

By: Representative Dedeaux

To: Appropriations

HOUSE BILL NO. 1108

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
 2 ALLOW THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO AUTHORIZE A
 3 STATE AGENCY OR LOCAL GOVERNING AUTHORITY TO ADVERTISE FOR BIDS ON
 4 GENERAL, ELECTRICAL AND MECHANICAL PUBLIC PROJECTS AS A WHOLE,
 5 SEPARATELY OR AS A COMBINATION OF THE TWO METHODS; TO REQUIRE
 6 ADVERTISEMENTS FOR SEPARATELY BID GENERAL, ELECTRICAL AND
 7 MECHANICAL PUBLIC PROJECTS TO BE DESCRIBED WITH PARTICULARITY; AND
 8 FOR RELATED PURPOSES.

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

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

12 31-7-13. All agencies and governing authorities shall
 13 purchase their commodities and printing; contract for garbage
 14 collection or disposal; contract for solid waste collection or
 15 disposal; contract for sewage collection or disposal; contract for
 16 public construction; and contract for rentals as herein provided.

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

26 (b) **Bidding procedure for purchases over \$1,500.00 but**
 27 **not over \$10,000.00.** Purchases which involve an expenditure of
 28 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
 29 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
 30 and shipping charges may be made from the lowest and best bidder



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

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

59 (i) **Publication requirement.** Purchases which
60 involve an expenditure of more than Ten Thousand Dollars
61 (\$10,000.00), exclusive of freight and shipping charges may be
62 made from the lowest and best bidder after advertising for
63 competitive sealed bids once each week for two (2) consecutive



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

90 (ii) **Bidding process amendment procedure.** If all
91 plans and/or specifications are published in the notification,
92 then the plans and/or specifications may not be amended. If all
93 plans and/or specifications are not published in the notification,
94 then amendments to the plans/specifications, bid opening date, bid
95 opening time and place may be made, provided that the agency or
96 governing authority maintains a list of all prospective bidders



97 who are known to have received a copy of the bid documents and all
98 such prospective bidders are sent copies of all amendments. This
99 notification of amendments may be made via mail, facsimile,
100 electronic mail or other generally accepted method of information
101 distribution. No addendum to bid specifications may be issued
102 within forty-eight (48) working hours of the time established for
103 the receipt of bids unless such addendum also amends the bid
104 opening to a date not less than five (5) working days after the
105 date of the addendum.

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

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



129 Board of Education, including prior approval of such bid by the
130 State Department of Education.

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

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

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

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

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



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



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

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

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



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

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

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



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

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

289 (k) **Governing authority emergency purchase procedure.**
290 If the governing authority, or the governing authority acting
291 through its designee, shall determine that an emergency exists in
292 regard to the purchase of any commodities or repair contracts, so
293 that the delay incident to giving opportunity for competitive



294 bidding would be detrimental to the interest of the governing
295 authority, then the provisions herein for competitive bidding
296 shall not apply and any officer or agent of such governing
297 authority having general or special authority therefor in making
298 such purchase or repair shall approve the bill presented therefor,
299 and he shall certify in writing thereon from whom such purchase
300 was made, or with whom such a repair contract was made. At the
301 board meeting next following the emergency purchase or repair
302 contract, documentation of the purchase or repair contract,
303 including a description of the commodity purchased, the price
304 thereof and the nature of the emergency shall be presented to the
305 board and shall be placed on the minutes of the board of such
306 governing authority.

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

325 (m) **Exceptions from bidding requirements.** Excepted
326 from bid requirements are:



327 (i) **Purchasing agreements approved by department.**
328 Purchasing agreements, contracts and maximum price regulations
329 executed or approved by the Department of Finance and
330 Administration.

331 (ii) **Outside equipment repairs.** Repairs to
332 equipment, when such repairs are made by repair facilities in the
333 private sector; however, engines, transmissions, rear axles and/or
334 other such components shall not be included in this exemption when
335 replaced as a complete unit instead of being repaired and the need
336 for such total component replacement is known before disassembly
337 of the component; provided, however, that invoices identifying the
338 equipment, specific repairs made, parts identified by number and
339 name, supplies used in such repairs, and the number of hours of
340 labor and costs therefor shall be required for the payment for
341 such repairs.

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

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

351 (v) **Governmental equipment auctions.** Motor
352 vehicles or other equipment purchased from a federal or state
353 agency or a governing authority at a public auction held for the
354 purpose of disposing of such vehicles or other equipment. Any
355 purchase by a governing authority under the exemption authorized
356 by this subparagraph (v) shall require advance authorization
357 spread upon the minutes of the governing authority to include the
358 listing of the item or items authorized to be purchased and the
359 maximum bid authorized to be paid for each item or items.



