

By: Senator(s) Hyde-Smith

To: Municipalities; County Affairs

SENATE BILL NO. 2271

1 AN ACT TO AUTHORIZE COUNTIES AND MUNICIPALITIES TO CONTRACT
2 FOR THE SALE OF ADVERTISING ON PUBLIC MOTOR VEHICLES; TO PLACE
3 RESTRICTIONS ON SUCH ADVERTISING; TO AUTHORIZE COUNTIES AND CITIES
4 TO CONTRACT FOR A SPONSOR PURCHASE PROGRAM FOR SUCH VEHICLES; TO
5 AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO PROVIDE AN
6 EXCEPTION TO BID REQUIREMENTS FOR THE PURCHASE OF SPONSOR
7 ADVERTISEMENT VEHICLES; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** (1) Any county or municipality may authorize the
10 sale of advertising on any law enforcement, emergency or other
11 motor vehicle owned, operated, contracted or controlled by the
12 county or municipality.

13 (2) Advertisement shall not contain the promotion of any
14 substance or activity that is illegal for minors such as alcohol,
15 tobacco and gambling.

16 (3) A county or municipality may contract for a sponsor
17 purchase program for vehicles at a nominal sum for a term of use
18 not to exceed thirty-six (36) months.

19 (4) No more than twenty-five percent (25%) of the exterior
20 area of a motor vehicle shall contain advertising.

21 **SECTION 2.** Section 31-7-13, Mississippi Code of 1972, is
22 amended as follows:

23 31-7-13. All agencies and governing authorities shall
24 purchase their commodities and printing; contract for garbage
25 collection or disposal; contract for solid waste collection or
26 disposal; contract for sewage collection or disposal; contract for
27 public construction; and contract for rentals as herein provided.

28 (a) **Bidding procedure for purchases not over \$3,500.00.**
29 Purchases which do not involve an expenditure of more than Three

30 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
31 shipping charges, may be made without advertising or otherwise
32 requesting competitive bids. However, nothing contained in this
33 paragraph (a) shall be construed to prohibit any agency or
34 governing authority from establishing procedures which require
35 competitive bids on purchases of Three Thousand Five Hundred
36 Dollars (\$3,500.00) or less.

37 (b) **Bidding procedure for purchases over \$3,500.00 but**
38 **not over \$15,000.00.** Purchases which involve an expenditure of
39 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
40 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
41 freight and shipping charges may be made from the lowest and best
42 bidder without publishing or posting advertisement for bids,
43 provided at least two (2) competitive written bids have been
44 obtained. Any governing authority purchasing commodities pursuant
45 to this paragraph (b) may authorize its purchasing agent, or his
46 designee, with regard to governing authorities other than
47 counties, or its purchase clerk, or his designee, with regard to
48 counties, to accept the lowest and best competitive written bid.
49 Such authorization shall be made in writing by the governing
50 authority and shall be maintained on file in the primary office of
51 the agency and recorded in the official minutes of the governing
52 authority, as appropriate. The purchasing agent or the purchase
53 clerk, or their designee, as the case may be, and not the
54 governing authority, shall be liable for any penalties and/or
55 damages as may be imposed by law for any act or omission of the
56 purchasing agent or purchase clerk, or their designee,
57 constituting a violation of law in accepting any bid without
58 approval by the governing authority. The term "competitive
59 written bid" shall mean a bid submitted on a bid form furnished by
60 the buying agency or governing authority and signed by authorized
61 personnel representing the vendor, or a bid submitted on a
62 vendor's letterhead or identifiable bid form and signed by

63 authorized personnel representing the vendor. "Competitive" shall
64 mean that the bids are developed based upon comparable
65 identification of the needs and are developed independently and
66 without knowledge of other bids or prospective bids. Bids may be
67 submitted by facsimile, electronic mail or other generally
68 accepted method of information distribution. Bids submitted by
69 electronic transmission shall not require the signature of the
70 vendor's representative unless required by agencies or governing
71 authorities.

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

73 (i) **Publication requirement.** Purchases which
74 involve an expenditure of more than Fifteen Thousand Dollars
75 (\$15,000.00), exclusive of freight and shipping charges, may be
76 made from the lowest and best bidder after advertising for
77 competitive sealed bids once each week for two (2) consecutive
78 weeks in a regular newspaper published in the county or
79 municipality in which such agency or governing authority is
80 located. The date as published for the bid opening shall not be
81 less than seven (7) working days after the last published notice;
82 however, if the purchase involves a construction project in which
83 the estimated cost is in excess of Fifteen Thousand Dollars
84 (\$15,000.00), such bids shall not be opened in less than fifteen
85 (15) working days after the last notice is published and the
86 notice for the purchase of such construction shall be published
87 once each week for two (2) consecutive weeks. The notice of
88 intention to let contracts or purchase equipment shall state the
89 time and place at which bids shall be received, list the contracts
90 to be made or types of equipment or supplies to be purchased, and,
91 if all plans and/or specifications are not published, refer to the
92 plans and/or specifications on file. If there is no newspaper
93 published in the county or municipality, then such notice shall be
94 given by posting same at the courthouse, or for municipalities at
95 the city hall, and at two (2) other public places in the county or

96 municipality, and also by publication once each week for two (2)
97 consecutive weeks in some newspaper having a general circulation
98 in the county or municipality in the above provided manner. On
99 the same date that the notice is submitted to the newspaper for
100 publication, the agency or governing authority involved shall mail
101 written notice to, or provide electronic notification to the main
102 office of the Mississippi Contract Procurement Center that
103 contains the same information as that in the published notice.

104 (ii) **Bidding process amendment procedure.** If all
105 plans and/or specifications are published in the notification,
106 then the plans and/or specifications may not be amended. If all
107 plans and/or specifications are not published in the notification,
108 then amendments to the plans/specifications, bid opening date, bid
109 opening time and place may be made, provided that the agency or
110 governing authority maintains a list of all prospective bidders
111 who are known to have received a copy of the bid documents and all
112 such prospective bidders are sent copies of all amendments. This
113 notification of amendments may be made via mail, facsimile,
114 electronic mail or other generally accepted method of information
115 distribution. No addendum to bid specifications may be issued
116 within two (2) working days of the time established for the
117 receipt of bids unless such addendum also amends the bid opening
118 to a date not less than five (5) working days after the date of
119 the addendum.

120 (iii) **Filing requirement.** In all cases involving
121 governing authorities, before the notice shall be published or
122 posted, the plans or specifications for the construction or
123 equipment being sought shall be filed with the clerk of the board
124 of the governing authority. In addition to these requirements, a
125 bid file shall be established which shall indicate those vendors
126 to whom such solicitations and specifications were issued, and
127 such file shall also contain such information as is pertinent to
128 the bid.

129 (iv) **Specification restrictions.** Specifications
130 pertinent to such bidding shall be written so as not to exclude
131 comparable equipment of domestic manufacture. However, if valid
132 justification is presented, the Department of Finance and
133 Administration or the board of a governing authority may approve a
134 request for specific equipment necessary to perform a specific
135 job. Further, such justification, when placed on the minutes of
136 the board of a governing authority, may serve as authority for
137 that governing authority to write specifications to require a
138 specific item of equipment needed to perform a specific job. In
139 addition to these requirements, from and after July 1, 1990,
140 vendors of relocatable classrooms and the specifications for the
141 purchase of such relocatable classrooms published by local school
142 boards shall meet all pertinent regulations of the State Board of
143 Education, including prior approval of such bid by the State
144 Department of Education.

145 (v) Agencies and governing authorities may
146 establish secure procedures by which bids may be submitted via
147 electronic means.

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

149 (i) **Decision procedure.** Purchases may be made
150 from the lowest and best bidder. In determining the lowest and
151 best bid, freight and shipping charges shall be included.
152 Life-cycle costing, total cost bids, warranties, guaranteed
153 buy-back provisions and other relevant provisions may be included
154 in the best bid calculation. All best bid procedures for state
155 agencies must be in compliance with regulations established by the
156 Department of Finance and Administration. If any governing
157 authority accepts a bid other than the lowest bid actually
158 submitted, it shall place on its minutes detailed calculations and
159 narrative summary showing that the accepted bid was determined to
160 be the lowest and best bid, including the dollar amount of the
161 accepted bid and the dollar amount of the lowest bid. No agency

162 or governing authority shall accept a bid based on items not
163 included in the specifications.

