

By: Representative Read

To: Appropriations

HOUSE BILL NO. 1274
(As Passed the House)

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 ALLOW THE PURCHASING ENTITY TO DESIGNATE THE METHOD BY WHICH BIDS
3 WILL BE RECEIVED FOR PUBLIC PURCHASES IN EXCESS OF \$15,000.00; TO
4 SET A REPEALER DATE OF JULY 1, 2008, ON THIS NEW PROVISION; AND
5 FOR RELATED PURPOSES.

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

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

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

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

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

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

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

59 (i) **Publication requirement.** 1. Purchases which
60 involve an expenditure of more than Fifteen Thousand Dollars
61 (\$15,000.00), exclusive of freight and shipping charges, may be

62 made from the lowest and best bidder after advertising for
63 competitive * * * bids once each week for two (2) consecutive
64 weeks in a regular newspaper published in the county or
65 municipality in which such agency or governing authority is
66 located.

67 2. The purchasing entity may designate the
68 method by which the bids will be received, including, but not
69 limited to, bids sealed in an envelope, bids received
70 electronically in a secure system, bids received via a reverse
71 auction, or bids received by any other method that promotes open
72 competition and has been approved by the Office of Purchasing and
73 Travel. The provisions of this part 2 of subparagraph (i) shall
74 be repealed on July 1, 2008.

75 3. The date as published for the bid opening
76 shall not be less than seven (7) working days after the last
77 published notice; however, if the purchase involves a construction
78 project in which the estimated cost is in excess of Fifteen
79 Thousand Dollars (\$15,000.00), such bids shall not be opened in
80 less than fifteen (15) working days after the last notice is
81 published and the notice for the purchase of such construction
82 shall be published once each week for two (2) consecutive weeks.
83 The notice of intention to let contracts or purchase equipment
84 shall state the time and place at which bids shall be received,
85 list the contracts to be made or types of equipment or supplies to
86 be purchased, and, if all plans and/or specifications are not
87 published, refer to the plans and/or specifications on file. If
88 there is no newspaper published in the county or municipality,
89 then such notice shall be given by posting same at the courthouse,
90 or for municipalities at the city hall, and at two (2) other
91 public places in the county or municipality, and also by
92 publication once each week for two (2) consecutive weeks in some
93 newspaper having a general circulation in the county or
94 municipality in the above provided manner. On the same date that

95 the notice is submitted to the newspaper for publication, the
96 agency or governing authority involved shall mail written notice
97 to, or provide electronic notification to the main office of the
98 Mississippi Contract Procurement Center that contains the same
99 information as that in the published notice.

100 (ii) **Bidding process amendment procedure.** If all
101 plans and/or specifications are published in the notification,
102 then the plans and/or specifications may not be amended. If all
103 plans and/or specifications are not published in the notification,
104 then amendments to the plans/specifications, bid opening date, bid
105 opening time and place may be made, provided that the agency or
106 governing authority maintains a list of all prospective bidders
107 who are known to have received a copy of the bid documents and all
108 such prospective bidders are sent copies of all amendments. This
109 notification of amendments may be made via mail, facsimile,
110 electronic mail or other generally accepted method of information
111 distribution. No addendum to bid specifications may be issued
112 within two (2) working days of the time established for the
113 receipt of bids unless such addendum also amends the bid opening
114 to a date not less than five (5) working days after the date of
115 the addendum.

116 (iii) **Filing requirement.** In all cases involving
117 governing authorities, before the notice shall be published or
118 posted, the plans or specifications for the construction or
119 equipment being sought shall be filed with the clerk of the board
120 of the governing authority. In addition to these requirements, a
121 bid file shall be established which shall indicate those vendors
122 to whom such solicitations and specifications were issued, and
123 such file shall also contain such information as is pertinent to
124 the bid.

125 (iv) **Specification restrictions.**

126 1. Specifications pertinent to such bidding
127 shall be written so as not to exclude comparable equipment of

128 domestic manufacture. However, if valid justification is
129 presented, the Department of Finance and Administration or the
130 board of a governing authority may approve a request for specific
131 equipment necessary to perform a specific job. Further, such
132 justification, when placed on the minutes of the board of a
133 governing authority, may serve as authority for that governing
134 authority to write specifications to require a specific item of
135 equipment needed to perform a specific job. In addition to these
136 requirements, from and after July 1, 1990, vendors of relocatable
137 classrooms and the specifications for the purchase of such
138 relocatable classrooms published by local school boards shall meet
139 all pertinent regulations of the State Board of Education,
140 including prior approval of such bid by the State Department of
141 Education.

