

By: Representative Brown

To: Universities and  
Colleges; Appropriations

## HOUSE BILL NO. 1098

1 AN ACT TO CREATE A NEW SECTION TO BE CODIFIED AS SECTION  
2 31-7-46, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD OF  
3 TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING TO ALLOW THE  
4 STATE INSTITUTIONS OF HIGHER LEARNING TO ESTABLISH GROUP  
5 PURCHASING PROGRAMS FOR THE PURCHASE OF SUPPLIES, COMMODITIES AND  
6 EQUIPMENT; TO AMEND SECTION 31-7-9, MISSISSIPPI CODE OF 1972, TO  
7 EXEMPT INSTITUTIONS PARTICIPATING IN SUCH GROUP PURCHASING  
8 PROGRAMS FROM REGULATIONS ADOPTED BY THE OFFICE OF PURCHASING AND  
9 TRAVEL; TO AMEND SECTION 31-7-10, MISSISSIPPI CODE OF 1972, TO  
10 EXEMPT SUCH INSTITUTIONS FROM STATE REQUIREMENTS RELATING TO  
11 LEASE-PURCHASE AGREEMENTS; TO AMEND SECTION 31-7-11, MISSISSIPPI  
12 CODE OF 1972, TO EXEMPT SUCH INSTITUTIONS FROM THE REQUIREMENT OF  
13 REPORTING CERTAIN INFORMATION RELATING TO PURCHASES TO THE  
14 DEPARTMENT OF FINANCE AND ADMINISTRATION; TO AMEND SECTION  
15 31-7-12, MISSISSIPPI CODE OF 1972, TO EXEMPT SUCH INSTITUTIONS  
16 FROM REQUIREMENTS RELATING TO THE STATE CONTRACT PRICE; TO AMEND  
17 SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO EXEMPT SUCH  
18 INSTITUTIONS FROM STATE BIDDING REQUIREMENTS; AND FOR RELATED  
19 PURPOSES.

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

21 **SECTION 1.** The following shall be codified as Section  
22 31-7-46, Mississippi Code of 1972:

23 31-7-46. (1) The Board of Trustees of State Institutions of  
24 Higher Learning may authorize the various institutions of higher  
25 learning to organize, operate and/or participate in group  
26 purchasing programs for the purchase of supplies, commodities and  
27 equipment if, in the determination of the board, a group  
28 purchasing program is likely to affect economy or efficiency in  
29 the operations of the participating institutions.

30 (2) Purchases of supplies, commodities or equipment through  
31 a group purchasing program by a state institution of higher  
32 learning participating in a group purchasing program are exempt  
33 from the requirements of Sections 31-7-9 through 31-7-13.

34 (3) Before December 1, 2008, and December 1 of each  
35 subsequent year, the state institutions of higher learning

36 participating in any group purchase program authorized under this  
37 section shall prepare and submit to the Chairmen of the  
38 Appropriations Committees of the House of Representatives and  
39 Senate a report analyzing the savings and economic benefits  
40 derived by the institutions through participation in the group  
41 purchase program or programs. In lieu of each participating  
42 institution submitting an individual report, the Board of Trustees  
43 of State Institutions of Higher Learning, in its discretion, may  
44 elect to compile such data into a single report.

45 **SECTION 2.** Section 31-7-9, Mississippi Code of 1972, is  
46 amended as follows:

47 31-7-9. (1) (a) The Office of Purchasing, Travel and Fleet  
48 Management shall adopt purchasing regulations governing the  
49 purchase by any agency of any commodity or commodities and  
50 establishing standards and specifications for a commodity or  
51 commodities and the maximum fair prices of a commodity or  
52 commodities, subject to the approval of the Public Procurement  
53 Review Board. It shall have the power to amend, add to or  
54 eliminate purchasing regulations. The adoption of, amendment,  
55 addition to or elimination of purchasing regulations shall be  
56 based upon a determination by the Office of Purchasing, Travel and  
57 Fleet Management with the approval of the Public Procurement  
58 Review Board, that such action is reasonable and practicable and  
59 advantageous to promote efficiency and economy in the purchase of  
60 commodities by the agencies of the state. Upon the adoption of  
61 any purchasing regulation, or an amendment, addition or  
62 elimination therein, copies of same shall be furnished to the  
63 State Auditor and to all agencies affected thereby. Thereafter,  
64 and except as otherwise may be provided in subsection (2) of this  
65 section, no agency of the state shall purchase any commodities  
66 covered by existing purchasing regulations unless such commodities  
67 be in conformity with the standards and specifications set forth  
68 in the purchasing regulations and unless the price thereof does

69 not exceed the maximum fair price established by such purchasing  
70 regulations. The said Office of Purchasing, Travel and Fleet  
71 Management shall furnish to any county or municipality or other  
72 local public agency of the state requesting same, copies of  
73 purchasing regulations adopted by the Office of Purchasing, Travel  
74 and Fleet Management and any amendments, changes or eliminations  
75 of same that may be made from time to time.

76 (b) The Office of Purchasing, Travel and Fleet  
77 Management may adopt purchasing regulations governing the use of  
78 credit cards, procurement cards and purchasing club membership  
79 cards to be used by state agencies, governing authorities of  
80 counties and municipalities and the Chickasawhay Natural Gas  
81 District. Use of the cards shall be in strict compliance with the  
82 regulations promulgated by the office. Any amounts due on the  
83 cards shall incur interest charges as set forth in Section  
84 31-7-305 and shall not be considered debt.

85 (2) The Office of Purchasing, Travel and Fleet Management  
86 shall adopt, subject to the approval of the Public Procurement  
87 Review Board, purchasing regulations governing the purchase of  
88 unmarked vehicles to be used by the Bureau of Narcotics and  
89 Department of Public Safety in official investigations pursuant to  
90 Section 25-1-87. Such regulations shall ensure that purchases of  
91 such vehicles shall be at a fair price and shall take into  
92 consideration the peculiar needs of the Bureau of Narcotics and  
93 Department of Public Safety in undercover operations.

94 (3) The Office of Purchasing, Travel and Fleet Management  
95 shall adopt, subject to the approval of the Public Procurement  
96 Review Board, regulations governing the certification process for  
97 certified purchasing offices. Such regulations shall require  
98 entities desiring to be classified as certified purchasing offices  
99 to submit applications and applicable documents on an annual  
100 basis, at which time the Office of Purchasing, Travel and Fleet

101 Management may provide the governing entity with a certification  
102 valid for one (1) year from the date of issuance.

103 (4) Purchases of commodities by a state institution of  
104 higher learning participating in a group purchasing program  
105 authorized under Section 31-7-46 are exempt from the regulations  
106 adopted by the Office of Purchasing and Travel pursuant to this  
107 section.

108 **SECTION 3.** Section 31-7-10, Mississippi Code of 1972, is  
109 amended as follows:

110 31-7-10. (1) For the purposes of this section, the term  
111 "equipment" shall mean equipment, furniture, and if applicable,  
112 associated software and other applicable direct costs associated  
113 with the acquisition. In addition to its other powers and duties,  
114 the Department of Finance and Administration shall have the  
115 authority to develop a master lease-purchase program and, pursuant  
116 to that program, shall have the authority to execute on behalf of  
117 the state master lease-purchase agreements for equipment to be  
118 used by an agency, as provided in this section. Each agency  
119 electing to acquire equipment by a lease-purchase agreement shall  
120 participate in the Department of Finance and Administration's  
121 master lease-purchase program, unless the Department of Finance  
122 and Administration makes a determination that such equipment  
123 cannot be obtained under the program or unless the equipment can  
124 be obtained elsewhere at an overall cost lower than that for which  
125 the equipment can be obtained under the program. Such  
126 lease-purchase agreements may include the refinancing or  
127 consolidation, or both, of any state agency lease-purchase  
128 agreements entered into after June 30, 1990.

