

By: Representative Janus

To: Appropriations

## HOUSE BILL NO. 214

1 AN ACT TO AMEND SECTION 31-5-17, MISSISSIPPI CODE OF 1972, TO  
2 PROHIBIT THE AWARDING OF STATE CONTRACTS TO CONTRACTORS THAT HAVE  
3 PERSONS WHO ARE NOT AMERICAN CITIZENS OR LEGAL ALIENS WHO WILL  
4 WORK UNDER THE STATE CONTRACT; TO REQUIRE THAT EVERY PUBLIC  
5 OFFICER, CONTRACTOR, OR AGENT WHO ENGAGES IN OR IS IN CHARGE OF  
6 THE CONSTRUCTION OF ANY STATE BUILDING OR PUBLIC WORK FOR THE  
7 STATE, EMPLOY ONLY WORKERS WHO ARE AMERICAN CITIZENS OR LEGAL  
8 ALIENS OR WHO HAVE SOME SPECIALTY FOR WHICH AMERICAN CITIZENS OR  
9 LEGAL ALIENS CANNOT BE FOUND; TO AMEND SECTION 25-53-5,  
10 MISSISSIPPI CODE OF 1972, TO PROHIBIT THE BOARD OF THE MISSISSIPPI  
11 DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES FROM ACCEPTING A BID  
12 FROM OR ENTERING INTO A CONTRACT WITH A CONTRACTOR OR VENDOR THAT  
13 HAS PERSONS WHO ARE NOT AMERICAN CITIZENS OR LEGAL ALIENS WHO WILL  
14 WORK UNDER THE CONTRACT; TO ALLOW CONTRACTORS OR VENDORS ENTERING  
15 INTO A CONTRACT WITH THE MISSISSIPPI DEPARTMENT OF INFORMATION  
16 TECHNOLOGY SERVICES TO HAVE PERSONS WHO WILL WORK UNDER THE  
17 CONTRACT WHO HAVE SOME SPECIALTY FOR WHICH AMERICAN CITIZENS OR  
18 LEGAL ALIENS CANNOT BE FOUND; TO AMEND SECTION 25-53-125,  
19 MISSISSIPPI CODE OF 1972, TO PROHIBIT THE BOARD OF THE MISSISSIPPI  
20 DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES FROM ACCEPTING BIDS  
21 FROM OR ENTERING INTO A CONTRACT FOR THE PROCUREMENT OF  
22 TELECOMMUNICATIONS EQUIPMENT, SYSTEMS OR RELATED SERVICES WITH A  
23 CONTRACTOR OR VENDOR THAT HAS PERSONS WHO ARE NOT AMERICAN  
24 CITIZENS OR LEGAL ALIENS WHO WILL WORK UNDER THE CONTRACT; TO  
25 ALLOW CONTRACTORS OR VENDORS ENTERING INTO A CONTRACT WITH THE  
26 MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES TO HAVE  
27 PERSONS WHO WILL WORK UNDER THE CONTRACT WHO HAVE SOME SPECIALTY  
28 FOR WHICH AMERICAN CITIZENS OR LEGAL ALIENS CANNOT BE FOUND; TO  
29 AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO PROHIBIT STATE  
30 AGENCIES FROM ACCEPTING BIDS FROM OR ENTERING INTO A CONTRACT WITH  
31 A CONTRACTOR OR VENDOR THAT HAS PERSONS WHO ARE NOT AMERICAN  
32 CITIZENS OR LEGAL ALIENS WHO WILL WORK UNDER THE CONTRACT; TO  
33 ALLOW CONTRACTORS OR VENDORS ENTERING INTO A CONTRACT WITH STATE  
34 AGENCIES TO HAVE PERSONS WHO WILL WORK UNDER THE CONTRACT WHO HAVE  
35 SOME SPECIALTY FOR WHICH AMERICAN CITIZENS OR LEGAL ALIENS CANNOT  
36 BE FOUND; AND FOR RELATED PURPOSES.

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

38 **SECTION 1.** Section 31-5-17, Mississippi Code of 1972, is  
39 amended as follows:

40 31-5-17. (1) Every public officer, contractor,  
41 superintendent, or agent engaged in or in charge of the  
42 construction of any state or public building or public work of any  
43 kind for the State of Mississippi or for any board, city  
44 commission, governmental agency, or municipality of the State of

45 Mississippi shall employ only workmen and laborers who have  
46 actually resided in Mississippi for two (2) years next preceding  
47 such employment.

48 (2) No state contract shall be awarded to a contractor that  
49 has persons who are not American citizens or legal aliens who will  
50 work under the state contract. However, a state contract may be  
51 awarded to a contractor that has persons who will work under the  
52 state contract who have some specialty for which American citizens  
53 or legal aliens cannot be found. Every public officer,  
54 contractor, superintendent, or agent engaged in or in charge of  
55 the construction of any state building or public work of any kind  
56 for the State of Mississippi shall employ only workmen and  
57 laborers who are American citizens or legal aliens or who have  
58 some specialty for which American citizens or legal aliens cannot  
59 be found.

60 **SECTION 2.** Section 25-53-5, Mississippi Code of 1972, is  
61 amended as follows:

62 25-53-5. The authority shall have the following powers,  
63 duties, and responsibilities:

64 (a) The authority shall provide for the development of  
65 plans for the efficient acquisition and utilization of computer  
66 equipment and services by all agencies of state government, and  
67 provide for their implementation. In so doing, the authority may  
68 use the MDITS staff, at the discretion of the executive director  
69 of the authority, or the authority may contract for the services  
70 of qualified consulting firms in the field of information  
71 technology and utilize the service of such consultants as may be  
72 necessary for such purposes.

73 (b) The authority shall immediately institute  
74 procedures for carrying out the purposes of this chapter and  
75 supervise the efficient execution of the powers and duties of the  
76 office of executive director of the authority. In the execution  
77 of its functions under this chapter, the authority shall maintain

78 as a paramount consideration the successful internal organization  
79 and operation of the several agencies so that efficiency existing  
80 therein shall not be adversely affected or impaired. In executing  
81 its functions in relation to the institutions of higher learning  
82 and junior colleges in the state, the authority shall take into  
83 consideration the special needs of such institutions in relation  
84 to the fields of teaching and scientific research.

85 (c) Title of whatever nature of all computer equipment  
86 now vested in any agency of the State of Mississippi is hereby  
87 vested in the authority, and no such equipment shall be disposed  
88 of in any manner except in accordance with the direction of the  
89 authority or under the provisions of such rules and regulations as  
90 may hereafter be adopted by the authority in relation thereto.

