

By: Representatives Martinson, Gunn, Baker
(8th), Staples, Formby, Stevens, Lott

To: Appropriations

HOUSE BILL NO. 1123

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THAT PUBLIC CONSTRUCTION CONTRACTS MAY NOT INCLUDE
3 ALLOWANCES FOR UNSPECIFIED ITEMS AND AMOUNTS; TO CLARIFY THAT A
4 PUBLIC OWNER, IN DEVELOPING PLANS AND SPECIFICATIONS FOR A PUBLIC
5 CONSTRUCTION PROJECT, MAY INSTRUCT POTENTIAL BIDDERS THAT CERTAIN
6 MATERIALS OR EQUIPMENT WILL BE PROVIDED DURING THE CONSTRUCTION
7 PROCESS AND PURCHASED IN ACCORDANCE WITH PUBLIC PURCHASING LAWS BY
8 THE PUBLIC OWNER DURING THE COURSE OF CONSTRUCTION; AND FOR
9 RELATED PURPOSES.

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

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

13 31-7-13. All agencies and governing authorities shall
14 purchase their commodities and printing; contract for garbage
15 collection or disposal; contract for solid waste collection or
16 disposal; contract for sewage collection or disposal; contract for
17 public construction; and contract for rentals as herein provided.

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

27 (b) **Bidding procedure for purchases over \$3,500.00 but**
28 **not over \$15,000.00.** Purchases which involve an expenditure of
29 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
30 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of

31 freight and shipping charges may be made from the lowest and best
32 bidder without publishing or posting advertisement for bids,
33 provided at least two (2) competitive written bids have been
34 obtained. Any governing authority purchasing commodities pursuant
35 to this paragraph (b) may authorize its purchasing agent, or his
36 designee, with regard to governing authorities other than
37 counties, or its purchase clerk, or his designee, with regard to
38 counties, to accept the lowest and best competitive written bid.
39 Such authorization shall be made in writing by the governing
40 authority and shall be maintained on file in the primary office of
41 the agency and recorded in the official minutes of the governing
42 authority, as appropriate. The purchasing agent or the purchase
43 clerk, or their designee, as the case may be, and not the
44 governing authority, shall be liable for any penalties and/or
45 damages as may be imposed by law for any act or omission of the
46 purchasing agent or purchase clerk, or their designee,
47 constituting a violation of law in accepting any bid without
48 approval by the governing authority. The term "competitive
49 written bid" shall mean a bid submitted on a bid form furnished by
50 the buying agency or governing authority and signed by authorized
51 personnel representing the vendor, or a bid submitted on a
52 vendor's letterhead or identifiable bid form and signed by
53 authorized personnel representing the vendor. "Competitive" shall
54 mean that the bids are developed based upon comparable
55 identification of the needs and are developed independently and
56 without knowledge of other bids or prospective bids. Bids may be
57 submitted by facsimile, electronic mail or other generally
58 accepted method of information distribution. Bids submitted by
59 electronic transmission shall not require the signature of the
60 vendor's representative unless required by agencies or governing
61 authorities.

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

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

94 (ii) **Bidding process amendment procedure.** If all
95 plans and/or specifications are published in the notification,

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

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

119 (iv) **Specification restrictions. 1.**
120 Specifications pertinent to such bidding shall be written so as
121 not to exclude comparable equipment of domestic manufacture.
122 However, if valid justification is presented, the Department of
123 Finance and Administration or the board of a governing authority
124 may approve a request for specific equipment necessary to perform
125 a specific job. Further, such justification, when placed on the
126 minutes of the board of a governing authority, may serve as
127 authority for that governing authority to write specifications to
128 require a specific item of equipment needed to perform a specific

129 job. In addition to these requirements, from and after July 1,
130 1990, vendors of relocatable classrooms and the specifications for
131 the purchase of such relocatable classrooms published by local
132 school boards shall meet all pertinent regulations of the State
133 Board of Education, including prior approval of such bid by the
134 State Department of Education.

135 2. Specifications for construction projects
136 shall not include an allowance for commodities, equipment,
137 furniture, construction materials or hardware, in which
138 prospective bidders are instructed to include in their bids
139 specified amounts for such items. However, specifications may
140 instruct prospective bidders that certain commodities, equipment,
141 furniture, construction materials or hardware will be provided by
142 the owner during construction or later, and such items may then be
143 purchased by the owner in the manner provided by law.

