

By: Senator(s) Harden

To: Fees, Salaries and
Administration;
Appropriations

SENATE BILL NO. 2644

1 AN ACT TO AMEND SECTIONS 31-7-9 AND 31-7-13, MISSISSIPPI CODE
2 OF 1972, TO DIRECT THE OFFICE OF PURCHASING IN THE DEPARTMENT OF
3 FINANCE AND ADMINISTRATION TO PROMULGATE REGULATIONS REQUIRING
4 STATE AGENCIES TO PURCHASE 15% OF THEIR OFFICE SUPPLIES FROM THE
5 MISSISSIPPI INDUSTRIES FOR THE BLIND; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 31-7-9, Mississippi Code of 1972, is
8 amended as follows:

9 31-7-9. (1) (a) The Office of Purchasing and Travel shall
10 adopt purchasing regulations governing the purchase by any agency
11 of any commodity or commodities and establishing standards and
12 specifications for a commodity or commodities and the maximum fair
13 prices of a commodity or commodities, subject to the approval of
14 the Public Procurement Review Board. It shall have the power to
15 amend, add to or eliminate purchasing regulations. The adoption
16 of, amendment, addition to or elimination of purchasing
17 regulations shall be based upon a determination by the Office of
18 Purchasing and Travel with the approval of the Public Procurement
19 Review Board, that such action is reasonable and practicable and
20 advantageous to promote efficiency and economy in the purchase of
21 commodities by the agencies of the state. Upon the adoption of
22 any purchasing regulation, or an amendment, addition or
23 elimination therein, copies of same shall be furnished to the
24 State Auditor and to all agencies affected thereby. Thereafter,
25 and except as otherwise may be provided in subsection (2) of this
26 section, no agency of the state shall purchase any commodities
27 covered by existing purchasing regulations unless such commodities
28 be in conformity with the standards and specifications set forth

29 in the purchasing regulations and unless the price thereof does
30 not exceed the maximum fair price established by such purchasing
31 regulations. The said Office of Purchasing and Travel shall
32 furnish to any county or municipality or other local public agency
33 of the state requesting same, copies of purchasing regulations
34 adopted by the Office of Purchasing and Travel and any amendments,
35 changes or eliminations of same that may be made from time to
36 time.

37 (b) The Office of Purchasing and Travel may adopt
38 purchasing regulations governing the use of credit cards,
39 procurement cards and purchasing club membership cards to be used
40 by state agencies and governing authorities of counties and
41 municipalities. Use of the cards shall be in strict compliance
42 with the regulations promulgated by the office. Any amounts due
43 on the cards shall incur interest charges as set forth in Section
44 31-7-305 and shall not be considered debt.

45 (2) The Office of Purchasing and Travel shall adopt, subject
46 to the approval of the Public Procurement Review Board, purchasing
47 regulations governing the purchase of unmarked vehicles to be used
48 by the Bureau of Narcotics and Department of Public Safety in
49 official investigations pursuant to Section 25-1-87. Such
50 regulations shall ensure that purchases of such vehicles shall be
51 at a fair price and shall take into consideration the peculiar
52 needs of the Bureau of Narcotics and Department of Public Safety
53 in undercover operations.

54 (3) The Office of Purchasing and Travel shall adopt, subject
55 to the approval of the Public Procurement Review Board,
56 regulations governing the certification process for certified
57 purchasing offices. Such regulations shall require entities
58 desiring to be classified as certified purchasing offices to
59 submit applications and applicable documents on an annual basis,
60 at which time the Office of Purchasing and Travel may provide the

61 governing entity with a certification valid for one (1) year from
62 the date of issuance.

63 (4) The Office of Purchasing and Travel shall adopt, subject
64 to the approval of the Public Procurement Review Board, purchasing
65 regulations to implement a requirement that all state agencies
66 will purchase fifteen percent (15%) of their office products from
67 the Mississippi Industries for the Blind, in order to maximize
68 volume discounts and cost savings for office products. Such
69 products may or may not be a blind-made product. It is the intent
70 of the Legislature that such purchases shall enable the
71 Mississippi Industries for the Blind to fund other programs which
72 employ visually impaired Mississippians but do not self-generate
73 sufficient funds. The purchase of office products pursuant to
74 Section 31-7-13(m)(xxiv) shall allow agencies to order office
75 products without the requirements of advertising for public bid
76 and the issuance of multiple purchase orders.