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

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

170 (e) **Lease-purchase authorization.** For the purposes of
171 this section, the term "equipment" shall mean equipment, furniture
172 and, if applicable, associated software and other applicable
173 direct costs associated with the acquisition. Any lease-purchase
174 of equipment which an agency is not required to lease-purchase
175 under the master lease-purchase program pursuant to Section
176 31-7-10 and any lease-purchase of equipment which a governing
177 authority elects to lease-purchase may be acquired by a
178 lease-purchase agreement under this paragraph (e). Lease-purchase
179 financing may also be obtained from the vendor or from a
180 third-party source after having solicited and obtained at least
181 two (2) written competitive bids, as defined in paragraph (b) of
182 this section, for such financing without advertising for such
183 bids. Solicitation for the bids for financing may occur before or
184 after acceptance of bids for the purchase of such equipment or,
185 where no such bids for purchase are required, at any time before
186 the purchase thereof. No such lease-purchase agreement shall be
187 for an annual rate of interest which is greater than the overall
188 maximum interest rate to maturity on general obligation
189 indebtedness permitted under Section 75-17-101, and the term of
190 such lease-purchase agreement shall not exceed the useful life of
191 equipment covered thereby as determined according to the upper
192 limit of the asset depreciation range (ADR) guidelines for the
193 Class Life Asset Depreciation Range System established by the
194 Internal Revenue Service pursuant to the United States Internal

195 Revenue Code and regulations thereunder as in effect on December
196 31, 1980, or comparable depreciation guidelines with respect to
197 any equipment not covered by ADR guidelines. Any lease-purchase
198 agreement entered into pursuant to this paragraph (e) may contain
199 any of the terms and conditions which a master lease-purchase
200 agreement may contain under the provisions of Section 31-7-10(5),
201 and shall contain an annual allocation dependency clause
202 substantially similar to that set forth in Section 31-7-10(8).
203 Each agency or governing authority entering into a lease-purchase
204 transaction pursuant to this paragraph (e) shall maintain with
205 respect to each such lease-purchase transaction the same
206 information as required to be maintained by the Department of
207 Finance and Administration pursuant to Section 31-7-10(13).
208 However, nothing contained in this section shall be construed to
209 permit agencies to acquire items of equipment with a total
210 acquisition cost in the aggregate of less than Ten Thousand
211 Dollars (\$10,000.00) by a single lease-purchase transaction. All
212 equipment, and the purchase thereof by any lessor, acquired by
213 lease-purchase under this paragraph and all lease-purchase
214 payments with respect thereto shall be exempt from all Mississippi
215 sales, use and ad valorem taxes. Interest paid on any
216 lease-purchase agreement under this section shall be exempt from
217 State of Mississippi income taxation.

218 (f) **Alternate bid authorization.** When necessary to
219 ensure ready availability of commodities for public works and the
220 timely completion of public projects, no more than two (2)
221 alternate bids may be accepted by a governing authority for
222 commodities. No purchases may be made through use of such
223 alternate bids procedure unless the lowest and best bidder cannot
224 deliver the commodities contained in his bid. In that event,
225 purchases of such commodities may be made from one (1) of the
226 bidders whose bid was accepted as an alternate.

227 (g) **Construction contract change authorization.** In the
228 event a determination is made by an agency or governing authority
229 after a construction contract is let that changes or modifications
230 to the original contract are necessary or would better serve the
231 purpose of the agency or the governing authority, such agency or
232 governing authority may, in its discretion, order such changes
233 pertaining to the construction that are necessary under the
234 circumstances without the necessity of further public bids;
235 provided that such change shall be made in a commercially
236 reasonable manner and shall not be made to circumvent the public
237 purchasing statutes. In addition to any other authorized person,
238 the architect or engineer hired by an agency or governing
239 authority with respect to any public construction contract shall
240 have the authority, when granted by an agency or governing
241 authority, to authorize changes or modifications to the original
242 contract without the necessity of prior approval of the agency or
243 governing authority when any such change or modification is less
244 than one percent (1%) of the total contract amount. The agency or
245 governing authority may limit the number, manner or frequency of
246 such emergency changes or modifications.

247 (h) **Petroleum purchase alternative.** In addition to
248 other methods of purchasing authorized in this chapter, when any
249 agency or governing authority shall have a need for gas, diesel
250 fuel, oils and/or other petroleum products in excess of the amount
251 set forth in paragraph (a) of this section, such agency or
252 governing authority may purchase the commodity after having
253 solicited and obtained at least two (2) competitive written bids,
254 as defined in paragraph (b) of this section. If two (2)
255 competitive written bids are not obtained, the entity shall comply
256 with the procedures set forth in paragraph (c) of this section.
257 In the event any agency or governing authority shall have
258 advertised for bids for the purchase of gas, diesel fuel, oils and
259 other petroleum products and coal and no acceptable bids can be

260 obtained, such agency or governing authority is authorized and
261 directed to enter into any negotiations necessary to secure the
262 lowest and best contract available for the purchase of such
263 commodities.

264 (i) **Road construction petroleum products price**
265 **adjustment clause authorization.** Any agency or governing
266 authority authorized to enter into contracts for the construction,
267 maintenance, surfacing or repair of highways, roads or streets,
268 may include in its bid proposal and contract documents a price
269 adjustment clause with relation to the cost to the contractor,
270 including taxes, based upon an industry-wide cost index, of
271 petroleum products including asphalt used in the performance or
272 execution of the contract or in the production or manufacture of
273 materials for use in such performance. Such industry-wide index
274 shall be established and published monthly by the Mississippi
275 Department of Transportation with a copy thereof to be mailed,
276 upon request, to the clerks of the governing authority of each
277 municipality and the clerks of each board of supervisors
278 throughout the state. The price adjustment clause shall be based
279 on the cost of such petroleum products only and shall not include
280 any additional profit or overhead as part of the adjustment. The
281 bid proposals or document contract shall contain the basis and
282 methods of adjusting unit prices for the change in the cost of
283 such petroleum products.

284 (j) **State agency emergency purchase procedure.** If the
285 governing board or the executive head, or his designee, of any
286 agency of the state shall determine that an emergency exists in
287 regard to the purchase of any commodities or repair contracts, so
288 that the delay incident to giving opportunity for competitive
289 bidding would be detrimental to the interests of the state, then
290 the provisions herein for competitive bidding shall not apply and
291 the head of such agency shall be authorized to make the purchase
292 or repair. Total purchases so made shall only be for the purpose

293 of meeting needs created by the emergency situation. In the event
294 such executive head is responsible to an agency board, at the
295 meeting next following the emergency purchase, documentation of
296 the purchase, including a description of the commodity purchased,
297 the purchase price thereof and the nature of the emergency shall
298 be presented to the board and placed on the minutes of the board
299 of such agency. The head of such agency, or his designee, shall,
300 at the earliest possible date following such emergency purchase,
301 file with the Department of Finance and Administration (i) a
302 statement explaining the conditions and circumstances of the
303 emergency, which shall include a detailed description of the
304 events leading up to the situation and the negative impact to the
305 entity if the purchase is made following the statutory
306 requirements set forth in paragraph (a), (b) or (c) of this
307 section, and (ii) a certified copy of the appropriate minutes of
308 the board of such agency, if applicable. On or before September 1
309 of each year, the State Auditor shall prepare and deliver to the
310 Senate Fees, Salaries and Administration Committee, the House Fees
311 and Salaries of Public Officers Committee and the Joint
312 Legislative Budget Committee a report containing a list of all
313 state agency emergency purchases and supporting documentation for
314 each emergency purchases.

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

316 If the governing authority, or the governing authority acting
317 through its designee, shall determine that an emergency exists in
318 regard to the purchase of any commodities or repair contracts, so
319 that the delay incident to giving opportunity for competitive
320 bidding would be detrimental to the interest of the governing
321 authority, then the provisions herein for competitive bidding
322 shall not apply and any officer or agent of such governing
323 authority having general or special authority therefor in making
324 such purchase or repair shall approve the bill presented therefor,
325 and he shall certify in writing thereon from whom such purchase

326 was made, or with whom such a repair contract was made. At the
327 board meeting next following the emergency purchase or repair
328 contract, documentation of the purchase or repair contract,
329 including a description of the commodity purchased, the price
330 thereof and the nature of the emergency shall be presented to the
331 board and shall be placed on the minutes of the board of such
332 governing authority.

