

By: Representative Franks

To: Appropriations

HOUSE BILL NO. 898

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE PUBLIC PURCHASING LAWS TO INCREASE THE MINIMUM AMOUNT
3 OF EXPENDITURES FOR WHICH THE COMPETITIVE BID PROCESS IS REQUIRED;
4 AND FOR RELATED PURPOSES.

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

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

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

13 (a) **Bidding procedure for purchases not over \$5,000.00.**

14 Purchases which do not involve an expenditure of more than Five
15 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
16 charges, may be made without advertising or otherwise requesting
17 competitive bids. However, nothing contained in this paragraph

18 (a) shall be construed to prohibit any agency or governing
19 authority from establishing procedures which require competitive
20 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

21 (b) **Bidding procedure for purchases over \$5,000.00 but**
22 **not over \$25,000.00.** Purchases which involve an expenditure of

23 more than Five Thousand Dollars (\$5,000.00) but not more than
24 Twenty-five Thousand Dollars (\$25,000.00), exclusive of freight
25 and shipping charges may be made from the lowest and best bidder
26 without publishing or posting advertisement for bids, provided at
27 least two (2) competitive written bids have been obtained. Any
28 governing authority purchasing commodities pursuant to this

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

56 (c) **Bidding procedure for purchases over \$25,000.00.**

57 (i) **Publication requirement.** Purchases which
58 involve an expenditure of more than Twenty-five Thousand Dollars
59 (\$25,000.00), exclusive of freight and shipping charges, may be
60 made from the lowest and best bidder after advertising for
61 competitive sealed bids once each week for two (2) consecutive

62 weeks in a regular newspaper published in the county or
63 municipality in which such agency or governing authority is
64 located. The date as published for the bid opening shall not be
65 less than seven (7) working days after the last published notice;
66 however, if the purchase involves a construction project in which
67 the estimated cost is in excess of Twenty-five Thousand Dollars
68 (\$25,000.00), such bids shall not be opened in less than fifteen
69 (15) working days after the last notice is published and the
70 notice for the purchase of such construction shall be published
71 once each week for two (2) consecutive weeks. The notice of
72 intention to let contracts or purchase equipment shall state the
73 time and place at which bids shall be received, list the contracts
74 to be made or types of equipment or supplies to be purchased, and,
75 if all plans and/or specifications are not published, refer to the
76 plans and/or specifications on file. If there is no newspaper
77 published in the county or municipality, then such notice shall be
78 given by posting same at the courthouse, or for municipalities at
79 the city hall, and at two (2) other public places in the county or
80 municipality, and also by publication once each week for two (2)
81 consecutive weeks in some newspaper having a general circulation
82 in the county or municipality in the above provided manner. On
83 the same date that the notice is submitted to the newspaper for
84 publication, the agency or governing authority involved shall mail
85 written notice to, or provide electronic notification to the main
86 office of the Mississippi Contract Procurement Center that
87 contains the same information as that in the published notice.

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

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

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

113 (iv) **Specification restrictions.**

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

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

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

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

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

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

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

161 offering the best value. In determining the best value bid,
162 freight and shipping charges shall be included. Life-cycle
163 costing, total cost bids, warranties, guaranteed buy-back
164 provisions, documented previous experience, training costs and
165 other relevant provisions may be included in the best value
166 calculation. This provision shall authorize Certified Purchasing
167 Offices to utilize a Request For Proposals (RFP) process when
168 purchasing commodities. All best value procedures for state
169 agencies must be in compliance with regulations established by the
170 Department of Finance and Administration. No agency or governing
171 authority shall accept a bid based on items or criteria not
172 included in the specifications.

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

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

179 (e) **Lease-purchase authorization.** For the purposes of
180 this section, the term "equipment" shall mean equipment, furniture
181 and, if applicable, associated software and other applicable
182 direct costs associated with the acquisition. Any lease-purchase
183 of equipment which an agency is not required to lease-purchase
184 under the master lease-purchase program pursuant to Section
185 31-7-10 and any lease-purchase of equipment which a governing
186 authority elects to lease-purchase may be acquired by a
187 lease-purchase agreement under this paragraph (e). Lease-purchase
188 financing may also be obtained from the vendor or from a
189 third-party source after having solicited and obtained at least
190 two (2) written competitive bids, as defined in paragraph (b) of
191 this section, for such financing without advertising for such
192 bids. Solicitation for the bids for financing may occur before or
193 after acceptance of bids for the purchase of such equipment or,

