

By: Senator(s) Harden

To: Fees, Salaries and
Administration;
Appropriations

SENATE BILL NO. 2213

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

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

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

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

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

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

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

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

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

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

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

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

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

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

128 vendor's representative unless required by agencies or governing
129 authorities.

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

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

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

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

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

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

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

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

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

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

222 (ii) **Decision procedure for Certified Purchasing**
223 **Offices.** In addition to the decision procedure set forth in
224 paragraph (d)(i), Certified Purchasing Offices may also use the
225 following procedure: Purchases may be made from the bidder

226 offering the best value. In determining the best value bid,
227 freight and shipping charges shall be included. Life-cycle
228 costing, total cost bids, warranties, guaranteed buy-back
229 provisions, documented previous experience, training costs and
230 other relevant provisions may be included in the best value
231 calculation. This provision shall authorize Certified Purchasing
232 Offices to utilize a Request For Proposals (RFP) process when
233 purchasing commodities. All best value procedures for state
234 agencies must be in compliance with regulations established by the
235 Department of Finance and Administration. No agency or governing
236 authority shall accept a bid based on items or criteria not
237 included in the specifications.

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

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

244 (e) **Lease-purchase authorization.** For the purposes of
245 this section, the term "equipment" shall mean equipment, furniture
246 and, if applicable, associated software and other applicable
247 direct costs associated with the acquisition. Any lease-purchase
248 of equipment which an agency is not required to lease-purchase
249 under the master lease-purchase program pursuant to Section
250 31-7-10 and any lease-purchase of equipment which a governing
251 authority elects to lease-purchase may be acquired by a
252 lease-purchase agreement under this paragraph (e). Lease-purchase
253 financing may also be obtained from the vendor or from a
254 third-party source after having solicited and obtained at least
255 two (2) written competitive bids, as defined in paragraph (b) of
256 this section, for such financing without advertising for such
257 bids. Solicitation for the bids for financing may occur before or
258 after acceptance of bids for the purchase of such equipment or,

259 where no such bids for purchase are required, at any time before
260 the purchase thereof. No such lease-purchase agreement shall be
261 for an annual rate of interest which is greater than the overall
262 maximum interest rate to maturity on general obligation
263 indebtedness permitted under Section 75-17-101, and the term of
264 such lease-purchase agreement shall not exceed the useful life of
265 equipment covered thereby as determined according to the upper
266 limit of the asset depreciation range (ADR) guidelines for the
267 Class Life Asset Depreciation Range System established by the
268 Internal Revenue Service pursuant to the United States Internal
269 Revenue Code and regulations thereunder as in effect on December
270 31, 1980, or comparable depreciation guidelines with respect to
271 any equipment not covered by ADR guidelines. Any lease-purchase
272 agreement entered into pursuant to this paragraph (e) may contain
273 any of the terms and conditions which a master lease-purchase
274 agreement may contain under the provisions of Section 31-7-10(5),
275 and shall contain an annual allocation dependency clause
276 substantially similar to that set forth in Section 31-7-10(8).
277 Each agency or governing authority entering into a lease-purchase
278 transaction pursuant to this paragraph (e) shall maintain with
279 respect to each such lease-purchase transaction the same
280 information as required to be maintained by the Department of
281 Finance and Administration pursuant to Section 31-7-10(13).
282 However, nothing contained in this section shall be construed to
283 permit agencies to acquire items of equipment with a total
284 acquisition cost in the aggregate of less than Ten Thousand
285 Dollars (\$10,000.00) by a single lease-purchase transaction. All
286 equipment, and the purchase thereof by any lessor, acquired by
287 lease-purchase under this paragraph and all lease-purchase
288 payments with respect thereto shall be exempt from all Mississippi
289 sales, use and ad valorem taxes. Interest paid on any
290 lease-purchase agreement under this section shall be exempt from
291 State of Mississippi income taxation.

292 (f) **Alternate bid authorization.** When necessary to
293 ensure ready availability of commodities for public works and the
294 timely completion of public projects, no more than two (2)
295 alternate bids may be accepted by a governing authority for
296 commodities. No purchases may be made through use of such
297 alternate bids procedure unless the lowest and best bidder cannot
298 deliver the commodities contained in his bid. In that event,
299 purchases of such commodities may be made from one (1) of the
300 bidders whose bid was accepted as an alternate.

