

By: Representative Guice

To: Appropriations

HOUSE BILL NO. 5
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE PUBLIC PURCHASING LAWS TO INCREASE THE MINIMUM AMOUNT
3 OF EXPENDITURES FOR WHICH COMPETITIVE BIDS ARE REQUIRED; TO
4 PROHIBIT ANY ADDENDUMS TO BID SPECIFICATIONS WITHIN TWO WORKING
5 DAYS OF THE RECEIPT OF BIDS; TO EXEMPT FROM THE BIDDING
6 REQUIREMENTS CERTAIN CONTRACTS BY PUBLIC HOSPITALS FOR THE LEASE
7 OR PURCHASE OF EQUIPMENT OR SERVICES; TO REQUIRE THE STATE AUDITOR
8 TO FILE WITH CERTAIN LEGISLATIVE COMMITTEES A REPORT CONTAINING A
9 LIST OF ALL STATE AGENCY EMERGENCY PURCHASES; AND FOR RELATED
10 PURPOSES.

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

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

14 31-7-13. All agencies and governing authorities shall
15 purchase their commodities and printing; contract for garbage
16 collection or disposal; contract for solid waste collection or
17 disposal; contract for sewage collection or disposal; contract for
18 public construction; and contract for rentals as herein provided.

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

28 (b) **Bidding procedure for purchases over \$3,500.00 but**
29 **not over \$15,000.00.** Purchases which involve an expenditure of
30 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
31 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of



32 freight and shipping charges may be made from the lowest and best
33 bidder without publishing or posting advertisement for bids,
34 provided at least two (2) competitive written bids have been
35 obtained. Any governing authority purchasing commodities pursuant
36 to this paragraph (b) may authorize its purchasing agent, or his
37 designee, with regard to governing authorities other than
38 counties, or its purchase clerk, or his designee, with regard to
39 counties, to accept the lowest and best competitive written bid.
40 Such authorization shall be made in writing by the governing
41 authority and shall be maintained on file in the primary office of
42 the agency and recorded in the official minutes of the governing
43 authority, as appropriate. The purchasing agent or the purchase
44 clerk, or their designee, as the case may be, and not the
45 governing authority, shall be liable for any penalties and/or
46 damages as may be imposed by law for any act or omission of the
47 purchasing agent or purchase clerk, or their designee,
48 constituting a violation of law in accepting any bid without
49 approval by the governing authority. The term "competitive
50 written bid" shall mean a bid submitted on a bid form furnished by
51 the buying agency or governing authority and signed by authorized
52 personnel representing the vendor, or a bid submitted on a
53 vendor's letterhead or identifiable bid form and signed by
54 authorized personnel representing the vendor. Bids may be
55 submitted by facsimile, electronic mail or other generally
56 accepted method of information distribution. Bids submitted by
57 electronic transmission shall not require the signature of the
58 vendor's representative unless required by agencies or governing
59 authorities.

60 (c) **Bidding procedure for purchases over \$15,000.00.**

61 (i) **Publication requirement.** Purchases which
62 involve an expenditure of more than Fifteen Thousand Dollars
63 (\$15,000.00), exclusive of freight and shipping charges may be
64 made from the lowest and best bidder after advertising for



65 competitive sealed bids once each week for two (2) consecutive
66 weeks in a regular newspaper published in the county or
67 municipality in which such agency or governing authority is
68 located. The date as published for the bid opening shall not be
69 less than seven (7) working days after the last published notice;
70 however, if the purchase involves a construction project in which
71 the estimated cost is in excess of Fifteen Thousand Dollars
72 (\$15,000.00), such bids shall not be opened in less than fifteen
73 (15) working days after the last notice is published and the
74 notice for the purchase of such construction shall be published
75 once each week for two (2) consecutive weeks. The notice of
76 intention to let contracts or purchase equipment shall state the
77 time and place at which bids shall be received, list the contracts
78 to be made or types of equipment or supplies to be purchased, and,
79 if all plans and/or specifications are not published, refer to the
80 plans and/or specifications on file. If there is no newspaper
81 published in the county or municipality, then such notice shall be
82 given by posting same at the courthouse, or for municipalities at
83 the city hall, and at two (2) other public places in the county or
84 municipality, and also by publication once each week for two (2)
85 consecutive weeks in some newspaper having a general circulation
86 in the county or municipality in the above provided manner. On
87 the same date that the notice is submitted to the newspaper for
88 publication, the agency or governing authority involved shall mail
89 written notice to, or provide electronic notification to the main
90 office of the Mississippi Contract Procurement Center that
91 contains the same information as that in the published notice.