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

79 31-7-13. All agencies and governing authorities shall
80 purchase their commodities and printing; contract for garbage
81 collection or disposal; contract for solid waste collection or
82 disposal; contract for sewage collection or disposal; contract for
83 public construction; and contract for rentals as herein provided.

84 (a) **Bidding procedure for purchases not over \$3,500.00.**
85 Purchases which do not involve an expenditure of more than Three
86 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
87 shipping charges, may be made without advertising or otherwise
88 requesting competitive bids. However, nothing contained in this
89 paragraph (a) shall be construed to prohibit any agency or
90 governing authority from establishing procedures which require
91 competitive bids on purchases of Three Thousand Five Hundred
92 Dollars (\$3,500.00) or less.

93 (b) **Bidding procedure for purchases over \$3,500.00 but**
94 **not over \$15,000.00.** Purchases which involve an expenditure of
95 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
96 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
97 freight and shipping charges may be made from the lowest and best
98 bidder without publishing or posting advertisement for bids,
99 provided at least two (2) competitive written bids have been
100 obtained. Any governing authority purchasing commodities pursuant
101 to this paragraph (b) may authorize its purchasing agent, or his
102 designee, with regard to governing authorities other than
103 counties, or its purchase clerk, or his designee, with regard to
104 counties, to accept the lowest and best competitive written bid.
105 Such authorization shall be made in writing by the governing
106 authority and shall be maintained on file in the primary office of
107 the agency and recorded in the official minutes of the governing
108 authority, as appropriate. The purchasing agent or the purchase
109 clerk, or their designee, as the case may be, and not the
110 governing authority, shall be liable for any penalties and/or
111 damages as may be imposed by law for any act or omission of the
112 purchasing agent or purchase clerk, or their designee,
113 constituting a violation of law in accepting any bid without
114 approval by the governing authority. The term "competitive
115 written bid" shall mean a bid submitted on a bid form furnished by
116 the buying agency or governing authority and signed by authorized
117 personnel representing the vendor, or a bid submitted on a
118 vendor's letterhead or identifiable bid form and signed by
119 authorized personnel representing the vendor. "Competitive" shall
120 mean that the bids are developed based upon comparable
121 identification of the needs and are developed independently and
122 without knowledge of other bids or prospective bids. Bids may be
123 submitted by facsimile, electronic mail or other generally
124 accepted method of information distribution. Bids submitted by
125 electronic transmission shall not require the signature of the

126 vendor's representative unless required by agencies or governing
127 authorities.

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

129 (i) **Publication requirement.** Purchases which
130 involve an expenditure of more than Fifteen Thousand Dollars
131 (\$15,000.00), exclusive of freight and shipping charges, may be
132 made from the lowest and best bidder after advertising for
133 competitive sealed bids once each week for two (2) consecutive
134 weeks in a regular newspaper published in the county or
135 municipality in which such agency or governing authority is
136 located. The date as published for the bid opening shall not be
137 less than seven (7) working days after the last published notice;
138 however, if the purchase involves a construction project in which
139 the estimated cost is in excess of Fifteen Thousand Dollars
140 (\$15,000.00), such bids shall not be opened in less than fifteen
141 (15) working days after the last notice is published and the
142 notice for the purchase of such construction shall be published
143 once each week for two (2) consecutive weeks. The notice of
144 intention to let contracts or purchase equipment shall state the
145 time and place at which bids shall be received, list the contracts
146 to be made or types of equipment or supplies to be purchased, and,
147 if all plans and/or specifications are not published, refer to the
148 plans and/or specifications on file. If there is no newspaper
149 published in the county or municipality, then such notice shall be
150 given by posting same at the courthouse, or for municipalities at
151 the city hall, and at two (2) other public places in the county or
152 municipality, and also by publication once each week for two (2)
153 consecutive weeks in some newspaper having a general circulation
154 in the county or municipality in the above provided manner. On
155 the same date that the notice is submitted to the newspaper for
156 publication, the agency or governing authority involved shall mail
157 written notice to, or provide electronic notification to the main

