

PEER: THE MISSISSIPPI LEGISLATURE'S OVERSIGHT AGENCY

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

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As an integral part of the Legislature, PEER provides a variety of services, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

**State and Local Government Use of the
Fuelman Fuel Access System**

June 16, 1993

**The PEER Committee
Mississippi Legislature**

The Mississippi Legislature
Joint Committee on Performance Evaluation and Expenditure Review
PEER Committee



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June 16, 1993

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At its meeting of June 16, 1993, the PEER Committee authorized release of the report entitled **State and Local Government Use of the Fuelman Fuel Access System.**

A handwritten signature in cursive script that reads "Cecil McCrory".

Representative Cecil McCrory, Chairman

**This report does not recommend increased
funding or additional staff.**

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State and Local Government Use of the Fuelman Fuel Access System

Executive Summary

June 16, 1993

Introduction

The PEER Committee addressed the following questions:

- What is Fuelman?
- Which state and local government entities currently use Fuelman?
- Do state agencies effectively evaluate whether fuel access systems save money?

What is Fuelman? (page 4)

"Fuelman" is the trade name of an automated fuel access system offered by R. R. Morrison of Vicksburg, Mississippi.

Fuel access systems provide users with management information about the fuel usage patterns of each vehicle and driver using the system. Fuelman purchases are made from gasoline pumps which have Fuelman card reading devices attached to them. A driver inserts a card assigned to that individual and a second card assigned to the vehicle.

Through this system, the company managing Fuelman provides the agency with information on driver purchases and vehicle patterns of usage. Such systems also prohibit the possibility that drivers may purchase incidental items such as soft drinks or cigarettes and charge these as a fuel cost, as can happen with conventional gasoline credit cards.

In an official opinion issued November 16, 1992, the Attorney General determined that the use of such systems without prior bidding is not a violation of the state's purchasing laws (MISS. CODE ANN. Section 31-7-1 et seq.)

Which state and local government entities currently use Fuelman? (page 7)

As of December 1992, ten state agencies, fifteen governing authorities, and six school districts used the Fuelman system for purchasing gasoline (see Exhibit 2, page 8, for a list of Fuelman users).

Do state agencies and governing authorities effectively evaluate whether fuel access systems save money? (page 11)

Fuelman users do not audit prices routinely to determine if they are getting the best buy on gasoline from Fuelman. Only three users state that they use the driver/vehicle management information to assist them in their fleet management function.

While Fuelman in particular and fuel access systems in general may provide the state with an effective system for managing fuel and vehicle costs, such systems allow former users of bulk-purchased fuel to acquire fuels which were formerly bid on the open market.

Recommendations (p. 14)

1. The Legislature should amend MISS. CODE ANN. Section 31-7-13 to require that agencies and governing authorities obtain bids on profit margins for fuel access systems (or similar access systems for other commodities) regardless of whether each purchase is for less than \$500 (see Appendix B, page 21, for draft legislation).
2. To insure effective use of fuel access systems, agencies using systems such as Fuelman should:
 - obtain OPIS pricing information and market fuel price information and compare the two to determine whether the price pro-

vided by their fuel access system is competitive with that of other vendors of gasoline;

- formulate policies which clearly inform all personnel using fleet vehicles that they are not to purchase fuel from other vendors except in an emergency; and,
- devise methods of incorporating weekly management reports into fleet management programs. Such should include, but not be limited to:

- routing management reports to direct supervisors of each driver;
- requiring the supervisor to review the mileage and usage of each vehicle and driver;
- reporting any suspected fraud to internal audit or other control personnel for investigation; and,
- supervisors' review of possible methods of insuring more efficient use of vehicles based on management reports.

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State and Local Government Use of the Fuelman Fuel Access System

Introduction

Authority

The PEER Committee reviewed state and local governments' use of a fuel access system marketed under the name of Fuelman. The Committee acted in accordance with MISS. CODE ANN. Section 5-3-57.

Scope and Purpose

The PEER Committee obtained information relative to the following questions:

- What is Fuelman in particular, and what are fuel access systems in general?
- Which state and local government entities currently use Fuelman?
- Do state agencies effectively evaluate whether fuel access systems save money?

Method

During the course of this review, PEER:

- reviewed state statutes and regulations related to the purchase of commodities by state agencies and governing authorities;
- interviewed personnel of the Office of Purchasing and Travel, Department of Finance and Administration, to determine the history and background of Fuelman and credit card use in the state;
- interviewed Fuelman personnel to develop a working knowledge of the Fuelman product concept, including how it works, the components of the product, how it is priced, and the number of outlets;
- interviewed local government personnel regarding their use of Fuelman to determine concerns regarding the effects of the Fuelman product on competitiveness;

- requested an Attorney General's opinion regarding the use of fuel management systems and the state purchasing laws; and,
- distributed questionnaires to governing authorities using Fuelman to determine how they use Fuelman and their perception of its benefits.

Overview

Fuelman is a fuel access system which provides users with detailed management information on each vehicle's and driver's fuel use, including mileage and number of purchases. Such systems are accessed by the use of computer-readable cards inserted into a card reader on the gas pump. When the cards are inserted into the reader, the computer system records the driver and vehicle, mileage encoded by the driver, and the amount of purchase. Fuel access systems provide the user with management information on vehicle mileage and drivers' patterns of purchase, and can be useful in detecting pilferage of fuel through the mileage information. Fuel access systems also eliminate the possibility that a driver may purchase incidental items such as cigarettes or soft drinks while purchasing gasoline and charging them to the agency along with the gasoline purchase.

In December 1992, ten Mississippi state agencies, fifteen governing authorities, and six school districts/educational institutions were using the Fuelman system for purchasing gasoline. Fuelman prices were consistently lower than prices reported for the Jackson retail market in FY 1991; however, no agency has an auditing system in place to insure that Fuelman pricing remains competitive with other suppliers. In addition, management information generated by Fuelman cannot always be used effectively because some agencies do not place sufficient restrictions on the use of other gasoline credit cards.