91 (d) The authority shall adopt rules, regulations, and  
92 procedures governing the acquisition of computer and  
93 telecommunications equipment and services which shall, to the  
94 fullest extent practicable, insure the maximum of competition  
95 between all manufacturers of supplies or equipment or services.  
96 In the writing of specifications, in the making of contracts  
97 relating to the acquisition of such equipment and services, and in  
98 the performance of its other duties the authority shall provide  
99 for the maximum compatibility of all information systems hereafter  
100 installed or utilized by all state agencies and may require the  
101 use of common computer languages where necessary to accomplish the  
102 purposes of this chapter. The authority may establish by  
103 regulation and charge reasonable fees on a nondiscriminatory basis  
104 for the furnishing to bidders of copies of bid specifications and  
105 other documents issued by the authority.

106 (e) The authority shall adopt rules and regulations  
107 governing the sharing with, or the sale or lease of information  
108 technology services to any nonstate agency or person. Such  
109 regulations shall provide that any such sharing, sale, or lease  
110 shall be restricted in that same shall be accomplished only where

111 such services are not readily available otherwise within the  
112 state, and then only at a charge to the user not less than the  
113 prevailing rate of charge for similar services by private  
114 enterprise within this state.

115 (f) The authority may, in its discretion, establish a  
116 special technical advisory committee or committees to study and  
117 make recommendations on technology matters within the competence  
118 of the authority as the authority may see fit. Persons serving on  
119 the Information Resource Council, its task forces, or any such  
120 technical advisory committees shall be entitled to receive their  
121 actual and necessary expenses actually incurred in the performance  
122 of such duties, together with mileage as provided by law for state  
123 employees, provided the same has been authorized by a resolution  
124 duly adopted by the authority and entered on its minutes prior to  
125 the performance of such duties.

126 (g) The authority may provide for the development and  
127 require the adoption of standardized computer programs and may  
128 provide for the dissemination of information to and the  
129 establishment of training programs for the personnel of the  
130 various information technology centers of state agencies and  
131 personnel of the agencies utilizing the services thereof.

132 (h) The authority shall adopt reasonable rules and  
133 regulations requiring the reporting to the authority through the  
134 office of executive director of such information as may be  
135 required for carrying out the purposes of this chapter and may  
136 also establish such reasonable procedures to be followed in the  
137 presentation of bills for payment under the terms of all contracts  
138 for the acquisition of computer equipment and services now or  
139 hereafter in force as may be required by the authority or by the  
140 executive director in the execution of their powers and duties.

141 (i) The authority shall require such adequate  
142 documentation of information technology procedures utilized by the  
143 various state agencies and may require the establishment of such

144 organizational structures within state agencies relating to  
145 information technology operations as may be necessary to  
146 effectuate the purposes of this chapter.

147           (j) The authority may adopt such further reasonable  
148 rules and regulations as may be necessary to fully implement the  
149 purposes of this chapter. All rules and regulations adopted by  
150 the authority shall be published and disseminated in readily  
151 accessible form to all affected state agencies, and to all current  
152 suppliers of computer equipment and services to the state, and to  
153 all prospective suppliers requesting the same. Such rules and  
154 regulations shall be kept current, be periodically revised, and  
155 copies thereof shall be available at all times for inspection by  
156 the public at reasonable hours in the offices of the authority.  
157 Whenever possible no rule, regulation or any proposed amendment to  
158 such rules and regulations shall be finally adopted or enforced  
159 until copies of said proposed rules and regulations have been  
160 furnished to all interested parties for their comment and  
161 suggestions.

162           (k) The authority shall establish rules and regulations  
163 which shall provide for the submission of all contracts proposed  
164 to be executed by the executive director for computer equipment or  
165 services to the authority for approval before final execution, and  
166 the authority may provide that such contracts involving the  
167 expenditure of less than such specified amount as may be  
168 established by the authority may be finally executed by the  
169 executive director without first obtaining such approval by the  
170 authority.

171           (l) The authority is authorized to purchase, lease, or  
172 rent computer equipment or services and to operate said equipment  
173 and utilize said services in providing services to one or more  
174 state agencies when in its opinion such operation will provide  
175 maximum efficiency and economy in the functions of any such agency  
176 or agencies.

177           (m) Upon the request of the governing body of a  
178 political subdivision or instrumentality, the authority shall  
179 assist the political subdivision or instrumentality in its  
180 development of plans for the efficient acquisition and utilization  
181 of computer equipment and services. An appropriate fee shall be  
182 charged the political subdivision by the authority for such  
183 assistance.

184           (n) The authority shall adopt rules and regulations  
185 governing the protest procedures to be followed by any actual or  
186 prospective bidder, offerer or contractor who is aggrieved in  
187 connection with the solicitation or award of a contract for the  
188 acquisition of computer equipment or services. Such rules and  
189 regulations shall prescribe the manner, time and procedure for  
190 making protests and may provide that a protest not timely filed  
191 shall be summarily denied. The authority may require the  
192 protesting party, at the time of filing the protest, to post a  
193 bond, payable to the state, in an amount that the authority  
194 determines sufficient to cover any expense or loss incurred by the  
195 state, the authority or any state agency as a result of the  
196 protest if the protest subsequently is determined by a court of  
197 competent jurisdiction to have been filed without any substantial  
198 basis or reasonable expectation to believe that the protest was  
199 meritorious; however, in no event may the amount of the bond  
200 required exceed a reasonable estimate of the total project cost.  
201 The authority, in its discretion, also may prohibit any  
202 prospective bidder, offerer or contractor who is a party to any  
203 litigation involving any such contract with the state, the  
204 authority or any agency of the state to participate in any other  
205 such bid, offer or contract, or to be awarded any such contract,  
206 during the pendency of the litigation.

207           (o) The authority shall make a report in writing to the  
208 Legislature each year in the month of January. Such report shall

209 contain a full and detailed account of the work of the authority  
210 for the preceding year as specified in Section 25-53-29(3).

211 All acquisitions of computer equipment and services involving  
212 the expenditure of funds in excess of the dollar amount  
213 established in Section 31-7-13(c), or rentals or leases in excess  
214 of the dollar amount established in Section 31-7-13(c) for the  
215 term of the contract, shall be based upon competitive and open  
216 specifications, and contracts therefor shall be entered into only  
217 after advertisements for bids are published in one or more daily  
218 newspapers having a general circulation in the state not less than  
219 fourteen (14) days prior to receiving sealed bids therefor. The  
220 authority may reserve the right to reject any or all bids, and if  
221 all bids are rejected, the authority may negotiate a contract  
222 within the limitations of the specifications so long as the terms  
223 of any such negotiated contract are equal to or better than the  
224 comparable terms submitted by the lowest and best bidder, and so  
225 long as the total cost to the State of Mississippi does not exceed  
226 the lowest bid. If the authority accepts one (1) of such bids, it  
227 shall be that which is the lowest and best.

