

By: Representative Scott

To: Workforce Development;  
Appropriations

HOUSE BILL NO. 498

1 AN ACT TO ESTABLISH THE OPPORTUNITIES FOR DIVERSITY IN  
 2 CONTRACTING PROGRAM (ODC PROGRAM) TO BE ADMINISTERED BY THE  
 3 MISSISSIPPI DEVELOPMENT AUTHORITY TO IMPROVE THE NUMBER OF  
 4 SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERNS  
 5 THAT DO BUSINESS WITH THE STATE BY FACILITATING AND IMPROVING  
 6 ACCESS TO GOVERNMENT CONTRACTS; TO REQUIRE EACH STATE AGENCY TO  
 7 APPOINT AN ODC COMPLIANCE OFFICER WHO WILL BE RESPONSIBLE FOR  
 8 MONITORING COMPLIANCE WITH THE ODC PROGRAM AND FOR REPORTING  
 9 COMPLIANCE OR NONCOMPLIANCE FOR THEIR RESPECTIVE AGENCIES TO THE  
 10 MISSISSIPPI DEVELOPMENT AUTHORITY; TO ESTABLISH THE  
 11 RESPONSIBILITIES OF ODC COMPLIANCE OFFICERS; TO REQUIRE STATE  
 12 AGENCIES TO INCLUDE CERTAIN LANGUAGE IN CONTRACTS FOR GOODS AND  
 13 SERVICES; TO ESTABLISH A PROCESS FOR ISSUING ODC WAIVERS; TO AMEND  
 14 SECTION 31-7-13, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;  
 15 AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** Sections 1 through 6 of this act shall be known  
 18 and may be cited as the Opportunities for Diversity in Contracting  
 19 Act.

20 **SECTION 2.** The State of Mississippi is committed to  
 21 improving the number of socially and economically disadvantaged  
 22 small business concerns that do business with the state by  
 23 facilitating and improving access to government contracts.  
 24 Facilitating this access is not only the right thing to do, but



25 will foster an environment in which all Mississippi businesses  
26 have access to and compete fairly in the procurement process.

27 **SECTION 3.** As used in this section:

28 (a) "ODC business enterprise" means a socially and  
29 economically disadvantaged small business concern certified as a  
30 participant in the Opportunities for Diversity in Contracting  
31 Program by the Mississippi Development Authority under Section 4  
32 of this act.

33 (b) "MDA" means the Mississippi Development Authority.

34 (c) "Socially and economically disadvantaged small  
35 business concern" means a socially and economically disadvantaged  
36 small business concern as defined under the Small Business Act (15  
37 USCS, Section 637(a)), except that the net worth of the business  
38 may not be greater than Seven Hundred Fifty Thousand Dollars  
39 (\$750,000.00).

40 **SECTION 4.** (1) The MDA shall establish a business  
41 assistance program known as the Opportunities for Diversity in  
42 Contracting Program (ODC Program) with the goal of improving the  
43 number of socially and economically disadvantaged small business  
44 concerns that do business with the state by facilitating and  
45 improving access to government contracts. The MDA shall adopt  
46 rules to administer the program that do all of the following:

47 (a) Establish procedures by which a sole  
48 proprietorship, association, partnership, corporation, limited



49 liability corporation, or joint venture may apply for  
50 certification as an ODC business enterprise.

51 (b) Except as provided in paragraph (n) of this  
52 subsection, establish agency procurement goals for contracting  
53 with ODC business enterprises in the award of contracts based on  
54 the availability of eligible program participants as determined by  
55 the MDA.

56 (i) Goals established under this paragraph shall  
57 be based on a percentage level of participation and a percentage  
58 of contractor availability.

59 (ii) Goals established under this paragraph shall  
60 be applied at the contract level, relative to an overall dollar  
61 goal for each state agency, in accordance with the following  
62 certification categories: construction, architecture, and  
63 engineering; professional services; goods and services; and  
64 information technology services.

65 (c) Establish a system of certifying ODC business  
66 enterprises.

67 (d) Establish standards to determine when an ODC  
68 business enterprise no longer qualifies for ODC business  
69 enterprise certification.

70 (e) Develop a process for evaluating and adjusting  
71 goals established by this section to determine what adjustments  
72 are necessary to achieve participation goals established by the  
73 executive director.



74 (f) Establish a point system or comparable system to  
75 evaluate bid proposals to encourage ODC business enterprises to  
76 participate in the procurement of professional services and  
77 information technology services.

78 (g) Establish a system to track data and analyze each  
79 certification category established under paragraph (b)(ii) of this  
80 subsection.

81 (h) Establish a process to mediate complaints and to  
82 review ODC business enterprise certification appeals.

83 (i) Implement an outreach program to educate potential  
84 participants about the ODC Program.

85 (j) Establish a system to assist state agencies in  
86 identifying and using ODC business enterprises in their  
87 contracting processes.

88 (k) Implement a system of self-reporting by ODC  
89 business enterprises as well as an on-site inspection process to  
90 validate the qualifications of an ODC business enterprise.

91 (l) Establish a waiver mechanism to waive program goals  
92 or participation requirements for those agencies that, despite  
93 their documented best efforts, are unable to contract with  
94 certified ODC business enterprises.

95 (m) Establish a process for monitoring overall program  
96 compliance in which equal employment opportunity officers  
97 primarily are responsible for monitoring their respective  
98 agencies.



99 (n) Establish guidelines for institutions of higher  
100 learning to allow the institutions of higher learning to establish  
101 agency procurement goals for contracting with ODC business  
102 enterprises.

103 (2) Business and personal financial information and trade  
104 secrets submitted by ODC Program applicants pursuant to this  
105 section shall be exempt from the provisions of the Mississippi  
106 Public Records Act of 1983, unless the executive director presents  
107 the financial information or trade secrets at a public hearing or  
108 public proceeding regarding the applicant's eligibility to  
109 participate in the program.

110 **SECTION 5.** (1) Each state agency shall appoint an ODC  
111 compliance officer who will be responsible for monitoring  
112 compliance with the ODC Program and for reporting compliance or  
113 noncompliance for their respective agencies to the MDA. The ODC  
114 compliance officer shall also be responsible for:

115 (a) Analyzing spending on goods, services and  
116 construction projects for his or her agency and determining missed  
117 opportunities for the inclusion of ODC vendors.

118 (b) Analyzing the spending of the state agency with ODC  
119 vendors, as well as ODC vendor availability by regions of the  
120 state so the MDA may determine the appropriate ODC goal for each  
121 contract.

122 (c) Reporting ODC enrollment for all contracts issued  
123 by each state agency to the MDA.



124 (d) Implementing a scorecard system that will be  
125 developed by the MDA, which tracks each state agency's ODC Program  
126 expenditures.

