as
687 are determined by the governing authority or agency to be
688 appropriate for inclusion; all factors determined relevant by the
689 governing authority or agency or required by this paragraph (r)
690 shall be duly included in the advertisement to elicit proposals.
691 After responses to the request for proposals have been duly
692 received, the governing authority or agency shall select the most
693 qualified proposal or proposals on the basis of price, technology
694 and other relevant factors and from such proposals, but not
695 limited to the terms thereof, negotiate and enter contracts with
696 one or more of the persons or firms submitting proposals. If the
697 governing authority or agency deems none of the proposals to be
698 qualified or otherwise acceptable, the request for proposals
699 process may be reinitiated. Notwithstanding any other provisions
700 of this paragraph, where a county with at least thirty-five
701 thousand (35,000) nor more than forty thousand (40,000)
702 population, according to the 1990 federal decennial census, owns
703 or operates a solid waste landfill, the governing authorities of
704 any other county or municipality may contract with the governing
705 authorities of the county owning or operating the landfill,
706 pursuant to a resolution duly adopted and spread upon the minutes
707 of each governing authority involved, for garbage or solid waste
708 collection or disposal services through contract negotiations.

709 (s) **Minority set aside authorization.** Notwithstanding
710 any provision of this section to the contrary, any agency or
711 governing authority, by order placed on its minutes, may, in its
712 discretion, set aside not more than twenty percent (20%) of its
713 anticipated annual expenditures for the purchase of commodities
714 from minority businesses; however, all such set-aside purchases
715 shall comply with all purchasing regulations promulgated by the
716 Department of Finance and Administration and shall be subject to
717 bid requirements under this section. Set-aside purchases for

718 which competitive bids are required shall be made from the lowest
719 and best minority business bidder. For the purposes of this
720 paragraph, the term "minority business" means a business which is
721 owned by a majority of persons who are United States citizens or
722 permanent resident aliens (as defined by the Immigration and
723 Naturalization Service) of the United States, and who are Asian,
724 Black, Hispanic or Native American, according to the following
725 definitions:

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

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

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

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

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

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

748 **SECTION 3.** This act shall take effect and be in force from
749 and after July 1, 2004.