

By: Young

To: Universities and
Colleges;
Appropriations

HOUSE BILL NO. 1475

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 EXEMPT FROM STATE BID REQUIREMENTS CONTRACTS FOR THE DESIGN AND
3 CONSTRUCTION OF A PUBLIC PROJECT ENTERED INTO WITH A SINGLE ENTITY
4 BY THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING;
5 TO AMEND SECTION 37-101-43, MISSISSIPPI CODE OF 1972, TO AUTHORIZE
6 THE BOARD OF TRUSTEES, IN ITS DISCRETION, TO EMPLOY AN ARCHITECT
7 FROM THE RECOMMENDATIONS OF A STATE INSTITUTION OF HIGHER LEARNING
8 FOR THE PREPARATION OF PLANS FOR HOUSING AND DORMITORY FACILITIES
9 FUNDED WITH PRIVATE FINANCING; TO CREATE NEW SECTION 37-101-44,
10 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD OF TRUSTEES TO
11 CONTRACT WITH A SINGLE ENTITY FOR THE DESIGN AND CONSTRUCTION OF
12 PUBLIC WORKS; TO BRING FORWARD SECTION 37-101-41, MISSISSIPPI CODE
13 OF 1972, WHICH AUTHORIZES THE BOARD OF TRUSTEES TO LEASE LAND AT
14 CERTAIN INSTITUTIONS FOR THE CONSTRUCTION OF HOUSING AND DORMITORY
15 FACILITIES BY PRIVATE FINANCING; AND FOR RELATED PURPOSES.

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

17 SECTION 1. Section 31-7-13, Mississippi Code of 1972, is
18 amended as follows:[LH1]

19 31-7-13. All agencies and governing authorities shall
20 purchase their commodities and printing; contract for fire
21 insurance, automobile insurance, casualty insurance (other than
22 workers' compensation) and liability insurance; contract for
23 garbage collection or disposal; contract for solid waste
24 collection or disposal; contract for sewage collection or
25 disposal; and contract for public construction as herein provided.

26 (a) **Bidding procedure for purchases not over \$1,500.00.**

27 Purchases which do not involve an expenditure of more than One
28 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or
29 shipping charges, may be made without advertising or otherwise
30 requesting competitive bids. Provided, however, that nothing
31 contained in this paragraph (a) shall be construed to prohibit any
32 agency or governing authority from establishing procedures which

33 require competitive bids on purchases of One Thousand Five Hundred
34 Dollars (\$1,500.00) or less.

35 (b) **Bidding procedure for purchases over \$1,500.00 but**
36 **not over \$10,000.00.** Purchases which involve an expenditure of
37 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
38 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
39 and shipping charges may be made from the lowest and best bidder
40 without publishing or posting advertisement for bids, provided at
41 least two (2) competitive written bids have been obtained. Any
42 governing authority purchasing commodities pursuant to this
43 paragraph (b) may authorize its purchasing agent, or his designee,
44 with regard to governing authorities other than counties, or its
45 purchase clerk, or his designee, with regard to counties, to
46 accept the lowest and best competitive written bid. Such
47 authorization shall be made in writing by the governing authority
48 and shall be maintained on file in the primary office of the
49 agency and recorded in the official minutes of the governing
50 authority, as appropriate. The purchasing agent or the purchase
51 clerk, or their designee, as the case may be, and not the
52 governing authority, shall be liable for any penalties and/or
53 damages as may be imposed by law for any act or omission of the
54 purchasing agent or purchase clerk, or their designee,
55 constituting a violation of law in accepting any bid without
56 approval by the governing authority. The term "competitive
57 written bid" shall mean a bid submitted on a bid form furnished by
58 the buying agency or governing authority and signed by authorized
59 personnel representing the vendor, or a bid submitted on a
60 vendor's letterhead or identifiable bid form and signed by
61 authorized personnel representing the vendor. Bids may be
62 submitted by facsimile, electronic mail or other generally
63 accepted method of information distribution. Bids submitted by
64 electronic transmission shall not require the signature of the
65 vendor's representative unless required by agencies or governing
66 authorities.