333 (1) **Hospital purchase, lease-purchase and lease**
334 **authorization.**

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

340 (ii) In addition to the authority granted in
341 subparagraph (i) of this paragraph (1), the commissioners or board
342 of trustees is authorized to enter into contracts for the lease of
343 equipment or services, or both, which it considers necessary for
344 the proper care of patients if, in its opinion, it is not
345 financially feasible to purchase the necessary equipment or
346 services. Any such contract for the lease of equipment or
347 services executed by the commissioners or board shall not exceed a
348 maximum of five (5) years' duration and shall include a
349 cancellation clause based on unavailability of funds. If such
350 cancellation clause is exercised, there shall be no further
351 liability on the part of the lessee. Any such contract for the
352 lease of equipment or services executed on behalf of the
353 commissioners or board that complies with the provisions of this
354 subparagraph (ii) shall be excepted from the bid requirements set
355 forth in this section.

356 (m) **Exceptions from bidding requirements.** Excepted
357 from bid requirements are:

358 (i) **Purchasing agreements approved by department.**

359 Purchasing agreements, contracts and maximum price regulations
360 executed or approved by the Department of Finance and
361 Administration.

362 (ii) **Outside equipment repairs.** Repairs to
363 equipment, when such repairs are made by repair facilities in the
364 private sector; however, engines, transmissions, rear axles and/or
365 other such components shall not be included in this exemption when
366 replaced as a complete unit instead of being repaired and the need
367 for such total component replacement is known before disassembly
368 of the component; however, invoices identifying the equipment,
369 specific repairs made, parts identified by number and name,
370 supplies used in such repairs, and the number of hours of labor
371 and costs therefor shall be required for the payment for such
372 repairs.

373 (iii) **In-house equipment repairs.** Purchases of
374 parts for repairs to equipment, when such repairs are made by
375 personnel of the agency or governing authority; however, entire
376 assemblies, such as engines or transmissions, shall not be
377 included in this exemption when the entire assembly is being
378 replaced instead of being repaired.

379 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
380 of gravel or fill dirt which are to be removed and transported by
381 the purchaser.

382 (v) **Governmental equipment auctions.** Motor
383 vehicles or other equipment purchased from a federal agency or
384 authority, another governing authority or state agency of the
385 State of Mississippi, or any governing authority or state agency
386 of another state at a public auction held for the purpose of
387 disposing of such vehicles or other equipment. Any purchase by a
388 governing authority under the exemption authorized by this
389 subparagraph (v) shall require advance authorization spread upon
390 the minutes of the governing authority to include the listing of

391 the item or items authorized to be purchased and the maximum bid
392 authorized to be paid for each item or items.

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

394 Purchases, sales, transfers or trades by governing authorities or
395 state agencies when such purchases, sales, transfers or trades are
396 made by a private treaty agreement or through means of
397 negotiation, from any federal agency or authority, another
398 governing authority or state agency of the State of Mississippi,
399 or any state agency or governing authority of another state.
400 Nothing in this section shall permit such purchases through public
401 auction except as provided for in subparagraph (v) of this
402 section. It is the intent of this section to allow governmental
403 entities to dispose of and/or purchase commodities from other
404 governmental entities at a price that is agreed to by both
405 parties. This shall allow for purchases and/or sales at prices
406 which may be determined to be below the market value if the
407 selling entity determines that the sale at below market value is
408 in the best interest of the taxpayers of the state. Governing
409 authorities shall place the terms of the agreement and any
410 justification on the minutes, and state agencies shall obtain
411 approval from the Department of Finance and Administration, prior
412 to releasing or taking possession of the commodities.

413 (vii) **Perishable supplies or food.** Perishable
414 supplies or foods purchased for use in connection with hospitals,
415 the school lunch programs, homemaking programs and for the feeding
416 of county or municipal prisoners.

417 (viii) **Single source items.** Noncompetitive items
418 available from one (1) source only. In connection with the
419 purchase of noncompetitive items only available from one (1)
420 source, a certification of the conditions and circumstances
421 requiring the purchase shall be filed by the agency with the
422 Department of Finance and Administration and by the governing
423 authority with the board of the governing authority. Upon receipt

424 of that certification the Department of Finance and Administration
425 or the board of the governing authority, as the case may be, may,
426 in writing, authorize the purchase, which authority shall be noted
427 on the minutes of the body at the next regular meeting thereafter.
428 In those situations, a governing authority is not required to
429 obtain the approval of the Department of Finance and
430 Administration.

431 (ix) **Waste disposal facility construction**
432 **contracts.** Construction of incinerators and other facilities for
433 disposal of solid wastes in which products either generated
434 therein, such as steam, or recovered therefrom, such as materials
435 for recycling, are to be sold or otherwise disposed of; however,
436 in constructing such facilities, a governing authority or agency
437 shall publicly issue requests for proposals, advertised for in the
438 same manner as provided herein for seeking bids for public
439 construction projects, concerning the design, construction,
440 ownership, operation and/or maintenance of such facilities,
441 wherein such requests for proposals when issued shall contain
442 terms and conditions relating to price, financial responsibility,
443 technology, environmental compatibility, legal responsibilities
444 and such other matters as are determined by the governing
445 authority or agency to be appropriate for inclusion; and after
446 responses to the request for proposals have been duly received,
447 the governing authority or agency may select the most qualified
448 proposal or proposals on the basis of price, technology and other
449 relevant factors and from such proposals, but not limited to the
450 terms thereof, negotiate and enter contracts with one or more of
451 the persons or firms submitting proposals.

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

455 (xi) **Information technology products.** Purchases
456 of information technology products made by governing authorities

457 under the provisions of purchase schedules, or contracts executed
458 or approved by the Mississippi Department of Information
459 Technology Services and designated for use by governing
460 authorities.

461 (xii) **Energy efficiency services and equipment.**
462 Energy efficiency services and equipment acquired by school
463 districts, community and junior colleges, institutions of higher
464 learning and state agencies or other applicable governmental
465 entities on a shared-savings, lease or lease-purchase basis
466 pursuant to Section 31-7-14.

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

471 (xiv) **Library books and other reference materials.**
472 Purchases by libraries or for libraries of books and periodicals;
473 processed film, video cassette tapes, filmstrips and slides;
474 recorded audio tapes, cassettes and diskettes; and any such items
475 as would be used for teaching, research or other information
476 distribution; however, equipment such as projectors, recorders,
477 audio or video equipment, and monitor televisions are not exempt
478 under this subparagraph.

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

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

485 (xvii) **Multichannel interactive video systems.**
486 From and after July 1, 1990, contracts by Mississippi Authority
487 for Educational Television with any private educational
488 institution or private nonprofit organization whose purposes are
489 educational in regard to the construction, purchase, lease or

490 lease-purchase of facilities and equipment and the employment of
491 personnel for providing multichannel interactive video systems
492 (ITSF) in the school districts of this state.

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

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

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

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

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

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

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

512 Contracts for garbage collection or disposal, contracts for solid
513 waste collection or disposal and contracts for sewage collection
514 or disposal.

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

516 **contracts.** Professional maintenance program contracts for the
517 repair or maintenance of municipal water tanks, which provide
518 professional services needed to maintain municipal water storage
519 tanks for a fixed annual fee for a duration of two (2) or more
520 years.

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

522 **Blind products.** Purchases made by state agencies or governing

523 authorities involving any item that is manufactured, processed or
524 produced by the Mississippi Industries for the Blind.

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

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

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

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

530 (xxvii) **Used heavy or specialized machinery or**
531 **equipment for installation of soil and water conservation**

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

533 machinery or equipment used for the installation and

534 implementation of soil and water conservation practices or

535 measures purchased subject to the restrictions provided in

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

537 Soil and Water Conservation Commission under the exemption

538 authorized by this subparagraph shall require advance

539 authorization spread upon the minutes of the commission to include

540 the listing of the item or items authorized to be purchased and

541 the maximum bid authorized to be paid for each item or items.

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

543 Leases by hospitals of equipment or services if the leases are in

544 compliance with subparagraph (1)(ii).

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

546 **cooperative purchasing agreements.** Purchases made by certified

547 purchasing offices of state agencies or governing authorities

548 under cooperative purchasing agreements previously approved by the

549 Office of Purchasing and Travel and established by or for any

550 municipality, county, parish or state government or the federal

551 government, provided that the notification to potential

552 contractors includes a clause that sets forth the availability of

553 the cooperative purchasing agreement to other governmental

554 entities. Such purchases shall only be made if the use of the

555 cooperative purchasing agreements is determined to be in the best
556 interest of the government entity.

