

By: Senator(s) Robertson

To: Fees, Salaries and Administration

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2572

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 CHANGE THE NAME OF THE OFFICE TO WHICH AN AGENCY OR GOVERNING
3 AUTHORITY MUST PROVIDE NOTICE OF PURCHASES WHICH INVOLVE AN
4 EXPENDITURE OF MORE THAN \$15,000.00 FROM THE MISSISSIPPI CONTRACT
5 PROCUREMENT CENTER TO THE MISSISSIPPI PROCUREMENT TECHNICAL
6 ASSISTANCE PROGRAM; TO AMEND SECTION 31-7-14, MISSISSIPPI CODE OF
7 1972, TO AUTHORIZE PUBLIC ENTITIES TO AMEND OR SUPPLEMENT ENERGY
8 SERVICES CONTRACTS WITHOUT FURTHER ISSUANCE OF REQUESTS FOR
9 PROPOSALS IF ADDITIONAL ENERGY SERVICES WILL RESULT IN ACTUAL COST
10 SAVINGS; AND FOR RELATED PURPOSES.

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

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

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

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

28 (b) **Bidding procedure for purchases over \$3,500.00 but**
29 **not over \$15,000.00.** Purchases which involve an expenditure of
30 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
31 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of

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

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

64 (i) **Publication requirement.**

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

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

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

98 newspaper having a general circulation in the county or
99 municipality in the above provided manner. On the same date that
100 the notice is submitted to the newspaper for publication, the
101 agency or governing authority involved shall mail written notice
102 to, or provide electronic notification to the main office of the
103 Mississippi Procurement Technical Assistance Program under the
104 Mississippi Development Authority that contains the same
105 information as that in the published notice.

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

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

131 (iv) **Specification restrictions.**

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

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

156 (v) Agencies and governing authorities may
157 establish secure procedures by which bids may be submitted via
158 electronic means.

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

160 (i) **Decision procedure.** Purchases may be made
161 from the lowest and best bidder. In determining the lowest and
162 best bid, freight and shipping charges shall be included.

163 Life-cycle costing, total cost bids, warranties, guaranteed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

360 (l) **Hospital purchase, lease-purchase and lease**
361 **authorization.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

557 (xxvii) **Used heavy or specialized machinery or**
558 **equipment for installation of soil and water conservation**
559 **practices purchased at auction.** Used heavy or specialized

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

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

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

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

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

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

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

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

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

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

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

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

658 systems under the terms of a state contract established by the
659 Office of Purchasing and Travel.

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

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

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

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

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

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

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

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

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

734 **SECTION 2.** Section 31-7-14, Mississippi Code of 1972, is
735 amended as follows:

736 31-7-14. (1) (a) For purposes of this section, the
737 following words and phrases shall have the meaning ascribed
738 herein, unless the context clearly indicates otherwise:

739 (i) "Division" means the Energy Division of the
740 Mississippi Development Authority.

741 (ii) "Energy services" or "energy efficient
742 services" means energy efficiency equipment, services relating to
743 the installation, operation and maintenance of equipment and
744 improvements reasonably required to existing or new equipment and
745 existing or new improvements and facilities including, but not
746 limited to, heating, ventilation and air conditioning systems,
747 lighting, windows, insulation and energy management controls, life
748 safety measures that provide long-term, operating-cost reductions,
749 building operation programs that reduce operating costs, other
750 energy-conservation-related improvements, including improvements
751 or equipment related to renewable energy, water and other natural
752 resources conservation, including accuracy and measurement of
753 water distribution and/or consumption, and other equipment,
754 services and improvements providing energy efficiency as
755 determined by the division.

756 (iii) "Energy performance contract" means an
757 agreement to provide energy services which include, but are not
758 limited to, the design, installation, financing and maintenance or
759 management of the energy systems or equipment in order to improve
760 its energy efficiency. The energy savings are guaranteed by the
761 performance contractor and savings from energy, operations,
762 maintenance and other cost-avoidance measures can be used to repay
763 the cost of the project.

764 (iv) "Energy services contract" means an agreement
765 to provide energy services which include, but are not limited to,
766 the design, installation, financing and maintenance or management
767 of the energy systems or equipment in order to improve its energy
768 efficiency. Payments for the contract are not contingent upon the
769 actual savings realized from the equipment.