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

160 (ii) **Bidding process amendment procedure.** If all
161 plans and/or specifications are published in the notification,
162 then the plans and/or specifications may not be amended. If all
163 plans and/or specifications are not published in the notification,
164 then amendments to the plans/specifications, bid opening date, bid
165 opening time and place may be made, provided that the agency or
166 governing authority maintains a list of all prospective bidders
167 who are known to have received a copy of the bid documents and all
168 such prospective bidders are sent copies of all amendments. This
169 notification of amendments may be made via mail, facsimile,
170 electronic mail or other generally accepted method of information
171 distribution. No addendum to bid specifications may be issued
172 within two (2) working days of the time established for the
173 receipt of bids unless such addendum also amends the bid opening
174 to a date not less than five (5) working days after the date of
175 the addendum.

176 (iii) **Filing requirement.** In all cases involving
177 governing authorities, before the notice shall be published or
178 posted, the plans or specifications for the construction or
179 equipment being sought shall be filed with the clerk of the board
180 of the governing authority. In addition to these requirements, a
181 bid file shall be established which shall indicate those vendors
182 to whom such solicitations and specifications were issued, and
183 such file shall also contain such information as is pertinent to
184 the bid.

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

191 job. Further, such justification, when placed on the minutes of
192 the board of a governing authority, may serve as authority for
193 that governing authority to write specifications to require a
194 specific item of equipment needed to perform a specific job. In
195 addition to these requirements, from and after July 1, 1990,
196 vendors of relocatable classrooms and the specifications for the
197 purchase of such relocatable classrooms published by local school
198 boards shall meet all pertinent regulations of the State Board of
199 Education, including prior approval of such bid by the State
200 Department of Education.

201 (v) Agencies and governing authorities may
202 establish secure procedures by which bids may be submitted via
203 electronic means.

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

205 (i) **Decision procedure.** Purchases may be made
206 from the lowest and best bidder. In determining the lowest and
207 best bid, freight and shipping charges shall be included.
208 Life-cycle costing, total cost bids, warranties, guaranteed
209 buy-back provisions and other relevant provisions may be included
210 in the best bid calculation. All best bid procedures for state
211 agencies must be in compliance with regulations established by the
212 Department of Finance and Administration. If any governing
213 authority accepts a bid other than the lowest bid actually
214 submitted, it shall place on its minutes detailed calculations and
215 narrative summary showing that the accepted bid was determined to
216 be the lowest and best bid, including the dollar amount of the
217 accepted bid and the dollar amount of the lowest bid. No agency
218 or governing authority shall accept a bid based on items not
219 included in the specifications.

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

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

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

226 (e) **Lease-purchase authorization.** For the purposes of
227 this section, the term "equipment" shall mean equipment, furniture
228 and, if applicable, associated software and other applicable
229 direct costs associated with the acquisition. Any lease-purchase
230 of equipment which an agency is not required to lease-purchase
231 under the master lease-purchase program pursuant to Section
232 31-7-10 and any lease-purchase of equipment which a governing
233 authority elects to lease-purchase may be acquired by a
234 lease-purchase agreement under this paragraph (e). Lease-purchase
235 financing may also be obtained from the vendor or from a
236 third-party source after having solicited and obtained at least
237 two (2) written competitive bids, as defined in paragraph (b) of
238 this section, for such financing without advertising for such
239 bids. Solicitation for the bids for financing may occur before or
240 after acceptance of bids for the purchase of such equipment or,
241 where no such bids for purchase are required, at any time before
242 the purchase thereof. No such lease-purchase agreement shall be
243 for an annual rate of interest which is greater than the overall
244 maximum interest rate to maturity on general obligation
245 indebtedness permitted under Section 75-17-101, and the term of
246 such lease-purchase agreement shall not exceed the useful life of
247 equipment covered thereby as determined according to the upper
248 limit of the asset depreciation range (ADR) guidelines for the
249 Class Life Asset Depreciation Range System established by the
250 Internal Revenue Service pursuant to the United States Internal
251 Revenue Code and regulations thereunder as in effect on December
252 31, 1980, or comparable depreciation guidelines with respect to
253 any equipment not covered by ADR guidelines. Any lease-purchase
254 agreement entered into pursuant to this paragraph (e) may contain
255 any of the terms and conditions which a master lease-purchase
256 agreement may contain under the provisions of Section 31-7-10(5),