557 (xxx) Purchases of vehicles through sponsor
558 advertisement program. Purchases of vehicles through a sponsor
559 advertisement program in which the vehicles are purchased for a
560 nominal sum for a term not to exceed thirty-six (36) months.

561 (n) **Term contract authorization.** All contracts for the
562 purchase of:

563 (i) All contracts for the purchase of commodities,
564 equipment and public construction (including, but not limited to,
565 repair and maintenance), may be let for periods of not more than
566 sixty (60) months in advance, subject to applicable statutory
567 provisions prohibiting the letting of contracts during specified
568 periods near the end of terms of office. Term contracts for a
569 period exceeding twenty-four (24) months shall also be subject to
570 ratification or cancellation by governing authority boards taking
571 office subsequent to the governing authority board entering the
572 contract.

573 (ii) Bid proposals and contracts may include price
574 adjustment clauses with relation to the cost to the contractor
575 based upon a nationally published industry-wide or nationally
576 published and recognized cost index. The cost index used in a
577 price adjustment clause shall be determined by the Department of
578 Finance and Administration for the state agencies and by the
579 governing board for governing authorities. The bid proposal and
580 contract documents utilizing a price adjustment clause shall
581 contain the basis and method of adjusting unit prices for the
582 change in the cost of such commodities, equipment and public
583 construction.

584 (o) **Purchase law violation prohibition and vendor**
585 **penalty.** No contract or purchase as herein authorized shall be
586 made for the purpose of circumventing the provisions of this
587 section requiring competitive bids, nor shall it be lawful for any

588 person or concern to submit individual invoices for amounts within
589 those authorized for a contract or purchase where the actual value
590 of the contract or commodity purchased exceeds the authorized
591 amount and the invoices therefor are split so as to appear to be
592 authorized as purchases for which competitive bids are not
593 required. Submission of such invoices shall constitute a
594 misdemeanor punishable by a fine of not less than Five Hundred
595 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
596 or by imprisonment for thirty (30) days in the county jail, or
597 both such fine and imprisonment. In addition, the claim or claims
598 submitted shall be forfeited.

599 (p) **Electrical utility petroleum-based equipment**
600 **purchase procedure.** When in response to a proper advertisement
601 therefor, no bid firm as to price is submitted to an electric
602 utility for power transformers, distribution transformers, power
603 breakers, reclosers or other articles containing a petroleum
604 product, the electric utility may accept the lowest and best bid
605 therefor although the price is not firm.

606 (q) **Fuel management system bidding procedure.** Any
607 governing authority or agency of the state shall, before
608 contracting for the services and products of a fuel management or
609 fuel access system, enter into negotiations with not fewer than
610 two (2) sellers of fuel management or fuel access systems for
611 competitive written bids to provide the services and products for
612 the systems. In the event that the governing authority or agency
613 cannot locate two (2) sellers of such systems or cannot obtain
614 bids from two (2) sellers of such systems, it shall show proof
615 that it made a diligent, good-faith effort to locate and negotiate
616 with two (2) sellers of such systems. Such proof shall include,
617 but not be limited to, publications of a request for proposals and
618 letters soliciting negotiations and bids. For purposes of this
619 paragraph (q), a fuel management or fuel access system is an
620 automated system of acquiring fuel for vehicles as well as

621 management reports detailing fuel use by vehicles and drivers, and
622 the term "competitive written bid" shall have the meaning as
623 defined in paragraph (b) of this section. Governing authorities
624 and agencies shall be exempt from this process when contracting
625 for the services and products of a fuel management or fuel access
626 systems under the terms of a state contract established by the
627 Office of Purchasing and Travel.

628 (r) **Solid waste contract proposal procedure.** Before
629 entering into any contract for garbage collection or disposal,
630 contract for solid waste collection or disposal or contract for
631 sewage collection or disposal, which involves an expenditure of
632 more than Fifty Thousand Dollars (\$50,000.00), a governing
633 authority or agency shall issue publicly a request for proposals
634 concerning the specifications for such services which shall be
635 advertised for in the same manner as provided in this section for
636 seeking bids for purchases which involve an expenditure of more
637 than the amount provided in paragraph (c) of this section. Any
638 request for proposals when issued shall contain terms and
639 conditions relating to price, financial responsibility,
640 technology, legal responsibilities and other relevant factors as
641 are determined by the governing authority or agency to be
642 appropriate for inclusion; all factors determined relevant by the
643 governing authority or agency or required by this paragraph (r)
644 shall be duly included in the advertisement to elicit proposals.
645 After responses to the request for proposals have been duly
646 received, the governing authority or agency shall select the most
647 qualified proposal or proposals on the basis of price, technology
648 and other relevant factors and from such proposals, but not
649 limited to the terms thereof, negotiate and enter contracts with
650 one or more of the persons or firms submitting proposals. If the
651 governing authority or agency deems none of the proposals to be
652 qualified or otherwise acceptable, the request for proposals
653 process may be reinitiated. Notwithstanding any other provisions

654 of this paragraph, where a county with at least thirty-five
655 thousand (35,000) nor more than forty thousand (40,000)
656 population, according to the 1990 federal decennial census, owns
657 or operates a solid waste landfill, the governing authorities of
658 any other county or municipality may contract with the governing
659 authorities of the county owning or operating the landfill,
660 pursuant to a resolution duly adopted and spread upon the minutes
661 of each governing authority involved, for garbage or solid waste
662 collection or disposal services through contract negotiations.

663 (s) **Minority set aside authorization.** Notwithstanding
664 any provision of this section to the contrary, any agency or
665 governing authority, by order placed on its minutes, may, in its
666 discretion, set aside not more than twenty percent (20%) of its
667 anticipated annual expenditures for the purchase of commodities
668 from minority businesses; however, all such set-aside purchases
669 shall comply with all purchasing regulations promulgated by the
670 Department of Finance and Administration and shall be subject to
671 bid requirements under this section. Set-aside purchases for
672 which competitive bids are required shall be made from the lowest
673 and best minority business bidder. For the purposes of this
674 paragraph, the term "minority business" means a business which is
675 owned by a majority of persons who are United States citizens or
676 permanent resident aliens (as defined by the Immigration and
677 Naturalization Service) of the United States, and who are Asian,
678 Black, Hispanic or Native American, according to the following
679 definitions:

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

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

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

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

691 (t) **Construction punch list restriction.** The
692 architect, engineer or other representative designated by the
693 agency or governing authority that is contracting for public
694 construction or renovation may prepare and submit to the
695 contractor only one (1) preliminary punch list of items that do
696 not meet the contract requirements at the time of substantial
697 completion and one (1) final list immediately before final
698 completion and final payment.

699 (u) **Purchase authorization clarification.** Nothing in
700 this section shall be construed as authorizing any purchase not
701 authorized by law.

702 **SECTION 3.** Section 31-7-13, Mississippi Code of 1972, is
703 amended as follows:

704 31-7-13. All agencies and governing authorities shall
705 purchase their commodities and printing; contract for garbage
706 collection or disposal; contract for solid waste collection or
707 disposal; contract for sewage collection or disposal; contract for
708 public construction; and contract for rentals as herein provided.

709 (a) **Bidding procedure for purchases not over \$3,500.00.**
710 Purchases which do not involve an expenditure of more than Three
711 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
712 shipping charges, may be made without advertising or otherwise
713 requesting competitive bids. However, nothing contained in this
714 paragraph (a) shall be construed to prohibit any agency or
715 governing authority from establishing procedures which require
716 competitive bids on purchases of Three Thousand Five Hundred
717 Dollars (\$3,500.00) or less.