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

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

384 (viii) **Single source items.** Noncompetitive items
385 available from one (1) source only. In connection with the
386 purchase of noncompetitive items only available from one (1)
387 source, a certification of the conditions and circumstances
388 requiring the purchase shall be filed by the agency with the
389 Department of Finance and Administration and by the governing
390 authority with the board of the governing authority. Upon receipt
391 of that certification the Department of Finance and Administration
392 or the board of the governing authority, as the case may be, may,



393 in writing, authorize the purchase, which authority shall be noted
394 on the minutes of the body at the next regular meeting thereafter.
395 In those situations, a governing authority is not required to
396 obtain the approval of the Department of Finance and
397 Administration.

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

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

422 (xi) **Information technology products.** Purchases
423 of information technology products made by governing authorities
424 under the provisions of purchase schedules, or contracts executed
425 or approved by the Mississippi Department of Information



426 Technology Services and designated for use by governing
427 authorities.

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

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

438 (xiv) **Library books and other reference materials.**
439 Purchases by libraries or for libraries of books and periodicals;
440 processed film, video cassette tapes, filmstrips and slides;
441 recorded audio tapes, cassettes and diskettes; and any such items
442 as would be used for teaching, research or other information
443 distribution; however, equipment such as projectors, recorders,
444 audio or video equipment, and monitor televisions are not exempt
445 under this subparagraph.

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

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

452 (xvii) **Multichannel interactive video systems.**
453 From and after July 1, 1990, contracts by Mississippi Authority
454 for Educational Television with any private educational
455 institution or private nonprofit organization whose purposes are
456 educational in regard to the construction, purchase, lease or
457 lease-purchase of facilities and equipment and the employment of



458 personnel for providing multichannel interactive video systems
459 (ITSF) in the school districts of this state.

460 (xviii) **Purchases of prison industry products.**

461 From and after January 1, 1991, purchases made by state agencies
462 or governing authorities involving any item that is manufactured,
463 processed, grown or produced from the state's prison industries.

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

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

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

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

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

479 Contracts for garbage collection or disposal, contracts for solid
480 waste collection or disposal and contracts for sewage collection
481 or disposal.

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

483 **contracts.** Professional maintenance program contracts for the
484 repair or maintenance of municipal water tanks, which provide
485 professional services needed to maintain municipal water storage
486 tanks for a fixed annual fee for a duration of two (2) or more
487 years.

488 (xxiv) **Purchases of Mississippi Industries for the**

489 **Blind products.** Purchases made by state agencies or governing



490 authorities involving any item that is manufactured, processed or
491 produced by the Mississippi Industries for the Blind.

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

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

494 (xxvi) **Certain purchases under the Mississippi**

495 **Major Economic Impact Act.** Contracts entered into pursuant to the
496 provisions of Section 57-75-9(2) and (3).

497 (xxvii) **Used heavy or specialized machinery or**
498 **equipment for installation of soil and water conservation**

499 **practices purchased at auction.** Used heavy or specialized

500 machinery or equipment used for the installation and

501 implementation of soil and water conservation practices or

502 measures purchased subject to the restrictions provided in

503 Sections 69-27-331 through 69-27-341. Any purchase by the State

504 Soil and Water Conservation Commission under the exemption

505 authorized by this subparagraph shall require advance

506 authorization spread upon the minutes of the commission to include

507 the listing of the item or items authorized to be purchased and

508 the maximum bid authorized to be paid for each item or items.

509 (n) **Term contract authorization.** All contracts for the
510 purchase of:

511 (i) All contracts for the purchase of commodities,

512 equipment and public construction (including, but not limited to,

513 repair and maintenance), may be let for periods of not more than

514 sixty (60) months in advance, subject to applicable statutory

515 provisions prohibiting the letting of contracts during specified

516 periods near the end of terms of office. Term contracts for a

517 period exceeding twenty-four (24) months shall also be subject to

518 ratification or cancellation by governing authority boards taking

519 office subsequent to the governing authority board entering the

520 contract.

521 (ii) Bid proposals and contracts may include price

522 adjustment clauses with relation to the cost to the contractor



523 based upon a nationally published industry-wide or nationally
524 published and recognized cost index. The cost index used in a
525 price adjustment clause shall be determined by the Department of
526 Finance and Administration for the state agencies and by the
527 governing board for governing authorities. The bid proposal and
528 contract documents utilizing a price adjustment clause shall
529 contain the basis and method of adjusting unit prices for the
530 change in the cost of such commodities, equipment and public
531 construction.

