

By: Senator(s) Horhn

To: Finance

SENATE BILL NO. 2349

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO SET ASIDE
3 20% OF THE AMOUNT EXPENDED FOR ANY PUBLIC CONSTRUCTION PROJECT
4 THAT THE DEPARTMENT MANAGES, NOT TO EXCEED \$5,000,000.00, TO SMALL
5 CONTRACTORS; TO AWARD SUCH SET-ASIDE CONTRACTS TO THE LOWEST AND
6 BEST SMALL CONTRACTOR BIDDER; TO DEFINE THE TERM "SMALL
7 CONTRACTOR"; AND FOR RELATED PURPOSES.

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

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

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

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

25 (b) **Bidding procedure for purchases over \$3,500.00 but**
26 **not over \$15,000.00.** Purchases which involve an expenditure of
27 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
28 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
29 freight and shipping charges may be made from the lowest and best

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

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

61 (i) **Publication requirement.** Purchases which
62 involve an expenditure of more than Fifteen Thousand Dollars

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

92 (ii) **Bidding process amendment procedure.** If all
93 plans and/or specifications are published in the notification,
94 then the plans and/or specifications may not be amended. If all
95 plans and/or specifications are not published in the notification,

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

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

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

129 purchase of such relocatable classrooms published by local school
130 boards shall meet all pertinent regulations of the State Board of
131 Education, including prior approval of such bid by the State
132 Department of Education.

133 (v) Agencies and governing authorities may
134 establish secure procedures by which bids may be submitted via
135 electronic means.

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

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

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

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

158 (e) **Lease-purchase authorization.** For the purposes of
159 this section, the term "equipment" shall mean equipment, furniture
160 and, if applicable, associated software and other applicable
161 direct costs associated with the acquisition. Any lease-purchase

162 of equipment which an agency is not required to lease-purchase
163 under the master lease-purchase program pursuant to Section
164 31-7-10 and any lease-purchase of equipment which a governing
165 authority elects to lease-purchase may be acquired by a
166 lease-purchase agreement under this paragraph (e). Lease-purchase
167 financing may also be obtained from the vendor or from a
168 third-party source after having solicited and obtained at least
169 two (2) written competitive bids, as defined in paragraph (b) of
170 this section, for such financing without advertising for such
171 bids. Solicitation for the bids for financing may occur before or
172 after acceptance of bids for the purchase of such equipment or,
173 where no such bids for purchase are required, at any time before
174 the purchase thereof. No such lease-purchase agreement shall be
175 for an annual rate of interest which is greater than the overall
176 maximum interest rate to maturity on general obligation
177 indebtedness permitted under Section 75-17-101, and the term of
178 such lease-purchase agreement shall not exceed the useful life of
179 equipment covered thereby as determined according to the upper
180 limit of the asset depreciation range (ADR) guidelines for the
181 Class Life Asset Depreciation Range System established by the
182 Internal Revenue Service pursuant to the United States Internal
183 Revenue Code and regulations thereunder as in effect on December
184 31, 1980, or comparable depreciation guidelines with respect to
185 any equipment not covered by ADR guidelines. Any lease-purchase
186 agreement entered into pursuant to this paragraph (e) may contain
187 any of the terms and conditions which a master lease-purchase
188 agreement may contain under the provisions of Section 31-7-10(5),
189 and shall contain an annual allocation dependency clause
190 substantially similar to that set forth in Section 31-7-10(8).
191 Each agency or governing authority entering into a lease-purchase
192 transaction pursuant to this paragraph (e) shall maintain with
193 respect to each such lease-purchase transaction the same
194 information as required to be maintained by the Department of

195 Finance and Administration pursuant to Section 31-7-10(13).
196 However, nothing contained in this section shall be construed to
197 permit agencies to acquire items of equipment with a total
198 acquisition cost in the aggregate of less than Ten Thousand
199 Dollars (\$10,000.00) by a single lease-purchase transaction. All
200 equipment, and the purchase thereof by any lessor, acquired by
201 lease-purchase under this paragraph and all lease-purchase
202 payments with respect thereto shall be exempt from all Mississippi
203 sales, use and ad valorem taxes. Interest paid on any
204 lease-purchase agreement under this section shall be exempt from
205 State of Mississippi income taxation.

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

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

228 have the authority, when granted by an agency or governing
229 authority, to authorize changes or modifications to the original
230 contract without the necessity of prior approval of the agency or
231 governing authority when any such change or modification is less
232 than one percent (1%) of the total contract amount. The agency or
233 governing authority may limit the number, manner or frequency of
234 such emergency changes or modifications.