228 The authority shall not accept a bid from or enter into a  
229 contract with a contractor or vendor that has persons who are not  
230 American citizens or legal aliens who will work under the  
231 contract. However, the authority may accept a bid from or enter  
232 into a contract with a contractor or vendor that has persons who  
233 will work under the contract who have some specialty for which  
234 American citizens or legal aliens cannot be found. The authority  
235 shall require contractors and vendors submitting bids to attach an  
236 affidavit stating that all persons who will work under the  
237 contract are American citizens or legal aliens or who have some  
238 specialty for which American citizens or legal aliens cannot be  
239 found.

240 (p) When applicable, the authority may procure  
241 equipment, systems and related services in accordance with the law

242 or regulations, or both, which govern the Bureau of Purchasing of  
243 the Office of General Services or which govern the Mississippi  
244 Department of Information Technology Services procurement of  
245 telecommunications equipment, software and services.

246 (q) The authority is authorized to purchase, lease, or  
247 rent information technology and services for the purpose of  
248 establishing pilot projects to investigate emerging technologies.  
249 These acquisitions shall be limited to new technologies and shall  
250 be limited to an amount set by annual appropriation of the  
251 Legislature. These acquisitions shall be exempt from the  
252 advertising and bidding requirement.

253 (r) All fees collected by the Mississippi Department of  
254 Information Technology Services shall be deposited into the  
255 Mississippi Department of Information Technology Services  
256 Revolving Fund unless otherwise specified by the Legislature.

257 (s) The authority shall work closely with the council  
258 to bring about effective coordination of policies, standards and  
259 procedures relating to procurement of remote sensing and  
260 geographic information systems (GIS) resources. In addition, the  
261 authority is responsible for development, operation and  
262 maintenance of a delivery system infrastructure for geographic  
263 information systems data. The authority shall provide a warehouse  
264 for Mississippi's geographic information systems data.

265 **SECTION 3.** Section 25-53-125, Mississippi Code of 1972, is  
266 amended as follows:

267 25-53-125. The following general provisions shall apply to  
268 all procurements under Sections 25-53-101 through 25-53-125:

269 (a) No contracts entered into hereunder shall have an  
270 initial effective date earlier than the date on which such  
271 contract receives approval as required herein.

272 (b) All changes, modifications and amendments to any  
273 contract hereunder shall be approved in advance by the Board of  
274 MDITS, in addition to any other approvals required by law.



275 (c) The Board of MDITS shall promulgate rules and  
276 regulations in accordance with the Administrative Procedures Law,  
277 Section 25-43-1 et seq., \* \* \* for the establishment of contract  
278 format.

279 (d) Where written proposals or bids are submitted by  
280 vendors, the proposal or bid of the successful vendor shall be  
281 incorporated into the final contract consummated with that vendor.

282 (e) The provisions of Sections 25-53-101 through  
283 25-53-125 shall, with respect to the procurement of  
284 telecommunications equipment, systems or related services,  
285 supersede specifications of any contradictory or conflicting  
286 provisions of Chapter 7, Title 31, Mississippi Code of 1972, and  
287 other laws with respect to awarding public contracts.

288 (f) The Board of MDITS shall not accept a bid from or  
289 enter into a contract for the procurement of telecommunications  
290 equipment, systems or related services with a contractor or vendor  
291 that has persons who are not American citizens or legal aliens who  
292 will work under the contract. However, the Board of MDITS may  
293 accept a bid from or enter into a contract for the procurement of  
294 telecommunications equipment, systems or related services with a  
295 contractor or vendor that has persons who will work under the  
296 contract who have some specialty for which American citizens or  
297 legal aliens cannot be found. The Board of MDITS shall require  
298 contractors and vendors submitting bids to attach an affidavit  
299 stating that all persons who will work under the contract are  
300 American citizens or legal aliens or have some specialty for which  
301 American citizens or legal aliens cannot be found.

302 **SECTION 4.** Section 31-7-13, Mississippi Code of 1972, is  
303 amended as follows:

304 31-7-13. All agencies and governing authorities shall  
305 purchase their commodities and printing; contract for garbage  
306 collection or disposal; contract for solid waste collection or

307 disposal; contract for sewage collection or disposal; contract for  
308 public construction; and contract for rentals as herein provided.

309 (a) **Bidding procedure for purchases not over \$3,500.00.**

310 Purchases which do not involve an expenditure of more than Three  
311 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or  
312 shipping charges, may be made without advertising or otherwise  
313 requesting competitive bids. However, nothing contained in this  
314 paragraph (a) shall be construed to prohibit any agency or  
315 governing authority from establishing procedures which require  
316 competitive bids on purchases of Three Thousand Five Hundred  
317 Dollars (\$3,500.00) or less.

318 (b) **Bidding procedure for purchases over \$3,500.00 but**

319 **not over \$15,000.00.** Purchases which involve an expenditure of  
320 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
321 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
322 freight and shipping charges may be made from the lowest and best  
323 bidder without publishing or posting advertisement for bids,  
324 provided at least two (2) competitive written bids have been  
325 obtained. Any governing authority purchasing commodities pursuant  
326 to this paragraph (b) may authorize its purchasing agent, or his  
327 designee, with regard to governing authorities other than  
328 counties, or its purchase clerk, or his designee, with regard to  
329 counties, to accept the lowest and best competitive written bid.  
330 Such authorization shall be made in writing by the governing  
331 authority and shall be maintained on file in the primary office of  
332 the agency and recorded in the official minutes of the governing  
333 authority, as appropriate. The purchasing agent or the purchase  
334 clerk, or their designee, as the case may be, and not the  
335 governing authority, shall be liable for any penalties and/or  
336 damages as may be imposed by law for any act or omission of the  
337 purchasing agent or purchase clerk, or their designee,  
338 constituting a violation of law in accepting any bid without  
339 approval by the governing authority. The term "competitive

340 written bid" shall mean a bid submitted on a bid form furnished by  
341 the buying agency or governing authority and signed by authorized  
342 personnel representing the vendor, or a bid submitted on a  
343 vendor's letterhead or identifiable bid form and signed by  
344 authorized personnel representing the vendor. "Competitive" shall  
345 mean that the bids are developed based upon comparable  
346 identification of the needs and are developed independently and  
347 without knowledge of other bids or prospective bids. Bids may be  
348 submitted by facsimile, electronic mail or other generally  
349 accepted method of information distribution. Bids submitted by  
350 electronic transmission shall not require the signature of the  
351 vendor's representative unless required by agencies or governing  
352 authorities.