129 (2) All funds designated by agencies for procurement of  
130 equipment and financing thereof under the master lease-purchase  
131 program shall be paid into a special fund created in the State  
132 Treasury known as the "Master Lease-Purchase Program Fund," which  
133 shall be used by the Department of Finance and Administration for

134 payment to the lessors for equipment acquired under master  
135 lease-purchase agreements.

136 (3) Upon final approval of an appropriation bill, each  
137 agency shall submit to the Public Procurement Review Board a  
138 schedule of proposed equipment acquisitions for the master  
139 lease-purchase program. Upon approval of an equipment schedule by  
140 the Public Procurement Review Board with the advice of the  
141 Department of Information Technology Services, the Office of  
142 Purchasing, Travel and Fleet Management, and the Division of  
143 Energy and Transportation of the Mississippi Development Authority  
144 as it pertains to energy efficient climate control systems, the  
145 Public Procurement Review Board shall forward a copy of the  
146 equipment schedule to the Department of Finance and  
147 Administration.

148 (4) The level of lease-purchase debt recommended by the  
149 Department of Finance and Administration shall be subject to  
150 approval by the State Bond Commission. After such approval, the  
151 Department of Finance and Administration shall be authorized to  
152 advertise and solicit written competitive proposals for a lessor,  
153 who will purchase the equipment pursuant to bid awards made by the  
154 using agency under a given category and then transfer the  
155 equipment to the Department of Finance and Administration as  
156 lessee, pursuant to a master lease-purchase agreement.

157 The Department of Finance and Administration shall select the  
158 successful proposer for the financing of equipment under the  
159 master lease-purchase program with the approval of the State Bond  
160 Commission.

161 (5) Each master lease-purchase agreement, and any subsequent  
162 amendments, shall include such terms and conditions as the State  
163 Bond Commission shall determine to be appropriate and in the  
164 public interest, and may include any covenants deemed necessary or  
165 desirable to protect the interests of the lessor, including, but  
166 not limited to, provisions setting forth the interest rate (or

167 method for computing interest rates) for financing pursuant to  
168 such agreement, covenants concerning application of payments and  
169 funds held in the Master Lease-Purchase Program Fund, covenants to  
170 maintain casualty insurance with respect to equipment subject to  
171 the master lease-purchase agreement (and all state agencies are  
172 specifically authorized to purchase any insurance required by a  
173 master lease-purchase agreement) and covenants precluding or  
174 limiting the right of the lessee or user to acquire equipment  
175 within a specified time (not to exceed five (5) years) after  
176 cancellation on the basis of a failure to appropriate funds for  
177 payment of amounts due under a lease-purchase agreement covering  
178 comparable equipment. The State Bond Commission shall transmit  
179 copies of each such master lease-purchase agreement and each such  
180 amendment to the Joint Legislative Budget Committee. To the  
181 extent provided in any master lease-purchase agreement, title to  
182 equipment leased pursuant thereto shall be deemed to be vested in  
183 the state or the user of the equipment (as specified in such  
184 master lease-purchase agreement), subject to default under or  
185 termination of such master lease-purchase agreement.

186         A master lease-purchase agreement may provide for payment by  
187 the lessor to the lessee of the purchase price of the equipment to  
188 be acquired pursuant thereto prior to the date on which payment is  
189 due to the vendor for such equipment and that the lease payments  
190 by the lessee shall commence as though the equipment had been  
191 provided on the date of payment. If the lessee, or lessee's  
192 escrow agent, has sufficient funds for payment of equipment  
193 purchases prior to payment due date to vendor of equipment, such  
194 funds shall be held or utilized on an as-needed basis for payment  
195 of equipment purchases either by the State Treasurer (in which  
196 event the master lease-purchase agreement may include provisions  
197 concerning the holding of such funds, the creation of a security  
198 interest for the benefit of the lessor in such funds until  
199 disbursed and other appropriate provisions approved by the Bond

200 Commission) or by a corporate trustee selected by the Department  
201 of Finance and Administration (in which event the Department of  
202 Finance and Administration shall have the authority to enter into  
203 an agreement with such a corporate trustee containing terms and  
204 conditions approved by the Bond Commission). Earnings on any  
205 amount paid by the lessor prior to the acquisition of the  
206 equipment may be used to make lease payments under the master  
207 lease-purchase agreement or applied to pay costs and expenses  
208 incurred in connection with such lease-purchase agreement. In  
209 such event, the equipment-use agreements with the user agency may  
210 provide for lease payments to commence upon the date of payment by  
211 the lessor and may also provide for a credit against such payments  
212 to the extent that investment receipts from investment of the  
213 purchase price are to be used to make lease-purchase payments.

214 (6) The annual rate of interest paid under any  
215 lease-purchase agreement authorized under this section shall not  
216 exceed the maximum interest rate to maturity on general obligation  
217 indebtedness permitted under Section 75-17-101.

218 (7) The Department of Finance and Administration shall  
219 furnish the equipment to the various agencies, also known as the  
220 user, pursuant to an equipment-use agreement developed by the  
221 Department of Finance and Administration. Such agreements shall  
222 require that all monthly payments due from such agency be paid,  
223 transferred or allocated into the Master Lease-Purchase Program  
224 Fund pursuant to a schedule established by the Department of  
225 Finance and Administration. In the event such sums are not paid  
226 by the defined payment period, the Executive Director of the  
227 Department of Finance and Administration shall issue a requisition  
228 for a warrant to draw such amount as may be due from any funds  
229 appropriated for the use of the agency which has failed to make  
230 the payment as agreed.

231 (8) All master lease-purchase agreements executed under the  
232 authority of this section shall contain the following annual

233 allocation dependency clause or an annual allocation dependency  
234 clause which is substantially equivalent thereto: "The  
235 continuation of each equipment schedule to this agreement is  
236 contingent in whole or in part upon the appropriation of funds by  
237 the Legislature to make the lease-purchase payments required under  
238 such equipment schedule. If the Legislature fails to appropriate  
239 sufficient funds to provide for the continuation of the  
240 lease-purchase payments under any such equipment schedule, then  
241 the obligations of the lessee and of the agency to make such  
242 lease-purchase payments and the corresponding provisions of any  
243 such equipment schedule to this agreement shall terminate on the  
244 last day of the fiscal year for which appropriations were made."

245 (9) The maximum lease term for any equipment acquired under  
246 the master lease-purchase program shall not exceed the useful life  
247 of such equipment as determined according to the upper limit of  
248 the asset depreciation range (ADR) guidelines for the Class Life  
249 Asset Depreciation Range System established by the Internal  
250 Revenue Service pursuant to the United States Internal Revenue  
251 Code and Regulations thereunder as in effect on December 31, 1980,  
252 or comparable depreciation guidelines with respect to any  
253 equipment not covered by ADR guidelines. The Department of  
254 Finance and Administration shall be deemed to have met the  
255 requirements of this subsection if the term of a master  
256 lease-purchase agreement does not exceed the weighted average  
257 useful life of all equipment covered by such agreement and the  
258 schedules thereto as determined by the Department of Finance and  
259 Administration. For purposes of this subsection, the "term of a  
260 master lease-purchase agreement" shall be the weighted average  
261 maturity of all principal payments to be made under such master  
262 lease-purchase agreement and all schedules thereto.

