

By: Senator(s) Ferris

To: Education

## SENATE BILL NO. 2188

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 EXEMPT PURCHASES OF STATE-ADOPTED TEXTBOOKS BY SCHOOL DISTRICTS  
3 FROM PUBLIC BID REQUIREMENTS; AND FOR RELATED PURPOSES.

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

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

7 31-7-13. All agencies and governing authorities shall  
8 purchase their commodities and printing; contract for fire  
9 insurance, automobile insurance, casualty insurance (other than  
10 workers' compensation) and liability insurance; contract for  
11 garbage collection or disposal; contract for solid waste  
12 collection or disposal; contract for sewage collection or  
13 disposal; and contract for public construction as herein provided.

14 (a) Purchases which do not involve an expenditure of  
15 more than One Thousand Five Hundred Dollars (\$1,500.00), exclusive  
16 of freight or shipping charges, may be made without advertising or  
17 otherwise requesting competitive bids. Provided, however, that  
18 nothing contained in this paragraph (a) shall be construed to  
19 prohibit any agency or governing authority from establishing  
20 procedures which require competitive bids on purchases of One  
21 Thousand Five Hundred Dollars (\$1,500.00) or less.

22 (b) Purchases which involve an expenditure of more than  
23 One Thousand Five Hundred Dollars (\$1,500.00) but not more than  
24 Ten Thousand Dollars (\$10,000.00), exclusive of freight and  
25 shipping charges may be made from the lowest and best bidder  
26 without publishing or posting advertisement for bids, provided at  
27 least two (2) competitive written bids have been obtained. Any

governing authority purchasing commodities pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, with regard to governing authorities other than counties, or its purchase clerk, or his designee, with regard to counties, to accept the lowest and best competitive written bid. Such authorization shall be made in writing by the governing authority and shall be maintained on file in the primary office of the agency and recorded in the official minutes of the governing authority, as appropriate. The purchasing agent or the purchase clerk, or their designee, as the case may be, and not the governing authority, shall be liable for any penalties and/or damages as may be imposed by law for any act or omission of the purchasing agent or purchase clerk, or their designee, constituting a violation of law in accepting any bid without approval by the governing authority. The term "competitive written bid" shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor.

(c) Purchases which involve an expenditure of more than Ten Thousand Dollars (\$10,000.00), exclusive of freight and shipping charges may be made from the lowest and best bidder after advertising for competitive sealed bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Fifteen Thousand Dollars (\$15,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the

66 plans and/or specifications on file. In all cases involving  
67 governing authorities, before the notice shall be published or  
68 posted, the plans or specifications for the construction or  
69 equipment being sought shall be filed with the clerk of the board  
70 of the governing authority, and there remain. If there is no  
71 newspaper published in the county or municipality, then such  
72 notice shall be given by posting same at the courthouse, or for  
73 municipalities at the city hall, and at two (2) other public  
74 places in the county or municipality, and also by publication once  
75 each week for two (2) consecutive weeks in some newspaper having a  
76 general circulation in the county or municipality in the above  
77 provided manner. On the same date that the notice is submitted to  
78 the newspaper for publication, the agency or governing authority  
79 involved shall mail written notice to the main office of the  
80 Mississippi Contract Procurement Center that contains the same  
81 information as that in the published notice. In addition to these  
82 requirements, agencies shall maintain a vendor file and vendors of  
83 the equipment or commodities being sought may be mailed  
84 solicitations and specifications, and a bid file shall be  
85 established which shall indicate those vendors to whom such  
86 solicitations and specifications were mailed, and such file shall  
87 also contain such information as is pertinent to the bid.  
88 Specifications pertinent to such bidding shall be written so as  
89 not to exclude comparable equipment of domestic manufacture.  
90 Provided, however, that should valid justification be presented,  
91 the Department of Finance and Administration or the board of a  
92 governing authority may approve a request for specific equipment  
93 necessary to perform a specific job. Provided further, that a  
94 registered professional engineer or architect may write  
95 specifications for a governing authority to require a specific  
96 item of equipment available only from limited sources or vendors  
97 when such specifications conform with the rules and regulations  
98 promulgated by an appropriate federal agency regulating such  
99 matters under the federal procurement laws. Further, such

justification, when placed on the minutes of the board of a governing authority, may serve as authority for that governing authority to write specifications to require a specific item of equipment needed to perform a specific job. In addition to these requirements, from and after July 1, 1990, vendors of relocatable classrooms and the specifications for the purchase of such relocatable classrooms published by local school boards shall meet all pertinent regulations of the State Board of Education, including prior approval of such bid by the State Department of Education. Nothing in this section shall prohibit any agency or governing authority from writing specifications to include life-cycle costing, total cost bids, extended warranties or guaranteed buy-back provisions, provided that such bid requirements shall be in compliance with regulations established by the Department of Audit.

