

By: Senator(s) Jordan

To: Fees, Salaries and Administration

SENATE BILL NO. 2985

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE LOCAL GOVERNING AUTHORITIES TO MAKE CERTAIN PURCHASES
3 UNDER \$15,000 IN AMOUNT THROUGH ITS PURCHASING AGENT WITHOUT
4 FORMAL BOARD APPROVAL; 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 Three
15 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
16 shipping charges, may be made without advertising or otherwise
17 requesting competitive bids. However, nothing contained in this
18 paragraph (a) shall be construed to prohibit any agency or
19 governing authority from establishing procedures which require
20 competitive bids on purchases of Three Thousand Five Hundred
21 Dollars (\$3,500.00) or less.

22 (b) **Bidding procedure for purchases over \$3,500.00 but**
23 **not over \$15,000.00.** Purchases which involve an expenditure of
24 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
25 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
26 freight and shipping charges may be made from the lowest and best
27 bidder without publishing or posting advertisement for bids,
28 provided at least two (2) competitive written bids have been

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

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

59 (i) **Publication requirement.** Purchases which
60 involve an expenditure of more than Fifteen Thousand Dollars
61 (\$15,000.00), exclusive of freight and shipping charges, may be

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

90 (ii) **Bidding process amendment procedure.** If all
91 plans and/or specifications are published in the notification,
92 then the plans and/or specifications may not be amended. If all
93 plans and/or specifications are not published in the notification,
94 then amendments to the plans/specifications, bid opening date, bid

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

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

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

128 boards shall meet all pertinent regulations of the State Board of
129 Education, including prior approval of such bid by the State
130 Department of Education.

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

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

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

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

161 purchasing commodities. All best value procedures for state
162 agencies must be in compliance with regulations established by the
163 Department of Finance and Administration. No agency or governing
164 authority shall accept a bid based on items or criteria not
165 included in the specifications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

335 (1) **Hospital purchase, lease-purchase and lease**
336 **authorization.**

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

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

358 (m) **Exceptions from bidding requirements.** Excepted
359 from bid requirements are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

514 Contracts for garbage collection or disposal, contracts for solid
515 waste collection or disposal and contracts for sewage collection
516 or disposal.

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

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

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

527 (xxv) **Purchases of state-adopted textbooks.**
528 Purchases of state-adopted textbooks by public school districts.

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

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

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

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

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

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

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

568 (n) **Term contract authorization.** All contracts for the
569 purchase of:

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

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

589 change in the cost of such commodities, equipment and public
590 construction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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