

By: Representative Myers

To: Appropriations

HOUSE BILL NO. 1021

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

557 (xxx) **School yearbooks.** Purchases of school
558 yearbooks by state agencies or governing authorities; provided,
559 however, that state agencies and governing authorities shall use
560 for these purchases the RFP process as set forth in the
561 Mississippi Procurement Manual adopted by the Office of Purchasing
562 and Travel.

563 (n) **Term contract authorization.** All contracts for the
564 purchase of:

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

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

586 (o) **Purchase law violation prohibition and vendor**
587 **penalty.** No contract or purchase as herein authorized shall be
588 made for the purpose of circumventing the provisions of this
589 section requiring competitive bids, nor shall it be lawful for any
590 person or concern to submit individual invoices for amounts within
591 those authorized for a contract or purchase where the actual value
592 of the contract or commodity purchased exceeds the authorized
593 amount and the invoices therefor are split so as to appear to be
594 authorized as purchases for which competitive bids are not
595 required. Submission of such invoices shall constitute a
596 misdemeanor punishable by a fine of not less than Five Hundred
597 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
598 or by imprisonment for thirty (30) days in the county jail, or
599 both such fine and imprisonment. In addition, the claim or claims
600 submitted shall be forfeited.

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

608 (q) **Fuel management system bidding procedure.** Any
609 governing authority or agency of the state shall, before
610 contracting for the services and products of a fuel management or
611 fuel access system, enter into negotiations with not fewer than
612 two (2) sellers of fuel management or fuel access systems for
613 competitive written bids to provide the services and products for
614 the systems. In the event that the governing authority or agency
615 cannot locate two (2) sellers of such systems or cannot obtain
616 bids from two (2) sellers of such systems, it shall show proof
617 that it made a diligent, good-faith effort to locate and negotiate
618 with two (2) sellers of such systems. Such proof shall include,

619 but not be limited to, publications of a request for proposals and
620 letters soliciting negotiations and bids. For purposes of this
621 paragraph (q), a fuel management or fuel access system is an
622 automated system of acquiring fuel for vehicles as well as
623 management reports detailing fuel use by vehicles and drivers, and
624 the term "competitive written bid" shall have the meaning as
625 defined in paragraph (b) of this section. Governing authorities
626 and agencies shall be exempt from this process when contracting
627 for the services and products of a fuel management or fuel access
628 systems under the terms of a state contract established by the
629 Office of Purchasing and Travel.

630 (r) **Solid waste contract proposal procedure.** Before
631 entering into any contract for garbage collection or disposal,
632 contract for solid waste collection or disposal or contract for
633 sewage collection or disposal, which involves an expenditure of
634 more than Fifty Thousand Dollars (\$50,000.00), a governing
635 authority or agency shall issue publicly a request for proposals
636 concerning the specifications for such services which shall be
637 advertised for in the same manner as provided in this section for
638 seeking bids for purchases which involve an expenditure of more
639 than the amount provided in paragraph (c) of this section. Any
640 request for proposals when issued shall contain terms and
641 conditions relating to price, financial responsibility,
642 technology, legal responsibilities and other relevant factors as
643 are determined by the governing authority or agency to be
644 appropriate for inclusion; all factors determined relevant by the
645 governing authority or agency or required by this paragraph (r)
646 shall be duly included in the advertisement to elicit proposals.
647 After responses to the request for proposals have been duly
648 received, the governing authority or agency shall select the most
649 qualified proposal or proposals on the basis of price, technology
650 and other relevant factors and from such proposals, but not
651 limited to the terms thereof, negotiate and enter contracts with

652 one or more of the persons or firms submitting proposals. If the
653 governing authority or agency deems none of the proposals to be
654 qualified or otherwise acceptable, the request for proposals
655 process may be reinitiated. Notwithstanding any other provisions
656 of this paragraph, where a county with at least thirty-five
657 thousand (35,000) nor more than forty thousand (40,000)
658 population, according to the 1990 federal decennial census, owns
659 or operates a solid waste landfill, the governing authorities of
660 any other county or municipality may contract with the governing
661 authorities of the county owning or operating the landfill,
662 pursuant to a resolution duly adopted and spread upon the minutes
663 of each governing authority involved, for garbage or solid waste
664 collection or disposal services through contract negotiations.

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

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

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

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

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

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

701 (u) A contractor is prohibited from bidding on any
702 construction or renovation project for any agency if the
703 contractor currently has an outstanding contract or contracts with
704 any agency or agencies for public construction or renovation
705 projects of which the total amount is Thirty Million Dollars
706 (\$30,000,000.00) or more.

707 (v) **Purchase authorization clarification.** Nothing in
708 this section shall be construed as authorizing any purchase not
709 authorized by law.

710 **SECTION 2.** This act shall take effect and be in force from
711 and after July 1, 2005.