(d) (i) Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and shipping charges shall be included. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

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

(iii) Whenever bids are solicited for a public construction or renovation project and only one (1) bid is received, the agency or the governing authority may accept such

bid if the bid is opened, it is within the funds allocated for the project, it is responsive to the solicitation and the contractor is capable of performing the contract in accordance with the solicitation.

(iv) No addendum to bid specifications for such projects may be issued by the agency or governing authority within twelve (12) hours of the time established by the agency or governing authority for the receipt of bids.

(e) Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of property covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions

168 which a master lease-purchase agreement may contain under the  
169 provisions of Section 31-7-10(5), and shall contain an annual  
170 allocation dependency clause substantially similar to that set  
171 forth in Section 31-7-10(8). Each agency or governing authority  
172 entering into a lease-purchase transaction pursuant to this  
173 paragraph (e) shall maintain with respect to each such  
174 lease-purchase transaction the same information as required to be  
175 maintained by the Department of Finance and Administration  
176 pursuant to Section 31-7-10(13). However, nothing contained in  
177 this section shall be construed to permit agencies to acquire  
178 items of equipment with a total acquisition cost in the aggregate  
179 of less than Ten Thousand Dollars (\$10,000.00) by a single  
180 lease-purchase transaction. All equipment, and the purchase  
181 thereof by any lessor, acquired by lease-purchase under this  
182 paragraph and all lease-purchase payments with respect thereto  
183 shall be exempt from all Mississippi sales, use and ad valorem  
184 taxes. Interest paid on any lease-purchase agreement under this  
185 section shall be exempt from State of Mississippi income taxation.

186 (f) When necessary to ensure ready availability of  
187 commodities for public works and the timely completion of public  
188 projects, no more than two (2) alternate bids may be accepted by a  
189 governing authority for commodities. No purchases may be made  
190 through use of such alternate bids procedure unless the lowest and  
191 best bidder, for reasons beyond his control, cannot deliver the  
192 commodities contained in his bid. In that event, purchases of  
193 such commodities may be made from one (1) of the bidders whose bid  
194 was accepted as an alternate.

195 (g) In the event a determination is made by an agency  
196 or governing authority after a construction contract is let that  
197 changes or modifications to the original contract are necessary or  
198 would better serve the purpose of the agency or the governing  
199 authority, such agency or governing authority may, in its  
200 discretion, order such changes pertaining to the construction that  
201 are necessary under the circumstances without the necessity of

further public bids; provided that such change shall be made in a commercially reasonable manner and shall not be made to circumvent the public purchasing statutes. In addition to any other authorized person, the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original contract without the necessity of prior approval of the agency or governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

(h) In the event any agency or governing authority shall have advertised for bids for the purchase of gas, diesel fuel, oils and other petroleum products and coal and no acceptable bids can be obtained, such agency or governing authority is authorized and directed to enter into any negotiations necessary to secure the lowest and best contract available for the purchase of such commodities.

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

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

(j) If the executive head of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the provisions herein for competitive bidding shall not apply and the head of such agency shall be authorized to make the purchase or repair. Total purchases so made shall only be for the purpose of meeting needs created by the emergency situation. In the event such executive head is responsible to an agency board, at the meeting next following the emergency purchase, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the nature of the emergency shall be presented to the board and placed on the minutes of the board of such agency. The head of such agency shall, at the earliest possible date following such emergency purchase, file with the Department of Finance and Administration (i) a statement under oath certifying the conditions and circumstances of the emergency, and (ii) a certified copy of the appropriate minutes of the board of such agency, if applicable.

(k) If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract



was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority.

(1) The commissioners or board of trustees of any hospital owned or owned and operated separately or jointly by one or more counties, cities, towns, supervisors districts or election districts, or combinations thereof, may contract with such lowest and best bidder for the purchase or lease of any commodity under a contract of purchase or lease-purchase agreement whose obligatory terms do not exceed five (5) years. In addition to the authority granted herein, the commissioners or board of trustees are authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee.

