

By: Burton

To: Fees, Salaries and
AdministrationSENATE BILL NO. 2900
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 19-7-5, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE METHOD BY WHICH COUNTIES MAY DISPOSE OF PERSONAL
3 PROPERTY WITH A FAIR MARKET VALUE OF ZERO; TO AMEND SECTION
4 31-7-1, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERMS
5 "CONSTRUCTION" AND "PURCHASE" AS THEY RELATE TO THE PUBLIC
6 PURCHASING LAWS; TO AMEND SECTIONS 31-7-3, 31-7-5, 31-7-9 AND
7 31-7-11, MISSISSIPPI CODE OF 1972, TO USE THE CORRECT NAME OF THE
8 AGENCY ADMINISTERING THE PUBLIC PURCHASING LAWS; TO AMEND SECTION
9 31-7-10, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERM "EQUIPMENT";
10 TO AMEND SECTION 31-7-12, MISSISSIPPI CODE OF 1972, TO DELETE THE
11 PROVISION ALLOWING GOVERNING AUTHORITIES TO PURCHASE COMMODITIES
12 WITHOUT REGARD TO STATE CONTRACT PRICE WHEN THE EXPENDITURE IS
13 LESS THAN \$1500.00; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF
14 1972, TO CLARIFY THAT CONTRACTS FOR RENTALS ARE SUBJECT TO THE
15 PUBLIC PURCHASING LAWS; TO PROVIDE THAT NO ADDENDUM TO BID
16 SPECIFICATIONS MAY BE ISSUED WITHIN 12 WORKING HOURS OF THE TIME
17 ESTABLISHED FOR THE RECEIPT OF BIDS UNLESS ADDENDUM ALSO AMENDS
18 THE BID OPENING DATE; TO DELETE THE PROVISION REQUIRING AN AGENCY
19 TO MAINTAIN A VENDOR FILE; TO REVISE THE PROCEDURE BY WHICH
20 ENTITIES MAY PURCHASE PETROLEUM PRODUCTS; TO DELETE CERTAIN
21 EXEMPTIONS FROM THE PUBLIC PURCHASING LAWS; TO INCREASE THE
22 MAXIMUM TERM TO 60 MONTHS IN CERTAIN PURCHASING CONTRACTS AND TO
23 ALLOW PRICE ADJUSTMENT CLAUSES; TO AMEND SECTION 31-7-455,
24 MISSISSIPPI CODE OF 1972, TO REVISE THE METHOD BY WHICH SCHOOL
25 BOARDS MAY DISPOSE OF PERSONAL PROPERTY WHICH NO LONGER HAVE
26 USEFUL VALUE TO THE SCHOOL DISTRICT; AND FOR RELATED PURPOSES.

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

28 SECTION 1. Section 19-7-5, Mississippi Code of 1972, is
29 amended as follows:[LR1]

30 19-7-5. The board of supervisors shall have the power to
31 sell and dispose of at public sale for cash, any personal property
32 belonging to the county or any subdivision thereof when the same
33 shall have ceased to be used for county purposes or when, in the
34 judgment of said board, a sale thereof would promote the best
35 interest of the county. Said sale shall be advertised by posting
36 notices at three (3) public places in the county, at least ten
37 (10) days prior to such sale, one (1) of which said notices shall
38 be posted at the courthouse. The proceeds of said sale shall be

39 placed in the county depository to the credit of the proper fund.

40 Where said property shall not exceed One Hundred Dollars
41 (\$100.00) in value the same may be sold and disposed of by the
42 boards of supervisors at a private sale by the unanimous vote of
43 the members of said board of supervisors and the proceeds thereof
44 disposed of as above provided. However, if the board of
45 supervisors find consistent with fact that the fair market value
46 of the personal property is zero and this finding is duly entered
47 on the minutes of the board, then the personal property in
48 question may be disposed of as deemed to be appropriate and in the
49 best interest of the county. If any of such property may be of
50 use or benefit to the United States government in its national
51 defense effort, the board of supervisors is hereby authorized in
52 its discretion to turn over such property to the United States
53 government by way of a donation thereto.

54 SECTION 2. Section 31-7-1, Mississippi Code of 1972, is
55 amended as follows:[LR2]

56 31-7-1. The following terms are defined for the purposes of
57 this chapter to have the following meanings:

58 (a) "Agency" shall mean any state board, commission,
59 committee, council, university, department or unit thereof created
60 by the Constitution or statutes if such board, commission,
61 committee, council, university, department, unit or the head
62 thereof is authorized to appoint subordinate staff by the
63 Constitution or statute, except a legislative or judicial board,
64 commission, committee, council, department or unit thereof.

65 (b) "Governing authority" shall mean boards of
66 supervisors, governing boards of all school districts, all boards
67 of directors of public water supply districts, boards of directors
68 of master public water supply districts, municipal public utility
69 commissions, governing authorities of all municipalities, port
70 authorities, commissioners and boards of trustees of any public
71 hospitals, boards of trustees of public library systems, district
72 attorneys, school attendance officers and any political
73 subdivision of the state supported wholly or in part by public
74 funds of the state or political subdivisions thereof, including
75 commissions, boards and agencies created or operated under the

76 authority of any county or municipality of this state. The term
77 "governing authority" shall not include economic development
78 authorities supported in part by private funds, or commissions
79 appointed to hold title to and oversee the development and
80 management of lands and buildings which are donated by private
81 individuals to the public for the use and benefit of the community
82 and which are supported in part by private funds.