718 (b) **Bidding procedure for purchases over \$3,500.00 but**
719 **not over \$15,000.00.** Purchases which involve an expenditure of
720 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
721 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
722 freight and shipping charges may be made from the lowest and best
723 bidder without publishing or posting advertisement for bids,
724 provided at least two (2) competitive written bids have been
725 obtained. Any governing authority purchasing commodities pursuant
726 to this paragraph (b) may authorize its purchasing agent, or his
727 designee, with regard to governing authorities other than
728 counties, or its purchase clerk, or his designee, with regard to
729 counties, to accept the lowest and best competitive written bid.
730 Such authorization shall be made in writing by the governing
731 authority and shall be maintained on file in the primary office of
732 the agency and recorded in the official minutes of the governing
733 authority, as appropriate. The purchasing agent or the purchase
734 clerk, or their designee, as the case may be, and not the
735 governing authority, shall be liable for any penalties and/or
736 damages as may be imposed by law for any act or omission of the
737 purchasing agent or purchase clerk, or their designee,
738 constituting a violation of law in accepting any bid without
739 approval by the governing authority. The term "competitive
740 written bid" shall mean a bid submitted on a bid form furnished by
741 the buying agency or governing authority and signed by authorized
742 personnel representing the vendor, or a bid submitted on a
743 vendor's letterhead or identifiable bid form and signed by
744 authorized personnel representing the vendor. "Competitive" shall
745 mean that the bids are developed based upon comparable
746 identification of the needs and are developed independently and
747 without knowledge of other bids or prospective bids. Bids may be
748 submitted by facsimile, electronic mail or other generally
749 accepted method of information distribution. Bids submitted by
750 electronic transmission shall not require the signature of the

751 vendor's representative unless required by agencies or governing
752 authorities.

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

754 (i) **Publication requirement.** Purchases which
755 involve an expenditure of more than Fifteen Thousand Dollars
756 (\$15,000.00), exclusive of freight and shipping charges, may be
757 made from the lowest and best bidder after advertising for
758 competitive sealed bids once each week for two (2) consecutive
759 weeks in a regular newspaper published in the county or
760 municipality in which such agency or governing authority is
761 located. The date as published for the bid opening shall not be
762 less than seven (7) working days after the last published notice;
763 however, if the purchase involves a construction project in which
764 the estimated cost is in excess of Fifteen Thousand Dollars
765 (\$15,000.00), such bids shall not be opened in less than fifteen
766 (15) working days after the last notice is published and the
767 notice for the purchase of such construction shall be published
768 once each week for two (2) consecutive weeks. The notice of
769 intention to let contracts or purchase equipment shall state the
770 time and place at which bids shall be received, list the contracts
771 to be made or types of equipment or supplies to be purchased, and,
772 if all plans and/or specifications are not published, refer to the
773 plans and/or specifications on file. If there is no newspaper
774 published in the county or municipality, then such notice shall be
775 given by posting same at the courthouse, or for municipalities at
776 the city hall, and at two (2) other public places in the county or
777 municipality, and also by publication once each week for two (2)
778 consecutive weeks in some newspaper having a general circulation
779 in the county or municipality in the above provided manner. On
780 the same date that the notice is submitted to the newspaper for
781 publication, the agency or governing authority involved shall mail
782 written notice to, or provide electronic notification to the main

783 office of the Mississippi Contract Procurement Center that
784 contains the same information as that in the published notice.

785 (ii) **Bidding process amendment procedure.** If all
786 plans and/or specifications are published in the notification,
787 then the plans and/or specifications may not be amended. If all
788 plans and/or specifications are not published in the notification,
789 then amendments to the plans/specifications, bid opening date, bid
790 opening time and place may be made, provided that the agency or
791 governing authority maintains a list of all prospective bidders
792 who are known to have received a copy of the bid documents and all
793 such prospective bidders are sent copies of all amendments. This
794 notification of amendments may be made via mail, facsimile,
795 electronic mail or other generally accepted method of information
796 distribution. No addendum to bid specifications may be issued
797 within two (2) working days of the time established for the
798 receipt of bids unless such addendum also amends the bid opening
799 to a date not less than five (5) working days after the date of
800 the addendum.

801 (iii) **Filing requirement.** In all cases involving
802 governing authorities, before the notice shall be published or
803 posted, the plans or specifications for the construction or
804 equipment being sought shall be filed with the clerk of the board
805 of the governing authority. In addition to these requirements, a
806 bid file shall be established which shall indicate those vendors
807 to whom such solicitations and specifications were issued, and
808 such file shall also contain such information as is pertinent to
809 the bid.

810 (iv) **Specification restrictions.** Specifications
811 pertinent to such bidding shall be written so as not to exclude
812 comparable equipment of domestic manufacture. However, if valid
813 justification is presented, the Department of Finance and
814 Administration or the board of a governing authority may approve a
815 request for specific equipment necessary to perform a specific

816 job. Further, such justification, when placed on the minutes of
817 the board of a governing authority, may serve as authority for
818 that governing authority to write specifications to require a
819 specific item of equipment needed to perform a specific job. In
820 addition to these requirements, from and after July 1, 1990,
821 vendors of relocatable classrooms and the specifications for the
822 purchase of such relocatable classrooms published by local school
823 boards shall meet all pertinent regulations of the State Board of
824 Education, including prior approval of such bid by the State
825 Department of Education.

826 (v) Agencies and governing authorities may
827 establish secure procedures by which bids may be submitted via
828 electronic means.

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

830 (i) **Decision procedure.** Purchases may be made
831 from the lowest and best bidder. In determining the lowest and
832 best bid, freight and shipping charges shall be included.
833 Life-cycle costing, total cost bids, warranties, guaranteed
834 buy-back provisions and other relevant provisions may be included
835 in the best bid calculation. All best bid procedures for state
836 agencies must be in compliance with regulations established by the
837 Department of Finance and Administration. If any governing
838 authority accepts a bid other than the lowest bid actually
839 submitted, it shall place on its minutes detailed calculations and
840 narrative summary showing that the accepted bid was determined to
841 be the lowest and best bid, including the dollar amount of the
842 accepted bid and the dollar amount of the lowest bid. No agency
843 or governing authority shall accept a bid based on items not
844 included in the specifications.

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

846 If the lowest and best bid is not more than ten percent (10%)
847 above the amount of funds allocated for a public construction or
848 renovation project, then the agency or governing authority shall

849 be permitted to negotiate with the lowest bidder in order to enter
850 into a contract for an amount not to exceed the funds allocated.

851 (e) **Lease-purchase authorization.** For the purposes of
852 this section, the term "equipment" shall mean equipment, furniture
853 and, if applicable, associated software and other applicable
854 direct costs associated with the acquisition. Any lease-purchase
855 of equipment which an agency is not required to lease-purchase
856 under the master lease-purchase program pursuant to Section
857 31-7-10 and any lease-purchase of equipment which a governing
858 authority elects to lease-purchase may be acquired by a
859 lease-purchase agreement under this paragraph (e). Lease-purchase
860 financing may also be obtained from the vendor or from a
861 third-party source after having solicited and obtained at least
862 two (2) written competitive bids, as defined in paragraph (b) of
863 this section, for such financing without advertising for such
864 bids. Solicitation for the bids for financing may occur before or
865 after acceptance of bids for the purchase of such equipment or,
866 where no such bids for purchase are required, at any time before
867 the purchase thereof. No such lease-purchase agreement shall be
868 for an annual rate of interest which is greater than the overall
869 maximum interest rate to maturity on general obligation
870 indebtedness permitted under Section 75-17-101, and the term of
871 such lease-purchase agreement shall not exceed the useful life of
872 equipment covered thereby as determined according to the upper
873 limit of the asset depreciation range (ADR) guidelines for the
874 Class Life Asset Depreciation Range System established by the
875 Internal Revenue Service pursuant to the United States Internal
876 Revenue Code and regulations thereunder as in effect on December
877 31, 1980, or comparable depreciation guidelines with respect to
878 any equipment not covered by ADR guidelines. Any lease-purchase
879 agreement entered into pursuant to this paragraph (e) may contain
880 any of the terms and conditions which a master lease-purchase
881 agreement may contain under the provisions of Section 31-7-10(5),

882 and shall contain an annual allocation dependency clause
883 substantially similar to that set forth in Section 31-7-10(8).
884 Each agency or governing authority entering into a lease-purchase
885 transaction pursuant to this paragraph (e) shall maintain with
886 respect to each such lease-purchase transaction the same
887 information as required to be maintained by the Department of
888 Finance and Administration pursuant to Section 31-7-10(13).
889 However, nothing contained in this section shall be construed to
890 permit agencies to acquire items of equipment with a total
891 acquisition cost in the aggregate of less than Ten Thousand
892 Dollars (\$10,000.00) by a single lease-purchase transaction. All
893 equipment, and the purchase thereof by any lessor, acquired by
894 lease-purchase under this paragraph and all lease-purchase
895 payments with respect thereto shall be exempt from all Mississippi
896 sales, use and ad valorem taxes. Interest paid on any
897 lease-purchase agreement under this section shall be exempt from
898 State of Mississippi income taxation.