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

252 (i) **Road construction petroleum products price**
253 **adjustment clause authorization.** Any agency or governing
254 authority authorized to enter into contracts for the construction,
255 maintenance, surfacing or repair of highways, roads or streets,
256 may include in its bid proposal and contract documents a price
257 adjustment clause with relation to the cost to the contractor,
258 including taxes, based upon an industry-wide cost index, of
259 petroleum products including asphalt used in the performance or
260 execution of the contract or in the production or manufacture of

261 materials for use in such performance. Such industry-wide index
262 shall be established and published monthly by the Mississippi
263 Department of Transportation with a copy thereof to be mailed,
264 upon request, to the clerks of the governing authority of each
265 municipality and the clerks of each board of supervisors
266 throughout the state. The price adjustment clause shall be based
267 on the cost of such petroleum products only and shall not include
268 any additional profit or overhead as part of the adjustment. The
269 bid proposals or document contract shall contain the basis and
270 methods of adjusting unit prices for the change in the cost of
271 such petroleum products.

272 (j) **State agency emergency purchase procedure.** If the
273 governing board or the executive head, or his designee, of any
274 agency of the state shall determine that an emergency exists in
275 regard to the purchase of any commodities or repair contracts, so
276 that the delay incident to giving opportunity for competitive
277 bidding would be detrimental to the interests of the state, then
278 the provisions herein for competitive bidding shall not apply and
279 the head of such agency shall be authorized to make the purchase
280 or repair. Total purchases so made shall only be for the purpose
281 of meeting needs created by the emergency situation. In the event
282 such executive head is responsible to an agency board, at the
283 meeting next following the emergency purchase, documentation of
284 the purchase, including a description of the commodity purchased,
285 the purchase price thereof and the nature of the emergency shall
286 be presented to the board and placed on the minutes of the board
287 of such agency. The head of such agency, or his designee, shall,
288 at the earliest possible date following such emergency purchase,
289 file with the Department of Finance and Administration (i) a
290 statement explaining the conditions and circumstances of the
291 emergency, which shall include a detailed description of the
292 events leading up to the situation and the negative impact to the
293 entity if the purchase is made following the statutory

294 requirements set forth in paragraph (a), (b) or (c) of this
295 section, and (ii) a certified copy of the appropriate minutes of
296 the board of such agency, if applicable. On or before September 1
297 of each year, the State Auditor shall prepare and deliver to the
298 Senate Fees, Salaries and Administration Committee, the House Fees
299 and Salaries of Public Officers Committee and the Joint
300 Legislative Budget Committee a report containing a list of all
301 state agency emergency purchases and supporting documentation for
302 each emergency purchases.

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

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

321 (l) **Hospital purchase, lease-purchase and lease**
322 **authorization.**

323 (i) The commissioners or board of trustees of any
324 public hospital may contract with such lowest and best bidder for
325 the purchase or lease-purchase of any commodity under a contract

326 of purchase or lease-purchase agreement whose obligatory payment
327 terms do not exceed five (5) years.

328 (ii) In addition to the authority granted in
329 subparagraph (i) of this paragraph (1), the commissioners or board
330 of trustees is authorized to enter into contracts for the lease of
331 equipment or services, or both, which it considers necessary for
332 the proper care of patients if, in its opinion, it is not
333 financially feasible to purchase the necessary equipment or
334 services. Any such contract for the lease of equipment or
335 services executed by the commissioners or board shall not exceed a
336 maximum of five (5) years' duration and shall include a
337 cancellation clause based on unavailability of funds. If such
338 cancellation clause is exercised, there shall be no further
339 liability on the part of the lessee. Any such contract for the
340 lease of equipment or services executed on behalf of the
341 commissioners or board that complies with the provisions of this
342 subparagraph (ii) shall be excepted from the bid requirements set
343 forth in this section.

344 (m) **Exceptions from bidding requirements.** Excepted
345 from bid requirements are:

346 (i) **Purchasing agreements approved by department.**
347 Purchasing agreements, contracts and maximum price regulations
348 executed or approved by the Department of Finance and
349 Administration.

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

359 and costs therefor shall be required for the payment for such
360 repairs.

361 (iii) **In-house equipment repairs.** Purchases of
362 parts for repairs to equipment, when such repairs are made by
363 personnel of the agency or governing authority; however, entire
364 assemblies, such as engines or transmissions, shall not be
365 included in this exemption when the entire assembly is being
366 replaced instead of being repaired.

