

By: Representative Franks

To: Appropriations

HOUSE BILL NO. 776

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE PUBLIC PURCHASING LAWS TO INCREASE THE MINIMUM AMOUNT  
3 OF EXPENDITURES FOR WHICH THE COMPETITIVE BID PROCESS IS REQUIRED;  
4 AND FOR RELATED PURPOSES.

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

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

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

13 (a) **Bidding procedure for purchases not over \$5,000.00.**  
14 Purchases which do not involve an expenditure of more than Five  
15 Thousand Dollars (\$5,000.00), exclusive of freight or shipping  
16 charges, may be made without advertising or otherwise requesting  
17 competitive bids. However, nothing contained in this paragraph  
18 (a) shall be construed to prohibit any agency or governing  
19 authority from establishing procedures which require competitive  
20 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

21 (b) **Bidding procedure for purchases over \$5,000.00 but**  
22 **not over \$25,000.00.** Purchases which involve an expenditure of  
23 more than Five Thousand Dollars (\$5,000.00) but not more than  
24 Twenty-five Thousand Dollars (\$25,000.00), exclusive of freight  
25 and shipping charges may be made from the lowest and best bidder  
26 without publishing or posting advertisement for bids, provided at  
27 least two (2) competitive written bids have been obtained. Any  
28 governing authority purchasing commodities pursuant to this

29 paragraph (b) may authorize its purchasing agent, or his designee,  
30 with regard to governing authorities other than counties, or its  
31 purchase clerk, or his designee, with regard to counties, to  
32 accept the lowest and best competitive written bid. Such  
33 authorization shall be made in writing by the governing authority  
34 and shall be maintained on file in the primary office of the  
35 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 \$25,000.00.**

57 (i) **Publication requirement.** 1. Purchases which  
58 involve an expenditure of more than Twenty-five Thousand Dollars  
59 (\$25,000.00), exclusive of freight and shipping charges, may be  
60 made from the lowest and best bidder after advertising for  
61 competitive bids once each week for two (2) consecutive weeks in a

62 regular newspaper published in the county or municipality in which  
63 such agency or governing authority is located.

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

72           3. The date as published for the bid opening  
73 shall not be less than seven (7) working days after the last  
74 published notice; however, if the purchase involves a construction  
75 project in which the estimated cost is in excess of Twenty-five  
76 Thousand Dollars (\$25,000.00), such bids shall not be opened in  
77 less than fifteen (15) working days after the last notice is  
78 published and the notice for the purchase of such construction  
79 shall be published once each week for two (2) consecutive weeks.  
80 The notice of intention to let contracts or purchase equipment  
81 shall state the time and place at which bids shall be received,  
82 list the contracts to be made or types of equipment or supplies to  
83 be purchased, and, if all plans and/or specifications are not  
84 published, refer to the plans and/or specifications on file. If  
85 there is no newspaper published in the county or municipality,  
86 then such notice shall be given by posting same at the courthouse,  
87 or for municipalities at the city hall, and at two (2) other  
88 public places in the county or municipality, and also by  
89 publication once each week for two (2) consecutive weeks in some  
90 newspaper having a general circulation in the county or  
91 municipality in the above provided manner. On the same date that  
92 the notice is submitted to the newspaper for publication, the  
93 agency or governing authority involved shall mail written notice  
94 to, or provide electronic notification to the main office of the

95 Mississippi Contract Procurement Center that contains the same  
96 information as that in the published notice.

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

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

122           (iv) **Specification restrictions.**

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

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

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

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

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

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

161 narrative summary showing that the accepted bid was determined to  
162 be the lowest and best bid, including the dollar amount of the  
163 accepted bid and the dollar amount of the lowest bid. No agency  
164 or governing authority shall accept a bid based on items not  
165 included in the specifications.

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

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

188                   (e) **Lease-purchase authorization.** For the purposes of  
189 this section, the term "equipment" shall mean equipment, furniture  
190 and, if applicable, associated software and other applicable  
191 direct costs associated with the acquisition. Any lease-purchase  
192 of equipment which an agency is not required to lease-purchase  
193 under the master lease-purchase program pursuant to Section

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

227 permit agencies to acquire items of equipment with a total  
228 acquisition cost in the aggregate of less than Ten Thousand  
229 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
230 equipment, and the purchase thereof by any lessor, acquired by  
231 lease-purchase under this paragraph and all lease-purchase  
232 payments with respect thereto shall be exempt from all Mississippi  
233 sales, use and ad valorem taxes. Interest paid on any  
234 lease-purchase agreement under this section shall be exempt from  
235 State of Mississippi income taxation.

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

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



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

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

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

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

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

326 the board of such agency, if applicable. On or before September 1  
327 of each year, the State Auditor shall prepare and deliver to the  
328 Senate Fees, Salaries and Administration Committee, the House Fees  
329 and Salaries of Public Officers Committee and the Joint  
330 Legislative Budget Committee a report containing a list of all  
331 state agency emergency purchases and supporting documentation for  
332 each emergency purchase.