127 (e) Implementing an outreach and training plan that  
128 will be developed by the MDA, to ensure compliance with ODC  
129 Program requirements.

130 (f) Attending semiannual training conducted by the MDA  
131 on ODC Program requirements.

132 (g) Participating in an annual compliance review  
133 conducted by the MDA and implementing recommendations made by the  
134 MDA as a result of the review process.

135 (2) State agencies shall ensure that all contracts for the  
136 purchase of goods and services contain language that:

137 (a) Prohibits contractors and subcontractors from  
138 engaging in discriminatory employment practices.

139 (b) Certifies that contractors and subcontractors are  
140 in compliance with all applicable state and federal law governing  
141 fair labor and employment practices.

142 (c) Encourages contractors and subcontractors to  
143 purchase goods and services from certified ODC vendors.

144 (3) State agencies shall not issue ODC waivers without  
145 undertaking the following:

146 (a) Having all ODC waivers reviewed by the agency's  
147 procurement officer, in collaboration with its ODC compliance



148 officer, who will certify that each ODC waiver issued by the  
149 agency complies with criteria for granting an ODC waiver.

150 (b) Submitting quarterly reports to the MDA that list  
151 each ODC waiver granted by the agency.

152 (c) Permitting the MDA to complete its review of each  
153 state agency's quarterly reports and to conduct periodic audits of  
154 each state agency's administration of the ODC waiver process.

155 (4) If the MDA determines that a state agency has not  
156 properly administered the issuance of ODC waivers, subsequent ODC  
157 waivers shall not be issued without the approval of the MDA. The  
158 MDA may release a state agency from the approval process once the  
159 MDA had determined that an agency has the ability to consistently  
160 administer the waiver process.

161 **SECTION 6.** The MDA shall file an annual report with the  
162 Governor, Lieutenant Governor and Speaker of the House of  
163 Representatives regarding progress in advancing the ODC Program as  
164 well as any initiatives that are implemented to increase the  
165 number of certified ODC vendors doing business with the state.

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

168 31-7-13. All agencies and governing authorities shall  
169 purchase their commodities and printing; contract for garbage  
170 collection or disposal; contract for solid waste collection or  
171 disposal; contract for sewage collection or disposal; contract for  
172 public construction; and contract for rentals as herein provided.



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

174 Purchases which do not involve an expenditure of more than Five  
175 Thousand Dollars (\$5,000.00), exclusive of freight or shipping  
176 charges, may be made without advertising or otherwise requesting  
177 competitive bids. However, nothing contained in this paragraph  
178 (a) shall be construed to prohibit any agency or governing  
179 authority from establishing procedures which require competitive  
180 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

181 (b) **Bidding procedure for purchases over \$5,000.00 but**

182 **not over \$50,000.00.** Purchases which involve an expenditure of  
183 more than Five Thousand Dollars (\$5,000.00) but not more than  
184 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and  
185 shipping charges, may be made from the lowest and best bidder  
186 without publishing or posting advertisement for bids, provided at  
187 least two (2) competitive written bids have been obtained. In  
188 determining the lowest and best bidder, a point system or  
189 comparable system established under the Opportunities for  
190 Diversity in Contracting Act shall be used. Any state agency or  
191 community/junior college purchasing commodities or procuring  
192 construction pursuant to this paragraph (b) may authorize its  
193 purchasing agent, or his designee, to accept the lowest  
194 competitive written bid under Fifty Thousand Dollars (\$50,000.00).  
195 Any governing authority purchasing commodities pursuant to this  
196 paragraph (b) may authorize its purchasing agent, or his designee,  
197 with regard to governing authorities other than counties, or its





198 purchase clerk, or his designee, with regard to counties, to  
199 accept the lowest and best competitive written bid. Such  
200 authorization shall be made in writing by the governing authority  
201 and shall be maintained on file in the primary office of the  
202 agency and recorded in the official minutes of the governing  
203 authority, as appropriate. The purchasing agent or the purchase  
204 clerk, or their designee, as the case may be, and not the  
205 governing authority, shall be liable for any penalties and/or  
206 damages as may be imposed by law for any act or omission of the  
207 purchasing agent or purchase clerk, or their designee,  
208 constituting a violation of law in accepting any bid without  
209 approval by the governing authority. The term "competitive  
210 written bid" shall mean a bid submitted on a bid form furnished by  
211 the buying agency or governing authority and signed by authorized  
212 personnel representing the vendor, or a bid submitted on a  
213 vendor's letterhead or identifiable bid form and signed by  
214 authorized personnel representing the vendor. "Competitive" shall  
215 mean that the bids are developed based upon comparable  
216 identification of the needs and are developed independently and  
217 without knowledge of other bids or prospective bids. Any bid item  
218 for construction in excess of Five Thousand Dollars (\$5,000.00)  
219 shall be broken down by components to provide detail of component  
220 description and pricing. These details shall be submitted with  
221 the written bids and become part of the bid evaluation criteria.  
222 Bids may be submitted by facsimile, electronic mail or other



223 generally accepted method of information distribution. Bids  
224 submitted by electronic transmission shall not require the  
225 signature of the vendor's representative unless required by  
226 agencies or governing authorities.

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

228 (i) **Publication requirement.**

229 1. Purchases which involve an expenditure of  
230 more than Fifty Thousand Dollars (\$50,000.00), exclusive of  
231 freight and shipping charges, may be made from the lowest and best  
232 bidder after advertising for competitive bids once each week for  
233 two (2) consecutive weeks in a regular newspaper published in the  
234 county or municipality in which such agency or governing authority  
235 is located. In determining the lowest and best bidder, a point  
236 system or comparable system established under the Opportunities  
237 for Diversity in Contracting Act shall be used. However, all  
238 American Recovery and Reinvestment Act projects in excess of  
239 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. All  
240 references to American Recovery and Reinvestment Act projects in  
241 this section shall not apply to programs identified in Division B  
242 of the American Recovery and Reinvestment Act.

243 2. Reverse auctions shall be the primary  
244 method for receiving bids during the bidding process. If a  
245 purchasing entity determines that a reverse auction is not in the  
246 best interest of the state, then that determination must be  
247 approved by the Public Procurement Review Board. The purchasing



248 entity shall submit a detailed explanation of why a reverse  
249 auction would not be in the best interest of the state and present  
250 an alternative process to be approved by the Public Procurement  
251 Review Board. If the Public Procurement Review Board authorizes  
252 the purchasing entity to solicit bids with a method other than  
253 reverse auction, then the purchasing entity may designate the  
254 other methods by which the bids will be received, including, but  
255 not limited to, bids sealed in an envelope, bids received  
256 electronically in a secure system, or bids received by any other  
257 method that promotes open competition and has been approved by the  
258 Office of Purchasing and Travel. However, reverse auction shall  
259 not be used for any public contract for design or construction of  
260 public facilities, including buildings, roads and bridges. The  
261 Public Procurement Review Board must approve any contract entered  
262 into by alternative process. The provisions of this item 2 shall  
263 not apply to the individual state institutions of higher learning.