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

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

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

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

163 (ii) **Decision procedure for Certified Purchasing**
164 **Offices.** In addition to the decision procedure set forth in
165 paragraph (d)(i), Certified Purchasing Offices may also use the
166 following procedure: Purchases may be made from the bidder
167 offering the best value. In determining the best value bid,
168 freight and shipping charges shall be included. Life-cycle
169 costing, total cost bids, warranties, guaranteed buy-back
170 provisions, documented previous experience, training costs and
171 other relevant provisions may be included in the best value
172 calculation. This provision shall authorize Certified Purchasing
173 Offices to utilize a Request For Proposals (RFP) process when
174 purchasing commodities. All best value procedures for state
175 agencies must be in compliance with regulations established by the
176 Department of Finance and Administration. No agency or governing
177 authority shall accept a bid based on items or criteria not
178 included in the specifications.

179 (iii) **Construction project negotiations authority.**
180 If the lowest and best bid is not more than ten percent (10%)
181 above the amount of funds allocated for a public construction or
182 renovation project, then the agency or governing authority shall
183 be permitted to negotiate with the lowest bidder in order to enter
184 into a contract for an amount not to exceed the funds allocated.

185 (e) **Lease-purchase authorization.** For the purposes of
186 this section, the term "equipment" shall mean equipment, furniture
187 and, if applicable, associated software and other applicable
188 direct costs associated with the acquisition. Any lease-purchase
189 of equipment which an agency is not required to lease-purchase
190 under the master lease-purchase program pursuant to Section
191 31-7-10 and any lease-purchase of equipment which a governing
192 authority elects to lease-purchase may be acquired by a
193 lease-purchase agreement under this paragraph (e). Lease-purchase

194 financing may also be obtained from the vendor or from a
195 third-party source after having solicited and obtained at least
196 two (2) written competitive bids, as defined in paragraph (b) of
197 this section, for such financing without advertising for such
198 bids. Solicitation for the bids for financing may occur before or
199 after acceptance of bids for the purchase of such equipment or,
200 where no such bids for purchase are required, at any time before
201 the purchase thereof. No such lease-purchase agreement shall be
202 for an annual rate of interest which is greater than the overall
203 maximum interest rate to maturity on general obligation
204 indebtedness permitted under Section 75-17-101, and the term of
205 such lease-purchase agreement shall not exceed the useful life of
206 equipment covered thereby as determined according to the upper
207 limit of the asset depreciation range (ADR) guidelines for the
208 Class Life Asset Depreciation Range System established by the
209 Internal Revenue Service pursuant to the United States Internal
210 Revenue Code and regulations thereunder as in effect on December
211 31, 1980, or comparable depreciation guidelines with respect to
212 any equipment not covered by ADR guidelines. Any lease-purchase
213 agreement entered into pursuant to this paragraph (e) may contain
214 any of the terms and conditions which a master lease-purchase
215 agreement may contain under the provisions of Section 31-7-10(5),
216 and shall contain an annual allocation dependency clause
217 substantially similar to that set forth in Section 31-7-10(8).
218 Each agency or governing authority entering into a lease-purchase
219 transaction pursuant to this paragraph (e) shall maintain with
220 respect to each such lease-purchase transaction the same
221 information as required to be maintained by the Department of
222 Finance and Administration pursuant to Section 31-7-10(13).
223 However, nothing contained in this section shall be construed to
224 permit agencies to acquire items of equipment with a total
225 acquisition cost in the aggregate of less than Ten Thousand
226 Dollars (\$10,000.00) by a single lease-purchase transaction. All

227 equipment, and the purchase thereof by any lessor, acquired by
228 lease-purchase under this paragraph and all lease-purchase
229 payments with respect thereto shall be exempt from all Mississippi
230 sales, use and ad valorem taxes. Interest paid on any
231 lease-purchase agreement under this section shall be exempt from
232 State of Mississippi income taxation.

233 (f) **Alternate bid authorization.** When necessary to
234 ensure ready availability of commodities for public works and the
235 timely completion of public projects, no more than two (2)
236 alternate bids may be accepted by a governing authority for
237 commodities. No purchases may be made through use of such
238 alternate bids procedure unless the lowest and best bidder cannot
239 deliver the commodities contained in his bid. In that event,
240 purchases of such commodities may be made from one (1) of the
241 bidders whose bid was accepted as an alternate.