899 (f) **Alternate bid authorization.** When necessary to
900 ensure ready availability of commodities for public works and the
901 timely completion of public projects, no more than two (2)
902 alternate bids may be accepted by a governing authority for
903 commodities. No purchases may be made through use of such
904 alternate bids procedure unless the lowest and best bidder cannot
905 deliver the commodities contained in his bid. In that event,
906 purchases of such commodities may be made from one (1) of the
907 bidders whose bid was accepted as an alternate.

908 (g) **Construction contract change authorization.** In the
909 event a determination is made by an agency or governing authority
910 after a construction contract is let that changes or modifications
911 to the original contract are necessary or would better serve the
912 purpose of the agency or the governing authority, such agency or
913 governing authority may, in its discretion, order such changes
914 pertaining to the construction that are necessary under the

915 circumstances without the necessity of further public bids;
916 provided that such change shall be made in a commercially
917 reasonable manner and shall not be made to circumvent the public
918 purchasing statutes. In addition to any other authorized person,
919 the architect or engineer hired by an agency or governing
920 authority with respect to any public construction contract shall
921 have the authority, when granted by an agency or governing
922 authority, to authorize changes or modifications to the original
923 contract without the necessity of prior approval of the agency or
924 governing authority when any such change or modification is less
925 than one percent (1%) of the total contract amount. The agency or
926 governing authority may limit the number, manner or frequency of
927 such emergency changes or modifications.

928 (h) **Petroleum purchase alternative.** In addition to
929 other methods of purchasing authorized in this chapter, when any
930 agency or governing authority shall have a need for gas, diesel
931 fuel, oils and/or other petroleum products in excess of the amount
932 set forth in paragraph (a) of this section, such agency or
933 governing authority may purchase the commodity after having
934 solicited and obtained at least two (2) competitive written bids,
935 as defined in paragraph (b) of this section. If two (2)
936 competitive written bids are not obtained, the entity shall comply
937 with the procedures set forth in paragraph (c) of this section.
938 In the event any agency or governing authority shall have
939 advertised for bids for the purchase of gas, diesel fuel, oils and
940 other petroleum products and coal and no acceptable bids can be
941 obtained, such agency or governing authority is authorized and
942 directed to enter into any negotiations necessary to secure the
943 lowest and best contract available for the purchase of such
944 commodities.

945 (i) **Road construction petroleum products price**
946 **adjustment clause authorization.** Any agency or governing
947 authority authorized to enter into contracts for the construction,

948 maintenance, surfacing or repair of highways, roads or streets,
949 may include in its bid proposal and contract documents a price
950 adjustment clause with relation to the cost to the contractor,
951 including taxes, based upon an industry-wide cost index, of
952 petroleum products including asphalt used in the performance or
953 execution of the contract or in the production or manufacture of
954 materials for use in such performance. Such industry-wide index
955 shall be established and published monthly by the Mississippi
956 Department of Transportation with a copy thereof to be mailed,
957 upon request, to the clerks of the governing authority of each
958 municipality and the clerks of each board of supervisors
959 throughout the state. The price adjustment clause shall be based
960 on the cost of such petroleum products only and shall not include
961 any additional profit or overhead as part of the adjustment. The
962 bid proposals or document contract shall contain the basis and
963 methods of adjusting unit prices for the change in the cost of
964 such petroleum products.

965 (j) **State agency emergency purchase procedure.** If the
966 governing board or the executive head, or his designee, of any
967 agency of the state shall determine that an emergency exists in
968 regard to the purchase of any commodities or repair contracts, so
969 that the delay incident to giving opportunity for competitive
970 bidding would be detrimental to the interests of the state, then
971 the provisions herein for competitive bidding shall not apply and
972 the head of such agency shall be authorized to make the purchase
973 or repair. Total purchases so made shall only be for the purpose
974 of meeting needs created by the emergency situation. In the event
975 such executive head is responsible to an agency board, at the
976 meeting next following the emergency purchase, documentation of
977 the purchase, including a description of the commodity purchased,
978 the purchase price thereof and the nature of the emergency shall
979 be presented to the board and placed on the minutes of the board
980 of such agency. The head of such agency, or his designee, shall,

981 at the earliest possible date following such emergency purchase,
982 file with the Department of Finance and Administration (i) a
983 statement explaining the conditions and circumstances of the
984 emergency, which shall include a detailed description of the
985 events leading up to the situation and the negative impact to the
986 entity if the purchase is made following the statutory
987 requirements set forth in paragraph (a), (b) or (c) of this
988 section, and (ii) a certified copy of the appropriate minutes of
989 the board of such agency, if applicable. On or before September 1
990 of each year, the State Auditor shall prepare and deliver to the
991 Senate Fees, Salaries and Administration Committee, the House Fees
992 and Salaries of Public Officers Committee and the Joint
993 Legislative Budget Committee a report containing a list of all
994 state agency emergency purchases and supporting documentation for
995 each emergency purchases.

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

997 If the governing authority, or the governing authority acting
998 through its designee, shall determine that an emergency exists in
999 regard to the purchase of any commodities or repair contracts, so
1000 that the delay incident to giving opportunity for competitive
1001 bidding would be detrimental to the interest of the governing
1002 authority, then the provisions herein for competitive bidding
1003 shall not apply and any officer or agent of such governing
1004 authority having general or special authority therefor in making
1005 such purchase or repair shall approve the bill presented therefor,
1006 and he shall certify in writing thereon from whom such purchase
1007 was made, or with whom such a repair contract was made. At the
1008 board meeting next following the emergency purchase or repair
1009 contract, documentation of the purchase or repair contract,
1010 including a description of the commodity purchased, the price
1011 thereof and the nature of the emergency shall be presented to the
1012 board and shall be placed on the minutes of the board of such
1013 governing authority.

1014 (1) **Hospital purchase, lease-purchase and lease**
1015 **authorization.**

1016 (i) The commissioners or board of trustees of any
1017 public hospital may contract with such lowest and best bidder for
1018 the purchase or lease-purchase of any commodity under a contract
1019 of purchase or lease-purchase agreement whose obligatory payment
1020 terms do not exceed five (5) years.

1021 (ii) In addition to the authority granted in
1022 subparagraph (i) of this paragraph (1), the commissioners or board
1023 of trustees is authorized to enter into contracts for the lease of
1024 equipment or services, or both, which it considers necessary for
1025 the proper care of patients if, in its opinion, it is not
1026 financially feasible to purchase the necessary equipment or
1027 services. Any such contract for the lease of equipment or
1028 services executed by the commissioners or board shall not exceed a
1029 maximum of five (5) years' duration and shall include a
1030 cancellation clause based on unavailability of funds. If such
1031 cancellation clause is exercised, there shall be no further
1032 liability on the part of the lessee. Any such contract for the
1033 lease of equipment or services executed on behalf of the
1034 commissioners or board that complies with the provisions of this
1035 subparagraph (ii) shall be excepted from the bid requirements set
1036 forth in this section.

1037 (m) **Exceptions from bidding requirements.** Excepted
1038 from bid requirements are:

1039 (i) **Purchasing agreements approved by department.**
1040 Purchasing agreements, contracts and maximum price regulations
1041 executed or approved by the Department of Finance and
1042 Administration.

1043 (ii) **Outside equipment repairs.** Repairs to
1044 equipment, when such repairs are made by repair facilities in the
1045 private sector; however, engines, transmissions, rear axles and/or
1046 other such components shall not be included in this exemption when

1047 replaced as a complete unit instead of being repaired and the need
1048 for such total component replacement is known before disassembly
1049 of the component; however, invoices identifying the equipment,
1050 specific repairs made, parts identified by number and name,
1051 supplies used in such repairs, and the number of hours of labor
1052 and costs therefor shall be required for the payment for such
1053 repairs.

1054 (iii) **In-house equipment repairs.** Purchases of
1055 parts for repairs to equipment, when such repairs are made by
1056 personnel of the agency or governing authority; however, entire
1057 assemblies, such as engines or transmissions, shall not be
1058 included in this exemption when the entire assembly is being
1059 replaced instead of being repaired.

1060 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
1061 of gravel or fill dirt which are to be removed and transported by
1062 the purchaser.