194 where no such bids for purchase are required, at any time before
195 the purchase thereof. No such lease-purchase agreement shall be
196 for an annual rate of interest which is greater than the overall
197 maximum interest rate to maturity on general obligation
198 indebtedness permitted under Section 75-17-101, and the term of
199 such lease-purchase agreement shall not exceed the useful life of
200 equipment covered thereby as determined according to the upper
201 limit of the asset depreciation range (ADR) guidelines for the
202 Class Life Asset Depreciation Range System established by the
203 Internal Revenue Service pursuant to the United States Internal
204 Revenue Code and regulations thereunder as in effect on December
205 31, 1980, or comparable depreciation guidelines with respect to
206 any equipment not covered by ADR guidelines. Any lease-purchase
207 agreement entered into pursuant to this paragraph (e) may contain
208 any of the terms and conditions which a master lease-purchase
209 agreement may contain under the provisions of Section 31-7-10(5),
210 and shall contain an annual allocation dependency clause
211 substantially similar to that set forth in Section 31-7-10(8).
212 Each agency or governing authority entering into a lease-purchase
213 transaction pursuant to this paragraph (e) shall maintain with
214 respect to each such lease-purchase transaction the same
215 information as required to be maintained by the Department of
216 Finance and Administration pursuant to Section 31-7-10(13).
217 However, nothing contained in this section shall be construed to
218 permit agencies to acquire items of equipment with a total
219 acquisition cost in the aggregate of less than Ten Thousand
220 Dollars (\$10,000.00) by a single lease-purchase transaction. All
221 equipment, and the purchase thereof by any lessor, acquired by
222 lease-purchase under this paragraph and all lease-purchase
223 payments with respect thereto shall be exempt from all Mississippi
224 sales, use and ad valorem taxes. Interest paid on any
225 lease-purchase agreement under this section shall be exempt from
226 State of Mississippi income taxation.

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

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

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

260 set forth in paragraph (a) of this section, such agency or
261 governing authority may purchase the commodity after having
262 solicited and obtained at least two (2) competitive written bids,
263 as defined in paragraph (b) of this section. If two (2)
264 competitive written bids are not obtained, the entity shall comply
265 with the procedures set forth in paragraph (c) of this section.
266 In the event any agency or governing authority shall have
267 advertised for bids for the purchase of gas, diesel fuel, oils and
268 other petroleum products and coal and no acceptable bids can be
269 obtained, such agency or governing authority is authorized and
270 directed to enter into any negotiations necessary to secure the
271 lowest and best contract available for the purchase of such
272 commodities.

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

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

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

325 If the governing authority, or the governing authority acting

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

342 (1) **Hospital purchase, lease-purchase and lease**
343 **authorization.**

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

349 (ii) In addition to the authority granted in
350 subparagraph (i) of this paragraph (1), the commissioners or board
351 of trustees is authorized to enter into contracts for the lease of
352 equipment or services, or both, which it considers necessary for
353 the proper care of patients if, in its opinion, it is not
354 financially feasible to purchase the necessary equipment or
355 services. Any such contract for the lease of equipment or
356 services executed by the commissioners or board shall not exceed a
357 maximum of five (5) years' duration and shall include a
358 cancellation clause based on unavailability of funds. If such

359 cancellation clause is exercised, there shall be no further
360 liability on the part of the lessee. Any such contract for the
361 lease of equipment or services executed on behalf of the
362 commissioners or board that complies with the provisions of this
363 subparagraph (ii) shall be excepted from the bid requirements set
364 forth in this section.

365 (m) **Exceptions from bidding requirements.** Excepted
366 from bid requirements are:

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

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

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

388 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
389 of gravel or fill dirt which are to be removed and transported by
390 the purchaser.

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

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

422 (vii) **Perishable supplies or food.** Perishable
423 supplies or food purchased for use in connection with hospitals,

424 the school lunch programs, homemaking programs and for the feeding
425 of county or municipal prisoners.

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

440 (ix) **Waste disposal facility construction**
441 **contracts.** Construction of incinerators and other facilities for
442 disposal of solid wastes in which products either generated
443 therein, such as steam, or recovered therefrom, such as materials
444 for recycling, are to be sold or otherwise disposed of; however,
445 in constructing such facilities, a governing authority or agency
446 shall publicly issue requests for proposals, advertised for in the
447 same manner as provided herein for seeking bids for public
448 construction projects, concerning the design, construction,
449 ownership, operation and/or maintenance of such facilities,
450 wherein such requests for proposals when issued shall contain
451 terms and conditions relating to price, financial responsibility,
452 technology, environmental compatibility, legal responsibilities
453 and such other matters as are determined by the governing
454 authority or agency to be appropriate for inclusion; and after
455 responses to the request for proposals have been duly received,
456 the governing authority or agency may select the most qualified

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

522 waste collection or disposal and contracts for sewage collection
523 or disposal.