242 (g) **Construction contract change authorization.** In the
243 event a determination is made by an agency or governing authority
244 after a construction contract is let that changes or modifications
245 to the original contract are necessary or would better serve the
246 purpose of the agency or the governing authority, such agency or
247 governing authority may, in its discretion, order such changes
248 pertaining to the construction that are necessary under the
249 circumstances without the necessity of further public bids;
250 provided that such change shall be made in a commercially
251 reasonable manner and shall not be made to circumvent the public
252 purchasing statutes. In addition to any other authorized person,
253 the architect or engineer hired by an agency or governing
254 authority with respect to any public construction contract shall
255 have the authority, when granted by an agency or governing
256 authority, to authorize changes or modifications to the original
257 contract without the necessity of prior approval of the agency or
258 governing authority when any such change or modification is less
259 than one percent (1%) of the total contract amount. The agency or

260 governing authority may limit the number, manner or frequency of
261 such emergency changes or modifications.

262 (h) **Petroleum purchase alternative.** In addition to
263 other methods of purchasing authorized in this chapter, when any
264 agency or governing authority shall have a need for gas, diesel
265 fuel, oils and/or other petroleum products in excess of the amount
266 set forth in paragraph (a) of this section, such agency or
267 governing authority may purchase the commodity after having
268 solicited and obtained at least two (2) competitive written bids,
269 as defined in paragraph (b) of this section. If two (2)
270 competitive written bids are not obtained, the entity shall comply
271 with the procedures set forth in paragraph (c) of this section.
272 In the event any agency or governing authority shall have
273 advertised for bids for the purchase of gas, diesel fuel, oils and
274 other petroleum products and coal and no acceptable bids can be
275 obtained, such agency or governing authority is authorized and
276 directed to enter into any negotiations necessary to secure the
277 lowest and best contract available for the purchase of such
278 commodities.

279 (i) **Road construction petroleum products price**
280 **adjustment clause authorization.** Any agency or governing
281 authority authorized to enter into contracts for the construction,
282 maintenance, surfacing or repair of highways, roads or streets,
283 may include in its bid proposal and contract documents a price
284 adjustment clause with relation to the cost to the contractor,
285 including taxes, based upon an industry-wide cost index, of
286 petroleum products including asphalt used in the performance or
287 execution of the contract or in the production or manufacture of
288 materials for use in such performance. Such industry-wide index
289 shall be established and published monthly by the Mississippi
290 Department of Transportation with a copy thereof to be mailed,
291 upon request, to the clerks of the governing authority of each
292 municipality and the clerks of each board of supervisors

293 throughout the state. The price adjustment clause shall be based
294 on the cost of such petroleum products only and shall not include
295 any additional profit or overhead as part of the adjustment. The
296 bid proposals or document contract shall contain the basis and
297 methods of adjusting unit prices for the change in the cost of
298 such petroleum products.

299 (j) **State agency emergency purchase procedure.** If the
300 governing board or the executive head, or his designee, of any
301 agency of the state shall determine that an emergency exists in
302 regard to the purchase of any commodities or repair contracts, so
303 that the delay incident to giving opportunity for competitive
304 bidding would be detrimental to the interests of the state, then
305 the provisions herein for competitive bidding shall not apply and
306 the head of such agency shall be authorized to make the purchase
307 or repair. Total purchases so made shall only be for the purpose
308 of meeting needs created by the emergency situation. In the event
309 such executive head is responsible to an agency board, at the
310 meeting next following the emergency purchase, documentation of
311 the purchase, including a description of the commodity purchased,
312 the purchase price thereof and the nature of the emergency shall
313 be presented to the board and placed on the minutes of the board
314 of such agency. The head of such agency, or his designee, shall,
315 at the earliest possible date following such emergency purchase,
316 file with the Department of Finance and Administration (i) a
317 statement explaining the conditions and circumstances of the
318 emergency, which shall include a detailed description of the
319 events leading up to the situation and the negative impact to the
320 entity if the purchase is made following the statutory
321 requirements set forth in paragraph (a), (b) or (c) of this
322 section, and (ii) a certified copy of the appropriate minutes of
323 the board of such agency, if applicable. On or before September 1
324 of each year, the State Auditor shall prepare and deliver to the
325 Senate Fees, Salaries and Administration Committee, the House Fees

326 and Salaries of Public Officers Committee and the Joint
327 Legislative Budget Committee a report containing a list of all
328 state agency emergency purchases and supporting documentation for
329 each emergency purchase.