264                   3. The date as published for the bid opening  
265 shall not be less than seven (7) working days after the last  
266 published notice; however, if the purchase involves a construction  
267 project in which the estimated cost is in excess of Fifty Thousand  
268 Dollars (\$50,000.00), such bids shall not be opened in less than  
269 fifteen (15) working days after the last notice is published and  
270 the notice for the purchase of such construction shall be  
271 published once each week for two (2) consecutive weeks. However,  
272 all American Recovery and Reinvestment Act projects in excess of



273 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any  
274 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
275 under the American Recovery and Reinvestment Act, publication  
276 shall be made one (1) time and the bid opening for construction  
277 projects shall not be less than ten (10) working days after the  
278 date of the published notice. The notice of intention to let  
279 contracts or purchase equipment shall state the time and place at  
280 which bids shall be received, list the contracts to be made or  
281 types of equipment or supplies to be purchased, and, if all plans  
282 and/or specifications are not published, refer to the plans and/or  
283 specifications on file. If there is no newspaper published in the  
284 county or municipality, then such notice shall be given by posting  
285 same at the courthouse, or for municipalities at the city hall,  
286 and at two (2) other public places in the county or municipality,  
287 and also by publication once each week for two (2) consecutive  
288 weeks in some newspaper having a general circulation in the county  
289 or municipality in the above-provided manner. On the same date  
290 that the notice is submitted to the newspaper for publication, the  
291 agency or governing authority involved shall mail written notice  
292 to, or provide electronic notification to the main office of the  
293 Mississippi Procurement Technical Assistance Program under the  
294 Mississippi Development Authority that contains the same  
295 information as that in the published notice. Submissions received  
296 by the Mississippi Procurement Technical Assistance Program for  
297 projects funded by the American Recovery and Reinvestment Act



298 shall be displayed on a separate and unique Internet web page  
299 accessible to the public and maintained by the Mississippi  
300 Development Authority for the Mississippi Procurement Technical  
301 Assistance Program. Those American Recovery and Reinvestment Act  
302 related submissions shall be publicly posted within twenty-four  
303 (24) hours of receipt by the Mississippi Development Authority and  
304 the bid opening shall not occur until the submission has been  
305 posted for ten (10) consecutive days. The Department of Finance  
306 and Administration shall maintain information regarding contracts  
307 and other expenditures from the American Recovery and Reinvestment  
308 Act, on a unique Internet web page accessible to the public. The  
309 Department of Finance and Administration shall promulgate rules  
310 regarding format, content and deadlines, unless otherwise  
311 specified by law, of the posting of award notices, contract  
312 execution and subsequent amendments, links to the contract  
313 documents, expenditures against the awarded contracts and general  
314 expenditures of funds from the American Recovery and Reinvestment  
315 Act. Within one (1) working day of the contract award, the agency  
316 or governing authority shall post to the designated web page  
317 maintained by the Department of Finance and Administration, notice  
318 of the award, including the award recipient, the contract amount,  
319 and a brief summary of the contract in accordance with rules  
320 promulgated by the department. Within one (1) working day of the  
321 contract execution, the agency or governing authority shall post  
322 to the designated web page maintained by the Department of Finance



323 and Administration a summary of the executed contract and make a  
324 copy of the appropriately redacted contract documents available  
325 for linking to the designated web page in accordance with the  
326 rules promulgated by the department. The information provided by  
327 the agency or governing authority shall be posted to the web page  
328 for the duration of the American Recovery and Reinvestment Act  
329 funding or until the project is completed, whichever is longer.

330 (ii) **Bidding process amendment procedure.** If all  
331 plans and/or specifications are published in the notification,  
332 then the plans and/or specifications may not be amended. If all  
333 plans and/or specifications are not published in the notification,  
334 then amendments to the plans/specifications, bid opening date, bid  
335 opening time and place may be made, provided that the agency or  
336 governing authority maintains a list of all prospective bidders  
337 who are known to have received a copy of the bid documents and all  
338 such prospective bidders are sent copies of all amendments. This  
339 notification of amendments may be made via mail, facsimile,  
340 electronic mail or other generally accepted method of information  
341 distribution. No addendum to bid specifications may be issued  
342 within two (2) working days of the time established for the  
343 receipt of bids unless such addendum also amends the bid opening  
344 to a date not less than five (5) working days after the date of  
345 the addendum.

346 (iii) **Filing requirement.** In all cases involving  
347 governing authorities, before the notice shall be published or



348 posted, the plans or specifications for the construction or  
349 equipment being sought shall be filed with the clerk of the board  
350 of the governing authority. In addition to these requirements, a  
351 bid file shall be established which shall indicate those vendors  
352 to whom such solicitations and specifications were issued, and  
353 such file shall also contain such information as is pertinent to  
354 the bid.

355 (iv) **Specification restrictions.**

356 1. Specifications pertinent to such bidding  
357 shall be written so as not to exclude comparable equipment of  
358 domestic manufacture. However, if valid justification is  
359 presented, the Department of Finance and Administration or the  
360 board of a governing authority may approve a request for specific  
361 equipment necessary to perform a specific job. Further, such  
362 justification, when placed on the minutes of the board of a  
363 governing authority, may serve as authority for that governing  
364 authority to write specifications to require a specific item of  
365 equipment needed to perform a specific job. In addition to these  
366 requirements, from and after July 1, 1990, vendors of relocatable  
367 classrooms and the specifications for the purchase of such  
368 relocatable classrooms published by local school boards shall meet  
369 all pertinent regulations of the State Board of Education,  
370 including prior approval of such bid by the State Department of  
371 Education.



372                   2. Specifications for construction projects  
373 may include an allowance for commodities, equipment, furniture,  
374 construction materials or systems in which prospective bidders are  
375 instructed to include in their bids specified amounts for such  
376 items so long as the allowance items are acquired by the vendor in  
377 a commercially reasonable manner and approved by the  
378 agency/governing authority. Such acquisitions shall not be made  
379 to circumvent the public purchasing laws.

