

By: Senator(s) Nunnelee

To: Fees, Salaries and Administration

SENATE BILL NO. 2673

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 CHANGE THE THRESHOLD UNDER THE PUBLIC PURCHASING LAW TO REQUIRE  
3 ADVERTISING AND COMPETITIVE SEALED BIDS FOR PURCHASES OVER  
4 \$25,000; AND FOR RELATED PURPOSES.

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

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

8 31-7-13. All agencies and governing authorities shall  
9 purchase their commodities and printing; contract for garbage  
10 collection or disposal; contract for solid waste collection or  
11 disposal; contract for sewage collection or disposal; contract for  
12 public construction; and contract for rentals as herein provided.

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

22 (b) **Bidding procedure for purchases over \$3,500.00 but**  
23 **not over \$15,000.00.** Purchases which involve an expenditure of  
24 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
25 more than Twenty-five Thousand Dollars (\$25,000.00), exclusive of  
26 freight and shipping charges may be made from the lowest and best  
27 bidder without publishing or posting advertisement for bids,  
28 provided at least two (2) competitive written bids have been

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

57 (c) **Bidding procedure for purchases over \$25,000.00.**

58 (i) **Publication requirement.**

59 1. Purchases which involve an expenditure of  
60 more than Twenty-five Thousand Dollars (\$25,000.00), exclusive of  
61 freight and shipping charges, may be made from the lowest and best

62 bidder after advertising for competitive bids once each week for  
63 two (2) consecutive weeks in a regular newspaper published in the  
64 county or municipality in which such agency or governing authority  
65 is located.

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

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

95 agency or governing authority involved shall mail written notice  
96 to, or provide electronic notification to the main office of the  
97 Mississippi Contract Procurement Center that contains the same  
98 information as that in the published notice.

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

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

124           (iv) **Specification restrictions.**

125           1. Specifications pertinent to such bidding  
126 shall be written so as not to exclude comparable equipment of  
127 domestic manufacture. However, if valid justification is

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

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

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

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

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

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

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

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

190                   (e) **Lease-purchase authorization.** For the purposes of  
191 this section, the term "equipment" shall mean equipment, furniture  
192 and, if applicable, associated software and other applicable  
193 direct costs associated with the acquisition. Any lease-purchase

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

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

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

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

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

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

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

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

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

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

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

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

353 (l) **Hospital purchase, lease-purchase and lease**  
354 **authorization.**

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

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

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

376 (m) **Exceptions from bidding requirements.** Excepted  
377 from bid requirements are:

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

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

391 and costs therefor shall be required for the payment for such  
392 repairs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

545                   (xxv) **Purchases of state-adopted textbooks.**  
546 Purchases of state-adopted textbooks by public school districts.

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

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

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

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

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

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

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

586 (n) **Term contract authorization.** All contracts for the  
587 purchase of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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