92 (ii) **Bidding process amendment procedure.** If all
93 plans and/or specifications are published in the notification,
94 then the plans and/or specifications may not be amended. If all
95 plans and/or specifications are not published in the notification,
96 then amendments to the plans/specifications, bid opening date, bid
97 opening time and place may be made, provided that the agency or



98 governing authority maintains a list of all prospective bidders
99 who are known to have received a copy of the bid documents and all
100 such prospective bidders are sent copies of all amendments. This
101 notification of amendments may be made via mail, facsimile,
102 electronic mail or other generally accepted method of information
103 distribution. No addendum to bid specifications may be issued
104 within two (2) working days of the time established for the
105 receipt of bids unless such addendum also amends the bid opening
106 to a date not less than five (5) working days after the date of
107 the addendum.

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

117 (iv) **Specification restrictions.** Specifications
118 pertinent to such bidding shall be written so as not to exclude
119 comparable equipment of domestic manufacture. Provided, however,
120 that should valid justification be presented, the Department of
121 Finance and Administration or the board of a governing authority
122 may approve a request for specific equipment necessary to perform
123 a specific job. Further, such justification, when placed on the
124 minutes of the board of a governing authority, may serve as
125 authority for that governing authority to write specifications to
126 require a specific item of equipment needed to perform a specific
127 job. In addition to these requirements, from and after July 1,
128 1990, vendors of relocatable classrooms and the specifications for
129 the purchase of such relocatable classrooms published by local
130 school boards shall meet all pertinent regulations of the State



131 Board of Education, including prior approval of such bid by the
132 State Department of Education.

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

134 (i) **Decision procedure.** Purchases may be made
135 from the lowest and best bidder. In determining the lowest and
136 best bid, freight and shipping charges shall be included.
137 Life-cycle costing, total cost bids, warranties, guaranteed
138 buy-back provisions and other relevant provisions may be included
139 in the best bid calculation. All best bid procedures for state
140 agencies must be in compliance with regulations established by the
141 Department of Finance and Administration. If any governing
142 authority accepts a bid other than the lowest bid actually
143 submitted, it shall place on its minutes detailed calculations and
144 narrative summary showing that the accepted bid was determined to
145 be the lowest and best bid, including the dollar amount of the
146 accepted bid and the dollar amount of the lowest bid. No agency
147 or governing authority shall accept a bid based on items not
148 included in the specifications.

149 (ii) **Construction project negotiations authority.**

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

155 (e) **Lease-purchase authorization.** For the purposes of
156 this section, the term "equipment" shall mean equipment, furniture
157 and, if applicable, associated software and other applicable
158 direct costs associated with the acquisition. Any lease-purchase
159 of equipment which an agency is not required to lease-purchase
160 under the master lease-purchase program pursuant to Section
161 31-7-10 and any lease-purchase of equipment which a governing
162 authority elects to lease-purchase may be acquired by a
163 lease-purchase agreement under this paragraph (e). Lease-purchase