367 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
368 of gravel or fill dirt which are to be removed and transported by
369 the purchaser.

370 (v) **Governmental equipment auctions.** Motor
371 vehicles or other equipment purchased from a federal agency or
372 authority, another governing authority or state agency of the
373 State of Mississippi, or any governing authority or state agency
374 of another state at a public auction held for the purpose of
375 disposing of such vehicles or other equipment. Any purchase by a
376 governing authority under the exemption authorized by this
377 subparagraph (v) shall require advance authorization spread upon
378 the minutes of the governing authority to include the listing of
379 the item or items authorized to be purchased and the maximum bid
380 authorized to be paid for each item or items.

381 (vi) **Intergovernmental sales and transfers.**
382 Purchases, sales, transfers or trades by governing authorities or
383 state agencies when such purchases, sales, transfers or trades are
384 made by a private treaty agreement or through means of
385 negotiation, from any federal agency or authority, another
386 governing authority or state agency of the State of Mississippi,
387 or any state agency or governing authority of another state.
388 Nothing in this section shall permit such purchases through public
389 auction except as provided for in subparagraph (v) of this
390 section. It is the intent of this section to allow governmental
391 entities to dispose of and/or purchase commodities from other

392 governmental entities at a price that is agreed to by both
393 parties. This shall allow for purchases and/or sales at prices
394 which may be determined to be below the market value if the
395 selling entity determines that the sale at below market value is
396 in the best interest of the taxpayers of the state. Governing
397 authorities shall place the terms of the agreement and any
398 justification on the minutes, and state agencies shall obtain
399 approval from the Department of Finance and Administration, prior
400 to releasing or taking possession of the commodities.

401 (vii) **Perishable supplies or food.** Perishable
402 supplies or foods purchased for use in connection with hospitals,
403 the school lunch programs, homemaking programs and for the feeding
404 of county or municipal prisoners.

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

419 (ix) **Waste disposal facility construction**
420 **contracts.** Construction of incinerators and other facilities for
421 disposal of solid wastes in which products either generated
422 therein, such as steam, or recovered therefrom, such as materials
423 for recycling, are to be sold or otherwise disposed of; however,
424 in constructing such facilities, a governing authority or agency

425 shall publicly issue requests for proposals, advertised for in the
426 same manner as provided herein for seeking bids for public
427 construction projects, concerning the design, construction,
428 ownership, operation and/or maintenance of such facilities,
429 wherein such requests for proposals when issued shall contain
430 terms and conditions relating to price, financial responsibility,
431 technology, environmental compatibility, legal responsibilities
432 and such other matters as are determined by the governing
433 authority or agency to be appropriate for inclusion; and after
434 responses to the request for proposals have been duly received,
435 the governing authority or agency may select the most qualified
436 proposal or proposals on the basis of price, technology and other
437 relevant factors and from such proposals, but not limited to the
438 terms thereof, negotiate and enter contracts with one or more of
439 the persons or firms submitting proposals.

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

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

449 (xii) **Energy efficiency services and equipment.**
450 Energy efficiency services and equipment acquired by school
451 districts, community and junior colleges, institutions of higher
452 learning and state agencies or other applicable governmental
453 entities on a shared-savings, lease or lease-purchase basis
454 pursuant to Section 31-7-14.

455 (xiii) **Municipal electrical utility system fuel.**
456 Purchases of coal and/or natural gas by municipally-owned electric

457 power generating systems that have the capacity to use both coal
458 and natural gas for the generation of electric power.

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

460 Purchases by libraries or for libraries of books and periodicals;
461 processed film, video cassette tapes, filmstrips and slides;
462 recorded audio tapes, cassettes and diskettes; and any such items
463 as would be used for teaching, research or other information
464 distribution; however, equipment such as projectors, recorders,
465 audio or video equipment, and monitor televisions are not exempt
466 under this subparagraph.

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

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

473 (xvii) **Multichannel interactive video systems.**
474 From and after July 1, 1990, contracts by Mississippi Authority
475 for Educational Television with any private educational
476 institution or private nonprofit organization whose purposes are
477 educational in regard to the construction, purchase, lease or
478 lease-purchase of facilities and equipment and the employment of
479 personnel for providing multichannel interactive video systems
480 (ITSF) in the school districts of this state.

