

By: Representative Ward

To: Judiciary A; Ways and Means

HOUSE BILL NO. 227

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE GOVERNING AUTHORITIES TO USE THE DESIGN-BUILD METHOD OF
3 AWARDING CONTRACTS; AND FOR RELATED PURPOSES.

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

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

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

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

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



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

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

57 (i) **Publication requirement.**

58 1. Purchases which involve an expenditure of
59 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
60 freight and shipping charges, may be made from the lowest and best



61 bidder after advertising for competitive bids once each week for
62 two (2) consecutive weeks in a regular newspaper published in the
63 county or municipality in which such agency or governing authority
64 is located.

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

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



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

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

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

123 (iv) **Specification restrictions.**

124 1. Specifications pertinent to such bidding
125 shall be written so as not to exclude comparable equipment of
126 domestic manufacture. However, if valid justification is



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

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

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

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

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



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

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

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

189 (e) **Lease-purchase authorization.** For the purposes of
190 this section, the term "equipment" shall mean equipment, furniture
191 and, if applicable, associated software and other applicable
192 direct costs associated with the acquisition. Any lease-purchase



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



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

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

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



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

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

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



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

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



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

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

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

352 (l) **Hospital purchase, lease-purchase and lease**
353 **authorization.**

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



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

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

375 (m) **Exceptions from bidding requirements.** Excepted
376 from bid requirements are:

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

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



390 and costs therefor shall be required for the payment for such
391 repairs.

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

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

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

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



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

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

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

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



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

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

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

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

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



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

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

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

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

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

504 (xvii) **Multichannel interactive video systems.**

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

512 (xviii) **Purchases of prison industry products.**

513 From and after January 1, 1991, purchases made by state agencies
514 or governing authorities involving any item that is manufactured,
515 processed, grown or produced from the state's prison industries.

516 (xix) **Undercover operations equipment.** Purchases

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



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

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

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

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

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

544 (xxv) **Purchases of state-adopted textbooks.**
545 Purchases of state-adopted textbooks by public school districts.

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

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



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

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

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

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

582 (xxxii) **Design-build method * * * of contracting by**
583 **governing authorities.** As an alternative to other methods of
584 awarding contracts, governing authorities may use the design-build
585 method of contracting for public projects. As used in this
586 paragraph (xxxii), the term "design-build" method of contracting



587 means a contract that combines the design and construction phases
588 of a project into a single contract and the contractor is required
589 to satisfactorily perform, at a minimum, both the design and
590 construction of the project. Governing authorities shall
591 establish detailed criteria for the selection of the successful
592 design-build contractor in each request for design-build
593 proposals.

594 (n) **Term contract authorization.** All contracts for the
595 purchase of:

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

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

617 (o) **Purchase law violation prohibition and vendor**
618 **penalty.** No contract or purchase as herein authorized shall be
619 made for the purpose of circumventing the provisions of this



620 section requiring competitive bids, nor shall it be lawful for any
621 person or concern to submit individual invoices for amounts within
622 those authorized for a contract or purchase where the actual value
623 of the contract or commodity purchased exceeds the authorized
624 amount and the invoices therefor are split so as to appear to be
625 authorized as purchases for which competitive bids are not
626 required. Submission of such invoices shall constitute a
627 misdemeanor punishable by a fine of not less than Five Hundred
628 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
629 or by imprisonment for thirty (30) days in the county jail, or
630 both such fine and imprisonment. In addition, the claim or claims
631 submitted shall be forfeited.

632 (p) **Electrical utility petroleum-based equipment**
633 **purchase procedure.** When in response to a proper advertisement
634 therefor, no bid firm as to price is submitted to an electric
635 utility for power transformers, distribution transformers, power
636 breakers, reclosers or other articles containing a petroleum
637 product, the electric utility may accept the lowest and best bid
638 therefor although the price is not firm.

639 (q) **Fuel management system bidding procedure.** Any
640 governing authority or agency of the state shall, before
641 contracting for the services and products of a fuel management or
642 fuel access system, enter into negotiations with not fewer than
643 two (2) sellers of fuel management or fuel access systems for
644 competitive written bids to provide the services and products for
645 the systems. In the event that the governing authority or agency
646 cannot locate two (2) sellers of such systems or cannot obtain
647 bids from two (2) sellers of such systems, it shall show proof
648 that it made a diligent, good-faith effort to locate and negotiate
649 with two (2) sellers of such systems. Such proof shall include,
650 but not be limited to, publications of a request for proposals and
651 letters soliciting negotiations and bids. For purposes of this
652 paragraph (q), a fuel management or fuel access system is an



653 automated system of acquiring fuel for vehicles as well as
654 management reports detailing fuel use by vehicles and drivers, and
655 the term "competitive written bid" shall have the meaning as
656 defined in paragraph (b) of this section. Governing authorities
657 and agencies shall be exempt from this process when contracting
658 for the services and products of a fuel management or fuel access
659 systems under the terms of a state contract established by the
660 Office of Purchasing and Travel.

661 (r) **Solid waste contract proposal procedure.** Before
662 entering into any contract for garbage collection or disposal,
663 contract for solid waste collection or disposal or contract for
664 sewage collection or disposal, which involves an expenditure of
665 more than Fifty Thousand Dollars (\$50,000.00), a governing
666 authority or agency shall issue publicly a request for proposals
667 concerning the specifications for such services which shall be
668 advertised for in the same manner as provided in this section for
669 seeking bids for purchases which involve an expenditure of more
670 than the amount provided in paragraph (c) of this section. Any
671 request for proposals when issued shall contain terms and
672 conditions relating to price, financial responsibility,
673 technology, legal responsibilities and other relevant factors as
674 are determined by the governing authority or agency to be
675 appropriate for inclusion; all factors determined relevant by the
676 governing authority or agency or required by this paragraph (r)
677 shall be duly included in the advertisement to elicit proposals.
678 After responses to the request for proposals have been duly
679 received, the governing authority or agency shall select the most
680 qualified proposal or proposals on the basis of price, technology
681 and other relevant factors and from such proposals, but not
682 limited to the terms thereof, negotiate and enter contracts with
683 one or more of the persons or firms submitting proposals. If the
684 governing authority or agency deems none of the proposals to be
685 qualified or otherwise acceptable, the request for proposals



686 process may be reinitiated. Notwithstanding any other provisions
687 of this paragraph, where a county with at least thirty-five
688 thousand (35,000) nor more than forty thousand (40,000)
689 population, according to the 1990 federal decennial census, owns
690 or operates a solid waste landfill, the governing authorities of
691 any other county or municipality may contract with the governing
692 authorities of the county owning or operating the landfill,
693 pursuant to a resolution duly adopted and spread upon the minutes
694 of each governing authority involved, for garbage or solid waste
695 collection or disposal services through contract negotiations.

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

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

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



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

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

724 (t) **Construction punch list restriction.** The
725 architect, engineer or other representative designated by the
726 agency or governing authority that is contracting for public
727 construction or renovation may prepare and submit to the
728 contractor only one (1) preliminary punch list of items that do
729 not meet the contract requirements at the time of substantial
730 completion and one (1) final list immediately before final
731 completion and final payment.

732 (u) **Purchase authorization clarification.** Nothing in
733 this section shall be construed as authorizing any purchase not
734 authorized by law.

735 **SECTION 2.** This act shall take effect and be in force from
736 and after July 1, 2007.