301 (g) **Construction contract change authorization.** In the
302 event a determination is made by an agency or governing authority
303 after a construction contract is let that changes or modifications
304 to the original contract are necessary or would better serve the
305 purpose of the agency or the governing authority, such agency or
306 governing authority may, in its discretion, order such changes
307 pertaining to the construction that are necessary under the
308 circumstances without the necessity of further public bids;
309 provided that such change shall be made in a commercially
310 reasonable manner and shall not be made to circumvent the public
311 purchasing statutes. In addition to any other authorized person,
312 the architect or engineer hired by an agency or governing
313 authority with respect to any public construction contract shall
314 have the authority, when granted by an agency or governing
315 authority, to authorize changes or modifications to the original
316 contract without the necessity of prior approval of the agency or
317 governing authority when any such change or modification is less
318 than one percent (1%) of the total contract amount. The agency or
319 governing authority may limit the number, manner or frequency of
320 such emergency changes or modifications.

321 (h) **Petroleum purchase alternative.** In addition to
322 other methods of purchasing authorized in this chapter, when any
323 agency or governing authority shall have a need for gas, diesel
324 fuel, oils and/or other petroleum products in excess of the amount

325 set forth in paragraph (a) of this section, such agency or
326 governing authority may purchase the commodity after having
327 solicited and obtained at least two (2) competitive written bids,
328 as defined in paragraph (b) of this section. If two (2)
329 competitive written bids are not obtained, the entity shall comply
330 with the procedures set forth in paragraph (c) of this section.
331 In the event any agency or governing authority shall have
332 advertised for bids for the purchase of gas, diesel fuel, oils and
333 other petroleum products and coal and no acceptable bids can be
334 obtained, such agency or governing authority is authorized and
335 directed to enter into any negotiations necessary to secure the
336 lowest and best contract available for the purchase of such
337 commodities.

338 (i) **Road construction petroleum products price**
339 **adjustment clause authorization.** Any agency or governing
340 authority authorized to enter into contracts for the construction,
341 maintenance, surfacing or repair of highways, roads or streets,
342 may include in its bid proposal and contract documents a price
343 adjustment clause with relation to the cost to the contractor,
344 including taxes, based upon an industry-wide cost index, of
345 petroleum products including asphalt used in the performance or
346 execution of the contract or in the production or manufacture of
347 materials for use in such performance. Such industry-wide index
348 shall be established and published monthly by the Mississippi
349 Department of Transportation with a copy thereof to be mailed,
350 upon request, to the clerks of the governing authority of each
351 municipality and the clerks of each board of supervisors
352 throughout the state. The price adjustment clause shall be based
353 on the cost of such petroleum products only and shall not include
354 any additional profit or overhead as part of the adjustment. The
355 bid proposals or document contract shall contain the basis and
356 methods of adjusting unit prices for the change in the cost of
357 such petroleum products.

358 (j) **State agency emergency purchase procedure.** If the
359 governing board or the executive head, or his designee, of any
360 agency of the state shall determine that an emergency exists in
361 regard to the purchase of any commodities or repair contracts, so
362 that the delay incident to giving opportunity for competitive
363 bidding would be detrimental to the interests of the state, then
364 the provisions herein for competitive bidding shall not apply and
365 the head of such agency shall be authorized to make the purchase
366 or repair. Total purchases so made shall only be for the purpose
367 of meeting needs created by the emergency situation. In the event
368 such executive head is responsible to an agency board, at the
369 meeting next following the emergency purchase, documentation of
370 the purchase, including a description of the commodity purchased,
371 the purchase price thereof and the nature of the emergency shall
372 be presented to the board and placed on the minutes of the board
373 of such agency. The head of such agency, or his designee, shall,
374 at the earliest possible date following such emergency purchase,
375 file with the Department of Finance and Administration (i) a
376 statement explaining the conditions and circumstances of the
377 emergency, which shall include a detailed description of the
378 events leading up to the situation and the negative impact to the
379 entity if the purchase is made following the statutory
380 requirements set forth in paragraph (a), (b) or (c) of this
381 section, and (ii) a certified copy of the appropriate minutes of
382 the board of such agency, if applicable. On or before September 1
383 of each year, the State Auditor shall prepare and deliver to the
384 Senate Fees, Salaries and Administration Committee, the House Fees
385 and Salaries of Public Officers Committee and the Joint
386 Legislative Budget Committee a report containing a list of all
387 state agency emergency purchases and supporting documentation for
388 each emergency purchase.