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

331 If the governing authority, or the governing authority acting
332 through its designee, shall determine that an emergency exists in
333 regard to the purchase of any commodities or repair contracts, so
334 that the delay incident to giving opportunity for competitive
335 bidding would be detrimental to the interest of the governing
336 authority, then the provisions herein for competitive bidding
337 shall not apply and any officer or agent of such governing
338 authority having general or special authority therefor in making
339 such purchase or repair shall approve the bill presented therefor,
340 and he shall certify in writing thereon from whom such purchase
341 was made, or with whom such a repair contract was made. At the
342 board meeting next following the emergency purchase or repair
343 contract, documentation of the purchase or repair contract,
344 including a description of the commodity purchased, the price
345 thereof and the nature of the emergency shall be presented to the
346 board and shall be placed on the minutes of the board of such
347 governing authority.

348 (l) **Hospital purchase, lease-purchase and lease**
349 **authorization.**

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

355 (ii) In addition to the authority granted in
356 subparagraph (i) of this paragraph (l), the commissioners or board
357 of trustees is authorized to enter into contracts for the lease of
358 equipment or services, or both, which it considers necessary for

359 the proper care of patients if, in its opinion, it is not
360 financially feasible to purchase the necessary equipment or
361 services. Any such contract for the lease of equipment or
362 services executed by the commissioners or board shall not exceed a
363 maximum of five (5) years' duration and shall include a
364 cancellation clause based on unavailability of funds. If such
365 cancellation clause is exercised, there shall be no further
366 liability on the part of the lessee. Any such contract for the
367 lease of equipment or services executed on behalf of the
368 commissioners or board that complies with the provisions of this
369 subparagraph (ii) shall be excepted from the bid requirements set
370 forth in this section.

371 (m) **Exceptions from bidding requirements.** Excepted
372 from bid requirements are:

373 (i) **Purchasing agreements approved by department.**
374 Purchasing agreements, contracts and maximum price regulations
375 executed or approved by the Department of Finance and
376 Administration.

377 (ii) **Outside equipment repairs.** Repairs to
378 equipment, when such repairs are made by repair facilities in the
379 private sector; however, engines, transmissions, rear axles and/or
380 other such components shall not be included in this exemption when
381 replaced as a complete unit instead of being repaired and the need
382 for such total component replacement is known before disassembly
383 of the component; however, invoices identifying the equipment,
384 specific repairs made, parts identified by number and name,
385 supplies used in such repairs, and the number of hours of labor
386 and costs therefor shall be required for the payment for such
387 repairs.

388 (iii) **In-house equipment repairs.** Purchases of
389 parts for repairs to equipment, when such repairs are made by
390 personnel of the agency or governing authority; however, entire
391 assemblies, such as engines or transmissions, shall not be

392 included in this exemption when the entire assembly is being
393 replaced instead of being repaired.

394 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
395 of gravel or fill dirt which are to be removed and transported by
396 the purchaser.

397 (v) **Governmental equipment auctions.** Motor
398 vehicles or other equipment purchased from a federal agency or
399 authority, another governing authority or state agency of the
400 State of Mississippi, or any governing authority or state agency
401 of another state at a public auction held for the purpose of
402 disposing of such vehicles or other equipment. Any purchase by a
403 governing authority under the exemption authorized by this
404 subparagraph (v) shall require advance authorization spread upon
405 the minutes of the governing authority to include the listing of
406 the item or items authorized to be purchased and the maximum bid
407 authorized to be paid for each item or items.

408 (vi) **Intergovernmental sales and transfers.**
409 Purchases, sales, transfers or trades by governing authorities or
410 state agencies when such purchases, sales, transfers or trades are
411 made by a private treaty agreement or through means of
412 negotiation, from any federal agency or authority, another
413 governing authority or state agency of the State of Mississippi,
414 or any state agency or governing authority of another state.
415 Nothing in this section shall permit such purchases through public
416 auction except as provided for in subparagraph (v) of this
417 section. It is the intent of this section to allow governmental
418 entities to dispose of and/or purchase commodities from other
419 governmental entities at a price that is agreed to by both
420 parties. This shall allow for purchases and/or sales at prices
421 which may be determined to be below the market value if the
422 selling entity determines that the sale at below market value is
423 in the best interest of the taxpayers of the state. Governing
424 authorities shall place the terms of the agreement and any

425 justification on the minutes, and state agencies shall obtain
426 approval from the Department of Finance and Administration, prior
427 to releasing or taking possession of the commodities.