257 and shall contain an annual allocation dependency clause
258 substantially similar to that set forth in Section 31-7-10(8).
259 Each agency or governing authority entering into a lease-purchase
260 transaction pursuant to this paragraph (e) shall maintain with
261 respect to each such lease-purchase transaction the same
262 information as required to be maintained by the Department of
263 Finance and Administration pursuant to Section 31-7-10(13).
264 However, nothing contained in this section shall be construed to
265 permit agencies to acquire items of equipment with a total
266 acquisition cost in the aggregate of less than Ten Thousand
267 Dollars (\$10,000.00) by a single lease-purchase transaction. All
268 equipment, and the purchase thereof by any lessor, acquired by
269 lease-purchase under this paragraph and all lease-purchase
270 payments with respect thereto shall be exempt from all Mississippi
271 sales, use and ad valorem taxes. Interest paid on any
272 lease-purchase agreement under this section shall be exempt from
273 State of Mississippi income taxation.

274 (f) **Alternate bid authorization.** When necessary to
275 ensure ready availability of commodities for public works and the
276 timely completion of public projects, no more than two (2)
277 alternate bids may be accepted by a governing authority for
278 commodities. No purchases may be made through use of such
279 alternate bids procedure unless the lowest and best bidder cannot
280 deliver the commodities contained in his bid. In that event,
281 purchases of such commodities may be made from one (1) of the
282 bidders whose bid was accepted as an alternate.

283 (g) **Construction contract change authorization.** In the
284 event a determination is made by an agency or governing authority
285 after a construction contract is let that changes or modifications
286 to the original contract are necessary or would better serve the
287 purpose of the agency or the governing authority, such agency or
288 governing authority may, in its discretion, order such changes
289 pertaining to the construction that are necessary under the

290 circumstances without the necessity of further public bids;
291 provided that such change shall be made in a commercially
292 reasonable manner and shall not be made to circumvent the public
293 purchasing statutes. In addition to any other authorized person,
294 the architect or engineer hired by an agency or governing
295 authority with respect to any public construction contract shall
296 have the authority, when granted by an agency or governing
297 authority, to authorize changes or modifications to the original
298 contract without the necessity of prior approval of the agency or
299 governing authority when any such change or modification is less
300 than one percent (1%) of the total contract amount. The agency or
301 governing authority may limit the number, manner or frequency of
302 such emergency changes or modifications.

303 (h) **Petroleum purchase alternative.** In addition to
304 other methods of purchasing authorized in this chapter, when any
305 agency or governing authority shall have a need for gas, diesel
306 fuel, oils and/or other petroleum products in excess of the amount
307 set forth in paragraph (a) of this section, such agency or
308 governing authority may purchase the commodity after having
309 solicited and obtained at least two (2) competitive written bids,
310 as defined in paragraph (b) of this section. If two (2)
311 competitive written bids are not obtained, the entity shall comply
312 with the procedures set forth in paragraph (c) of this section.
313 In the event any agency or governing authority shall have
314 advertised for bids for the purchase of gas, diesel fuel, oils and
315 other petroleum products and coal and no acceptable bids can be
316 obtained, such agency or governing authority is authorized and
317 directed to enter into any negotiations necessary to secure the
318 lowest and best contract available for the purchase of such
319 commodities.

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

323 maintenance, surfacing or repair of highways, roads or streets,
324 may include in its bid proposal and contract documents a price
325 adjustment clause with relation to the cost to the contractor,
326 including taxes, based upon an industry-wide cost index, of
327 petroleum products including asphalt used in the performance or
328 execution of the contract or in the production or manufacture of
329 materials for use in such performance. Such industry-wide index
330 shall be established and published monthly by the Mississippi
331 Department of Transportation with a copy thereof to be mailed,
332 upon request, to the clerks of the governing authority of each
333 municipality and the clerks of each board of supervisors
334 throughout the state. The price adjustment clause shall be based
335 on the cost of such petroleum products only and shall not include
336 any additional profit or overhead as part of the adjustment. The
337 bid proposals or document contract shall contain the basis and
338 methods of adjusting unit prices for the change in the cost of
339 such petroleum products.