263 (10) Interest paid on any master lease-purchase agreement  
264 under this section shall be exempt from State of Mississippi  
265 income taxation. All equipment, and the purchase thereof by any

266 lessor, acquired under the master lease-purchase program and all  
267 lease-purchase payments with respect thereto shall be exempt from  
268 all Mississippi sales, use and ad valorem taxes.

269 (11) The Governor, in his annual executive budget to the  
270 Legislature, shall recommend appropriations sufficient to provide  
271 funds to pay all amounts due and payable during the applicable  
272 fiscal year under master lease-purchase agreements entered into  
273 pursuant to this section.

274 (12) Any master lease-purchase agreement reciting in  
275 substance that such agreement has been entered into pursuant to  
276 this section shall be conclusively deemed to have been entered  
277 into in accordance with all of the provisions and conditions set  
278 forth in this section. Any defect or irregularity arising with  
279 respect to procedures applicable to the acquisition of any  
280 equipment shall not invalidate or otherwise limit the obligation  
281 of the Department of Finance and Administration, or the state or  
282 any agency of the state, under any master lease-purchase agreement  
283 or any equipment-use agreement.

284 (13) There shall be maintained by the Department of Finance  
285 and Administration, with respect to each master lease-purchase  
286 agreement, an itemized statement of the cash price, interest  
287 rates, interest costs, commissions, debt service schedules and all  
288 other costs and expenses paid by the state incident to the  
289 lease-purchase of equipment under such agreement.

290 (14) Lease-purchase agreements entered into by the Board of  
291 Trustees of State Institutions of Higher Learning pursuant to the  
292 authority of Section 37-101-413 or by any other agency which has  
293 specific statutory authority other than pursuant to Section  
294 31-7-13(e) to acquire equipment by lease-purchase shall not be  
295 made pursuant to the master lease-purchase program under this  
296 section, unless the Board of Trustees of State Institutions of  
297 Higher Learning or such other agency elects to participate as to  
298 part or all of its lease-purchase acquisitions in the master

299 lease-purchase program pursuant to this section. Equipment  
300 procured through a master lease-purchase agreement by any state  
301 institution of higher learning participating in a group purchasing  
302 program authorized under Section 31-7-46 is exempt from the  
303 requirements of this section.

304 (15) The Department of Finance and Administration may  
305 develop a master lease-purchase program for school districts and,  
306 pursuant to that program, may execute on behalf of the school  
307 districts master lease-purchase agreements for equipment to be  
308 used by the school districts. The form and structure of this  
309 program shall be substantially the same as set forth in this  
310 section for the master lease-purchase program for state agencies.  
311 If sums due from a school district under the master lease-purchase  
312 program are not paid by the expiration of the defined payment  
313 period, the Executive Director of the Department of Finance and  
314 Administration may withhold such amount that is due from the  
315 school district's minimum education or adequate education program  
316 fund allotments.

317 (16) The Department of Finance and Administration may  
318 develop a master lease-purchase program for community and junior  
319 college districts and, pursuant to that program, may execute on  
320 behalf of the community and junior college districts master  
321 lease-purchase agreements for equipment to be used by the  
322 community and junior college districts. The form and structure of  
323 this program must be substantially the same as set forth in this  
324 section for the master lease-purchase program for state agencies.  
325 If sums due from a community or junior college district under the  
326 master lease-purchase program are not paid by the expiration of  
327 the defined payment period, the Executive Director of the  
328 Department of Finance and Administration may withhold an amount  
329 equal to the amount due under the program from any funds allocated  
330 for that community or junior college district in the state

331 appropriations for the use and support of the community and junior  
332 colleges.

333         **SECTION 4.** Section 31-7-11, Mississippi Code of 1972, is  
334 amended as follows:

335         31-7-11. Each agency of the state shall furnish information  
336 relative to its purchase of commodities, and as to its method of  
337 purchasing such commodities, to the Department of Finance and  
338 Administration annually and at such other times as the Department  
339 of Finance and Administration may request.

340         The Department of Finance and Administration shall have  
341 supervision over the purchasing and purchasing practices of each  
342 state agency and may by regulation or order correct any practice  
343 that appears contrary to the provisions of this chapter or to the  
344 best interests of the state. If it shall appear that any agency  
345 is not practicing economy in its purchasing or is permitting  
346 favoritism or any improper purchasing practice, the Department of  
347 Finance and Administration shall require that the agency  
348 immediately cease such improper activity, with full and complete  
349 authority in the Department of Finance and Administration to carry  
350 into effect its directions in such regard.

351         All purchases, trade-ins, sales or transfer of personal  
352 property made by any officer, board, agency, department or branch  
353 of the state government except the Legislature shall be subject to  
354 the approval of the Department of Finance and Administration.  
355 Such transaction shall be made in accordance with rules and  
356 regulations of the Department of Finance and Administration  
357 relating to the purchase of state-owned motor vehicles and all  
358 other personal property. The title of such property shall remain  
359 in the name of the state.

360         Purchases of commodities by a state institution of higher  
361 learning participating in a group purchasing program authorized  
362 under Section 31-7-46 are exempt from the reporting requirements  
363 of this section.

364           **SECTION 5.** Section 31-7-12, Mississippi Code of 1972, is  
365 amended as follows:

366           31-7-12. (1) Except in regard to purchases of unmarked  
367 vehicles made in accordance with purchasing regulations adopted by  
368 the Department of Finance and Administration pursuant to Section  
369 31-7-9(2), all agencies shall purchase commodities at the state  
370 contract price from the approved source, unless approval is  
371 granted by the Department of Finance and Administration to solicit  
372 purchases outside the terms of the contracts. However, prices  
373 accepted by an agency shall be less than the prices set by the  
374 state contract. Prices accepted by an agency shall be obtained in  
375 compliance with paragraph (a), (b) or (c) of Section 31-7-13. It  
376 shall be the responsibility of the Department of Finance and  
377 Administration to ascertain that the resulting prices shall  
378 provide a cost effective alternative to the established state  
379 contract.

380           (2) Governing authorities may purchase commodities approved  
381 by the Department of Finance and Administration from the state  
382 contract vendor, or from any source offering the identical  
383 commodity, at a price not exceeding the state contract price  
384 established by the Department of Finance and Administration for  
385 such commodity, without obtaining or advertising for competitive  
386 bids. Governing authorities that do not exercise the option to  
387 purchase such commodities from the state contract vendor or from  
388 another source offering the identical commodity at a price not  
389 exceeding the state contract price established by the Department  
390 of Finance and Administration shall make such purchases pursuant  
391 to the provisions of Section 31-7-13 without regard to state  
392 contract prices established by the Department of Finance and  
393 Administration, unless such purchases are authorized to be made  
394 under subsection (5) of this section.

395           (3) Nothing in this section shall prohibit governing  
396 authorities from purchasing, pursuant to subsection (2) of this

397 section, commodities approved by the Department of Finance and  
398 Administration at a price not exceeding the state contract price  
399 established by the Department of Finance and Administration.

