

By: Senator(s) Robertson

To: Fees, Salaries and Administration

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; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

60 (i) **Publication requirement.**

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

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

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

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

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

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

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

126 (iv) **Specification restrictions.**

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

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

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

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

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

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

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

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

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

192 (e) **Lease-purchase authorization.** For the purposes of
193 this section, the term "equipment" shall mean equipment, furniture
194 and, if applicable, associated software and other applicable

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

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

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

249 (g) **Construction contract change authorization.** In the
250 event a determination is made by an agency or governing authority
251 after a construction contract is let that changes or modifications
252 to the original contract are necessary or would better serve the
253 purpose of the agency or the governing authority, such agency or
254 governing authority may, in its discretion, order such changes
255 pertaining to the construction that are necessary under the
256 circumstances without the necessity of further public bids;
257 provided that such change shall be made in a commercially
258 reasonable manner and shall not be made to circumvent the public
259 purchasing statutes. In addition to any other authorized person,
260 the architect or engineer hired by an agency or governing

261 authority with respect to any public construction contract shall
262 have the authority, when granted by an agency or governing
263 authority, to authorize changes or modifications to the original
264 contract without the necessity of prior approval of the agency or
265 governing authority when any such change or modification is less
266 than one percent (1%) of the total contract amount. The agency or
267 governing authority may limit the number, manner or frequency of
268 such emergency changes or modifications.

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

286 (i) **Road construction petroleum products price**
287 **adjustment clause authorization.** Any agency or governing
288 authority authorized to enter into contracts for the construction,
289 maintenance, surfacing or repair of highways, roads or streets,
290 may include in its bid proposal and contract documents a price
291 adjustment clause with relation to the cost to the contractor,
292 including taxes, based upon an industry-wide cost index, of
293 petroleum products including asphalt used in the performance or

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

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

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

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

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

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

357 (i) The commissioners or board of trustees of any
358 public hospital may contract with such lowest and best bidder for
359 the purchase or lease-purchase of any commodity under a contract

360 of purchase or lease-purchase agreement whose obligatory payment
361 terms do not exceed five (5) years.

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

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

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

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

393 and costs therefor shall be required for the payment for such
394 repairs.

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

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

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

415 (vi) **Intergovernmental sales and transfers.**
416 Purchases, sales, transfers or trades by governing authorities or
417 state agencies when such purchases, sales, transfers or trades are
418 made by a private treaty agreement or through means of
419 negotiation, from any federal agency or authority, another
420 governing authority or state agency of the State of Mississippi,
421 or any state agency or governing authority of another state.
422 Nothing in this section shall permit such purchases through public
423 auction except as provided for in subparagraph (v) of this
424 section. It is the intent of this section to allow governmental
425 entities to dispose of and/or purchase commodities from other

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

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

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

453 (ix) **Waste disposal facility construction**
454 **contracts.** Construction of incinerators and other facilities for
455 disposal of solid wastes in which products either generated
456 therein, such as steam, or recovered therefrom, such as materials
457 for recycling, are to be sold or otherwise disposed of; however,
458 in constructing such facilities, a governing authority or agency

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

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

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

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

489 (xiii) **Municipal electrical utility system fuel.**
490 Purchases of coal and/or natural gas by municipally-owned electric

491 power generating systems that have the capacity to use both coal
492 and natural gas for the generation of electric power.

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

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

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

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

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

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

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

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

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

520 of surveillance equipment or any other high-tech equipment to be
521 used by law enforcement agents in undercover operations, provided
522 that any such purchase shall be in compliance with regulations
523 established by the Department of Finance and Administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

611 (o) **Purchase law violation prohibition and vendor**
612 **penalty.** No contract or purchase as herein authorized shall be
613 made for the purpose of circumventing the provisions of this
614 section requiring competitive bids, nor shall it be lawful for any
615 person or concern to submit individual invoices for amounts within
616 those authorized for a contract or purchase where the actual value
617 of the contract or commodity purchased exceeds the authorized
618 amount and the invoices therefor are split so as to appear to be
619 authorized as purchases for which competitive bids are not
620 required. Submission of such invoices shall constitute a
621 misdemeanor punishable by a fine of not less than Five Hundred
622 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),

623 or by imprisonment for thirty (30) days in the county jail, or
624 both such fine and imprisonment. In addition, the claim or claims
625 submitted shall be forfeited.

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

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

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

688 of each governing authority involved, for garbage or solid waste
689 collection or disposal services through contract negotiations.

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

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

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

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

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

718 (t) **Construction punch list restriction.** The
719 architect, engineer or other representative designated by the
720 agency or governing authority that is contracting for public

721 construction or renovation may prepare and submit to the
722 contractor only one (1) preliminary punch list of items that do
723 not meet the contract requirements at the time of substantial
724 completion and one (1) final list immediately before final
725 completion and final payment.

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

729 **SECTION 2.** This act shall take effect and be in force from
730 and after its passage.