1063 (v) **Governmental equipment auctions.** Motor
1064 vehicles or other equipment purchased from a federal agency or
1065 authority, another governing authority or state agency of the
1066 State of Mississippi, or any governing authority or state agency
1067 of another state at a public auction held for the purpose of
1068 disposing of such vehicles or other equipment. Any purchase by a
1069 governing authority under the exemption authorized by this
1070 subparagraph (v) shall require advance authorization spread upon
1071 the minutes of the governing authority to include the listing of
1072 the item or items authorized to be purchased and the maximum bid
1073 authorized to be paid for each item or items.

1074 (vi) **Intergovernmental sales and transfers.**
1075 Purchases, sales, transfers or trades by governing authorities or
1076 state agencies when such purchases, sales, transfers or trades are
1077 made by a private treaty agreement or through means of
1078 negotiation, from any federal agency or authority, another
1079 governing authority or state agency of the State of Mississippi,

1080 or any state agency or governing authority of another state.
1081 Nothing in this section shall permit such purchases through public
1082 auction except as provided for in subparagraph (v) of this
1083 section. It is the intent of this section to allow governmental
1084 entities to dispose of and/or purchase commodities from other
1085 governmental entities at a price that is agreed to by both
1086 parties. This shall allow for purchases and/or sales at prices
1087 which may be determined to be below the market value if the
1088 selling entity determines that the sale at below market value is
1089 in the best interest of the taxpayers of the state. Governing
1090 authorities shall place the terms of the agreement and any
1091 justification on the minutes, and state agencies shall obtain
1092 approval from the Department of Finance and Administration, prior
1093 to releasing or taking possession of the commodities.

1094 (vii) **Perishable supplies or food.** Perishable
1095 supplies or foods purchased for use in connection with hospitals,
1096 the school lunch programs, homemaking programs and for the feeding
1097 of county or municipal prisoners.

1098 (viii) **Single source items.** Noncompetitive items
1099 available from one (1) source only. In connection with the
1100 purchase of noncompetitive items only available from one (1)
1101 source, a certification of the conditions and circumstances
1102 requiring the purchase shall be filed by the agency with the
1103 Department of Finance and Administration and by the governing
1104 authority with the board of the governing authority. Upon receipt
1105 of that certification the Department of Finance and Administration
1106 or the board of the governing authority, as the case may be, may,
1107 in writing, authorize the purchase, which authority shall be noted
1108 on the minutes of the body at the next regular meeting thereafter.
1109 In those situations, a governing authority is not required to
1110 obtain the approval of the Department of Finance and
1111 Administration.

1112 (ix) **Waste disposal facility construction**
1113 **contracts.** Construction of incinerators and other facilities for
1114 disposal of solid wastes in which products either generated
1115 therein, such as steam, or recovered therefrom, such as materials
1116 for recycling, are to be sold or otherwise disposed of; however,
1117 in constructing such facilities, a governing authority or agency
1118 shall publicly issue requests for proposals, advertised for in the
1119 same manner as provided herein for seeking bids for public
1120 construction projects, concerning the design, construction,
1121 ownership, operation and/or maintenance of such facilities,
1122 wherein such requests for proposals when issued shall contain
1123 terms and conditions relating to price, financial responsibility,
1124 technology, environmental compatibility, legal responsibilities
1125 and such other matters as are determined by the governing
1126 authority or agency to be appropriate for inclusion; and after
1127 responses to the request for proposals have been duly received,
1128 the governing authority or agency may select the most qualified
1129 proposal or proposals on the basis of price, technology and other
1130 relevant factors and from such proposals, but not limited to the
1131 terms thereof, negotiate and enter contracts with one or more of
1132 the persons or firms submitting proposals.

1133 (x) **Hospital group purchase contracts.** Supplies,
1134 commodities and equipment purchased by hospitals through group
1135 purchase programs pursuant to Section 31-7-38.

1136 (xi) **Information technology products.** Purchases
1137 of information technology products made by governing authorities
1138 under the provisions of purchase schedules, or contracts executed
1139 or approved by the Mississippi Department of Information
1140 Technology Services and designated for use by governing
1141 authorities.

1142 (xii) **Energy efficiency services and equipment.**
1143 Energy efficiency services and equipment acquired by school
1144 districts, community and junior colleges, institutions of higher

1145 learning and state agencies or other applicable governmental
1146 entities on a shared-savings, lease or lease-purchase basis
1147 pursuant to Section 31-7-14.

1148 (xiii) **Municipal electrical utility system fuel.**

1149 Purchases of coal and/or natural gas by municipally-owned electric
1150 power generating systems that have the capacity to use both coal
1151 and natural gas for the generation of electric power.

1152 (xiv) **Library books and other reference materials.**

1153 Purchases by libraries or for libraries of books and periodicals;
1154 processed film, video cassette tapes, filmstrips and slides;
1155 recorded audio tapes, cassettes and diskettes; and any such items
1156 as would be used for teaching, research or other information
1157 distribution; however, equipment such as projectors, recorders,
1158 audio or video equipment, and monitor televisions are not exempt
1159 under this subparagraph.

1160 (xv) **Unmarked vehicles.** Purchases of unmarked
1161 vehicles when such purchases are made in accordance with
1162 purchasing regulations adopted by the Department of Finance and
1163 Administration pursuant to Section 31-7-9(2).

1164 (xvi) **Election ballots.** Purchases of ballots
1165 printed pursuant to Section 23-15-351.

1166 (xvii) **Multichannel interactive video systems.**

1167 From and after July 1, 1990, contracts by Mississippi Authority
1168 for Educational Television with any private educational
1169 institution or private nonprofit organization whose purposes are
1170 educational in regard to the construction, purchase, lease or
1171 lease-purchase of facilities and equipment and the employment of
1172 personnel for providing multichannel interactive video systems
1173 (ITSF) in the school districts of this state.

1174 (xviii) **Purchases of prison industry products.**

1175 From and after January 1, 1991, purchases made by state agencies
1176 or governing authorities involving any item that is manufactured,
1177 processed, grown or produced from the state's prison industries.

1178 (xix) **Undercover operations equipment.** Purchases
1179 of surveillance equipment or any other high-tech equipment to be
1180 used by law enforcement agents in undercover operations, provided
1181 that any such purchase shall be in compliance with regulations
1182 established by the Department of Finance and Administration.

1183 (xx) **Junior college books for rent.** Purchases by
1184 community or junior colleges of textbooks which are obtained for
1185 the purpose of renting such books to students as part of a book
1186 service system.

1187 (xxi) **Certain school district purchases.**
1188 Purchases of commodities made by school districts from vendors
1189 with which any levying authority of the school district, as
1190 defined in Section 37-57-1, has contracted through competitive
1191 bidding procedures for purchases of the same commodities.

1192 (xxii) **Garbage, solid waste and sewage contracts.**
1193 Contracts for garbage collection or disposal, contracts for solid
1194 waste collection or disposal and contracts for sewage collection
1195 or disposal.

1196 (xxiii) **Municipal water tank maintenance**
1197 **contracts.** Professional maintenance program contracts for the
1198 repair or maintenance of municipal water tanks, which provide
1199 professional services needed to maintain municipal water storage
1200 tanks for a fixed annual fee for a duration of two (2) or more
1201 years.

1202 (xxiv) **Purchases of Mississippi Industries for the**
1203 **Blind products.** Purchases made by state agencies or governing
1204 authorities involving any item that is manufactured, processed or
1205 produced by the Mississippi Industries for the Blind.

1206 (xxv) **Purchases of state-adopted textbooks.**
1207 Purchases of state-adopted textbooks by public school districts.

1208 (xxvi) **Certain purchases under the Mississippi**
1209 **Major Economic Impact Act.** Contracts entered into pursuant to the
1210 provisions of Section 57-75-9(2) and (3).

1211 (xxvii) **Used heavy or specialized machinery or**
1212 **equipment for installation of soil and water conservation**
1213 **practices purchased at auction.** Used heavy or specialized
1214 machinery or equipment used for the installation and
1215 implementation of soil and water conservation practices or
1216 measures purchased subject to the restrictions provided in
1217 Sections 69-27-331 through 69-27-341. Any purchase by the State
1218 Soil and Water Conservation Commission under the exemption
1219 authorized by this subparagraph shall require advance
1220 authorization spread upon the minutes of the commission to include
1221 the listing of the item or items authorized to be purchased and
1222 the maximum bid authorized to be paid for each item or items.

1223 (xxviii) **Hospital lease of equipment or services.**
1224 Leases by hospitals of equipment or services if the leases are in
1225 compliance with subparagraph (1)(ii).