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

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

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

154 (i) **Decision procedure.** Purchases may be made
155 from the lowest and best bidder. In determining the lowest and
156 best bid, freight and shipping charges shall be included.
157 Life-cycle costing, total cost bids, warranties, guaranteed
158 buy-back provisions and other relevant provisions may be included
159 in the best bid calculation. All best bid procedures for state
160 agencies must be in compliance with regulations established by the

161 Department of Finance and Administration. If any governing
162 authority accepts a bid other than the lowest bid actually
163 submitted, it shall place on its minutes detailed calculations and
164 narrative summary showing that the accepted bid was determined to
165 be the lowest and best bid, including the dollar amount of the
166 accepted bid and the dollar amount of the lowest bid. No agency
167 or governing authority shall accept a bid based on items not
168 included in the specifications.

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

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

191 (e) **Lease-purchase authorization.** For the purposes of
192 this section, the term "equipment" shall mean equipment, furniture
193 and, if applicable, associated software and other applicable

194 direct costs associated with the acquisition. Any lease-purchase
195 of equipment which an agency is not required to lease-purchase
196 under the master lease-purchase program pursuant to Section
197 31-7-10 and any lease-purchase of equipment which a governing
198 authority elects to lease-purchase may be acquired by a
199 lease-purchase agreement under this paragraph (e). Lease-purchase
200 financing may also be obtained from the vendor or from a
201 third-party source after having solicited and obtained at least
202 two (2) written competitive bids, as defined in paragraph (b) of
203 this section, for such financing without advertising for such
204 bids. Solicitation for the bids for financing may occur before or
205 after acceptance of bids for the purchase of such equipment or,
206 where no such bids for purchase are required, at any time before
207 the purchase thereof. No such lease-purchase agreement shall be
208 for an annual rate of interest which is greater than the overall
209 maximum interest rate to maturity on general obligation
210 indebtedness permitted under Section 75-17-101, and the term of
211 such lease-purchase agreement shall not exceed the useful life of
212 equipment covered thereby as determined according to the upper
213 limit of the asset depreciation range (ADR) guidelines for the
214 Class Life Asset Depreciation Range System established by the
215 Internal Revenue Service pursuant to the United States Internal
216 Revenue Code and regulations thereunder as in effect on December
217 31, 1980, or comparable depreciation guidelines with respect to
218 any equipment not covered by ADR guidelines. Any lease-purchase
219 agreement entered into pursuant to this paragraph (e) may contain
220 any of the terms and conditions which a master lease-purchase
221 agreement may contain under the provisions of Section 31-7-10(5),
222 and shall contain an annual allocation dependency clause
223 substantially similar to that set forth in Section 31-7-10(8).
224 Each agency or governing authority entering into a lease-purchase
225 transaction pursuant to this paragraph (e) shall maintain with
226 respect to each such lease-purchase transaction the same

227 information as required to be maintained by the Department of
228 Finance and Administration pursuant to Section 31-7-10(13).
229 However, nothing contained in this section shall be construed to
230 permit agencies to acquire items of equipment with a total
231 acquisition cost in the aggregate of less than Ten Thousand
232 Dollars (\$10,000.00) by a single lease-purchase transaction. All
233 equipment, and the purchase thereof by any lessor, acquired by
234 lease-purchase under this paragraph and all lease-purchase
235 payments with respect thereto shall be exempt from all Mississippi
236 sales, use and ad valorem taxes. Interest paid on any
237 lease-purchase agreement under this section shall be exempt from
238 State of Mississippi income taxation.

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

248 (g) **Construction contract change authorization.** In the
249 event a determination is made by an agency or governing authority
250 after a construction contract is let that changes or modifications
251 to the original contract are necessary or would better serve the
252 purpose of the agency or the governing authority, such agency or
253 governing authority may, in its discretion, order such changes
254 pertaining to the construction that are necessary under the
255 circumstances without the necessity of further public bids;
256 provided that such change shall be made in a commercially
257 reasonable manner and shall not be made to circumvent the public
258 purchasing statutes. In addition to any other authorized person,
259 the architect or engineer hired by an agency or governing

260 authority with respect to any public construction contract shall
261 have the authority, when granted by an agency or governing
262 authority, to authorize changes or modifications to the original
263 contract without the necessity of prior approval of the agency or
264 governing authority when any such change or modification is less
265 than one percent (1%) of the total contract amount. The agency or
266 governing authority may limit the number, manner or frequency of
267 such emergency changes or modifications.