67 (c) **Bidding procedure for purchases over \$10,000.00.**
68 Purchases which involve an expenditure of more than Ten Thousand
69 Dollars (\$10,000.00), exclusive of freight and shipping charges

70 may be made from the lowest and best bidder after advertising for
71 competitive sealed bids once each week for two (2) consecutive
72 weeks in a regular newspaper published in the county or
73 municipality in which such agency or governing authority is
74 located. The date as published for the bid opening shall not be
75 less than seven (7) working days after the last published notice;
76 however, if the purchase involves a construction project in which
77 the estimated cost is in excess of Fifteen Thousand Dollars
78 (\$15,000.00), such bids shall not be opened in less than fifteen
79 (15) working days after the last notice is published and the
80 notice for the purchase of such construction shall be published
81 once each week for two (2) consecutive weeks. The notice of
82 intention to let contracts or purchase equipment shall state the
83 time and place at which bids shall be received, list the contracts
84 to be made or types of equipment or supplies to be purchased, and,
85 if all plans and/or specifications are not published, refer to the
86 plans and/or specifications on file. If all plans and/or
87 specifications are published in the notification, then the plans
88 and/or specifications may not be amended. If all plans and/or
89 specifications are not published in the notification, then
90 amendments to the plans/specifications, bid opening date, bid
91 opening time and place may be made, provided that the agency or
92 governing authority maintains a list of all prospective bidders
93 who are known to have received a copy of the bid documents and all
94 such prospective bidders are sent copies of all amendments. This
95 notification of amendments may be made via mail, facsimile,
96 electronic mail or other generally accepted method of information
97 distribution. In all cases involving governing authorities,
98 before the notice shall be published or posted, the plans or
99 specifications for the construction or equipment being sought
100 shall be filed with the clerk of the board of the governing
101 authority, and there remain. If there is no newspaper published
102 in the county or municipality, then such notice shall be given by

103 posting same at the courthouse, or for municipalities at the city
104 hall, and at two (2) other public places in the county or
105 municipality, and also by publication once each week for two (2)
106 consecutive weeks in some newspaper having a general circulation
107 in the county or municipality in the above provided manner. On
108 the same date that the notice is submitted to the newspaper for
109 publication, the agency or governing authority involved shall mail
110 written notice to the main office of the Mississippi Contract
111 Procurement Center that contains the same information as that in
112 the published notice. In addition to these requirements, agencies
113 shall maintain a vendor file and vendors of the equipment or
114 commodities being sought may be mailed solicitations and
115 specifications, and a bid file shall be established which shall
116 indicate those vendors to whom such solicitations and
117 specifications were mailed, and such file shall also contain such
118 information as is pertinent to the bid. Specifications pertinent
119 to such bidding shall be written so as not to exclude comparable
120 equipment of domestic manufacture. Provided, however, that should
121 valid justification be presented, the Department of Finance and
122 Administration or the board of a governing authority may approve a
123 request for specific equipment necessary to perform a specific
124 job. Provided further, that a registered professional engineer or
125 architect may write specifications for a governing authority to
126 require a specific item of equipment available only from limited
127 sources or vendors when such specifications conform with the rules
128 and regulations promulgated by an appropriate federal agency
129 regulating such matters under the federal procurement laws.
130 Further, such justification, when placed on the minutes of the
131 board of a governing authority, may serve as authority for that
132 governing authority to write specifications to require a specific
133 item of equipment needed to perform a specific job. In addition
134 to these requirements, from and after July 1, 1990, vendors of
135 relocatable classrooms and the specifications for the purchase of

136 such relocatable classrooms published by local school boards shall
137 meet all pertinent regulations of the State Board of Education,
138 including prior approval of such bid by the State Department of
139 Education. Nothing in this section shall prohibit any agency or
140 governing authority from writing specifications to include
141 life-cycle costing, total cost bids, extended warranties or
142 guaranteed buy-back provisions, provided that such bid
143 requirements shall be in compliance with regulations established
144 by the Department of Audit.

