

By: Senator(s) Horhn

To: Finance

SENATE BILL NO. 2959

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
 2 REQUIRE THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO SET ASIDE  
 3 20% OF THE AMOUNT EXPENDED FOR ANY PUBLIC CONSTRUCTION PROJECT  
 4 THAT THE DEPARTMENT MANAGES, NOT TO EXCEED \$5,000,000.00, TO SMALL  
 5 CONTRACTORS; TO AWARD SUCH SET-ASIDE CONTRACTS TO THE LOWEST AND  
 6 BEST SMALL CONTRACTOR BIDDER; TO DEFINE THE TERM "SMALL  
 7 CONTRACTOR"; AND FOR RELATED PURPOSES.

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

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

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

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

25 (b) **Bidding procedure for purchases over \$3,500.00 but**  
 26 **not over \$15,000.00.** Purchases which involve an expenditure of  
 27 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
 28 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
 29 freight and shipping charges may be made from the lowest and best

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

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

61 (i) **Publication requirement.** Purchases which  
62 involve an expenditure of more than Fifteen Thousand Dollars

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

92 (ii) **Bidding process amendment procedure.** If all  
93 plans and/or specifications are published in the notification,  
94 then the plans and/or specifications may not be amended. If all  
95 plans and/or specifications are not published in the notification,

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

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

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

129 purchase of such relocatable classrooms published by local school  
130 boards shall meet all pertinent regulations of the State Board of  
131 Education, including prior approval of such bid by the State  
132 Department of Education.

133 (v) Agencies and governing authorities may  
134 establish secure procedures by which bids may be submitted via  
135 electronic means.

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

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

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

162 Offices to utilize a Request For Proposals (RFP) process when  
163 purchasing commodities. All best value procedures for state  
164 agencies must be in compliance with regulations established by the  
165 Department of Finance and Administration. No agency or governing  
166 authority shall accept a bid based on items or criteria not  
167 included in the specifications.

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

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

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

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

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

228 deliver the commodities contained in his bid. In that event,  
229 purchases of such commodities may be made from one (1) of the  
230 bidders whose bid was accepted as an alternate.

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

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



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

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

288           (j) **State agency emergency purchase procedure.** If the  
289 governing board or the executive head, or his designee, of any  
290 agency of the state shall determine that an emergency exists in  
291 regard to the purchase of any commodities or repair contracts, so  
292 that the delay incident to giving opportunity for competitive  
293 bidding would be detrimental to the interests of the state, then

294 the provisions herein for competitive bidding shall not apply and  
295 the head of such agency shall be authorized to make the purchase  
296 or repair. Total purchases so made shall only be for the purpose  
297 of meeting needs created by the emergency situation. In the event  
298 such executive head is responsible to an agency board, at the  
299 meeting next following the emergency purchase, documentation of  
300 the purchase, including a description of the commodity purchased,  
301 the purchase price thereof and the nature of the emergency shall  
302 be presented to the board and placed on the minutes of the board  
303 of such agency. The head of such agency, or his designee, shall,  
304 at the earliest possible date following such emergency purchase,  
305 file with the Department of Finance and Administration (i) a  
306 statement explaining the conditions and circumstances of the  
307 emergency, which shall include a detailed description of the  
308 events leading up to the situation and the negative impact to the  
309 entity if the purchase is made following the statutory  
310 requirements set forth in paragraph (a), (b) or (c) of this  
311 section, and (ii) a certified copy of the appropriate minutes of  
312 the board of such agency, if applicable. On or before September 1  
313 of each year, the State Auditor shall prepare and deliver to the  
314 Senate Fees, Salaries and Administration Committee, the House Fees  
315 and Salaries of Public Officers Committee and the Joint  
316 Legislative Budget Committee a report containing a list of all  
317 state agency emergency purchases and supporting documentation for  
318 each emergency purchase.

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

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

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

337           (1) **Hospital purchase, lease-purchase and lease**  
338 **authorization.**

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

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

360 (m) **Exceptions from bidding requirements.** Excepted  
361 from bid requirements are:

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

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

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

383 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
384 of gravel or fill dirt which are to be removed and transported by  
385 the purchaser.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

516 Contracts for garbage collection or disposal, contracts for solid  
517 waste collection or disposal and contracts for sewage collection  
518 or disposal.

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

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



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

529                   (xxv) **Purchases of state-adopted textbooks.**  
530 Purchases of state-adopted textbooks by public school districts.

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

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

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

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

558 entities. Such purchases shall only be made if the use of the  
559 cooperative purchasing agreements is determined to be in the best  
560 interest of the government entity.

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

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

570 (n) **Term contract authorization.** All contracts for the  
571 purchase of:

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

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

591 change in the cost of such commodities, equipment and public  
592 construction.

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

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

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

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

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

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

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

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

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

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

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

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

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

711 (v) **Small contractor set aside requirement.**  
712 Notwithstanding any provision of this section to the contrary, the  
713 Department of Finance and Administration shall set aside twenty  
714 percent (20%) of the amount expended for any public construction  
715 project that such department manages, not to exceed Five Million  
716 Dollars (\$5,000,000.00), for small contractors. The set-aside  
717 portion of such contract shall comply with regulations promulgated  
718 by the Department of Finance and Administration and shall be  
719 subject to bid requirements under this section. Set-aside  
720 contracts for which competitive bids are required shall be made  
721 from the lowest and best small contractor bidder. For purposes of

722 this paragraph, the term "small contractor" means a contractor  
723 whose bonding capacity, as determined by the Department of Finance  
724 and Administration, does not exceed Five Million Dollars  
725 (\$5,000,000.00).

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