164 financing may also be obtained from the vendor or from a
165 third-party source after having solicited and obtained at least
166 two (2) written competitive bids, as defined in paragraph (b) of
167 this section, for such financing without advertising for such
168 bids. Solicitation for the bids for financing may occur before or
169 after acceptance of bids for the purchase of such equipment or,
170 where no such bids for purchase are required, at anytime before
171 the purchase thereof. No such lease-purchase agreement shall be
172 for an annual rate of interest which is greater than the overall
173 maximum interest rate to maturity on general obligation
174 indebtedness permitted under Section 75-17-101, and the term of
175 such lease-purchase agreement shall not exceed the useful life of
176 equipment covered thereby as determined according to the upper
177 limit of the asset depreciation range (ADR) guidelines for the
178 Class Life Asset Depreciation Range System established by the
179 Internal Revenue Service pursuant to the United States Internal
180 Revenue Code and regulations thereunder as in effect on December
181 31, 1980, or comparable depreciation guidelines with respect to
182 any equipment not covered by ADR guidelines. Any lease-purchase
183 agreement entered into pursuant to this paragraph (e) may contain
184 any of the terms and conditions which a master lease-purchase
185 agreement may contain under the provisions of Section 31-7-10(5),
186 and shall contain an annual allocation dependency clause
187 substantially similar to that set forth in Section 31-7-10(8).
188 Each agency or governing authority entering into a lease-purchase
189 transaction pursuant to this paragraph (e) shall maintain with
190 respect to each such lease-purchase transaction the same
191 information as required to be maintained by the Department of
192 Finance and Administration pursuant to Section 31-7-10(13).
193 However, nothing contained in this section shall be construed to
194 permit agencies to acquire items of equipment with a total
195 acquisition cost in the aggregate of less than Ten Thousand
196 Dollars (\$10,000.00) by a single lease-purchase transaction. All



197 equipment, and the purchase thereof by any lessor, acquired by
198 lease-purchase under this paragraph and all lease-purchase
199 payments with respect thereto shall be exempt from all Mississippi
200 sales, use and ad valorem taxes. Interest paid on any
201 lease-purchase agreement under this section shall be exempt from
202 State of Mississippi income taxation.

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

213 (g) **Construction contract change authorization.** In the
214 event a determination is made by an agency or governing authority
215 after a construction contract is let that changes or modifications
216 to the original contract are necessary or would better serve the
217 purpose of the agency or the governing authority, such agency or
218 governing authority may, in its discretion, order such changes
219 pertaining to the construction that are necessary under the
220 circumstances without the necessity of further public bids;
221 provided that such change shall be made in a commercially
222 reasonable manner and shall not be made to circumvent the public
223 purchasing statutes. In addition to any other authorized person,
224 the architect or engineer hired by an agency or governing
225 authority with respect to any public construction contract shall
226 have the authority, when granted by an agency or governing
227 authority, to authorize changes or modifications to the original
228 contract without the necessity of prior approval of the agency or
229 governing authority when any such change or modification is less



230 than one percent (1%) of the total contract amount. The agency or
231 governing authority may limit the number, manner or frequency of
232 such emergency changes or modifications.

233 (h) **Petroleum purchase alternative.** In addition to
234 other methods of purchasing authorized in this chapter, when any
235 agency or governing authority shall have a need for gas, diesel
236 fuel, oils and/or other petroleum products in excess of the amount
237 set forth in paragraph (a) of this section, such agency or
238 governing authority may purchase the commodity after having
239 solicited and obtained at least two (2) competitive written bids,
240 as defined in paragraph (b) of this section. If two (2)
241 competitive written bids are not obtained the entity shall comply
242 with the procedures set forth in paragraph (c) of this section.
243 In the event any agency or governing authority shall have
244 advertised for bids for the purchase of gas, diesel fuel, oils and
245 other petroleum products and coal and no acceptable bids can be
246 obtained, such agency or governing authority is authorized and
247 directed to enter into any negotiations necessary to secure the
248 lowest and best contract available for the purchase of such
249 commodities.