83 (c) "Purchasing agent" shall mean any administrator,
84 superintendent, purchase clerk or other chief officer so
85 designated having general or special authority to negotiate for
86 and make private contract for or purchase for any governing
87 authority.

88 (d) "Public funds" shall mean and include any
89 appropriated funds, special funds, fees or any other emoluments
90 received by an agency or governing authority.

91 (e) "Commodities" shall mean and include the various
92 commodities, goods, merchandise, furniture, equipment, automotive
93 equipment of every kind, and other personal property purchased by
94 the agencies of the state and governing authorities, but not
95 commodities purchased for resale or raw materials converted into
96 products for resale.

97 * * *

98 (i) "Equipment" shall be construed to include:
99 automobiles, trucks, tractors, office appliances and all other
100 equipment of every kind and description.

101 (ii) "Furniture" shall be construed to include:
102 desks, chairs, tables, seats, filing cabinets, bookcases and all
103 other items of a similar nature as well as dormitory furniture,
104 appliances, carpets and all other items of personal property
105 generally referred to as home, office or school furniture.

106 (f) "Emergency" shall mean any circumstances caused by
107 fire, flood, explosion, storm, earthquake, epidemic, riot,
108 insurrection or caused by any inherent defect due to defective

109 construction, or when the immediate preservation of order or of
110 public health is necessary by reason of unforeseen emergency, or
111 when the immediate restoration of a condition of usefulness of any
112 public building, equipment, road or bridge appears advisable, or
113 in the case of a public utility when there is a failure of any
114 machine or other thing used and useful in the generation,
115 production or distribution of electricity, water or natural gas,
116 or in the transportation or treatment of sewage; or when the delay
117 incident to obtaining competitive bids could cause adverse impact
118 upon the governing authorities or agency, its employees or its
119 citizens; or in the case of a public airport, when the delay
120 incident to publishing an advertisement for competitive bids would
121 endanger public safety in a specific (not general) manner, result
122 in or perpetuate a specific breach of airport security, or prevent
123 the airport from providing specific air transportation services.

124 (g) "Construction" shall mean the process of building,
125 altering, improving, renovating or demolishing a public structure,
126 public building, or other public real property. It does not
127 include routine operation, routine repair or regularly scheduled
128 maintenance of existing public structures, public buildings or
129 other public real property.

130 (h) "Purchase" shall mean buying, renting, leasing or
131 otherwise acquiring.

132 SECTION 3. Section 31-7-3, Mississippi Code of 1972, is
133 amended as follows:[LR3]

134 31-7-3. The Department of Finance and Administration shall
135 administer the provisions of this chapter.

136 The purposes or aims of the Department of Finance and
137 Administration in carrying out said provisions shall be to
138 coordinate and promote efficiency and economy in the purchase of
139 commodities by the agencies of the state.

140 SECTION 4. Section 31-7-5, Mississippi Code of 1972, is
141 amended as follows:[LR4]

31-7-5. The Department of Finance and Administration shall prescribe rules and regulations governing the manner in which the authority and duties granted to it by law may be carried out. It shall employ suitable and competent personnel, necessary to carry out its purposes. The Department of Finance and Administration may establish an Office of Purchasing and Travel and employ a competent person as Director of the Office of Purchasing and Travel.

SECTION 5. Section 31-7-9, Mississippi Code of 1972, is amended as follows:[LR5]

31-7-9. (1) The Office of Purchasing and Travel shall adopt purchasing regulations governing the purchase by any agency of any commodity or commodities and establishing standards and specifications for a commodity or commodities and the maximum fair prices of a commodity or commodities, subject to the approval of the Public Procurement Review Board. It shall have the power to amend, add to or eliminate purchasing regulations. The adoption of, amendment, addition to or elimination of purchasing regulations shall be based upon a determination by the Office of Purchasing and Travel with the approval of the Public Procurement Review Board, that such action is reasonable and practicable and advantageous to promote efficiency and economy in the purchase of commodities by the agencies of the state. Upon the adoption of any purchasing regulation, or an amendment, addition or elimination therein, copies of same shall be furnished to the State Auditor and to all agencies affected thereby. Thereafter, and except as otherwise may be provided in subsection (2) of this section, no agency of the state shall purchase any commodities covered by existing purchasing regulations unless such commodities be in conformity with the standards and specifications set forth in the purchasing regulations and unless the price thereof does not exceed the maximum fair price established by such purchasing regulations. The said Office of Purchasing and Travel shall

furnish to any county or municipality or other local public agency of the state requesting same, copies of purchasing regulations adopted by the Office of Purchasing and Travel and any amendments, changes or eliminations of same that may be made from time to time.

(2) The Office of Purchasing and Travel shall adopt, subject to the approval of the Public Procurement Review Board, purchasing regulations governing the purchase of unmarked vehicles to be used by the Bureau of Narcotics and Department of Public Safety in official investigations pursuant to Section 25-1-87. Such regulations shall ensure that purchases of such vehicles shall be at a fair price and shall take into consideration the peculiar needs of the Bureau of Narcotics and Department of Public Safety in undercover operations.

