

By: Senator(s) Horhn

To: Finance

SENATE BILL NO. 2854

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO SET ASIDE
3 20% OF THE AMOUNT EXPENDED FOR ANY PUBLIC CONSTRUCTION PROJECT
4 THAT THE DEPARTMENT MANAGES, NOT TO EXCEED \$5,000,000.00, TO SMALL
5 CONTRACTORS; TO AWARD SUCH SET-ASIDE CONTRACTS TO THE LOWEST AND
6 BEST SMALL CONTRACTOR BIDDER; TO DEFINE THE TERM "SMALL
7 CONTRACTOR"; AND FOR RELATED PURPOSES.

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

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

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

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

25 (b) **Bidding procedure for purchases over \$3,500.00 but**
26 **not over \$15,000.00.** Purchases which involve an expenditure of
27 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
28 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
29 freight and shipping charges may be made from the lowest and best

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

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

61 (i) **Publication requirement.** Purchases which
62 involve an expenditure of more than Fifteen Thousand Dollars

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

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

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

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

117 (iv) **Specification restrictions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

720 (v) Small contractor set-aside requirement.
721 Notwithstanding any provision of this section to the contrary, the
722 Department of Finance and Administration shall set aside twenty
723 percent (20%) of the amount expended for any public construction
724 project that such department manages, not to exceed Five Million
725 Dollars (\$5,000,000.00), for small contractors. The set-aside
726 portion of such contract shall comply with regulations promulgated
727 by the Department of Finance and Administration and shall be
728 subject to bid requirements under this section. Set-aside
729 contracts for which competitive bids are required shall be made
730 from the lowest and best small contractor bidder. For purposes of
731 this paragraph, the term "small contractor" means a contractor
732 whose bonding capacity, as determined by the Department of Finance
733 and Administration, does not exceed Five Million Dollars
734 (\$5,000,000.00).

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