380                   (v) **Electronic bids.** Agencies and governing  
381 authorities shall provide a secure electronic interactive system  
382 for the submittal of bids requiring competitive bidding that shall  
383 be an additional bidding option for those bidders who choose to  
384 submit their bids electronically. The Department of Finance and  
385 Administration shall provide, by regulation, the standards that  
386 agencies must follow when receiving electronic bids. Agencies and  
387 governing authorities shall make the appropriate provisions  
388 necessary to accept electronic bids from those bidders who choose  
389 to submit their bids electronically for all purchases requiring  
390 competitive bidding under this section. Any special condition or  
391 requirement for the electronic bid submission shall be specified  
392 in the advertisement for bids required by this section. Agencies  
393 or governing authorities that are currently without available high  
394 speed Internet access shall be exempt from the requirement of this  
395 subparagraph (v) until such time that high speed Internet access  
396 becomes available. Any county having a population of less than





397 twenty thousand (20,000) shall be exempt from the provisions of  
398 this subparagraph (v). Any municipality having a population of  
399 less than ten thousand (10,000) shall be exempt from the  
400 provisions of this subparagraph (v). The provisions of this  
401 subparagraph (v) shall not require any bidder to submit bids  
402 electronically. When construction bids are submitted  
403 electronically, the requirement for including a certificate of  
404 responsibility, or a statement that the bid enclosed does not  
405 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the  
406 bid envelope as indicated in Section 31-3-21(1) and (2) shall be  
407 deemed in compliance with by including same as an attachment with  
408 the electronic bid submittal.

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

410 (i) **Decision procedure.** Purchases may be made  
411 from the lowest and best bidder. In determining the lowest and  
412 best bid, freight and shipping charges shall be included.  
413 Life-cycle costing, total cost bids, warranties, guaranteed  
414 buy-back provisions and other relevant provisions may be included  
415 in the best bid calculation. All best bid procedures for state  
416 agencies must be in compliance with regulations established by the  
417 Department of Finance and Administration. If any governing  
418 authority accepts a bid other than the lowest bid actually  
419 submitted, it shall place on its minutes detailed calculations and  
420 narrative summary showing that the accepted bid was determined to  
421 be the lowest and best bid, including the dollar amount of the



422 accepted bid and the dollar amount of the lowest bid. No agency  
423 or governing authority shall accept a bid based on items not  
424 included in the specifications.

425 (ii) **Decision procedure for Certified Purchasing**

426 **Offices.** In addition to the decision procedure set forth in  
427 subparagraph (i) of this paragraph (d), Certified Purchasing  
428 Offices may also use the following procedure: Purchases may be  
429 made from the bidder offering the best value. In determining the  
430 best value bid, freight and shipping charges shall be included.  
431 Life-cycle costing, total cost bids, warranties, guaranteed  
432 buy-back provisions, documented previous experience, training  
433 costs and other relevant provisions, including, but not limited  
434 to, a bidder having a local office and inventory located within  
435 the jurisdiction of the governing authority, may be included in  
436 the best value calculation. This provision shall authorize  
437 Certified Purchasing Offices to utilize a Request For Proposals  
438 (RFP) process when purchasing commodities. All best value  
439 procedures for state agencies must be in compliance with  
440 regulations established by the Department of Finance and  
441 Administration. No agency or governing authority shall accept a  
442 bid based on items or criteria not included in the specifications.

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

444 **Landmarks.** In addition to the decision procedure set forth in  
445 subparagraph (i) of this paragraph (d), where purchase involves  
446 renovation, restoration, or both, of the State Capitol Building or



447 any other historical building designated for at least five (5)  
448 years as a Mississippi Landmark by the Board of Trustees of the  
449 Department of Archives and History under the authority of Sections  
450 39-7-7 and 39-7-11, the agency or governing authority may use the  
451 following procedure: Purchases may be made from the lowest and  
452 best prequalified bidder. Prequalification of bidders shall be  
453 determined not less than fifteen (15) working days before the  
454 first published notice of bid opening. Prequalification criteria  
455 shall be limited to bidder's knowledge and experience in  
456 historical restoration, preservation and renovation. In  
457 determining the lowest and best bid, freight and shipping charges  
458 shall be included. Life-cycle costing, total cost bids,  
459 warranties, guaranteed buy-back provisions and other relevant  
460 provisions may be included in the best bid calculation. All best  
461 bid and prequalification procedures for state agencies must be in  
462 compliance with regulations established by the Department of  
463 Finance and Administration. If any governing authority accepts a  
464 bid other than the lowest bid actually submitted, it shall place  
465 on its minutes detailed calculations and narrative summary showing  
466 that the accepted bid was determined to be the lowest and best  
467 bid, including the dollar amount of the accepted bid and the  
468 dollar amount of the lowest bid. No agency or governing authority  
469 shall accept a bid based on items not included in the  
470 specifications.



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

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

477 (e) **Lease-purchase authorization.** For the purposes of  
478 this section, the term "equipment" shall mean equipment, furniture  
479 and, if applicable, associated software and other applicable  
480 direct costs associated with the acquisition. Any lease-purchase  
481 of equipment which an agency is not required to lease-purchase  
482 under the master lease-purchase program pursuant to Section  
483 31-7-10 and any lease-purchase of equipment which a governing  
484 authority elects to lease-purchase may be acquired by a  
485 lease-purchase agreement under this paragraph (e). Lease-purchase  
486 financing may also be obtained from the vendor or from a  
487 third-party source after having solicited and obtained at least  
488 two (2) written competitive bids, as defined in paragraph (b) of  
489 this section, for such financing without advertising for such  
490 bids. Solicitation for the bids for financing may occur before or  
491 after acceptance of bids for the purchase of such equipment or,  
492 where no such bids for purchase are required, at any time before  
493 the purchase thereof. No such lease-purchase agreement shall be  
494 for an annual rate of interest which is greater than the overall  
495 maximum interest rate to maturity on general obligation



496 indebtedness permitted under Section 75-17-101, and the term of  
497 such lease-purchase agreement shall not exceed the useful life of  
498 equipment covered thereby as determined according to the upper  
499 limit of the asset depreciation range (ADR) guidelines for the  
500 Class Life Asset Depreciation Range System established by the  
501 Internal Revenue Service pursuant to the United States Internal  
502 Revenue Code and regulations thereunder as in effect on December  
503 31, 1980, or comparable depreciation guidelines with respect to  
504 any equipment not covered by ADR guidelines. Any lease-purchase  
505 agreement entered into pursuant to this paragraph (e) may contain  
506 any of the terms and conditions which a master lease-purchase  
507 agreement may contain under the provisions of Section 31-7-10(5),  
508 and shall contain an annual allocation dependency clause  
509 substantially similar to that set forth in Section 31-7-10(8).  
510 Each agency or governing authority entering into a lease-purchase  
511 transaction pursuant to this paragraph (e) shall maintain with  
512 respect to each such lease-purchase transaction the same  
513 information as required to be maintained by the Department of  
514 Finance and Administration pursuant to Section 31-7-10(13).  
515 However, nothing contained in this section shall be construed to  
516 permit agencies to acquire items of equipment with a total  
517 acquisition cost in the aggregate of less than Ten Thousand  
518 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
519 equipment, and the purchase thereof by any lessor, acquired by  
520 lease-purchase under this paragraph and all lease-purchase



521 payments with respect thereto shall be exempt from all Mississippi  
522 sales, use and ad valorem taxes. Interest paid on any  
523 lease-purchase agreement under this section shall be exempt from  
524 State of Mississippi income taxation.