250 (i) **Road construction petroleum products price**
251 **adjustment clause authorization.** Any agency or governing
252 authority authorized to enter into contracts for the construction,
253 maintenance, surfacing or repair of highways, roads or streets,
254 may include in its bid proposal and contract documents a price
255 adjustment clause with relation to the cost to the contractor,
256 including taxes, based upon an industry-wide cost index, of
257 petroleum products including asphalt used in the performance or
258 execution of the contract or in the production or manufacture of
259 materials for use in such performance. Such industry-wide index
260 shall be established and published monthly by the Mississippi
261 Department of Transportation with a copy thereof to be mailed,
262 upon request, to the clerks of the governing authority of each



263 municipality and the clerks of each board of supervisors
264 throughout the state. The price adjustment clause shall be based
265 on the cost of such petroleum products only and shall not include
266 any additional profit or overhead as part of the adjustment. The
267 bid proposals or document contract shall contain the basis and
268 methods of adjusting unit prices for the change in the cost of
269 such petroleum products.

270 (j) **State agency emergency purchase procedure.** If the
271 executive head of any agency of the state shall determine that an
272 emergency exists in regard to the purchase of any commodities or
273 repair contracts, so that the delay incident to giving opportunity
274 for competitive bidding would be detrimental to the interests of
275 the state, then the provisions herein for competitive bidding
276 shall not apply and the head of such agency shall be authorized to
277 make the purchase or repair. Total purchases so made shall only
278 be for the purpose of meeting needs created by the emergency
279 situation. In the event such executive head is responsible to an
280 agency board, at the meeting next following the emergency
281 purchase, documentation of the purchase, including a description
282 of the commodity purchased, the purchase price thereof and the
283 nature of the emergency shall be presented to the board and placed
284 on the minutes of the board of such agency. The head of such
285 agency shall, at the earliest possible date following such
286 emergency purchase, file with the Department of Finance and
287 Administration (i) a statement under oath certifying the
288 conditions and circumstances of the emergency, and (ii) a
289 certified copy of the appropriate minutes of the board of such
290 agency, if applicable. On or before September 1 of each year, the
291 State Auditor shall prepare and deliver to the Senate Fees,
292 Salaries and Administration Committee, the House Fees and Salaries
293 of Public Officers Committee and the Joint Legislative Budget
294 Committee a report containing a list of all state agency emergency



295 purchases and supporting documentation for each emergency
296 purchases.

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

298 If the governing authority, or the governing authority acting
299 through its designee, shall determine that an emergency exists in
300 regard to the purchase of any commodities or repair contracts, so
301 that the delay incident to giving opportunity for competitive
302 bidding would be detrimental to the interest of the governing
303 authority, then the provisions herein for competitive bidding
304 shall not apply and any officer or agent of such governing
305 authority having general or special authority therefor in making
306 such purchase or repair shall approve the bill presented therefor,
307 and he shall certify in writing thereon from whom such purchase
308 was made, or with whom such a repair contract was made. At the
309 board meeting next following the emergency purchase or repair
310 contract, documentation of the purchase or repair contract,
311 including a description of the commodity purchased, the price
312 thereof and the nature of the emergency shall be presented to the
313 board and shall be placed on the minutes of the board of such
314 governing authority.

315 (l) **Hospital purchase, lease-purchase and lease**

316 **authorization.** (i) The commissioners or board of trustees of any
317 public hospital * * * may contract with such lowest and best
318 bidder for the purchase or lease-purchase of any commodity under a
319 contract of purchase or lease-purchase agreement whose obligatory
320 payment terms do not exceed five (5) years.

321 (ii) In addition to the authority granted in
322 subparagraph (i) of this paragraph (l), the commissioners or board
323 of trustees is authorized to enter into contracts for the lease of
324 equipment or services, or both, which it considers necessary for
325 the proper care of patients if, in its opinion, it is not
326 financially feasible to purchase the necessary equipment or
327 services. Any such contract for the lease of equipment or



328 services executed by the commissioners or board shall not exceed a
329 maximum of five (5) years' duration and shall include a
330 cancellation clause based on unavailability of funds. If such
331 cancellation clause is exercised, there shall be no further
332 liability on the part of the lessee. Any such contract for the
333 lease of equipment or services executed on behalf of the
334 commissioners or board that complies with the provisions of this
335 subparagraph (ii) shall be excepted from the bid requirements set
336 forth in this section.

