

By: Representative Watson

To: Appropriations

HOUSE BILL NO. 1107

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 CHANGE THE ENTITY TO WHICH STATE AGENCIES AND LOCAL GOVERNING
3 AUTHORITIES ARE TO PROVIDE NOTICE OF THEIR PROPOSED PURCHASES FROM
4 THE MISSISSIPPI CONTRACT PROCUREMENT CENTER TO THE MISSISSIPPI
5 PROCUREMENT TECHNICAL ASSISTANCE PROGRAM; 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 * * * Procurement Technical Assistance Program of the
100 Mississippi Development Authority that contains the same
101 information as that in the published notice.

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

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

127 (iv) **Specification restrictions.**

128 1. Specifications pertinent to such bidding
129 shall be written so as not to exclude comparable equipment of
130 domestic manufacture. However, if valid justification is
131 presented, the Department of Finance and Administration or the
132 board of a governing authority may approve a request for specific
133 equipment necessary to perform a specific job. Further, such
134 justification, when placed on the minutes of the board of a
135 governing authority, may serve as authority for that governing
136 authority to write specifications to require a specific item of
137 equipment needed to perform a specific job. In addition to these
138 requirements, from and after July 1, 1990, vendors of relocatable
139 classrooms and the specifications for the purchase of such
140 relocatable classrooms published by local school boards shall meet
141 all pertinent regulations of the State Board of Education,
142 including prior approval of such bid by the State Department of
143 Education.

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

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

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

156 (i) **Decision procedure.** Purchases may be made
157 from the lowest and best bidder. In determining the lowest and
158 best bid, freight and shipping charges shall be included.
159 Life-cycle costing, total cost bids, warranties, guaranteed
160 buy-back provisions and other relevant provisions may be included

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

520 (xix) **Undercover operations equipment.** Purchases
521 of surveillance equipment or any other high-tech equipment to be
522 used by law enforcement agents in undercover operations, provided

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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