

By: Representative Lamar

To: County Affairs

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1506

1 AN ACT TO AMEND SECTION 17-17-5, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE BOARDS OF SUPERVISORS AND MUNICIPAL GOVERNING
3 AUTHORITIES TO EXTEND CONTRACTS RELATED TO SOLID WASTES FOR AN
4 ADDITIONAL FOUR YEARS WITHOUT REBIDDING IF SUCH CONTRACTS DO NOT
5 HAVE ANY ADDITIONAL INCREASE, OTHER THAN INFLATIONARY INCREASE, OR
6 SERVICE CHANGE; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF
7 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 17-17-5, Mississippi Code of 1972,
10 is amended as follows:

11 17-17-5. (1) After December 31, 1992, the board of
12 supervisors and/or municipal governing body shall provide for the
13 collection and disposal of garbage and the disposal of rubbish.
14 The board of supervisors and/or municipal governing body may
15 provide such collection or disposal services by contract with
16 private or other controlling agencies, and the service may include
17 house-to-house service or the placement of regularly serviced and
18 controlled bulk refuse receptacles within reasonable distance from
19 the farthest affected household, and the wastes disposed of in a
20 manner acceptable to the department and within the meaning of this



21 chapter. The board of supervisors and/or municipal governing body
22 shall have the power to and are hereby authorized to enter into
23 contracts related in any manner to the collection and
24 transportation of solid wastes for a term of up to six (6) years,
25 with the option to extend the contract for an additional four (4)
26 years without a rebid for contracts that have no additional
27 increase, other than inflationary increase, or service charge, and
28 to enter into contracts related in any manner to the generation
29 and sale of energy generated from solid waste, and contracts for
30 treatment, processing, distribution, recycling, elimination or
31 disposal of solid wastes for a term of up to thirty (30) years.
32 The municipal governing body of any municipality is authorized to
33 regulate the disposal of garbage and rubbish in sanitary
34 landfills, as provided in Section 21-19-1 * * *.

35 (2) In the event an unincorporated area which is annexed by
36 a municipality is being provided collection and disposal of
37 garbage and rubbish under contract with private or other
38 controlling agencies, the municipality shall annex the area
39 subject to the contract for the remainder of the term of the
40 contract, but not to exceed five (5) years.

41 **SECTION 2.** Section 31-7-13, Mississippi Code of 1972, is
42 amended as follows:

43 31-7-13. All agencies and governing authorities shall
44 purchase their commodities and printing; contract for garbage
45 collection or disposal; contract for solid waste collection or



46 disposal; contract for sewage collection or disposal; contract for
47 public construction; and contract for rentals as herein provided.

48 (a) **Bidding procedure for purchases not over \$5,000.00.**

49 Purchases which do not involve an expenditure of more than Five
50 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
51 charges, may be made without advertising or otherwise requesting
52 competitive bids. However, nothing contained in this paragraph

53 (a) shall be construed to prohibit any agency or governing
54 authority from establishing procedures which require competitive
55 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

56 (b) **Bidding procedure for purchases over \$5,000.00 but
57 not over \$50,000.00.** Purchases which involve an expenditure of

58 more than Five Thousand Dollars (\$5,000.00) but not more than
59 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
60 shipping charges may be made from the lowest and best bidder
61 without publishing or posting advertisement for bids, provided at
62 least two (2) competitive written bids have been obtained. Any
63 state agency or community/junior college purchasing commodities or
64 procuring construction pursuant to this paragraph (b) may
65 authorize its purchasing agent, or his designee, to accept the
66 lowest competitive written bid under Fifty Thousand Dollars
67 (\$50,000.00). Any governing authority purchasing commodities
68 pursuant to this paragraph (b) may authorize its purchasing agent,
69 or his designee, with regard to governing authorities other than
70 counties, or its purchase clerk, or his designee, with regard to



71 counties, to accept the lowest and best competitive written bid.
72 Such authorization shall be made in writing by the governing
73 authority and shall be maintained on file in the primary office of
74 the agency and recorded in the official minutes of the governing
75 authority, as appropriate. The purchasing agent or the purchase
76 clerk, or their designee, as the case may be, and not the
77 governing authority, shall be liable for any penalties and/or
78 damages as may be imposed by law for any act or omission of the
79 purchasing agent or purchase clerk, or their designee,
80 constituting a violation of law in accepting any bid without
81 approval by the governing authority. The term "competitive
82 written bid" shall mean a bid submitted on a bid form furnished by
83 the buying agency or governing authority and signed by authorized
84 personnel representing the vendor, or a bid submitted on a
85 vendor's letterhead or identifiable bid form and signed by
86 authorized personnel representing the vendor. "Competitive" shall
87 mean that the bids are developed based upon comparable
88 identification of the needs and are developed independently and
89 without knowledge of other bids or prospective bids. Any bid item
90 for construction in excess of Five Thousand Dollars (\$5,000.00)
91 shall be broken down by components to provide detail of component
92 description and pricing. These details shall be submitted with
93 the written bids and become part of the bid evaluation criteria.
94 Bids may be submitted by facsimile, electronic mail or other
95 generally accepted method of information distribution. Bids



96 submitted by electronic transmission shall not require the
97 signature of the vendor's representative unless required by
98 agencies or governing authorities.

