

**Adopted
AMENDMENT NO 2 PROPOSED TO**

Cmte Sub for Senate Bill No. 2486

BY: Senator(s) Gordon

1 **AMEND by inserting the following new section after line 580**
2 **and renumbering subsequent section(s):**

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

5 31-7-13. All agencies and governing authorities shall
6 purchase their commodities and printing; contract for garbage
7 collection or disposal; contract for solid waste collection or
8 disposal; contract for sewage collection or disposal; contract for
9 public construction; and contract for rentals as herein provided.

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

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

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

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

55 (i) **Publication requirement.** Purchases which
56 involve an expenditure of more than Fifteen Thousand Dollars
57 (\$15,000.00), exclusive of freight and shipping charges, may be
58 made from the lowest and best bidder after advertising for
59 competitive sealed bids once each week for two (2) consecutive
60 weeks in a regular newspaper published in the county or
61 municipality in which such agency or governing authority is
62 located. The date as published for the bid opening shall not be
63 less than seven (7) working days after the last published notice;
64 however, if the purchase involves a construction project in which
65 the estimated cost is in excess of Fifteen Thousand Dollars
66 (\$15,000.00), such bids shall not be opened in less than fifteen
67 (15) working days after the last notice is published and the
68 notice for the purchase of such construction shall be published
69 once each week for two (2) consecutive weeks. The notice of
70 intention to let contracts or purchase equipment shall state the
71 time and place at which bids shall be received, list the contracts
72 to be made or types of equipment or supplies to be purchased, and,
73 if all plans and/or specifications are not published, refer to the
74 plans and/or specifications on file. If there is no newspaper
75 published in the county or municipality, then such notice shall be
76 given by posting same at the courthouse, or for municipalities at
77 the city hall, and at two (2) other public places in the county or
78 municipality, and also by publication once each week for two (2)
79 consecutive weeks in some newspaper having a general circulation
80 in the county or municipality in the above provided manner. On
81 the same date that the notice is submitted to the newspaper for
82 publication, the agency or governing authority involved shall mail
83 written notice to, or provide electronic notification to the main
84 office of the Mississippi Contract Procurement Center that
85 contains the same information as that in the published notice.

86 (ii) **Bidding process amendment procedure.** If all
87 plans and/or specifications are published in the notification,
88 then the plans and/or specifications may not be amended. If all
89 plans and/or specifications are not published in the notification,
90 then amendments to the plans/specifications, bid opening date, bid
91 opening time and place may be made, provided that the agency or
92 governing authority maintains a list of all prospective bidders
93 who are known to have received a copy of the bid documents and all
94 such prospective bidders are sent copies of all amendments. This
95 notification of amendments may be made via mail, facsimile,
96 electronic mail or other generally accepted method of information
97 distribution. No addendum to bid specifications may be issued
98 within two (2) working days of the time established for the
99 receipt of bids unless such addendum also amends the bid opening
100 to a date not less than five (5) working days after the date of
101 the addendum.

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

111 (iv) **Specification restrictions. 1.**
112 Specifications pertinent to such bidding shall be written so as
113 not to exclude comparable equipment of domestic manufacture.
114 However, if valid justification is presented, the Department of
115 Finance and Administration or the board of a governing authority
116 may approve a request for specific equipment necessary to perform
117 a specific job. Further, such justification, when placed on the

minutes of the board of a governing authority, may serve as authority for that governing authority to write specifications to require a specific item of equipment needed to perform a specific job. In addition to these requirements, from and after July 1, 1990, vendors of relocatable classrooms and the specifications for the purchase of such relocatable classrooms published by local school boards shall meet all pertinent regulations of the State Board of Education, including prior approval of such bid by the State Department of Education.

2. Specifications for construction projects may include an allowance for commodities, equipment, furniture, construction materials or hardware in which prospective bidders are instructed to include in their bids specified amounts for such items so long as the allowance items are acquired by the vendor in a commercially reasonable manner and approved by the agency/governing authority. Such acquisitions shall not be made to circumvent the public purchasing laws.

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

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

(i) **Decision procedure.** Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to

be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

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

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

(e) **Lease-purchase authorization.** For the purposes of this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section