SECTION 6. Section 31-7-10, Mississippi Code of 1972, is amended as follows:[LR6]

31-7-10. (1) For the purposes of this section, the term "equipment" shall mean equipment, furniture, and if applicable, associated software and other applicable direct costs associated with the acquisition. In addition to its other powers and duties, the Department of Finance and Administration shall have the authority to develop a master lease-purchase program and, pursuant to that program, shall have the authority to execute on behalf of the state master lease-purchase agreements for equipment to be used by an agency, as herein provided. Each agency electing to acquire equipment by a lease-purchase agreement shall participate in the Department of Finance and Administration's master lease-purchase program, unless the Department of Finance and Administration makes a determination that such equipment cannot be obtained under the program or unless the equipment can be obtained elsewhere at an overall cost lower than that for which the equipment can be obtained under the program. Such lease-purchase agreements may include the refinancing and/or consolidation of any

208 state agency lease-purchase agreements entered into after June 30,
209 1990.

210 (2) All funds designated by agencies for procurement of
211 equipment and financing thereof under the master lease-purchase
212 program shall be paid into a special fund hereby created in the
213 State Treasury known as the "Master Lease-Purchase Program Fund"
214 which shall be used by the Department of Finance and
215 Administration for payment to the lessors for equipment acquired
216 under master lease-purchase agreements.

217 (3) Upon final approval of an appropriation bill, each
218 agency shall submit to the Public Procurement Review Board a
219 schedule of proposed equipment acquisitions for the master
220 lease-purchase program. Upon approval of an equipment schedule by
221 the Public Procurement Review Board with the advice of the
222 Department of Information Technology Services, the Office of
223 Purchasing and Travel, and the Division of Energy and
224 Transportation of the Department of Economic Development as it
225 pertains to energy efficient climate control systems, the Public
226 Procurement Review Board shall forward a copy of the equipment
227 schedule to the Department of Finance and Administration.

228 (4) The level of lease-purchase debt recommended by the
229 Department of Finance and Administration shall be subject to
230 approval by the State Bond Commission. After such approval, the
231 Department of Finance and Administration shall be authorized to
232 advertise and solicit written competitive proposals for a lessor,
233 who will purchase the equipment pursuant to bid awards made by the
234 using agency under a given category and then transfer the
235 equipment to the Department of Finance and Administration as
236 lessee, pursuant to a master lease-purchase agreement.

237 The Department of Finance and Administration shall select the
238 successful proposer for the financing of equipment under the
239 master lease-purchase program with the approval of the State Bond
240 Commission.

(5) Each master lease-purchase agreement, and any subsequent amendments, shall include such terms and conditions as the State Bond Commission shall determine to be appropriate and in the public interest, and may include any covenants deemed necessary or desirable to protect the interests of the lessor, including, but not limited to, provisions setting forth the interest rate (or method for computing interest rates) for financing pursuant to such agreement, covenants concerning application of payments and funds held in the Master Lease-Purchase Program Fund, covenants to maintain casualty insurance with respect to equipment subject to the master lease-purchase agreement (and all state agencies are specifically authorized to purchase any insurance required by a master lease-purchase agreement) and covenants precluding or limiting the right of the lessee or user to acquire equipment within a specified time (not to exceed five (5) years) after cancellation on the basis of a failure to appropriate funds for payment of amounts due under a lease-purchase agreement covering comparable equipment. The State Bond Commission shall transmit copies of each such master lease-purchase agreement and each such amendment to the Joint Legislative Budget Committee. To the extent provided in any master lease-purchase agreement, title to equipment leased pursuant thereto shall be deemed to be vested in the state or the user of the equipment (as specified in such master lease-purchase agreement), subject to default under or termination of such master lease-purchase agreement.

A master lease-purchase agreement may provide for payment by the lessor to the lessee of the purchase price of the equipment to be acquired pursuant thereto prior to the date on which payment is due to the vendor for such equipment and that the lease payments by the lessee shall commence as though the equipment had been provided on the date of payment. If the lessee, or lessee's escrow agent, has sufficient funds for payment of equipment purchases prior to payment due date to vendor of equipment, such

funds shall be held or utilized on an as needed basis for payment of equipment purchases either by the State Treasurer (in which event the master lease-purchase agreement may include provisions concerning the holding of such funds, the creation of a security interest for the benefit of the lessor in such funds until disbursed and other appropriate provisions approved by the Bond Commission) or by a corporate trustee selected by the Department of Finance and Administration (in which event the Department of Finance and Administration shall have the authority to enter into an agreement with such a corporate trustee containing terms and conditions approved by the bond commission). Earnings on any amount paid by the lessor prior to the acquisition of the equipment may be used to make lease payments under the master lease-purchase agreement or applied to pay costs and expenses incurred in connection with such lease-purchase agreement. In such event, the equipment use agreements with the user agency may provide for lease payments to commence upon the date of payment by the lessor and may also provide for a credit against such payments to the extent that investment receipts from investment of the purchase price are to be used to make lease-purchase payments.

(6) The annual rate of interest paid under any lease-purchase agreement authorized under this section shall not exceed the maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101.

(7) The Department of Finance and Administration shall furnish the equipment to the various agencies, also known as the user, pursuant to an equipment-use agreement developed by the Department of Finance and Administration. Such agreements shall require that all monthly payments due from such agency be paid, transferred or allocated into the Master Lease-Purchase Program Fund pursuant to a schedule established by the Department of Finance and Administration. In the event such sums are not paid by the defined payment period, the Executive Director of the

307 Department of Finance and Administration shall issue a requisition
308 for a warrant to draw such amount as may be due from any funds
309 appropriated for the use of the agency which has failed to make
310 the payment as agreed.

