

By: Representative Young

To: Universities and
Colleges; Appropriations

HOUSE BILL NO. 1199

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.