182 31-7-10 and any lease-purchase of equipment which a governing
183 authority elects to lease-purchase may be acquired by a
184 lease-purchase agreement under this paragraph (e). Lease-purchase
185 financing may also be obtained from the vendor or from a
186 third-party source after having solicited and obtained at least
187 two (2) written competitive bids, as defined in paragraph (b) of
188 this section, for such financing without advertising for such
189 bids. Solicitation for the bids for financing may occur before or
190 after acceptance of bids for the purchase of such equipment or,
191 where no such bids for purchase are required, at any time before
192 the purchase thereof. No such lease-purchase agreement shall be
193 for an annual rate of interest which is greater than the overall
194 maximum interest rate to maturity on general obligation
195 indebtedness permitted under Section 75-17-101, and the term of
196 such lease-purchase agreement shall not exceed the useful life of
197 equipment covered thereby as determined according to the upper
198 limit of the asset depreciation range (ADR) guidelines for the
199 Class Life Asset Depreciation Range System established by the
200 Internal Revenue Service pursuant to the United States Internal
201 Revenue Code and regulations thereunder as in effect on December
202 31, 1980, or comparable depreciation guidelines with respect to
203 any equipment not covered by ADR guidelines. Any lease-purchase
204 agreement entered into pursuant to this paragraph (e) may contain
205 any of the terms and conditions which a master lease-purchase
206 agreement may contain under the provisions of Section 31-7-10(5),
207 and shall contain an annual allocation dependency clause
208 substantially similar to that set forth in Section 31-7-10(8).
209 Each agency or governing authority entering into a lease-purchase
210 transaction pursuant to this paragraph (e) shall maintain with
211 respect to each such lease-purchase transaction the same
212 information as required to be maintained by the Department of
213 Finance and Administration pursuant to Section 31-7-10(13).

214 However, nothing contained in this section shall be construed to
215 permit agencies to acquire items of equipment with a total
216 acquisition cost in the aggregate of less than Ten Thousand
217 Dollars (\$10,000.00) by a single lease-purchase transaction. All
218 equipment, and the purchase thereof by any lessor, acquired by
219 lease-purchase under this paragraph and all lease-purchase
220 payments with respect thereto shall be exempt from all Mississippi
221 sales, use and ad valorem taxes. Interest paid on any
222 lease-purchase agreement under this section shall be exempt from
223 State of Mississippi income taxation.

224 (f) **Alternate bid authorization.** When necessary to
225 ensure ready availability of commodities for public works and the
226 timely completion of public projects, no more than two (2)
227 alternate bids may be accepted by a governing authority for
228 commodities. No purchases may be made through use of such
229 alternate bids procedure unless the lowest and best bidder cannot
230 deliver the commodities contained in his bid. In that event,
231 purchases of such commodities may be made from one (1) of the
232 bidders whose bid was accepted as an alternate.

233 (g) **Construction contract change authorization.** In the
234 event a determination is made by an agency or governing authority
235 after a construction contract is let that changes or modifications
236 to the original contract are necessary or would better serve the
237 purpose of the agency or the governing authority, such agency or
238 governing authority may, in its discretion, order such changes
239 pertaining to the construction that are necessary under the
240 circumstances without the necessity of further public bids;
241 provided that such change shall be made in a commercially
242 reasonable manner and shall not be made to circumvent the public
243 purchasing statutes. In addition to any other authorized person,
244 the architect or engineer hired by an agency or governing
245 authority with respect to any public construction contract shall

have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original contract without the necessity of prior approval of the agency or governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

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

(i) **Road construction petroleum products price adjustment clause authorization.** Any agency or governing authority authorized to enter into contracts for the construction, maintenance, surfacing or repair of highways, roads or streets, may include in its bid proposal and contract documents a price adjustment clause with relation to the cost to the contractor, including taxes, based upon an industry-wide cost index, of petroleum products including asphalt used in the performance or

278 execution of the contract or in the production or manufacture of
279 materials for use in such performance. Such industry-wide index
280 shall be established and published monthly by the Mississippi
281 Department of Transportation with a copy thereof to be mailed,
282 upon request, to the clerks of the governing authority of each
283 municipality and the clerks of each board of supervisors
284 throughout the state. The price adjustment clause shall be based
285 on the cost of such petroleum products only and shall not include
286 any additional profit or overhead as part of the adjustment. The
287 bid proposals or document contract shall contain the basis and
288 methods of adjusting unit prices for the change in the cost of
289 such petroleum products.

290 (j) **State agency emergency purchase procedure.** If the
291 governing board or the executive head, or his designee, of any
292 agency of the state shall determine that an emergency exists in
293 regard to the purchase of any commodities or repair contracts, so
294 that the delay incident to giving opportunity for competitive
295 bidding would be detrimental to the interests of the state, then
296 the provisions herein for competitive bidding shall not apply and
297 the head of such agency shall be authorized to make the purchase
298 or repair. Total purchases so made shall only be for the purpose
299 of meeting needs created by the emergency situation. In the event
300 such executive head is responsible to an agency board, at the
301 meeting next following the emergency purchase, documentation of
302 the purchase, including a description of the commodity purchased,
303 the purchase price thereof and the nature of the emergency shall
304 be presented to the board and placed on the minutes of the board
305 of such agency. The head of such agency, or his designee, shall,
306 at the earliest possible date following such emergency purchase,
307 file with the Department of Finance and Administration (i) a
308 statement explaining the conditions and circumstances of the
309 emergency, which shall include a detailed description of the

events leading up to the situation and the negative impact to the entity if the purchase is made following the statutory requirements set forth in paragraph (a), (b) or (c) of this section, and (ii) a certified copy of the appropriate minutes of the board of such agency, if applicable. On or before September 1 of each year, the State Auditor shall prepare and deliver to the Senate Fees, Salaries and Administration Committee, the House Fees and Salaries of Public Officers Committee and the Joint Legislative Budget Committee a report containing a list of all state agency emergency purchases and supporting documentation for each emergency purchase.