(m) Excepted from bid requirements are:

(i) Purchasing agreements, contracts and maximum price regulations executed or approved by the Department of Finance and Administration.

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

provided, however, that invoices identifying the equipment, specific repairs made, parts identified by number and name, supplies used in such repairs, and the number of hours of labor and costs therefor shall be required for the payment for such repairs.

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

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

(v) Motor vehicles or other equipment purchased from a federal or state agency or a governing authority at a public auction held for the purpose of disposing of such vehicles or other equipment. Any purchase by a governing authority under the exemption authorized by this paragraph (v) shall require advance authorization spread upon the minutes of the governing authority to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(vi) Purchases, sales, transfers or trades by governing authorities or state agencies when such purchases, sales, transfers or trades are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi, or any state agency of another state. Nothing in this section shall permit such purchases through public auction except as provided for in paragraph (v) of this section. It is the intent of this section to allow governmental entities to dispose of and/or purchase commodities from other governmental entities at a price that is agreed to by both parties. This shall allow for purchases and/or sales at prices which may be determined to be below the market value if the selling entity determines that

the sale at below market value is in the best interest of the taxpayers of the state. Governing authorities shall place the terms of the agreement and any justification on the minutes, and state agencies shall obtain approval from the Department of Finance and Administration, prior to releasing or taking possession of the commodities.

(vii) Perishable supplies or foods purchased for use in connection with hospitals, the school lunch programs, homemaking programs and for the feeding of county or municipal prisoners.

(viii) Noncompetitive items available from one (1) source only.

(ix) Construction of incinerators and other facilities for disposal of solid wastes in which products either generated therein, such as steam, or recovered therefrom, such as materials for recycling, are to be sold or otherwise disposed of; provided, however, in constructing such facilities a governing authority or agency shall publicly issue requests for proposals, advertised for in the same manner as provided herein for seeking bids for public construction projects, concerning the design, construction, ownership, operation and/or maintenance of such facilities, wherein such requests for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, environmental compatibility, legal responsibilities and such other matters as are determined by the governing authority or agency to be appropriate for inclusion; and after responses to the request for proposals have been duly received, the governing authority or agency may select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals.

(x) Supplies, commodities and equipment purchased by hospitals through group purchase programs pursuant to Section

31-7-38.

(xi) Purchases of data processing equipment made by governing authorities under the provisions of purchase agreements, contracts or maximum price regulations executed or approved by the Mississippi Department of Information Technology Services.

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

(xiii) Purchases of contracts for fire insurance, automobile insurance, casualty insurance, health insurance and liability insurance by governing authorities or agencies.

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

(xv) Purchases by libraries or for libraries of books and periodicals; processed film, video cassette tapes, filmstrips and slides; recorded audio tapes, cassettes and diskettes; and any such items as would be used for teaching, research or other information distribution; however, equipment such as projectors, recorders, audio or video equipment, and monitor televisions are not exempt under this paragraph.

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

(xvii) Sales, transfers or trades of any personal property between governing authorities within a county or any such transaction involving governing authorities of two (2) or more counties.

(xviii) Purchases of ballots printed pursuant to

Section 23-15-351.

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

(xx) From and after January 1, 1991, purchases made by state agencies involving any item that is manufactured, processed, grown or produced from the state's prison industries.

(xxi) Purchases of surveillance equipment or any other high-tech equipment to be used by narcotics agents in undercover operations, provided that any such purchase shall be in compliance with regulations established by the Department of Finance and Administration.

(xxii) Purchases by community or junior colleges of textbooks which are obtained for the purpose of renting such books to students as part of a book service system.

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

(xxiv) Emergency purchases made by the Public Employees' Retirement System pursuant to Section 25-11-15(7).

(xxv) Repealed.

(xxvi) Contracts for garbage collection or disposal, contracts for solid waste collection or disposal and contracts for sewage collection or disposal.

(xxvii) Professional maintenance program contracts for the repair or maintenance of municipal water tanks, which provide professional services needed to maintain municipal water storage tanks for a fixed annual fee for a duration of two (2) or

more years.

(xxviii) Purchases made by state agencies involving any item that is manufactured, processed or produced by the Mississippi Industries for the Blind.

(xxix) Purchases of state-adopted textbooks by public school districts.

In connection with the purchase of noncompetitive items only available from one (1) source, a certification of the conditions and circumstances requiring the purchase shall be filed by the agency with the Department of Finance and Administration and by the governing authority with the board of the governing authority.

Upon receipt of such certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter. In such situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration.

