

By: Senator(s) Chaney

To: Fees, Salaries and Administration

SENATE BILL NO. 2299

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 AUTHORIZE CERTIFIED PURCHASING OFFICES TO UTILIZE THE REQUEST FOR  
3 PROPOSAL (RFP) PROCESS TO PURCHASE COMMODITIES; AND FOR RELATED  
4 PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

149 (ii) **Decision procedure for Certified Purchasing**  
150 **Offices.** In addition to the decision procedure set forth in  
151 paragraph (d)(i), Certified Purchasing Offices may also use the  
152 following procedure: Purchases may be made from the bidder  
153 offering the best value. In determining the best value bid,  
154 freight and shipping charges shall be included. Life-cycle  
155 costing, total cost bids, warranties, guaranteed buy-back  
156 provisions, documented previous experience, training costs and  
157 other relevant provisions may be included in the best value  
158 calculation. This provision shall authorize Certified Purchasing  
159 Offices to utilize a Request For Proposals (RFP) process when  
160 purchasing commodities. All best value procedures for state

161 agencies must be in compliance with regulations established by the  
162 Department of Finance and Administration. No agency or governing  
163 authority shall accept a bid based on items or criteria not  
164 included in the specifications.

165 (iii) Construction project negotiations authority.

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

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

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

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

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

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

248           (h) **Petroleum purchase alternative.** In addition to  
249 other methods of purchasing authorized in this chapter, when any  
250 agency or governing authority shall have a need for gas, diesel  
251 fuel, oils and/or other petroleum products in excess of the amount  
252 set forth in paragraph (a) of this section, such agency or  
253 governing authority may purchase the commodity after having  
254 solicited and obtained at least two (2) competitive written bids,  
255 as defined in paragraph (b) of this section. If two (2)  
256 competitive written bids are not obtained, the entity shall comply  
257 with the procedures set forth in paragraph (c) of this section.  
258 In the event any agency or governing authority shall have



259 advertised for bids for the purchase of gas, diesel fuel, oils and  
260 other petroleum products and coal and no acceptable bids can be  
261 obtained, such agency or governing authority is authorized and  
262 directed to enter into any negotiations necessary to secure the  
263 lowest and best contract available for the purchase of such  
264 commodities.

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

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

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

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

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

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

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

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

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

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

359 (i) **Purchasing agreements approved by department.**  
360 Purchasing agreements, contracts and maximum price regulations  
361 executed or approved by the Department of Finance and  
362 Administration.

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

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

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

383 (v) **Governmental equipment auctions.** Motor  
384 vehicles or other equipment purchased from a federal agency or  
385 authority, another governing authority or state agency of the  
386 State of Mississippi, or any governing authority or state agency  
387 of another state at a public auction held for the purpose of  
388 disposing of such vehicles or other equipment. Any purchase by a  
389 governing authority under the exemption authorized by this

390 subparagraph (v) shall require advance authorization spread upon  
391 the minutes of the governing authority to include the listing of  
392 the item or items authorized to be purchased and the maximum bid  
393 authorized to be paid for each item or items.

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

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

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

418 (viii) **Single source items.** Noncompetitive items  
419 available from one (1) source only. In connection with the  
420 purchase of noncompetitive items only available from one (1)  
421 source, a certification of the conditions and circumstances  
422 requiring the purchase shall be filed by the agency with the

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

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

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

456                   (xi) **Information technology products.** Purchases  
457 of information technology products made by governing authorities  
458 under the provisions of purchase schedules, or contracts executed  
459 or approved by the Mississippi Department of Information  
460 Technology Services and designated for use by governing  
461 authorities.

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

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

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

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

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

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

489 institution or private nonprofit organization whose purposes are  
490 educational in regard to the construction, purchase, lease or  
491 lease-purchase of facilities and equipment and the employment of  
492 personnel for providing multichannel interactive video systems  
493 (ITSF) in the school districts of this state.

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

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

498 (xix) **Undercover operations equipment.** Purchases

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

503 (xx) **Junior college books for rent.** Purchases by

504 community or junior colleges of textbooks which are obtained for  
505 the purpose of renting such books to students as part of a book  
506 service system.

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

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

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

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

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

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



522 (xxiv) **Purchases of Mississippi Industries for the**  
523 **Blind products.** Purchases made by state agencies or governing  
524 authorities involving any item that is manufactured, processed or  
525 produced by the Mississippi Industries for the Blind.

526 (xxv) **Purchases of state-adopted textbooks.**  
527 Purchases of state-adopted textbooks by public school districts.