337 (m) **Exceptions from bidding requirements.** Excepted
338 from bid requirements are:

339 (i) **Purchasing agreements approved by department.**
340 Purchasing agreements, contracts and maximum price regulations
341 executed or approved by the Department of Finance and
342 Administration.

343 (ii) **Outside equipment repairs.** Repairs to
344 equipment, when such repairs are made by repair facilities in the
345 private sector; however, engines, transmissions, rear axles and/or
346 other such components shall not be included in this exemption when
347 replaced as a complete unit instead of being repaired and the need
348 for such total component replacement is known before disassembly
349 of the component; provided, however, that invoices identifying the
350 equipment, specific repairs made, parts identified by number and
351 name, supplies used in such repairs, and the number of hours of
352 labor and costs therefor shall be required for the payment for
353 such repairs.

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



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

363 (v) **Governmental equipment auctions.** Motor
364 vehicles or other equipment purchased from a federal or state
365 agency or a governing authority at a public auction held for the
366 purpose of disposing of such vehicles or other equipment. Any
367 purchase by a governing authority under the exemption authorized
368 by this subparagraph (v) shall require advance authorization
369 spread upon the minutes of the governing authority to include the
370 listing of the item or items authorized to be purchased and the
371 maximum bid authorized to be paid for each item or items.

372 (vi) **Intergovernmental sales and transfers.**
373 Purchases, sales, transfers or trades by governing authorities or
374 state agencies when such purchases, sales, transfers or trades are
375 made by a private treaty agreement or through means of
376 negotiation, from any federal agency or authority, another
377 governing authority or state agency of the State of Mississippi,
378 or any state agency of another state. Nothing in this section
379 shall permit such purchases through public auction except as
380 provided for in subparagraph (v) of this section. It is the
381 intent of this section to allow governmental entities to dispose
382 of and/or purchase commodities from other governmental entities at
383 a price that is agreed to by both parties. This shall allow for
384 purchases and/or sales at prices which may be determined to be
385 below the market value if the selling entity determines that the
386 sale at below market value is in the best interest of the
387 taxpayers of the state. Governing authorities shall place the
388 terms of the agreement and any justification on the minutes, and
389 state agencies shall obtain approval from the Department of
390 Finance and Administration, prior to releasing or taking
391 possession of the commodities.



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

396 (viii) **Single source items.** Noncompetitive items
397 available from one (1) source only. In connection with the
398 purchase of noncompetitive items only available from one (1)
399 source, a certification of the conditions and circumstances
400 requiring the purchase shall be filed by the agency with the
401 Department of Finance and Administration and by the governing
402 authority with the board of the governing authority. Upon receipt
403 of that certification the Department of Finance and Administration
404 or the board of the governing authority, as the case may be, may,
405 in writing, authorize the purchase, which authority shall be noted
406 on the minutes of the body at the next regular meeting thereafter.
407 In those situations, a governing authority is not required to
408 obtain the approval of the Department of Finance and
409 Administration.

410 (ix) **Waste disposal facility construction**
411 **contracts.** Construction of incinerators and other facilities for
412 disposal of solid wastes in which products either generated
413 therein, such as steam, or recovered therefrom, such as materials
414 for recycling, are to be sold or otherwise disposed of; provided,
415 however, in constructing such facilities a governing authority or
416 agency shall publicly issue requests for proposals, advertised for
417 in the same manner as provided herein for seeking bids for public
418 construction projects, concerning the design, construction,
419 ownership, operation and/or maintenance of such facilities,
420 wherein such requests for proposals when issued shall contain
421 terms and conditions relating to price, financial responsibility,
422 technology, environmental compatibility, legal responsibilities
423 and such other matters as are determined by the governing
424 authority or agency to be appropriate for inclusion; and after



425 responses to the request for proposals have been duly received,
426 the governing authority or agency may select the most qualified
427 proposal or proposals on the basis of price, technology and other
428 relevant factors and from such proposals, but not limited to the
429 terms thereof, negotiate and enter contracts with one or more of
430 the persons or firms submitting proposals.