525           (f) **Alternate bid authorization.** When necessary to  
526 ensure ready availability of commodities for public works and the  
527 timely completion of public projects, no more than two (2)  
528 alternate bids may be accepted by a governing authority for  
529 commodities. No purchases may be made through use of such  
530 alternate bids procedure unless the lowest and best bidder cannot  
531 deliver the commodities contained in his bid. In that event,  
532 purchases of such commodities may be made from one (1) of the  
533 bidders whose bid was accepted as an alternate.

534           (g) **Construction contract change authorization.** In the  
535 event a determination is made by an agency or governing authority  
536 after a construction contract is let that changes or modifications  
537 to the original contract are necessary or would better serve the  
538 purpose of the agency or the governing authority, such agency or  
539 governing authority may, in its discretion, order such changes  
540 pertaining to the construction that are necessary under the  
541 circumstances without the necessity of further public bids;  
542 provided that such change shall be made in a commercially  
543 reasonable manner and shall not be made to circumvent the public  
544 purchasing statutes. In addition to any other authorized person,  
545 the architect or engineer hired by an agency or governing



546 authority with respect to any public construction contract shall  
547 have the authority, when granted by an agency or governing  
548 authority, to authorize changes or modifications to the original  
549 contract without the necessity of prior approval of the agency or  
550 governing authority when any such change or modification is less  
551 than one percent (1%) of the total contract amount. The agency or  
552 governing authority may limit the number, manner or frequency of  
553 such emergency changes or modifications.

554           (h) **Petroleum purchase alternative.** In addition to  
555 other methods of purchasing authorized in this chapter, when any  
556 agency or governing authority shall have a need for gas, diesel  
557 fuel, oils and/or other petroleum products in excess of the amount  
558 set forth in paragraph (a) of this section, such agency or  
559 governing authority may purchase the commodity after having  
560 solicited and obtained at least two (2) competitive written bids,  
561 as defined in paragraph (b) of this section. If two (2)  
562 competitive written bids are not obtained, the entity shall comply  
563 with the procedures set forth in paragraph (c) of this section.  
564 In the event any agency or governing authority shall have  
565 advertised for bids for the purchase of gas, diesel fuel, oils and  
566 other petroleum products and coal and no acceptable bids can be  
567 obtained, such agency or governing authority is authorized and  
568 directed to enter into any negotiations necessary to secure the  
569 lowest and best contract available for the purchase of such  
570 commodities.



571                   (i)   **Road construction petroleum products price**  
572 **adjustment clause authorization.** Any agency or governing  
573 authority authorized to enter into contracts for the construction,  
574 maintenance, surfacing or repair of highways, roads or streets,  
575 may include in its bid proposal and contract documents a price  
576 adjustment clause with relation to the cost to the contractor,  
577 including taxes, based upon an industry-wide cost index, of  
578 petroleum products including asphalt used in the performance or  
579 execution of the contract or in the production or manufacture of  
580 materials for use in such performance. Such industry-wide index  
581 shall be established and published monthly by the Mississippi  
582 Department of Transportation with a copy thereof to be mailed,  
583 upon request, to the clerks of the governing authority of each  
584 municipality and the clerks of each board of supervisors  
585 throughout the state. The price adjustment clause shall be based  
586 on the cost of such petroleum products only and shall not include  
587 any additional profit or overhead as part of the adjustment. The  
588 bid proposals or document contract shall contain the basis and  
589 methods of adjusting unit prices for the change in the cost of  
590 such petroleum products.

591                   (j)   **State agency emergency purchase procedure.** If the  
592 governing board or the executive head, or his designees, of any  
593 agency of the state shall determine that an emergency exists in  
594 regard to the purchase of any commodities or repair contracts, so  
595 that the delay incident to giving opportunity for competitive





596 bidding would be detrimental to the interests of the state, then  
597 the head of such agency, or his designees, shall file with the  
598 Department of Finance and Administration (i) a statement  
599 explaining the conditions and circumstances of the emergency,  
600 which shall include a detailed description of the events leading  
601 up to the situation and the negative impact to the entity if the  
602 purchase is made following the statutory requirements set forth in  
603 paragraph (a), (b) or (c) of this section, and (ii) a certified  
604 copy of the appropriate minutes of the board of such agency  
605 requesting the emergency purchase, if applicable. Upon receipt of  
606 the statement and applicable board certification, the State Fiscal  
607 Officer, or his designees, may, in writing, authorize the purchase  
608 or repair without having to comply with competitive bidding  
609 requirements.

610       If the governing board or the executive head, or his  
611 designees, of any agency determines that an emergency exists in  
612 regard to the purchase of any commodities or repair contracts, so  
613 that the delay incident to giving opportunity for competitive  
614 bidding would threaten the health or safety of any person, or the  
615 preservation or protection of property, then the provisions in  
616 this section for competitive bidding shall not apply, and any  
617 officer or agent of the agency having general or specific  
618 authority for making the purchase or repair contract shall approve  
619 the bill presented for payment, and he shall certify in writing



620 from whom the purchase was made, or with whom the repair contract  
621 was made.

622 Total purchases made under this paragraph (j) shall only be  
623 for the purpose of meeting needs created by the emergency  
624 situation. Following the emergency purchase, documentation of the  
625 purchase, including a description of the commodity purchased, the  
626 purchase price thereof and the nature of the emergency shall be  
627 filed with the Department of Finance and Administration. Any  
628 contract awarded pursuant to this paragraph (j) shall not exceed a  
629 term of one (1) year.

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

631 If the governing authority, or the governing authority acting  
632 through its designee, shall determine that an emergency exists in  
633 regard to the purchase of any commodities or repair contracts, so  
634 that the delay incident to giving opportunity for competitive  
635 bidding would be detrimental to the interest of the governing  
636 authority, then the provisions herein for competitive bidding  
637 shall not apply and any officer or agent of such governing  
638 authority having general or special authority therefor in making  
639 such purchase or repair shall approve the bill presented therefor,  
640 and he shall certify in writing thereon from whom such purchase  
641 was made, or with whom such a repair contract was made. At the  
642 board meeting next following the emergency purchase or repair  
643 contract, documentation of the purchase or repair contract,  
644 including a description of the commodity purchased, the price



645 thereof and the nature of the emergency shall be presented to the  
646 board and shall be placed on the minutes of the board of such  
647 governing authority.