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

390 If the governing authority, or the governing authority acting

391 through its designee, shall determine that an emergency exists in
392 regard to the purchase of any commodities or repair contracts, so
393 that the delay incident to giving opportunity for competitive
394 bidding would be detrimental to the interest of the governing
395 authority, then the provisions herein for competitive bidding
396 shall not apply and any officer or agent of such governing
397 authority having general or special authority therefor in making
398 such purchase or repair shall approve the bill presented therefor,
399 and he shall certify in writing thereon from whom such purchase
400 was made, or with whom such a repair contract was made. At the
401 board meeting next following the emergency purchase or repair
402 contract, documentation of the purchase or repair contract,
403 including a description of the commodity purchased, the price
404 thereof and the nature of the emergency shall be presented to the
405 board and shall be placed on the minutes of the board of such
406 governing authority.

407 (1) **Hospital purchase, lease-purchase and lease**
408 **authorization.**

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

414 (ii) In addition to the authority granted in
415 subparagraph (i) of this paragraph (1), the commissioners or board
416 of trustees is authorized to enter into contracts for the lease of
417 equipment or services, or both, which it considers necessary for
418 the proper care of patients if, in its opinion, it is not
419 financially feasible to purchase the necessary equipment or
420 services. Any such contract for the lease of equipment or
421 services executed by the commissioners or board shall not exceed a
422 maximum of five (5) years' duration and shall include a
423 cancellation clause based on unavailability of funds. If such

424 cancellation clause is exercised, there shall be no further
425 liability on the part of the lessee. Any such contract for the
426 lease of equipment or services executed on behalf of the
427 commissioners or board that complies with the provisions of this
428 subparagraph (ii) shall be excepted from the bid requirements set
429 forth in this section.

430 (m) **Exceptions from bidding requirements.** Excepted
431 from bid requirements are:

432 (i) **Purchasing agreements approved by department.**
433 Purchasing agreements, contracts and maximum price regulations
434 executed or approved by the Department of Finance and
435 Administration.

436 (ii) **Outside equipment repairs.** Repairs to
437 equipment, when such repairs are made by repair facilities in the
438 private sector; however, engines, transmissions, rear axles and/or
439 other such components shall not be included in this exemption when
440 replaced as a complete unit instead of being repaired and the need
441 for such total component replacement is known before disassembly
442 of the component; however, invoices identifying the equipment,
443 specific repairs made, parts identified by number and name,
444 supplies used in such repairs, and the number of hours of labor
445 and costs therefor shall be required for the payment for such
446 repairs.

447 (iii) **In-house equipment repairs.** Purchases of
448 parts for repairs to equipment, when such repairs are made by
449 personnel of the agency or governing authority; however, entire
450 assemblies, such as engines or transmissions, shall not be
451 included in this exemption when the entire assembly is being
452 replaced instead of being repaired.

453 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
454 of gravel or fill dirt which are to be removed and transported by
455 the purchaser.

456 (v) **Governmental equipment auctions.** Motor
457 vehicles or other equipment purchased from a federal agency or
458 authority, another governing authority or state agency of the
459 State of Mississippi, or any governing authority or state agency
460 of another state at a public auction held for the purpose of
461 disposing of such vehicles or other equipment. Any purchase by a
462 governing authority under the exemption authorized by this
463 subparagraph (v) shall require advance authorization spread upon
464 the minutes of the governing authority to include the listing of
465 the item or items authorized to be purchased and the maximum bid
466 authorized to be paid for each item or items.