99 (c) **Bidding procedure for purchases over \$50,000.00.**

100 (i) **Publication requirement.**

101 1. Purchases which involve an expenditure of
102 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
103 freight and shipping charges, may be made from the lowest and best
104 bidder after advertising for competitive bids once each week for
105 two (2) consecutive weeks in a regular newspaper published in the
106 county or municipality in which such agency or governing authority
107 is located. However, all American Recovery and Reinvestment Act
108 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
109 shall be bid. All references to American Recovery and
110 Reinvestment Act projects in this section shall not apply to
111 programs identified in Division B of the American Recovery and
112 Reinvestment Act.

113 2. The purchasing entity may designate the
114 method by which the bids will be received, including, but not
115 limited to, bids sealed in an envelope, bids received
116 electronically in a secure system, bids received via a reverse
117 auction, or bids received by any other method that promotes open
118 competition and has been approved by the Office of Purchasing and
119 Travel. However, reverse auction shall not be used for any public



120 contract for design or construction of public facilities,
121 including buildings, roads and bridges.

122 3. The date as published for the bid opening
123 shall not be less than seven (7) working days after the last
124 published notice; however, if the purchase involves a construction
125 project in which the estimated cost is in excess of Fifty Thousand
126 Dollars (\$50,000.00), such bids shall not be opened in less than
127 fifteen (15) working days after the last notice is published and
128 the notice for the purchase of such construction shall be
129 published once each week for two (2) consecutive weeks. However,
130 all American Recovery and Reinvestment Act projects in excess of
131 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
132 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
133 under the American Recovery and Reinvestment Act, publication
134 shall be made one (1) time and the bid opening for construction
135 projects shall not be less than ten (10) working days after the
136 date of the published notice. The notice of intention to let
137 contracts or purchase equipment shall state the time and place at
138 which bids shall be received, list the contracts to be made or
139 types of equipment or supplies to be purchased, and, if all plans
140 and/or specifications are not published, refer to the plans and/or
141 specifications on file. If there is no newspaper published in the
142 county or municipality, then such notice shall be given by posting
143 same at the courthouse, or for municipalities at the city hall,
144 and at two (2) other public places in the county or municipality,



145 and also by publication once each week for two (2) consecutive
146 weeks in some newspaper having a general circulation in the county
147 or municipality in the above-provided manner. On the same date
148 that the notice is submitted to the newspaper for publication, the
149 agency or governing authority involved shall mail written notice
150 to, or provide electronic notification to the main office of the
151 Mississippi Procurement Technical Assistance Program under the
152 Mississippi Development Authority that contains the same
153 information as that in the published notice. Submissions received
154 by the Mississippi Procurement Technical Assistance Program for
155 projects funded by the American Recovery and Reinvestment Act
156 shall be displayed on a separate and unique Internet web page
157 accessible to the public and maintained by the Mississippi
158 Development Authority for the Mississippi Procurement Technical
159 Assistance Program. Those American Recovery and Reinvestment Act
160 related submissions shall be publicly posted within twenty-four
161 (24) hours of receipt by the Mississippi Development Authority and
162 the bid opening shall not occur until the submission has been
163 posted for ten (10) consecutive days. The Department of Finance
164 and Administration shall maintain information regarding contracts
165 and other expenditures from the American Recovery and Reinvestment
166 Act, on a unique Internet web page accessible to the public. The
167 Department of Finance and Administration shall promulgate rules
168 regarding format, content and deadlines, unless otherwise
169 specified by law, of the posting of award notices, contract



170 execution and subsequent amendments, links to the contract
171 documents, expenditures against the awarded contracts and general
172 expenditures of funds from the American Recovery and Reinvestment
173 Act. Within one (1) working day of the contract award, the agency
174 or governing authority shall post to the designated web page
175 maintained by the Department of Finance and Administration, notice
176 of the award, including the award recipient, the contract amount,
177 and a brief summary of the contract in accordance with rules
178 promulgated by the department. Within one (1) working day of the
179 contract execution, the agency or governing authority shall post
180 to the designated web page maintained by the Department of Finance
181 and Administration a summary of the executed contract and make a
182 copy of the appropriately redacted contract documents available
183 for linking to the designated web page in accordance with the
184 rules promulgated by the department. The information provided by
185 the agency or governing authority shall be posted to the web page
186 for the duration of the American Recovery and Reinvestment Act
187 funding or until the project is completed, whichever is longer.

188 (ii) **Bidding process amendment procedure.** If all
189 plans and/or specifications are published in the notification,
190 then the plans and/or specifications may not be amended. If all
191 plans and/or specifications are not published in the notification,
192 then amendments to the plans/specifications, bid opening date, bid
193 opening time and place may be made, provided that the agency or
194 governing authority maintains a list of all prospective bidders



195 who are known to have received a copy of the bid documents and all
196 such prospective bidders are sent copies of all amendments. This
197 notification of amendments may be made via mail, facsimile,
198 electronic mail or other generally accepted method of information
199 distribution. No addendum to bid specifications may be issued
200 within two (2) working days of the time established for the
201 receipt of bids unless such addendum also amends the bid opening
202 to a date not less than five (5) working days after the date of
203 the addendum.

204 (iii) **Filing requirement.** In all cases involving
205 governing authorities, before the notice shall be published or
206 posted, the plans or specifications for the construction or
207 equipment being sought shall be filed with the clerk of the board
208 of the governing authority. In addition to these requirements, a
209 bid file shall be established which shall indicate those vendors
210 to whom such solicitations and specifications were issued, and
211 such file shall also contain such information as is pertinent to
212 the bid.

