

By: Representative Brown

To: Appropriations

HOUSE BILL NO. 1070

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE AUTHORITY UNDER THE PUBLIC PURCHASING LAWS FOR STATE
3 AGENCIES AND LOCAL GOVERNING AUTHORITIES TO NEGOTIATE WITH THE
4 LOWEST BIDDER IN ORDER TO ENTER INTO A CONTRACT FOR AN AMOUNT
5 WITHIN THE FUNDS ALLOCATED FOR A PROJECT; AND FOR RELATED
6 PURPOSES.

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

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

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

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

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

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

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

60 (i) **Publication requirement.**

61 1. Purchases which involve an expenditure of
62 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of

63 freight and shipping charges, may be made from the lowest and best
64 bidder after advertising for competitive bids once each week for
65 two (2) consecutive weeks in a regular newspaper published in the
66 county or municipality in which such agency or governing authority
67 is located.

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

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

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

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

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

126 (iv) **Specification restrictions.**

127 1. Specifications pertinent to such bidding
128 shall be written so as not to exclude comparable equipment of

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

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

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

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

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

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

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

186 (iii) * * * **Project negotiations authority.** If
187 the lowest and best bid is * * * more than ten percent (10%) above
188 the amount of funds allocated for a * * * project, then the agency
189 or governing authority shall be permitted to negotiate with the
190 lowest bidder in order to enter into a contract for an amount not
191 to exceed the funds allocated, after obtaining approval from the
192 Executive Director of the Department of Finance and
193 Administration.

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

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

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

251 (g) **Construction contract change authorization.** In the
252 event a determination is made by an agency or governing authority
253 after a construction contract is let that changes or modifications
254 to the original contract are necessary or would better serve the
255 purpose of the agency or the governing authority, such agency or
256 governing authority may, in its discretion, order such changes
257 pertaining to the construction that are necessary under the
258 circumstances without the necessity of further public bids;
259 provided that such change shall be made in a commercially

260 reasonable manner and shall not be made to circumvent the public
261 purchasing statutes. In addition to any other authorized person,
262 the architect or engineer hired by an agency or governing
263 authority with respect to any public construction contract shall
264 have the authority, when granted by an agency or governing
265 authority, to authorize changes or modifications to the original
266 contract without the necessity of prior approval of the agency or
267 governing authority when any such change or modification is less
268 than one percent (1%) of the total contract amount. The agency or
269 governing authority may limit the number, manner or frequency of
270 such emergency changes or modifications.

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

288 (i) **Road construction petroleum products price**
289 **adjustment clause authorization.** Any agency or governing
290 authority authorized to enter into contracts for the construction,
291 maintenance, surfacing or repair of highways, roads or streets,
292 may include in its bid proposal and contract documents a price

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

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

326 statement explaining the conditions and circumstances of the
327 emergency, which shall include a detailed description of the
328 events leading up to the situation and the negative impact to the
329 entity if the purchase is made following the statutory
330 requirements set forth in paragraph (a), (b) or (c) of this
331 section, and (ii) a certified copy of the appropriate minutes of
332 the board of such agency, if applicable. On or before September 1
333 of each year, the State Auditor shall prepare and deliver to the
334 Senate Fees, Salaries and Administration Committee, the House Fees
335 and Salaries of Public Officers Committee and the Joint
336 Legislative Budget Committee a report containing a list of all
337 state agency emergency purchases and supporting documentation for
338 each emergency purchase.

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

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

357 (l) **Hospital purchase, lease-purchase and lease**
358 **authorization.**

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

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

380 (m) **Exceptions from bidding requirements.** Excepted
381 from bid requirements are:

382 (i) **Purchasing agreements approved by department.**
383 Purchasing agreements, contracts and maximum price regulations
384 executed or approved by the Department of Finance and
385 Administration.

386 (ii) **Outside equipment repairs.** Repairs to
387 equipment, when such repairs are made by repair facilities in the
388 private sector; however, engines, transmissions, rear axles and/or
389 other such components shall not be included in this exemption when
390 replaced as a complete unit instead of being repaired and the need
391 for such total component replacement is known before disassembly

392 of the component; however, invoices identifying the equipment,
393 specific repairs made, parts identified by number and name,
394 supplies used in such repairs, and the number of hours of labor
395 and costs therefor shall be required for the payment for such
396 repairs.

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

403 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
404 of gravel or fill dirt which are to be removed and transported by
405 the purchaser.