311 (8) All master lease-purchase agreements executed under the
312 authority of this section shall contain the following annual
313 allocation dependency clause or an annual allocation dependency
314 clause which is substantially equivalent thereto: "The
315 continuation of each equipment schedule to this agreement is
316 contingent in whole or in part upon the appropriation of funds by
317 the Legislature to make the lease-purchase payments required under
318 such equipment schedule. If the Legislature fails to appropriate
319 sufficient funds to provide for the continuation of the
320 lease-purchase payments under any such equipment schedule, then
321 the obligations of the lessee and of the agency to make such
322 lease-purchase payments and the corresponding provisions of any
323 such equipment schedule to this agreement shall terminate on the
324 last day of the fiscal year for which appropriations were made."

325 (9) The maximum lease term for any equipment acquired under
326 the master lease-purchase program shall not exceed the useful life
327 of such equipment as determined according to the upper limit of
328 the asset depreciation range (ADR) guidelines for the Class Life
329 Asset Depreciation Range System established by the Internal
330 Revenue Service pursuant to the United States Internal Revenue
331 Code and regulations thereunder as in effect on December 31, 1980,
332 or comparable depreciation guidelines with respect to any
333 equipment not covered by ADR guidelines. The Department of
334 Finance and Administration shall be deemed to have met the
335 requirements of this subsection if the term of a master
336 lease-purchase agreement does not exceed the weighted average
337 useful life of all equipment covered by such agreement and the
338 schedules thereto as determined by the Department of Finance and
339 Administration. For purposes of this subsection (9), the "term of

a master lease-purchase agreement" shall be the weighted average maturity of all principal payments to be made under such master lease-purchase agreement and all schedules thereto.

(10) Interest paid on any master lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation. All equipment, and the purchase thereof by any lessor, acquired under the master lease-purchase program and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes.

(11) The Governor, in his annual executive budget to the Legislature, shall recommend appropriations sufficient to provide funds to pay all amounts due and payable during the applicable fiscal year under master lease-purchase agreements entered into pursuant to this section.

(12) Any master lease-purchase agreement reciting in substance that such agreement has been entered into pursuant to this section shall be conclusively deemed to have been entered into in accordance with all of the provisions and conditions set forth in this section. Any defect or irregularity arising with respect to procedures applicable to the acquisition of any equipment shall not invalidate or otherwise limit the obligation of the Department of Finance and Administration, or the state or any agency of the state, under any master lease-purchase agreement or any equipment-use agreement.

(13) There shall be maintained by the Department of Finance and Administration with respect to each master lease-purchase agreement an itemized statement of the cash price, interest rates, interest costs, commissions, debt service schedules and all other costs and expenses paid by the state incident to the lease-purchase of equipment under such agreement.

(14) Lease-purchase agreements entered into by the Board of Trustees of State Institutions of Higher Learning pursuant to the authority of Section 37-101-413 or by any other agency which has

specific statutory authority other than pursuant to Section 31-7-13(e) to acquire equipment by lease-purchase shall not be made pursuant to the master lease-purchase program under this section, unless the Board of Trustees of State Institutions of Higher Learning or such other agency elects to participate as to part or all of its lease-purchase acquisitions in the master lease-purchase program pursuant to this section.

SECTION 7. Section 31-7-11, Mississippi Code of 1972, is amended as follows:[LR7]

31-7-11. Each agency of the state shall furnish information relative to its purchase of commodities, and as to its method of purchasing such commodities, to the Department of Finance and Administration annually and at such other times as the Department of Finance and Administration may request.

The Department of Finance and Administration shall have supervision over the purchasing and purchasing practices of each state agency and may by regulation or order correct any practice that appears contrary to the provisions of this chapter or to the best interests of the state. If it shall appear that any agency is not practicing economy in its purchasing or is permitting favoritism or any improper purchasing practice, the Department of Finance and Administration shall require that the agency immediately cease such improper activity, with full and complete authority in the Department of Finance and Administration to carry into effect its directions in such regard.

All purchases, trade-ins, sales or transfer of personal property made by any officer, board, agency, department or branch of the state government except the Legislature shall be subject to the approval of the Department of Finance and Administration. Such transaction shall be made in accordance with rules and regulations of the Department of Finance and Administration relating to the purchase of state-owned motor vehicles and all other personal property. The title of such property shall remain

406 in the name of the state.

407 SECTION 8. Section 31-7-12, Mississippi Code of 1972, is
408 amended as follows:[LR8]

409 31-7-12. (1) Except in regard to purchases of unmarked
410 vehicles made in accordance with purchasing regulations adopted by
411 the Department of Finance and Administration pursuant to Section
412 31-7-9(2), all agencies shall purchase commodities at the state
413 contract price from the approved source, unless approval is
414 granted by the Department of Finance and Administration to solicit
415 purchases outside the terms of the contracts. However, prices
416 accepted by an agency shall be less than the prices set by the
417 state contract. Prices accepted by an agency shall be obtained in
418 compliance with paragraph (a), (b) or (c) of Section 31-7-13. It
419 shall be the responsibility of the Department of Finance and
420 Administration to ascertain that the resulting prices shall
421 provide a cost effective alternative to the established state
422 contract.

