

By: Representative Brown

To: Appropriations

## HOUSE BILL NO. 993

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE AUTHORITY UNDER THE PUBLIC PURCHASING LAWS FOR STATE  
3 AGENCIES AND LOCAL GOVERNING AUTHORITIES TO NEGOTIATE WITH THE  
4 LOWEST BIDDER IN ORDER TO ENTER INTO A CONTRACT FOR AN AMOUNT  
5 WITHIN THE FUNDS ALLOCATED FOR A PROJECT; AND FOR RELATED  
6 PURPOSES.

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

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

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

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

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

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

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

60 (i) **Publication requirement.** Purchases which  
61 involve an expenditure of more than Fifteen Thousand Dollars  
62 (\$15,000.00), exclusive of freight and shipping charges, may be

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

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

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

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

116                   (iv) **Specification restrictions.**

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

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

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

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

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

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

160                   (ii) **Decision procedure for Certified Purchasing**  
161 **Offices.** In addition to the decision procedure set forth in

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

176 (iii) \* \* \* **Project negotiations authority.** If  
177 the lowest and best bid is \* \* \* more than ten percent (10%) above  
178 the amount of funds allocated for a \* \* \* project, then the agency  
179 or governing authority shall be permitted to negotiate with the  
180 lowest bidder in order to enter into a contract for an amount not  
181 to exceed the funds allocated, after obtaining approval from the  
182 Executive Director of the Department of Finance and  
183 Administration.

184 (e) **Lease-purchase authorization.** For the purposes of  
185 this section, the term "equipment" shall mean equipment, furniture  
186 and, if applicable, associated software and other applicable  
187 direct costs associated with the acquisition. Any lease-purchase  
188 of equipment which an agency is not required to lease-purchase  
189 under the master lease-purchase program pursuant to Section  
190 31-7-10 and any lease-purchase of equipment which a governing  
191 authority elects to lease-purchase may be acquired by a  
192 lease-purchase agreement under this paragraph (e). Lease-purchase  
193 financing may also be obtained from the vendor or from a  
194 third-party source after having solicited and obtained at least

195 two (2) written competitive bids, as defined in paragraph (b) of  
196 this section, for such financing without advertising for such  
197 bids. Solicitation for the bids for financing may occur before or  
198 after acceptance of bids for the purchase of such equipment or,  
199 where no such bids for purchase are required, at any time before  
200 the purchase thereof. No such lease-purchase agreement shall be  
201 for an annual rate of interest which is greater than the overall  
202 maximum interest rate to maturity on general obligation  
203 indebtedness permitted under Section 75-17-101, and the term of  
204 such lease-purchase agreement shall not exceed the useful life of  
205 equipment covered thereby as determined according to the upper  
206 limit of the asset depreciation range (ADR) guidelines for the  
207 Class Life Asset Depreciation Range System established by the  
208 Internal Revenue Service pursuant to the United States Internal  
209 Revenue Code and regulations thereunder as in effect on December  
210 31, 1980, or comparable depreciation guidelines with respect to  
211 any equipment not covered by ADR guidelines. Any lease-purchase  
212 agreement entered into pursuant to this paragraph (e) may contain  
213 any of the terms and conditions which a master lease-purchase  
214 agreement may contain under the provisions of Section 31-7-10(5),  
215 and shall contain an annual allocation dependency clause  
216 substantially similar to that set forth in Section 31-7-10(8).  
217 Each agency or governing authority entering into a lease-purchase  
218 transaction pursuant to this paragraph (e) shall maintain with  
219 respect to each such lease-purchase transaction the same  
220 information as required to be maintained by the Department of  
221 Finance and Administration pursuant to Section 31-7-10(13).  
222 However, nothing contained in this section shall be construed to  
223 permit agencies to acquire items of equipment with a total  
224 acquisition cost in the aggregate of less than Ten Thousand  
225 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
226 equipment, and the purchase thereof by any lessor, acquired by  
227 lease-purchase under this paragraph and all lease-purchase

228 payments with respect thereto shall be exempt from all Mississippi  
229 sales, use and ad valorem taxes. Interest paid on any  
230 lease-purchase agreement under this section shall be exempt from  
231 State of Mississippi income taxation.

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

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



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

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

294 any additional profit or overhead as part of the adjustment. The  
295 bid proposals or document contract shall contain the basis and  
296 methods of adjusting unit prices for the change in the cost of  
297 such petroleum products.

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

327 state agency emergency purchases and supporting documentation for  
328 each emergency purchase.

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

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

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

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

354 (ii) In addition to the authority granted in  
355 subparagraph (i) of this paragraph (l), the commissioners or board  
356 of trustees is authorized to enter into contracts for the lease of  
357 equipment or services, or both, which it considers necessary for  
358 the proper care of patients if, in its opinion, it is not  
359 financially feasible to purchase the necessary equipment or

360 services. Any such contract for the lease of equipment or  
361 services executed by the commissioners or board shall not exceed a  
362 maximum of five (5) years' duration and shall include a  
363 cancellation clause based on unavailability of funds. If such  
364 cancellation clause is exercised, there shall be no further  
365 liability on the part of the lessee. Any such contract for the  
366 lease of equipment or services executed on behalf of the  
367 commissioners or board that complies with the provisions of this  
368 subparagraph (ii) shall be excepted from the bid requirements set  
369 forth in this section.