Fuelman purchases represent commodity purchases under the purchasing laws; however, the Attorney General and the Department of Finance and Administration do not consider such purchases as requiring bids because each single purchase is below \$500. Such interpretations of the purchasing statutes contradict the Legislature's intent that the state purchasing laws promote efficiency and economy through competition (the competitive bid process).

Background

Many state agencies and local governments purchase large volumes of fuel for their vehicle fleets. Traditional methods of acquiring gasoline were:

- the state or local agency made bulk purchases and kept the fuel in government-owned tanks; or,
- individuals purchased fuel by credit card at service stations and stores.

Each method presents advantages and disadvantages to the public body using it as a means of acquiring and distributing gasoline.

Bulk tanks allow for control over usage, as an attendant must be on hand to pump the fuel and can log in the amount pumped and to whom the gas was distributed. Such a method of distribution does, however, require that the drivers carefully plan their fuel usage so as not to necessitate purchasing fuel at a point away from the agency-owned pumps. Also, government-owned tanks and pumps are expensive and are becoming more so, as U. S. Environmental Protection Agency regulations require regular inspection and repair of tanks to help guard against leakage.

Credit cards, while providing flexibility for the vehicle operator, reduce controls over spending. A user could coax a store owner into adding other purchases, such as cigarettes or soft drinks, to a receipt for gasoline. Also, gasoline purchases could be made and easily transferred to the purchaser's private vehicle, since no logs or other records exist showing vehicle mileage.

In the past decade, new private sector services have developed which eliminate many of the aforementioned disadvantages associated with the two traditional methods of distributing gasoline to government vehicles. These services are generally lumped into the category of fuel access systems. Fuel access systems allow the vehicle operator to acquire fuel from a pump via a charge card, and have information about the purchase recorded in computer records. After the passage of as little as a week, all relevant information about the government's fuel purchases is compiled in a report showing purchases by vehicle and driver, as well as self-reported mileage information. Such records can help an agency manager determine how efficiently personnel use vehicles and fuel.

What Is Fuelman and Who Uses It?

Description of the Service

Fuelman is a fuel access system offered by R. R. Morrison of Vicksburg, Mississippi. Its service consists of a weekly management report provided to users, along with gasoline which is available to any user through any of the approximately 200 service stations with a Fuelman card reader.

The system operates as follows:

- An agency using Fuelman issues to a driver two cards--a vehicle card which is always carried in a particular vehicle, and a card carried by a particular employee. When a vehicle requires gasoline, the employee goes to a service station with Fuelman service and inserts two cards into a card reader attached to the pump. One card identifies the driver, the other card identifies the vehicle. The insertion of these cards allows the driver to pump gasoline, and feeds the information into the Fuelman computer system regarding the identity of the purchaser, and the vehicle for which the purchase is being made. After the gasoline is pumped, the driver enters a personal identification number, both cards, and the odometer reading into the card reader.
- Information regarding the purchase, including the number of gallons purchased, is transmitted to Morrison's computer in Vicksburg for preparation of records and statements.
- Morrison sends weekly statements and management reports to agencies and governing authorities.

Agencies using this service receive weekly management reports which show who made purchases, for which vehicles, mileage on vehicles at purchase time, gallons purchased, and the miles per gallon for each vehicle. Such management information can be used to help the agency review its vehicle usage policies, and perhaps detect or prevent fraud by unscrupulous employees who might convert gasoline to their own use.

Pricing of Fuelman

An agency employee using Fuelman does not pay, or bind his agency to pay, the price of gasoline posted at the pump. Fuelman pricing is based on a formula which utilizes the Oil Pricing Information Service (OPIS) rack price plus the freight, taxes, and profit margin.

The OPIS price is published weekly for fuels for each terminal or rack in the United States. Each Thursday, a list of OPIS prices is released

and published for the industry. This published price is used to determine the price of all Fuelman purchases made from the Monday immediately preceding the publication of the OPIS price through the Sunday immediately following such publication.

All freight rates are subject to tariffs set by the Interstate Commerce Commission and are published for inspection. The margin of profit is set by Fuelman. For a comparison of Fuelman costs with selected Jackson area prices in 1991, see Exhibit 1, page 6.

Laws Governing the Acquisition of Fuel Access Systems

PEER addressed questions with respect to the legality of agencies and governing authorities making use of Fuelman services--specifically, whether the use of such systems violates state purchasing laws. The PEER Committee's Chairman requested from the Attorney General an opinion regarding the use of fuel access systems by state agencies and governing authorities. Specifically, PEER asked the Attorney General to address the legality of the following:

- Because fuel access systems provide state agencies and governing authorities with gasoline as well as management information, does a fuel access system purchase constitute a purchase of a commodity regulated by the state purchasing laws (MISS. CODE ANN. Section 31-7-1 [1972]) or a purchase of a personal service not regulated by the purchasing laws?
- If fuel access system purchases are deemed to be subject to the state purchasing laws, would purchases of fuel with a fuel access system card for an individual vehicle be subject to MISS. CODE ANN. Section 31-7-13 (a) (1972), which allows commodity purchases of less than \$500 to be made without formal bids or price quotations? Would cumulative purchases of fuel in excess of \$500 per year for an individual vehicle be subject to MISS. CODE ANN. Section 31-7-13 (a) (1972)?
- If such purchases are not subject to MISS. CODE ANN. Section 31-7-13 (a) (1972), are state agencies and governing authorities required to advertise and receive competitive bids for fuel purchases? If fuel vendors are not responsive, would the negotiation provisions of Section 31-7-13 (h) (1972) require a state agency or governing authority to negotiate with vendors who submitted unsuccessful bids before negotiating with other potential vendors, such as Fuelman, which did not submit such a bid?