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

354 (i) **Publication requirement.** Purchases which  
355 involve an expenditure of more than Fifteen Thousand Dollars  
356 (\$15,000.00), exclusive of freight and shipping charges, may be  
357 made from the lowest and best bidder after advertising for  
358 competitive sealed bids once each week for two (2) consecutive  
359 weeks in a regular newspaper published in the county or  
360 municipality in which such agency or governing authority is  
361 located. The date as published for the bid opening shall not be  
362 less than seven (7) working days after the last published notice;  
363 however, if the purchase involves a construction project in which  
364 the estimated cost is in excess of Fifteen Thousand Dollars  
365 (\$15,000.00), such bids shall not be opened in less than fifteen  
366 (15) working days after the last notice is published and the  
367 notice for the purchase of such construction shall be published  
368 once each week for two (2) consecutive weeks. The notice of  
369 intention to let contracts or purchase equipment shall state the  
370 time and place at which bids shall be received, list the contracts  
371 to be made or types of equipment or supplies to be purchased, and,  
372 if all plans and/or specifications are not published, refer to the

373 plans and/or specifications on file. If there is no newspaper  
374 published in the county or municipality, then such notice shall be  
375 given by posting same at the courthouse, or for municipalities at  
376 the city hall, and at two (2) other public places in the county or  
377 municipality, and also by publication once each week for two (2)  
378 consecutive weeks in some newspaper having a general circulation  
379 in the county or municipality in the above provided manner. On  
380 the same date that the notice is submitted to the newspaper for  
381 publication, the agency or governing authority involved shall mail  
382 written notice to, or provide electronic notification to the main  
383 office of the Mississippi Contract Procurement Center that  
384 contains the same information as that in the published notice.

385           (ii) **Bidding process amendment procedure.** If all  
386 plans and/or specifications are published in the notification,  
387 then the plans and/or specifications may not be amended. If all  
388 plans and/or specifications are not published in the notification,  
389 then amendments to the plans/specifications, bid opening date, bid  
390 opening time and place may be made, provided that the agency or  
391 governing authority maintains a list of all prospective bidders  
392 who are known to have received a copy of the bid documents and all  
393 such prospective bidders are sent copies of all amendments. This  
394 notification of amendments may be made via mail, facsimile,  
395 electronic mail or other generally accepted method of information  
396 distribution. No addendum to bid specifications may be issued  
397 within two (2) working days of the time established for the  
398 receipt of bids unless such addendum also amends the bid opening  
399 to a date not less than five (5) working days after the date of  
400 the addendum.

401           (iii) **Filing requirement.** In all cases involving  
402 governing authorities, before the notice shall be published or  
403 posted, the plans or specifications for the construction or  
404 equipment being sought shall be filed with the clerk of the board  
405 of the governing authority. In addition to these requirements, a

406 bid file shall be established which shall indicate those vendors  
407 to whom such solicitations and specifications were issued, and  
408 such file shall also contain such information as is pertinent to  
409 the bid.

410                   (iv) **Specification restrictions.** Specifications  
411 pertinent to such bidding shall be written so as not to exclude  
412 comparable equipment of domestic manufacture. However, if valid  
413 justification is presented, the Department of Finance and  
414 Administration or the board of a governing authority may approve a  
415 request for specific equipment necessary to perform a specific  
416 job. Further, such justification, when placed on the minutes of  
417 the board of a governing authority, may serve as authority for  
418 that governing authority to write specifications to require a  
419 specific item of equipment needed to perform a specific job. In  
420 addition to these requirements, from and after July 1, 1990,  
421 vendors of relocatable classrooms and the specifications for the  
422 purchase of such relocatable classrooms published by local school  
423 boards shall meet all pertinent regulations of the State Board of  
424 Education, including prior approval of such bid by the State  
425 Department of Education.

426                   (v) Agencies and governing authorities may  
427 establish secure procedures by which bids may be submitted via  
428 electronic means.

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

430                   (i) **Decision procedure.** Purchases may be made  
431 from the lowest and best bidder. In determining the lowest and  
432 best bid, freight and shipping charges shall be included.  
433 Life-cycle costing, total cost bids, warranties, guaranteed  
434 buy-back provisions and other relevant provisions may be included  
435 in the best bid calculation. All best bid procedures for state  
436 agencies must be in compliance with regulations established by the  
437 Department of Finance and Administration. If any governing  
438 authority accepts a bid other than the lowest bid actually

439 submitted, it shall place on its minutes detailed calculations and  
440 narrative summary showing that the accepted bid was determined to  
441 be the lowest and best bid, including the dollar amount of the  
442 accepted bid and the dollar amount of the lowest bid. No agency  
443 or governing authority shall accept a bid based on items not  
444 included in the specifications.

445           (ii) **Decision procedure for Certified Purchasing**  
446 **Offices.** In addition to the decision procedure set forth in  
447 paragraph (d)(i), Certified Purchasing Offices may also use the  
448 following procedure: Purchases may be made from the bidder  
449 offering the best value. In determining the best value bid,  
450 freight and shipping charges shall be included. Life-cycle  
451 costing, total cost bids, warranties, guaranteed buy-back  
452 provisions, documented previous experience, training costs and  
453 other relevant provisions may be included in the best value  
454 calculation. This provision shall authorize Certified Purchasing  
455 Offices to utilize a Request For Proposals (RFP) process when  
456 purchasing commodities. All best value procedures for state  
457 agencies must be in compliance with regulations established by the  
458 Department of Finance and Administration. No agency or governing  
459 authority shall accept a bid based on items or criteria not  
460 included in the specifications.

461           (iii) **Construction project negotiations authority.**  
462 If the lowest and best bid is not more than ten percent (10%)  
463 above the amount of funds allocated for a public construction or  
464 renovation project, then the agency or governing authority shall  
465 be permitted to negotiate with the lowest bidder in order to enter  
466 into a contract for an amount not to exceed the funds allocated.

