

By: Representative Franks

To: Appropriations

## HOUSE BILL NO. 1186

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE PUBLIC PURCHASING LAWS TO INCREASE THE MINIMUM AMOUNT  
3 OF EXPENDITURES FOR WHICH THE COMPETITIVE BID PROCESS IS REQUIRED;  
4 AND FOR RELATED PURPOSES.

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

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

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

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

14 Purchases which do not involve an expenditure of more than Five  
15 Thousand Dollars (\$5,000.00), exclusive of freight or shipping  
16 charges, may be made without advertising or otherwise requesting  
17 competitive bids. However, nothing contained in this paragraph

18 (a) shall be construed to prohibit any agency or governing  
19 authority from establishing procedures which require competitive  
20 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

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

22 **not over \$15,000.00.** Purchases which involve an expenditure of  
23 more than Five Thousand Dollars (\$5,000.00) but not more than  
24 Twenty-five Thousand Dollars (\$25,000.00), exclusive of freight  
25 and shipping charges may be made from the lowest and best bidder  
26 without publishing or posting advertisement for bids, provided at  
27 least two (2) competitive written bids have been obtained. Any  
28 governing authority purchasing commodities pursuant to this

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

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

57 (i) **Publication requirement.** Purchases which  
58 involve an expenditure of more than Twenty-five Thousand Dollars  
59 (\$25,000.00), exclusive of freight and shipping charges, may be  
60 made from the lowest and best bidder after advertising for  
61 competitive sealed bids once each week for two (2) consecutive

62 weeks in a regular newspaper published in the county or  
63 municipality in which such agency or governing authority is  
64 located. The date as published for the bid opening shall not be  
65 less than seven (7) working days after the last published notice;  
66 however, if the purchase involves a construction project in which  
67 the estimated cost is in excess of Twenty-five Thousand Dollars  
68 (\$25,000.00), such bids shall not be opened in less than fifteen  
69 (15) working days after the last notice is published and the  
70 notice for the purchase of such construction shall be published  
71 once each week for two (2) consecutive weeks. The notice of  
72 intention to let contracts or purchase equipment shall state the  
73 time and place at which bids shall be received, list the contracts  
74 to be made or types of equipment or supplies to be purchased, and,  
75 if all plans and/or specifications are not published, refer to the  
76 plans and/or specifications on file. If there is no newspaper  
77 published in the county or municipality, then such notice shall be  
78 given by posting same at the courthouse, or for municipalities at  
79 the city hall, and at two (2) other public places in the county or  
80 municipality, and also by publication once each week for two (2)  
81 consecutive weeks in some newspaper having a general circulation  
82 in the county or municipality in the above provided manner. On  
83 the same date that the notice is submitted to the newspaper for  
84 publication, the agency or governing authority involved shall mail  
85 written notice to, or provide electronic notification to the main  
86 office of the Mississippi Contract Procurement Center that  
87 contains the same information as that in the published notice.

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

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

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

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

127 Education, including prior approval of such bid by the State  
128 Department of Education.

129 (v) Agencies and governing authorities may  
130 establish secure procedures by which bids may be submitted via  
131 electronic means.

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

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

148 (ii) **Decision procedure for Certified Purchasing**  
149 **Offices.** In addition to the decision procedure set forth in  
150 paragraph (d)(i), Certified Purchasing Offices may also use the  
151 following procedure: Purchases may be made from the bidder  
152 offering the best value. In determining the best value bid,  
153 freight and shipping charges shall be included. Life-cycle  
154 costing, total cost bids, warranties, guaranteed buy-back  
155 provisions, documented previous experience, training costs and  
156 other relevant provisions may be included in the best value  
157 calculation. This provision shall authorize Certified Purchasing  
158 Offices to utilize a Request For Proposals (RFP) process when  
159 purchasing commodities. All best value procedures for state

160 agencies must be in compliance with regulations established by the  
161 Department of Finance and Administration. No agency or governing  
162 authority shall accept a bid based on items or criteria not  
163 included in the specifications.

