

By: Senator(s) Thames

To: Fees, Salaries and Administration

SENATE BILL NO. 2396

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; AND  
4 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 \* \* \* 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 purchasing entity may designate the method by which  
66 the bids will be received, including, but not limited to, bids  
67 sealed in an envelope, bids received electronically in a secure  
68 system, bids received via a reverse auction, or bids received by  
69 any other method that promotes open competition and has been  
70 approved by the Office of Purchasing and Travel. The date as  
71 published for the bid opening shall not be less than seven (7)  
72 working days after the last published notice; however, if the  
73 purchase involves a construction project in which the estimated  
74 cost is in excess of Fifteen Thousand Dollars (\$15,000.00), such  
75 bids shall not be opened in less than fifteen (15) working days  
76 after the last notice is published and the notice for the purchase  
77 of such construction shall be published once each week for two (2)  
78 consecutive weeks. The notice of intention to let contracts or  
79 purchase equipment shall state the time and place at which bids  
80 shall be received, list the contracts to be made or types of  
81 equipment or supplies to be purchased, and, if all plans and/or  
82 specifications are not published, refer to the plans and/or  
83 specifications on file. If there is no newspaper published in the  
84 county or municipality, then such notice shall be given by posting  
85 same at the courthouse, or for municipalities at the city hall,  
86 and at two (2) other public places in the county or municipality,  
87 and also by publication once each week for two (2) consecutive  
88 weeks in some newspaper having a general circulation in the county  
89 or municipality in the above provided manner. On the same date  
90 that the notice is submitted to the newspaper for publication, the  
91 agency or governing authority involved shall mail written notice  
92 to, or provide electronic notification to the main office of the  
93 Mississippi Contract Procurement Center that contains the same  
94 information as that in the published notice.

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

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

120                   (iv) **Specification restrictions.**

121                   1. Specifications pertinent to such bidding  
122 shall be written so as not to exclude comparable equipment of  
123 domestic manufacture. However, if valid justification is  
124 presented, the Department of Finance and Administration or the  
125 board of a governing authority may approve a request for specific  
126 equipment necessary to perform a specific job. Further, such  
127 justification, when placed on the minutes of the board of a

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

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

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

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

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

161 accepted bid and the dollar amount of the lowest bid. No agency  
162 or governing authority shall accept a bid based on items not  
163 included in the specifications.

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

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

186 (e) **Lease-purchase authorization.** For the purposes of  
187 this section, the term "equipment" shall mean equipment, furniture  
188 and, if applicable, associated software and other applicable  
189 direct costs associated with the acquisition. Any lease-purchase  
190 of equipment which an agency is not required to lease-purchase  
191 under the master lease-purchase program pursuant to Section  
192 31-7-10 and any lease-purchase of equipment which a governing  
193 authority elects to lease-purchase may be acquired by a

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

227 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
228 equipment, and the purchase thereof by any lessor, acquired by  
229 lease-purchase under this paragraph and all lease-purchase  
230 payments with respect thereto shall be exempt from all Mississippi  
231 sales, use and ad valorem taxes. Interest paid on any  
232 lease-purchase agreement under this section shall be exempt from  
233 State of Mississippi income taxation.

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

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

260 than one percent (1%) of the total contract amount. The agency or  
261 governing authority may limit the number, manner or frequency of  
262 such emergency changes or modifications.

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

280 (i) **Road construction petroleum products price**  
281 **adjustment clause authorization.** Any agency or governing  
282 authority authorized to enter into contracts for the construction,  
283 maintenance, surfacing or repair of highways, roads or streets,  
284 may include in its bid proposal and contract documents a price  
285 adjustment clause with relation to the cost to the contractor,  
286 including taxes, based upon an industry-wide cost index, of  
287 petroleum products including asphalt used in the performance or  
288 execution of the contract or in the production or manufacture of  
289 materials for use in such performance. Such industry-wide index  
290 shall be established and published monthly by the Mississippi  
291 Department of Transportation with a copy thereof to be mailed,  
292 upon request, to the clerks of the governing authority of each

293 municipality and the clerks of each board of supervisors  
294 throughout the state. The price adjustment clause shall be based  
295 on the cost of such petroleum products only and shall not include  
296 any additional profit or overhead as part of the adjustment. The  
297 bid proposals or document contract shall contain the basis and  
298 methods of adjusting unit prices for the change in the cost of  
299 such petroleum products.