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

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

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

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

499 (xxii) **Garbage, solid waste and sewage contracts.**
500 Contracts for garbage collection or disposal, contracts for solid
501 waste collection or disposal and contracts for sewage collection
502 or disposal.

503 (xxiii) **Municipal water tank maintenance**
504 **contracts.** Professional maintenance program contracts for the
505 repair or maintenance of municipal water tanks, which provide
506 professional services needed to maintain municipal water storage
507 tanks for a fixed annual fee for a duration of two (2) or more
508 years.

509 (xxiv) **Purchases of Mississippi Industries for the**
510 **Blind products.** Purchases made by state agencies or governing
511 authorities involving any item that is manufactured, processed or
512 produced by the Mississippi Industries for the Blind.

513 (xxv) **Purchases of state-adopted textbooks.**
514 Purchases of state-adopted textbooks by public school districts.

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

518 (xxvii) **Used heavy or specialized machinery or**
519 **equipment for installation of soil and water conservation**
520 **practices purchased at auction.** Used heavy or specialized
521 machinery or equipment used for the installation and
522 implementation of soil and water conservation practices or

523 measures purchased subject to the restrictions provided in
524 Sections 69-27-331 through 69-27-341. Any purchase by the State
525 Soil and Water Conservation Commission under the exemption
526 authorized by this subparagraph shall require advance
527 authorization spread upon the minutes of the commission to include
528 the listing of the item or items authorized to be purchased and
529 the maximum bid authorized to be paid for each item or items.

530 (xxviii) **Hospital lease of equipment or services.**

531 Leases by hospitals of equipment or services if the leases are in
532 compliance with subparagraph (1)(ii).

533 (xxix) **Purchases made pursuant to qualified**

534 **cooperative purchasing agreements.** Purchases made by certified
535 purchasing offices of state agencies or governing authorities
536 under cooperative purchasing agreements previously approved by the
537 Office of Purchasing and Travel and established by or for any
538 municipality, county, parish or state government or the federal
539 government, provided that the notification to potential
540 contractors includes a clause that sets forth the availability of
541 the cooperative purchasing agreement to other governmental
542 entities. Such purchases shall only be made if the use of the
543 cooperative purchasing agreements is determined to be in the best
544 interest of the government entity.

545 (n) **Term contract authorization.** All contracts for the
546 purchase of:

547 (i) All contracts for the purchase of commodities,
548 equipment and public construction (including, but not limited to,
549 repair and maintenance), may be let for periods of not more than
550 sixty (60) months in advance, subject to applicable statutory
551 provisions prohibiting the letting of contracts during specified
552 periods near the end of terms of office. Term contracts for a
553 period exceeding twenty-four (24) months shall also be subject to
554 ratification or cancellation by governing authority boards taking

555 office subsequent to the governing authority board entering the
556 contract.

557 (ii) Bid proposals and contracts may include price
558 adjustment clauses with relation to the cost to the contractor
559 based upon a nationally published industry-wide or nationally
560 published and recognized cost index. The cost index used in a
561 price adjustment clause shall be determined by the Department of
562 Finance and Administration for the state agencies and by the
563 governing board for governing authorities. The bid proposal and
564 contract documents utilizing a price adjustment clause shall
565 contain the basis and method of adjusting unit prices for the
566 change in the cost of such commodities, equipment and public
567 construction.

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

583 (p) **Electrical utility petroleum-based equipment**
584 **purchase procedure.** When in response to a proper advertisement
585 therefor, no bid firm as to price is submitted to an electric
586 utility for power transformers, distribution transformers, power
587 breakers, reclosers or other articles containing a petroleum

588 product, the electric utility may accept the lowest and best bid
589 therefor although the price is not firm.

590 (q) **Fuel management system bidding procedure.** Any
591 governing authority or agency of the state shall, before
592 contracting for the services and products of a fuel management or
593 fuel access system, enter into negotiations with not fewer than
594 two (2) sellers of fuel management or fuel access systems for
595 competitive written bids to provide the services and products for
596 the systems. In the event that the governing authority or agency
597 cannot locate two (2) sellers of such systems or cannot obtain
598 bids from two (2) sellers of such systems, it shall show proof
599 that it made a diligent, good-faith effort to locate and negotiate
600 with two (2) sellers of such systems. Such proof shall include,
601 but not be limited to, publications of a request for proposals and
602 letters soliciting negotiations and bids. For purposes of this
603 paragraph (q), a fuel management or fuel access system is an
604 automated system of acquiring fuel for vehicles as well as
605 management reports detailing fuel use by vehicles and drivers, and
606 the term "competitive written bid" shall have the meaning as
607 defined in paragraph (b) of this section. Governing authorities
608 and agencies shall be exempt from this process when contracting
609 for the services and products of a fuel management or fuel access
610 systems under the terms of a state contract established by the
611 Office of Purchasing and Travel.