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

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

534 (xxv) **Purchases of state-adopted textbooks.**
535 Purchases of state-adopted textbooks by public school districts.

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

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

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

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

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

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

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

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

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

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

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

620 (q) **Fuel management system bidding procedure.** Any
621 governing authority or agency of the state shall, before
622 contracting for the services and products of a fuel management or
623 fuel access system, enter into negotiations with not fewer than
624 two (2) sellers of fuel management or fuel access systems for
625 competitive written bids to provide the services and products for
626 the systems. In the event that the governing authority or agency
627 cannot locate two (2) sellers of such systems or cannot obtain
628 bids from two (2) sellers of such systems, it shall show proof
629 that it made a diligent, good-faith effort to locate and negotiate
630 with two (2) sellers of such systems. Such proof shall include,
631 but not be limited to, publications of a request for proposals and
632 letters soliciting negotiations and bids. For purposes of this
633 paragraph (q), a fuel management or fuel access system is an
634 automated system of acquiring fuel for vehicles as well as
635 management reports detailing fuel use by vehicles and drivers, and
636 the term "competitive written bid" shall have the meaning as
637 defined in paragraph (b) of this section. Governing authorities
638 and agencies shall be exempt from this process when contracting
639 for the services and products of a fuel management or fuel access
640 systems under the terms of a state contract established by the
641 Office of Purchasing and Travel.

642 (r) **Solid waste contract proposal procedure.** Before
643 entering into any contract for garbage collection or disposal,
644 contract for solid waste collection or disposal or contract for
645 sewage collection or disposal, which involves an expenditure of
646 more than Fifty Thousand Dollars (\$50,000.00), a governing
647 authority or agency shall issue publicly a request for proposals
648 concerning the specifications for such services which shall be
649 advertised for in the same manner as provided in this section for
650 seeking bids for purchases which involve an expenditure of more
651 than the amount provided in paragraph (c) of this section. Any
652 request for proposals when issued shall contain terms and

653 conditions relating to price, financial responsibility,
654 technology, legal responsibilities and other relevant factors as
655 are determined by the governing authority or agency to be
656 appropriate for inclusion; all factors determined relevant by the
657 governing authority or agency or required by this paragraph (r)
658 shall be duly included in the advertisement to elicit proposals.
659 After responses to the request for proposals have been duly
660 received, the governing authority or agency shall select the most
661 qualified proposal or proposals on the basis of price, technology
662 and other relevant factors and from such proposals, but not
663 limited to the terms thereof, negotiate and enter contracts with
664 one or more of the persons or firms submitting proposals. If the
665 governing authority or agency deems none of the proposals to be
666 qualified or otherwise acceptable, the request for proposals
667 process may be reinitiated. Notwithstanding any other provisions
668 of this paragraph, where a county with at least thirty-five
669 thousand (35,000) nor more than forty thousand (40,000)
670 population, according to the 1990 federal decennial census, owns
671 or operates a solid waste landfill, the governing authorities of
672 any other county or municipality may contract with the governing
673 authorities of the county owning or operating the landfill,
674 pursuant to a resolution duly adopted and spread upon the minutes
675 of each governing authority involved, for garbage or solid waste
676 collection or disposal services through contract negotiations.

677 (s) **Minority set-aside authorization.** Notwithstanding
678 any provision of this section to the contrary, any agency or
679 governing authority, by order placed on its minutes, may, in its
680 discretion, set aside not more than twenty percent (20%) of its
681 anticipated annual expenditures for the purchase of commodities
682 from minority businesses; however, all such set-aside purchases
683 shall comply with all purchasing regulations promulgated by the
684 Department of Finance and Administration and shall be subject to
685 bid requirements under this section. Set-aside purchases for

686 which competitive bids are required shall be made from the lowest
687 and best minority business bidder. For the purposes of this
688 paragraph, the term "minority business" means a business which is
689 owned by a majority of persons who are United States citizens or
690 permanent resident aliens (as defined by the Immigration and
691 Naturalization Service) of the United States, and who are Asian,
692 Black, Hispanic or Native American, according to the following
693 definitions:

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

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

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

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

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

713 (u) **Purchase authorization clarification.** Nothing in
714 this section shall be construed as authorizing any purchase not
715 authorized by law.

716 **SECTION 2.** This act shall take effect and be in force from
717 and after July 1, 2006.