770 (v) "Entity" means the board of trustees of any
771 public school district, junior college, institution of higher
772 learning, publicly-owned hospital, state agency or governing
773 authority of this chapter.

774 (vi) "Shared savings contract" means an agreement
775 where the contractor and the entity each receive a preagreed
776 percentage or dollar value of the energy cost savings over the
777 life of the contract.

778 (vii) "Reduce operating costs" means elimination
779 of future expenses or avoidance of future replacement expenditures
780 as a result of new equipment installed or services performed. A
781 contract that otherwise satisfies the requirements of this section
782 shall satisfy the requirements allowing use of an energy
783 performance or shared savings contract even if the sole expense
784 being eliminated is maintenance expense.

785 (b) An entity may enter into a lease, energy services
786 contract or lease-purchase contracts for energy efficiency
787 equipment, services relating to the installation, operation and
788 maintenance of equipment or improvements reasonably required to

789 existing or new equipment and existing or new improvements and
790 facilities and shall contract in accordance with the following
791 provisions:

792 (i) An entity shall publicly issue requests for
793 proposals, advertised in the same manner as provided in Section
794 31-7-13 for seeking competitive sealed bids, concerning the
795 provision of energy efficiency services relating to the
796 installation, operation and maintenance of equipment, improvements
797 reasonably required to existing or new equipment and existing or
798 new improvements and facilities or the design, installation,
799 ownership, operation and maintenance of energy efficiency
800 equipment. Those requests for proposals shall contain terms and
801 conditions relating to submission of proposals, evaluation and
802 selection of proposals, financial terms, legal responsibilities,
803 and any other matters as the entity determines to be appropriate
804 for inclusion.

805 (ii) Upon receiving responses to the request for
806 proposals, the entity may select the most qualified proposal or
807 proposals on the basis of experience and qualifications of the
808 proposers, the technical approach, the financial arrangements, the
809 overall benefits to the entity and any other relevant factors
810 determined to be appropriate.

811 (iii) An entity shall negotiate and enter into
812 contracts with the person, persons, firm or firms submitting the
813 proposal selected as the most qualified under this section.

814 (iv) All contracts must contain the following
815 annual allocation dependency clause: The continuation of this
816 contract is contingent upon the appropriation of funds to fulfill
817 the requirements of the contract by the Legislature or other
818 budgeting authority. If the Legislature or other budgeting
819 authority fails to appropriate sufficient monies to provide for
820 the continuation of the contract, the contract shall terminate on
821 the last day of the fiscal year for which appropriations were

822 made. The termination shall be without penalty or expense to the
823 entity of any kind whatsoever, except as to the portions of
824 payments for which funds were appropriated.

825 (v) The annual rate of interest paid under any
826 lease-purchase agreement authorized by this section shall not
827 exceed the maximum interest rate to maturity on general obligation
828 indebtedness permitted under Section 75-17-101.

829 (vi) The maximum lease-purchase term for any
830 equipment acquired under this section shall not exceed the useful
831 life of that equipment as determined according to the upper limit
832 of the asset depreciation range (ADR) guidelines for the Class
833 Life Asset Depreciation Range System established by the Internal
834 Revenue Service under the United States Internal Revenue Code and
835 the regulations thereunder as in effect on December 31, 1980, or
836 comparable depreciation guidelines with respect to any equipment
837 not covered by ADR guidelines.

838 (vii) This subsection shall, with respect to the
839 procurement of energy efficiency services and/or equipment,
840 supersede any contradictory or conflicting provisions of Chapter
841 7, Title 31, Mississippi Code of 1972, and other laws with respect
842 to awarding public contracts.

843 (2) (a) The division may contract with a party selected
844 under this subsection to provide financing to entities and private
845 "nonprofit" hospitals, to purchase energy efficiency equipment,
846 services relating to the installation, operation and maintenance
847 of equipment or improvements reasonably required to existing or
848 new equipment and existing or new improvements and facilities or
849 an energy saving performance contract, energy services contract,
850 or lease-purchase basis. Any energy efficiency lease financing
851 contract entered into by the division before May 15, 1992, shall
852 be valid and binding when the contract was entered into under this
853 subsection.