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

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

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

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

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

362 (m) **Exceptions from bidding requirements.** Excepted
363 from bid requirements are:

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

368 (ii) **Outside equipment repairs.** Repairs to
369 equipment, when such repairs are made by repair facilities in the
370 private sector; however, engines, transmissions, rear axles and/or
371 other such components shall not be included in this exemption when
372 replaced as a complete unit instead of being repaired and the need

373 for such total component replacement is known before disassembly
374 of the component; however, invoices identifying the equipment,
375 specific repairs made, parts identified by number and name,
376 supplies used in such repairs, and the number of hours of labor
377 and costs therefor shall be required for the payment for such
378 repairs.

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

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

388 (v) **Governmental equipment auctions.** Motor
389 vehicles or other equipment purchased from a federal agency or
390 authority, another governing authority or state agency of the
391 State of Mississippi, or any governing authority or state agency
392 of another state at a public auction held for the purpose of
393 disposing of such vehicles or other equipment. Any purchase by a
394 governing authority under the exemption authorized by this
395 subparagraph (v) shall require advance authorization spread upon
396 the minutes of the governing authority to include the listing of
397 the item or items authorized to be purchased and the maximum bid
398 authorized to be paid for each item or items.

399 (vi) **Intergovernmental sales and transfers.**
400 Purchases, sales, transfers or trades by governing authorities or
401 state agencies when such purchases, sales, transfers or trades are
402 made by a private treaty agreement or through means of
403 negotiation, from any federal agency or authority, another
404 governing authority or state agency of the State of Mississippi,

405 or any state agency or governing authority of another state.
406 Nothing in this section shall permit such purchases through public
407 auction except as provided for in subparagraph (v) of this
408 section. It is the intent of this section to allow governmental
409 entities to dispose of and/or purchase commodities from other
410 governmental entities at a price that is agreed to by both
411 parties. This shall allow for purchases and/or sales at prices
412 which may be determined to be below the market value if the
413 selling entity determines that the sale at below market value is
414 in the best interest of the taxpayers of the state. Governing
415 authorities shall place the terms of the agreement and any
416 justification on the minutes, and state agencies shall obtain
417 approval from the Department of Finance and Administration, prior
418 to releasing or taking possession of the commodities.

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

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

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

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

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

467 (xii) **Energy efficiency services and equipment.**
468 Energy efficiency services and equipment acquired by school

districts, community and junior colleges, institutions of higher learning and state agencies or other applicable governmental entities on a shared-savings, lease or lease-purchase basis pursuant to Section 31-7-14.

(xiii) **Municipal electrical utility system fuel.**

Purchases of coal and/or natural gas by municipally-owned electric power generating systems that have the capacity to use both coal and natural gas for the generation of electric power.

(xiv) **Library books and other reference materials.**

Purchases by libraries or for libraries of books and periodicals; processed film, video cassette tapes, filmstrips and slides; recorded audio tapes, cassettes and diskettes; and any such items as would be used for teaching, research or other information distribution; however, equipment such as projectors, recorders, audio or video equipment, and monitor televisions are not exempt under this subparagraph.

(xv) **Unmarked vehicles.** Purchases of unmarked

vehicles when such purchases are made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to Section 31-7-9(2).

(xvi) **Election ballots.** Purchases of ballots

printed pursuant to Section 23-15-351.

(xvii) **Multichannel interactive video systems.**

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

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

From and after January 1, 1991, purchases made by state agencies

501 or governing authorities involving any item that is manufactured,
502 processed, grown or produced from the state's prison industries.

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

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

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

517 (xxii) **Garbage, solid waste and sewage contracts.**
518 Contracts for garbage collection or disposal, contracts for solid
519 waste collection or disposal and contracts for sewage collection
520 or disposal.

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

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

531 (xxv) **Purchases of state-adopted textbooks.**
532 Purchases of state-adopted textbooks by public school districts.

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

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

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

551 (xxix) **Purchases made pursuant to qualified**
552 **cooperative purchasing agreements.** Purchases made by certified
553 purchasing offices of state agencies or governing authorities
554 under cooperative purchasing agreements previously approved by the
555 Office of Purchasing and Travel and established by or for any
556 municipality, county, parish or state government or the federal
557 government, provided that the notification to potential
558 contractors includes a clause that sets forth the availability of
559 the cooperative purchasing agreement to other governmental
560 entities. Such purchases shall only be made if the use of the
561 cooperative purchasing agreements is determined to be in the best
562 interest of the government entity.