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

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

554 (q) **Fuel management system bidding procedure.** Any
555 governing authority or agency of the state shall, before



556 contracting for the services and products of a fuel management or
557 fuel access system, enter into negotiations with not fewer than
558 two (2) sellers of fuel management or fuel access systems for
559 competitive written bids to provide the services and products for
560 the systems. In the event that the governing authority or agency
561 cannot locate two (2) sellers of such systems or cannot obtain
562 bids from two (2) sellers of such systems, it shall show proof
563 that it made a diligent, good-faith effort to locate and negotiate
564 with two (2) sellers of such systems. Such proof shall include,
565 but not be limited to, publications of a request for proposals and
566 letters soliciting negotiations and bids. For purposes of this
567 paragraph (q), a fuel management or fuel access system is an
568 automated system of acquiring fuel for vehicles as well as
569 management reports detailing fuel use by vehicles and drivers, and
570 the term "competitive written bid" shall have the meaning as
571 defined in paragraph (b) of this section. Governing authorities
572 and agencies shall be exempt from this process when contracting
573 for the services and products of a fuel management or fuel access
574 systems under the terms of a state contract established by the
575 Office of Purchasing and Travel.

576 (r) **Solid waste contract proposal procedure.** Before
577 entering into any contract for garbage collection or disposal,
578 contract for solid waste collection or disposal or contract for
579 sewage collection or disposal, which involves an expenditure of
580 more than Fifty Thousand Dollars (\$50,000.00), a governing
581 authority or agency shall issue publicly a request for proposals
582 concerning the specifications for such services which shall be
583 advertised for in the same manner as provided in this section for
584 seeking bids for purchases which involve an expenditure of more
585 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
586 when issued shall contain terms and conditions relating to price,
587 financial responsibility, technology, legal responsibilities and
588 other relevant factors as are determined by the governing



589 authority or agency to be appropriate for inclusion; all factors
590 determined relevant by the governing authority or agency or
591 required by this paragraph (r) shall be duly included in the
592 advertisement to elicit proposals. After responses to the request
593 for proposals have been duly received, the governing authority or
594 agency shall select the most qualified proposal or proposals on
595 the basis of price, technology and other relevant factors and from
596 such proposals, but not limited to the terms thereof, negotiate
597 and enter contracts with one or more of the persons or firms
598 submitting proposals. If the governing authority or agency deems
599 none of the proposals to be qualified or otherwise acceptable, the
600 request for proposals process may be reinitiated. Notwithstanding
601 any other provisions of this paragraph, where a county with at
602 least thirty-five thousand (35,000) nor more than forty thousand
603 (40,000) population, according to the 1990 federal decennial
604 census, owns or operates a solid waste landfill, the governing
605 authorities of any other county or municipality may contract with
606 the governing authorities of the county owning or operating the
607 landfill, pursuant to a resolution duly adopted and spread upon
608 the minutes of each governing authority involved, for garbage or
609 solid waste collection or disposal services through contract
610 negotiations.

611 (s) **Minority set-aside authorization.** Notwithstanding
612 any provision of this section to the contrary, any agency or
613 governing authority, by order placed on its minutes, may, in its
614 discretion, set aside not more than twenty percent (20%) of its
615 anticipated annual expenditures for the purchase of commodities
616 from minority businesses; however, all such set-aside purchases
617 shall comply with all purchasing regulations promulgated by the
618 Department of Finance and Administration and shall be subject to
619 bid requirements under this section. Set-aside purchases for
620 which competitive bids are required shall be made from the lowest
621 and best minority business bidder. For the purposes of this



622 paragraph, the term "minority business" means a business which is
623 owned by a majority of persons who are United States citizens or
624 permanent resident aliens (as defined by the Immigration and
625 Naturalization Service) of the United States, and who are Asian,
626 Black, Hispanic or Native American, according to the following
627 definitions:

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

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

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

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

639 (t) **Construction punch list restriction.** The
640 architect, engineer or other representative designated by the
641 agency or governing authority that is contracting for public
642 construction or renovation may prepare and submit to the
643 contractor only one (1) preliminary punch list of items that do
644 not meet the contract requirements at the time of substantial
645 completion and one (1) final list immediately before final
646 completion and final payment.

647 (u) The Department of Finance and Administration may
648 authorize an agency or governing authority to advertise for bids
649 on general, electrical and mechanical public projects as a whole,
650 separately or as a combination of the two (2) methods in meeting
651 the publication requirements of this section.

652 If the Department of Finance and Administration authorizes an
653 agency or governing authority to advertise for bids on general,
654 electrical or mechanical public projects separately, the



655 advertisement shall describe with particularity the portions of
656 the project for which bids are being solicited. The department
657 may authorize an agency or governing authority to advertise at the
658 same time and in the same notice, all bids on a public project, as
659 a whole, separately or as a combination of the two (2) methods.

660 (v) **Purchase authorization clarification.** Nothing in
661 this section shall be construed as authorizing any purchase not
662 authorized by law.

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