340 (j) **State agency emergency purchase procedure.** If the
341 governing board or the executive head, or his designee, of any
342 agency of the state shall determine that an emergency exists in
343 regard to the purchase of any commodities or repair contracts, so
344 that the delay incident to giving opportunity for competitive
345 bidding would be detrimental to the interests of the state, then
346 the provisions herein for competitive bidding shall not apply and
347 the head of such agency shall be authorized to make the purchase
348 or repair. Total purchases so made shall only be for the purpose
349 of meeting needs created by the emergency situation. In the event
350 such executive head is responsible to an agency board, at the
351 meeting next following the emergency purchase, documentation of
352 the purchase, including a description of the commodity purchased,
353 the purchase price thereof and the nature of the emergency shall
354 be presented to the board and placed on the minutes of the board
355 of such agency. The head of such agency, or his designee, shall,

356 at the earliest possible date following such emergency purchase,
357 file with the Department of Finance and Administration (i) a
358 statement explaining the conditions and circumstances of the
359 emergency, which shall include a detailed description of the
360 events leading up to the situation and the negative impact to the
361 entity if the purchase is made following the statutory
362 requirements set forth in paragraph (a), (b) or (c) of this
363 section, and (ii) a certified copy of the appropriate minutes of
364 the board of such agency, if applicable. On or before September 1
365 of each year, the State Auditor shall prepare and deliver to the
366 Senate Fees, Salaries and Administration Committee, the House Fees
367 and Salaries of Public Officers Committee and the Joint
368 Legislative Budget Committee a report containing a list of all
369 state agency emergency purchases and supporting documentation for
370 each emergency purchases.

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

372 If the governing authority, or the governing authority acting
373 through its designee, shall determine that an emergency exists in
374 regard to the purchase of any commodities or repair contracts, so
375 that the delay incident to giving opportunity for competitive
376 bidding would be detrimental to the interest of the governing
377 authority, then the provisions herein for competitive bidding
378 shall not apply and any officer or agent of such governing
379 authority having general or special authority therefor in making
380 such purchase or repair shall approve the bill presented therefor,
381 and he shall certify in writing thereon from whom such purchase
382 was made, or with whom such a repair contract was made. At the
383 board meeting next following the emergency purchase or repair
384 contract, documentation of the purchase or repair contract,
385 including a description of the commodity purchased, the price
386 thereof and the nature of the emergency shall be presented to the
387 board and shall be placed on the minutes of the board of such
388 governing authority.

389 (1) **Hospital purchase, lease-purchase and lease**
390 **authorization.**

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

396 (ii) In addition to the authority granted in
397 subparagraph (i) of this paragraph (1), the commissioners or board
398 of trustees is authorized to enter into contracts for the lease of
399 equipment or services, or both, which it considers necessary for
400 the proper care of patients if, in its opinion, it is not
401 financially feasible to purchase the necessary equipment or
402 services. Any such contract for the lease of equipment or
403 services executed by the commissioners or board shall not exceed a
404 maximum of five (5) years' duration and shall include a
405 cancellation clause based on unavailability of funds. If such
406 cancellation clause is exercised, there shall be no further
407 liability on the part of the lessee. Any such contract for the
408 lease of equipment or services executed on behalf of the
409 commissioners or board that complies with the provisions of this
410 subparagraph (ii) shall be excepted from the bid requirements set
411 forth in this section.

412 (m) **Exceptions from bidding requirements.** Excepted
413 from bid requirements are:

414 (i) **Purchasing agreements approved by department.**
415 Purchasing agreements, contracts and maximum price regulations
416 executed or approved by the Department of Finance and
417 Administration.

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

422 replaced as a complete unit instead of being repaired and the need
423 for such total component replacement is known before disassembly
424 of the component; however, invoices identifying the equipment,
425 specific repairs made, parts identified by number and name,
426 supplies used in such repairs, and the number of hours of labor
427 and costs therefor shall be required for the payment for such
428 repairs.