467           (e) **Lease-purchase authorization.** For the purposes of  
468 this section, the term "equipment" shall mean equipment, furniture  
469 and, if applicable, associated software and other applicable  
470 direct costs associated with the acquisition. Any lease-purchase  
471 of equipment which an agency is not required to lease-purchase

472 under the master lease-purchase program pursuant to Section  
473 31-7-10 and any lease-purchase of equipment which a governing  
474 authority elects to lease-purchase may be acquired by a  
475 lease-purchase agreement under this paragraph (e). Lease-purchase  
476 financing may also be obtained from the vendor or from a  
477 third-party source after having solicited and obtained at least  
478 two (2) written competitive bids, as defined in paragraph (b) of  
479 this section, for such financing without advertising for such  
480 bids. Solicitation for the bids for financing may occur before or  
481 after acceptance of bids for the purchase of such equipment or,  
482 where no such bids for purchase are required, at any time before  
483 the purchase thereof. No such lease-purchase agreement shall be  
484 for an annual rate of interest which is greater than the overall  
485 maximum interest rate to maturity on general obligation  
486 indebtedness permitted under Section 75-17-101, and the term of  
487 such lease-purchase agreement shall not exceed the useful life of  
488 equipment covered thereby as determined according to the upper  
489 limit of the asset depreciation range (ADR) guidelines for the  
490 Class Life Asset Depreciation Range System established by the  
491 Internal Revenue Service pursuant to the United States Internal  
492 Revenue Code and regulations thereunder as in effect on December  
493 31, 1980, or comparable depreciation guidelines with respect to  
494 any equipment not covered by ADR guidelines. Any lease-purchase  
495 agreement entered into pursuant to this paragraph (e) may contain  
496 any of the terms and conditions which a master lease-purchase  
497 agreement may contain under the provisions of Section 31-7-10(5),  
498 and shall contain an annual allocation dependency clause  
499 substantially similar to that set forth in Section 31-7-10(8).  
500 Each agency or governing authority entering into a lease-purchase  
501 transaction pursuant to this paragraph (e) shall maintain with  
502 respect to each such lease-purchase transaction the same  
503 information as required to be maintained by the Department of  
504 Finance and Administration pursuant to Section 31-7-10(13).

505 However, nothing contained in this section shall be construed to  
506 permit agencies to acquire items of equipment with a total  
507 acquisition cost in the aggregate of less than Ten Thousand  
508 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
509 equipment, and the purchase thereof by any lessor, acquired by  
510 lease-purchase under this paragraph and all lease-purchase  
511 payments with respect thereto shall be exempt from all Mississippi  
512 sales, use and ad valorem taxes. Interest paid on any  
513 lease-purchase agreement under this section shall be exempt from  
514 State of Mississippi income taxation.

515           (f) **Alternate bid authorization.** When necessary to  
516 ensure ready availability of commodities for public works and the  
517 timely completion of public projects, no more than two (2)  
518 alternate bids may be accepted by a governing authority for  
519 commodities. No purchases may be made through use of such  
520 alternate bids procedure unless the lowest and best bidder cannot  
521 deliver the commodities contained in his bid. In that event,  
522 purchases of such commodities may be made from one (1) of the  
523 bidders whose bid was accepted as an alternate.

524           (g) **Construction contract change authorization.** In the  
525 event a determination is made by an agency or governing authority  
526 after a construction contract is let that changes or modifications  
527 to the original contract are necessary or would better serve the  
528 purpose of the agency or the governing authority, such agency or  
529 governing authority may, in its discretion, order such changes  
530 pertaining to the construction that are necessary under the  
531 circumstances without the necessity of further public bids;  
532 provided that such change shall be made in a commercially  
533 reasonable manner and shall not be made to circumvent the public  
534 purchasing statutes. In addition to any other authorized person,  
535 the architect or engineer hired by an agency or governing  
536 authority with respect to any public construction contract shall  
537 have the authority, when granted by an agency or governing



538 authority, to authorize changes or modifications to the original  
539 contract without the necessity of prior approval of the agency or  
540 governing authority when any such change or modification is less  
541 than one percent (1%) of the total contract amount. The agency or  
542 governing authority may limit the number, manner or frequency of  
543 such emergency changes or modifications.

544           (h) **Petroleum purchase alternative.** In addition to  
545 other methods of purchasing authorized in this chapter, when any  
546 agency or governing authority shall have a need for gas, diesel  
547 fuel, oils and/or other petroleum products in excess of the amount  
548 set forth in paragraph (a) of this section, such agency or  
549 governing authority may purchase the commodity after having  
550 solicited and obtained at least two (2) competitive written bids,  
551 as defined in paragraph (b) of this section. If two (2)  
552 competitive written bids are not obtained, the entity shall comply  
553 with the procedures set forth in paragraph (c) of this section.  
554 In the event any agency or governing authority shall have  
555 advertised for bids for the purchase of gas, diesel fuel, oils and  
556 other petroleum products and coal and no acceptable bids can be  
557 obtained, such agency or governing authority is authorized and  
558 directed to enter into any negotiations necessary to secure the  
559 lowest and best contract available for the purchase of such  
560 commodities.

561           (i) **Road construction petroleum products price**  
562 **adjustment clause authorization.** Any agency or governing  
563 authority authorized to enter into contracts for the construction,  
564 maintenance, surfacing or repair of highways, roads or streets,  
565 may include in its bid proposal and contract documents a price  
566 adjustment clause with relation to the cost to the contractor,  
567 including taxes, based upon an industry-wide cost index, of  
568 petroleum products including asphalt used in the performance or  
569 execution of the contract or in the production or manufacture of  
570 materials for use in such performance. Such industry-wide index

571 shall be established and published monthly by the Mississippi  
572 Department of Transportation with a copy thereof to be mailed,  
573 upon request, to the clerks of the governing authority of each  
574 municipality and the clerks of each board of supervisors  
575 throughout the state. The price adjustment clause shall be based  
576 on the cost of such petroleum products only and shall not include  
577 any additional profit or overhead as part of the adjustment. The  
578 bid proposals or document contract shall contain the basis and  
579 methods of adjusting unit prices for the change in the cost of  
580 such petroleum products.