428 (vii) **Perishable supplies or food.** Perishable
429 supplies or foods purchased for use in connection with hospitals,
430 the school lunch programs, homemaking programs and for the feeding
431 of county or municipal prisoners.

432 (viii) **Single source items.** Noncompetitive items
433 available from one (1) source only. In connection with the
434 purchase of noncompetitive items only available from one (1)
435 source, a certification of the conditions and circumstances
436 requiring the purchase shall be filed by the agency with the
437 Department of Finance and Administration and by the governing
438 authority with the board of the governing authority. Upon receipt
439 of that certification the Department of Finance and Administration
440 or the board of the governing authority, as the case may be, may,
441 in writing, authorize the purchase, which authority shall be noted
442 on the minutes of the body at the next regular meeting thereafter.
443 In those situations, a governing authority is not required to
444 obtain the approval of the Department of Finance and
445 Administration.

446 (ix) **Waste disposal facility construction**
447 **contracts.** Construction of incinerators and other facilities for
448 disposal of solid wastes in which products either generated
449 therein, such as steam, or recovered therefrom, such as materials
450 for recycling, are to be sold or otherwise disposed of; however,
451 in constructing such facilities, a governing authority or agency
452 shall publicly issue requests for proposals, advertised for in the
453 same manner as provided herein for seeking bids for public
454 construction projects, concerning the design, construction,
455 ownership, operation and/or maintenance of such facilities,
456 wherein such requests for proposals when issued shall contain
457 terms and conditions relating to price, financial responsibility,

458 technology, environmental compatibility, legal responsibilities
459 and such other matters as are determined by the governing
460 authority or agency to be appropriate for inclusion; and after
461 responses to the request for proposals have been duly received,
462 the governing authority or agency may select the most qualified
463 proposal or proposals on the basis of price, technology and other
464 relevant factors and from such proposals, but not limited to the
465 terms thereof, negotiate and enter contracts with one or more of
466 the persons or firms submitting proposals.

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

470 (xi) **Information technology products.** Purchases
471 of information technology products made by governing authorities
472 under the provisions of purchase schedules, or contracts executed
473 or approved by the Mississippi Department of Information
474 Technology Services and designated for use by governing
475 authorities.

476 (xii) **Energy efficiency services and equipment.**
477 Energy efficiency services and equipment acquired by school
478 districts, community and junior colleges, institutions of higher
479 learning and state agencies or other applicable governmental
480 entities on a shared-savings, lease or lease-purchase basis
481 pursuant to Section 31-7-14.

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

486 (xiv) **Library books and other reference materials.**
487 Purchases by libraries or for libraries of books and periodicals;
488 processed film, video cassette tapes, filmstrips and slides;
489 recorded audio tapes, cassettes and diskettes; and any such items
490 as would be used for teaching, research or other information

491 distribution; however, equipment such as projectors, recorders,
492 audio or video equipment, and monitor televisions are not exempt
493 under this subparagraph.

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

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

500 (xvii) **Multichannel interactive video systems.**
501 From and after July 1, 1990, contracts by Mississippi Authority
502 for Educational Television with any private educational
503 institution or private nonprofit organization whose purposes are
504 educational in regard to the construction, purchase, lease or
505 lease-purchase of facilities and equipment and the employment of
506 personnel for providing multichannel interactive video systems
507 (ITSF) in the school districts of this state.

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

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

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

521 (xxi) **Certain school district purchases.**
522 Purchases of commodities made by school districts from vendors
523 with which any levying authority of the school district, as

524 defined in Section 37-57-1, has contracted through competitive
525 bidding procedures for purchases of the same commodities.

526 (xxii) **Garbage, solid waste and sewage contracts.**
527 Contracts for garbage collection or disposal, contracts for solid
528 waste collection or disposal and contracts for sewage collection
529 or disposal.

530 (xxiii) **Municipal water tank maintenance**
531 **contracts.** Professional maintenance program contracts for the
532 repair or maintenance of municipal water tanks, which provide
533 professional services needed to maintain municipal water storage
534 tanks for a fixed annual fee for a duration of two (2) or more
535 years.