467 (vi) **Intergovernmental sales and transfers.**
468 Purchases, sales, transfers or trades by governing authorities or
469 state agencies when such purchases, sales, transfers or trades are
470 made by a private treaty agreement or through means of
471 negotiation, from any federal agency or authority, another
472 governing authority or state agency of the State of Mississippi,
473 or any state agency or governing authority of another state.
474 Nothing in this section shall permit such purchases through public
475 auction except as provided for in subparagraph (v) of this
476 section. It is the intent of this section to allow governmental
477 entities to dispose of and/or purchase commodities from other
478 governmental entities at a price that is agreed to by both
479 parties. This shall allow for purchases and/or sales at prices
480 which may be determined to be below the market value if the
481 selling entity determines that the sale at below market value is
482 in the best interest of the taxpayers of the state. Governing
483 authorities shall place the terms of the agreement and any
484 justification on the minutes, and state agencies shall obtain
485 approval from the Department of Finance and Administration, prior
486 to releasing or taking possession of the commodities.

487 (vii) **Perishable supplies or food.** Perishable
488 supplies or foods purchased for use in connection with hospitals,

489 the school lunch programs, homemaking programs and for the feeding
490 of county or municipal prisoners.

491 (viii) **Single source items.** Noncompetitive items
492 available from one (1) source only. In connection with the
493 purchase of noncompetitive items only available from one (1)
494 source, a certification of the conditions and circumstances
495 requiring the purchase shall be filed by the agency with the
496 Department of Finance and Administration and by the governing
497 authority with the board of the governing authority. Upon receipt
498 of that certification the Department of Finance and Administration
499 or the board of the governing authority, as the case may be, may,
500 in writing, authorize the purchase, which authority shall be noted
501 on the minutes of the body at the next regular meeting thereafter.
502 In those situations, a governing authority is not required to
503 obtain the approval of the Department of Finance and
504 Administration.

505 (ix) **Waste disposal facility construction**
506 **contracts.** Construction of incinerators and other facilities for
507 disposal of solid wastes in which products either generated
508 therein, such as steam, or recovered therefrom, such as materials
509 for recycling, are to be sold or otherwise disposed of; however,
510 in constructing such facilities, a governing authority or agency
511 shall publicly issue requests for proposals, advertised for in the
512 same manner as provided herein for seeking bids for public
513 construction projects, concerning the design, construction,
514 ownership, operation and/or maintenance of such facilities,
515 wherein such requests for proposals when issued shall contain
516 terms and conditions relating to price, financial responsibility,
517 technology, environmental compatibility, legal responsibilities
518 and such other matters as are determined by the governing
519 authority or agency to be appropriate for inclusion; and after
520 responses to the request for proposals have been duly received,
521 the governing authority or agency may select the most qualified

522 proposal or proposals on the basis of price, technology and other
523 relevant factors and from such proposals, but not limited to the
524 terms thereof, negotiate and enter contracts with one or more of
525 the persons or firms submitting proposals.

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

529 (xi) **Information technology products.** Purchases
530 of information technology products made by governing authorities
531 under the provisions of purchase schedules, or contracts executed
532 or approved by the Mississippi Department of Information
533 Technology Services and designated for use by governing
534 authorities.

535 (xii) **Energy efficiency services and equipment.**
536 Energy efficiency services and equipment acquired by school
537 districts, community and junior colleges, institutions of higher
538 learning and state agencies or other applicable governmental
539 entities on a shared-savings, lease or lease-purchase basis
540 pursuant to Section 31-7-14.

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

545 (xiv) **Library books and other reference materials.**
546 Purchases by libraries or for libraries of books and periodicals;
547 processed film, video cassette tapes, filmstrips and slides;
548 recorded audio tapes, cassettes and diskettes; and any such items
549 as would be used for teaching, research or other information
550 distribution; however, equipment such as projectors, recorders,
551 audio or video equipment, and monitor televisions are not exempt
552 under this subparagraph.

553 (xv) **Unmarked vehicles.** Purchases of unmarked
554 vehicles when such purchases are made in accordance with

555 purchasing regulations adopted by the Department of Finance and
556 Administration pursuant to Section 31-7-9(2).

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

559 (xvii) **Multichannel interactive video systems.**
560 From and after July 1, 1990, contracts by Mississippi Authority
561 for Educational Television with any private educational
562 institution or private nonprofit organization whose purposes are
563 educational in regard to the construction, purchase, lease or
564 lease-purchase of facilities and equipment and the employment of
565 personnel for providing multichannel interactive video systems
566 (ITSF) in the school districts of this state.