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

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

293 execution of the contract or in the production or manufacture of
294 materials for use in such performance. Such industry-wide index
295 shall be established and published monthly by the Mississippi
296 Department of Transportation with a copy thereof to be mailed,
297 upon request, to the clerks of the governing authority of each
298 municipality and the clerks of each board of supervisors
299 throughout the state. The price adjustment clause shall be based
300 on the cost of such petroleum products only and shall not include
301 any additional profit or overhead as part of the adjustment. The
302 bid proposals or document contract shall contain the basis and
303 methods of adjusting unit prices for the change in the cost of
304 such petroleum products.

305 (j) **State agency emergency purchase procedure.** If the
306 governing board or the executive head, or his designee, of any
307 agency of the state shall determine that an emergency exists in
308 regard to the purchase of any commodities or repair contracts, so
309 that the delay incident to giving opportunity for competitive
310 bidding would be detrimental to the interests of the state, then
311 the provisions herein for competitive bidding shall not apply and
312 the head of such agency shall be authorized to make the purchase
313 or repair. Total purchases so made shall only be for the purpose
314 of meeting needs created by the emergency situation. In the event
315 such executive head is responsible to an agency board, at the
316 meeting next following the emergency purchase, documentation of
317 the purchase, including a description of the commodity purchased,
318 the purchase price thereof and the nature of the emergency shall
319 be presented to the board and placed on the minutes of the board
320 of such agency. The head of such agency, or his designee, shall,
321 at the earliest possible date following such emergency purchase,
322 file with the Department of Finance and Administration (i) a
323 statement explaining the conditions and circumstances of the
324 emergency, which shall include a detailed description of the
325 events leading up to the situation and the negative impact to the

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

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

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

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

356 (i) The commissioners or board of trustees of any
357 public hospital may contract with such lowest and best bidder for
358 the purchase or lease-purchase of any commodity under a contract

359 of purchase or lease-purchase agreement whose obligatory payment
360 terms do not exceed five (5) years.

361 (ii) In addition to the authority granted in
362 subparagraph (i) of this paragraph (1), the commissioners or board
363 of trustees is authorized to enter into contracts for the lease of
364 equipment or services, or both, which it considers necessary for
365 the proper care of patients if, in its opinion, it is not
366 financially feasible to purchase the necessary equipment or
367 services. Any such contract for the lease of equipment or
368 services executed by the commissioners or board shall not exceed a
369 maximum of five (5) years' duration and shall include a
370 cancellation clause based on unavailability of funds. If such
371 cancellation clause is exercised, there shall be no further
372 liability on the part of the lessee. Any such contract for the
373 lease of equipment or services executed on behalf of the
374 commissioners or board that complies with the provisions of this
375 subparagraph (ii) shall be excepted from the bid requirements set
376 forth in this section.

377 (m) **Exceptions from bidding requirements.** Excepted
378 from bid requirements are:

379 (i) **Purchasing agreements approved by department.**
380 Purchasing agreements, contracts and maximum price regulations
381 executed or approved by the Department of Finance and
382 Administration.

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

392 and costs therefor shall be required for the payment for such
393 repairs.

394 (iii) **In-house equipment repairs.** Purchases of
395 parts for repairs to equipment, when such repairs are made by
396 personnel of the agency or governing authority; however, entire
397 assemblies, such as engines or transmissions, shall not be
398 included in this exemption when the entire assembly is being
399 replaced instead of being repaired.

400 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
401 of gravel or fill dirt which are to be removed and transported by
402 the purchaser.

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

414 (vi) **Intergovernmental sales and transfers.**
415 Purchases, sales, transfers or trades by governing authorities or
416 state agencies when such purchases, sales, transfers or trades are
417 made by a private treaty agreement or through means of
418 negotiation, from any federal agency or authority, another
419 governing authority or state agency of the State of Mississippi,
420 or any state agency or governing authority of another state.
421 Nothing in this section shall permit such purchases through public
422 auction except as provided for in subparagraph (v) of this
423 section. It is the intent of this section to allow governmental
424 entities to dispose of and/or purchase commodities from other

425 governmental entities at a price that is agreed to by both
426 parties. This shall allow for purchases and/or sales at prices
427 which may be determined to be below the market value if the
428 selling entity determines that the sale at below market value is
429 in the best interest of the taxpayers of the state. Governing
430 authorities shall place the terms of the agreement and any
431 justification on the minutes, and state agencies shall obtain
432 approval from the Department of Finance and Administration, prior
433 to releasing or taking possession of the commodities.