(n) (i) All contracts for the purchase of:

(A) Commodities, equipment and public construction (including, but not limited to, repair and maintenance), and

(B) Water lines, sewer lines, storm drains, drainage ditches, asphalt milling, traffic striping, asphalt overlay of streets, and curb and gutter (not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00) per project listed in this item B) may be let for periods of not more than twenty-four (24) months in advance, subject to applicable statutory provisions prohibiting the letting of contracts during specified periods near the end of terms of office.

(ii) All purchases made by governing authorities, including purchases made pursuant to the provisions of subparagraph (i) of this paragraph (n), may be made upon one (1) purchase order issued per month to each individual vendor prior to

474 delivery of such commodities provided that each individual  
475 delivery, load or shipment purchased is properly requisitioned and  
476 is properly received and receipted by signed ticket, receipt or  
477 invoice, indicating thereon the point of delivery, and provided  
478 that, with respect to counties, such commodities are properly  
479 accounted for by the receiving clerk or an assistant receiving  
480 clerk as provided by Section 31-7-109. Such purchase order shall  
481 be invalid on the first calendar day of the month immediately  
482 following the month in which it was issued. Purchases in such  
483 month immediately following may be made only if a purchase order  
484 is issued for such month. Each monthly purchase order shall be  
485 retained in the records of the governing authority. Agencies may  
486 make purchases as authorized under this subparagraph (ii) in  
487 accordance with such regulations, policies and procedures as are  
488 promulgated by the Department of Finance and Administration.

489 (o) No contract or purchase as herein authorized shall  
490 be made for the purpose of circumventing the provisions of this  
491 section requiring competitive bids, nor shall it be lawful for any  
492 person or concern to submit individual invoices for amounts within  
493 those authorized for a contract or purchase where the actual value  
494 of the contract or commodity purchased exceeds the authorized  
495 amount and the invoices therefor are split so as to appear to be  
496 authorized as purchases for which competitive bids are not  
497 required. Submission of such invoices shall constitute a  
498 misdemeanor punishable by a fine of not less than Five Hundred  
499 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
500 or by imprisonment for thirty (30) days in the county jail, or  
501 both such fine and imprisonment. In addition, the claim or claims  
502 submitted shall be forfeited.

503 (p) When in response to a proper advertisement  
504 therefor, no bid firm as to price is submitted to an electric  
505 utility for power transformers, distribution transformers, power  
506 breakers, reclosers or other articles containing a petroleum  
507 product, the electric utility may accept the lowest and best bid

therefor although the price is not firm.

(q) The prohibitions and restrictions set forth in Sections 19-11-27, 21-35-27 and 31-7-49 shall not apply to a contract, lease or lease-purchase agreement entered pursuant to the requirements of this chapter.

(r) For the purposes of this section, the term "purchase" shall mean the total amount of money encumbered by a single purchase order.

(s) Any governing authority or agency of the state shall, before contracting for the services and products of a fuel management or fuel access system, enter into negotiations with not fewer than two (2) sellers of fuel management or fuel access systems for competitive written bids to provide the services and products for the systems. In the event that the governing authority or agency cannot locate two (2) sellers of such systems or cannot obtain bids from two (2) sellers of such systems, it shall show proof that it made a diligent, good-faith effort to locate and negotiate with two (2) sellers of such systems. Such proof shall include, but not be limited to, publications of a request for proposals and letters soliciting negotiations and bids. For purposes of this paragraph (s), a fuel management or fuel access system is an automated system of acquiring fuel for vehicles as well as management reports detailing fuel use by vehicles and drivers, and the term "competitive written bid" shall have the meaning as defined in paragraph (b) of this section.

(t) Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars (\$50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than Ten Thousand Dollars



(\$10,000.00). Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (t) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated.

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

(i) "Asian" means persons having origins in any of the original people of the Far East, Southeast Asia, the Indian

576 subcontinent, or the Pacific Islands.

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

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

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

585                   (v) The architect, engineer or other  
586 representative designated by the agency or governing authority  
587 that is contracting for public construction or renovation may  
588 prepare and submit to the contractor only one (1) preliminary  
589 punch list of items that do not meet the contract requirements at  
590 the time of substantial completion and one (1) final list  
591 immediately before final completion and final payment.

592                   (w) Nothing in this section shall be construed as  
593 authorizing any purchase not authorized by law.

594       SECTION 2. This act shall take effect and be in force from  
595 and after July 1, 1999.