536 (xxiv) **Purchases of Mississippi Industries for the**
537 **Blind products.** Purchases made by state agencies or governing
538 authorities involving any item that is manufactured, processed or
539 produced by the Mississippi Industries for the Blind.

540 (xxv) **Purchases of state-adopted textbooks.**
541 Purchases of state-adopted textbooks by public school districts.

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

545 (xxvii) **Used heavy or specialized machinery or**
546 **equipment for installation of soil and water conservation**
547 **practices purchased at auction.** Used heavy or specialized
548 machinery or equipment used for the installation and
549 implementation of soil and water conservation practices or
550 measures purchased subject to the restrictions provided in
551 Sections 69-27-331 through 69-27-341. Any purchase by the State
552 Soil and Water Conservation Commission under the exemption
553 authorized by this subparagraph shall require advance
554 authorization spread upon the minutes of the commission to include
555 the listing of the item or items authorized to be purchased and
556 the maximum bid authorized to be paid for each item or items.

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

560 (xxix) **Purchases made pursuant to qualified**
561 **cooperative purchasing agreements.** Purchases made by certified
562 purchasing offices of state agencies or governing authorities
563 under cooperative purchasing agreements previously approved by the
564 Office of Purchasing and Travel and established by or for any
565 municipality, county, parish or state government or the federal
566 government, provided that the notification to potential
567 contractors includes a clause that sets forth the availability of
568 the cooperative purchasing agreement to other governmental
569 entities. Such purchases shall only be made if the use of the
570 cooperative purchasing agreements is determined to be in the best
571 interest of the government entity.

572 (xxx) **School yearbooks.** Purchases of school
573 yearbooks by state agencies or governing authorities; provided,
574 however, that state agencies and governing authorities shall use
575 for these purchases the RFP process as set forth in the
576 Mississippi Procurement Manual adopted by the Office of Purchasing
577 and Travel.

578 (xxxi) **Design-build method or the design-build**
579 **bridging method of contracting.** Contracts entered into the
580 provisions of Section 31-11-3(9).

581 (n) **Term contract authorization.** All contracts for the
582 purchase of:

583 (i) All contracts for the purchase of commodities,
584 equipment and public construction (including, but not limited to,
585 repair and maintenance), may be let for periods of not more than
586 sixty (60) months in advance, subject to applicable statutory
587 provisions prohibiting the letting of contracts during specified
588 periods near the end of terms of office. Term contracts for a
589 period exceeding twenty-four (24) months shall also be subject to

590 ratification or cancellation by governing authority boards taking
591 office subsequent to the governing authority board entering the
592 contract.

593 (ii) Bid proposals and contracts may include price
594 adjustment clauses with relation to the cost to the contractor
595 based upon a nationally published industry-wide or nationally
596 published and recognized cost index. The cost index used in a
597 price adjustment clause shall be determined by the Department of
598 Finance and Administration for the state agencies and by the
599 governing board for governing authorities. The bid proposal and
600 contract documents utilizing a price adjustment clause shall
601 contain the basis and method of adjusting unit prices for the
602 change in the cost of such commodities, equipment and public
603 construction.

604 (o) **Purchase law violation prohibition and vendor**
605 **penalty.** No contract or purchase as herein authorized shall be
606 made for the purpose of circumventing the provisions of this
607 section requiring competitive bids, nor shall it be lawful for any
608 person or concern to submit individual invoices for amounts within
609 those authorized for a contract or purchase where the actual value
610 of the contract or commodity purchased exceeds the authorized
611 amount and the invoices therefor are split so as to appear to be
612 authorized as purchases for which competitive bids are not
613 required. Submission of such invoices shall constitute a
614 misdemeanor punishable by a fine of not less than Five Hundred
615 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
616 or by imprisonment for thirty (30) days in the county jail, or
617 both such fine and imprisonment. In addition, the claim or claims
618 submitted shall be forfeited.

619 (p) **Electrical utility petroleum-based equipment**
620 **purchase procedure.** When in response to a proper advertisement
621 therefor, no bid firm as to price is submitted to an electric
622 utility for power transformers, distribution transformers, power

623 breakers, reclosers or other articles containing a petroleum
624 product, the electric utility may accept the lowest and best bid
625 therefor although the price is not firm.