164 (iii) **Construction project negotiations authority.**

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

170 (e) **Lease-purchase authorization.** For the purposes of  
171 this section, the term "equipment" shall mean equipment, furniture  
172 and, if applicable, associated software and other applicable  
173 direct costs associated with the acquisition. Any lease-purchase  
174 of equipment which an agency is not required to lease-purchase  
175 under the master lease-purchase program pursuant to Section  
176 31-7-10 and any lease-purchase of equipment which a governing  
177 authority elects to lease-purchase may be acquired by a  
178 lease-purchase agreement under this paragraph (e). Lease-purchase  
179 financing may also be obtained from the vendor or from a  
180 third-party source after having solicited and obtained at least  
181 two (2) written competitive bids, as defined in paragraph (b) of  
182 this section, for such financing without advertising for such  
183 bids. Solicitation for the bids for financing may occur before or  
184 after acceptance of bids for the purchase of such equipment or,  
185 where no such bids for purchase are required, at any time before  
186 the purchase thereof. No such lease-purchase agreement shall be  
187 for an annual rate of interest which is greater than the overall  
188 maximum interest rate to maturity on general obligation  
189 indebtedness permitted under Section 75-17-101, and the term of  
190 such lease-purchase agreement shall not exceed the useful life of  
191 equipment covered thereby as determined according to the upper  
192 limit of the asset depreciation range (ADR) guidelines for the

193 Class Life Asset Depreciation Range System established by the  
194 Internal Revenue Service pursuant to the United States Internal  
195 Revenue Code and regulations thereunder as in effect on December  
196 31, 1980, or comparable depreciation guidelines with respect to  
197 any equipment not covered by ADR guidelines. Any lease-purchase  
198 agreement entered into pursuant to this paragraph (e) may contain  
199 any of the terms and conditions which a master lease-purchase  
200 agreement may contain under the provisions of Section 31-7-10(5),  
201 and shall contain an annual allocation dependency clause  
202 substantially similar to that set forth in Section 31-7-10(8).  
203 Each agency or governing authority entering into a lease-purchase  
204 transaction pursuant to this paragraph (e) shall maintain with  
205 respect to each such lease-purchase transaction the same  
206 information as required to be maintained by the Department of  
207 Finance and Administration pursuant to Section 31-7-10(13).  
208 However, nothing contained in this section shall be construed to  
209 permit agencies to acquire items of equipment with a total  
210 acquisition cost in the aggregate of less than Ten Thousand  
211 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
212 equipment, and the purchase thereof by any lessor, acquired by  
213 lease-purchase under this paragraph and all lease-purchase  
214 payments with respect thereto shall be exempt from all Mississippi  
215 sales, use and ad valorem taxes. Interest paid on any  
216 lease-purchase agreement under this section shall be exempt from  
217 State of Mississippi income taxation.

218 (f) **Alternate bid authorization.** When necessary to  
219 ensure ready availability of commodities for public works and the  
220 timely completion of public projects, no more than two (2)  
221 alternate bids may be accepted by a governing authority for  
222 commodities. No purchases may be made through use of such  
223 alternate bids procedure unless the lowest and best bidder cannot  
224 deliver the commodities contained in his bid. In that event,

225 purchases of such commodities may be made from one (1) of the  
226 bidders whose bid was accepted as an alternate.

227           (g) **Construction contract change authorization.** In the  
228 event a determination is made by an agency or governing authority  
229 after a construction contract is let that changes or modifications  
230 to the original contract are necessary or would better serve the  
231 purpose of the agency or the governing authority, such agency or  
232 governing authority may, in its discretion, order such changes  
233 pertaining to the construction that are necessary under the  
234 circumstances without the necessity of further public bids;  
235 provided that such change shall be made in a commercially  
236 reasonable manner and shall not be made to circumvent the public  
237 purchasing statutes. In addition to any other authorized person,  
238 the architect or engineer hired by an agency or governing  
239 authority with respect to any public construction contract shall  
240 have the authority, when granted by an agency or governing  
241 authority, to authorize changes or modifications to the original  
242 contract without the necessity of prior approval of the agency or  
243 governing authority when any such change or modification is less  
244 than one percent (1%) of the total contract amount. The agency or  
245 governing authority may limit the number, manner or frequency of  
246 such emergency changes or modifications.