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

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

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

446 (xiii) **Municipal electrical utility system fuel.**
447 Purchases of coal and/or natural gas by municipally-owned electric
448 power generating systems that have the capacity to use both coal
449 and natural gas for the generation of electric power.

450 (xiv) **Library books and other reference materials.**
451 Purchases by libraries or for libraries of books and periodicals;
452 processed film, video cassette tapes, filmstrips and slides;
453 recorded audio tapes, cassettes and diskettes; and any such items
454 as would be used for teaching, research or other information
455 distribution; however, equipment such as projectors, recorders,
456 audio or video equipment, and monitor televisions are not exempt
457 under this subparagraph.



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

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

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

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

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

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

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



490 (xxii) **Garbage, solid waste and sewage contracts.**
491 Contracts for garbage collection or disposal, contracts for solid
492 waste collection or disposal and contracts for sewage collection
493 or disposal.

494 (xxiii) **Municipal water tank maintenance**
495 **contracts.** Professional maintenance program contracts for the
496 repair or maintenance of municipal water tanks, which provide
497 professional services needed to maintain municipal water storage
498 tanks for a fixed annual fee for a duration of two (2) or more
499 years.

500 (xxiv) **Purchases of Mississippi Industries for the**
501 **Blind products.** Purchases made by state agencies or governing
502 authorities involving any item that is manufactured, processed or
503 produced by the Mississippi Industries for the Blind.

504 (xxv) **Purchases of state-adopted textbooks.**
505 Purchases of state-adopted textbooks by public school districts.

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

509 (xxvii) **Used heavy or specialized machinery or**
510 **equipment for installation of soil and water conservation**
511 **practices purchased at auction.** Used heavy or specialized
512 machinery or equipment used for the installation and
513 implementation of soil and water conservation practices or
514 measures purchased subject to the restrictions provided in
515 Sections 69-27-331 through 69-27-341. Any purchase by the State
516 Soil and Water Conservation Commission under the exemption
517 authorized by this subparagraph shall require advance
518 authorization spread upon the minutes of the commission to include
519 the listing of the item or items authorized to be purchased and
520 the maximum bid authorized to be paid for each item or items.



521 (xxviii) Hospital lease of equipment or services.
522 Leases by hospitals of equipment or services if the leases are in
523 compliance with paragraph (1)(ii).

524 (n) **Term contract authorization.** All contracts for the
525 purchase of:

526 (i) All contracts for the purchase of commodities,
527 equipment and public construction (including, but not limited to,
528 repair and maintenance), may be let for periods of not more than
529 sixty (60) months in advance, subject to applicable statutory
530 provisions prohibiting the letting of contracts during specified
531 periods near the end of terms of office. Term contracts for a
532 period exceeding twenty-four (24) months shall also be subject to
533 ratification or cancellation by governing authority boards taking
534 office subsequent to the governing authority board entering the
535 contract.

536 (ii) Bid proposals and contracts may include price
537 adjustment clauses with relation to the cost to the contractor
538 based upon a nationally published industry-wide or nationally
539 published and recognized cost index. The cost index used in a
540 price adjustment clause shall be determined by the Department of
541 Finance and Administration for the state agencies and by the
542 governing board for governing authorities. The bid proposal and
543 contract documents utilizing a price adjustment clause shall
544 contain the basis and method of adjusting unit prices for the
545 change in the cost of such commodities, equipment and public
546 construction.