400 (4) The Department of Finance and Administration shall  
401 ensure that the prices of all commodities on the state contract  
402 are the lowest and best prices available from any source offering  
403 that commodity at the same level of quality or service, utilizing  
404 the reasonable standards established therefor by the Department of  
405 Finance and Administration. If the Department of Finance and  
406 Administration does not list an approved price for the particular  
407 item involved, purchase shall be made according to statutory  
408 bidding and licensing requirements. To encourage prudent  
409 purchasing practices, the Department of Finance and Administration  
410 shall be authorized and empowered to exempt certain commodities  
411 from the requirement that the lowest and best price be approved by  
412 order placed on its minutes.

413 (5) Any school district may purchase commodities from  
414 vendors with which any levying authority of the school district,  
415 as defined in Section 37-57-1, has contracted through competitive  
416 bidding procedures pursuant to Section 31-7-13 for purchases of  
417 the same commodities. Purchases authorized by this subsection may  
418 be made by a school district without obtaining or advertising for  
419 competitive bids, and such purchases shall be made at the same  
420 prices and under the same conditions as purchases of the same  
421 commodities are to be made by the levying authority of the school  
422 district under the contract with the vendor.

423 (6) Purchases of commodities by a state institution of  
424 higher learning participating in a group purchasing program  
425 authorized under Section 31-7-46 are exempt from the requirements  
426 of this section.

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

429           31-7-13. All agencies and governing authorities shall  
430 purchase their commodities and printing; contract for garbage  
431 collection or disposal; contract for solid waste collection or  
432 disposal; contract for sewage collection or disposal; contract for  
433 public construction; and contract for rentals as herein provided.

434           (a) **Bidding procedure for purchases not over \$3,500.00.**  
435 Purchases which do not involve an expenditure of more than Three  
436 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or  
437 shipping charges, may be made without advertising or otherwise  
438 requesting competitive bids. However, nothing contained in this  
439 paragraph (a) shall be construed to prohibit any agency or  
440 governing authority from establishing procedures which require  
441 competitive bids on purchases of Three Thousand Five Hundred  
442 Dollars (\$3,500.00) or less.

443           (b) **Bidding procedure for purchases over \$3,500.00 but**  
444 **not over \$15,000.00.** Purchases which involve an expenditure of  
445 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
446 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
447 freight and shipping charges may be made from the lowest and best  
448 bidder without publishing or posting advertisement for bids,  
449 provided at least two (2) competitive written bids have been  
450 obtained. Any governing authority purchasing commodities pursuant  
451 to this paragraph (b) may authorize its purchasing agent, or his  
452 designee, with regard to governing authorities other than  
453 counties, or its purchase clerk, or his designee, with regard to  
454 counties, to accept the lowest and best competitive written bid.  
455 Such authorization shall be made in writing by the governing  
456 authority and shall be maintained on file in the primary office of  
457 the agency and recorded in the official minutes of the governing  
458 authority, as appropriate. The purchasing agent or the purchase  
459 clerk, or their designee, as the case may be, and not the  
460 governing authority, shall be liable for any penalties and/or  
461 damages as may be imposed by law for any act or omission of the

462 purchasing agent or purchase clerk, or their designee,  
463 constituting a violation of law in accepting any bid without  
464 approval by the governing authority. The term "competitive  
465 written bid" shall mean a bid submitted on a bid form furnished by  
466 the buying agency or governing authority and signed by authorized  
467 personnel representing the vendor, or a bid submitted on a  
468 vendor's letterhead or identifiable bid form and signed by  
469 authorized personnel representing the vendor. "Competitive" shall  
470 mean that the bids are developed based upon comparable  
471 identification of the needs and are developed independently and  
472 without knowledge of other bids or prospective bids. Bids may be  
473 submitted by facsimile, electronic mail or other generally  
474 accepted method of information distribution. Bids submitted by  
475 electronic transmission shall not require the signature of the  
476 vendor's representative unless required by agencies or governing  
477 authorities.

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

479 (i) **Publication requirement.**

480 1. Purchases which involve an expenditure of  
481 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
482 freight and shipping charges, may be made from the lowest and best  
483 bidder after advertising for competitive bids once each week for  
484 two (2) consecutive weeks in a regular newspaper published in the  
485 county or municipality in which such agency or governing authority  
486 is located.

487 2. The purchasing entity may designate the  
488 method by which the bids will be received, including, but not  
489 limited to, bids sealed in an envelope, bids received  
490 electronically in a secure system, bids received via a reverse  
491 auction, or bids received by any other method that promotes open  
492 competition and has been approved by the Office of Purchasing and  
493 Travel. The provisions of this part 2 of subparagraph (i) shall  
494 be repealed on July 1, 2008.

495                   3. The date as published for the bid opening  
496 shall not be less than seven (7) working days after the last  
497 published notice; however, if the purchase involves a construction  
498 project in which the estimated cost is in excess of Fifteen  
499 Thousand Dollars (\$15,000.00), such bids shall not be opened in  
500 less than fifteen (15) working days after the last notice is  
501 published and the notice for the purchase of such construction  
502 shall be published once each week for two (2) consecutive weeks.  
503 The notice of intention to let contracts or purchase equipment  
504 shall state the time and place at which bids shall be received,  
505 list the contracts to be made or types of equipment or supplies to  
506 be purchased, and, if all plans and/or specifications are not  
507 published, refer to the plans and/or specifications on file. If  
508 there is no newspaper published in the county or municipality,  
509 then such notice shall be given by posting same at the courthouse,  
510 or for municipalities at the city hall, and at two (2) other  
511 public places in the county or municipality, and also by  
512 publication once each week for two (2) consecutive weeks in some  
513 newspaper having a general circulation in the county or  
514 municipality in the above provided manner. On the same date that  
515 the notice is submitted to the newspaper for publication, the  
516 agency or governing authority involved shall mail written notice  
517 to, or provide electronic notification to the main office of the  
518 Mississippi Contract Procurement Center that contains the same  
519 information as that in the published notice.

520                   (ii) **Bidding process amendment procedure.** If all  
521 plans and/or specifications are published in the notification,  
522 then the plans and/or specifications may not be amended. If all  
523 plans and/or specifications are not published in the notification,  
524 then amendments to the plans/specifications, bid opening date, bid  
525 opening time and place may be made, provided that the agency or  
526 governing authority maintains a list of all prospective bidders  
527 who are known to have received a copy of the bid documents and all

528 such prospective bidders are sent copies of all amendments. This  
529 notification of amendments may be made via mail, facsimile,  
530 electronic mail or other generally accepted method of information  
531 distribution. No addendum to bid specifications may be issued  
532 within two (2) working days of the time established for the  
533 receipt of bids unless such addendum also amends the bid opening  
534 to a date not less than five (5) working days after the date of  
535 the addendum.

536                   (iii) **Filing requirement.** In all cases involving  
537 governing authorities, before the notice shall be published or  
538 posted, the plans or specifications for the construction or  
539 equipment being sought shall be filed with the clerk of the board  
540 of the governing authority. In addition to these requirements, a  
541 bid file shall be established which shall indicate those vendors  
542 to whom such solicitations and specifications were issued, and  
543 such file shall also contain such information as is pertinent to  
544 the bid.