247           (h) **Petroleum purchase alternative.** In addition to  
248 other methods of purchasing authorized in this chapter, when any  
249 agency or governing authority shall have a need for gas, diesel  
250 fuel, oils and/or other petroleum products in excess of the amount  
251 set forth in paragraph (a) of this section, such agency or  
252 governing authority may purchase the commodity after having  
253 solicited and obtained at least two (2) competitive written bids,  
254 as defined in paragraph (b) of this section. If two (2)  
255 competitive written bids are not obtained, the entity shall comply  
256 with the procedures set forth in paragraph (c) of this section.  
257 In the event any agency or governing authority shall have



258 advertised for bids for the purchase of gas, diesel fuel, oils and  
259 other petroleum products and coal and no acceptable bids can be  
260 obtained, such agency or governing authority is authorized and  
261 directed to enter into any negotiations necessary to secure the  
262 lowest and best contract available for the purchase of such  
263 commodities.

264           (i) **Road construction petroleum products price**  
265 **adjustment clause authorization.** Any agency or governing  
266 authority authorized to enter into contracts for the construction,  
267 maintenance, surfacing or repair of highways, roads or streets,  
268 may include in its bid proposal and contract documents a price  
269 adjustment clause with relation to the cost to the contractor,  
270 including taxes, based upon an industry-wide cost index, of  
271 petroleum products including asphalt used in the performance or  
272 execution of the contract or in the production or manufacture of  
273 materials for use in such performance. Such industry-wide index  
274 shall be established and published monthly by the Mississippi  
275 Department of Transportation with a copy thereof to be mailed,  
276 upon request, to the clerks of the governing authority of each  
277 municipality and the clerks of each board of supervisors  
278 throughout the state. The price adjustment clause shall be based  
279 on the cost of such petroleum products only and shall not include  
280 any additional profit or overhead as part of the adjustment. The  
281 bid proposals or document contract shall contain the basis and  
282 methods of adjusting unit prices for the change in the cost of  
283 such petroleum products.

284           (j) **State agency emergency purchase procedure.** If the  
285 governing board or the executive head, or his designee, of any  
286 agency of the state shall determine that an emergency exists in  
287 regard to the purchase of any commodities or repair contracts, so  
288 that the delay incident to giving opportunity for competitive  
289 bidding would be detrimental to the interests of the state, then  
290 the provisions herein for competitive bidding shall not apply and

291 the head of such agency shall be authorized to make the purchase  
292 or repair. Total purchases so made shall only be for the purpose  
293 of meeting needs created by the emergency situation. In the event  
294 such executive head is responsible to an agency board, at the  
295 meeting next following the emergency purchase, documentation of  
296 the purchase, including a description of the commodity purchased,  
297 the purchase price thereof and the nature of the emergency shall  
298 be presented to the board and placed on the minutes of the board  
299 of such agency. The head of such agency, or his designee, shall,  
300 at the earliest possible date following such emergency purchase,  
301 file with the Department of Finance and Administration (i) a  
302 statement explaining the conditions and circumstances of the  
303 emergency, which shall include a detailed description of the  
304 events leading up to the situation and the negative impact to the  
305 entity if the purchase is made following the statutory  
306 requirements set forth in paragraph (a), (b) or (c) of this  
307 section, and (ii) a certified copy of the appropriate minutes of  
308 the board of such agency, if applicable. On or before September 1  
309 of each year, the State Auditor shall prepare and deliver to the  
310 Senate Fees, Salaries and Administration Committee, the House Fees  
311 and Salaries of Public Officers Committee and the Joint  
312 Legislative Budget Committee a report containing a list of all  
313 state agency emergency purchases and supporting documentation for  
314 each emergency purchase.

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

316 If the governing authority, or the governing authority acting  
317 through its designee, shall determine that an emergency exists in  
318 regard to the purchase of any commodities or repair contracts, so  
319 that the delay incident to giving opportunity for competitive  
320 bidding would be detrimental to the interest of the governing  
321 authority, then the provisions herein for competitive bidding  
322 shall not apply and any officer or agent of such governing  
323 authority having general or special authority therefor in making

324 such purchase or repair shall approve the bill presented therefor,  
325 and he shall certify in writing thereon from whom such purchase  
326 was made, or with whom such a repair contract was made. At the  
327 board meeting next following the emergency purchase or repair  
328 contract, documentation of the purchase or repair contract,  
329 including a description of the commodity purchased, the price  
330 thereof and the nature of the emergency shall be presented to the  
331 board and shall be placed on the minutes of the board of such  
332 governing authority.