429 (iii) **In-house equipment repairs.** Purchases of
430 parts for repairs to equipment, when such repairs are made by
431 personnel of the agency or governing authority; however, entire
432 assemblies, such as engines or transmissions, shall not be
433 included in this exemption when the entire assembly is being
434 replaced instead of being repaired.

435 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
436 of gravel or fill dirt which are to be removed and transported by
437 the purchaser.

438 (v) **Governmental equipment auctions.** Motor
439 vehicles or other equipment purchased from a federal agency or
440 authority, another governing authority or state agency of the
441 State of Mississippi, or any governing authority or state agency
442 of another state at a public auction held for the purpose of
443 disposing of such vehicles or other equipment. Any purchase by a
444 governing authority under the exemption authorized by this
445 subparagraph (v) shall require advance authorization spread upon
446 the minutes of the governing authority to include the listing of
447 the item or items authorized to be purchased and the maximum bid
448 authorized to be paid for each item or items.

449 (vi) **Intergovernmental sales and transfers.**
450 Purchases, sales, transfers or trades by governing authorities or
451 state agencies when such purchases, sales, transfers or trades are
452 made by a private treaty agreement or through means of
453 negotiation, from any federal agency or authority, another
454 governing authority or state agency of the State of Mississippi,

455 or any state agency or governing authority of another state.
456 Nothing in this section shall permit such purchases through public
457 auction except as provided for in subparagraph (v) of this
458 section. It is the intent of this section to allow governmental
459 entities to dispose of and/or purchase commodities from other
460 governmental entities at a price that is agreed to by both
461 parties. This shall allow for purchases and/or sales at prices
462 which may be determined to be below the market value if the
463 selling entity determines that the sale at below market value is
464 in the best interest of the taxpayers of the state. Governing
465 authorities shall place the terms of the agreement and any
466 justification on the minutes, and state agencies shall obtain
467 approval from the Department of Finance and Administration, prior
468 to releasing or taking possession of the commodities.

469 (vii) **Perishable supplies or food.** Perishable
470 supplies or foods purchased for use in connection with hospitals,
471 the school lunch programs, homemaking programs and for the feeding
472 of county or municipal prisoners.

473 (viii) **Single source items.** Noncompetitive items
474 available from one (1) source only. In connection with the
475 purchase of noncompetitive items only available from one (1)
476 source, a certification of the conditions and circumstances
477 requiring the purchase shall be filed by the agency with the
478 Department of Finance and Administration and by the governing
479 authority with the board of the governing authority. Upon receipt
480 of that certification the Department of Finance and Administration
481 or the board of the governing authority, as the case may be, may,
482 in writing, authorize the purchase, which authority shall be noted
483 on the minutes of the body at the next regular meeting thereafter.
484 In those situations, a governing authority is not required to
485 obtain the approval of the Department of Finance and
486 Administration.

487 (ix) **Waste disposal facility construction**
488 **contracts.** Construction of incinerators and other facilities for
489 disposal of solid wastes in which products either generated
490 therein, such as steam, or recovered therefrom, such as materials
491 for recycling, are to be sold or otherwise disposed of; however,
492 in constructing such facilities, a governing authority or agency
493 shall publicly issue requests for proposals, advertised for in the
494 same manner as provided herein for seeking bids for public
495 construction projects, concerning the design, construction,
496 ownership, operation and/or maintenance of such facilities,
497 wherein such requests for proposals when issued shall contain
498 terms and conditions relating to price, financial responsibility,
499 technology, environmental compatibility, legal responsibilities
500 and such other matters as are determined by the governing
501 authority or agency to be appropriate for inclusion; and after
502 responses to the request for proposals have been duly received,
503 the governing authority or agency may select the most qualified
504 proposal or proposals on the basis of price, technology and other
505 relevant factors and from such proposals, but not limited to the
506 terms thereof, negotiate and enter contracts with one or more of
507 the persons or firms submitting proposals.