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

326 Senate Fees, Salaries and Administration Committee, the House Fees  
327 and Salaries of Public Officers Committee and the Joint  
328 Legislative Budget Committee a report containing a list of all  
329 state agency emergency purchases and supporting documentation for  
330 each emergency purchase.

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

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

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

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

356 (ii) In addition to the authority granted in  
357 subparagraph (i) of this paragraph (l), the commissioners or board  
358 of trustees is authorized to enter into contracts for the lease of

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

372 (m) **Exceptions from bidding requirements.** Excepted  
373 from bid requirements are:

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

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

389 (iii) **In-house equipment repairs.** Purchases of  
390 parts for repairs to equipment, when such repairs are made by  
391 personnel of the agency or governing authority; however, entire

392 assemblies, such as engines or transmissions, shall not be  
393 included in this exemption when the entire assembly is being  
394 replaced instead of being repaired.

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

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

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

425 authorities shall place the terms of the agreement and any  
426 justification on the minutes, and state agencies shall obtain  
427 approval from the Department of Finance and Administration, prior  
428 to releasing or taking possession of the commodities.

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

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

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

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

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

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

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

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

487           (xiv) **Library books and other reference materials.**  
488 Purchases by libraries or for libraries of books and periodicals;  
489 processed film, video cassette tapes, filmstrips and slides;  
490 recorded audio tapes, cassettes and diskettes; and any such items

491 as would be used for teaching, research or other information  
492 distribution; however, equipment such as projectors, recorders,  
493 audio or video equipment, and monitor televisions are not exempt  
494 under this subparagraph.

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

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

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

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

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

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

522                   (xxi) **Certain school district purchases.**  
523 Purchases of commodities made by school districts from vendors

524 with which any levying authority of the school district, as  
525 defined in Section 37-57-1, has contracted through competitive  
526 bidding procedures for purchases of the same commodities.

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

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

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

541                   (xxv) **Purchases of state-adopted textbooks.**  
542 Purchases of state-adopted textbooks by public school districts.

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

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

556 the listing of the item or items authorized to be purchased and  
557 the maximum bid authorized to be paid for each item or items.

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

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

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

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

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

584 (i) All contracts for the purchase of commodities,  
585 equipment and public construction (including, but not limited to,  
586 repair and maintenance), may be let for periods of not more than  
587 sixty (60) months in advance, subject to applicable statutory  
588 provisions prohibiting the letting of contracts during specified

589 periods near the end of terms of office. Term contracts for a  
590 period exceeding twenty-four (24) months shall also be subject to  
591 ratification or cancellation by governing authority boards taking  
592 office subsequent to the governing authority board entering the  
593 contract.

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

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

620 (p) **Electrical utility petroleum-based equipment**  
621 **purchase procedure.** When in response to a proper advertisement

622 therefor, no bid firm as to price is submitted to an electric  
623 utility for power transformers, distribution transformers, power  
624 breakers, reclosers or other articles containing a petroleum  
625 product, the electric utility may accept the lowest and best bid  
626 therefor although the price is not firm.

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

649           (r) **Solid waste contract proposal procedure.** Before  
650 entering into any contract for garbage collection or disposal,  
651 contract for solid waste collection or disposal or contract for  
652 sewage collection or disposal, which involves an expenditure of  
653 more than Fifty Thousand Dollars (\$50,000.00), a governing  
654 authority or agency shall issue publicly a request for proposals

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

684 (s) **Minority set-aside authorization.** Notwithstanding  
685 any provision of this section to the contrary, any agency or  
686 governing authority, by order placed on its minutes, may, in its  
687 discretion, set aside not more than twenty percent (20%) of its

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

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

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

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

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

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

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

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