434 (vii) **Perishable supplies or food.** Perishable
435 supplies or food purchased for use in connection with hospitals,
436 the school lunch programs, homemaking programs and for the feeding
437 of county or municipal prisoners.

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

452 (ix) **Waste disposal facility construction**
453 **contracts.** Construction of incinerators and other facilities for
454 disposal of solid wastes in which products either generated
455 therein, such as steam, or recovered therefrom, such as materials
456 for recycling, are to be sold or otherwise disposed of; however,
457 in constructing such facilities, a governing authority or agency

458 shall publicly issue requests for proposals, advertised for in the
459 same manner as provided herein for seeking bids for public
460 construction projects, concerning the design, construction,
461 ownership, operation and/or maintenance of such facilities,
462 wherein such requests for proposals when issued shall contain
463 terms and conditions relating to price, financial responsibility,
464 technology, environmental compatibility, legal responsibilities
465 and such other matters as are determined by the governing
466 authority or agency to be appropriate for inclusion; and after
467 responses to the request for proposals have been duly received,
468 the governing authority or agency may select the most qualified
469 proposal or proposals on the basis of price, technology and other
470 relevant factors and from such proposals, but not limited to the
471 terms thereof, negotiate and enter contracts with one or more of
472 the persons or firms submitting proposals.

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

476 (xi) **Information technology products.** Purchases
477 of information technology products made by governing authorities
478 under the provisions of purchase schedules, or contracts executed
479 or approved by the Mississippi Department of Information
480 Technology Services and designated for use by governing
481 authorities.

482 (xii) **Energy efficiency services and equipment.**
483 Energy efficiency services and equipment acquired by school
484 districts, community and junior colleges, institutions of higher
485 learning and state agencies or other applicable governmental
486 entities on a shared-savings, lease or lease-purchase basis
487 pursuant to Section 31-7-14.

488 (xiii) **Municipal electrical utility system fuel.**
489 Purchases of coal and/or natural gas by municipally-owned electric

490 power generating systems that have the capacity to use both coal
491 and natural gas for the generation of electric power.

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

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

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

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

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

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

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

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

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

532 (xxii) **Garbage, solid waste and sewage contracts.**
533 Contracts for garbage collection or disposal, contracts for solid
534 waste collection or disposal and contracts for sewage collection
535 or disposal.

536 (xxiii) **Municipal water tank maintenance**
537 **contracts.** Professional maintenance program contracts for the
538 repair or maintenance of municipal water tanks, which provide
539 professional services needed to maintain municipal water storage
540 tanks for a fixed annual fee for a duration of two (2) or more
541 years.

542 (xxiv) **Purchases of Mississippi Industries for the**
543 **Blind products.** Purchases made by state agencies or governing
544 authorities involving any item that is manufactured, processed or
545 produced by the Mississippi Industries for the Blind.

546 (xxv) **Purchases of state-adopted textbooks.**
547 Purchases of state-adopted textbooks by public school districts.

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

551 (xxvii) **Used heavy or specialized machinery or**
552 **equipment for installation of soil and water conservation**
553 **practices purchased at auction.** Used heavy or specialized
554 machinery or equipment used for the installation and
555 implementation of soil and water conservation practices or

556 measures purchased subject to the restrictions provided in
557 Sections 69-27-331 through 69-27-341. Any purchase by the State
558 Soil and Water Conservation Commission under the exemption
559 authorized by this subparagraph shall require advance
560 authorization spread upon the minutes of the commission to include
561 the listing of the item or items authorized to be purchased and
562 the maximum bid authorized to be paid for each item or items.

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

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

578 (xxx) **School yearbooks.** Purchases of school
579 yearbooks by state agencies or governing authorities; provided,
580 however, that state agencies and governing authorities shall use
581 for these purchases the RFP process as set forth in the
582 Mississippi Procurement Manual adopted by the Office of Purchasing
583 and Travel.