563 (xxx) **School yearbooks.** Purchases of school
564 yearbooks by state agencies or governing authorities; provided,

however, that state agencies and governing authorities shall use for these purchases the RFP process as set forth in the Mississippi Procurement Manual adopted by the Office of Purchasing and Travel.

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

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

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

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

(o) **Purchase law violation prohibition and vendor penalty.** No contract or purchase as herein authorized shall be

597 made for the purpose of circumventing the provisions of this
598 section requiring competitive bids, nor shall it be lawful for any
599 person or concern to submit individual invoices for amounts within
600 those authorized for a contract or purchase where the actual value
601 of the contract or commodity purchased exceeds the authorized
602 amount and the invoices therefor are split so as to appear to be
603 authorized as purchases for which competitive bids are not
604 required. Submission of such invoices shall constitute a
605 misdemeanor punishable by a fine of not less than Five Hundred
606 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
607 or by imprisonment for thirty (30) days in the county jail, or
608 both such fine and imprisonment. In addition, the claim or claims
609 submitted shall be forfeited.

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

617 (q) **Fuel management system bidding procedure.** Any
618 governing authority or agency of the state shall, before
619 contracting for the services and products of a fuel management or
620 fuel access system, enter into negotiations with not fewer than
621 two (2) sellers of fuel management or fuel access systems for
622 competitive written bids to provide the services and products for
623 the systems. In the event that the governing authority or agency
624 cannot locate two (2) sellers of such systems or cannot obtain
625 bids from two (2) sellers of such systems, it shall show proof
626 that it made a diligent, good-faith effort to locate and negotiate
627 with two (2) sellers of such systems. Such proof shall include,
628 but not be limited to, publications of a request for proposals and

629 letters soliciting negotiations and bids. For purposes of this
630 paragraph (q), a fuel management or fuel access system is an
631 automated system of acquiring fuel for vehicles as well as
632 management reports detailing fuel use by vehicles and drivers, and
633 the term "competitive written bid" shall have the meaning as
634 defined in paragraph (b) of this section. Governing authorities
635 and agencies shall be exempt from this process when contracting
636 for the services and products of a fuel management or fuel access
637 systems under the terms of a state contract established by the
638 Office of Purchasing and Travel.

639 (r) **Solid waste contract proposal procedure.** Before
640 entering into any contract for garbage collection or disposal,
641 contract for solid waste collection or disposal or contract for
642 sewage collection or disposal, which involves an expenditure of
643 more than Fifty Thousand Dollars (\$50,000.00), a governing
644 authority or agency shall issue publicly a request for proposals
645 concerning the specifications for such services which shall be
646 advertised for in the same manner as provided in this section for
647 seeking bids for purchases which involve an expenditure of more
648 than the amount provided in paragraph (c) of this section. Any
649 request for proposals when issued shall contain terms and
650 conditions relating to price, financial responsibility,
651 technology, legal responsibilities and other relevant factors as
652 are determined by the governing authority or agency to be
653 appropriate for inclusion; all factors determined relevant by the
654 governing authority or agency or required by this paragraph (r)
655 shall be duly included in the advertisement to elicit proposals.
656 After responses to the request for proposals have been duly
657 received, the governing authority or agency shall select the most
658 qualified proposal or proposals on the basis of price, technology
659 and other relevant factors and from such proposals, but not
660 limited to the terms thereof, negotiate and enter contracts with

661 one or more of the persons or firms submitting proposals. If the
662 governing authority or agency deems none of the proposals to be
663 qualified or otherwise acceptable, the request for proposals
664 process may be reinitiated. Notwithstanding any other provisions
665 of this paragraph, where a county with at least thirty-five
666 thousand (35,000) nor more than forty thousand (40,000)
667 population, according to the 1990 federal decennial census, owns
668 or operates a solid waste landfill, the governing authorities of
669 any other county or municipality may contract with the governing
670 authorities of the county owning or operating the landfill,
671 pursuant to a resolution duly adopted and spread upon the minutes
672 of each governing authority involved, for garbage or solid waste
673 collection or disposal services through contract negotiations.

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

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

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

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

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

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

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

713 **FURTHER, AMEND by striking Section 8 and substituting in lieu**
714 **thereof the following:**

715 **SECTION 8.** This act shall take effect and be in force from
716 and after its passage.

717 **FURTHER, AMEND the title by inserting the following after the**
718 **semicolon on line 17:**

719 TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO CLARIFY
720 THAT PUBLIC CONSTRUCTION CONTRACTS MAY INCLUDE ALLOWANCES FOR
721 SPECIFIED ITEMS AND AMOUNTS;