333           (1) **Hospital purchase, lease-purchase and lease**  
334 **authorization.**

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

340           (ii) In addition to the authority granted in  
341 subparagraph (i) of this paragraph (1), the commissioners or board  
342 of trustees is authorized to enter into contracts for the lease of  
343 equipment or services, or both, which it considers necessary for  
344 the proper care of patients if, in its opinion, it is not  
345 financially feasible to purchase the necessary equipment or  
346 services. Any such contract for the lease of equipment or  
347 services executed by the commissioners or board shall not exceed a  
348 maximum of five (5) years' duration and shall include a  
349 cancellation clause based on unavailability of funds. If such  
350 cancellation clause is exercised, there shall be no further  
351 liability on the part of the lessee. Any such contract for the  
352 lease of equipment or services executed on behalf of the  
353 commissioners or board that complies with the provisions of this  
354 subparagraph (ii) shall be excepted from the bid requirements set  
355 forth in this section.

356 (m) **Exceptions from bidding requirements.** Excepted  
357 from bid requirements are:

358 (i) **Purchasing agreements approved by department.**  
359 Purchasing agreements, contracts and maximum price regulations  
360 executed or approved by the Department of Finance and  
361 Administration.

362 (ii) **Outside equipment repairs.** Repairs to  
363 equipment, when such repairs are made by repair facilities in the  
364 private sector; however, engines, transmissions, rear axles and/or  
365 other such components shall not be included in this exemption when  
366 replaced as a complete unit instead of being repaired and the need  
367 for such total component replacement is known before disassembly  
368 of the component; however, invoices identifying the equipment,  
369 specific repairs made, parts identified by number and name,  
370 supplies used in such repairs, and the number of hours of labor  
371 and costs therefor shall be required for the payment for such  
372 repairs.

373 (iii) **In-house equipment repairs.** Purchases of  
374 parts for repairs to equipment, when such repairs are made by  
375 personnel of the agency or governing authority; however, entire  
376 assemblies, such as engines or transmissions, shall not be  
377 included in this exemption when the entire assembly is being  
378 replaced instead of being repaired.

379 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
380 of gravel or fill dirt which are to be removed and transported by  
381 the purchaser.

382 (v) **Governmental equipment auctions.** Motor  
383 vehicles or other equipment purchased from a federal agency or  
384 authority, another governing authority or state agency of the  
385 State of Mississippi, or any governing authority or state agency  
386 of another state at a public auction held for the purpose of  
387 disposing of such vehicles or other equipment. Any purchase by a  
388 governing authority under the exemption authorized by this

389 subparagraph (v) shall require advance authorization spread upon  
390 the minutes of the governing authority to include the listing of  
391 the item or items authorized to be purchased and the maximum bid  
392 authorized to be paid for each item or items.

393                   (vi) **Intergovernmental sales and transfers.**

394 Purchases, sales, transfers or trades by governing authorities or  
395 state agencies when such purchases, sales, transfers or trades are  
396 made by a private treaty agreement or through means of  
397 negotiation, from any federal agency or authority, another  
398 governing authority or state agency of the State of Mississippi,  
399 or any state agency or governing authority of another state.  
400 Nothing in this section shall permit such purchases through public  
401 auction except as provided for in subparagraph (v) of this  
402 section. It is the intent of this section to allow governmental  
403 entities to dispose of and/or purchase commodities from other  
404 governmental entities at a price that is agreed to by both  
405 parties. This shall allow for purchases and/or sales at prices  
406 which may be determined to be below the market value if the  
407 selling entity determines that the sale at below market value is  
408 in the best interest of the taxpayers of the state. Governing  
409 authorities shall place the terms of the agreement and any  
410 justification on the minutes, and state agencies shall obtain  
411 approval from the Department of Finance and Administration, prior  
412 to releasing or taking possession of the commodities.

413                   (vii) **Perishable supplies or food.** Perishable  
414 supplies or foods purchased for use in connection with hospitals,  
415 the school lunch programs, homemaking programs and for the feeding  
416 of county or municipal prisoners.

