

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.