648           (1) **Hospital purchase, lease-purchase and lease**  
649 **authorization.**

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

655                   (ii) In addition to the authority granted in  
656 subparagraph (i) of this paragraph (1), the commissioners or board  
657 of trustees is authorized to enter into contracts for the lease of  
658 equipment or services, or both, which it considers necessary for  
659 the proper care of patients if, in its opinion, it is not  
660 financially feasible to purchase the necessary equipment or  
661 services. Any such contract for the lease of equipment or  
662 services executed by the commissioners or board shall not exceed a  
663 maximum of five (5) years' duration and shall include a  
664 cancellation clause based on unavailability of funds. If such  
665 cancellation clause is exercised, there shall be no further  
666 liability on the part of the lessee. Any such contract for the  
667 lease of equipment or services executed on behalf of the  
668 commissioners or board that complies with the provisions of this



669 subparagraph (ii) shall be excepted from the bid requirements set  
670 forth in this section.

671 (m) **Exceptions from bidding requirements.** Excepted  
672 from bid requirements are:

673 (i) **Purchasing agreements approved by department.**

674 Purchasing agreements, contracts and maximum price regulations  
675 executed or approved by the Department of Finance and  
676 Administration.

677 (ii) **Outside equipment repairs.** Repairs to  
678 equipment, when such repairs are made by repair facilities in the  
679 private sector; however, engines, transmissions, rear axles and/or  
680 other such components shall not be included in this exemption when  
681 replaced as a complete unit instead of being repaired and the need  
682 for such total component replacement is known before disassembly  
683 of the component; however, invoices identifying the equipment,  
684 specific repairs made, parts identified by number and name,  
685 supplies used in such repairs, and the number of hours of labor  
686 and costs therefor shall be required for the payment for such  
687 repairs.

688 (iii) **In-house equipment repairs.** Purchases of  
689 parts for repairs to equipment, when such repairs are made by  
690 personnel of the agency or governing authority; however, entire  
691 assemblies, such as engines or transmissions, shall not be  
692 included in this exemption when the entire assembly is being  
693 replaced instead of being repaired.



694 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
695 of gravel or fill dirt which are to be removed and transported by  
696 the purchaser.

697 (v) **Governmental equipment auctions.** Motor  
698 vehicles or other equipment purchased from a federal agency or  
699 authority, another governing authority or state agency of the  
700 State of Mississippi, or any governing authority or state agency  
701 of another state at a public auction held for the purpose of  
702 disposing of such vehicles or other equipment. Any purchase by a  
703 governing authority under the exemption authorized by this  
704 subparagraph (v) shall require advance authorization spread upon  
705 the minutes of the governing authority to include the listing of  
706 the item or items authorized to be purchased and the maximum bid  
707 authorized to be paid for each item or items.

708 (vi) **Intergovernmental sales and transfers.**  
709 Purchases, sales, transfers or trades by governing authorities or  
710 state agencies when such purchases, sales, transfers or trades are  
711 made by a private treaty agreement or through means of  
712 negotiation, from any federal agency or authority, another  
713 governing authority or state agency of the State of Mississippi,  
714 or any state agency or governing authority of another state.  
715 Nothing in this section shall permit such purchases through public  
716 auction except as provided for in subparagraph (v) of this  
717 paragraph (m). It is the intent of this section to allow  
718 governmental entities to dispose of and/or purchase commodities



719 from other governmental entities at a price that is agreed to by  
720 both parties. This shall allow for purchases and/or sales at  
721 prices which may be determined to be below the market value if the  
722 selling entity determines that the sale at below market value is  
723 in the best interest of the taxpayers of the state. Governing  
724 authorities shall place the terms of the agreement and any  
725 justification on the minutes, and state agencies shall obtain  
726 approval from the Department of Finance and Administration, prior  
727 to releasing or taking possession of the commodities.

728 (vii) **Perishable supplies or food.** Perishable  
729 supplies or food purchased for use in connection with hospitals,  
730 the school lunch programs, homemaking programs and for the feeding  
731 of county or municipal prisoners.

732 (viii) **Single source items.** Noncompetitive items  
733 available from one (1) source only. In connection with the  
734 purchase of noncompetitive items only available from one (1)  
735 source, a certification of the conditions and circumstances  
736 requiring the purchase shall be filed by the agency with the  
737 Department of Finance and Administration and by the governing  
738 authority with the board of the governing authority. Upon receipt  
739 of that certification the Department of Finance and Administration  
740 or the board of the governing authority, as the case may be, may,  
741 in writing, authorize the purchase, which authority shall be noted  
742 on the minutes of the body at the next regular meeting thereafter.  
743 In those situations, a governing authority is not required to



744 obtain the approval of the Department of Finance and  
745 Administration. Following the purchase, the executive head of the  
746 state agency, or his designees, shall file with the Department of  
747 Finance and Administration, documentation of the purchase,  
748 including a description of the commodity purchased, the purchase  
749 price thereof and the source from whom it was purchased.

750 (ix) **Waste disposal facility construction**

751 **contracts.** Construction of incinerators and other facilities for  
752 disposal of solid wastes in which products either generated  
753 therein, such as steam, or recovered therefrom, such as materials  
754 for recycling, are to be sold or otherwise disposed of; however,  
755 in constructing such facilities, a governing authority or agency  
756 shall publicly issue requests for proposals, advertised for in the  
757 same manner as provided herein for seeking bids for public  
758 construction projects, concerning the design, construction,  
759 ownership, operation and/or maintenance of such facilities,  
760 wherein such requests for proposals when issued shall contain  
761 terms and conditions relating to price, financial responsibility,  
762 technology, environmental compatibility, legal responsibilities  
763 and such other matters as are determined by the governing  
764 authority or agency to be appropriate for inclusion; and after  
765 responses to the request for proposals have been duly received,  
766 the governing authority or agency may select the most qualified  
767 proposal or proposals on the basis of price, technology and other  
768 relevant factors and from such proposals, but not limited to the



769 terms thereof, negotiate and enter contracts with one or more of  
770 the persons or firms submitting proposals.

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

774           (xi) **Information technology products.** Purchases  
775 of information technology products made by governing authorities  
776 under the provisions of purchase schedules, or contracts executed  
777 or approved by the Mississippi Department of Information  
778 Technology Services and designated for use by governing  
779 authorities.

780           (xii) **Energy efficiency services and equipment.**  
781 Energy efficiency services and equipment acquired by school  
782 districts, community and junior colleges, institutions of higher  
783 learning and state agencies or other applicable governmental  
784 entities on a shared-savings, lease or lease-purchase basis  
785 pursuant to Section 31-7-14.

