

By: Representative Brown

To: Appropriations

HOUSE BILL NO. 1070  
(As Passed the House)

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 not 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. If the lowest and best bid is more*  
192 *than ten percent (10%) above the amount of funds allocated for a*  
193 *project, then the agency or governing authority shall be permitted*  
194 *to negotiate with the lowest bidder in order to enter into a*

195 contract for an amount not to exceed the funds allocated, after  
196 obtaining approval from the Executive Director of the Department  
197 of Finance and Administration.

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

228 agreement may contain under the provisions of Section 31-7-10(5),  
229 and shall contain an annual allocation dependency clause  
230 substantially similar to that set forth in Section 31-7-10(8).  
231 Each agency or governing authority entering into a lease-purchase  
232 transaction pursuant to this paragraph (e) shall maintain with  
233 respect to each such lease-purchase transaction the same  
234 information as required to be maintained by the Department of  
235 Finance and Administration pursuant to Section 31-7-10(13).  
236 However, nothing contained in this section shall be construed to  
237 permit agencies to acquire items of equipment with a total  
238 acquisition cost in the aggregate of less than Ten Thousand  
239 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
240 equipment, and the purchase thereof by any lessor, acquired by  
241 lease-purchase under this paragraph and all lease-purchase  
242 payments with respect thereto shall be exempt from all Mississippi  
243 sales, use and ad valorem taxes. Interest paid on any  
244 lease-purchase agreement under this section shall be exempt from  
245 State of Mississippi income taxation.

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

255           (g) **Construction contract change authorization.** In the  
256 event a determination is made by an agency or governing authority  
257 after a construction contract is let that changes or modifications  
258 to the original contract are necessary or would better serve the  
259 purpose of the agency or the governing authority, such agency or  
260 governing authority may, in its discretion, order such changes



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

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

292           (i) **Road construction petroleum products price**  
293 **adjustment clause authorization.** Any agency or governing

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

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

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

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

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

359 board and shall be placed on the minutes of the board of such  
360 governing authority.

361 (1) **Hospital purchase, lease-purchase and lease**  
362 **authorization.**

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

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

384 (m) **Exceptions from bidding requirements.** Excepted  
385 from bid requirements are:

386 (i) **Purchasing agreements approved by department.**  
387 Purchasing agreements, contracts and maximum price regulations  
388 executed or approved by the Department of Finance and  
389 Administration.

390 (ii) **Outside equipment repairs.** Repairs to  
391 equipment, when such repairs are made by repair facilities in the

392 private sector; however, engines, transmissions, rear axles and/or  
393 other such components shall not be included in this exemption when  
394 replaced as a complete unit instead of being repaired and the need  
395 for such total component replacement is known before disassembly  
396 of the component; however, invoices identifying the equipment,  
397 specific repairs made, parts identified by number and name,  
398 supplies used in such repairs, and the number of hours of labor  
399 and costs therefor shall be required for the payment for such  
400 repairs.

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

407                   (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
408 of gravel or fill dirt which are to be removed and transported by  
409 the purchaser.

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

421                   (vi) **Intergovernmental sales and transfers.**  
422 Purchases, sales, transfers or trades by governing authorities or  
423 state agencies when such purchases, sales, transfers or trades are  
424 made by a private treaty agreement or through means of

425 negotiation, from any federal agency or authority, another  
426 governing authority or state agency of the State of Mississippi,  
427 or any state agency or governing authority of another state.  
428 Nothing in this section shall permit such purchases through public  
429 auction except as provided for in subparagraph (v) of this  
430 section. It is the intent of this section to allow governmental  
431 entities to dispose of and/or purchase commodities from other  
432 governmental entities at a price that is agreed to by both  
433 parties. This shall allow for purchases and/or sales at prices  
434 which may be determined to be below the market value if the  
435 selling entity determines that the sale at below market value is  
436 in the best interest of the taxpayers of the state. Governing  
437 authorities shall place the terms of the agreement and any  
438 justification on the minutes, and state agencies shall obtain  
439 approval from the Department of Finance and Administration, prior  
440 to releasing or taking possession of the commodities.

441           (vii) **Perishable supplies or food.** Perishable  
442 supplies or food purchased for use in connection with hospitals,  
443 the school lunch programs, homemaking programs and for the feeding  
444 of county or municipal prisoners.

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

457 obtain the approval of the Department of Finance and  
458 Administration.

