

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.