423 * * *

424 (2) Governing authorities may purchase commodities approved
425 by the Department of Finance and Administration from the state
426 contract vendor, or from any source offering the identical
427 commodity, at a price not exceeding the state contract price
428 established by the Department of Finance and Administration for
429 such commodity, without obtaining or advertising for competitive
430 bids * * *. Governing authorities that do not exercise the option
431 to purchase such commodities from the state contract vendor or
432 from another source offering the identical commodity at a price
433 not exceeding the state contract price established by the
434 Department of Finance and Administration shall make such purchases
435 pursuant to the provisions of Section 31-7-13 without regard to
436 state contract prices established by the Department of Finance and
437 Administration, unless such purchases are authorized to be made
438 under subsection (6) of this section.

439 (3) Nothing in this section shall prohibit governing
440 authorities from purchasing, pursuant to subsections (1) and (2)
441 of this section, commodities approved by the Department of Finance
442 and Administration at a price not exceeding the state contract
443 price established by the Department of Finance and Administration.

444 (4) The Department of Finance and Administration shall
445 ensure that the prices of all commodities on the state contract
446 are the lowest and best prices available from any source offering
447 that commodity at the same level of quality or service, utilizing
448 the reasonable standards established therefor by the Department of
449 Finance and Administration. If the Department of Finance and
450 Administration does not list an approved price for the particular
451 item involved, purchase shall be made according to statutory
452 bidding and licensing requirements. To encourage prudent
453 purchasing practices, the Department of Finance and Administration
454 shall be authorized and empowered to exempt certain commodities
455 from the requirement that the lowest and best price be approved by
456 order placed on its minutes.

457 (5) Any school district may purchase commodities from
458 vendors with which any levying authority of the school district,
459 as defined in Section 37-57-1, has contracted through competitive
460 bidding procedures pursuant to Section 31-7-13 for purchases of
461 the same commodities. Purchases authorized by this subsection may
462 be made by a school district without obtaining or advertising for
463 competitive bids, and such purchases shall be made at the same
464 prices and under the same conditions as purchases of the same
465 commodities are to be made by the levying authority of the school
466 district under the contract with the vendor.

467 SECTION 9. Section 31-7-13, Mississippi Code of 1972, is
468 amended as follows:[LR9]

469 31-7-13. All agencies and governing authorities shall
470 purchase their commodities and printing; * * * contract for
471 garbage collection or disposal; contract for solid waste

472 collection or disposal; contract for sewage collection or
473 disposal; * * * contract for public construction; and contract for
474 rentals as herein provided.

475 (a) **Bidding procedure for purchases not over \$1,500.00.**

476 Purchases which do not involve an expenditure of more than One
477 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or
478 shipping charges, may be made without advertising or otherwise
479 requesting competitive bids. Provided, however, that nothing
480 contained in this paragraph (a) shall be construed to prohibit any
481 agency or governing authority from establishing procedures which
482 require competitive bids on purchases of One Thousand Five Hundred
483 Dollars (\$1,500.00) or less.

484 (b) **Bidding procedure for purchases over \$1,500.00 but**
485 **not over \$10,000.00.** Purchases which involve an expenditure of

486 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
487 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
488 and shipping charges may be made from the lowest and best bidder
489 without publishing or posting advertisement for bids, provided at
490 least two (2) competitive written bids have been obtained. Any
491 governing authority purchasing commodities pursuant to this
492 paragraph (b) may authorize its purchasing agent, or his designee,
493 with regard to governing authorities other than counties, or its
494 purchase clerk, or his designee, with regard to counties, to
495 accept the lowest and best competitive written bid. Such
496 authorization shall be made in writing by the governing authority
497 and shall be maintained on file in the primary office of the
498 agency and recorded in the official minutes of the governing
499 authority, as appropriate. The purchasing agent or the purchase
500 clerk, or their designee, as the case may be, and not the
501 governing authority, shall be liable for any penalties and/or
502 damages as may be imposed by law for any act or omission of the
503 purchasing agent or purchase clerk, or their designee,
504 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. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing authorities.

(c) **Bidding procedure for purchases over \$10,000.00.**

(i) Publication requirement. 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 plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be

given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Contract Procurement Center that contains the same information as that in the published notice.

(ii) **Bidding Process Amendment Procedure.** If all plans and/or specifications are published in the notification, then the plans and/or specifications may not be amended. If all plans and/or specifications are not published in the notification, then amendments to the plans/specifications, bid opening date, bid opening time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments. This notification of amendments may be made via mail, facsimile, electronic mail or other generally accepted method of information distribution. No addendum to bid specifications may be issued within twelve (12) working hours of the time established for the receipt of bids unless such addendum also amends the bid opening to a date not less than five (5) working days after the date of the addendum.

(iii) **Filing Requirement.** In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority. * * * In addition to these requirements, * * * a bid file shall be established which shall indicate those vendors to whom such solicitations and

571 specifications were issued, and such file shall also contain such
572 information as is pertinent to the bid.