Exhibit 1

1991 Self-Serve Gasoline Prices per Gallon: Retail vs. Fuelman System

	January	February	March	April	May	June	July	August	September	October	November	December	Average
<i>Regular Unleaded</i>													
State Purchase Price--Retail	\$1.03	\$0.97	\$0.90	\$0.92	\$1.00	\$1.03	\$0.95	\$0.94	\$0.97	\$0.93	\$0.91	\$0.91	\$0.96
State Purchase Price--Fuelman	0.99	0.90	0.94	0.97	0.99	0.92	0.91	0.96	0.90	0.90	0.91	0.82	0.93
Savings/(Cost) by Using Fuelman	\$0.04	\$0.07	(\$0.04)	(\$0.05)	\$0.01	\$0.11	\$0.04	(\$0.02)	\$0.07	\$0.03	\$0.00	\$0.09	\$0.03
<i>Premium Unleaded</i>													
State Purchase Price--Retail	\$1.24	\$1.18	\$1.10	\$1.13	\$1.20	\$1.22	\$1.14	\$1.14	\$1.17	\$1.13	\$1.12	\$1.11	\$1.16
State Purchase Price--Fuelman	1.08	0.99	1.02	1.06	1.07	1.01	1.00	1.04	0.98	0.99	1.00	0.91	1.01
Savings/(Cost) by Using Fuelman	\$0.16	\$0.19	\$0.08	\$0.07	\$0.13	\$0.21	\$0.14	\$0.10	\$0.19	\$0.14	\$0.12	\$0.20	\$0.15

SOURCE: Lundberg Survey Inc. (Retail Market Price) and R.R. Morrison (Fuelman System)

The Attorney General responded with an official opinion dated November 16, 1992. In this opinion, the Attorney General noted that purchases through Fuelman are purchases of commodities within the scope of the state purchasing laws. These purchases do not have to be bid unless a single purchase exceeds \$500. This is true even if an employee makes multiple purchases for a single vehicle which, when aggregated, would exceed \$500. The Attorney General also noted that purchases over \$500 in value must be bid and that the provisions of MISS. CODE ANN. Section 31-7-13 (h) apply to state agencies and governing authorities. As to the question of with which parties an agency or governing authority must negotiate under Section 31-7-13 (h), the opinion is silent. See Appendix A, page 15, for the complete text of the Attorney General's opinion.

Thus the purchasing laws of the state govern Fuelman and other fuel access systems, but when single purchases fall below \$500 in value, there is no need to bid obtain quotes from other providers of fuel, according to the Attorney General. Single fill-ups of an agency vehicle, assuming relatively stable gasoline prices, will not cost \$500. Thus, the Attorney General is of the opinion that agencies and governing authorities are free to use Fuelman from the numerous service stations located across the state, and are not required to bid or obtain quotes.

Who Uses Fuelman?

Fuelman has been successful in selling its service to governmental entities in Mississippi. As of December 1992, fifteen governing authorities, ten state agencies, and six school districts/educational institutions were using Fuelman (see Exhibit 2, page 8). These agencies and governing authorities had generally entered into written agreements with Fuelman with the exception of the Department of Public Safety.

Exhibit 2

**Governmental Fuelman Customers
(as of December 1992)**

Governing Authorities

Bolivar County Sheriff's Department
Copiah County Sheriff's Department
Copiah County
Hinds County
Warren County
Pontotoc County Health Services
Tishomingo County Health Services
Housing Authority of Vicksburg
City of Brandon
City of Crystal Springs
City of Long Beach
City of Magnolia
City of Richland
City of Ridgeland
City of Vicksburg

State Agencies

Department of Agriculture and Commerce
Department of Corrections
Department of Public Safety
Department of Wildlife, Fisheries and Parks
Department of Education
Mississippi Forestry Commission
Department of Public Safety
Educational Television Authority
Department of Vocational Rehabilitation
Public Service Commission

School Districts/Educational Institutions

Jackson Public Schools
Lee County Public Schools
Vicksburg-Warren County Schools
North Panola Schools
Hinds County Public Schools
Hinds Community College

SOURCE: Fuelman and Department of Finance and Administration officials.

Efficient Use of Fuelman

PEER sought information from the agencies and governing authorities using Fuelman to determine whether they make efficient use of the system. Specifically, PEER was concerned about the following:

- Do agencies determine whether they have saved money since changing to Fuelman?
- Do agencies effectively use management reports provided by Fuelman?

Cost Savings

Based on average Jackson retail price information for FY 1991 and Fuelman prices during that same period, any entity using the Fuelman service during that period would have saved \$0.03 per gallon on unleaded regular and \$0.14 per gallon on unleaded premium gasoline. Thus, it is possible to save money using Fuelman.

To insure that it realizes savings, an agency or governing authority must:

- understand how Fuelman is priced;
- be willing to monitor the prices; and,
- compare Fuelman prices with those of the competition.

No state agency currently audits Fuelman prices and compares them with the market prices charged. If agencies realize savings, the savings do not result from diligent monitoring by each agency.

Of the ten state agencies questioned, only the Department of Education and the Department of Wildlife, Fisheries, and Parks have stated that they plan to audit Fuelman prices in the future. While Fuelman prices for FY 1991 were below those retail prices PEER reviewed, there is no guarantee that those prices will continue to be lower in the future.

Vehicle and Fleet Management

In addition to possible savings on gasoline, Fuelman can provide agencies a valuable management tool through its weekly management reports. These reports can help agencies and governing authorities review vehicle usage and could help prevent or isolate cases of employee conversion of gasoline to personal use.

For these benefits to be experienced by an agency, that agency must make the management report a component of its vehicle management process. Someone must read the reports, analyze them, draw inferences for further review, and make final conclusions based on the information presented. Of the ten agencies which reported to PEER about their use of Fuelman, the Department of Education, the Department of Environmental Quality, and the Public Service Commission reported that they use these reports in their vehicle planning process. These agencies note that they plan to in the future.

For agencies to make effective use of this service, it is important that management and other staff understand that to benefit from the management report, Fuelman should be used to the exclusion of other vendors unless an emergency necessitates other use. This is because sales from a non-Fuelman dealer will not be incorporated into the mileage reports and usage reports generated by Fuelman.

Agencies which use Fuelman still use credit cards for other gasoline purchases, but not all of these agencies have disseminated policies to line personnel on when other cards may be used. Because Fuelman provides management information based on information fed into the computer system at fill-up, use of other cards can result in gaps in the management reports provided by Fuelman. Such gaps can distort data on miles per gallon and prevent agencies from making effective use of the management reports.