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

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

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

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

610 (o) **Purchase law violation prohibition and vendor**
611 **penalty.** No contract or purchase as herein authorized shall be
612 made for the purpose of circumventing the provisions of this
613 section requiring competitive bids, nor shall it be lawful for any
614 person or concern to submit individual invoices for amounts within
615 those authorized for a contract or purchase where the actual value
616 of the contract or commodity purchased exceeds the authorized
617 amount and the invoices therefor are split so as to appear to be
618 authorized as purchases for which competitive bids are not
619 required. Submission of such invoices shall constitute a
620 misdemeanor punishable by a fine of not less than Five Hundred
621 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),

622 or by imprisonment for thirty (30) days in the county jail, or
623 both such fine and imprisonment. In addition, the claim or claims
624 submitted shall be forfeited.

625 (p) **Electrical utility petroleum-based equipment**
626 **purchase procedure.** When in response to a proper advertisement
627 therefor, no bid firm as to price is submitted to an electric
628 utility for power transformers, distribution transformers, power
629 breakers, reclosers or other articles containing a petroleum
630 product, the electric utility may accept the lowest and best bid
631 therefor although the price is not firm.

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

654 (r) **Solid waste contract proposal procedure.** Before
655 entering into any contract for garbage collection or disposal,
656 contract for solid waste collection or disposal or contract for
657 sewage collection or disposal, which involves an expenditure of
658 more than Fifty Thousand Dollars (\$50,000.00), a governing
659 authority or agency shall issue publicly a request for proposals
660 concerning the specifications for such services which shall be
661 advertised for in the same manner as provided in this section for
662 seeking bids for purchases which involve an expenditure of more
663 than the amount provided in paragraph (c) of this section. Any
664 request for proposals when issued shall contain terms and
665 conditions relating to price, financial responsibility,
666 technology, legal responsibilities and other relevant factors as
667 are determined by the governing authority or agency to be
668 appropriate for inclusion; all factors determined relevant by the
669 governing authority or agency or required by this paragraph (r)
670 shall be duly included in the advertisement to elicit proposals.
671 After responses to the request for proposals have been duly
672 received, the governing authority or agency shall select the most
673 qualified proposal or proposals on the basis of price, technology
674 and other relevant factors and from such proposals, but not
675 limited to the terms thereof, negotiate and enter contracts with
676 one or more of the persons or firms submitting proposals. If the
677 governing authority or agency deems none of the proposals to be
678 qualified or otherwise acceptable, the request for proposals
679 process may be reinitiated. Notwithstanding any other provisions
680 of this paragraph, where a county with at least thirty-five
681 thousand (35,000) nor more than forty thousand (40,000)
682 population, according to the 1990 federal decennial census, owns
683 or operates a solid waste landfill, the governing authorities of
684 any other county or municipality may contract with the governing
685 authorities of the county owning or operating the landfill,
686 pursuant to a resolution duly adopted and spread upon the minutes

687 of each governing authority involved, for garbage or solid waste
688 collection or disposal services through contract negotiations.

689 (s) **Minority set-aside authorization.** Notwithstanding
690 any provision of this section to the contrary, any agency or
691 governing authority, by order placed on its minutes, may, in its
692 discretion, set aside not more than twenty percent (20%) of its
693 anticipated annual expenditures for the purchase of commodities
694 from minority businesses; however, all such set-aside purchases
695 shall comply with all purchasing regulations promulgated by the
696 Department of Finance and Administration and shall be subject to
697 bid requirements under this section. Set-aside purchases for
698 which competitive bids are required shall be made from the lowest
699 and best minority business bidder. For the purposes of this
700 paragraph, the term "minority business" means a business which is
701 owned by a majority of persons who are United States citizens or
702 permanent resident aliens (as defined by the Immigration and
703 Naturalization Service) of the United States, and who are Asian,
704 Black, Hispanic or Native American, according to the following
705 definitions:

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

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

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

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

717 (t) **Construction punch list restriction.** The
718 architect, engineer or other representative designated by the
719 agency or governing authority that is contracting for public

720 construction or renovation may prepare and submit to the
721 contractor only one (1) preliminary punch list of items that do
722 not meet the contract requirements at the time of substantial
723 completion and one (1) final list immediately before final
724 completion and final payment.

725 (u) **Purchase authorization clarification.** Nothing in
726 this section shall be construed as authorizing any purchase not
727 authorized by law.

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