145 (d) **Lowest and best bid decision procedure.** (i)
146 Purchases may be made from the lowest and best bidder. In
147 determining the lowest and best bid, freight and shipping charges
148 shall be included. If any governing authority accepts a bid other
149 than the lowest bid actually submitted, it shall place on its
150 minutes detailed calculations and narrative summary showing that
151 the accepted bid was determined to be the lowest and best bid,
152 including the dollar amount of the accepted bid and the dollar
153 amount of the lowest bid. No agency or governing authority shall
154 accept a bid based on items not included in the specifications.

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

161 (iii) Whenever bids are solicited for a public
162 construction or renovation project and only one (1) bid is
163 received, the agency or the governing authority may accept such
164 bid if the bid is opened, it is within the funds allocated for the
165 project, it is responsive to the solicitation and the contractor
166 is capable of performing the contract in accordance with the
167 solicitation.

168 (iv) No addendum to bid specifications for such

169 projects may be issued by the agency or governing authority within
170 twelve (12) hours of the time established by the agency or
171 governing authority for the receipt of bids.

172 (e) **Lease-purchase authorization.** Any lease-purchase
173 of equipment which an agency is not required to lease-purchase
174 under the master lease-purchase program pursuant to Section
175 31-7-10 and any lease-purchase of equipment which a governing
176 authority elects to lease-purchase may be acquired by a
177 lease-purchase agreement under this paragraph (e). Lease-purchase
178 financing may also be obtained from the vendor or from a
179 third-party source after having solicited and obtained at least
180 two (2) written competitive bids, as defined in paragraph (b) of
181 this section, for such financing without advertising for such
182 bids. Solicitation for the bids for financing may occur before or
183 after acceptance of bids for the purchase of such equipment or,
184 where no such bids for purchase are required, at any time before
185 the purchase thereof. No such lease-purchase agreement shall be
186 for an annual rate of interest which is greater than the overall
187 maximum interest rate to maturity on general obligation
188 indebtedness permitted under Section 75-17-101, and the term of
189 such lease-purchase agreement shall not exceed the useful life of
190 property covered thereby as determined according to the upper
191 limit of the asset depreciation range (ADR) guidelines for the
192 Class Life Asset Depreciation Range System established by the
193 Internal Revenue Service pursuant to the United States Internal
194 Revenue Code and regulations thereunder as in effect on December
195 31, 1980, or comparable depreciation guidelines with respect to
196 any equipment not covered by ADR guidelines. Any lease-purchase
197 agreement entered into pursuant to this paragraph (e) may contain
198 any of the terms and conditions which a master lease-purchase
199 agreement may contain under the provisions of Section 31-7-10(5),
200 and shall contain an annual allocation dependency clause
201 substantially similar to that set forth in Section 31-7-10(8).

202 Each agency or governing authority entering into a lease-purchase
203 transaction pursuant to this paragraph (e) shall maintain with
204 respect to each such lease-purchase transaction the same
205 information as required to be maintained by the Department of
206 Finance and Administration pursuant to Section 31-7-10(13).
207 However, nothing contained in this section shall be construed to
208 permit agencies to acquire items of equipment with a total
209 acquisition cost in the aggregate of less than Ten Thousand
210 Dollars (\$10,000.00) by a single lease-purchase transaction. All
211 equipment, and the purchase thereof by any lessor, acquired by
212 lease-purchase under this paragraph and all lease-purchase
213 payments with respect thereto shall be exempt from all Mississippi
214 sales, use and ad valorem taxes. Interest paid on any
215 lease-purchase agreement under this section shall be exempt from
216 State of Mississippi income taxation.

