

By: Senator(s) White

To: Labor; Fees, Salaries
and Administration

SENATE BILL NO. 2242

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 PROHIBIT STATE AGENCIES AND LOCAL GOVERNMENTS FROM REQUIRING
3 CERTAIN AGREEMENTS WITH LABOR ORGANIZATIONS BY CONTRACTORS AS A
4 CONDITION OF BIDDING ON PROJECTS; AND FOR RELATED PURPOSES.

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

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

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

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

22 (b) **Bidding procedure for purchases over \$3,500.00 but**
23 **not over \$15,000.00.** Purchases which involve an expenditure of
24 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
25 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
26 freight and shipping charges may be made from the lowest and best
27 bidder without publishing or posting advertisement for bids,
28 provided at least two (2) competitive written bids have been

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

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

58 (i) **Publication requirement.** Purchases which
59 involve an expenditure of more than Fifteen Thousand Dollars
60 (\$15,000.00), exclusive of freight and shipping charges, may be
61 made from the lowest and best bidder after advertising for

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

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

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

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

114 (iv) **Specification restrictions.**

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

128 all pertinent regulations of the State Board of Education,
129 including prior approval of such bid by the State Department of
130 Education.

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

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

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

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

158 (ii) **Decision procedure for Certified Purchasing**
159 **Offices.** In addition to the decision procedure set forth in
160 paragraph (d)(i), Certified Purchasing Offices may also use the

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

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

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

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

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

226 lease-purchase agreement under this section shall be exempt from
227 State of Mississippi income taxation.

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

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

257 (h) **Petroleum purchase alternative.** In addition to
258 other methods of purchasing authorized in this chapter, when any

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

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

292 methods of adjusting unit prices for the change in the cost of
293 such petroleum products.

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

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

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

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

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

350 (ii) In addition to the authority granted in
351 subparagraph (i) of this paragraph (l), the commissioners or board
352 of trustees is authorized to enter into contracts for the lease of
353 equipment or services, or both, which it considers necessary for
354 the proper care of patients if, in its opinion, it is not
355 financially feasible to purchase the necessary equipment or
356 services. Any such contract for the lease of equipment or
357 services executed by the commissioners or board shall not exceed a

358 maximum of five (5) years' duration and shall include a
359 cancellation clause based on unavailability of funds. If such
360 cancellation clause is exercised, there shall be no further
361 liability on the part of the lessee. Any such contract for the
362 lease of equipment or services executed on behalf of the
363 commissioners or board that complies with the provisions of this
364 subparagraph (ii) shall be excepted from the bid requirements set
365 forth in this section.

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

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

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

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

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

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

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

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

423 (vii) **Perishable supplies or food.** Perishable
424 supplies or food purchased for use in connection with hospitals,
425 the school lunch programs, homemaking programs and for the feeding
426 of county or municipal prisoners.

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

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

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

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

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

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

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

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

487 audio or video equipment, and monitor televisions are not exempt
488 under this subparagraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

585 ratification or cancellation by governing authority boards taking
586 office subsequent to the governing authority board entering the
587 contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

717 (v) Labor organization agreements prohibited.

718 (i) Unless required by federal law, each public
719 entity, when engaged in procuring products or services or letting
720 contracts for construction, manufacture or operation of public
721 works paid for in whole or in part by state or local funds, or
722 when overseeing or administering such procurement, construction,
723 manufacture or operation, shall ensure that bid specification,
724 project agreements and other controlling documents, entered into,
725 required or subject to approval by the public entity do not:

726 1. Require bidders, offerors, contractors,
727 subcontractors or operators to:

728 a. Enter into or adhere to agreements
729 with one or more labor organizations on the same or related
730 projects.

731 b. Enter into any agreement whereby it
732 must remain neutral toward any labor organization.

733 c. Pay predetermined or prevailing
734 wages.

735 2. Discriminate against bidders, offerors,
736 contractors, subcontractors or operators for refusing to:

737 a. Become or remain signatories or
738 otherwise adhere to agreements with one or more labor
739 organizations on the same or related projects.

740 b. Enter into any agreement whereby it
741 must remain neutral towards any labor organizations.

742 3. Require any bidders, offerors,
743 contractors, subcontractors or operators to enter into, adhere to
744 or enforce any agreement that requires its employers as a
745 condition of employment to:

746 a. Become members of or become
747 affiliated with a labor organization.

748 b. Pay dues or fees to a labor
749 organization over an employee's objection.

750 (ii) Public entities shall not provide financial
751 assistance, issue grants or enter into cooperative agreements for
752 projects, a condition of which requires that bid specifications,
753 project agreements or other controlling documents pertaining to
754 the grant or cooperative agreement contain any of the elements
755 specified in subparagraph (i). Furthermore, public entities shall
756 exercise such authority as may be required to preclude a grant
757 recipient or party to a cooperative agreement from imposing any of
758 the elements specified in subparagraph (i) in connection with any
759 grant or cooperative agreement awarded or entered into.

760 (iii) Nothing herein shall prohibit contractors or
761 subcontractors from voluntarily entering into agreements described
762 in this section.

763 (iv) Any interested party, which shall include a
764 bidder, offeror, contractor, subcontractor, operator or taxpayer,
765 shall have standing to challenge any bid specification, project
766 agreement, neutrality agreement, controlling document, grant or
767 cooperative agreement, which violates this section. Furthermore,
768 such party is enabled to and shall receive injunctive relief to
769 prevent violations of this section upon a proper showing.

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