

By: Representative Moody

To: Appropriations

HOUSE BILL NO. 1109
(As Passed the House)

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 EXEMPT FROM THE BIDDING REQUIREMENTS OF THE PUBLIC PURCHASING LAWS
3 CERTAIN CONTRACTS BY PUBLIC HOSPITALS FOR THE LEASE OR PURCHASE OF
4 EQUIPMENT OR SERVICES AND PURCHASES BY LOCAL GOVERNING AUTHORITIES
5 OF CERTAIN INSURANCE CONTRACTS; AND FOR RELATED PURPOSES.

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

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

9 31-7-13. All agencies and governing authorities shall
10 purchase their commodities and printing; contract for garbage
11 collection or disposal; contract for solid waste collection or
12 disposal; contract for sewage collection or disposal; contract for
13 public construction; and contract for rentals as herein provided.

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

23 (b) **Bidding procedure for purchases over \$1,500.00 but**
24 **not over \$10,000.00.** Purchases which involve an expenditure of
25 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
26 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
27 and shipping charges may be made from the lowest and best bidder
28 without publishing or posting advertisement for bids, provided at



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

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

56 (i) **Publication requirement.** Purchases which
57 involve an expenditure of more than Ten Thousand Dollars
58 (\$10,000.00), exclusive of freight and shipping charges may be
59 made from the lowest and best bidder after advertising for
60 competitive sealed bids once each week for two (2) consecutive
61 weeks in a regular newspaper published in the county or



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

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



95 such prospective bidders are sent copies of all amendments. This
96 notification of amendments may be made via mail, facsimile,
97 electronic mail or other generally accepted method of information
98 distribution. No addendum to bid specifications may be issued
99 within two (2) business days of the time established for the
100 receipt of bids unless such addendum also amends the bid opening
101 to a date not less than five (5) working days after the date of
102 the addendum.

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

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



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

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

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

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

150 (e) **Lease-purchase authorization.** For the purposes of
151 this section, the term "equipment" shall mean equipment, furniture
152 and, if applicable, associated software and other applicable
153 direct costs associated with the acquisition. Any lease-purchase
154 of equipment which an agency is not required to lease-purchase
155 under the master lease-purchase program pursuant to Section
156 31-7-10 and any lease-purchase of equipment which a governing
157 authority elects to lease-purchase may be acquired by a
158 lease-purchase agreement under this paragraph (e). Lease-purchase
159 financing may also be obtained from the vendor or from a
160 third-party source after having solicited and obtained at least



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



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

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

208 (g) **Construction contract change authorization.** In the
209 event a determination is made by an agency or governing authority
210 after a construction contract is let that changes or modifications
211 to the original contract are necessary or would better serve the
212 purpose of the agency or the governing authority, such agency or
213 governing authority may, in its discretion, order such changes
214 pertaining to the construction that are necessary under the
215 circumstances without the necessity of further public bids;
216 provided that such change shall be made in a commercially
217 reasonable manner and shall not be made to circumvent the public
218 purchasing statutes. In addition to any other authorized person,
219 the architect or engineer hired by an agency or governing
220 authority with respect to any public construction contract shall
221 have the authority, when granted by an agency or governing
222 authority, to authorize changes or modifications to the original
223 contract without the necessity of prior approval of the agency or
224 governing authority when any such change or modification is less
225 than one percent (1%) of the total contract amount. The agency or



226 governing authority may limit the number, manner or frequency of
227 such emergency changes or modifications.

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

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



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

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

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



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

304 (1) **Hospital purchase, lease-purchase and lease**
305 **authorization.** (i) The commissioners or board of trustees of any
306 public hospital * * * may contract with such lowest and best
307 bidder for the purchase or lease-purchase of any commodity under a
308 contract of purchase or lease-purchase agreement whose obligatory
309 payment terms do not exceed five (5) years.