213 (iv) **Specification restrictions.**

214 1. Specifications pertinent to such bidding
215 shall be written so as not to exclude comparable equipment of
216 domestic manufacture. However, if valid justification is
217 presented, the Department of Finance and Administration or the
218 board of a governing authority may approve a request for specific
219 equipment necessary to perform a specific job. Further, such



220 justification, when placed on the minutes of the board of a
221 governing authority, may serve as authority for that governing
222 authority to write specifications to require a specific item of
223 equipment needed to perform a specific job. In addition to these
224 requirements, from and after July 1, 1990, vendors of relocatable
225 classrooms and the specifications for the purchase of such
226 relocatable classrooms published by local school boards shall meet
227 all pertinent regulations of the State Board of Education,
228 including prior approval of such bid by the State Department of
229 Education.

230 2. Specifications for construction projects
231 may include an allowance for commodities, equipment, furniture,
232 construction materials or systems in which prospective bidders are
233 instructed to include in their bids specified amounts for such
234 items so long as the allowance items are acquired by the vendor in
235 a commercially reasonable manner and approved by the
236 agency/governing authority. Such acquisitions shall not be made
237 to circumvent the public purchasing laws.

238 (v) Agencies and governing authorities may
239 establish secure procedures by which bids may be submitted via
240 electronic means.

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

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



245 Life-cycle costing, total cost bids, warranties, guaranteed
246 buy-back provisions and other relevant provisions may be included
247 in the best bid calculation. All best bid procedures for state
248 agencies must be in compliance with regulations established by the
249 Department of Finance and Administration. If any governing
250 authority accepts a bid other than the lowest bid actually
251 submitted, it shall place on its minutes detailed calculations and
252 narrative summary showing that the accepted bid was determined to
253 be the lowest and best bid, including the dollar amount of the
254 accepted bid and the dollar amount of the lowest bid. No agency
255 or governing authority shall accept a bid based on items not
256 included in the specifications.

257 (ii) **Decision procedure for Certified Purchasing**
258 **Offices.** In addition to the decision procedure set forth in * * *
259 subparagraph (i) of this paragraph (d), Certified Purchasing
260 Offices may also use the following procedure: Purchases may be
261 made from the bidder offering the best value. In determining the
262 best value bid, freight and shipping charges shall be included.
263 Life-cycle costing, total cost bids, warranties, guaranteed
264 buy-back provisions, documented previous experience, training
265 costs and other relevant provisions, including, but not limited
266 to, a bidder having a local office and inventory located within
267 the jurisdiction of the governing authority, may be included in
268 the best value calculation. This provision shall authorize
269 Certified Purchasing Offices to utilize a Request For Proposals



270 (RFP) process when purchasing commodities. All best value
271 procedures for state agencies must be in compliance with
272 regulations established by the Department of Finance and
273 Administration. No agency or governing authority shall accept a
274 bid based on items or criteria not included in the specifications.

275 (iii) **Decision procedure for Mississippi**

276 **Landmarks.** In addition to the decision procedure set forth
277 in * * * subparagraph (i) of this paragraph (d), where purchase
278 involves renovation, restoration, or both, of the State Capitol
279 Building or any other historical building designated for at least
280 five (5) years as a Mississippi Landmark by the Board of Trustees
281 of the Department of Archives and History under the authority of
282 Sections 39-7-7 and 39-7-11, the agency or governing authority may
283 use the following procedure: Purchases may be made from the
284 lowest and best prequalified bidder. Prequalification of bidders
285 shall be determined not less than fifteen (15) working days before
286 the first published notice of bid opening. Prequalification
287 criteria shall be limited to bidder's knowledge and experience in
288 historical restoration, preservation and renovation. In
289 determining the lowest and best bid, freight and shipping charges
290 shall be included. Life-cycle costing, total cost bids,
291 warranties, guaranteed buy-back provisions and other relevant
292 provisions may be included in the best bid calculation. All best
293 bid and prequalification procedures for state agencies must be in
294 compliance with regulations established by the Department of



295 Finance and Administration. If any governing authority accepts a
296 bid other than the lowest bid actually submitted, it shall place
297 on its minutes detailed calculations and narrative summary showing
298 that the accepted bid was determined to be the lowest and best
299 bid, including the dollar amount of the accepted bid and the
300 dollar amount of the lowest bid. No agency or governing authority
301 shall accept a bid based on items not included in the
302 specifications.

303 (iv) **Construction project negotiations authority.**

304 If the lowest and best bid is not more than ten percent (10%)
305 above the amount of funds allocated for a public construction or
306 renovation project, then the agency or governing authority shall
307 be permitted to negotiate with the lowest bidder in order to enter
308 into a contract for an amount not to exceed the funds allocated.