545                   (iv) **Specification restrictions.**

546                   1. Specifications pertinent to such bidding  
547 shall be written so as not to exclude comparable equipment of  
548 domestic manufacture. However, if valid justification is  
549 presented, the Department of Finance and Administration or the  
550 board of a governing authority may approve a request for specific  
551 equipment necessary to perform a specific job. Further, such  
552 justification, when placed on the minutes of the board of a  
553 governing authority, may serve as authority for that governing  
554 authority to write specifications to require a specific item of  
555 equipment needed to perform a specific job. In addition to these  
556 requirements, from and after July 1, 1990, vendors of relocatable  
557 classrooms and the specifications for the purchase of such  
558 relocatable classrooms published by local school boards shall meet  
559 all pertinent regulations of the State Board of Education,

560 including prior approval of such bid by the State Department of  
561 Education.

562                   2. Specifications for construction projects  
563 may include an allowance for commodities, equipment, furniture,  
564 construction materials or systems in which prospective bidders are  
565 instructed to include in their bids specified amounts for such  
566 items so long as the allowance items are acquired by the vendor in  
567 a commercially reasonable manner and approved by the  
568 agency/governing authority. Such acquisitions shall not be made  
569 to circumvent the public purchasing laws.

570                   (v) Agencies and governing authorities may  
571 establish secure procedures by which bids may be submitted via  
572 electronic means.

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

574                   (i) **Decision procedure.** Purchases may be made  
575 from the lowest and best bidder. In determining the lowest and  
576 best bid, freight and shipping charges shall be included.  
577 Life-cycle costing, total cost bids, warranties, guaranteed  
578 buy-back provisions and other relevant provisions may be included  
579 in the best bid calculation. All best bid procedures for state  
580 agencies must be in compliance with regulations established by the  
581 Department of Finance and Administration. If any governing  
582 authority accepts a bid other than the lowest bid actually  
583 submitted, it shall place on its minutes detailed calculations and  
584 narrative summary showing that the accepted bid was determined to  
585 be the lowest and best bid, including the dollar amount of the  
586 accepted bid and the dollar amount of the lowest bid. No agency  
587 or governing authority shall accept a bid based on items not  
588 included in the specifications.

589                   (ii) **Decision procedure for Certified Purchasing**  
590 **Offices.** In addition to the decision procedure set forth in  
591 paragraph (d)(i), Certified Purchasing Offices may also use the  
592 following procedure: Purchases may be made from the bidder

593 offering the best value. In determining the best value bid,  
594 freight and shipping charges shall be included. Life-cycle  
595 costing, total cost bids, warranties, guaranteed buy-back  
596 provisions, documented previous experience, training costs and  
597 other relevant provisions may be included in the best value  
598 calculation. This provision shall authorize Certified Purchasing  
599 Offices to utilize a Request For Proposals (RFP) process when  
600 purchasing commodities. All best value procedures for state  
601 agencies must be in compliance with regulations established by the  
602 Department of Finance and Administration. No agency or governing  
603 authority shall accept a bid based on items or criteria not  
604 included in the specifications.

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

611 (e) **Lease-purchase authorization.** For the purposes of  
612 this section, the term "equipment" shall mean equipment, furniture  
613 and, if applicable, associated software and other applicable  
614 direct costs associated with the acquisition. Any lease-purchase  
615 of equipment which an agency is not required to lease-purchase  
616 under the master lease-purchase program pursuant to Section  
617 31-7-10 and any lease-purchase of equipment which a governing  
618 authority elects to lease-purchase may be acquired by a  
619 lease-purchase agreement under this paragraph (e). Lease-purchase  
620 financing may also be obtained from the vendor or from a  
621 third-party source after having solicited and obtained at least  
622 two (2) written competitive bids, as defined in paragraph (b) of  
623 this section, for such financing without advertising for such  
624 bids. Solicitation for the bids for financing may occur before or  
625 after acceptance of bids for the purchase of such equipment or,

626 where no such bids for purchase are required, at any time before  
627 the purchase thereof. No such lease-purchase agreement shall be  
628 for an annual rate of interest which is greater than the overall  
629 maximum interest rate to maturity on general obligation  
630 indebtedness permitted under Section 75-17-101, and the term of  
631 such lease-purchase agreement shall not exceed the useful life of  
632 equipment covered thereby as determined according to the upper  
633 limit of the asset depreciation range (ADR) guidelines for the  
634 Class Life Asset Depreciation Range System established by the  
635 Internal Revenue Service pursuant to the United States Internal  
636 Revenue Code and regulations thereunder as in effect on December  
637 31, 1980, or comparable depreciation guidelines with respect to  
638 any equipment not covered by ADR guidelines. Any lease-purchase  
639 agreement entered into pursuant to this paragraph (e) may contain  
640 any of the terms and conditions which a master lease-purchase  
641 agreement may contain under the provisions of Section 31-7-10(5),  
642 and shall contain an annual allocation dependency clause  
643 substantially similar to that set forth in Section 31-7-10(8).  
644 Each agency or governing authority entering into a lease-purchase  
645 transaction pursuant to this paragraph (e) shall maintain with  
646 respect to each such lease-purchase transaction the same  
647 information as required to be maintained by the Department of  
648 Finance and Administration pursuant to Section 31-7-10(13).  
649 However, nothing contained in this section shall be construed to  
650 permit agencies to acquire items of equipment with a total  
651 acquisition cost in the aggregate of less than Ten Thousand  
652 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
653 equipment, and the purchase thereof by any lessor, acquired by  
654 lease-purchase under this paragraph and all lease-purchase  
655 payments with respect thereto shall be exempt from all Mississippi  
656 sales, use and ad valorem taxes. Interest paid on any  
657 lease-purchase agreement under this section shall be exempt from  
658 State of Mississippi income taxation.

659           (f) **Alternate bid authorization.** When necessary to  
660 ensure ready availability of commodities for public works and the  
661 timely completion of public projects, no more than two (2)  
662 alternate bids may be accepted by a governing authority for  
663 commodities. No purchases may be made through use of such  
664 alternate bids procedure unless the lowest and best bidder cannot  
665 deliver the commodities contained in his bid. In that event,  
666 purchases of such commodities may be made from one (1) of the  
667 bidders whose bid was accepted as an alternate.

668           (g) **Construction contract change authorization.** In the  
669 event a determination is made by an agency or governing authority  
670 after a construction contract is let that changes or modifications  
671 to the original contract are necessary or would better serve the  
672 purpose of the agency or the governing authority, such agency or  
673 governing authority may, in its discretion, order such changes  
674 pertaining to the construction that are necessary under the  
675 circumstances without the necessity of further public bids;  
676 provided that such change shall be made in a commercially  
677 reasonable manner and shall not be made to circumvent the public  
678 purchasing statutes. In addition to any other authorized person,  
679 the architect or engineer hired by an agency or governing  
680 authority with respect to any public construction contract shall  
681 have the authority, when granted by an agency or governing  
682 authority, to authorize changes or modifications to the original  
683 contract without the necessity of prior approval of the agency or  
684 governing authority when any such change or modification is less  
685 than one percent (1%) of the total contract amount. The agency or  
686 governing authority may limit the number, manner or frequency of  
687 such emergency changes or modifications.