612 (r) **Solid waste contract proposal procedure.** Before
613 entering into any contract for garbage collection or disposal,
614 contract for solid waste collection or disposal or contract for
615 sewage collection or disposal, which involves an expenditure of
616 more than Fifty Thousand Dollars (\$50,000.00), a governing
617 authority or agency shall issue publicly a request for proposals
618 concerning the specifications for such services which shall be
619 advertised for in the same manner as provided in this section for
620 seeking bids for purchases which involve an expenditure of more

621 than the amount provided in paragraph (c) of this section. Any
622 request for proposals when issued shall contain terms and
623 conditions relating to price, financial responsibility,
624 technology, legal responsibilities and other relevant factors as
625 are determined by the governing authority or agency to be
626 appropriate for inclusion; all factors determined relevant by the
627 governing authority or agency or required by this paragraph (r)
628 shall be duly included in the advertisement to elicit proposals.
629 After responses to the request for proposals have been duly
630 received, the governing authority or agency shall select the most
631 qualified proposal or proposals on the basis of price, technology
632 and other relevant factors and from such proposals, but not
633 limited to the terms thereof, negotiate and enter contracts with
634 one or more of the persons or firms submitting proposals. If the
635 governing authority or agency deems none of the proposals to be
636 qualified or otherwise acceptable, the request for proposals
637 process may be reinitiated. Notwithstanding any other provisions
638 of this paragraph, where a county with at least thirty-five
639 thousand (35,000) nor more than forty thousand (40,000)
640 population, according to the 1990 federal decennial census, owns
641 or operates a solid waste landfill, the governing authorities of
642 any other county or municipality may contract with the governing
643 authorities of the county owning or operating the landfill,
644 pursuant to a resolution duly adopted and spread upon the minutes
645 of each governing authority involved, for garbage or solid waste
646 collection or disposal services through contract negotiations.

647 (s) **Minority set aside authorization.** Notwithstanding
648 any provision of this section to the contrary, any agency or
649 governing authority, by order placed on its minutes, may, in its
650 discretion, set aside not more than twenty percent (20%) of its
651 anticipated annual expenditures for the purchase of commodities
652 from minority businesses; however, all such set-aside purchases
653 shall comply with all purchasing regulations promulgated by the

654 Department of Finance and Administration and shall be subject to
655 bid requirements under this section. Set-aside purchases for
656 which competitive bids are required shall be made from the lowest
657 and best minority business bidder. For the purposes of this
658 paragraph, the term "minority business" means a business which is
659 owned by a majority of persons who are United States citizens or
660 permanent resident aliens (as defined by the Immigration and
661 Naturalization Service) of the United States, and who are Asian,
662 Black, Hispanic or Native American, according to the following
663 definitions:

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

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

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

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

675 (t) **Construction punch list restriction.** The
676 architect, engineer or other representative designated by the
677 agency or governing authority that is contracting for public
678 construction or renovation may prepare and submit to the
679 contractor only one (1) preliminary punch list of items that do
680 not meet the contract requirements at the time of substantial
681 completion and one (1) final list immediately before final
682 completion and final payment.

683 (u) **Purchase authorization clarification.** Nothing in
684 this section shall be construed as authorizing any purchase not
685 authorized by law.

686 (v) Small contractor set aside requirement.
687 Notwithstanding any provision of this section to the contrary, the
688 Department of Finance and Administration shall set aside twenty
689 percent (20%) of the amount expended for any public construction
690 project that such department manages, not to exceed Five Million
691 Dollars (\$5,000,000.00), for small contractors. The set-aside
692 portion of such contract shall comply with regulations promulgated
693 by the Department of Finance and Administration and shall be
694 subject to bid requirements under this section. Set-aside
695 contracts for which competitive bids are required shall be made
696 from the lowest and best small contractor bidder. For purposes of
697 this paragraph, the term "small contractor" means a contractor
698 whose bonding capacity, as determined by the Department of Finance
699 and Administration, does not exceed Five Million Dollars
700 (\$5,000,000.00).

701 **SECTION 2.** This act shall take effect and be in force from
702 and after July 1, 2004.