Conclusions

- ***The Mississippi Attorney General is of the opinion that MISS. CODE ANN. Section 31-7-13 does not prohibit agencies and governing authorities from purchasing fuel through fuel access systems without bidding any component of the seller's price.***

The implications of the Attorney General's opinion (see Appendix A, page 15, for full text of the opinion) are that many former bulk purchasers who once bid out their purchases are now able to get the type of management information a well-operated bulk system could provide without bidding out the purchase. Thus the former bulk purchaser gets the benefits of the bulk system without the difficulties of bidding and the ease of use commonly associated with credit card purchases. Because Fuelman bases its pricing on fluctuations in market pricing, there is no guarantee that the user who once made bulk purchases will have a better price from Fuelman than was once received from the bulk seller. Thus the rack price, which is based on market changes as well as profit margins, is exempt from bidding.

In spite of the present interpretation of purchasing laws, the requiring of bids for the profit margin (the one component of the pricing controlled by the seller) would be consistent with the basic policy of the state purchasing laws pronounced in MISS. CODE ANN. Section 31-7-2:

. . . The purpose or aims of the Office of General Services in carrying out said provisions shall be to coordinate and promote efficiency and economy in the purchase of commodities by the state.

While this provision specifically speaks to the Office of General Services' duties with respect to state agency purchasing, and this office does not have pre-audit responsibility for the purchases of governing authorities, the same argument as to efficiency and economy in purchasing could be made for all entities which must operate under the purchasing laws.

The lack of any bid requirement for the margin portion of the price users pay leaves no protection against sudden price changes by vendors which are attributable to the choices made solely by the vendor.

- ***User agencies have not uniformly established procedures to insure that Fuelman management information is used to maximum benefit.***

Not all agencies using Fuelman review their billings to insure correct charges. Additionally, these agencies do not acquire the necessary information to engage in comparison shopping for gasoline. Only the Department of Education, the Department of Environmental Quality, and

the Public Service Commission report that they use the weekly management information system reports to aid in fleet management through the use of mileage and fuel purchase information. No agency has formulated a policy on credit cards limiting credit card purchases to emergency purchases only.

When an agency buys a service along with the gasoline, wise and prudent policy would be for the agency to make the most effective use of the service. Agencies which currently use Fuelman and do not utilize the management reports lose the opportunity to monitor pricing, billing errors, and competitiveness; do not receive the benefit of the mileage information; and defeat one purpose of the system by not closely regulating the use of credit cards.

- ***The opinion of the Attorney General and the Department of Finance and Administration that purchases of fuel through a fuel access system, such as Fuelman, are not subject to state bid requirements contradicts the purpose and intent of purchasing laws established by the Legislature. In addition, such interpretations establish a precedent regarding the purchase of commodities that could result in substantial purchases of commodities by state agencies and governing authorities without regard to state bid requirements.***

The Attorney General and Department of Finance and Administration officials maintain that as long as no single purchase of fuel exceeds \$500, state bid requirements do not apply. These officials maintain this position despite the fact that state agencies and governing authorities that contract with Fuelman do so with the intention of acquiring hundreds and thousands of dollars worth of fuel from this vendor on an annual basis. Such agreements appear more like term contracts for fuel rather than single purchases of fuel which were not contemplated in advance.

PEER does not contend that the use of Fuelman represents attempts to avoid state purchasing and bid requirements. However, MISS. CODE ANN. Section 31-7-13 clearly reflects the Legislature's intent that purchases of commodities (in excess of \$500) be competitively bid. While state agencies and governing authorities cannot estimate the exact amount of fuel that will be needed in a given year, such entities can reasonably estimate such amounts based on historical and other data. In almost every case, such entities can reasonably estimate that the entity's fuel needs for a given year will exceed \$500. As such, these entities should attempt to obtain competitive bids. If bids cannot be obtained, MISS. CODE ANN. Section 31-7-13 (h) requires agencies and governing authorities to enter into negotiations to secure the lowest and best contract available for the purchases of fuel. PEER contends that one cannot determine that a particular contract, in this case Fuelman, is the lowest and best without reviewing offerings of competitors.

In his opinion to the PEER Committee (see Appendix A, page 15), the Attorney General states that fuel purchases from Fuelman represent commodities. As such, vendors of all other commodities (e.g., office supplies, parts, printing, building supplies) could be inclined to create similar access systems to provide similar convenience for governmental entities, as the recurring daily needs of many agencies and governing authorities for these commodities does not exceed \$500. This is not to say that there is anything wrong with the concept of a commodity access system such as Fuelman, but rather to say that transactions between such systems and state and local governmental entities should be controlled in the same manner as other purchases.

Recommendations

1. The Legislature should amend MISS. CODE ANN. Section 31-7-13 to require that agencies and governing authorities obtain bids on profit margins for fuel access systems (or similar access systems for other commodities) regardless of whether each purchase is for less than \$500 (see Appendix B, page 21.)

2. To insure effective use of fuel access systems, agencies using systems such as Fuelman should:
 - obtain OPIS pricing information and market fuel price information and compare the two to determine whether the price provided by their fuel access system is competitive with that of other vendors of gasoline;

 - formulate policies which clearly inform all personnel using fleet vehicles that they are not to purchase fuel from other vendors except in an emergency; and,

 - devise methods of incorporating weekly management reports into fleet management programs. Such should include, but not be limited to:
 - routing management reports to direct supervisors of each driver;

 - requiring the supervisor to review the mileage and usage of each vehicle and driver;

 - reporting any suspected fraud to internal audit or other control personnel for investigation; and,

 - supervisors' review of possible methods of insuring more efficient use of vehicles based on management reports.