417                   (viii) **Single source items.** Noncompetitive items  
418 available from one (1) source only. In connection with the  
419 purchase of noncompetitive items only available from one (1)  
420 source, a certification of the conditions and circumstances  
421 requiring the purchase shall be filed by the agency with the

422 Department of Finance and Administration and by the governing  
423 authority with the board of the governing authority. Upon receipt  
424 of that certification the Department of Finance and Administration  
425 or the board of the governing authority, as the case may be, may,  
426 in writing, authorize the purchase, which authority shall be noted  
427 on the minutes of the body at the next regular meeting thereafter.  
428 In those situations, a governing authority is not required to  
429 obtain the approval of the Department of Finance and  
430 Administration.

431                   (ix) **Waste disposal facility construction**  
432 **contracts.** Construction of incinerators and other facilities for  
433 disposal of solid wastes in which products either generated  
434 therein, such as steam, or recovered therefrom, such as materials  
435 for recycling, are to be sold or otherwise disposed of; however,  
436 in constructing such facilities, a governing authority or agency  
437 shall publicly issue requests for proposals, advertised for in the  
438 same manner as provided herein for seeking bids for public  
439 construction projects, concerning the design, construction,  
440 ownership, operation and/or maintenance of such facilities,  
441 wherein such requests for proposals when issued shall contain  
442 terms and conditions relating to price, financial responsibility,  
443 technology, environmental compatibility, legal responsibilities  
444 and such other matters as are determined by the governing  
445 authority or agency to be appropriate for inclusion; and after  
446 responses to the request for proposals have been duly received,  
447 the governing authority or agency may select the most qualified  
448 proposal or proposals on the basis of price, technology and other  
449 relevant factors and from such proposals, but not limited to the  
450 terms thereof, negotiate and enter contracts with one or more of  
451 the persons or firms submitting proposals.

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

455                   (xi) **Information technology products.** Purchases  
456 of information technology products made by governing authorities  
457 under the provisions of purchase schedules, or contracts executed  
458 or approved by the Mississippi Department of Information  
459 Technology Services and designated for use by governing  
460 authorities.

461                   (xii) **Energy efficiency services and equipment.**  
462 Energy efficiency services and equipment acquired by school  
463 districts, community and junior colleges, institutions of higher  
464 learning and state agencies or other applicable governmental  
465 entities on a shared-savings, lease or lease-purchase basis  
466 pursuant to Section 31-7-14.

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

471                   (xiv) **Library books and other reference materials.**  
472 Purchases by libraries or for libraries of books and periodicals;  
473 processed film, video cassette tapes, filmstrips and slides;  
474 recorded audio tapes, cassettes and diskettes; and any such items  
475 as would be used for teaching, research or other information  
476 distribution; however, equipment such as projectors, recorders,  
477 audio or video equipment, and monitor televisions are not exempt  
478 under this subparagraph.

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

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

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

488 institution or private nonprofit organization whose purposes are  
489 educational in regard to the construction, purchase, lease or  
490 lease-purchase of facilities and equipment and the employment of  
491 personnel for providing multichannel interactive video systems  
492 (ITSF) in the school districts of this state.

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

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

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

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

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

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

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

512 Contracts for garbage collection or disposal, contracts for solid  
513 waste collection or disposal and contracts for sewage collection  
514 or disposal.

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

516 **contracts.** Professional maintenance program contracts for the  
517 repair or maintenance of municipal water tanks, which provide  
518 professional services needed to maintain municipal water storage  
519 tanks for a fixed annual fee for a duration of two (2) or more  
520 years.



521 (xxiv) **Purchases of Mississippi Industries for the**  
522 **Blind products.** Purchases made by state agencies or governing  
523 authorities involving any item that is manufactured, processed or  
524 produced by the Mississippi Industries for the Blind.

525 (xxv) **Purchases of state-adopted textbooks.**  
526 Purchases of state-adopted textbooks by public school districts.