309 (e) **Lease-purchase authorization.** For the purposes of
310 this section, the term "equipment" shall mean equipment, furniture
311 and, if applicable, associated software and other applicable
312 direct costs associated with the acquisition. Any lease-purchase
313 of equipment which an agency is not required to lease-purchase
314 under the master lease-purchase program pursuant to Section
315 31-7-10 and any lease-purchase of equipment which a governing
316 authority elects to lease-purchase may be acquired by a
317 lease-purchase agreement under this paragraph (e). Lease-purchase
318 financing may also be obtained from the vendor or from a
319 third-party source after having solicited and obtained at least



320 two (2) written competitive bids, as defined in paragraph (b) of
321 this section, for such financing without advertising for such
322 bids. Solicitation for the bids for financing may occur before or
323 after acceptance of bids for the purchase of such equipment or,
324 where no such bids for purchase are required, at any time before
325 the purchase thereof. No such lease-purchase agreement shall be
326 for an annual rate of interest which is greater than the overall
327 maximum interest rate to maturity on general obligation
328 indebtedness permitted under Section 75-17-101, and the term of
329 such lease-purchase agreement shall not exceed the useful life of
330 equipment covered thereby as determined according to the upper
331 limit of the asset depreciation range (ADR) guidelines for the
332 Class Life Asset Depreciation Range System established by the
333 Internal Revenue Service pursuant to the United States Internal
334 Revenue Code and regulations thereunder as in effect on December
335 31, 1980, or comparable depreciation guidelines with respect to
336 any equipment not covered by ADR guidelines. Any lease-purchase
337 agreement entered into pursuant to this paragraph (e) may contain
338 any of the terms and conditions which a master lease-purchase
339 agreement may contain under the provisions of Section 31-7-10(5),
340 and shall contain an annual allocation dependency clause
341 substantially similar to that set forth in Section 31-7-10(8).
342 Each agency or governing authority entering into a lease-purchase
343 transaction pursuant to this paragraph (e) shall maintain with
344 respect to each such lease-purchase transaction the same



345 information as required to be maintained by the Department of
346 Finance and Administration pursuant to Section 31-7-10(13).
347 However, nothing contained in this section shall be construed to
348 permit agencies to acquire items of equipment with a total
349 acquisition cost in the aggregate of less than Ten Thousand
350 Dollars (\$10,000.00) by a single lease-purchase transaction. All
351 equipment, and the purchase thereof by any lessor, acquired by
352 lease-purchase under this paragraph and all lease-purchase
353 payments with respect thereto shall be exempt from all Mississippi
354 sales, use and ad valorem taxes. Interest paid on any
355 lease-purchase agreement under this section shall be exempt from
356 State of Mississippi income taxation.

357 (f) **Alternate bid authorization.** When necessary to
358 ensure ready availability of commodities for public works and the
359 timely completion of public projects, no more than two (2)
360 alternate bids may be accepted by a governing authority for
361 commodities. No purchases may be made through use of such
362 alternate bids procedure unless the lowest and best bidder cannot
363 deliver the commodities contained in his bid. In that event,
364 purchases of such commodities may be made from one (1) of the
365 bidders whose bid was accepted as an alternate.

366 (g) **Construction contract change authorization.** In the
367 event a determination is made by an agency or governing authority
368 after a construction contract is let that changes or modifications
369 to the original contract are necessary or would better serve the



370 purpose of the agency or the governing authority, such agency or
371 governing authority may, in its discretion, order such changes
372 pertaining to the construction that are necessary under the
373 circumstances without the necessity of further public bids;
374 provided that such change shall be made in a commercially
375 reasonable manner and shall not be made to circumvent the public
376 purchasing statutes. In addition to any other authorized person,
377 the architect or engineer hired by an agency or governing
378 authority with respect to any public construction contract shall
379 have the authority, when granted by an agency or governing
380 authority, to authorize changes or modifications to the original
381 contract without the necessity of prior approval of the agency or
382 governing authority when any such change or modification is less
383 than one percent (1%) of the total contract amount. The agency or
384 governing authority may limit the number, manner or frequency of
385 such emergency changes or modifications.

386 (h) **Petroleum purchase alternative.** In addition to
387 other methods of purchasing authorized in this chapter, when any
388 agency or governing authority shall have a need for gas, diesel
389 fuel, oils and/or other petroleum products in excess of the amount
390 set forth in paragraph (a) of this section, such agency or
391 governing authority may purchase the commodity after having
392 solicited and obtained at least two (2) competitive written bids,
393 as defined in paragraph (b) of this section. If two (2)
394 competitive written bids are not obtained, the entity shall comply



395 with the procedures set forth in paragraph (c) of this section.
396 In the event any agency or governing authority shall have
397 advertised for bids for the purchase of gas, diesel fuel, oils and
398 other petroleum products and coal and no acceptable bids can be
399 obtained, such agency or governing authority is authorized and
400 directed to enter into any negotiations necessary to secure the
401 lowest and best contract available for the purchase of such
402 commodities.

403 (i) **Road construction petroleum products price**
404 **adjustment clause authorization.** Any agency or governing
405 authority authorized to enter into contracts for the construction,
406 maintenance, surfacing or repair of highways, roads or streets,
407 may include in its bid proposal and contract documents a price
408 adjustment clause with relation to the cost to the contractor,
409 including taxes, based upon an industry-wide cost index, of
410 petroleum products including asphalt used in the performance or
411 execution of the contract or in the production or manufacture of
412 materials for use in such performance. Such industry-wide index
413 shall be established and published monthly by the Mississippi
414 Department of Transportation with a copy thereof to be mailed,
415 upon request, to the clerks of the governing authority of each
416 municipality and the clerks of each board of supervisors
417 throughout the state. The price adjustment clause shall be based
418 on the cost of such petroleum products only and shall not include
419 any additional profit or overhead as part of the adjustment. The



420 bid proposals or document contract shall contain the basis and
421 methods of adjusting unit prices for the change in the cost of
422 such petroleum products.