217 (f) **Alternate bid authorization.** When necessary to
218 ensure ready availability of commodities for public works and the
219 timely completion of public projects, no more than two (2)
220 alternate bids may be accepted by a governing authority for
221 commodities. No purchases may be made through use of such
222 alternate bids procedure unless the lowest and best bidder, for
223 reasons beyond his control, cannot deliver the commodities
224 contained in his bid. In that event, purchases of such
225 commodities may be made from one (1) of the bidders whose bid was
226 accepted as an alternate.

227 (g) **Construction contract change authorization.** In the
228 event a determination is made by an agency or governing authority
229 after a construction contract is let that changes or modifications
230 to the original contract are necessary or would better serve the
231 purpose of the agency or the governing authority, such agency or
232 governing authority may, in its discretion, order such changes
233 pertaining to the construction that are necessary under the
234 circumstances without the necessity of further public bids;

235 provided that such change shall be made in a commercially
236 reasonable manner and shall not be made to circumvent the public
237 purchasing statutes. In addition to any other authorized person,
238 the architect or engineer hired by an agency or governing
239 authority with respect to any public construction contract shall
240 have the authority, when granted by an agency or governing
241 authority, to authorize changes or modifications to the original
242 contract without the necessity of prior approval of the agency or
243 governing authority when any such change or modification is less
244 than one percent (1%) of the total contract amount. The agency or
245 governing authority may limit the number, manner or frequency of
246 such emergency changes or modifications.

247 (h) **Petroleum purchase alternative.** In the event any
248 agency or governing authority shall have advertised for bids for
249 the purchase of gas, diesel fuel, oils and other petroleum
250 products and coal and no acceptable bids can be obtained, such
251 agency or governing authority is authorized and directed to enter
252 into any negotiations necessary to secure the lowest and best
253 contract available for the purchase of such commodities.

254 (i) **Road construction petroleum products price**
255 **adjustment clause authorization.** Any agency or governing
256 authority authorized to enter into contracts for the construction,
257 maintenance, surfacing or repair of highways, roads or streets,
258 may include in its bid proposal and contract documents a price
259 adjustment clause with relation to the cost to the contractor,
260 including taxes, based upon an industry-wide cost index, of
261 petroleum products including asphalt used in the performance or
262 execution of the contract or in the production or manufacture of
263 materials for use in such performance. Such industry-wide index
264 shall be established and published monthly by the State Department
265 of Transportation with a copy thereof to be mailed, upon request,
266 to the clerks of the governing authority of each municipality and
267 the clerks of each board of supervisors throughout the state. The

268 price adjustment clause shall be based on the cost of such
269 petroleum products only and shall not include any additional
270 profit or overhead as part of the adjustment. The bid proposals
271 or document contract shall contain the basis and methods of
272 adjusting unit prices for the change in the cost of such petroleum
273 products.

274 (j) **State agency emergency purchase procedure.** If the
275 executive head of any agency of the state shall determine that an
276 emergency exists in regard to the purchase of any commodities or
277 repair contracts, so that the delay incident to giving opportunity
278 for competitive bidding would be detrimental to the interests of
279 the state, then the provisions herein for competitive bidding
280 shall not apply and the head of such agency shall be authorized to
281 make the purchase or repair. Total purchases so made shall only
282 be for the purpose of meeting needs created by the emergency
283 situation. In the event such executive head is responsible to an
284 agency board, at the meeting next following the emergency
285 purchase, documentation of the purchase, including a description
286 of the commodity purchased, the purchase price thereof and the
287 nature of the emergency shall be presented to the board and placed
288 on the minutes of the board of such agency. The head of such
289 agency shall, at the earliest possible date following such
290 emergency purchase, file with the Department of Finance and
291 Administration (i) a statement under oath certifying the
292 conditions and circumstances of the emergency, and (ii) a
293 certified copy of the appropriate minutes of the board of such
294 agency, if applicable.