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

511 (xi) **Information technology products.** Purchases
512 of information technology products made by governing authorities
513 under the provisions of purchase schedules, or contracts executed
514 or approved by the Mississippi Department of Information
515 Technology Services and designated for use by governing
516 authorities.

517 (xii) **Energy efficiency services and equipment.**
518 Energy efficiency services and equipment acquired by school
519 districts, community and junior colleges, institutions of higher

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

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

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

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

528 Purchases by libraries or for libraries of books and periodicals;
529 processed film, video cassette tapes, filmstrips and slides;
530 recorded audio tapes, cassettes and diskettes; and any such items
531 as would be used for teaching, research or other information
532 distribution; however, equipment such as projectors, recorders,
533 audio or video equipment, and monitor televisions are not exempt
534 under this subparagraph.

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

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

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

542 From and after July 1, 1990, contracts by Mississippi Authority
543 for Educational Television with any private educational
544 institution or private nonprofit organization whose purposes are
545 educational in regard to the construction, purchase, lease or
546 lease-purchase of facilities and equipment and the employment of
547 personnel for providing multichannel interactive video systems
548 (ITSF) in the school districts of this state.

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

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

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

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

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

567 (xxii) **Garbage, solid waste and sewage contracts.**
568 Contracts for garbage collection or disposal, contracts for solid
569 waste collection or disposal and contracts for sewage collection
570 or disposal.

571 (xxiii) **Municipal water tank maintenance**
572 **contracts.** Professional maintenance program contracts for the
573 repair or maintenance of municipal water tanks, which provide
574 professional services needed to maintain municipal water storage
575 tanks for a fixed annual fee for a duration of two (2) or more
576 years.

577 (xxiv) **Purchases of Mississippi Industries for the**
578 **Blind products.** Purchases made by state agencies or governing
579 authorities involving any item that is manufactured, processed or
580 produced by the Mississippi Industries for the Blind. The Office
581 of Purchasing by regulation shall direct state agencies to
582 purchase fifteen percent (15%) of their office products from the
583 Mississippi Industries for the Blind without the necessity of
584 public bidding requirements and multiple purchase orders.

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

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

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

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

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

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

593 machinery or equipment used for the installation and

594 implementation of soil and water conservation practices or

595 measures purchased subject to the restrictions provided in

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

597 Soil and Water Conservation Commission under the exemption

598 authorized by this subparagraph shall require advance

599 authorization spread upon the minutes of the commission to include

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

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

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

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

604 compliance with subparagraph (1)(ii).

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

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

607 purchasing offices of state agencies or governing authorities

608 under cooperative purchasing agreements previously approved by the

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

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

611 government, provided that the notification to potential

612 contractors includes a clause that sets forth the availability of

613 the cooperative purchasing agreement to other governmental

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

615 cooperative purchasing agreements is determined to be in the best

616 interest of the government entity.

617 (n) **Term contract authorization.** All contracts for the
618 purchase of:

619 (i) All contracts for the purchase of commodities,
620 equipment and public construction (including, but not limited to,
621 repair and maintenance), may be let for periods of not more than
622 sixty (60) months in advance, subject to applicable statutory
623 provisions prohibiting the letting of contracts during specified
624 periods near the end of terms of office. Term contracts for a
625 period exceeding twenty-four (24) months shall also be subject to
626 ratification or cancellation by governing authority boards taking
627 office subsequent to the governing authority board entering the
628 contract.

629 (ii) Bid proposals and contracts may include price
630 adjustment clauses with relation to the cost to the contractor
631 based upon a nationally published industry-wide or nationally
632 published and recognized cost index. The cost index used in a
633 price adjustment clause shall be determined by the Department of
634 Finance and Administration for the state agencies and by the
635 governing board for governing authorities. The bid proposal and
636 contract documents utilizing a price adjustment clause shall
637 contain the basis and method of adjusting unit prices for the
638 change in the cost of such commodities, equipment and public
639 construction.