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

530 (xxvii) **Used heavy or specialized machinery or**  
531 **equipment for installation of soil and water conservation**  
532 **practices purchased at auction.** Used heavy or specialized  
533 machinery or equipment used for the installation and  
534 implementation of soil and water conservation practices or  
535 measures purchased subject to the restrictions provided in  
536 Sections 69-27-331 through 69-27-341. Any purchase by the State  
537 Soil and Water Conservation Commission under the exemption  
538 authorized by this subparagraph shall require advance  
539 authorization spread upon the minutes of the commission to include  
540 the listing of the item or items authorized to be purchased and  
541 the maximum bid authorized to be paid for each item or items.

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

545 (xxix) **Purchases made pursuant to qualified**  
546 **cooperative purchasing agreements.** Purchases made by certified  
547 purchasing offices of state agencies or governing authorities  
548 under cooperative purchasing agreements previously approved by the  
549 Office of Purchasing and Travel and established by or for any  
550 municipality, county, parish or state government or the federal  
551 government, provided that the notification to potential  
552 contractors includes a clause that sets forth the availability of  
553 the cooperative purchasing agreement to other governmental

554 entities. Such purchases shall only be made if the use of the  
555 cooperative purchasing agreements is determined to be in the best  
556 interest of the government entity.

557 (xxx) **School yearbooks.** Purchases of school  
558 yearbooks by state agencies or governing authorities; provided,  
559 however, that state agencies and governing authorities shall use  
560 for these purchases the RFP process as set forth in the  
561 Mississippi Procurement Manual adopted by the Office of Purchasing  
562 and Travel.

563 (xxxii) **Design-build method or the design-build**  
564 **bridging method of contracting.** Contracts entered into the  
565 provisions of Section 31-11-3(9).

566 (n) **Term contract authorization.** All contracts for the  
567 purchase of:

568 (i) All contracts for the purchase of commodities,  
569 equipment and public construction (including, but not limited to,  
570 repair and maintenance), may be let for periods of not more than  
571 sixty (60) months in advance, subject to applicable statutory  
572 provisions prohibiting the letting of contracts during specified  
573 periods near the end of terms of office. Term contracts for a  
574 period exceeding twenty-four (24) months shall also be subject to  
575 ratification or cancellation by governing authority boards taking  
576 office subsequent to the governing authority board entering the  
577 contract.

578 (ii) Bid proposals and contracts may include price  
579 adjustment clauses with relation to the cost to the contractor  
580 based upon a nationally published industry-wide or nationally  
581 published and recognized cost index. The cost index used in a  
582 price adjustment clause shall be determined by the Department of  
583 Finance and Administration for the state agencies and by the  
584 governing board for governing authorities. The bid proposal and  
585 contract documents utilizing a price adjustment clause shall  
586 contain the basis and method of adjusting unit prices for the

587 change in the cost of such commodities, equipment and public  
588 construction.

589           (o) **Purchase law violation prohibition and vendor**  
590 **penalty.** No contract or purchase as herein authorized shall be  
591 made for the purpose of circumventing the provisions of this  
592 section requiring competitive bids, nor shall it be lawful for any  
593 person or concern to submit individual invoices for amounts within  
594 those authorized for a contract or purchase where the actual value  
595 of the contract or commodity purchased exceeds the authorized  
596 amount and the invoices therefor are split so as to appear to be  
597 authorized as purchases for which competitive bids are not  
598 required. Submission of such invoices shall constitute a  
599 misdemeanor punishable by a fine of not less than Five Hundred  
600 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
601 or by imprisonment for thirty (30) days in the county jail, or  
602 both such fine and imprisonment. In addition, the claim or claims  
603 submitted shall be forfeited.

604           (p) **Electrical utility petroleum-based equipment**  
605 **purchase procedure.** When in response to a proper advertisement  
606 therefor, no bid firm as to price is submitted to an electric  
607 utility for power transformers, distribution transformers, power  
608 breakers, reclosers or other articles containing a petroleum  
609 product, the electric utility may accept the lowest and best bid  
610 therefor although the price is not firm.