854 (b) The entities and private "nonprofit" hospitals that
855 decide to contract for energy efficiency equipment, services
856 relating to the installation, operation and maintenance of
857 equipment or improvements reasonably required to existing or new
858 equipment and existing or new improvements and facilities on a
859 lease, energy services contract or lease-purchase basis, may
860 request financial assistance from the division.

861 (c) The provisions of any energy efficiency
862 lease-purchase agreements authorized under this subsection (2)
863 shall comply with the requirements of subsection (1)(b)(iv) and
864 (v) of this section. The term of any energy services performance
865 contract, energy services contract, lease or lease-purchase
866 agreement for energy efficiency services and/or equipment entered
867 into under this section shall not exceed fifteen (15) years.

868 (d) Any entity or private "nonprofit" hospital having
869 approval of the division may borrow money in anticipation of
870 entering into a lease-purchase agreement pursuant to subsection
871 (2)(b) of this section. Any borrowing may be upon terms and
872 conditions as may be agreed upon by the borrowing entity and the
873 party advancing interim funds; however, the principal on any
874 borrowing shall be repaid within a period of time not to exceed
875 one hundred eighty (180) days. In borrowing money under this
876 subparagraph (d), it is not necessary to publish notice of
877 intention to do so or to secure the consent of the qualified
878 electors, either by election or otherwise. Any borrowing may be
879 negotiated between the parties and is not required to be publicly
880 bid, may be evidenced by negotiable notes or lease and shall not
881 be considered when computing any limitation of indebtedness of the
882 borrowing entity established by law. The principal, interest and
883 costs of incurring any borrowing shall not exceed the principal
884 amount of the final contract or agreement approved by the
885 division, and accepted by the borrowing entity, under subsection
886 (2)(b) of this section.

887 (e) This subsection (2) shall, with respect to the
888 procurement of energy efficiency services and/or equipment,
889 supersede the provisions of any contradictory or conflicting
890 provisions of Chapter 7, Title 31, Mississippi Code of 1972, and
891 other laws with respect to awarding public contracts.

892 (3) All lease-purchase agreements authorized by this section
893 and the income from those agreements shall be exempt from all
894 taxation within the State of Mississippi, except gift, transfer
895 and inheritance taxes.

896 (4) (a) An entity may contract for energy efficiency
897 equipment services relating to the installation, operation or
898 maintenance of equipment or improvements reasonably required to
899 existing or new equipment and existing or new improvements and
900 facilities on a shared savings basis or performance basis.

901 (b) If an entity decides to enter into a contract for
902 energy efficiency equipment, services relating to the
903 installation, operation or maintenance of equipment or
904 improvements reasonably required to existing or new equipment and
905 existing or new improvements and facilities on a shared savings
906 basis or performance basis, the entity shall issue a request for
907 proposals or a request for qualifications, as determined necessary
908 by the division, in the same manner as prescribed under subsection
909 (1)(b) of this section. The entity shall notify the division in
910 writing. The final contract shall be approved by the division.

911 (c) The terms of any shared savings or performance
912 contract for efficiency services and/or equipment entered into
913 under this section may not exceed fifteen (15) years.

914 (d) The terms of any shared savings or performance
915 contract entered into under this section must contain a guarantee
916 of savings clause from the company providing energy efficiency
917 equipment services relating to the installation, operation and
918 maintenance of equipment or improvements reasonably required to

919 existing or new equipment and existing or new improvements and
920 facilities.

921 (5) By September 1 of each year, each entity that receives
922 financial assistance through the energy efficiency lease program
923 shall annually report to the division its energy usage by meter in
924 dollars and consumption by fuel type for the previous fiscal year.

925 (6) The contract may be construed to provide flexibility to
926 public agencies in structuring agreements entered into hereunder
927 so that economic benefits may be maximized.

928 (7) If an entity determines after a contract is entered
929 under this section that additional energy services will result in
930 actual cost savings for the entity, then the entity, in its sole
931 discretion, may amend or supplement the contract to obtain such
932 services without further issuance of requests for proposals or
933 other requirements of subsection (1)(b) of this section.

934 **SECTION 3.** This act shall take effect and be in force from
935 and after its passage.