

By: Representative Myers (By Request)

To: Appropriations

HOUSE BILL NO. 1513

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 REVISE MINORITY SET ASIDES AND RESTRICTIONS ON MULTIPLE CONTRACTS  
3 IN THE BID LAWS; AND FOR RELATED PURPOSES.

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

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

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

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

21 (b) **Bidding procedure for purchases over \$3,500.00 but**  
22 **not over \$15,000.00.** Purchases which involve an expenditure of  
23 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
24 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
25 freight and shipping charges may be made from the lowest and best  
26 bidder without publishing or posting advertisement for bids,  
27 provided at least two (2) competitive written bids have been

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

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

57 (i) **Publication requirement.** Purchases which  
58 involve an expenditure of more than Fifteen Thousand Dollars  
59 (\$15,000.00), exclusive of freight and shipping charges, may be  
60 made from the lowest and best bidder after advertising for

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

88           (ii) **Bidding process amendment procedure.** If all  
89 plans and/or specifications are published in the notification,  
90 then the plans and/or specifications may not be amended. If all  
91 plans and/or specifications are not published in the notification,  
92 then amendments to the plans/specifications, bid opening date, bid  
93 opening time and place may be made, provided that the agency or

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

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

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

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

129 (v) Agencies and governing authorities may  
130 establish secure procedures by which bids may be submitted via  
131 electronic means.

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

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

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

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

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

160 31-7-10 and any lease-purchase of equipment which a governing  
161 authority elects to lease-purchase may be acquired by a  
162 lease-purchase agreement under this paragraph (e). Lease-purchase  
163 financing may also be obtained from the vendor or from a  
164 third-party source after having solicited and obtained at least  
165 two (2) written competitive bids, as defined in paragraph (b) of  
166 this section, for such financing without advertising for such  
167 bids. Solicitation for the bids for financing may occur before or  
168 after acceptance of bids for the purchase of such equipment or,  
169 where no such bids for purchase are required, at any time before  
170 the purchase thereof. No such lease-purchase agreement shall be  
171 for an annual rate of interest which is greater than the overall  
172 maximum interest rate to maturity on general obligation  
173 indebtedness permitted under Section 75-17-101, and the term of  
174 such lease-purchase agreement shall not exceed the useful life of  
175 equipment covered thereby as determined according to the upper  
176 limit of the asset depreciation range (ADR) guidelines for the  
177 Class Life Asset Depreciation Range System established by the  
178 Internal Revenue Service pursuant to the United States Internal  
179 Revenue Code and regulations thereunder as in effect on December  
180 31, 1980, or comparable depreciation guidelines with respect to  
181 any equipment not covered by ADR guidelines. Any lease-purchase  
182 agreement entered into pursuant to this paragraph (e) may contain  
183 any of the terms and conditions which a master lease-purchase  
184 agreement may contain under the provisions of Section 31-7-10(5),  
185 and shall contain an annual allocation dependency clause  
186 substantially similar to that set forth in Section 31-7-10(8).  
187 Each agency or governing authority entering into a lease-purchase  
188 transaction pursuant to this paragraph (e) shall maintain with  
189 respect to each such lease-purchase transaction the same  
190 information as required to be maintained by the Department of  
191 Finance and Administration pursuant to Section 31-7-10(13).  
192 However, nothing contained in this section shall be construed to

193 permit agencies to acquire items of equipment with a total  
194 acquisition cost in the aggregate of less than Ten Thousand  
195 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
196 equipment, and the purchase thereof by any lessor, acquired by  
197 lease-purchase under this paragraph and all lease-purchase  
198 payments with respect thereto shall be exempt from all Mississippi  
199 sales, use and ad valorem taxes. Interest paid on any  
200 lease-purchase agreement under this section shall be exempt from  
201 State of Mississippi income taxation.

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

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

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

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

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

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

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

292 the board of such agency, if applicable. On or before September 1  
293 of each year, the State Auditor shall prepare and deliver to the  
294 Senate Fees, Salaries and Administration Committee, the House Fees  
295 and Salaries of Public Officers Committee and the Joint  
296 Legislative Budget Committee a report containing a list of all  
297 state agency emergency purchases and supporting documentation for  
298 each emergency purchases.

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

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

317 (l) **Hospital purchase, lease-purchase and lease**  
318 **authorization.**

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

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

340                   (m) **Exceptions from bidding requirements.** Excepted  
341 from bid requirements are:

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

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

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

363                   (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
364 of gravel or fill dirt which are to be removed and transported by  
365 the purchaser.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

488 the purpose of renting such books to students as part of a book  
489 service system.

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

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

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

496 Contracts for garbage collection or disposal, contracts for solid  
497 waste collection or disposal and contracts for sewage collection  
498 or disposal.

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

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

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

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

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

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

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

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

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

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

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

517 machinery or equipment used for the installation and

518 implementation of soil and water conservation practices or

519 measures purchased subject to the restrictions provided in

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

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

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

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

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

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

541 (n) **Term contract authorization.** All contracts for the  
542 purchase of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

685                   (v)   **Purchase authorization clarification.**   Nothing in  
686 this section shall be construed as authorizing any purchase not  
687 authorized by law.

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