

By: Senator(s) Horhn

To: Finance

## SENATE BILL NO. 2378

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 REQUIRE THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO SET ASIDE  
3 20% OF THE AMOUNT EXPENDED FOR ANY PUBLIC CONSTRUCTION PROJECT  
4 THAT THE DEPARTMENT MANAGES, NOT TO EXCEED \$5,000,000.00, TO SMALL  
5 CONTRACTORS; TO AWARD SUCH SET-ASIDE CONTRACTS TO THE LOWEST AND  
6 BEST SMALL CONTRACTOR BIDDER; TO DEFINE THE TERM "SMALL  
7 CONTRACTOR"; AND FOR RELATED PURPOSES.

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

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

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

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

25 (b) **Bidding procedure for purchases over \$3,500.00 but**  
26 **not over \$15,000.00.** Purchases which involve an expenditure of  
27 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
28 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
29 freight and shipping charges may be made from the lowest and best

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

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

61 (i) **Publication requirement.**

62                   1. Purchases which involve an expenditure of  
63 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
64 freight and shipping charges, may be made from the lowest and best  
65 bidder after advertising for competitive bids once each week for  
66 two (2) consecutive weeks in a regular newspaper published in the  
67 county or municipality in which such agency or governing authority  
68 is located.

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

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

95 newspaper having a general circulation in the county or  
96 municipality in the above provided manner. On the same date that  
97 the notice is submitted to the newspaper for publication, the  
98 agency or governing authority involved shall mail written notice  
99 to, or provide electronic notification to the main office of the  
100 Mississippi Contract Procurement Center 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           (v) **Small contractor set-aside requirement.**  
731 Notwithstanding any provision of this section to the contrary, the  
732 Department of Finance and Administration shall set aside twenty  
733 percent (20%) of the amount expended for any public construction  
734 project that such department manages, not to exceed Five Million  
735 Dollars (\$5,000,000.00), for small contractors. The set-aside  
736 portion of such contract shall comply with regulations promulgated  
737 by the Department of Finance and Administration and shall be  
738 subject to bid requirements under this section. Set-aside  
739 contracts for which competitive bids are required shall be made  
740 from the lowest and best small contractor bidder. For purposes of  
741 this paragraph, the term "small contractor" means a contractor  
742 whose bonding capacity, as determined by the Department of Finance  
743 and Administration, does not exceed Five Million Dollars  
744 (\$5,000,000.00).

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