573 **(iv) Specification Restrictions.** Specifications
574 pertinent to such bidding shall be written so as not to exclude
575 comparable equipment of domestic manufacture. Provided, however,
576 that should valid justification be presented, the Department of
577 Finance and Administration or the board of a governing authority
578 may approve a request for specific equipment necessary to perform
579 a specific job. * * * Further, such justification, when placed on
580 the minutes of the board of a governing authority, may serve as
581 authority for that governing authority to write specifications to
582 require a specific item of equipment needed to perform a specific
583 job. In addition to these requirements, from and after July 1,
584 1990, vendors of relocatable classrooms and the specifications for
585 the purchase of such relocatable classrooms published by local
586 school boards shall meet all pertinent regulations of the State
587 Board of Education, including prior approval of such bid by the
588 State Department of Education. * * *

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

590 (i) **Decision Procedure.** Purchases may be made
591 from the lowest and best bidder. In determining the lowest and
592 best bid, freight and shipping charges shall be included.
593 Life-cycle costing, total cost bids, warranties, guaranteed
594 buy-back provisions and other relevant provisions may be included
595 in the best bid calculation. All best bid procedures must be in
596 compliance with regulations established by the Department of
597 Finance and Administration. If any governing authority accepts a
598 bid other than the lowest bid actually submitted, it shall place
599 on its minutes detailed calculations and narrative summary showing
600 that the accepted bid was determined to be the lowest and best
601 bid, including the dollar amount of the accepted bid and the
602 dollar amount of the lowest bid. No agency or governing authority
603 shall accept a bid based on items not included in the

604 specifications.

605 (ii) **Construction Project Negotiations Authority.**

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

611 * * *

612 (e) **Lease-purchase authorization.** For the purposes of
613 this section, the term "equipment" shall mean equipment, furniture
614 and, if applicable, associated software and other applicable
615 direct costs associated with the acquisition. Any lease-purchase
616 of equipment which an agency is not required to lease-purchase
617 under the master lease-purchase program pursuant to Section
618 31-7-10 and any lease-purchase of equipment which a governing
619 authority elects to lease-purchase may be acquired by a
620 lease-purchase agreement under this paragraph (e). Lease-purchase
621 financing may also be obtained from the vendor or from a
622 third-party source after having solicited and obtained at least
623 two (2) written competitive bids, as defined in paragraph (b) of
624 this section, for such financing without advertising for such
625 bids. Solicitation for the bids for financing may occur before or
626 after acceptance of bids for the purchase of such equipment or,
627 where no such bids for purchase are required, at any time before
628 the purchase thereof. No such lease-purchase agreement shall be
629 for an annual rate of interest which is greater than the overall
630 maximum interest rate to maturity on general obligation
631 indebtedness permitted under Section 75-17-101, and the term of
632 such lease-purchase agreement shall not exceed the useful life of
633 equipment covered thereby as determined according to the upper
634 limit of the asset depreciation range (ADR) guidelines for the
635 Class Life Asset Depreciation Range System established by the
636 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 which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8). Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10(13). However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten Thousand Dollars (\$10,000.00) by a single lease-purchase transaction. All equipment, and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

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

670 (g) **Construction contract change authorization.** In the
671 event a determination is made by an agency or governing authority
672 after a construction contract is let that changes or modifications
673 to the original contract are necessary or would better serve the
674 purpose of the agency or the governing authority, such agency or
675 governing authority may, in its discretion, order such changes
676 pertaining to the construction that are necessary under the
677 circumstances without the necessity of further public bids;
678 provided that such change shall be made in a commercially
679 reasonable manner and shall not be made to circumvent the public
680 purchasing statutes. In addition to any other authorized person,
681 the architect or engineer hired by an agency or governing
682 authority with respect to any public construction contract shall
683 have the authority, when granted by an agency or governing
684 authority, to authorize changes or modifications to the original
685 contract without the necessity of prior approval of the agency or
686 governing authority when any such change or modification is less
687 than one percent (1%) of the total contract amount. The agency or
688 governing authority may limit the number, manner or frequency of
689 such emergency changes or modifications.

690 (h) **Petroleum purchase alternative.** In addition to
691 other methods of purchasing authorized in this chapter, when any
692 agency or governing authority shall have a need for gas, diesel
693 fuel, oils and/or other petroleum products in excess of the amount
694 set forth in paragraph (a) of this section, such agency or
695 governing authority may purchase the commodity after having
696 solicited and obtained at least two (2) competitive written bids,
697 as defined in paragraph (b) of this section. If two (2)
698 competitive written bids are not obtained the entity shall comply
699 with the procedures set forth in paragraph (c) of this section.
700 In the event any agency or governing authority shall have
701 advertised for bids for the purchase of gas, diesel fuel, oils and
702 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) **Road construction petroleum products price adjustment clause authorization.** 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 Mississippi 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) **State agency emergency purchase procedure.** 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) **Governing authority emergency purchase procedure.**

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.

(l) **Hospital purchase or lease authorization.** The

commissioners or board of trustees of any hospital owned or owned and operated separately or jointly by one or more counties,

769 cities, towns, supervisors districts or election districts, or
770 combinations thereof, may contract with such lowest and best
771 bidder for the purchase or lease of any commodity under a contract
772 of purchase or lease-purchase agreement whose obligatory terms do
773 not exceed five (5) years. In addition to the authority granted
774 herein, the commissioners or board of trustees are authorized to
775 enter into contracts for the lease of equipment or services, or
776 both, which it considers necessary for the proper care of patients
777 if, in its opinion, it is not financially feasible to purchase the
778 necessary equipment or services. Any such contract for the lease
779 of equipment or services executed by the commissioners or board
780 shall not exceed a maximum of five (5) years' duration and shall
781 include a cancellation clause based on unavailability of funds.
782 If such cancellation clause is exercised, there shall be no
783 further liability on the part of the lessee.