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

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

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

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

585 (xxii) **Garbage, solid waste and sewage contracts.**
586 Contracts for garbage collection or disposal, contracts for solid

587 waste collection or disposal and contracts for sewage collection
588 or disposal.

589 (xxiii) **Municipal water tank maintenance**
590 **contracts.** Professional maintenance program contracts for the
591 repair or maintenance of municipal water tanks, which provide
592 professional services needed to maintain municipal water storage
593 tanks for a fixed annual fee for a duration of two (2) or more
594 years.

595 (xxiv) **Purchases of Mississippi Industries for the**
596 **Blind products.** Purchases made by state agencies or governing
597 authorities involving any item that is manufactured, processed or
598 produced by the Mississippi Industries for the Blind. The Office
599 of Purchasing and Travel by regulation shall direct state agencies
600 to purchase fifteen percent (15%) of their office products from
601 the Mississippi Industries for the Blind without the necessity of
602 public bidding requirements and multiple purchase orders.

603 (xxv) **Purchases of state-adopted textbooks.**
604 Purchases of state-adopted textbooks by public school districts.

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

608 (xxvii) **Used heavy or specialized machinery or**
609 **equipment for installation of soil and water conservation**
610 **practices purchased at auction.** Used heavy or specialized
611 machinery or equipment used for the installation and
612 implementation of soil and water conservation practices or
613 measures purchased subject to the restrictions provided in
614 Sections 69-27-331 through 69-27-341. Any purchase by the State
615 Soil and Water Conservation Commission under the exemption
616 authorized by this subparagraph shall require advance
617 authorization spread upon the minutes of the commission to include
618 the listing of the item or items authorized to be purchased and
619 the maximum bid authorized to be paid for each item or items.

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

623 (xxix) **Purchases made pursuant to qualified**
624 **cooperative purchasing agreements.** Purchases made by certified
625 purchasing offices of state agencies or governing authorities
626 under cooperative purchasing agreements previously approved by the
627 Office of Purchasing and Travel and established by or for any
628 municipality, county, parish or state government or the federal
629 government, provided that the notification to potential
630 contractors includes a clause that sets forth the availability of
631 the cooperative purchasing agreement to other governmental
632 entities. Such purchases shall only be made if the use of the
633 cooperative purchasing agreements is determined to be in the best
634 interest of the government entity.

635 (xxx) **School yearbooks.** Purchases of school
636 yearbooks by state agencies or governing authorities; provided,
637 however, that state agencies and governing authorities shall use
638 for these purchases the RFP process as set forth in the
639 Mississippi Procurement Manual adopted by the Office of Purchasing
640 and Travel.

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

644 (n) **Term contract authorization.** All contracts for the
645 purchase of:

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

653 ratification or cancellation by governing authority boards taking
654 office subsequent to the governing authority board entering the
655 contract.

656 (ii) Bid proposals and contracts may include price
657 adjustment clauses with relation to the cost to the contractor
658 based upon a nationally published industry-wide or nationally
659 published and recognized cost index. The cost index used in a
660 price adjustment clause shall be determined by the Department of
661 Finance and Administration for the state agencies and by the
662 governing board for governing authorities. The bid proposal and
663 contract documents utilizing a price adjustment clause shall
664 contain the basis and method of adjusting unit prices for the
665 change in the cost of such commodities, equipment and public
666 construction.

667 (o) **Purchase law violation prohibition and vendor**
668 **penalty.** No contract or purchase as herein authorized shall be
669 made for the purpose of circumventing the provisions of this
670 section requiring competitive bids, nor shall it be lawful for any
671 person or concern to submit individual invoices for amounts within
672 those authorized for a contract or purchase where the actual value
673 of the contract or commodity purchased exceeds the authorized
674 amount and the invoices therefor are split so as to appear to be
675 authorized as purchases for which competitive bids are not
676 required. Submission of such invoices shall constitute a
677 misdemeanor punishable by a fine of not less than Five Hundred
678 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
679 or by imprisonment for thirty (30) days in the county jail, or
680 both such fine and imprisonment. In addition, the claim or claims
681 submitted shall be forfeited.