Appendix A

Attorney General's Opinion Regarding State Agencies' and Governing Authorities' Use of Fuel Access Systems STATE OF MISSISSIPPI



OFFICE OF THE ATTORNEY GENERAL

OFFICIAL ATTORNEY GENERAL'S OPINION

MIKE MOORE
ATTORNEY GENERAL

November 16, 1992

Senator William W. Canon
Chairman, PEER Committee
Post Office Box 1204
Jackson, Mississippi 39215-1204

Dear Senator Canon:

Attorney General Mike Moore has received your letter of request dated September 22, 1992 and has assigned it to me for research and reply. Your letter states in part the following:

In accordance with MISS. CODE ANN. Section 5-3-51 (1972) et seq., the PEER Committee, at its August 19, 1992 meeting, authorized a review of state agencies and governing authorities' use of fuel access systems. According to information provided to the Committee, most fuel access systems are similar to the use of oil company credit cards, but are somewhat different because of their use of controlled purchases of gasoline (with special debit cards for both drivers and vehicles) and the weekly provision of computerized management information reports (monthly gasoline purchases per vehicle, miles per gallon per vehicle, etc.). The Committee has determined that at least ten state agencies and twenty governing authorities have contractual agreements with FuelMan, the primary fuel access system in Mississippi.

The PEER Committee has concerns as to whether state agencies' and governing authorities' use of fuel access systems complies with certain state laws. The Committee, in accordance with MISS. CODE ANN. Section 5-3-65 and 7-5-25 (1972), requests an official attorney general's opinion to address the following questions.

1. Because fuel access systems provide state agencies and governing authorities with gasoline as well as management information, does a fuel access system purchase constitute a purchase of a commodity regulated by the state purchase laws (MISS. CODE

ANN. Section 31-7-1 (1972) et seq.) or a purchase of a personal service not regulated by the purchasing law?

2. If fuel access system purchases are deemed to be subject to state purchasing laws, would purchases of fuel with a fuel access system card for an individual vehicle be subject to MISS. CODE ANN. Section 31-7-13 (a) (1972), which allows commodity purchases of less than \$500 to be made without formal bids or price quotations? Would cumulative purchases of fuel in excess of \$500 per year for an individual vehicle be subject to MISS. CODE ANN. Section 31-7-13 (a) (1972)?
3. If such purchases are not subject to MISS. CODE ANN. Section 31-7-13 (a) (1972), are state agencies and governing authorities required to advertise and receive competitive bids for fuel purchases? If fuel vendors are not responsive (by submitting a firm price) to the request for proposals, would the negotiation provisions of MISS. CODE ANN. Section 31-7-13 (h) (1972) require a state agency or governing authority to negotiate with vendors who submitted unsuccessful bids before negotiating with other potential vendors, such as FuelMan, which did not submit a bid?

From my review, FuelMan makes available fuel at over one thousand (1000) commercial sites throughout the state. All sites have card ready equipment or terminals and are self-service. Fuel is accessed via control cards. The pricing of the fuel is based on the following:

1. Applicable average terminal/rack price is reported by OPIS each Thursday for each product purchased that calendar week, OPIS, Oil Price Information Service, is an independent company providing terminal/rack prices by area.
2. Freight rate.
3. All applicable taxes.
4. Fuelman service fees of nine (\$.09) or ten (\$.10) cents per gallon on the average.

FuelMan offers a management system that includes weekly reports to state agencies on fuel consumption including driver's name, date of purchase, vehicle description, gallons used and dollars expended on fuel.

Senator William Canon
November 16, 1992
Page 3

Section 31-7-13, Miss. Code Ann. (Supp. 1990) prescribes the procedures for the acquisition of commodities, equipment supplies, insurance, printing, and public construction. Section 31-7-1, Miss. Code Ann. (Supp. 1990) defines certain terms. The word "commodities" shall mean and include the various commodities, goods, merchandise, furniture, equipment, automotive equipment for every kind and other personal property purchased by agencies of the state and governing authorities, but not commodities purchased for resale under §31-7-1.

§31-7-13, Miss. Code Ann. (Supp. 1990) states in part:

All agencies and governing authorities shall purchase their commodities and printing; contract for fire insurance, automobile insurance, casualty insurance (other than workers' compensation) and liability insurance; and contract for public construction as herein provided.

(a) Purchases which do not involve an expenditure of more than Five Hundred Dollars (\$500.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. Provided, however, that nothing contained in this paragraph shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive bids on purchases of Five Hundred Dollars (\$500.00) or less.

In response to your first question, fuel access systems utilized by state agencies and governing authorities constitute the purchase of commodities and are subject to state purchasing laws, §§ 31-7-1 et seq.. See prior official opinion to J. Richard Barry, attached hereto, dictating credit card purchases of gasoline are subject to state purchasing laws.

As to your second question, purchases of fuel with a fuel access system card for an individual vehicle are subject to §31-7-13(a), but such purchases should not be competitively bid unless any single fuel purchase exceeds five hundred dollars (\$500.00). Cumulative purchases of fuel in excess of five hundred dollars (\$500.00) per year are subject to §31-7-13(a), but are not required to be bid unless any single purchase exceeds five hundred dollars (\$500.00).

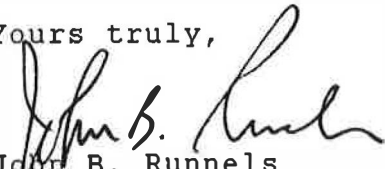
In answer to your third question, all fuel purchases by state agencies and governing authorities in excess of \$500.00 are subject to competitive bids and other mandates of §31-7-1 et seq.. We are also of the opinion the provisions of §31-7-13 (h)

Senator William Canon
November 16, 1992
Page 4

are available to both state agencies and local governing authorities.

Trusting this is sufficient, I remain

Yours truly,



John B. Runnels
Special Assistant Attorney General

JBR:fca

Attachment

OFFICIAL OPINION

STATE OF MISSISSIPPI



OFFICE OF THE ATTORNEY GENERAL

OFFICIAL ATTORNEY GENERAL'S OPINION

MIKE MOORE
ATTORNEY GENERAL

June 26, 1991

Mr. J. Richard Barry
Bourdeaux & Jones
505 Constitution Avenue
Meridian, MS 39301

Re: Credit Cards for Municipalities

Dear Mr. Barry:

Attorney General Mike Moore has received your letter on behalf of the Town of Marion and has referred it to me to answer. Your letter states:

...the town is presently buying its gasoline for city vehicles in bulk. The supplier, who has received the bid on the gas, requires the Town to buy the gas 350 gallons at a time.