581           (j) **State agency emergency purchase procedure.** If the  
582 governing board or the executive head, or his designee, of any  
583 agency of the state shall determine that an emergency exists in  
584 regard to the purchase of any commodities or repair contracts, so  
585 that the delay incident to giving opportunity for competitive  
586 bidding would be detrimental to the interests of the state, then  
587 the provisions herein for competitive bidding shall not apply and  
588 the head of such agency shall be authorized to make the purchase  
589 or repair. Total purchases so made shall only be for the purpose  
590 of meeting needs created by the emergency situation. In the event  
591 such executive head is responsible to an agency board, at the  
592 meeting next following the emergency purchase, documentation of  
593 the purchase, including a description of the commodity purchased,  
594 the purchase price thereof and the nature of the emergency shall  
595 be presented to the board and placed on the minutes of the board  
596 of such agency. The head of such agency, or his designee, shall,  
597 at the earliest possible date following such emergency purchase,  
598 file with the Department of Finance and Administration (i) a  
599 statement explaining the conditions and circumstances of the  
600 emergency, which shall include a detailed description of the  
601 events leading up to the situation and the negative impact to the  
602 entity if the purchase is made following the statutory  
603 requirements set forth in paragraph (a), (b) or (c) of this

604 section, and (ii) a certified copy of the appropriate minutes of  
605 the board of such agency, if applicable. On or before September 1  
606 of each year, the State Auditor shall prepare and deliver to the  
607 Senate Fees, Salaries and Administration Committee, the House Fees  
608 and Salaries of Public Officers Committee and the Joint  
609 Legislative Budget Committee a report containing a list of all  
610 state agency emergency purchases and supporting documentation for  
611 each emergency purchase.

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

613 If the governing authority, or the governing authority acting  
614 through its designee, shall determine that an emergency exists in  
615 regard to the purchase of any commodities or repair contracts, so  
616 that the delay incident to giving opportunity for competitive  
617 bidding would be detrimental to the interest of the governing  
618 authority, then the provisions herein for competitive bidding  
619 shall not apply and any officer or agent of such governing  
620 authority having general or special authority therefor in making  
621 such purchase or repair shall approve the bill presented therefor,  
622 and he shall certify in writing thereon from whom such purchase  
623 was made, or with whom such a repair contract was made. At the  
624 board meeting next following the emergency purchase or repair  
625 contract, documentation of the purchase or repair contract,  
626 including a description of the commodity purchased, the price  
627 thereof and the nature of the emergency shall be presented to the  
628 board and shall be placed on the minutes of the board of such  
629 governing authority.

630 (l) **Hospital purchase, lease-purchase and lease**  
631 **authorization.**

632 (i) The commissioners or board of trustees of any  
633 public hospital may contract with such lowest and best bidder for  
634 the purchase or lease-purchase of any commodity under a contract  
635 of purchase or lease-purchase agreement whose obligatory payment  
636 terms do not exceed five (5) years.

637                   (ii) In addition to the authority granted in  
638 subparagraph (i) of this paragraph (1), the commissioners or board  
639 of trustees is authorized to enter into contracts for the lease of  
640 equipment or services, or both, which it considers necessary for  
641 the proper care of patients if, in its opinion, it is not  
642 financially feasible to purchase the necessary equipment or  
643 services. Any such contract for the lease of equipment or  
644 services executed by the commissioners or board shall not exceed a  
645 maximum of five (5) years' duration and shall include a  
646 cancellation clause based on unavailability of funds. If such  
647 cancellation clause is exercised, there shall be no further  
648 liability on the part of the lessee. Any such contract for the  
649 lease of equipment or services executed on behalf of the  
650 commissioners or board that complies with the provisions of this  
651 subparagraph (ii) shall be excepted from the bid requirements set  
652 forth in this section.

653                   (m) **Exceptions from bidding requirements.** Excepted  
654 from bid requirements are:

655                   (i) **Purchasing agreements approved by department.**  
656 Purchasing agreements, contracts and maximum price regulations  
657 executed or approved by the Department of Finance and  
658 Administration.

659                   (ii) **Outside equipment repairs.** Repairs to  
660 equipment, when such repairs are made by repair facilities in the  
661 private sector; however, engines, transmissions, rear axles and/or  
662 other such components shall not be included in this exemption when  
663 replaced as a complete unit instead of being repaired and the need  
664 for such total component replacement is known before disassembly  
665 of the component; however, invoices identifying the equipment,  
666 specific repairs made, parts identified by number and name,  
667 supplies used in such repairs, and the number of hours of labor  
668 and costs therefor shall be required for the payment for such  
669 repairs.

670                   (iii) **In-house equipment repairs.** Purchases of  
671 parts for repairs to equipment, when such repairs are made by  
672 personnel of the agency or governing authority; however, entire  
673 assemblies, such as engines or transmissions, shall not be  
674 included in this exemption when the entire assembly is being  
675 replaced instead of being repaired.

676                   (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
677 of gravel or fill dirt which are to be removed and transported by  
678 the purchaser.

679                   (v) **Governmental equipment auctions.** Motor  
680 vehicles or other equipment purchased from a federal agency or  
681 authority, another governing authority or state agency of the  
682 State of Mississippi, or any governing authority or state agency  
683 of another state at a public auction held for the purpose of  
684 disposing of such vehicles or other equipment. Any purchase by a  
685 governing authority under the exemption authorized by this  
686 subparagraph (v) shall require advance authorization spread upon  
687 the minutes of the governing authority to include the listing of  
688 the item or items authorized to be purchased and the maximum bid  
689 authorized to be paid for each item or items.

690                   (vi) **Intergovernmental sales and transfers.**  
691 Purchases, sales, transfers or trades by governing authorities or  
692 state agencies when such purchases, sales, transfers or trades are  
693 made by a private treaty agreement or through means of  
694 negotiation, from any federal agency or authority, another  
695 governing authority or state agency of the State of Mississippi,  
696 or any state agency or governing authority of another state.  
697 Nothing in this section shall permit such purchases through public  
698 auction except as provided for in subparagraph (v) of this  
699 section. It is the intent of this section to allow governmental  
700 entities to dispose of and/or purchase commodities from other  
701 governmental entities at a price that is agreed to by both  
702 parties. This shall allow for purchases and/or sales at prices

703 which may be determined to be below the market value if the  
704 selling entity determines that the sale at below market value is  
705 in the best interest of the taxpayers of the state. Governing  
706 authorities shall place the terms of the agreement and any  
707 justification on the minutes, and state agencies shall obtain  
708 approval from the Department of Finance and Administration, prior  
709 to releasing or taking possession of the commodities.

710 (vii) **Perishable supplies or food.** Perishable  
711 supplies or foods purchased for use in connection with hospitals,  
712 the school lunch programs, homemaking programs and for the feeding  
713 of county or municipal prisoners.