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

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

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

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

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

499                   (xiv) **Library books and other reference materials.**  
500 Purchases by libraries or for libraries of books and periodicals;  
501 processed film, video cassette tapes, filmstrips and slides;  
502 recorded audio tapes, cassettes and diskettes; and any such items  
503 as would be used for teaching, research or other information  
504 distribution; however, equipment such as projectors, recorders,  
505 audio or video equipment, and monitor televisions are not exempt  
506 under this subparagraph.

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

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

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



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

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

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

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

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

539 (xxii) **Garbage, solid waste and sewage contracts.**  
540 Contracts for garbage collection or disposal, contracts for solid  
541 waste collection or disposal and contracts for sewage collection  
542 or disposal.

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

549 (xxiv) **Purchases of Mississippi Industries for the**  
550 **Blind products.** Purchases made by state agencies or governing  
551 authorities involving any item that is manufactured, processed or  
552 produced by the Mississippi Industries for the Blind.

553                    (xxv)    **Purchases of state-adopted textbooks.**  
554 Purchases of state-adopted textbooks by public school districts.

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

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

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

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

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

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

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

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

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

617                   (o) **Purchase law violation prohibition and vendor**  
618 **penalty.** No contract or purchase as herein authorized shall be  
619 made for the purpose of circumventing the provisions of this  
620 section requiring competitive bids, nor shall it be lawful for any  
621 person or concern to submit individual invoices for amounts within  
622 those authorized for a contract or purchase where the actual value  
623 of the contract or commodity purchased exceeds the authorized  
624 amount and the invoices therefor are split so as to appear to be  
625 authorized as purchases for which competitive bids are not  
626 required. Submission of such invoices shall constitute a  
627 misdemeanor punishable by a fine of not less than Five Hundred  
628 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
629 or by imprisonment for thirty (30) days in the county jail, or  
630 both such fine and imprisonment. In addition, the claim or claims  
631 submitted shall be forfeited.

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

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

650 but not be limited to, publications of a request for proposals and  
651 letters soliciting negotiations and bids. For purposes of this  
652 paragraph (q), a fuel management or fuel access system is an  
653 automated system of acquiring fuel for vehicles as well as  
654 management reports detailing fuel use by vehicles and drivers, and  
655 the term "competitive written bid" shall have the meaning as  
656 defined in paragraph (b) of this section. Governing authorities  
657 and agencies shall be exempt from this process when contracting  
658 for the services and products of a fuel management or fuel access  
659 systems under the terms of a state contract established by the  
660 Office of Purchasing and Travel.

661 (r) **Solid waste contract proposal procedure.** Before  
662 entering into any contract for garbage collection or disposal,  
663 contract for solid waste collection or disposal or contract for  
664 sewage collection or disposal, which involves an expenditure of  
665 more than Fifty Thousand Dollars (\$50,000.00), a governing  
666 authority or agency shall issue publicly a request for proposals  
667 concerning the specifications for such services which shall be  
668 advertised for in the same manner as provided in this section for  
669 seeking bids for purchases which involve an expenditure of more  
670 than the amount provided in paragraph (c) of this section. Any  
671 request for proposals when issued shall contain terms and  
672 conditions relating to price, financial responsibility,  
673 technology, legal responsibilities and other relevant factors as  
674 are determined by the governing authority or agency to be  
675 appropriate for inclusion; all factors determined relevant by the  
676 governing authority or agency or required by this paragraph (r)  
677 shall be duly included in the advertisement to elicit proposals.  
678 After responses to the request for proposals have been duly  
679 received, the governing authority or agency shall select the most  
680 qualified proposal or proposals on the basis of price, technology  
681 and other relevant factors and from such proposals, but not  
682 limited to the terms thereof, negotiate and enter contracts with

683 one or more of the persons or firms submitting proposals. If the  
684 governing authority or agency deems none of the proposals to be  
685 qualified or otherwise acceptable, the request for proposals  
686 process may be reinitiated. Notwithstanding any other provisions  
687 of this paragraph, where a county with at least thirty-five  
688 thousand (35,000) nor more than forty thousand (40,000)  
689 population, according to the 1990 federal decennial census, owns  
690 or operates a solid waste landfill, the governing authorities of  
691 any other county or municipality may contract with the governing  
692 authorities of the county owning or operating the landfill,  
693 pursuant to a resolution duly adopted and spread upon the minutes  
694 of each governing authority involved, for garbage or solid waste  
695 collection or disposal services through contract negotiations.

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

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

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

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

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

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

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

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