The Town has two convenience store distributors that it has access to purchase gas by credit card. The Town would like to obtain credit cards to purchase its gas by credit card rather than purchasing gas in bulk. In order to keep the accounts separate, there would probably be a gas credit card for the police department, one for the fire department, and one for the street department.

On behalf of the Town, I would like to request from the Attorney General's office an opinion as to whether the Town of Marion can purchase its gasoline by credit card as described above in lieu of bidding it off and buying it in bulk.

Municipalities may not incur debt except as specifically authorized by statute. Miss. Code Ann. § 21-17-5(2)(b). We find no authority for a municipality to incur interest or service charges on the use of credit cards. This office is of the

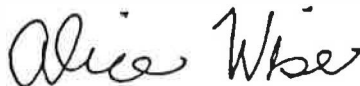
Mr. J. Richard Barry
June 26, 1991
Page 2

opinion that municipalities may use credit cards to purchase gas from a company that has been awarded a term contract consistent with applicable purchasing laws, including §31-7-13, concerning bid requirements when the credit cards are used as identification cards by individuals authorized by the municipalities under state law to purchase gas.

If we may be of any further assistance, please let us know.

Sincerely,

MIKE MOORE, ATTORNEY GENERAL

By: 
Alice D. Wise
Special Assistant Attorney General

ADW:sm

Appendix B

Proposed Legislation Requiring State Agencies and Governing Authorities to Obtain Bids on Profit Margins for

Mississippi Legislature *Fuel Access Systems* Regular Session, 1994

BY:

BILL

AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT AGENCIES AND GOVERNING AUTHORITIES WHICH CONTRACT FOR FUEL MANAGEMENT OR FUEL ACCESS SYSTEMS ENGAGE IN COMPETITIVE NEGOTIATIONS PRIOR TO CONTRACTING FOR SUCH SYSTEMS; AND FOR RELATED PURPOSES.

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

Section 1. Section 31-7-13, Mississippi Code of 1972, is amended as follows;

§ 31-7-13. Bid requirements and exceptions; public auctions.

All agencies and governing authorities shall purchase their commodities and printing; contract for fire insurance, automobile insurance, casualty insurance (other than workers' compensation) and liability insurance; and contract for public construction as herein provided.

- (a) Purchases which do not involve an expenditure of more than Five Hundred Dollars (\$500.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. Provided, however, that nothing contained in this paragraph shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive bids on purchases of Five Hundred Dollars (\$500.00) or less.
- (b) Purchases which involve an expenditure of more than Five Hundred Dollars (\$500.00) but not more than Five Thousand Dollars (\$5,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. Any governing authority purchasing commodities pursuant to this paragraph (b) may authorize its purchasing agent, with regard to governing authorities other than counties, or its purchase clerk, with regard to counties, to accept the lowest and best competitive written bid. Such authorization shall be made

in writing by the governing authority and shall be maintained on file in the primary office of the agency and recorded in the official minutes of the governing authority, as appropriate. The purchasing agent or the purchase clerk, as the case may be, and not the governing authority, shall be liable for any penalties and/or damages as may be imposed by law for any act or omission of the purchasing agent or purchase clerk constituting a violation of law in accepting any bid without approval by the governing authority. The term "competitive written bid" shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor.

- (c) Purchases which involve an expenditure of more than Five Thousand Dollars (\$5,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder after advertising for competitive sealed bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Ten Thousand Dollars (\$10,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority, and there remain. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to the main office of the Mississippi Contract Procurement Center that contains the same information as that in the published notice. In addition to these requirements, agencies shall maintain a vendor file and vendors of the equipment or commodities being sought may be mailed solicitations and specifications, and a bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were mailed, and such file shall also contain such information as is pertinent to the bid. Specifications pertinent to such bidding shall be written so as not to exclude comparable equipment of domestic manufacture. Provided, however, that should valid justification be presented, the Department of Finance and Administration or the board of a governing authority may approve a request for specific equipment necessary to perform a specific job. Provided, further, that a registered profes-

sional engineer or architect may write specifications for a governing authority to require a specific item of equipment available only from limited sources or vendors when such specifications conform with the rules and regulations promulgated by an appropriate federal agency regulating such matters under the federal procurement laws. Further, such justification, when placed on the minutes of the board of a governing authority, may serve as authority for

that governing authority to write specifications to require a specific item of equipment needed to perform a specific job. In addition to these requirements, from and after July 1, 1990, vendors of relocatable classrooms and the specifications for the purchase of such relocatable classrooms published by local school boards shall meet all pertinent regulations of the State Board of Education, including prior approval of such bid by the State Department of Education. Nothing in this section shall prohibit any agency or governing authority from writing specifications to include life-cycle costing, total cost bids, extended warranties or guaranteed buy-back provisions, provided that such bid requirements shall be in compliance with regulations established by the Department of Audit.

- (d) Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and shipping charges shall be included. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.
- (e) Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of property covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8). Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain

with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10(13). However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten Thousand Dollars (\$10,000.00) by a single lease-purchase transaction. All equipment and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