370 (m) **Exceptions from bidding requirements.** Excepted  
371 from bid requirements are:

372 (i) **Purchasing agreements approved by department.**  
373 Purchasing agreements, contracts and maximum price regulations  
374 executed or approved by the Department of Finance and  
375 Administration.

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

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

393                   (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
394 of gravel or fill dirt which are to be removed and transported by  
395 the purchaser.

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

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

425 approval from the Department of Finance and Administration, prior  
426 to releasing or taking possession of the commodities.

427 (vii) **Perishable supplies or food.** Perishable  
428 supplies or food purchased for use in connection with hospitals,  
429 the school lunch programs, homemaking programs and for the feeding  
430 of county or municipal prisoners.

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

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

458 and such other matters as are determined by the governing  
459 authority or agency to be appropriate for inclusion; and after  
460 responses to the request for proposals have been duly received,  
461 the governing authority or agency may select the most qualified  
462 proposal or proposals on the basis of price, technology and other  
463 relevant factors and from such proposals, but not limited to the  
464 terms thereof, negotiate and enter contracts with one or more of  
465 the persons or firms submitting proposals.

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

469           (xi) **Information technology products.** Purchases  
470 of information technology products made by governing authorities  
471 under the provisions of purchase schedules, or contracts executed  
472 or approved by the Mississippi Department of Information  
473 Technology Services and designated for use by governing  
474 authorities.

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

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

485           (xiv) **Library books and other reference materials.**  
486 Purchases by libraries or for libraries of books and periodicals;  
487 processed film, video cassette tapes, filmstrips and slides;  
488 recorded audio tapes, cassettes and diskettes; and any such items  
489 as would be used for teaching, research or other information  
490 distribution; however, equipment such as projectors, recorders,

491 audio or video equipment, and monitor televisions are not exempt  
492 under this subparagraph.

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

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

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

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

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

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

520           (xxi) **Certain school district purchases.**  
521 Purchases of commodities made by school districts from vendors  
522 with which any levying authority of the school district, as



523 defined in Section 37-57-1, has contracted through competitive  
524 bidding procedures for purchases of the same commodities.

525 (xxii) **Garbage, solid waste and sewage contracts.**  
526 Contracts for garbage collection or disposal, contracts for solid  
527 waste collection or disposal and contracts for sewage collection  
528 or disposal.

529 (xxiii) **Municipal water tank maintenance**  
530 **contracts.** Professional maintenance program contracts for the  
531 repair or maintenance of municipal water tanks, which provide  
532 professional services needed to maintain municipal water storage  
533 tanks for a fixed annual fee for a duration of two (2) or more  
534 years.

535 (xxiv) **Purchases of Mississippi Industries for the**  
536 **Blind products.** Purchases made by state agencies or governing  
537 authorities involving any item that is manufactured, processed or  
538 produced by the Mississippi Industries for the Blind.

539 (xxv) **Purchases of state-adopted textbooks.**  
540 Purchases of state-adopted textbooks by public school districts.

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

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

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

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

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

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

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

582                   (i) All contracts for the purchase of commodities,  
583 equipment and public construction (including, but not limited to,  
584 repair and maintenance), may be let for periods of not more than  
585 sixty (60) months in advance, subject to applicable statutory  
586 provisions prohibiting the letting of contracts during specified  
587 periods near the end of terms of office. Term contracts for a  
588 period exceeding twenty-four (24) months shall also be subject to

589 ratification or cancellation by governing authority boards taking  
590 office subsequent to the governing authority board entering the  
591 contract.

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

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

618 (p) **Electrical utility petroleum-based equipment**  
619 **purchase procedure.** When in response to a proper advertisement  
620 therefor, no bid firm as to price is submitted to an electric  
621 utility for power transformers, distribution transformers, power

622 breakers, reclosers or other articles containing a petroleum  
623 product, the electric utility may accept the lowest and best bid  
624 therefor although the price is not firm.

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

647           (r) **Solid waste contract proposal procedure.** Before  
648 entering into any contract for garbage collection or disposal,  
649 contract for solid waste collection or disposal or contract for  
650 sewage collection or disposal, which involves an expenditure of  
651 more than Fifty Thousand Dollars (\$50,000.00), a governing  
652 authority or agency shall issue publicly a request for proposals  
653 concerning the specifications for such services which shall be  
654 advertised for in the same manner as provided in this section for

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

682 (s) **Minority set-aside authorization.** Notwithstanding  
683 any provision of this section to the contrary, any agency or  
684 governing authority, by order placed on its minutes, may, in its  
685 discretion, set aside not more than twenty percent (20%) of its  
686 anticipated annual expenditures for the purchase of commodities  
687 from minority businesses; however, all such set-aside purchases

688 shall comply with all purchasing regulations promulgated by the  
689 Department of Finance and Administration and shall be subject to  
690 bid requirements under this section. Set-aside purchases for  
691 which competitive bids are required shall be made from the lowest  
692 and best minority business bidder. For the purposes of this  
693 paragraph, the term "minority business" means a business which is  
694 owned by a majority of persons who are United States citizens or  
695 permanent resident aliens (as defined by the Immigration and  
696 Naturalization Service) of the United States, and who are Asian,  
697 Black, Hispanic or Native American, according to the following  
698 definitions:

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

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

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

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

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

718 (u) **Purchase authorization clarification.** Nothing in  
719 this section shall be construed as authorizing any purchase not  
720 authorized by law.

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