784 (m) **Exceptions from bidding requirements.** Excepted
785 from bid requirements are:

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

787 Purchasing agreements, contracts and maximum price regulations
788 executed or approved by the Department of Finance and
789 Administration.

790 (ii) **Outside equipment repairs.** Repairs to
791 equipment, when such repairs are made by repair facilities in the
792 private sector; however, engines, transmissions, rear axles and/or
793 other such components shall not be included in this exemption when
794 replaced as a complete unit instead of being repaired and the need
795 for such total component replacement is known before disassembly
796 of the component; provided, however, that invoices identifying the
797 equipment, specific repairs made, parts identified by number and
798 name, supplies used in such repairs, and the number of hours of
799 labor and costs therefor shall be required for the payment for
800 such repairs.

801 (iii) **In-house equipment repairs.** 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 gravel or dirt.** Raw unprocessed deposits of gravel or fill dirt which are to be removed and transported by the purchaser.

(v) **Governmental equipment auctions.** 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) **Intergovernmental sales and transfers.** 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 food.** 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) **Single source items.** Noncompetitive items available from one (1) source only. 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 that 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 those situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration.

(ix) **Waste disposal facility construction contracts.** 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) **Hospital group purchase contracts.** Supplies, commodities and equipment purchased by hospitals through group purchase programs pursuant to Section 31-7-38.

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

(xii) **Energy efficiency services and equipment.** Energy efficiency services and equipment acquired by school districts, community and 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) **Municipal electrical utility system fuel.** 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.

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

(xv) **Unmarked vehicles.** 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).

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

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

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

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

(xx) **Junior college books for rent.** 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.

(xxi) **Certain school district purchases.**

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

938 * * *

939 (xxii) **Garbage, solid waste and sewage contracts.**

940 Contracts for garbage collection or disposal, contracts for solid
941 waste collection or disposal and contracts for sewage collection
942 or disposal.

943 (xxiii) **Municipal water tank maintenance**

944 **contracts.** Professional maintenance program contracts for the
945 repair or maintenance of municipal water tanks, which provide
946 professional services needed to maintain municipal water storage
947 tanks for a fixed annual fee for a duration of two (2) or more
948 years.

949 (xxiv) **Purchases of Mississippi Industries for the**
950 **Blind products.** Purchases made by state agencies or governing
951 authorities involving any item that is manufactured, processed or
952 produced by the Mississippi Industries for the Blind.

953 (xxv) **Purchases of state-adopted textbooks.**

954 Purchases of state-adopted textbooks by public school districts.

955 (n) * * * **Term contract authorization.** All contracts
956 for the purchase of:

957 (i) All contracts for the purchase of commodities,
958 equipment and public construction (including, but not limited to,
959 repair and maintenance), * * * may be let for periods of not more
960 than sixty (60) months in advance, subject to applicable statutory
961 provisions prohibiting the letting of contracts during specified
962 periods near the end of terms of office. Term contracts shall
963 also be subject to ratification or cancellation by governing
964 authority boards taking office subsequent to the governing
965 authority board entering the contract.

966 (ii) Bid proposals and contracts may include price

adjustment clauses with relation to the cost to the contractor based upon a nationally published industry-wide or nationally published and recognized cost index. The cost index used in a price adjustment clause shall be determined by the Department of Finance and Administration for the state agencies and by the governing board for governing authorities. The bid proposal and contract documents utilizing a price adjustment clause shall contain the basis and method of adjusting unit prices for the change in the cost of such commodities, equipment and public construction.

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

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

(q) **Exception to county/municipal budget limitations.**

1000 The prohibitions and restrictions set forth in Sections 19-11-27,
1001 21-35-27 and 31-7-49 shall not apply to a contract, lease or
1002 lease-purchase agreement entered pursuant to the requirements of
1003 this chapter.

1004 * * *

1005 (r) **Fuel management system bidding procedure.** Any
1006 governing authority or agency of the state shall, before
1007 contracting for the services and products of a fuel management or
1008 fuel access system, enter into negotiations with not fewer than
1009 two (2) sellers of fuel management or fuel access systems for
1010 competitive written bids to provide the services and products for
1011 the systems. In the event that the governing authority or agency
1012 cannot locate two (2) sellers of such systems or cannot obtain
1013 bids from two (2) sellers of such systems, it shall show proof
1014 that it made a diligent, good-faith effort to locate and negotiate
1015 with two (2) sellers of such systems. Such proof shall include,
1016 but not be limited to, publications of a request for proposals and
1017 letters soliciting negotiations and bids. For purposes of this
1018 paragraph (s), a fuel management or fuel access system is an
1019 automated system of acquiring fuel for vehicles as well as
1020 management reports detailing fuel use by vehicles and drivers, and
1021 the term "competitive written bid" shall have the meaning as
1022 defined in paragraph (b) of this section. Governing authorities
1023 and agencies shall be exempt from this process when contracting
1024 for the services and products of a fuel management or fuel access
1025 systems under the terms of a state contract established by the
1026 Office of Purchasing and Travel.

1027 (s) **Solid waste contract proposal procedure.** Before
1028 entering into any contract for garbage collection or disposal,
1029 contract for solid waste collection or disposal or contract for
1030 sewage collection or disposal, which involves an expenditure of
1031 more than Fifty Thousand Dollars (\$50,000.00), a governing
1032 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. Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand (40,000) population, according to the 1990 federal decennial census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.