423 (j) **State agency emergency purchase procedure.** If the
424 governing board or the executive head, or his designees, of any
425 agency of the state shall determine that an emergency exists in
426 regard to the purchase of any commodities or repair contracts, so
427 that the delay incident to giving opportunity for competitive
428 bidding would be detrimental to the interests of the state, then
429 the head of such agency, or his designees, shall file with the
430 Department of Finance and Administration (i) a statement
431 explaining the conditions and circumstances of the emergency,
432 which shall include a detailed description of the events leading
433 up to the situation and the negative impact to the entity if the
434 purchase is made following the statutory requirements set forth in
435 paragraph (a), (b) or (c) of this section, and (ii) a certified
436 copy of the appropriate minutes of the board of such agency
437 requesting the emergency purchase, if applicable. Upon receipt of
438 the statement and applicable board certification, the State Fiscal
439 Officer, or his designees, may, in writing, authorize the purchase
440 or repair without having to comply with competitive bidding
441 requirements.

442 If the governing board or the executive head, or his
443 designees, of any agency determines that an emergency exists in
444 regard to the purchase of any commodities or repair contracts, so



445 that the delay incident to giving opportunity for competitive
446 bidding would threaten the health or safety of any person, or the
447 preservation or protection of property, then the provisions in
448 this section for competitive bidding shall not apply, and any
449 officer or agent of the agency having general or specific
450 authority for making the purchase or repair contract shall approve
451 the bill presented for payment, and he shall certify in writing
452 from whom the purchase was made, or with whom the repair contract
453 was made.

454 Total purchases made under this paragraph (j) shall only be
455 for the purpose of meeting needs created by the emergency
456 situation. Following the emergency purchase, documentation of the
457 purchase, including a description of the commodity purchased, the
458 purchase price thereof and the nature of the emergency shall be
459 filed with the Department of Finance and Administration.

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

461 If the governing authority, or the governing authority acting
462 through its designee, shall determine that an emergency exists in
463 regard to the purchase of any commodities or repair contracts, so
464 that the delay incident to giving opportunity for competitive
465 bidding would be detrimental to the interest of the governing
466 authority, then the provisions herein for competitive bidding
467 shall not apply and any officer or agent of such governing
468 authority having general or special authority therefor in making
469 such purchase or repair shall approve the bill presented therefor,



470 and he shall certify in writing thereon from whom such purchase
471 was made, or with whom such a repair contract was made. At the
472 board meeting next following the emergency purchase or repair
473 contract, documentation of the purchase or repair contract,
474 including a description of the commodity purchased, the price
475 thereof and the nature of the emergency shall be presented to the
476 board and shall be placed on the minutes of the board of such
477 governing authority.

478 (1) **Hospital purchase, lease-purchase and lease**
479 **authorization.**

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

485 (ii) In addition to the authority granted in
486 subparagraph (i) of this paragraph (1), the commissioners or board
487 of trustees is authorized to enter into contracts for the lease of
488 equipment or services, or both, which it considers necessary for
489 the proper care of patients if, in its opinion, it is not
490 financially feasible to purchase the necessary equipment or
491 services. Any such contract for the lease of equipment or
492 services executed by the commissioners or board shall not exceed a
493 maximum of five (5) years' duration and shall include a
494 cancellation clause based on unavailability of funds. If such



495 cancellation clause is exercised, there shall be no further
496 liability on the part of the lessee. Any such contract for the
497 lease of equipment or services executed on behalf of the
498 commissioners or board that complies with the provisions of this
499 subparagraph (ii) shall be excepted from the bid requirements set
500 forth in this section.

501 (m) **Exceptions from bidding requirements.** Excepted
502 from bid requirements are:

503 (i) **Purchasing agreements approved by department.**
504 Purchasing agreements, contracts and maximum price regulations
505 executed or approved by the Department of Finance and
506 Administration.

507 (ii) **Outside equipment repairs.** Repairs to
508 equipment, when such repairs are made by repair facilities in the
509 private sector; however, engines, transmissions, rear axles and/or
510 other such components shall not be included in this exemption when
511 replaced as a complete unit instead of being repaired and the need
512 for such total component replacement is known before disassembly
513 of the component; however, invoices identifying the equipment,
514 specific repairs made, parts identified by number and name,
515 supplies used in such repairs, and the number of hours of labor
516 and costs therefor shall be required for the payment for such
517 repairs.

518 (iii) **In-house equipment repairs.** Purchases of
519 parts for repairs to equipment, when such repairs are made by



520 personnel of the agency or governing authority; however, entire
521 assemblies, such as engines or transmissions, shall not be
522 included in this exemption when the entire assembly is being
523 replaced instead of being repaired.

524 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
525 of gravel or fill dirt which are to be removed and transported by
526 the purchaser.

527 (v) **Governmental equipment auctions.** Motor
528 vehicles or other equipment purchased from a federal agency or
529 authority, another governing authority or state agency of the
530 State of Mississippi, or any governing authority or state agency
531 of another state at a public auction held for the purpose of
532 disposing of such vehicles or other equipment. Any purchase by a
533 governing authority under the exemption authorized by this
534 subparagraph (v) shall require advance authorization spread upon
535 the minutes of the governing authority to include the listing of
536 the item or items authorized to be purchased and the maximum bid
537 authorized to be paid for each item or items.