688           (h) **Petroleum purchase alternative.** In addition to  
689 other methods of purchasing authorized in this chapter, when any  
690 agency or governing authority shall have a need for gas, diesel  
691 fuel, oils and/or other petroleum products in excess of the amount

692 set forth in paragraph (a) of this section, such agency or  
693 governing authority may purchase the commodity after having  
694 solicited and obtained at least two (2) competitive written bids,  
695 as defined in paragraph (b) of this section. If two (2)  
696 competitive written bids are not obtained, the entity shall comply  
697 with the procedures set forth in paragraph (c) of this section.  
698 In the event any agency or governing authority shall have  
699 advertised for bids for the purchase of gas, diesel fuel, oils and  
700 other petroleum products and coal and no acceptable bids can be  
701 obtained, such agency or governing authority is authorized and  
702 directed to enter into any negotiations necessary to secure the  
703 lowest and best contract available for the purchase of such  
704 commodities.

705           (i) **Road construction petroleum products price**  
706 **adjustment clause authorization.** Any agency or governing  
707 authority authorized to enter into contracts for the construction,  
708 maintenance, surfacing or repair of highways, roads or streets,  
709 may include in its bid proposal and contract documents a price  
710 adjustment clause with relation to the cost to the contractor,  
711 including taxes, based upon an industry-wide cost index, of  
712 petroleum products including asphalt used in the performance or  
713 execution of the contract or in the production or manufacture of  
714 materials for use in such performance. Such industry-wide index  
715 shall be established and published monthly by the Mississippi  
716 Department of Transportation with a copy thereof to be mailed,  
717 upon request, to the clerks of the governing authority of each  
718 municipality and the clerks of each board of supervisors  
719 throughout the state. The price adjustment clause shall be based  
720 on the cost of such petroleum products only and shall not include  
721 any additional profit or overhead as part of the adjustment. The  
722 bid proposals or document contract shall contain the basis and  
723 methods of adjusting unit prices for the change in the cost of  
724 such petroleum products.

725           (j) **State agency emergency purchase procedure.** If the  
726 governing board or the executive head, or his designee, of any  
727 agency of the state shall determine that an emergency exists in  
728 regard to the purchase of any commodities or repair contracts, so  
729 that the delay incident to giving opportunity for competitive  
730 bidding would be detrimental to the interests of the state, then  
731 the provisions herein for competitive bidding shall not apply and  
732 the head of such agency shall be authorized to make the purchase  
733 or repair. Total purchases so made shall only be for the purpose  
734 of meeting needs created by the emergency situation. In the event  
735 such executive head is responsible to an agency board, at the  
736 meeting next following the emergency purchase, documentation of  
737 the purchase, including a description of the commodity purchased,  
738 the purchase price thereof and the nature of the emergency shall  
739 be presented to the board and placed on the minutes of the board  
740 of such agency. The head of such agency, or his designee, shall,  
741 at the earliest possible date following such emergency purchase,  
742 file with the Department of Finance and Administration (i) a  
743 statement explaining the conditions and circumstances of the  
744 emergency, which shall include a detailed description of the  
745 events leading up to the situation and the negative impact to the  
746 entity if the purchase is made following the statutory  
747 requirements set forth in paragraph (a), (b) or (c) of this  
748 section, and (ii) a certified copy of the appropriate minutes of  
749 the board of such agency, if applicable. On or before September 1  
750 of each year, the State Auditor shall prepare and deliver to the  
751 Senate Fees, Salaries and Administration Committee, the House Fees  
752 and Salaries of Public Officers Committee and the Joint  
753 Legislative Budget Committee a report containing a list of all  
754 state agency emergency purchases and supporting documentation for  
755 each emergency purchase.

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

758 through its designee, shall determine that an emergency exists in  
759 regard to the purchase of any commodities or repair contracts, so  
760 that the delay incident to giving opportunity for competitive  
761 bidding would be detrimental to the interest of the governing  
762 authority, then the provisions herein for competitive bidding  
763 shall not apply and any officer or agent of such governing  
764 authority having general or special authority therefor in making  
765 such purchase or repair shall approve the bill presented therefor,  
766 and he shall certify in writing thereon from whom such purchase  
767 was made, or with whom such a repair contract was made. At the  
768 board meeting next following the emergency purchase or repair  
769 contract, documentation of the purchase or repair contract,  
770 including a description of the commodity purchased, the price  
771 thereof and the nature of the emergency shall be presented to the  
772 board and shall be placed on the minutes of the board of such  
773 governing authority.

774           (1) **Hospital purchase, lease-purchase and lease**  
775 **authorization.**

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

781           (ii) In addition to the authority granted in  
782 subparagraph (i) of this paragraph (1), the commissioners or board  
783 of trustees is authorized to enter into contracts for the lease of  
784 equipment or services, or both, which it considers necessary for  
785 the proper care of patients if, in its opinion, it is not  
786 financially feasible to purchase the necessary equipment or  
787 services. Any such contract for the lease of equipment or  
788 services executed by the commissioners or board shall not exceed a  
789 maximum of five (5) years' duration and shall include a  
790 cancellation clause based on unavailability of funds. If such

791 cancellation clause is exercised, there shall be no further  
792 liability on the part of the lessee. Any such contract for the  
793 lease of equipment or services executed on behalf of the  
794 commissioners or board that complies with the provisions of this  
795 subparagraph (ii) shall be excepted from the bid requirements set  
796 forth in this section.

797 (m) **Exceptions from bidding requirements.** Excepted  
798 from bid requirements are:

799 (i) **Purchasing agreements approved by department.**  
800 Purchasing agreements, contracts and maximum price regulations  
801 executed or approved by the Department of Finance and  
802 Administration.

803 (ii) **Outside equipment repairs.** Repairs to  
804 equipment, when such repairs are made by repair facilities in the  
805 private sector; however, engines, transmissions, rear axles and/or  
806 other such components shall not be included in this exemption when  
807 replaced as a complete unit instead of being repaired and the need  
808 for such total component replacement is known before disassembly  
809 of the component; however, invoices identifying the equipment,  
810 specific repairs made, parts identified by number and name,  
811 supplies used in such repairs, and the number of hours of labor  
812 and costs therefor shall be required for the payment for such  
813 repairs.

814 (iii) **In-house equipment repairs.** Purchases of  
815 parts for repairs to equipment, when such repairs are made by  
816 personnel of the agency or governing authority; however, entire  
817 assemblies, such as engines or transmissions, shall not be  
818 included in this exemption when the entire assembly is being  
819 replaced instead of being repaired.

820 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
821 of gravel or fill dirt which are to be removed and transported by  
822 the purchaser.

823                   (v) **Governmental equipment auctions.** Motor  
824 vehicles or other equipment purchased from a federal agency or  
825 authority, another governing authority or state agency of the  
826 State of Mississippi, or any governing authority or state agency  
827 of another state at a public auction held for the purpose of  
828 disposing of such vehicles or other equipment. Any purchase by a  
829 governing authority under the exemption authorized by this  
830 subparagraph (v) shall require advance authorization spread upon  
831 the minutes of the governing authority to include the listing of  
832 the item or items authorized to be purchased and the maximum bid  
833 authorized to be paid for each item or items.

834                   (vi) **Intergovernmental sales and transfers.**  
835 Purchases, sales, transfers or trades by governing authorities or  
836 state agencies when such purchases, sales, transfers or trades are  
837 made by a private treaty agreement or through means of  
838 negotiation, from any federal agency or authority, another  
839 governing authority or state agency of the State of Mississippi,  
840 or any state agency or governing authority of another state.  
841 Nothing in this section shall permit such purchases through public  
842 auction except as provided for in subparagraph (v) of this  
843 section. It is the intent of this section to allow governmental  
844 entities to dispose of and/or purchase commodities from other  
845 governmental entities at a price that is agreed to by both  
846 parties. This shall allow for purchases and/or sales at prices  
847 which may be determined to be below the market value if the  
848 selling entity determines that the sale at below market value is  
849 in the best interest of the taxpayers of the state. Governing  
850 authorities shall place the terms of the agreement and any  
851 justification on the minutes, and state agencies shall obtain  
852 approval from the Department of Finance and Administration, prior  
853 to releasing or taking possession of the commodities.