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

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

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

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

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

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

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

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

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

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

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

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

424 which may be determined to be below the market value if the  
425 selling entity determines that the sale at below market value is  
426 in the best interest of the taxpayers of the state. Governing  
427 authorities shall place the terms of the agreement and any  
428 justification on the minutes, and state agencies shall obtain  
429 approval from the Department of Finance and Administration, prior  
430 to releasing or taking possession of the commodities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

520 (xx) **Junior college books for rent.** Purchases by  
521 community or junior colleges of textbooks which are obtained for



522 the purpose of renting such books to students as part of a book  
523 service system.

524 (xxi) **Certain school district purchases.**

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

529 (xxii) **Garbage, solid waste and sewage contracts.**

530 Contracts for garbage collection or disposal, contracts for solid  
531 waste collection or disposal and contracts for sewage collection  
532 or disposal.

533 (xxiii) **Municipal water tank maintenance**

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

539 (xxiv) **Purchases of Mississippi Industries for the**

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

543 (xxv) **Purchases of state-adopted textbooks.**

544 Purchases of state-adopted textbooks by public school districts.

545 (xxvi) **Certain purchases under the Mississippi**

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

548 (xxvii) **Used heavy or specialized machinery or**

549 **equipment for installation of soil and water conservation**

550 **practices purchased at auction.** Used heavy or specialized

551 machinery or equipment used for the installation and

552 implementation of soil and water conservation practices or

553 measures purchased subject to the restrictions provided in

554 Sections 69-27-331 through 69-27-341. Any purchase by the State

555 Soil and Water Conservation Commission under the exemption  
556 authorized by this subparagraph shall require advance  
557 authorization spread upon the minutes of the commission to include  
558 the listing of the item or items authorized to be purchased and  
559 the maximum bid authorized to be paid for each item or items.

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

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

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

581 (xxxii) **Design-build method or the design-build**  
582 **bridging method of contracting.** Contracts entered into under the  
583 provisions of Section 31-11-3(9).

584 (n) **Term contract authorization.** All contracts for the  
585 purchase of:

586 (i) All contracts for the purchase of commodities,  
587 equipment and public construction (including, but not limited to,

588 repair and maintenance), may be let for periods of not more than  
589 sixty (60) months in advance, subject to applicable statutory  
590 provisions prohibiting the letting of contracts during specified  
591 periods near the end of terms of office. Term contracts for a  
592 period exceeding twenty-four (24) months shall also be subject to  
593 ratification or cancellation by governing authority boards taking  
594 office subsequent to the governing authority board entering the  
595 contract.

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

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

620 both such fine and imprisonment. In addition, the claim or claims  
621 submitted shall be forfeited.

622 (p) **Electrical utility petroleum-based equipment**  
623 **purchase procedure.** When in response to a proper advertisement  
624 therefor, no bid firm as to price is submitted to an electric  
625 utility for power transformers, distribution transformers, power  
626 breakers, reclosers or other articles containing a petroleum  
627 product, the electric utility may accept the lowest and best bid  
628 therefor although the price is not firm.

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

651 (r) **Solid waste contract proposal procedure.** Before  
652 entering into any contract for garbage collection or disposal,

653 contract for solid waste collection or disposal or contract for  
654 sewage collection or disposal, which involves an expenditure of  
655 more than Fifty Thousand Dollars (\$50,000.00), a governing  
656 authority or agency shall issue publicly a request for proposals  
657 concerning the specifications for such services which shall be  
658 advertised for in the same manner as provided in this section for  
659 seeking bids for purchases which involve an expenditure of more  
660 than the amount provided in paragraph (c) of this section. Any  
661 request for proposals when issued shall contain terms and  
662 conditions relating to price, financial responsibility,  
663 technology, legal responsibilities and other relevant factors as  
664 are determined by the governing authority or agency to be  
665 appropriate for inclusion; all factors determined relevant by the  
666 governing authority or agency or required by this paragraph (r)  
667 shall be duly included in the advertisement to elicit proposals.  
668 After responses to the request for proposals have been duly  
669 received, the governing authority or agency shall select the most  
670 qualified proposal or proposals on the basis of price, technology  
671 and other relevant factors and from such proposals, but not  
672 limited to the terms thereof, negotiate and enter contracts with  
673 one or more of the persons or firms submitting proposals. If the  
674 governing authority or agency deems none of the proposals to be  
675 qualified or otherwise acceptable, the request for proposals  
676 process may be reinitiated. Notwithstanding any other provisions  
677 of this paragraph, where a county with at least thirty-five  
678 thousand (35,000) nor more than forty thousand (40,000)  
679 population, according to the 1990 federal decennial census, owns  
680 or operates a solid waste landfill, the governing authorities of  
681 any other county or municipality may contract with the governing  
682 authorities of the county owning or operating the landfill,  
683 pursuant to a resolution duly adopted and spread upon the minutes  
684 of each governing authority involved, for garbage or solid waste  
685 collection or disposal services through contract negotiations.

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

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

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

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

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

714                   (t) **Construction punch list restriction.** The  
715 architect, engineer or other representative designated by the  
716 agency or governing authority that is contracting for public  
717 construction or renovation may prepare and submit to the  
718 contractor only one (1) preliminary punch list of items that do

719 not meet the contract requirements at the time of substantial  
720 completion and one (1) final list immediately before final  
721 completion and final payment.

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

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