538 (vi) **Intergovernmental sales and transfers.**
539 Purchases, sales, transfers or trades by governing authorities or
540 state agencies when such purchases, sales, transfers or trades are
541 made by a private treaty agreement or through means of
542 negotiation, from any federal agency or authority, another
543 governing authority or state agency of the State of Mississippi,
544 or any state agency or governing authority of another state.



545 Nothing in this section shall permit such purchases through public
546 auction except as provided for in subparagraph (v) of this * * *
547 paragraph (m). It is the intent of this section to allow
548 governmental entities to dispose of and/or purchase commodities
549 from other governmental entities at a price that is agreed to by
550 both parties. This shall allow for purchases and/or sales at
551 prices which may be determined to be below the market value if the
552 selling entity determines that the sale at below market value is
553 in the best interest of the taxpayers of the state. Governing
554 authorities shall place the terms of the agreement and any
555 justification on the minutes, and state agencies shall obtain
556 approval from the Department of Finance and Administration, prior
557 to releasing or taking possession of the commodities.

558 (vii) **Perishable supplies or food.** Perishable
559 supplies or food purchased for use in connection with hospitals,
560 the school lunch programs, homemaking programs and for the feeding
561 of county or municipal prisoners.

562 (viii) **Single source items.** Noncompetitive items
563 available from one (1) source only. In connection with the
564 purchase of noncompetitive items only available from one (1)
565 source, a certification of the conditions and circumstances
566 requiring the purchase shall be filed by the agency with the
567 Department of Finance and Administration and by the governing
568 authority with the board of the governing authority. Upon receipt
569 of that certification the Department of Finance and Administration



570 or the board of the governing authority, as the case may be, may,
571 in writing, authorize the purchase, which authority shall be noted
572 on the minutes of the body at the next regular meeting thereafter.
573 In those situations, a governing authority is not required to
574 obtain the approval of the Department of Finance and
575 Administration. Following the purchase, the executive head of the
576 state agency, or his designees, shall file with the Department of
577 Finance and Administration, documentation of the purchase,
578 including a description of the commodity purchased, the purchase
579 price thereof and the source from whom it was purchased.

580 (ix) **Waste disposal facility construction**
581 **contracts.** Construction of incinerators and other facilities for
582 disposal of solid wastes in which products either generated
583 therein, such as steam, or recovered therefrom, such as materials
584 for recycling, are to be sold or otherwise disposed of; however,
585 in constructing such facilities, a governing authority or agency
586 shall publicly issue requests for proposals, advertised for in the
587 same manner as provided herein for seeking bids for public
588 construction projects, concerning the design, construction,
589 ownership, operation and/or maintenance of such facilities,
590 wherein such requests for proposals when issued shall contain
591 terms and conditions relating to price, financial responsibility,
592 technology, environmental compatibility, legal responsibilities
593 and such other matters as are determined by the governing
594 authority or agency to be appropriate for inclusion; and after



595 responses to the request for proposals have been duly received,
596 the governing authority or agency may select the most qualified
597 proposal or proposals on the basis of price, technology and other
598 relevant factors and from such proposals, but not limited to the
599 terms thereof, negotiate and enter contracts with one or more of
600 the persons or firms submitting proposals.

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

604 (xi) **Information technology products.** Purchases
605 of information technology products made by governing authorities
606 under the provisions of purchase schedules, or contracts executed
607 or approved by the Mississippi Department of Information
608 Technology Services and designated for use by governing
609 authorities.

610 (xii) **Energy efficiency services and equipment.**
611 Energy efficiency services and equipment acquired by school
612 districts, community and junior colleges, institutions of higher
613 learning and state agencies or other applicable governmental
614 entities on a shared-savings, lease or lease-purchase basis
615 pursuant to Section 31-7-14.

616 (xiii) **Municipal electrical utility system fuel.**
617 Purchases of coal and/or natural gas by municipally owned electric
618 power generating systems that have the capacity to use both coal
619 and natural gas for the generation of electric power.



620 (xiv) **Library books and other reference materials.**
621 Purchases by libraries or for libraries of books and periodicals;
622 processed film, videocassette tapes, filmstrips and slides;
623 recorded audiotapes, cassettes and diskettes; and any such items
624 as would be used for teaching, research or other information
625 distribution; however, equipment such as projectors, recorders,
626 audio or video equipment, and monitor televisions are not exempt
627 under this subparagraph.

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

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

634 (xvii) **Multichannel interactive video systems.**
635 From and after July 1, 1990, contracts by Mississippi Authority
636 for Educational Television with any private educational
637 institution or private nonprofit organization whose purposes are
638 educational in regard to the construction, purchase, lease or
639 lease-purchase of facilities and equipment and the employment of
640 personnel for providing multichannel interactive video systems
641 (ITSF) in the school districts of this state.

642 (xviii) **Purchases of prison industry products by**
643 **the Department of Corrections, regional correctional facilities or**
644 **privately owned prisons.** Purchases made by the Mississippi



645 Department of Corrections, regional correctional facilities or
646 privately owned prisons involving any item that is manufactured,
647 processed, grown or produced from the state's prison industries.

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

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

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

662 (xxii) **Garbage, solid waste and sewage contracts.**
663 Contracts for garbage collection or disposal, contracts for solid
664 waste collection or disposal and contracts for sewage collection
665 or disposal.

666 (xxiii) **Municipal water tank maintenance**
667 **contracts.** Professional maintenance program contracts for the
668 repair or maintenance of municipal water tanks, which provide
669 professional services needed to maintain municipal water storage



670 tanks for a fixed annual fee for a duration of two (2) or more
671 years.