714 (viii) **Single source items.** Noncompetitive items  
715 available from one (1) source only. In connection with the  
716 purchase of noncompetitive items only available from one (1)  
717 source, a certification of the conditions and circumstances  
718 requiring the purchase shall be filed by the agency with the  
719 Department of Finance and Administration and by the governing  
720 authority with the board of the governing authority. Upon receipt  
721 of that certification the Department of Finance and Administration  
722 or the board of the governing authority, as the case may be, may,  
723 in writing, authorize the purchase, which authority shall be noted  
724 on the minutes of the body at the next regular meeting thereafter.  
725 In those situations, a governing authority is not required to  
726 obtain the approval of the Department of Finance and  
727 Administration.

728 (ix) **Waste disposal facility construction**  
729 **contracts.** Construction of incinerators and other facilities for  
730 disposal of solid wastes in which products either generated  
731 therein, such as steam, or recovered therefrom, such as materials  
732 for recycling, are to be sold or otherwise disposed of; however,  
733 in constructing such facilities, a governing authority or agency  
734 shall publicly issue requests for proposals, advertised for in the  
735 same manner as provided herein for seeking bids for public

736 construction projects, concerning the design, construction,  
737 ownership, operation and/or maintenance of such facilities,  
738 wherein such requests for proposals when issued shall contain  
739 terms and conditions relating to price, financial responsibility,  
740 technology, environmental compatibility, legal responsibilities  
741 and such other matters as are determined by the governing  
742 authority or agency to be appropriate for inclusion; and after  
743 responses to the request for proposals have been duly received,  
744 the governing authority or agency may select the most qualified  
745 proposal or proposals on the basis of price, technology and other  
746 relevant factors and from such proposals, but not limited to the  
747 terms thereof, negotiate and enter contracts with one or more of  
748 the persons or firms submitting proposals.

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

752           (xi) **Information technology products.** Purchases  
753 of information technology products made by governing authorities  
754 under the provisions of purchase schedules, or contracts executed  
755 or approved by the Mississippi Department of Information  
756 Technology Services and designated for use by governing  
757 authorities.

758           (xii) **Energy efficiency services and equipment.**  
759 Energy efficiency services and equipment acquired by school  
760 districts, community and junior colleges, institutions of higher  
761 learning and state agencies or other applicable governmental  
762 entities on a shared-savings, lease or lease-purchase basis  
763 pursuant to Section 31-7-14.

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

768                   (xiv) **Library books and other reference materials.**  
769 Purchases by libraries or for libraries of books and periodicals;  
770 processed film, video cassette tapes, filmstrips and slides;  
771 recorded audio tapes, cassettes and diskettes; and any such items  
772 as would be used for teaching, research or other information  
773 distribution; however, equipment such as projectors, recorders,  
774 audio or video equipment, and monitor televisions are not exempt  
775 under this subparagraph.

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

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

782                   (xvii) **Multichannel interactive video systems.**  
783 From and after July 1, 1990, contracts by Mississippi Authority  
784 for Educational Television with any private educational  
785 institution or private nonprofit organization whose purposes are  
786 educational in regard to the construction, purchase, lease or  
787 lease-purchase of facilities and equipment and the employment of  
788 personnel for providing multichannel interactive video systems  
789 (ITSF) in the school districts of this state.

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

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

799                   (xx) **Junior college books for rent.** Purchases by  
800 community or junior colleges of textbooks which are obtained for



801 the purpose of renting such books to students as part of a book  
802 service system.

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

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

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

809 Contracts for garbage collection or disposal, contracts for solid  
810 waste collection or disposal and contracts for sewage collection  
811 or disposal.

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

813 **contracts.** Professional maintenance program contracts for the  
814 repair or maintenance of municipal water tanks, which provide  
815 professional services needed to maintain municipal water storage  
816 tanks for a fixed annual fee for a duration of two (2) or more  
817 years.

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

819 **Blind products.** Purchases made by state agencies or governing  
820 authorities involving any item that is manufactured, processed or  
821 produced by the Mississippi Industries for the Blind.

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

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

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

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

827 (xxvii) **Used heavy or specialized machinery or**

828 **equipment for installation of soil and water conservation**

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

830 machinery or equipment used for the installation and

831 implementation of soil and water conservation practices or

832 measures purchased subject to the restrictions provided in

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

834 Soil and Water Conservation Commission under the exemption  
835 authorized by this subparagraph shall require advance  
836 authorization spread upon the minutes of the commission to include  
837 the listing of the item or items authorized to be purchased and  
838 the maximum bid authorized to be paid for each item or items.

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

840 Leases by hospitals of equipment or services if the leases are in  
841 compliance with paragraph (1)(ii).

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

843 **cooperative purchasing agreements.** Purchases made by certified  
844 purchasing offices of state agencies or governing authorities  
845 under cooperative purchasing agreements previously approved by the  
846 Office of Purchasing and Travel and established by or for any  
847 municipality, county, parish or state government or the federal  
848 government, provided that the notification to potential  
849 contractors includes a clause that sets forth the availability of  
850 the cooperative purchasing agreement to other governmental  
851 entities. Such purchases shall only be made if the use of the  
852 cooperative purchasing agreements is determined to be in the best  
853 interest of the government entity.

854 (xxx) **School yearbooks.** Purchases of school

855 yearbooks by state agencies or governing authorities; provided,  
856 however, that state agencies and governing authorities shall use  
857 for these purchases the RFP process as set forth in the  
858 Mississippi Procurement Manual adopted by the Office of Purchasing  
859 and Travel.

860 (xxxii) **Design-build method or the design-build**

861 **bridging method of contracting.** Contracts entered into the  
862 provisions of Section 31-11-3(9).

863 (n) **Term contract authorization.** All contracts for the  
864 purchase of:

865 (i) All contracts for the purchase of commodities,  
866 equipment and public construction (including, but not limited to,

867 repair and maintenance), may be let for periods of not more than  
868 sixty (60) months in advance, subject to applicable statutory  
869 provisions prohibiting the letting of contracts during specified  
870 periods near the end of terms of office. Term contracts for a  
871 period exceeding twenty-four (24) months shall also be subject to  
872 ratification or cancellation by governing authority boards taking  
873 office subsequent to the governing authority board entering the  
874 contract.

875 (ii) Bid proposals and contracts may include price  
876 adjustment clauses with relation to the cost to the contractor  
877 based upon a nationally published industry-wide or nationally  
878 published and recognized cost index. The cost index used in a  
879 price adjustment clause shall be determined by the Department of  
880 Finance and Administration for the state agencies and by the  
881 governing board for governing authorities. The bid proposal and  
882 contract documents utilizing a price adjustment clause shall  
883 contain the basis and method of adjusting unit prices for the  
884 change in the cost of such commodities, equipment and public  
885 construction.

