

By: Senator(s) White

To: Labor; Fees, Salaries
and Administration

SENATE BILL NO. 2461

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 PROHIBIT STATE AGENCIES AND LOCAL GOVERNMENTS FROM REQUIRING
3 CERTAIN AGREEMENTS WITH LABOR ORGANIZATIONS BY CONTRACTORS AS A
4 CONDITION OF BIDDING ON PROJECTS; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

512 (xxii) **Garbage, solid waste and sewage contracts.**
513 Contracts for garbage collection or disposal, contracts for solid
514 waste collection or disposal and contracts for sewage collection
515 or disposal.

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

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

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

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

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

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

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

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

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

564 (xxxii) **Design-build method or the design-build**
565 **bridging method of contracting.** Contracts entered into the
566 provisions of Section 31-11-3(9).

567 (n) **Term contract authorization.** All contracts for the
568 purchase of:

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

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

588 change in the cost of such commodities, equipment and public
589 construction.

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

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

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

621 that it made a diligent, good-faith effort to locate and negotiate
622 with two (2) sellers of such systems. Such proof shall include,
623 but not be limited to, publications of a request for proposals and
624 letters soliciting negotiations and bids. For purposes of this
625 paragraph (q), a fuel management or fuel access system is an
626 automated system of acquiring fuel for vehicles as well as
627 management reports detailing fuel use by vehicles and drivers, and
628 the term "competitive written bid" shall have the meaning as
629 defined in paragraph (b) of this section. Governing authorities
630 and agencies shall be exempt from this process when contracting
631 for the services and products of a fuel management or fuel access
632 systems under the terms of a state contract established by the
633 Office of Purchasing and Travel.

634 (r) **Solid waste contract proposal procedure.** Before
635 entering into any contract for garbage collection or disposal,
636 contract for solid waste collection or disposal or contract for
637 sewage collection or disposal, which involves an expenditure of
638 more than Fifty Thousand Dollars (\$50,000.00), a governing
639 authority or agency shall issue publicly a request for proposals
640 concerning the specifications for such services which shall be
641 advertised for in the same manner as provided in this section for
642 seeking bids for purchases which involve an expenditure of more
643 than the amount provided in paragraph (c) of this section. Any
644 request for proposals when issued shall contain terms and
645 conditions relating to price, financial responsibility,
646 technology, legal responsibilities and other relevant factors as
647 are determined by the governing authority or agency to be
648 appropriate for inclusion; all factors determined relevant by the
649 governing authority or agency or required by this paragraph (r)
650 shall be duly included in the advertisement to elicit proposals.
651 After responses to the request for proposals have been duly
652 received, the governing authority or agency shall select the most
653 qualified proposal or proposals on the basis of price, technology

654 and other relevant factors and from such proposals, but not
655 limited to the terms thereof, negotiate and enter contracts with
656 one or more of the persons or firms submitting proposals. If the
657 governing authority or agency deems none of the proposals to be
658 qualified or otherwise acceptable, the request for proposals
659 process may be reinitiated. Notwithstanding any other provisions
660 of this paragraph, where a county with at least thirty-five
661 thousand (35,000) nor more than forty thousand (40,000)
662 population, according to the 1990 federal decennial census, owns
663 or operates a solid waste landfill, the governing authorities of
664 any other county or municipality may contract with the governing
665 authorities of the county owning or operating the landfill,
666 pursuant to a resolution duly adopted and spread upon the minutes
667 of each governing authority involved, for garbage or solid waste
668 collection or disposal services through contract negotiations.

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

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

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

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

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

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

705 (u) **Purchase authorization clarification.** Nothing in
706 this section shall be construed as authorizing any purchase not
707 authorized by law.

708 (v) **Labor organization agreements prohibited.**

709 (i) Unless required by federal law, each public
710 entity, when engaged in procuring products or services or letting
711 contracts for construction, manufacture or operation of public
712 works paid for in whole or in part by state or local funds, or
713 when overseeing or administering such procurement, construction,
714 manufacture or operation, shall ensure that bid specification,
715 project agreements and other controlling documents, entered into,
716 required or subject to approval by the public entity do not:

717 1. Require bidders, offerors, contractors,
718 subcontractors or operators to:

719 a. Enter into or adhere to agreements
720 with one or more labor organizations on the same or related
721 projects.

722 b. Enter into any agreement whereby it
723 must remain neutral toward any labor organization.

724 c. Pay predetermined or prevailing
725 wages.

726 2. Discriminate against bidders, offerors,
727 contractors, subcontractors or operators for refusing to:

728 a. Become or remain signatories or
729 otherwise adhere to agreements with one or more labor
730 organizations on the same or related projects.

731 b. Enter into any agreement whereby it
732 must remain neutral towards any labor organizations.

733 3. Require any bidders, offerors,
734 contractors, subcontractors or operators to enter into, adhere to
735 or enforce any agreement that requires its employers as a
736 condition of employment to:

737 a. Become members of or become
738 affiliated with a labor organization.

739 b. Pay dues or fees to a labor
740 organization over an employee's objection.

741 (ii) Public entities shall not provide financial
742 assistance, issue grants or enter into cooperative agreements for
743 projects, a condition of which requires that bid specifications,
744 project agreements or other controlling documents pertaining to
745 the grant or cooperative agreement contain any of the elements
746 specified in subparagraph (i). Furthermore, public entities shall
747 exercise such authority as may be required to preclude a grant
748 recipient or party to a cooperative agreement from imposing any of
749 the elements specified in subparagraph (i) in connection with any
750 grant or cooperative agreement awarded or entered into.

751 (iii) Nothing herein shall prohibit contractors or
752 subcontractors from voluntarily entering into agreements described
753 in this section.

754 (iv) Any interested party, which shall include a
755 bidder, offeror, contractor, subcontractor, operator or taxpayer,
756 shall have standing to challenge any bid specification, project
757 agreement, neutrality agreement, controlling document, grant or
758 cooperative agreement, which violates this section. Furthermore,
759 such party is enabled to and shall receive injunctive relief to
760 prevent violations of this section upon a proper showing.

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