1226 (xxix) **Purchases made pursuant to qualified**
1227 **cooperative purchasing agreements.** Purchases made by certified
1228 purchasing offices of state agencies or governing authorities
1229 under cooperative purchasing agreements previously approved by the
1230 Office of Purchasing and Travel and established by or for any
1231 municipality, county, parish or state government or the federal
1232 government, provided that the notification to potential
1233 contractors includes a clause that sets forth the availability of
1234 the cooperative purchasing agreement to other governmental
1235 entities. Such purchases shall only be made if the use of the
1236 cooperative purchasing agreements is determined to be in the best
1237 interest of the government entity.

1238 (xxx) **Purchases of vehicles through sponsor**
1239 **advertisement program.** Purchases of vehicles thorough a sponsor
1240 advertisement program in which the vehicles are purchased for a
1241 nominal sum for a term not to exceed thirty-six (36) months.

1242 (n) **Term contract authorization.** All contracts for the
1243 purchase of:

1244 (i) All contracts for the purchase of commodities,
1245 equipment and public construction (including, but not limited to,
1246 repair and maintenance), may be let for periods of not more than
1247 sixty (60) months in advance, subject to applicable statutory
1248 provisions prohibiting the letting of contracts during specified
1249 periods near the end of terms of office. Term contracts for a
1250 period exceeding twenty-four (24) months shall also be subject to
1251 ratification or cancellation by governing authority boards taking
1252 office subsequent to the governing authority board entering the
1253 contract.

1254 (ii) Bid proposals and contracts may include price
1255 adjustment clauses with relation to the cost to the contractor
1256 based upon a nationally published industry-wide or nationally
1257 published and recognized cost index. The cost index used in a
1258 price adjustment clause shall be determined by the Department of
1259 Finance and Administration for the state agencies and by the
1260 governing board for governing authorities. The bid proposal and
1261 contract documents utilizing a price adjustment clause shall
1262 contain the basis and method of adjusting unit prices for the
1263 change in the cost of such commodities, equipment and public
1264 construction.

1265 (o) **Purchase law violation prohibition and vendor**
1266 **penalty.** No contract or purchase as herein authorized shall be
1267 made for the purpose of circumventing the provisions of this
1268 section requiring competitive bids, nor shall it be lawful for any
1269 person or concern to submit individual invoices for amounts within
1270 those authorized for a contract or purchase where the actual value
1271 of the contract or commodity purchased exceeds the authorized
1272 amount and the invoices therefor are split so as to appear to be
1273 authorized as purchases for which competitive bids are not
1274 required. Submission of such invoices shall constitute a
1275 misdemeanor punishable by a fine of not less than Five Hundred
1276 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),

1277 or by imprisonment for thirty (30) days in the county jail, or
1278 both such fine and imprisonment. In addition, the claim or claims
1279 submitted shall be forfeited.

1280 (p) **Electrical utility petroleum-based equipment**
1281 **purchase procedure.** When in response to a proper advertisement
1282 therefor, no bid firm as to price is submitted to an electric
1283 utility for power transformers, distribution transformers, power
1284 breakers, reclosers or other articles containing a petroleum
1285 product, the electric utility may accept the lowest and best bid
1286 therefor although the price is not firm.

1287 (q) **Fuel management system bidding procedure.** Any
1288 governing authority or agency of the state shall, before
1289 contracting for the services and products of a fuel management or
1290 fuel access system, enter into negotiations with not fewer than
1291 two (2) sellers of fuel management or fuel access systems for
1292 competitive written bids to provide the services and products for
1293 the systems. In the event that the governing authority or agency
1294 cannot locate two (2) sellers of such systems or cannot obtain
1295 bids from two (2) sellers of such systems, it shall show proof
1296 that it made a diligent, good-faith effort to locate and negotiate
1297 with two (2) sellers of such systems. Such proof shall include,
1298 but not be limited to, publications of a request for proposals and
1299 letters soliciting negotiations and bids. For purposes of this
1300 paragraph (q), a fuel management or fuel access system is an
1301 automated system of acquiring fuel for vehicles as well as
1302 management reports detailing fuel use by vehicles and drivers, and
1303 the term "competitive written bid" shall have the meaning as
1304 defined in paragraph (b) of this section. Governing authorities
1305 and agencies shall be exempt from this process when contracting
1306 for the services and products of a fuel management or fuel access
1307 systems under the terms of a state contract established by the
1308 Office of Purchasing and Travel.

1309 (r) **Solid waste contract proposal procedure.** Before
1310 entering into any contract for garbage collection or disposal,
1311 contract for solid waste collection or disposal or contract for
1312 sewage collection or disposal, which involves an expenditure of
1313 more than Fifty Thousand Dollars (\$50,000.00), a governing
1314 authority or agency shall issue publicly a request for proposals
1315 concerning the specifications for such services which shall be
1316 advertised for in the same manner as provided in this section for
1317 seeking bids for purchases which involve an expenditure of more
1318 than the amount provided in paragraph (c) of this section. Any
1319 request for proposals when issued shall contain terms and
1320 conditions relating to price, financial responsibility,
1321 technology, legal responsibilities and other relevant factors as
1322 are determined by the governing authority or agency to be
1323 appropriate for inclusion; all factors determined relevant by the
1324 governing authority or agency or required by this paragraph (r)
1325 shall be duly included in the advertisement to elicit proposals.
1326 After responses to the request for proposals have been duly
1327 received, the governing authority or agency shall select the most
1328 qualified proposal or proposals on the basis of price, technology
1329 and other relevant factors and from such proposals, but not
1330 limited to the terms thereof, negotiate and enter contracts with
1331 one or more of the persons or firms submitting proposals. If the
1332 governing authority or agency deems none of the proposals to be
1333 qualified or otherwise acceptable, the request for proposals
1334 process may be reinitiated. Notwithstanding any other provisions
1335 of this paragraph, where a county with at least thirty-five
1336 thousand (35,000) nor more than forty thousand (40,000)
1337 population, according to the 1990 federal decennial census, owns
1338 or operates a solid waste landfill, the governing authorities of
1339 any other county or municipality may contract with the governing
1340 authorities of the county owning or operating the landfill,
1341 pursuant to a resolution duly adopted and spread upon the minutes

1342 of each governing authority involved, for garbage or solid waste
1343 collection or disposal services through contract negotiations.

1344 (s) **Minority set aside authorization.** Notwithstanding
1345 any provision of this section to the contrary, any agency or
1346 governing authority, by order placed on its minutes, may, in its
1347 discretion, set aside not more than twenty percent (20%) of its
1348 anticipated annual expenditures for the purchase of commodities
1349 from minority businesses; however, all such set-aside purchases
1350 shall comply with all purchasing regulations promulgated by the
1351 Department of Finance and Administration and shall be subject to
1352 bid requirements under this section. Set-aside purchases for
1353 which competitive bids are required shall be made from the lowest
1354 and best minority business bidder. For the purposes of this
1355 paragraph, the term "minority business" means a business which is
1356 owned by a majority of persons who are United States citizens or
1357 permanent resident aliens (as defined by the Immigration and
1358 Naturalization Service) of the United States, and who are Asian,
1359 Black, Hispanic or Native American, according to the following
1360 definitions:

1361 (i) "Asian" means persons having origins in any of
1362 the original people of the Far East, Southeast Asia, the Indian
1363 subcontinent, or the Pacific Islands.

1364 (ii) "Black" means persons having origins in any
1365 black racial group of Africa.

1366 (iii) "Hispanic" means persons of Spanish or
1367 Portuguese culture with origins in Mexico, South or Central
1368 America, or the Caribbean Islands, regardless of race.

1369 (iv) "Native American" means persons having
1370 origins in any of the original people of North America, including
1371 American Indians, Eskimos and Aleuts.

1372 (t) **Construction punch list restriction.** The
1373 architect, engineer or other representative designated by the
1374 agency or governing authority that is contracting for public

1375 construction or renovation may prepare and submit to the
1376 contractor only one (1) preliminary punch list of items that do
1377 not meet the contract requirements at the time of substantial
1378 completion and one (1) final list immediately before final
1379 completion and final payment.

1380 (u) **Purchase authorization clarification.** Nothing in
1381 this section shall be construed as authorizing any purchase not
1382 authorized by law.

1383 **SECTION 4.** This act shall take effect and be in force from
1384 and after July 1, 2004.