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

531 (xxvii) **Used heavy or specialized machinery or**  
532 **equipment for installation of soil and water conservation**  
533 **practices purchased at auction.** Used heavy or specialized  
534 machinery or equipment used for the installation and  
535 implementation of soil and water conservation practices or  
536 measures purchased subject to the restrictions provided in  
537 Sections 69-27-331 through 69-27-341. Any purchase by the State  
538 Soil and Water Conservation Commission under the exemption  
539 authorized by this subparagraph shall require advance  
540 authorization spread upon the minutes of the commission to include  
541 the listing of the item or items authorized to be purchased and  
542 the maximum bid authorized to be paid for each item or items.

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

546 (xxix) **Purchases made pursuant to qualified**  
547 **cooperative purchasing agreements.** Purchases made by Certified  
548 Purchasing Offices of state agencies or governing authorities  
549 under cooperative purchasing agreements previously approved by the  
550 Office of Purchasing and Travel and established by or for any  
551 municipality, county, parish or state government or the federal  
552 government, provided that the notification to potential  
553 contractors includes a clause that sets forth the availability of  
554 the cooperative purchasing agreement to other governmental

555 entities. Such purchases shall only be made if the use of the  
556 cooperative purchasing agreements is determined to be in the best  
557 interest of the government entity.

558 (n) **Term contract authorization.** All contracts for the  
559 purchase of:

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

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

581 (o) **Purchase law violation prohibition and vendor**  
582 **penalty.** No contract or purchase as herein authorized shall be  
583 made for the purpose of circumventing the provisions of this  
584 section requiring competitive bids, nor shall it be lawful for any  
585 person or concern to submit individual invoices for amounts within  
586 those authorized for a contract or purchase where the actual value  
587 of the contract or commodity purchased exceeds the authorized

588 amount and the invoices therefor are split so as to appear to be  
589 authorized as purchases for which competitive bids are not  
590 required. Submission of such invoices shall constitute a  
591 misdemeanor punishable by a fine of not less than Five Hundred  
592 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
593 or by imprisonment for thirty (30) days in the county jail, or  
594 both such fine and imprisonment. In addition, the claim or claims  
595 submitted shall be forfeited.

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

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

621 and agencies shall be exempt from this process when contracting  
622 for the services and products of a fuel management or fuel access  
623 systems under the terms of a state contract established by the  
624 Office of Purchasing and Travel.

625           (r) **Solid waste contract proposal procedure.** Before  
626 entering into any contract for garbage collection or disposal,  
627 contract for solid waste collection or disposal or contract for  
628 sewage collection or disposal, which involves an expenditure of  
629 more than Fifty Thousand Dollars (\$50,000.00), a governing  
630 authority or agency shall issue publicly a request for proposals  
631 concerning the specifications for such services which shall be  
632 advertised for in the same manner as provided in this section for  
633 seeking bids for purchases which involve an expenditure of more  
634 than the amount provided in paragraph (c) of this section. Any  
635 request for proposals when issued shall contain terms and  
636 conditions relating to price, financial responsibility,  
637 technology, legal responsibilities and other relevant factors as  
638 are determined by the governing authority or agency to be  
639 appropriate for inclusion; all factors determined relevant by the  
640 governing authority or agency or required by this paragraph (r)  
641 shall be duly included in the advertisement to elicit proposals.  
642 After responses to the request for proposals have been duly  
643 received, the governing authority or agency shall select the most  
644 qualified proposal or proposals on the basis of price, technology  
645 and other relevant factors and from such proposals, but not  
646 limited to the terms thereof, negotiate and enter contracts with  
647 one or more of the persons or firms submitting proposals. If the  
648 governing authority or agency deems none of the proposals to be  
649 qualified or otherwise acceptable, the request for proposals  
650 process may be reinitiated. Notwithstanding any other provisions  
651 of this paragraph, where a county with at least thirty-five  
652 thousand (35,000) nor more than forty thousand (40,000)  
653 population, according to the 1990 federal decennial census, owns

654 or operates a solid waste landfill, the governing authorities of  
655 any other county or municipality may contract with the governing  
656 authorities of the county owning or operating the landfill,  
657 pursuant to a resolution duly adopted and spread upon the minutes  
658 of each governing authority involved, for garbage or solid waste  
659 collection or disposal services through contract negotiations.

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

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

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

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

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

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

696 (u) **Purchase authorization clarification.** Nothing in  
697 this section shall be construed as authorizing any purchase not  
698 authorized by law.

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