- (f) When necessary to insure ready availability of commodities for public works and the timely completion of public projects, no more than two (2) alternate bids may be accepted by a governing authority for commodities. No purchases may be made through use of such alternate bids procedure unless the lowest and best bidder, for reasons beyond his control, cannot deliver the commodities contained in his bid. In that event, purchases of such commodities may be made from one (1) of the bidders whose bid was accepted as an alternate.
- (g) In the event a determination is made by an agency or governing authority after a construction contract is let that changes or modifications to the original contract are necessary or would better serve the purpose of the agency or the governing authority, such agency or governing authority may, in its discretion, order such changes pertaining to the construction that are necessary under the circumstances without the necessity of further public bids; provided that such change shall be made in a commercially reasonable manner and shall not be made to circumvent the public purchasing statutes.
- (h) In the event any agency or governing authority shall have advertised for bids for the purchase of gas, diesel fuel, oils and other petroleum products and coal and no acceptable bids can be obtained, such agency or governing authority is authorized and directed to enter into any negotiations necessary to secure the lowest and best contract available for the purchase of such commodities.
- (i) Any agency or governing authority authorized to enter into contracts for the construction, maintenance, surfacing or repair of highways, roads or streets, may include in its bid proposal and contract documents a price adjustment clause with relation to the cost to the contractor, including taxes, based upon an industry-wide cost index, of petroleum products including asphalt used in the performance or execution of the contract or in the production or manufacture of materials for use in such performance. Such industry-wide index shall be established and published monthly by the State Highway Department with a copy thereof to be mailed, upon request, to the clerks of the governing authority of each municipality and the clerks of each board of supervisors throughout the state. The price adjustment clause shall be based on the cost of such petroleum

products only and shall not include any additional profit or overhead as part of the adjustment. The bid proposals or document contract shall contain the basis and methods of adjusting unit prices for the change in the cost of such petroleum products.

- (j) If the executive head of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the provisions herein for competitive bidding shall not apply and the head of such agency shall be authorized to make the purchase or repair after obtaining verbal approval from the Department of Finance and Administration. Total purchases so made shall only be for the purpose of meeting needs created by the emergency situation. In the event such executive head is responsible to an agency board, at the meeting next following the emergency purchase, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the nature of the emergency shall be presented to the board and placed on the minutes of the board of such agency. The head of such agency shall, at the earliest possible date following such emergency purchase, file with the Department of Finance and Administration (i) a statement under oath certifying the conditions and circumstances of the emergency, and (ii) a certified copy of the appropriate minutes of the board of such agency, if applicable.
- (k) If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority.
- (l) The commissioners or board of trustees of any hospital owned or owned and operated separately or jointly by one or more counties, cities, towns, supervisors districts or election districts, or combinations thereof, may contract with such lowest and best bidder for the purchase or lease of any commodity under a contract of purchase or lease-purchase agreement whose obligatory terms do not exceed five (5) years. In addition to the authority granted herein, the commissioners or board of trustees are authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services.

products only and shall not include any additional profit or overhead as part of the adjustment. The bid proposals or document contract shall contain the basis and methods of adjusting unit prices for the change in the cost of such petroleum products.

- (j) If the executive head of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the provisions herein for competitive bidding shall not apply and the head of such agency shall be authorized to make the purchase or repair after obtaining verbal approval from the Department of Finance and Administration. Total purchases so made shall only be for the purpose of meeting needs created by the emergency situation. In the event such executive head is responsible to an agency board, at the meeting next following the emergency purchase, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the nature of the emergency shall be presented to the board and placed on the minutes of the board of such agency. The head of such agency shall, at the earliest possible date following such emergency purchase, file with the Department of Finance and Administration (i) a statement under oath certifying the conditions and circumstances of the emergency, and (ii) a certified copy of the appropriate minutes of the board of such agency, if applicable.
- (k) If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority.
- (l) The commissioners or board of trustees of any hospital owned or owned and operated separately or jointly by one or more counties, cities, towns, supervisors districts or election districts, or combinations thereof, may contract with such lowest and best bidder for the purchase or lease of any commodity under a contract of purchase or lease-purchase agreement whose obligatory terms do not exceed five (5) years. In addition to the authority granted herein, the commissioners or board of trustees are authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services.

Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee.

- (m) Excepted from bid requirements are:
- (i) Purchasing agreements, contracts and maximum price regulations executed or approved by the Department of Finance and Administration;
 - (ii) Repairs to equipment, when such repairs are made by repair facilities in the private sector; however, engines, transmissions, rear axles and/or other such components shall not be included in this exemption when replaced as a complete unit instead of being repaired and the need for such total component replacement is known before disassembly of the component; provided, however, that invoices identifying the equipment, specific repairs made, parts identified by number and name, supplies used in such repairs, and the number of hours of labor and costs therefor shall be required for the payment for such repairs;
 - (iii) Purchases of parts for repairs to equipment, when such repairs are made by personnel of the agency or governing authority; however, entire assemblies, such as engines or transmissions, shall not be included in this exemption when the entire assembly is being replaced instead of being repaired;
 - (iv) Raw unprocessed deposits of gravel or fill dirt which are to be removed and transported by the purchaser; provided, however, that the price thereof shall not exceed the lowest price to the general public, or the price listed with the Department of Finance and Administration, whichever is lower;
 - (v) Motor vehicles or other equipment purchased from an agency or governing authority at a public auction held for the purpose of disposing of such vehicles or other equipment;
 - (vi) Purchases by governing authorities of machinery, equipment or motor vehicles when such purchases are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi, or any state agency of another state adjacent to the State of Mississippi, provided that the price agreed upon does not exceed the price listed in the Nielsen/Data Quest publication, applicable to the equipment being purchased. Nothing in this section shall permit such purchases through public auction except as provided for in paragraph (v) of this section;
 - (vii) Perishable supplies or foods purchased for use in connection with hospitals, the school lunch programs, homemaking programs and for the feeding of county or municipal prisoners;
 - (viii) Noncompetitive items available from one (1) source only;
 - (ix) Construction of incinerators and other facilities for disposal of solid wastes in which products either generated therein, such as

steam, or recovered therefrom, such as materials for recycling, are to be sold or otherwise disposed of; provided, however, in constructing such facilities a governing authority or agency shall publicly issue requests for proposals, advertised for in the same manner as provided herein for seeking bids for public construction projects, concerning the design, construction, ownership, operation and/or maintenance of such facilities, wherein such requests for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, environmental compatibility, legal responsibilities and such other matters as are determined by the governing authority or agency to be appropriate for inclusion; and after responses to the request for proposals have been duly received, the governing authority or agency may select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals;