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

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

689 (q) **Fuel management system bidding procedure.** Any
690 governing authority or agency of the state shall, before
691 contracting for the services and products of a fuel management or
692 fuel access system, enter into negotiations with not fewer than
693 two (2) sellers of fuel management or fuel access systems for
694 competitive written bids to provide the services and products for
695 the systems. In the event that the governing authority or agency
696 cannot locate two (2) sellers of such systems or cannot obtain
697 bids from two (2) sellers of such systems, it shall show proof
698 that it made a diligent, good-faith effort to locate and negotiate
699 with two (2) sellers of such systems. Such proof shall include,
700 but not be limited to, publications of a request for proposals and
701 letters soliciting negotiations and bids. For purposes of this
702 paragraph (q), a fuel management or fuel access system is an
703 automated system of acquiring fuel for vehicles as well as
704 management reports detailing fuel use by vehicles and drivers, and
705 the term "competitive written bid" shall have the meaning as
706 defined in paragraph (b) of this section. Governing authorities
707 and agencies shall be exempt from this process when contracting
708 for the services and products of a fuel management or fuel access
709 systems under the terms of a state contract established by the
710 Office of Purchasing and Travel.

711 (r) **Solid waste contract proposal procedure.** Before
712 entering into any contract for garbage collection or disposal,
713 contract for solid waste collection or disposal or contract for
714 sewage collection or disposal, which involves an expenditure of
715 more than Fifty Thousand Dollars (\$50,000.00), a governing
716 authority or agency shall issue publicly a request for proposals
717 concerning the specifications for such services which shall be
718 advertised for in the same manner as provided in this section for

719 seeking bids for purchases which involve an expenditure of more
720 than the amount provided in paragraph (c) of this section. Any
721 request for proposals when issued shall contain terms and
722 conditions relating to price, financial responsibility,
723 technology, legal responsibilities and other relevant factors as
724 are determined by the governing authority or agency to be
725 appropriate for inclusion; all factors determined relevant by the
726 governing authority or agency or required by this paragraph (r)
727 shall be duly included in the advertisement to elicit proposals.
728 After responses to the request for proposals have been duly
729 received, the governing authority or agency shall select the most
730 qualified proposal or proposals on the basis of price, technology
731 and other relevant factors and from such proposals, but not
732 limited to the terms thereof, negotiate and enter contracts with
733 one or more of the persons or firms submitting proposals. If the
734 governing authority or agency deems none of the proposals to be
735 qualified or otherwise acceptable, the request for proposals
736 process may be reinitiated. Notwithstanding any other provisions
737 of this paragraph, where a county with at least thirty-five
738 thousand (35,000) nor more than forty thousand (40,000)
739 population, according to the 1990 federal decennial census, owns
740 or operates a solid waste landfill, the governing authorities of
741 any other county or municipality may contract with the governing
742 authorities of the county owning or operating the landfill,
743 pursuant to a resolution duly adopted and spread upon the minutes
744 of each governing authority involved, for garbage or solid waste
745 collection or disposal services through contract negotiations.

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

752 shall comply with all purchasing regulations promulgated by the
753 Department of Finance and Administration and shall be subject to
754 bid requirements under this section. Set-aside purchases for
755 which competitive bids are required shall be made from the lowest
756 and best minority business bidder. For the purposes of this
757 paragraph, the term "minority business" means a business which is
758 owned by a majority of persons who are United States citizens or
759 permanent resident aliens (as defined by the Immigration and
760 Naturalization Service) of the United States, and who are Asian,
761 Black, Hispanic or Native American, according to the following
762 definitions:

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

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

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

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

774 (t) **Construction punch list restriction.** The
775 architect, engineer or other representative designated by the
776 agency or governing authority that is contracting for public
777 construction or renovation may prepare and submit to the
778 contractor only one (1) preliminary punch list of items that do
779 not meet the contract requirements at the time of substantial
780 completion and one (1) final list immediately before final
781 completion and final payment.

782 (u) **Purchase authorization clarification.** Nothing in
783 this section shall be construed as authorizing any purchase not
784 authorized by law.

785 **SECTION 3.** This act shall take effect and be in force from
786 and after July 1, 2005.