626 (q) **Fuel management system bidding procedure.** Any
627 governing authority or agency of the state shall, before
628 contracting for the services and products of a fuel management or
629 fuel access system, enter into negotiations with not fewer than
630 two (2) sellers of fuel management or fuel access systems for
631 competitive written bids to provide the services and products for
632 the systems. In the event that the governing authority or agency
633 cannot locate two (2) sellers of such systems or cannot obtain
634 bids from two (2) sellers of such systems, it shall show proof
635 that it made a diligent, good-faith effort to locate and negotiate
636 with two (2) sellers of such systems. Such proof shall include,
637 but not be limited to, publications of a request for proposals and
638 letters soliciting negotiations and bids. For purposes of this
639 paragraph (q), a fuel management or fuel access system is an
640 automated system of acquiring fuel for vehicles as well as
641 management reports detailing fuel use by vehicles and drivers, and
642 the term "competitive written bid" shall have the meaning as
643 defined in paragraph (b) of this section. Governing authorities
644 and agencies shall be exempt from this process when contracting
645 for the services and products of a fuel management or fuel access
646 systems under the terms of a state contract established by the
647 Office of Purchasing and Travel.

648 (r) **Solid waste contract proposal procedure.** Before
649 entering into any contract for garbage collection or disposal,
650 contract for solid waste collection or disposal or contract for
651 sewage collection or disposal, which involves an expenditure of
652 more than Fifty Thousand Dollars (\$50,000.00), a governing
653 authority or agency shall issue publicly a request for proposals
654 concerning the specifications for such services which shall be
655 advertised for in the same manner as provided in this section for

656 seeking bids for purchases which involve an expenditure of more
657 than the amount provided in paragraph (c) of this section. Any
658 request for proposals when issued shall contain terms and
659 conditions relating to price, financial responsibility,
660 technology, legal responsibilities and other relevant factors as
661 are determined by the governing authority or agency to be
662 appropriate for inclusion; all factors determined relevant by the
663 governing authority or agency or required by this paragraph (r)
664 shall be duly included in the advertisement to elicit proposals.
665 After responses to the request for proposals have been duly
666 received, the governing authority or agency shall select the most
667 qualified proposal or proposals on the basis of price, technology
668 and other relevant factors and from such proposals, but not
669 limited to the terms thereof, negotiate and enter contracts with
670 one or more of the persons or firms submitting proposals. If the
671 governing authority or agency deems none of the proposals to be
672 qualified or otherwise acceptable, the request for proposals
673 process may be reinitiated. Notwithstanding any other provisions
674 of this paragraph, where a county with at least thirty-five
675 thousand (35,000) nor more than forty thousand (40,000)
676 population, according to the 1990 federal decennial census, owns
677 or operates a solid waste landfill, the governing authorities of
678 any other county or municipality may contract with the governing
679 authorities of the county owning or operating the landfill,
680 pursuant to a resolution duly adopted and spread upon the minutes
681 of each governing authority involved, for garbage or solid waste
682 collection or disposal services through contract negotiations.

683 (s) **Minority set-aside authorization.** Notwithstanding
684 any provision of this section to the contrary, any agency or
685 governing authority, by order placed on its minutes, may, in its
686 discretion, set aside not more than twenty percent (20%) of its
687 anticipated annual expenditures for the purchase of commodities
688 from minority businesses; however, all such set-aside purchases

689 shall comply with all purchasing regulations promulgated by the
690 Department of Finance and Administration and shall be subject to
691 bid requirements under this section. Set-aside purchases for
692 which competitive bids are required shall be made from the lowest
693 and best minority business bidder. For the purposes of this
694 paragraph, the term "minority business" means a business which is
695 owned by a majority of persons who are United States citizens or
696 permanent resident aliens (as defined by the Immigration and
697 Naturalization Service) of the United States, and who are Asian,
698 Black, Hispanic or Native American, according to the following
699 definitions:

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

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

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

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

711 (t) **Construction punch list restriction.** The
712 architect, engineer or other representative designated by the
713 agency or governing authority that is contracting for public
714 construction or renovation may prepare and submit to the
715 contractor only one (1) preliminary punch list of items that do
716 not meet the contract requirements at the time of substantial
717 completion and one (1) final list immediately before final
718 completion and final payment.

719 (u) **Purchase authorization clarification.** Nothing in
720 this section shall be construed as authorizing any purchase not
721 authorized by law.

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