(t) **Minority set aside authorization.** 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

1066 anticipated annual expenditures for the purchase of commodities
1067 from minority businesses; however, all such set-aside purchases
1068 shall comply with all purchasing regulations promulgated by the
1069 Department of Finance and Administration and shall be subject to
1070 bid requirements under this section. Set-aside purchases for
1071 which competitive bids are required shall be made from the lowest
1072 and best minority business bidder. For the purposes of this
1073 paragraph, the term "minority business" means a business which is
1074 owned by a majority of persons who are United States citizens or
1075 permanent resident aliens (as defined by the Immigration and
1076 Naturalization Service) of the United States, and who are Asian,
1077 Black, Hispanic or Native American, according to the following
1078 definitions:

1079 (i) "Asian" means persons having origins in any of
1080 the original people of the Far East, Southeast Asia, the Indian
1081 subcontinent, or the Pacific Islands.

1082 (ii) "Black" means persons having origins in any
1083 black racial group of Africa.

1084 (iii) "Hispanic" means persons of Spanish or
1085 Portuguese culture with origins in Mexico, South or Central
1086 America, or the Caribbean Islands, regardless of race.

1087 (iv) "Native American" means persons having
1088 origins in any of the original people of North America, including
1089 American Indians, Eskimos and Aleuts.

1090 (u) **Construction punch list restriction.** The
1091 architect, engineer or other representative designated by the
1092 agency or governing authority that is contracting for public
1093 construction or renovation may prepare and submit to the
1094 contractor only one (1) preliminary punch list of items that do
1095 not meet the contract requirements at the time of substantial
1096 completion and one (1) final list immediately before final
1097 completion and final payment.

1098 (v) **Purchase authorization clarification.** Nothing in

1099 this section shall be construed as authorizing any purchase not
1100 authorized by law.

1101 SECTION 10. Section 37-7-455, Mississippi Code of 1972, is
1102 amended as follows:[LR10]

1103 **Advertising of sale; conduct of sale, execution of**
1104 **conveyance; reservation of certain interests; disposal of personal**
1105 **property.**

1106 37-7-455. (1) Except as otherwise provided in subsection
1107 (2) of this section, all such land, buildings or other property
1108 shall be sold only after the receipt of sealed bids therefor after
1109 the time and place of making such sale has been duly advertised in
1110 some newspaper having a general circulation in the county in which
1111 the property is located once each week for three (3) consecutive
1112 weeks with the first publication to be made not less than fifteen
1113 (15) days prior to the date upon which such bids are to be
1114 received and opened. The property shall be sold to the highest
1115 and best bidder for cash, but the school board shall have the
1116 right to reject any and all bids. If the property is not sold
1117 pursuant to such advertisement, the school board * * *, by
1118 resolution, may set a date for an open meeting of the school board
1119 to be held within sixty (60) days after the date upon which the
1120 bids were opened. At the meeting held pursuant to such
1121 resolution, the school board may sell by auction the * * *
1122 property for a consideration not less than the highest sealed bid
1123 previously received pursuant to the advertisement. At the
1124 meeting, * * * any interested party may bid for cash, and the
1125 property shall be sold to the highest and best bidder for cash,
1126 but the school board shall have the right to reject any and all
1127 bids. The school board may require a written confirmation of bids
1128 received at such called meeting before selling the property at
1129 auction, but it shall not be necessary that sealed bids be
1130 received before conducting the auction.

1131 (2) As an alternative to the procedures established under

subsection (1) of this section, the school board of a school district may elect, in its discretion, to sell by public auction any property, other than real property or buildings of the school district, which is not used for school or related school purposes and not needed in the operation of the schools. Before such auction, the school board shall adopt a resolution calling for the auction and shall advertise the auction in some newspaper having a general circulation in the county in which the property is located once each week for two (2) consecutive weeks, with the first publication to be made not less than fifteen (15) days before the date upon which the auction shall be held. The advertisement shall include a general description of the property to be sold at the auction and the date, time and place that such auction shall be held. At the auction, any interested party may bid for cash. The property shall be sold to the highest and best bidder; however, the school board may reject any and all bids. When selling property under this subsection, a school board is not required to advertise for or receive competitive bids in connection with the sale of the property. Any items not sold at such auctions or any other property, other than real property or buildings of the district, not classified as fixed assets for school purposes pursuant to regulations of the State Department of Audit, which no longer have useful value to the school district, in the discretion of the school board or its designated representative, may be destroyed or disposed of in any manner whatsoever, provided that no school official or employee derives any personal economic benefit from such disposal.

(3) When the sale of such property is authorized and approved by the school board, the president of the school board shall be authorized and empowered to execute a conveyance of the property upon the terms and for the consideration fixed by the board. The school board shall reserve unto the district at least an undivided one-half (1/2) nonparticipating royalty interest in

1165 all oil, gas and minerals in, on or under the land, and all
1166 proceeds derived from royalties upon the reserved mineral
1167 interests shall be used as provided by Section 37-7-457; if the
1168 mineral interests of the district are less than the full and
1169 undivided ownership, the undivided royalty interest reserved by
1170 the district shall be reduced proportionately.

1171 SECTION 11. This act shall take effect and be in force from
1172 and after its passage.