640 (o) **Purchase law violation prohibition and vendor**
641 **penalty.** No contract or purchase as herein authorized shall be
642 made for the purpose of circumventing the provisions of this
643 section requiring competitive bids, nor shall it be lawful for any
644 person or concern to submit individual invoices for amounts within
645 those authorized for a contract or purchase where the actual value
646 of the contract or commodity purchased exceeds the authorized
647 amount and the invoices therefor are split so as to appear to be
648 authorized as purchases for which competitive bids are not
649 required. Submission of such invoices shall constitute a

650 misdemeanor punishable by a fine of not less than Five Hundred
651 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
652 or by imprisonment for thirty (30) days in the county jail, or
653 both such fine and imprisonment. In addition, the claim or claims
654 submitted shall be forfeited.

655 (p) **Electrical utility petroleum-based equipment**
656 **purchase procedure.** When in response to a proper advertisement
657 therefor, no bid firm as to price is submitted to an electric
658 utility for power transformers, distribution transformers, power
659 breakers, reclosers or other articles containing a petroleum
660 product, the electric utility may accept the lowest and best bid
661 therefor although the price is not firm.

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

682 systems under the terms of a state contract established by the
683 Office of Purchasing and Travel.

684 (r) **Solid waste contract proposal procedure.** Before
685 entering into any contract for garbage collection or disposal,
686 contract for solid waste collection or disposal or contract for
687 sewage collection or disposal, which involves an expenditure of
688 more than Fifty Thousand Dollars (\$50,000.00), a governing
689 authority or agency shall issue publicly a request for proposals
690 concerning the specifications for such services which shall be
691 advertised for in the same manner as provided in this section for
692 seeking bids for purchases which involve an expenditure of more
693 than the amount provided in paragraph (c) of this section. Any
694 request for proposals when issued shall contain terms and
695 conditions relating to price, financial responsibility,
696 technology, legal responsibilities and other relevant factors as
697 are determined by the governing authority or agency to be
698 appropriate for inclusion; all factors determined relevant by the
699 governing authority or agency or required by this paragraph (r)
700 shall be duly included in the advertisement to elicit proposals.
701 After responses to the request for proposals have been duly
702 received, the governing authority or agency shall select the most
703 qualified proposal or proposals on the basis of price, technology
704 and other relevant factors and from such proposals, but not
705 limited to the terms thereof, negotiate and enter contracts with
706 one or more of the persons or firms submitting proposals. If the
707 governing authority or agency deems none of the proposals to be
708 qualified or otherwise acceptable, the request for proposals
709 process may be reinitiated. Notwithstanding any other provisions
710 of this paragraph, where a county with at least thirty-five
711 thousand (35,000) nor more than forty thousand (40,000)
712 population, according to the 1990 federal decennial census, owns
713 or operates a solid waste landfill, the governing authorities of
714 any other county or municipality may contract with the governing

715 authorities of the county owning or operating the landfill,
716 pursuant to a resolution duly adopted and spread upon the minutes
717 of each governing authority involved, for garbage or solid waste
718 collection or disposal services through contract negotiations.

719 (s) **Minority set aside authorization.** Notwithstanding
720 any provision of this section to the contrary, any agency or
721 governing authority, by order placed on its minutes, may, in its
722 discretion, set aside not more than twenty percent (20%) of its
723 anticipated annual expenditures for the purchase of commodities
724 from minority businesses; however, all such set-aside purchases
725 shall comply with all purchasing regulations promulgated by the
726 Department of Finance and Administration and shall be subject to
727 bid requirements under this section. Set-aside purchases for
728 which competitive bids are required shall be made from the lowest
729 and best minority business bidder. For the purposes of this
730 paragraph, the term "minority business" means a business which is
731 owned by a majority of persons who are United States citizens or
732 permanent resident aliens (as defined by the Immigration and
733 Naturalization Service) of the United States, and who are Asian,
734 Black, Hispanic or Native American, according to the following
735 definitions:

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

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

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

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

747 (t) **Construction punch list restriction.** The
748 architect, engineer or other representative designated by the
749 agency or governing authority that is contracting for public
750 construction or renovation may prepare and submit to the
751 contractor only one (1) preliminary punch list of items that do
752 not meet the contract requirements at the time of substantial
753 completion and one (1) final list immediately before final
754 completion and final payment.

755 (u) **Purchase authorization clarification.** Nothing in
756 this section shall be construed as authorizing any purchase not
757 authorized by law.

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