854                   (vii) **Perishable supplies or food.** Perishable  
855 supplies or food purchased for use in connection with hospitals,

856 the school lunch programs, homemaking programs and for the feeding  
857 of county or municipal prisoners.

858                   (viii) **Single source items.** Noncompetitive items  
859 available from one (1) source only. In connection with the  
860 purchase of noncompetitive items only available from one (1)  
861 source, a certification of the conditions and circumstances  
862 requiring the purchase shall be filed by the agency with the  
863 Department of Finance and Administration and by the governing  
864 authority with the board of the governing authority. Upon receipt  
865 of that certification the Department of Finance and Administration  
866 or the board of the governing authority, as the case may be, may,  
867 in writing, authorize the purchase, which authority shall be noted  
868 on the minutes of the body at the next regular meeting thereafter.  
869 In those situations, a governing authority is not required to  
870 obtain the approval of the Department of Finance and  
871 Administration.

872                   (ix) **Waste disposal facility construction**  
873 **contracts.** Construction of incinerators and other facilities for  
874 disposal of solid wastes in which products either generated  
875 therein, such as steam, or recovered therefrom, such as materials  
876 for recycling, are to be sold or otherwise disposed of; however,  
877 in constructing such facilities, a governing authority or agency  
878 shall publicly issue requests for proposals, advertised for in the  
879 same manner as provided herein for seeking bids for public  
880 construction projects, concerning the design, construction,  
881 ownership, operation and/or maintenance of such facilities,  
882 wherein such requests for proposals when issued shall contain  
883 terms and conditions relating to price, financial responsibility,  
884 technology, environmental compatibility, legal responsibilities  
885 and such other matters as are determined by the governing  
886 authority or agency to be appropriate for inclusion; and after  
887 responses to the request for proposals have been duly received,  
888 the governing authority or agency may select the most qualified

889 proposal or proposals on the basis of price, technology and other  
890 relevant factors and from such proposals, but not limited to the  
891 terms thereof, negotiate and enter contracts with one or more of  
892 the persons or firms submitting proposals.

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

896                   (xi) **Information technology products.** Purchases  
897 of information technology products made by governing authorities  
898 under the provisions of purchase schedules, or contracts executed  
899 or approved by the Mississippi Department of Information  
900 Technology Services and designated for use by governing  
901 authorities.

902                   (xii) **Energy efficiency services and equipment.**  
903 Energy efficiency services and equipment acquired by school  
904 districts, community and junior colleges, institutions of higher  
905 learning and state agencies or other applicable governmental  
906 entities on a shared-savings, lease or lease-purchase basis  
907 pursuant to Section 31-7-14.

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

912                   (xiv) **Library books and other reference materials.**  
913 Purchases by libraries or for libraries of books and periodicals;  
914 processed film, video cassette tapes, filmstrips and slides;  
915 recorded audio tapes, cassettes and diskettes; and any such items  
916 as would be used for teaching, research or other information  
917 distribution; however, equipment such as projectors, recorders,  
918 audio or video equipment, and monitor televisions are not exempt  
919 under this subparagraph.

920                   (xv) **Unmarked vehicles.** Purchases of unmarked  
921 vehicles when such purchases are made in accordance with

922 purchasing regulations adopted by the Department of Finance and  
923 Administration pursuant to Section 31-7-9(2).

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

926 (xvii) **Multichannel interactive video systems.**  
927 From and after July 1, 1990, contracts by Mississippi Authority  
928 for Educational Television with any private educational  
929 institution or private nonprofit organization whose purposes are  
930 educational in regard to the construction, purchase, lease or  
931 lease-purchase of facilities and equipment and the employment of  
932 personnel for providing multichannel interactive video systems  
933 (ITSF) in the school districts of this state.

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

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

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

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

952 (xxii) **Garbage, solid waste and sewage contracts.**  
953 Contracts for garbage collection or disposal, contracts for solid

954 waste collection or disposal and contracts for sewage collection  
955 or disposal.

956                   (xxiii) **Municipal water tank maintenance**  
957 **contracts.** Professional maintenance program contracts for the  
958 repair or maintenance of municipal water tanks, which provide  
959 professional services needed to maintain municipal water storage  
960 tanks for a fixed annual fee for a duration of two (2) or more  
961 years.

962                   (xxiv) **Purchases of Mississippi Industries for the**  
963 **Blind products.** Purchases made by state agencies or governing  
964 authorities involving any item that is manufactured, processed or  
965 produced by the Mississippi Industries for the Blind.

966                   (xxv) **Purchases of state-adopted textbooks.**  
967 Purchases of state-adopted textbooks by public school districts.

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

971                   (xxvii) **Used heavy or specialized machinery or**  
972 **equipment for installation of soil and water conservation**  
973 **practices purchased at auction.** Used heavy or specialized  
974 machinery or equipment used for the installation and  
975 implementation of soil and water conservation practices or  
976 measures purchased subject to the restrictions provided in  
977 Sections 69-27-331 through 69-27-341. Any purchase by the State  
978 Soil and Water Conservation Commission under the exemption  
979 authorized by this subparagraph shall require advance  
980 authorization spread upon the minutes of the commission to include  
981 the listing of the item or items authorized to be purchased and  
982 the maximum bid authorized to be paid for each item or items.

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

986                   (xxix) **Purchases made pursuant to qualified**  
987 **cooperative purchasing agreements.** Purchases made by certified  
988 purchasing offices of state agencies or governing authorities  
989 under cooperative purchasing agreements previously approved by the  
990 Office of Purchasing and Travel and established by or for any  
991 municipality, county, parish or state government or the federal  
992 government, provided that the notification to potential  
993 contractors includes a clause that sets forth the availability of  
994 the cooperative purchasing agreement to other governmental  
995 entities. Such purchases shall only be made if the use of the  
996 cooperative purchasing agreements is determined to be in the best  
997 interest of the governmental entity.

998                   (xxx) **School yearbooks.** Purchases of school  
999 yearbooks by state agencies or governing authorities; provided,  
1000 however, that state agencies and governing authorities shall use  
1001 for these purchases the RFP process as set forth in the  
1002 Mississippi Procurement Manual adopted by the Office of Purchasing  
1003 and Travel.

1004                   (xxxi) **Design-build method or the design-build**  
1005 **bridging method of contracting.** Contracts entered into under the  
1006 provisions of Section 31-11-3(9).

1007                   (xxxii) **State institutions of higher learning**  
1008 **group purchase contracts.** Supplies, commodities and equipment  
1009 purchased by state institutions of higher learning participating  
1010 in a group purchasing program authorized under Section 31-7-46.

1011                   (n) **Term contract authorization.** All contracts for the  
1012 purchase of:

1013                   (i) All contracts for the purchase of commodities,  
1014 equipment and public construction (including, but not limited to,  
1015 repair and maintenance), may be let for periods of not more than  
1016 sixty (60) months in advance, subject to applicable statutory  
1017 provisions prohibiting the letting of contracts during specified  
1018 periods near the end of terms of office. Term contracts for a

1019 period exceeding twenty-four (24) months shall also be subject to  
1020 ratification or cancellation by governing authority boards taking  
1021 office subsequent to the governing authority board entering the  
1022 contract.