886 (o) **Purchase law violation prohibition and vendor**  
887 **penalty.** No contract or purchase as herein authorized shall be  
888 made for the purpose of circumventing the provisions of this  
889 section requiring competitive bids, nor shall it be lawful for any  
890 person or concern to submit individual invoices for amounts within  
891 those authorized for a contract or purchase where the actual value  
892 of the contract or commodity purchased exceeds the authorized  
893 amount and the invoices therefor are split so as to appear to be  
894 authorized as purchases for which competitive bids are not  
895 required. Submission of such invoices shall constitute a  
896 misdemeanor punishable by a fine of not less than Five Hundred  
897 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
898 or by imprisonment for thirty (30) days in the county jail, or

899 both such fine and imprisonment. In addition, the claim or claims  
900 submitted shall be forfeited.

901 (p) **Electrical utility petroleum-based equipment**  
902 **purchase procedure.** When in response to a proper advertisement  
903 therefor, no bid firm as to price is submitted to an electric  
904 utility for power transformers, distribution transformers, power  
905 breakers, reclosers or other articles containing a petroleum  
906 product, the electric utility may accept the lowest and best bid  
907 therefor although the price is not firm.

908 (q) **Fuel management system bidding procedure.** Any  
909 governing authority or agency of the state shall, before  
910 contracting for the services and products of a fuel management or  
911 fuel access system, enter into negotiations with not fewer than  
912 two (2) sellers of fuel management or fuel access systems for  
913 competitive written bids to provide the services and products for  
914 the systems. In the event that the governing authority or agency  
915 cannot locate two (2) sellers of such systems or cannot obtain  
916 bids from two (2) sellers of such systems, it shall show proof  
917 that it made a diligent, good-faith effort to locate and negotiate  
918 with two (2) sellers of such systems. Such proof shall include,  
919 but not be limited to, publications of a request for proposals and  
920 letters soliciting negotiations and bids. For purposes of this  
921 paragraph (q), a fuel management or fuel access system is an  
922 automated system of acquiring fuel for vehicles as well as  
923 management reports detailing fuel use by vehicles and drivers, and  
924 the term "competitive written bid" shall have the meaning as  
925 defined in paragraph (b) of this section. Governing authorities  
926 and agencies shall be exempt from this process when contracting  
927 for the services and products of a fuel management or fuel access  
928 systems under the terms of a state contract established by the  
929 Office of Purchasing and Travel.

930 (r) **Solid waste contract proposal procedure.** Before  
931 entering into any contract for garbage collection or disposal,

932 contract for solid waste collection or disposal or contract for  
933 sewage collection or disposal, which involves an expenditure of  
934 more than Fifty Thousand Dollars (\$50,000.00), a governing  
935 authority or agency shall issue publicly a request for proposals  
936 concerning the specifications for such services which shall be  
937 advertised for in the same manner as provided in this section for  
938 seeking bids for purchases which involve an expenditure of more  
939 than the amount provided in paragraph (c) of this section. Any  
940 request for proposals when issued shall contain terms and  
941 conditions relating to price, financial responsibility,  
942 technology, legal responsibilities and other relevant factors as  
943 are determined by the governing authority or agency to be  
944 appropriate for inclusion; all factors determined relevant by the  
945 governing authority or agency or required by this paragraph (r)  
946 shall be duly included in the advertisement to elicit proposals.  
947 After responses to the request for proposals have been duly  
948 received, the governing authority or agency shall select the most  
949 qualified proposal or proposals on the basis of price, technology  
950 and other relevant factors and from such proposals, but not  
951 limited to the terms thereof, negotiate and enter contracts with  
952 one or more of the persons or firms submitting proposals. If the  
953 governing authority or agency deems none of the proposals to be  
954 qualified or otherwise acceptable, the request for proposals  
955 process may be reinitiated. Notwithstanding any other provisions  
956 of this paragraph, where a county with at least thirty-five  
957 thousand (35,000) nor more than forty thousand (40,000)  
958 population, according to the 1990 federal decennial census, owns  
959 or operates a solid waste landfill, the governing authorities of  
960 any other county or municipality may contract with the governing  
961 authorities of the county owning or operating the landfill,  
962 pursuant to a resolution duly adopted and spread upon the minutes  
963 of each governing authority involved, for garbage or solid waste  
964 collection or disposal services through contract negotiations.

965           (s) **Minority set-aside authorization.** Notwithstanding  
966 any provision of this section to the contrary, any agency or  
967 governing authority, by order placed on its minutes, may, in its  
968 discretion, set aside not more than twenty percent (20%) of its  
969 anticipated annual expenditures for the purchase of commodities  
970 from minority businesses; however, all such set-aside purchases  
971 shall comply with all purchasing regulations promulgated by the  
972 Department of Finance and Administration and shall be subject to  
973 bid requirements under this section. Set-aside purchases for  
974 which competitive bids are required shall be made from the lowest  
975 and best minority business bidder. For the purposes of this  
976 paragraph, the term "minority business" means a business which is  
977 owned by a majority of persons who are United States citizens or  
978 permanent resident aliens (as defined by the Immigration and  
979 Naturalization Service) of the United States, and who are Asian,  
980 Black, Hispanic or Native American, according to the following  
981 definitions:

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

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

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

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

993           (t) **Construction punch list restriction.** The  
994 architect, engineer or other representative designated by the  
995 agency or governing authority that is contracting for public  
996 construction or renovation may prepare and submit to the  
997 contractor only one (1) preliminary punch list of items that do

998 not meet the contract requirements at the time of substantial  
999 completion and one (1) final list immediately before final  
1000 completion and final payment.

1001 (u) **Contract restrictions.** No agency shall accept a  
1002 bid from or enter into a contract with a contractor or vendor that  
1003 has persons who are not American citizens or legal aliens who will  
1004 work under the contract. However, an agency may accept a bid from  
1005 or enter into a contract with a contractor or vendor that has  
1006 persons who will work under the contract who have some specialty  
1007 for which American citizens or legal aliens cannot be found. The  
1008 agency shall require contractors and vendors submitting bids to  
1009 attach an affidavit stating that all persons who will work under  
1010 the contract are American citizens or legal aliens or have some  
1011 specialty for which American citizens or legal aliens cannot be  
1012 found.

1013 (v) **Purchase authorization clarification.** Nothing in  
1014 this section shall be construed as authorizing any purchase not  
1015 authorized by law.

1016 **SECTION 5.** This act shall take effect and be in force from  
1017 and after July 1, 2005.