547 (o) **Purchase law violation prohibition and vendor**
548 **penalty.** No contract or purchase as herein authorized shall be
549 made for the purpose of circumventing the provisions of this
550 section requiring competitive bids, nor shall it be lawful for any
551 person or concern to submit individual invoices for amounts within
552 those authorized for a contract or purchase where the actual value
553 of the contract or commodity purchased exceeds the authorized



554 amount and the invoices therefor are split so as to appear to be
555 authorized as purchases for which competitive bids are not
556 required. Submission of such invoices shall constitute a
557 misdemeanor punishable by a fine of not less than Five Hundred
558 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
559 or by imprisonment for thirty (30) days in the county jail, or
560 both such fine and imprisonment. In addition, the claim or claims
561 submitted shall be forfeited.

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

569 (q) **Fuel management system bidding procedure.** Any
570 governing authority or agency of the state shall, before
571 contracting for the services and products of a fuel management or
572 fuel access system, enter into negotiations with not fewer than
573 two (2) sellers of fuel management or fuel access systems for
574 competitive written bids to provide the services and products for
575 the systems. In the event that the governing authority or agency
576 cannot locate two (2) sellers of such systems or cannot obtain
577 bids from two (2) sellers of such systems, it shall show proof
578 that it made a diligent, good-faith effort to locate and negotiate
579 with two (2) sellers of such systems. Such proof shall include,
580 but not be limited to, publications of a request for proposals and
581 letters soliciting negotiations and bids. For purposes of this
582 paragraph (q), a fuel management or fuel access system is an
583 automated system of acquiring fuel for vehicles as well as
584 management reports detailing fuel use by vehicles and drivers, and
585 the term "competitive written bid" shall have the meaning as
586 defined in paragraph (b) of this section. Governing authorities



587 and agencies shall be exempt from this process when contracting
588 for the services and products of a fuel management or fuel access
589 systems under the terms of a state contract established by the
590 Office of Purchasing and Travel.

591 (r) **Solid waste contract proposal procedure.** Before
592 entering into any contract for garbage collection or disposal,
593 contract for solid waste collection or disposal or contract for
594 sewage collection or disposal, which involves an expenditure of
595 more than Fifty Thousand Dollars (\$50,000.00), a governing
596 authority or agency shall issue publicly a request for proposals
597 concerning the specifications for such services which shall be
598 advertised for in the same manner as provided in this section for
599 seeking bids for purchases which involve an expenditure of more
600 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
601 when issued shall contain terms and conditions relating to price,
602 financial responsibility, technology, legal responsibilities and
603 other relevant factors as are determined by the governing
604 authority or agency to be appropriate for inclusion; all factors
605 determined relevant by the governing authority or agency or
606 required by this paragraph (r) shall be duly included in the
607 advertisement to elicit proposals. After responses to the request
608 for proposals have been duly received, the governing authority or
609 agency shall select the most qualified proposal or proposals on
610 the basis of price, technology and other relevant factors and from
611 such proposals, but not limited to the terms thereof, negotiate
612 and enter contracts with one or more of the persons or firms
613 submitting proposals. If the governing authority or agency deems
614 none of the proposals to be qualified or otherwise acceptable, the
615 request for proposals process may be reinitiated. Notwithstanding
616 any other provisions of this paragraph, where a county with at
617 least thirty-five thousand (35,000) nor more than forty thousand
618 (40,000) population, according to the 1990 federal decennial
619 census, owns or operates a solid waste landfill, the governing



620 authorities of any other county or municipality may contract with
621 the governing authorities of the county owning or operating the
622 landfill, pursuant to a resolution duly adopted and spread upon
623 the minutes of each governing authority involved, for garbage or
624 solid waste collection or disposal services through contract
625 negotiations.

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

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

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

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



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

654 (t) **Construction punch list restriction.** The
655 architect, engineer or other representative designated by the
656 agency or governing authority that is contracting for public
657 construction or renovation may prepare and submit to the
658 contractor only one (1) preliminary punch list of items that do
659 not meet the contract requirements at the time of substantial
660 completion and one (1) final list immediately before final
661 completion and final payment.

662 (u) **Purchase authorization clarification.** Nothing in
663 this section shall be construed as authorizing any purchase not
664 authorized by law.

665 **SECTION 2.** This act shall take effect and be in force from
666 and after July 1, 2002.