611           (q) **Fuel management system bidding procedure.** Any  
612 governing authority or agency of the state shall, before  
613 contracting for the services and products of a fuel management or  
614 fuel access system, enter into negotiations with not fewer than  
615 two (2) sellers of fuel management or fuel access systems for  
616 competitive written bids to provide the services and products for  
617 the systems. In the event that the governing authority or agency  
618 cannot locate two (2) sellers of such systems or cannot obtain  
619 bids from two (2) sellers of such systems, it shall show proof

620 that it made a diligent, good-faith effort to locate and negotiate  
621 with two (2) sellers of such systems. Such proof shall include,  
622 but not be limited to, publications of a request for proposals and  
623 letters soliciting negotiations and bids. For purposes of this  
624 paragraph (q), a fuel management or fuel access system is an  
625 automated system of acquiring fuel for vehicles as well as  
626 management reports detailing fuel use by vehicles and drivers, and  
627 the term "competitive written bid" shall have the meaning as  
628 defined in paragraph (b) of this section. Governing authorities  
629 and agencies shall be exempt from this process when contracting  
630 for the services and products of a fuel management or fuel access  
631 systems under the terms of a state contract established by the  
632 Office of Purchasing and Travel.

633 (r) **Solid waste contract proposal procedure.** Before  
634 entering into any contract for garbage collection or disposal,  
635 contract for solid waste collection or disposal or contract for  
636 sewage collection or disposal, which involves an expenditure of  
637 more than Fifty Thousand Dollars (\$50,000.00), a governing  
638 authority or agency shall issue publicly a request for proposals  
639 concerning the specifications for such services which shall be  
640 advertised for in the same manner as provided in this section for  
641 seeking bids for purchases which involve an expenditure of more  
642 than the amount provided in paragraph (c) of this section. Any  
643 request for proposals when issued shall contain terms and  
644 conditions relating to price, financial responsibility,  
645 technology, legal responsibilities and other relevant factors as  
646 are determined by the governing authority or agency to be  
647 appropriate for inclusion; all factors determined relevant by the  
648 governing authority or agency or required by this paragraph (r)  
649 shall be duly included in the advertisement to elicit proposals.  
650 After responses to the request for proposals have been duly  
651 received, the governing authority or agency shall select the most  
652 qualified proposal or proposals on the basis of price, technology

653 and other relevant factors and from such proposals, but not  
654 limited to the terms thereof, negotiate and enter contracts with  
655 one or more of the persons or firms submitting proposals. If the  
656 governing authority or agency deems none of the proposals to be  
657 qualified or otherwise acceptable, the request for proposals  
658 process may be reinitiated. Notwithstanding any other provisions  
659 of this paragraph, where a county with at least thirty-five  
660 thousand (35,000) nor more than forty thousand (40,000)  
661 population, according to the 1990 federal decennial census, owns  
662 or operates a solid waste landfill, the governing authorities of  
663 any other county or municipality may contract with the governing  
664 authorities of the county owning or operating the landfill,  
665 pursuant to a resolution duly adopted and spread upon the minutes  
666 of each governing authority involved, for garbage or solid waste  
667 collection or disposal services through contract negotiations.

668 (s) **Minority set-aside authorization.** Notwithstanding  
669 any provision of this section to the contrary, any agency or  
670 governing authority, by order placed on its minutes, may, in its  
671 discretion, set aside not more than twenty percent (20%) of its  
672 anticipated annual expenditures for the purchase of commodities  
673 from minority businesses; however, all such set-aside purchases  
674 shall comply with all purchasing regulations promulgated by the  
675 Department of Finance and Administration and shall be subject to  
676 bid requirements under this section. Set-aside purchases for  
677 which competitive bids are required shall be made from the lowest  
678 and best minority business bidder. For the purposes of this  
679 paragraph, the term "minority business" means a business which is  
680 owned by a majority of persons who are United States citizens or  
681 permanent resident aliens (as defined by the Immigration and  
682 Naturalization Service) of the United States, and who are Asian,  
683 Black, Hispanic or Native American, according to the following  
684 definitions:

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

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

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

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

696 (t) **Construction punch list restriction.** The  
697 architect, engineer or other representative designated by the  
698 agency or governing authority that is contracting for public  
699 construction or renovation may prepare and submit to the  
700 contractor only one (1) preliminary punch list of items that do  
701 not meet the contract requirements at the time of substantial  
702 completion and one (1) final list immediately before final  
703 completion and final payment.

704 (u) **Purchase authorization clarification.** Nothing in  
705 this section shall be construed as authorizing any purchase not  
706 authorized by law.

707 **SECTION 2.** This act shall take effect and be in force from  
708 and after July 1, 2005.