672 (xxiv) **Purchases of Mississippi Industries for the**
673 **Blind products.** Purchases made by state agencies or governing
674 authorities involving any item that is manufactured, processed or
675 produced by the Mississippi Industries for the Blind.

676 (xxv) **Purchases of state-adopted textbooks.**
677 Purchases of state-adopted textbooks by public school districts.

678 (xxvi) **Certain purchases under the Mississippi**
679 **Major Economic Impact Act.** Contracts entered into pursuant to the
680 provisions of Section 57-75-9(2), (3) and (4).

681 (xxvii) **Used heavy or specialized machinery or**
682 **equipment for installation of soil and water conservation**
683 **practices purchased at auction.** Used heavy or specialized
684 machinery or equipment used for the installation and
685 implementation of soil and water conservation practices or
686 measures purchased subject to the restrictions provided in
687 Sections 69-27-331 through 69-27-341. Any purchase by the State
688 Soil and Water Conservation Commission under the exemption
689 authorized by this subparagraph shall require advance
690 authorization spread upon the minutes of the commission to include
691 the listing of the item or items authorized to be purchased and
692 the maximum bid authorized to be paid for each item or items.



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

696 (xxix) **Purchases made pursuant to qualified**
697 **cooperative purchasing agreements.** Purchases made by certified
698 purchasing offices of state agencies or governing authorities
699 under cooperative purchasing agreements previously approved by the
700 Office of Purchasing and Travel and established by or for any
701 municipality, county, parish or state government or the federal
702 government, provided that the notification to potential
703 contractors includes a clause that sets forth the availability of
704 the cooperative purchasing agreement to other governmental
705 entities. Such purchases shall only be made if the use of the
706 cooperative purchasing agreements is determined to be in the best
707 interest of the governmental entity.

708 (xxx) **School yearbooks.** Purchases of school
709 yearbooks by state agencies or governing authorities; provided,
710 however, that state agencies and governing authorities shall use
711 for these purchases the RFP process as set forth in the
712 Mississippi Procurement Manual adopted by the Office of Purchasing
713 and Travel.

714 (xxxi) **Design-build method and dual-phase**
715 **design-build method of contracting.** Contracts entered into under
716 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.



717 (xxxii) **Toll roads and bridge construction**
718 **projects.** Contracts entered into under the provisions of Section
719 65-43-1 or 65-43-3.

720 (xxxiii) **Certain purchases under Section 57-1-221.**
721 Contracts entered into pursuant to the provisions of Section
722 57-1-221.

723 (xxxiv) **Certain transfers made pursuant to the**
724 **provisions of Section 57-105-1(7).** Transfers of public property
725 or facilities under Section 57-105-1(7) and construction related
726 to such public property or facilities.

727 (xxxv) **Certain purchases or transfers entered into**
728 **with local electrical power associations.** Contracts or agreements
729 entered into under the provisions of Section 55-3-33.

730 (n) **Term contract authorization.** All contracts for the
731 purchase of:

732 (i) All contracts for the purchase of commodities,
733 equipment and public construction (including, but not limited to,
734 repair and maintenance), may be let for periods of not more than
735 sixty (60) months in advance, subject to applicable statutory
736 provisions prohibiting the letting of contracts during specified
737 periods near the end of terms of office. Term contracts for a
738 period exceeding twenty-four (24) months shall also be subject to
739 ratification or cancellation by governing authority boards taking
740 office subsequent to the governing authority board entering the
741 contract.



742 (ii) Bid proposals and contracts may include price
743 adjustment clauses with relation to the cost to the contractor
744 based upon a nationally published industry-wide or nationally
745 published and recognized cost index. The cost index used in a
746 price adjustment clause shall be determined by the Department of
747 Finance and Administration for the state agencies and by the
748 governing board for governing authorities. The bid proposal and
749 contract documents utilizing a price adjustment clause shall
750 contain the basis and method of adjusting unit prices for the
751 change in the cost of such commodities, equipment and public
752 construction.

753 (o) **Purchase law violation prohibition and vendor**
754 **penalty.** No contract or purchase as herein authorized shall be
755 made for the purpose of circumventing the provisions of this
756 section requiring competitive bids, nor shall it be lawful for any
757 person or concern to submit individual invoices for amounts within
758 those authorized for a contract or purchase where the actual value
759 of the contract or commodity purchased exceeds the authorized
760 amount and the invoices therefor are split so as to appear to be
761 authorized as purchases for which competitive bids are not
762 required. Submission of such invoices shall constitute a
763 misdemeanor punishable by a fine of not less than Five Hundred
764 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
765 or by imprisonment for thirty (30) days in the county jail, or



766 both such fine and imprisonment. In addition, the claim or claims
767 submitted shall be forfeited.

768 (p) **Electrical utility petroleum-based equipment**
769 **purchase procedure.** When in response to a proper advertisement
770 therefor, no bid firm as to price is submitted to an electric
771 utility for power transformers, distribution transformers, power
772 breakers, reclosers or other articles containing a petroleum
773 product, the electric utility may accept the lowest and best bid
774 therefor although the price is not firm.