1023 (ii) Bid proposals and contracts may include price  
1024 adjustment clauses with relation to the cost to the contractor  
1025 based upon a nationally published industry-wide or nationally  
1026 published and recognized cost index. The cost index used in a  
1027 price adjustment clause shall be determined by the Department of  
1028 Finance and Administration for the state agencies and by the  
1029 governing board for governing authorities. The bid proposal and  
1030 contract documents utilizing a price adjustment clause shall  
1031 contain the basis and method of adjusting unit prices for the  
1032 change in the cost of such commodities, equipment and public  
1033 construction.

1034 (o) **Purchase law violation prohibition and vendor**  
1035 **penalty.** No contract or purchase as herein authorized shall be  
1036 made for the purpose of circumventing the provisions of this  
1037 section requiring competitive bids, nor shall it be lawful for any  
1038 person or concern to submit individual invoices for amounts within  
1039 those authorized for a contract or purchase where the actual value  
1040 of the contract or commodity purchased exceeds the authorized  
1041 amount and the invoices therefor are split so as to appear to be  
1042 authorized as purchases for which competitive bids are not  
1043 required. Submission of such invoices shall constitute a  
1044 misdemeanor punishable by a fine of not less than Five Hundred  
1045 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
1046 or by imprisonment for thirty (30) days in the county jail, or  
1047 both such fine and imprisonment. In addition, the claim or claims  
1048 submitted shall be forfeited.

1049 (p) **Electrical utility petroleum-based equipment**  
1050 **purchase procedure.** When in response to a proper advertisement  
1051 therefor, no bid firm as to price is submitted to an electric

1052 utility for power transformers, distribution transformers, power  
1053 breakers, reclosers or other articles containing a petroleum  
1054 product, the electric utility may accept the lowest and best bid  
1055 therefor although the price is not firm.

1056           (q) **Fuel management system bidding procedure.** Any  
1057 governing authority or agency of the state shall, before  
1058 contracting for the services and products of a fuel management or  
1059 fuel access system, enter into negotiations with not fewer than  
1060 two (2) sellers of fuel management or fuel access systems for  
1061 competitive written bids to provide the services and products for  
1062 the systems. In the event that the governing authority or agency  
1063 cannot locate two (2) sellers of such systems or cannot obtain  
1064 bids from two (2) sellers of such systems, it shall show proof  
1065 that it made a diligent, good-faith effort to locate and negotiate  
1066 with two (2) sellers of such systems. Such proof shall include,  
1067 but not be limited to, publications of a request for proposals and  
1068 letters soliciting negotiations and bids. For purposes of this  
1069 paragraph (q), a fuel management or fuel access system is an  
1070 automated system of acquiring fuel for vehicles as well as  
1071 management reports detailing fuel use by vehicles and drivers, and  
1072 the term "competitive written bid" shall have the meaning as  
1073 defined in paragraph (b) of this section. Governing authorities  
1074 and agencies shall be exempt from this process when contracting  
1075 for the services and products of a fuel management or fuel access  
1076 systems under the terms of a state contract established by the  
1077 Office of Purchasing and Travel.

1078           (r) **Solid waste contract proposal procedure.** Before  
1079 entering into any contract for garbage collection or disposal,  
1080 contract for solid waste collection or disposal or contract for  
1081 sewage collection or disposal, which involves an expenditure of  
1082 more than Fifty Thousand Dollars (\$50,000.00), a governing  
1083 authority or agency shall issue publicly a request for proposals  
1084 concerning the specifications for such services which shall be

1085 advertised for in the same manner as provided in this section for  
1086 seeking bids for purchases which involve an expenditure of more  
1087 than the amount provided in paragraph (c) of this section. Any  
1088 request for proposals when issued shall contain terms and  
1089 conditions relating to price, financial responsibility,  
1090 technology, legal responsibilities and other relevant factors as  
1091 are determined by the governing authority or agency to be  
1092 appropriate for inclusion; all factors determined relevant by the  
1093 governing authority or agency or required by this paragraph (r)  
1094 shall be duly included in the advertisement to elicit proposals.  
1095 After responses to the request for proposals have been duly  
1096 received, the governing authority or agency shall select the most  
1097 qualified proposal or proposals on the basis of price, technology  
1098 and other relevant factors and from such proposals, but not  
1099 limited to the terms thereof, negotiate and enter contracts with  
1100 one or more of the persons or firms submitting proposals. If the  
1101 governing authority or agency deems none of the proposals to be  
1102 qualified or otherwise acceptable, the request for proposals  
1103 process may be reinitiated. Notwithstanding any other provisions  
1104 of this paragraph, where a county with at least thirty-five  
1105 thousand (35,000) nor more than forty thousand (40,000)  
1106 population, according to the 1990 federal decennial census, owns  
1107 or operates a solid waste landfill, the governing authorities of  
1108 any other county or municipality may contract with the governing  
1109 authorities of the county owning or operating the landfill,  
1110 pursuant to a resolution duly adopted and spread upon the minutes  
1111 of each governing authority involved, for garbage or solid waste  
1112 collection or disposal services through contract negotiations.

1113 (s) **Minority set-aside authorization.** Notwithstanding  
1114 any provision of this section to the contrary, any agency or  
1115 governing authority, by order placed on its minutes, may, in its  
1116 discretion, set aside not more than twenty percent (20%) of its  
1117 anticipated annual expenditures for the purchase of commodities

1118 from minority businesses; however, all such set-aside purchases  
1119 shall comply with all purchasing regulations promulgated by the  
1120 Department of Finance and Administration and shall be subject to  
1121 bid requirements under this section. Set-aside purchases for  
1122 which competitive bids are required shall be made from the lowest  
1123 and best minority business bidder. For the purposes of this  
1124 paragraph, the term "minority business" means a business which is  
1125 owned by a majority of persons who are United States citizens or  
1126 permanent resident aliens (as defined by the Immigration and  
1127 Naturalization Service) of the United States, and who are Asian,  
1128 Black, Hispanic or Native American, according to the following  
1129 definitions:

1130 (i) "Asian" means persons having origins in any of  
1131 the original people of the Far East, Southeast Asia, the Indian  
1132 subcontinent, or the Pacific Islands.

1133 (ii) "Black" means persons having origins in any  
1134 black racial group of Africa.

1135 (iii) "Hispanic" means persons of Spanish or  
1136 Portuguese culture with origins in Mexico, South or Central  
1137 America, or the Caribbean Islands, regardless of race.

1138 (iv) "Native American" means persons having  
1139 origins in any of the original people of North America, including  
1140 American Indians, Eskimos and Aleuts.

1141 (t) **Construction punch list restriction.** The  
1142 architect, engineer or other representative designated by the  
1143 agency or governing authority that is contracting for public  
1144 construction or renovation may prepare and submit to the  
1145 contractor only one (1) preliminary punch list of items that do  
1146 not meet the contract requirements at the time of substantial  
1147 completion and one (1) final list immediately before final  
1148 completion and final payment.

1149                   (u) **Purchase authorization clarification.** Nothing in  
1150 this section shall be construed as authorizing any purchase not  
1151 authorized by law.

1152                   **SECTION 7.** This act shall take effect and be in force from  
1153 and after July 1, 2007.