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

417 (vi) **Intergovernmental sales and transfers.**
418 Purchases, sales, transfers or trades by governing authorities or
419 state agencies when such purchases, sales, transfers or trades are
420 made by a private treaty agreement or through means of
421 negotiation, from any federal agency or authority, another
422 governing authority or state agency of the State of Mississippi,
423 or any state agency or governing authority of another state.
424 Nothing in this section shall permit such purchases through public

425 auction except as provided for in subparagraph (v) of this
426 section. It is the intent of this section to allow governmental
427 entities to dispose of and/or purchase commodities from other
428 governmental entities at a price that is agreed to by both
429 parties. This shall allow for purchases and/or sales at prices
430 which may be determined to be below the market value if the
431 selling entity determines that the sale at below market value is
432 in the best interest of the taxpayers of the state. Governing
433 authorities shall place the terms of the agreement and any
434 justification on the minutes, and state agencies shall obtain
435 approval from the Department of Finance and Administration, prior
436 to releasing or taking possession of the commodities.

437 (vii) **Perishable supplies or food.** Perishable
438 supplies or food purchased for use in connection with hospitals,
439 the school lunch programs, homemaking programs and for the feeding
440 of county or municipal prisoners.

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

455 (ix) **Waste disposal facility construction**
456 **contracts.** Construction of incinerators and other facilities for
457 disposal of solid wastes in which products either generated

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

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

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

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

491 (xiii) **Municipal electrical utility system fuel.**

492 Purchases of coal and/or natural gas by municipally-owned electric
493 power generating systems that have the capacity to use both coal
494 and natural gas for the generation of electric power.

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

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

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

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

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

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

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

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

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

522 of surveillance equipment or any other high-tech equipment to be
523 used by law enforcement agents in undercover operations, provided

524 that any such purchase shall be in compliance with regulations
525 established by the Department of Finance and Administration.

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

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

535 (xxii) **Garbage, solid waste and sewage contracts.**
536 Contracts for garbage collection or disposal, contracts for solid
537 waste collection or disposal and contracts for sewage collection
538 or disposal.

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

545 (xxiv) **Purchases of Mississippi Industries for the**
546 **Blind products.** Purchases made by state agencies or governing
547 authorities involving any item that is manufactured, processed or
548 produced by the Mississippi Industries for the Blind.

549 (xxv) **Purchases of state-adopted textbooks.**
550 Purchases of state-adopted textbooks by public school districts.

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

554 (xxvii) **Used heavy or specialized machinery or**
555 **equipment for installation of soil and water conservation**
556 **practices purchased at auction.** Used heavy or specialized

557 machinery or equipment used for the installation and
558 implementation of soil and water conservation practices or
559 measures purchased subject to the restrictions provided in
560 Sections 69-27-331 through 69-27-341. Any purchase by the State
561 Soil and Water Conservation Commission under the exemption
562 authorized by this subparagraph shall require advance
563 authorization spread upon the minutes of the commission to include
564 the listing of the item or items authorized to be purchased and
565 the maximum bid authorized to be paid for each item or items.

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

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

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

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

590 (n) **Term contract authorization.** All contracts for the
591 purchase of:

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

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

613 (o) **Purchase law violation prohibition and vendor**
614 **penalty.** No contract or purchase as herein authorized shall be
615 made for the purpose of circumventing the provisions of this
616 section requiring competitive bids, nor shall it be lawful for any
617 person or concern to submit individual invoices for amounts within
618 those authorized for a contract or purchase where the actual value
619 of the contract or commodity purchased exceeds the authorized
620 amount and the invoices therefor are split so as to appear to be
621 authorized as purchases for which competitive bids are not
622 required. Submission of such invoices shall constitute a

623 misdemeanor punishable by a fine of not less than Five Hundred
624 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
625 or by imprisonment for thirty (30) days in the county jail, or
626 both such fine and imprisonment. In addition, the claim or claims
627 submitted shall be forfeited.

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

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

655 systems under the terms of a state contract established by the
656 Office of Purchasing and Travel.

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

688 authorities of the county owning or operating the landfill,
689 pursuant to a resolution duly adopted and spread upon the minutes
690 of each governing authority involved, for garbage or solid waste
691 collection or disposal services through contract negotiations.

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

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

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

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

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

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

728 (u) **Purchase authorization clarification.** Nothing in
729 this section shall be construed as authorizing any purchase not
730 authorized by law.

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