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

790           (xiv) **Library books and other reference materials.**  
791 Purchases by libraries or for libraries of books and periodicals;  
792 processed film, videocassette tapes, filmstrips and slides;  
793 recorded audiotapes, cassettes and diskettes; and any such items





794 as would be used for teaching, research or other information  
795 distribution; however, equipment such as projectors, recorders,  
796 audio or video equipment, and monitor televisions are not exempt  
797 under this subparagraph.

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

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

804 (xvii) **Multichannel interactive video systems.**  
805 From and after July 1, 1990, contracts by Mississippi Authority  
806 for Educational Television with any private educational  
807 institution or private nonprofit organization whose purposes are  
808 educational in regard to the construction, purchase, lease or  
809 lease-purchase of facilities and equipment and the employment of  
810 personnel for providing multichannel interactive video systems  
811 (ITSF) in the school districts of this state.

812 (xviii) **Purchases of prison industry products by**  
813 **the Department of Corrections, regional correctional facilities or**  
814 **privately owned prisons.** Purchases made by the Mississippi  
815 Department of Corrections, regional correctional facilities or  
816 privately owned prisons involving any item that is manufactured,  
817 processed, grown or produced from the state's prison industries.



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

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

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

832                   (xxii)   **Garbage, solid waste and sewage contracts.**  
833 Contracts for garbage collection or disposal, contracts for solid  
834 waste collection or disposal and contracts for sewage collection  
835 or disposal.

836                   (xxiii)   **Municipal water tank maintenance**  
837 **contracts.** Professional maintenance program contracts for the  
838 repair or maintenance of municipal water tanks, which provide  
839 professional services needed to maintain municipal water storage  
840 tanks for a fixed annual fee for a duration of two (2) or more  
841 years.



842 (xxiv) **Purchases of Mississippi Industries for the**  
843 **Blind products.** Purchases made by state agencies or governing  
844 authorities involving any item that is manufactured, processed or  
845 produced by the Mississippi Industries for the Blind.

846 (xxv) **Purchases of state-adopted textbooks.**  
847 Purchases of state-adopted textbooks by public school districts.

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

851 (xxvii) **Used heavy or specialized machinery or**  
852 **equipment for installation of soil and water conservation**  
853 **practices purchased at auction.** Used heavy or specialized  
854 machinery or equipment used for the installation and  
855 implementation of soil and water conservation practices or  
856 measures purchased subject to the restrictions provided in  
857 Sections 69-27-331 through 69-27-341. Any purchase by the State  
858 Soil and Water Conservation Commission under the exemption  
859 authorized by this subparagraph shall require advance  
860 authorization spread upon the minutes of the commission to include  
861 the listing of the item or items authorized to be purchased and  
862 the maximum bid authorized to be paid for each item or items.

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



866                   (xxix)   **Purchases made pursuant to qualified**  
867 **cooperative purchasing agreements.** Purchases made by certified  
868 purchasing offices of state agencies or governing authorities  
869 under cooperative purchasing agreements previously approved by the  
870 Office of Purchasing and Travel and established by or for any  
871 municipality, county, parish or state government or the federal  
872 government, provided that the notification to potential  
873 contractors includes a clause that sets forth the availability of  
874 the cooperative purchasing agreement to other governmental  
875 entities. Such purchases shall only be made if the use of the  
876 cooperative purchasing agreements is determined to be in the best  
877 interest of the governmental entity.

878                   (xxx)   **School yearbooks.** Purchases of school  
879 yearbooks by state agencies or governing authorities; provided,  
880 however, that state agencies and governing authorities shall use  
881 for these purchases the RFP process as set forth in the  
882 Mississippi Procurement Manual adopted by the Office of Purchasing  
883 and Travel.

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

887                   (xxxii)   **Toll roads and bridge construction**  
888 **projects.** Contracts entered into under the provisions of Section  
889 65-43-1 or 65-43-3.



890 (xxxiii) **Certain purchases under Section 57-1-221.**  
891 Contracts entered into pursuant to the provisions of Section  
892 57-1-221.

893 (xxxiv) **Certain transfers made pursuant to the**  
894 **provisions of Section 57-105-1(7).** Transfers of public property  
895 or facilities under Section 57-105-1(7) and construction related  
896 to such public property or facilities.

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

900 (xxxvi) **Certain purchases by an academic medical**  
901 **center or health sciences school.** Purchases by an academic  
902 medical center or health sciences school, as defined in Section  
903 37-115-50, of commodities that are used for clinical purposes and  
904 1. intended for use in the diagnosis of disease or other  
905 conditions or in the cure, mitigation, treatment or prevention of  
906 disease, and 2. medical devices, biological, drugs and  
907 radiation-emitting devices as defined by the United States Food  
908 and Drug Administration.

909 (n) **Term contract authorization.** All contracts for the  
910 purchase of:

911 (i) All contracts for the purchase of commodities,  
912 equipment and public construction (including, but not limited to,  
913 repair and maintenance), may be let for periods of not more than  
914 sixty (60) months in advance, subject to applicable statutory



915 provisions prohibiting the letting of contracts during specified  
916 periods near the end of terms of office. Term contracts for a  
917 period exceeding twenty-four (24) months shall also be subject to  
918 ratification or cancellation by governing authority boards taking  
919 office subsequent to the governing authority board entering the  
920 contract.

921 (ii) Bid proposals and contracts may include price  
922 adjustment clauses with relation to the cost to the contractor  
923 based upon a nationally published industry-wide or nationally  
924 published and recognized cost index. The cost index used in a  
925 price adjustment clause shall be determined by the Department of  
926 Finance and Administration for the state agencies and by the  
927 governing board for governing authorities. The bid proposal and  
928 contract documents utilizing a price adjustment clause shall  
929 contain the basis and method of adjusting unit prices for the  
930 change in the cost of such commodities, equipment and public  
931 construction.

932 (o) **Purchase law violation prohibition and vendor**  
933 **penalty.** No contract or purchase as herein authorized shall be  
934 made for the purpose of circumventing the provisions of this  
935 section requiring competitive bids, nor shall it be lawful for any  
936 person or concern to submit individual invoices for amounts within  
937 those authorized for a contract or purchase where the actual value  
938 of the contract or commodity purchased exceeds the authorized  
939 amount and the invoices therefor are split so as to appear to be



940 authorized as purchases for which competitive bids are not  
941 required. Submission of such invoices shall constitute a  
942 misdemeanor punishable by a fine of not less than Five Hundred  
943 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
944 or by imprisonment for thirty (30) days in the county jail, or  
945 both such fine and imprisonment. In addition, the claim or claims  
946 submitted shall be forfeited.