775 (q) **Fuel management system bidding procedure.** Any
776 governing authority or agency of the state shall, before
777 contracting for the services and products of a fuel management or
778 fuel access system, enter into negotiations with not fewer than
779 two (2) sellers of fuel management or fuel access systems for
780 competitive written bids to provide the services and products for
781 the systems. In the event that the governing authority or agency
782 cannot locate two (2) sellers of such systems or cannot obtain
783 bids from two (2) sellers of such systems, it shall show proof
784 that it made a diligent, good-faith effort to locate and negotiate
785 with two (2) sellers of such systems. Such proof shall include,
786 but not be limited to, publications of a request for proposals and
787 letters soliciting negotiations and bids. For purposes of this
788 paragraph (q), a fuel management or fuel access system is an
789 automated system of acquiring fuel for vehicles as well as
790 management reports detailing fuel use by vehicles and drivers, and



791 the term "competitive written bid" shall have the meaning as
792 defined in paragraph (b) of this section. Governing authorities
793 and agencies shall be exempt from this process when contracting
794 for the services and products of fuel management or fuel access
795 systems under the terms of a state contract established by the
796 Office of Purchasing and Travel.

797 (r) **Solid waste contract proposal procedure.** Except
798 where a board of supervisors and/or a municipal governing body
799 extends a contract as prescribed under Section 17-17-5, before
800 entering into any contract for garbage collection or disposal,
801 contract for solid waste collection or disposal or contract for
802 sewage collection or disposal, which involves an expenditure of
803 more than Fifty Thousand Dollars (\$50,000.00), a governing
804 authority or agency shall issue publicly a request for proposals
805 concerning the specifications for such services which shall be
806 advertised for in the same manner as provided in this section for
807 seeking bids for purchases which involve an expenditure of more
808 than the amount provided in paragraph (c) of this section. Any
809 request for proposals when issued shall contain terms and
810 conditions relating to price, financial responsibility,
811 technology, legal responsibilities and other relevant factors as
812 are determined by the governing authority or agency to be
813 appropriate for inclusion; all factors determined relevant by the
814 governing authority or agency or required by this paragraph (r)
815 shall be duly included in the advertisement to elicit proposals.



816 After responses to the request for proposals have been duly
817 received, the governing authority or agency shall select the most
818 qualified proposal or proposals on the basis of price, technology
819 and other relevant factors and from such proposals, but not
820 limited to the terms thereof, negotiate and enter into contracts
821 with one or more of the persons or firms submitting proposals. If
822 the governing authority or agency deems none of the proposals to
823 be qualified or otherwise acceptable, the request for proposals
824 process may be reinitiated. Notwithstanding any other provisions
825 of this paragraph, where a county with at least thirty-five
826 thousand (35,000) nor more than forty thousand (40,000)
827 population, according to the 1990 federal decennial census, owns
828 or operates a solid waste landfill, the governing authorities of
829 any other county or municipality may contract with the governing
830 authorities of the county owning or operating the landfill,
831 pursuant to a resolution duly adopted and spread upon the minutes
832 of each governing authority involved, for garbage or solid waste
833 collection or disposal services through contract negotiations.

834 (s) **Minority set-aside authorization.** Notwithstanding
835 any provision of this section to the contrary, any agency or
836 governing authority, by order placed on its minutes, may, in its
837 discretion, set aside not more than twenty percent (20%) of its
838 anticipated annual expenditures for the purchase of commodities
839 from minority businesses; however, all such set-aside purchases
840 shall comply with all purchasing regulations promulgated by the



841 Department of Finance and Administration and shall be subject to
842 bid requirements under this section. Set-aside purchases for
843 which competitive bids are required shall be made from the lowest
844 and best minority business bidder. For the purposes of this
845 paragraph, the term "minority business" means a business which is
846 owned by a majority of persons who are United States citizens or
847 permanent resident aliens (as defined by the Immigration and
848 Naturalization Service) of the United States, and who are Asian,
849 Black, Hispanic or Native American, according to the following
850 definitions:

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

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

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

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

862 (t) **Construction punch list restriction.** The
863 architect, engineer or other representative designated by the
864 agency or governing authority that is contracting for public
865 construction or renovation may prepare and submit to the



866 contractor only one (1) preliminary punch list of items that do
867 not meet the contract requirements at the time of substantial
868 completion and one (1) final list immediately before final
869 completion and final payment.

870 (u) **Procurement of construction services by state**
871 **institutions of higher learning.** Contracts for privately financed
872 construction of auxiliary facilities on the campus of a state
873 institution of higher learning may be awarded by the Board of
874 Trustees of State Institutions of Higher Learning to the lowest
875 and best bidder, where sealed bids are solicited, or to the
876 offeror whose proposal is determined to represent the best value
877 to the citizens of the State of Mississippi, where requests for
878 proposals are solicited.

879 (v) **Insurability of bidders for public construction or**
880 **other public contracts.** In any solicitation for bids to perform
881 public construction or other public contracts to which this
882 section applies including, but not limited to, contracts for
883 repair and maintenance, for which the contract will require
884 insurance coverage in an amount of not less than One Million
885 Dollars (\$1,000,000.00), bidders shall be permitted to either
886 submit proof of current insurance coverage in the specified amount
887 or demonstrate ability to obtain the required coverage amount of
888 insurance if the contract is awarded to the bidder. Proof of
889 insurance coverage shall be submitted within five (5) business
890 days from bid acceptance.



891 (w) **Purchase authorization clarification.** Nothing in
892 this section shall be construed as authorizing any purchase not
893 authorized by law.

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

