

By: Representative Robinson (63rd)

To: Appropriations

HOUSE BILL NO. 858

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

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

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

57 (c) **Bidding procedure for purchases over \$25,000.00.**

58 (i) **Publication requirement.**

59 1. Purchases which involve an expenditure of
60 more than Twenty-five Thousand Dollars (\$25,000.00), exclusive of
61 freight and shipping charges, may be made from the lowest and best

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

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

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

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

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

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

124 (iv) **Specification restrictions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

586 (n) **Term contract authorization.** All contracts for the
587 purchase of:

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

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

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

621 or by imprisonment for thirty (30) days in the county jail, or
622 both such fine and imprisonment. In addition, the claim or claims
623 submitted shall be forfeited.

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

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

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

686 of each governing authority involved, for garbage or solid waste
687 collection or disposal services through contract negotiations.

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

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

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

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

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

716 (t) **Construction punch list restriction.** The
717 architect, engineer or other representative designated by the
718 agency or governing authority that is contracting for public

719 construction or renovation may prepare and submit to the
720 contractor only one (1) preliminary punch list of items that do
721 not meet the contract requirements at the time of substantial
722 completion and one (1) final list immediately before final
723 completion and final payment.

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

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