

By: Senator(s) Thames

To: Fees, Salaries and Administration

SENATE BILL NO. 2328

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE THE STATE AUDITOR TO FILE WITH CERTAIN LEGISLATIVE
3 COMMITTEES A REPORT CONTAINING A LIST OF ALL STATE AGENCY
4 EMERGENCY PURCHASES; AND FOR RELATED PURPOSES.

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

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

8 31-7-13. All agencies and governing authorities shall
9 purchase their commodities and printing; contract for garbage
10 collection or disposal; contract for solid waste collection or
11 disposal; contract for sewage collection or disposal; contract for
12 public construction; and contract for rentals as herein provided.

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

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



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

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

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



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

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



95 notification of amendments may be made via mail, facsimile,
96 electronic mail or other generally accepted method of information
97 distribution. No addendum to bid specifications may be issued
98 within forty-eight (48) working hours of the time established for
99 the receipt of bids unless such addendum also amends the bid
100 opening to a date not less than five (5) working days after the
101 date of the addendum.

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

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

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



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

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

149 (e) **Lease-purchase authorization.** For the purposes of
150 this section, the term "equipment" shall mean equipment, furniture
151 and, if applicable, associated software and other applicable
152 direct costs associated with the acquisition. Any lease-purchase
153 of equipment which an agency is not required to lease-purchase
154 under the master lease-purchase program pursuant to Section
155 31-7-10 and any lease-purchase of equipment which a governing
156 authority elects to lease-purchase may be acquired by a
157 lease-purchase agreement under this paragraph (e). Lease-purchase
158 financing may also be obtained from the vendor or from a
159 third-party source after having solicited and obtained at least
160 two (2) written competitive bids, as defined in paragraph (b) of



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



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

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

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



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

244 (i) **Road construction petroleum products price**
245 **adjustment clause authorization.** Any agency or governing
246 authority authorized to enter into contracts for the construction,
247 maintenance, surfacing or repair of highways, roads or streets,
248 may include in its bid proposal and contract documents a price
249 adjustment clause with relation to the cost to the contractor,
250 including taxes, based upon an industry-wide cost index, of
251 petroleum products including asphalt used in the performance or
252 execution of the contract or in the production or manufacture of
253 materials for use in such performance. Such industry-wide index
254 shall be established and published monthly by the Mississippi
255 Department of Transportation with a copy thereof to be mailed,
256 upon request, to the clerks of the governing authority of each
257 municipality and the clerks of each board of supervisors
258 throughout the state. The price adjustment clause shall be based
259 on the cost of such petroleum products only and shall not include



260 any additional profit or overhead as part of the adjustment. The
261 bid proposals or document contract shall contain the basis and
262 methods of adjusting unit prices for the change in the cost of
263 such petroleum products.

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

291 (k) **Governing authority emergency purchase procedure.**
292 If the governing authority, or the governing authority acting



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

309 (1) **Hospital purchase or lease authorization.** The
310 commissioners or board of trustees of any hospital owned or owned
311 and operated separately or jointly by one or more counties,
312 cities, towns, supervisors districts or election districts, or
313 combinations thereof, may contract with such lowest and best
314 bidder for the purchase or lease of any commodity under a contract
315 of purchase or lease-purchase agreement whose obligatory terms do
316 not exceed five (5) years. In addition to the authority granted
317 herein, the commissioners or board of trustees are authorized to
318 enter into contracts for the lease of equipment or services, or
319 both, which it considers necessary for the proper care of patients
320 if, in its opinion, it is not financially feasible to purchase the
321 necessary equipment or services. Any such contract for the lease
322 of equipment or services executed by the commissioners or board
323 shall not exceed a maximum of five (5) years' duration and shall
324 include a cancellation clause based on unavailability of funds.



325 If such cancellation clause is exercised, there shall be no
326 further liability on the part of the lessee.

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

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

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

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

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

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



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

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

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

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



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

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

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



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

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

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

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

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

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

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



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

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

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

466 (xix) **Undercover operations equipment.** Purchases

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

471 (xx) **Junior college books for rent.** Purchases by

472 community or junior colleges of textbooks which are obtained for
473 the purpose of renting such books to students as part of a book
474 service system.

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

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

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

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

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

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



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

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

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

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

511 (n) **Term contract authorization.** All contracts for the
512 purchase of:

513 (i) All contracts for the purchase of commodities,
514 equipment and public construction (including, but not limited to,
515 repair and maintenance), may be let for periods of not more than
516 sixty (60) months in advance, subject to applicable statutory
517 provisions prohibiting the letting of contracts during specified
518 periods near the end of terms of office. Term contracts for a
519 period exceeding twenty-four (24) months shall also be subject to
520 ratification or cancellation by governing authority boards taking
521 office subsequent to the governing authority board entering the
522 contract.



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

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

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



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

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



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

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



622 which competitive bids are required shall be made from the lowest
623 and best minority business bidder. For the purposes of this
624 paragraph, the term "minority business" means a business which is
625 owned by a majority of persons who are United States citizens or
626 permanent resident aliens (as defined by the Immigration and
627 Naturalization Service) of the United States, and who are Asian,
628 Black, Hispanic or Native American, according to the following
629 definitions:

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

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

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

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

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

649 (u) **Purchase authorization clarification.** Nothing in
650 this section shall be construed as authorizing any purchase not
651 authorized by law.

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