947           (p) **Electrical utility petroleum-based equipment**  
948 **purchase procedure.** When in response to a proper advertisement  
949 therefor, no bid firm as to price is submitted to an electric  
950 utility for power transformers, distribution transformers, power  
951 breakers, reclosers or other articles containing a petroleum  
952 product, the electric utility may accept the lowest and best bid  
953 therefor although the price is not firm.

954           (q) **Fuel management system bidding procedure.** Any  
955 governing authority or agency of the state shall, before  
956 contracting for the services and products of a fuel management or  
957 fuel access system, enter into negotiations with not fewer than  
958 two (2) sellers of fuel management or fuel access systems for  
959 competitive written bids to provide the services and products for  
960 the systems. In the event that the governing authority or agency  
961 cannot locate two (2) sellers of such systems or cannot obtain  
962 bids from two (2) sellers of such systems, it shall show proof  
963 that it made a diligent, good-faith effort to locate and negotiate  
964 with two (2) sellers of such systems. Such proof shall include,



965 but not be limited to, publications of a request for proposals and  
966 letters soliciting negotiations and bids. For purposes of this  
967 paragraph (q), a fuel management or fuel access system is an  
968 automated system of acquiring fuel for vehicles as well as  
969 management reports detailing fuel use by vehicles and drivers, and  
970 the term "competitive written bid" shall have the meaning as  
971 defined in paragraph (b) of this section. Governing authorities  
972 and agencies shall be exempt from this process when contracting  
973 for the services and products of fuel management or fuel access  
974 systems under the terms of a state contract established by the  
975 Office of Purchasing and Travel.

976 (r) **Solid waste contract proposal procedure.** Before  
977 entering into any contract for garbage collection or disposal,  
978 contract for solid waste collection or disposal or contract for  
979 sewage collection or disposal, which involves an expenditure of  
980 more than Fifty Thousand Dollars (\$50,000.00), a governing  
981 authority or agency shall issue publicly a request for proposals  
982 concerning the specifications for such services which shall be  
983 advertised for in the same manner as provided in this section for  
984 seeking bids for purchases which involve an expenditure of more  
985 than the amount provided in paragraph (c) of this section. Any  
986 request for proposals when issued shall contain terms and  
987 conditions relating to price, financial responsibility,  
988 technology, legal responsibilities and other relevant factors as  
989 are determined by the governing authority or agency to be





990 appropriate for inclusion; all factors determined relevant by the  
991 governing authority or agency or required by this paragraph (r)  
992 shall be duly included in the advertisement to elicit proposals.  
993 After responses to the request for proposals have been duly  
994 received, the governing authority or agency shall select the most  
995 qualified proposal or proposals on the basis of price, technology  
996 and other relevant factors and from such proposals, but not  
997 limited to the terms thereof, negotiate and enter into contracts  
998 with one or more of the persons or firms submitting proposals. If  
999 the governing authority or agency deems none of the proposals to  
1000 be qualified or otherwise acceptable, the request for proposals  
1001 process may be reinitiated. Notwithstanding any other provisions  
1002 of this paragraph, where a county with at least thirty-five  
1003 thousand (35,000) nor more than forty thousand (40,000)  
1004 population, according to the 1990 federal decennial census, owns  
1005 or operates a solid waste landfill, the governing authorities of  
1006 any other county or municipality may contract with the governing  
1007 authorities of the county owning or operating the landfill,  
1008 pursuant to a resolution duly adopted and spread upon the minutes  
1009 of each governing authority involved, for garbage or solid waste  
1010 collection or disposal services through contract negotiations.

1011 (s) **Minority set-aside authorization.** Notwithstanding  
1012 any provision of this section to the contrary, any agency or  
1013 governing authority, by order placed on its minutes, may, in its  
1014 discretion, set aside not more than twenty percent (20%) of its



1015 anticipated annual expenditures for the purchase of commodities  
1016 from minority businesses; however, all such set-aside purchases  
1017 shall comply with all purchasing regulations promulgated by the  
1018 Department of Finance and Administration and shall be subject to  
1019 bid requirements under this section. Set-aside purchases for  
1020 which competitive bids are required shall be made from the lowest  
1021 and best minority business bidder. For the purposes of this  
1022 paragraph, the term "minority business" means a business which is  
1023 owned by a majority of persons who are United States citizens or  
1024 permanent resident aliens (as defined by the Immigration and  
1025 Naturalization Service) of the United States, and who are Asian,  
1026 Black, Hispanic or Native American, according to the following  
1027 definitions:

1028 (i) "Asian" means persons having origins in any of  
1029 the original people of the Far East, Southeast Asia, the Indian  
1030 subcontinent, or the Pacific Islands.

1031 (ii) "Black" means persons having origins in any  
1032 black racial group of Africa.

1033 (iii) "Hispanic" means persons of Spanish or  
1034 Portuguese culture with origins in Mexico, South or Central  
1035 America, or the Caribbean Islands, regardless of race.

1036 (iv) "Native American" means persons having  
1037 origins in any of the original people of North America, including  
1038 American Indians, Eskimos and Aleuts.



1039                   (t)   **Construction punch list restriction.**   The  
1040 architect, engineer or other representative designated by the  
1041 agency or governing authority that is contracting for public  
1042 construction or renovation may prepare and submit to the  
1043 contractor only one (1) preliminary punch list of items that do  
1044 not meet the contract requirements at the time of substantial  
1045 completion and one (1) final list immediately before final  
1046 completion and final payment.

1047                   (u)   **Procurement of construction services by state**  
1048 **institutions of higher learning.**   Contracts for privately financed  
1049 construction of auxiliary facilities on the campus of a state  
1050 institution of higher learning may be awarded by the Board of  
1051 Trustees of State Institutions of Higher Learning to the lowest  
1052 and best bidder, where sealed bids are solicited, or to the  
1053 offeror whose proposal is determined to represent the best value  
1054 to the citizens of the State of Mississippi, where requests for  
1055 proposals are solicited.

1056                   (v)   **Insurability of bidders for public construction or**  
1057 **other public contracts.**   In any solicitation for bids to perform  
1058 public construction or other public contracts to which this  
1059 section applies including, but not limited to, contracts for  
1060 repair and maintenance, for which the contract will require  
1061 insurance coverage in an amount of not less than One Million  
1062 Dollars (\$1,000,000.00), bidders shall be permitted to either  
1063 submit proof of current insurance coverage in the specified amount



1064 or demonstrate ability to obtain the required coverage amount of  
1065 insurance if the contract is awarded to the bidder. Proof of  
1066 insurance coverage shall be submitted within five (5) business  
1067 days from bid acceptance.

1068 (w) **Purchase authorization clarification.** Nothing in  
1069 this section shall be construed as authorizing any purchase not  
1070 authorized by law.

1071 **SECTION 8.** This act shall take effect and be in force from  
1072 and after July 1, 2018.