- (x) Supplies and equipment purchased by hospitals through group purchase programs pursuant to Section 31-7-38;
- (xi) Purchases of data processing equipment made by governing authorities under the provisions of purchase agreements, contracts or maximum price regulations executed or approved by the State Central Data Processing Authority;
- (xii) Energy efficiency services and equipment acquired by school districts, junior colleges, institutions of higher learning, and state agencies or other applicable governmental entities on a shared-savings, lease or lease-purchase basis pursuant to Section 31-7-14;
- (xiii) Purchases of contracts for fire insurance, automobile insurance, casualty insurance and liability insurance by governing authorities;
- (xiv) Purchases of coal and/or natural gas by municipally-owned electric power generating systems that have the capacity to use both coal and natural gas for the generation of electric power;
- (xv) Purchases by libraries or for libraries of books and periodicals; processed film, video cassette tapes, filmstrips and slides; recorded audio tapes, cassettes and diskettes; and any such items as would be used for teaching, research or other information distribution; however, equipment such as projectors, recorders, audio or video equipment, and monitor televisions are not exempt under this paragraph;
- (xvi) Purchases of unmarked vehicles when such purchases are made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to Section 31-7-9(2);
- (xvii) Sales, transfers or trades of any personal property between governing authorities within a county or any such transaction involving governing authorities of two (2) or more counties;
- (xviii) Purchases of ballots printed pursuant to Section 23-15-351;
- (xix) From and after July 1, 1990, contracts by Mississippi Authority

for Educational Television with any private educational institution or private nonprofit organization whose purposes are educational in regard to the construction, purchase, lease or lease-purchase of facilities and equipment and the employment of personnel for providing multi-channel interactive video systems (ITSF) in the school districts of this state;

- (xx) From and after January 1, 1991, purchases made by state agencies involving any item that is manufactured, processed, grown or produced from the state's prison industries;
- (xxi) Purchases of surveillance equipment or any other high-tech equipment to be used by narcotics agents in undercover operations, provided that any such purchase shall be in compliance with regulations established by the Department of Finance and Administration;
- (xxii) Purchases by community or junior colleges of textbooks which are obtained for the purpose of renting such books to students as part of a book service system.

In connection with the purchase of noncompetitive items only available from one (1) source, a certification of the conditions and circumstances requiring the purchase shall be filed by the agency with the Department of Finance and Administration and by the governing authority with the board of the governing authority. Upon receipt of such certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter. In such situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration.

- (n)(i) All contracts for the purchase of commodities and equipment may be let for periods of not more than twenty-four (24) months in advance, subject to applicable statutory provisions prohibiting the letting of contracts during specified periods near the end of terms of office.
- (ii) All purchases made by governing authorities, including purchases made pursuant to the provisions of subparagraph (i) of this paragraph (n), may be made upon one (1) purchase order issued per month to each individual vendor prior to delivery of such commodities provided that each individual delivery, load or shipment purchased is properly requisitioned and is properly received and receipted by signed ticket, receipt or invoice, indicating thereon the point of delivery, and provided that, with respect to counties, such commodities are properly accounted for by the receiving clerk or an assistant receiving clerk as provided by Section 31-7-109. Such purchase order shall be invalid on the first calendar day of the month immediately following the month in which it was issued. Purchases in such month immediately following may be made only if a purchase order is issued for such month. Each monthly purchase order shall be retained in the records of the governing authority. Agencies may make purchases as authorized under this subparagraph (ii) in accordance with

such regulations, policies and procedures as are promulgated by the Department of Finance and Administration.

- (o) No contract or purchase as herein authorized shall be made for the purpose of circumventing the provisions of this section requiring competitive bids, nor shall it be lawful for any person or concern to submit individual invoices for amounts within those authorized for a contract or purchase where the actual value of the contract or commodity purchased exceeds the authorized amount and the invoices therefor are split so as to appear to be authorized as purchases for which competitive bids are not required. Submission of such invoices shall constitute a misdemeanor punishable by a fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment for thirty (30) days in the county jail, or both such fine and imprisonment. In addition, the claim or claims submitted shall be forfeited.
- (p) When in response to a proper advertisement therefor, no bid firm as to price is submitted to an electric utility for power transformers, distribution transformers, power breakers, reclosers or other article containing a petroleum product, the electric utility may accept the lowest and best bid therefor although the price is not firm.
- (q) The prohibitions and restrictions set forth in Sections 19-11-27, 21-35-27 and 31-7-49 shall not apply to a contract, lease or lease-purchase agreement entered pursuant to the requirements of this chapter.
- (r) For the purposes of this section, the term "purchase" shall mean the total amount of money encumbered by a single purchase order.

(s) Any governing authority or agency which wants to acquire the services and products of a fuel management or fuel access system, shall prior to contracting for same enter into competitive negotiations with not fewer than two (2) sellers of fuel management or fuel access systems. In the event that the agency or governing authority cannot locate two (2) such service providers, it shall show proof that it made a good faith effort to locate and negotiate with two (2) such providers. Such proof shall include publications of a request for proposals, and letters soliciting negotiations. For purposes of this paragraph, a fuel management or fuel access system is an automated system of acquiring fuel for vehicles as well as management reports detailing fuel use by vehicles and drivers.

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

- (i) "Asian" means persons having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- (ii) "Black" means persons having origins in any black racial group of Africa.
- (iii) "Hispanic" means persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race.
- (iv) "Native American" means persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.
- (t) Nothing in this section shall be construed as authorizing any purchase not authorized by law.

Section 2. This act shall take effect and be in force from and after July 1, 1994.

PEER Staff

Director

John W. Turcotte
Janet Moore, Administrative
Assistant

Administrative Division

Steve Miller, General Counsel
and Controller

Betty Heggy
Ann Hutcherson
Mary McNeill

Planning and Support Division

Max Arinder, Chief
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Sam Dawkins
Patty Hassinger
Larry Landrum
Kathleen Sullivan
Linda Triplett
Ava Welborn

Operations Division

James Barber, Chief
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Ted Booth
Barbara Hamilton
Susan Harris
Wayne Hegwood
Kevin Humphreys
Kelly Lockhart
Helen McFall
Joyce McCants
Danny Miller
Katherine Stark
Larry Whiting