310 (ii) In addition to the authority granted in
311 subparagraph (i) of this paragraph (1), the commissioners or board
312 of trustees is authorized to enter into contracts for the lease of
313 equipment or services, or both, which it considers necessary for
314 the proper care of patients if, in its opinion, it is not
315 financially feasible to purchase the necessary equipment or
316 services. Any such contract for the lease of equipment or
317 services executed by the commissioners or board shall not exceed a
318 maximum of five (5) years' duration and shall include a
319 cancellation clause based on unavailability of funds. If such
320 cancellation clause is exercised, there shall be no further
321 liability on the part of the lessee. Any such contract for the
322 lease of equipment or services executed on behalf of the
323 commissioners or board that complies with the provisions of this



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

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

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

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

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

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

352 (v) **Governmental equipment auctions.** Motor
353 vehicles or other equipment purchased from a federal or state
354 agency or a governing authority at a public auction held for the
355 purpose of disposing of such vehicles or other equipment. Any
356 purchase by a governing authority under the exemption authorized



357 by this subparagraph (v) shall require advance authorization
358 spread upon the minutes of the governing authority to include the
359 listing of the item or items authorized to be purchased and the
360 maximum bid authorized to be paid for each item or items.

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

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

385 (viii) **Single source items.** Noncompetitive items
386 available from one (1) source only. In connection with the
387 purchase of noncompetitive items only available from one (1)
388 source, a certification of the conditions and circumstances
389 requiring the purchase shall be filed by the agency with the



390 Department of Finance and Administration and by the governing
391 authority with the board of the governing authority. Upon receipt
392 of that certification the Department of Finance and Administration
393 or the board of the governing authority, as the case may be, may,
394 in writing, authorize the purchase, which authority shall be noted
395 on the minutes of the body at the next regular meeting thereafter.
396 In those situations, a governing authority is not required to
397 obtain the approval of the Department of Finance and
398 Administration.

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

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



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

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

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

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

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

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

453 (xvii) **Multichannel interactive video systems.**
454 From and after July 1, 1990, contracts by Mississippi Authority
455 for Educational Television with any private educational



456 institution or private nonprofit organization whose purposes are
457 educational in regard to the construction, purchase, lease or
458 lease-purchase of facilities and equipment and the employment of
459 personnel for providing multichannel interactive video systems
460 (ITSF) in the school districts of this state.

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

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

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

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

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

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

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

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

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

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



489 (xxiv) **Purchases of Mississippi Industries for the**
490 **Blind products.** Purchases made by state agencies or governing
491 authorities involving any item that is manufactured, processed or
492 produced by the Mississippi Industries for the Blind.

493 (xxv) **Purchases of state-adopted textbooks.**
494 Purchases of state-adopted textbooks by public school districts.

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

498 (xxvii) **Used heavy or specialized machinery or**
499 **equipment for installation of soil and water conservation**
500 **practices purchased at auction.** Used heavy or specialized
501 machinery or equipment used for the installation and
502 implementation of soil and water conservation practices or
503 measures purchased subject to the restrictions provided in
504 Sections 69-27-331 through 69-27-341. Any purchase by the State
505 Soil and Water Conservation Commission under the exemption
506 authorized by this subparagraph shall require advance
507 authorization spread upon the minutes of the commission to include
508 the listing of the item or items authorized to be purchased and
509 the maximum bid authorized to be paid for each item or items.

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

513 (xxix) **Purchases of certain insurance contracts.**
514 Purchases by governing authorities for contracts for fire
515 insurance, automobile insurance, casualty insurance, workers'
516 compensation insurance, health insurance and liability insurance.

517 (n) **Term contract authorization.** All contracts for the
518 purchase of:

519 (i) All contracts for the purchase of commodities,
520 equipment and public construction (including, but not limited to,
521 repair and maintenance), may be let for periods of not more than



522 sixty (60) months in advance, subject to applicable statutory
523 provisions prohibiting the letting of contracts during specified
524 periods near the end of terms of office. Term contracts for a
525 period exceeding twenty-four (24) months shall also be subject to
526 ratification or cancellation by governing authority boards taking
527 office subsequent to the governing authority board entering the
528 contract.

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

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



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

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

584 (r) **Solid waste contract proposal procedure.** Before
585 entering into any contract for garbage collection or disposal,
586 contract for solid waste collection or disposal or contract for
587 sewage collection or disposal, which involves an expenditure of



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

619 (s) **Minority set-aside authorization.** Notwithstanding
620 any provision of this section to the contrary, any agency or



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

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

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

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

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

647 (t) **Construction punch list restriction.** The
648 architect, engineer or other representative designated by the
649 agency or governing authority that is contracting for public
650 construction or renovation may prepare and submit to the
651 contractor only one (1) preliminary punch list of items that do
652 not meet the contract requirements at the time of substantial



653 completion and one (1) final list immediately before final
654 completion and final payment.

655 (u) **Purchase authorization clarification.** Nothing in
656 this section shall be construed as authorizing any purchase not
657 authorized by law.

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