295 (k) **Governing authority emergency purchase procedure.**
296 If the governing authority, or the governing authority acting
297 through its designee, shall determine that an emergency exists in
298 regard to the purchase of any commodities or repair contracts, so
299 that the delay incident to giving opportunity for competitive
300 bidding would be detrimental to the interest of the governing

301 authority, then the provisions herein for competitive bidding
302 shall not apply and any officer or agent of such governing
303 authority having general or special authority therefor in making
304 such purchase or repair shall approve the bill presented therefor,
305 and he shall certify in writing thereon from whom such purchase
306 was made, or with whom such a repair contract was made. At the
307 board meeting next following the emergency purchase or repair
308 contract, documentation of the purchase or repair contract,
309 including a description of the commodity purchased, the price
310 thereof and the nature of the emergency shall be presented to the
311 board and shall be placed on the minutes of the board of such
312 governing authority.

313 (1) **Hospital purchase or lease authorization.** The
314 commissioners or board of trustees of any hospital owned or owned
315 and operated separately or jointly by one or more counties,
316 cities, towns, supervisors districts or election districts, or
317 combinations thereof, may contract with such lowest and best
318 bidder for the purchase or lease of any commodity under a contract
319 of purchase or lease-purchase agreement whose obligatory terms do
320 not exceed five (5) years. In addition to the authority granted
321 herein, the commissioners or board of trustees are authorized to
322 enter into contracts for the lease of equipment or services, or
323 both, which it considers necessary for the proper care of patients
324 if, in its opinion, it is not financially feasible to purchase the
325 necessary equipment or services. Any such contract for the lease
326 of equipment or services executed by the commissioners or board
327 shall not exceed a maximum of five (5) years' duration and shall
328 include a cancellation clause based on unavailability of funds.
329 If such cancellation clause is exercised, there shall be no
330 further liability on the part of the lessee.

331 (m) **Exceptions from bidding requirements.** Excepted
332 from bid requirements are:

333 (i) **Purchasing agreements approved by department.**

334 Purchasing agreements, contracts and maximum price regulations
335 executed or approved by the Department of Finance and
336 Administration.

337 (ii) **Outside equipment repairs.** Repairs to
338 equipment, when such repairs are made by repair facilities in the
339 private sector; however, engines, transmissions, rear axles and/or
340 other such components shall not be included in this exemption when
341 replaced as a complete unit instead of being repaired and the need
342 for such total component replacement is known before disassembly
343 of the component; provided, however, that invoices identifying the
344 equipment, specific repairs made, parts identified by number and
345 name, supplies used in such repairs, and the number of hours of
346 labor and costs therefor shall be required for the payment for
347 such repairs.

348 (iii) **In-house equipment repairs.** Purchases of
349 parts for repairs to equipment, when such repairs are made by
350 personnel of the agency or governing authority; however, entire
351 assemblies, such as engines or transmissions, shall not be
352 included in this exemption when the entire assembly is being
353 replaced instead of being repaired.

354 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
355 of gravel or fill dirt which are to be removed and transported by
356 the purchaser.

357 (v) **Governmental equipment auctions.** Motor
358 vehicles or other equipment purchased from a federal or state
359 agency or a governing authority at a public auction held for the
360 purpose of disposing of such vehicles or other equipment. Any
361 purchase by a governing authority under the exemption authorized
362 by this paragraph (v) shall require advance authorization spread
363 upon the minutes of the governing authority to include the listing
364 of the item or items authorized to be purchased and the maximum
365 bid authorized to be paid for each item or items.

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

367 Purchases, sales, transfers or trades by governing authorities or
368 state agencies when such purchases, sales, transfers or trades are
369 made by a private treaty agreement or through means of
370 negotiation, from any federal agency or authority, another
371 governing authority or state agency of the State of Mississippi,
372 or any state agency of another state. Nothing in this section
373 shall permit such purchases through public auction except as
374 provided for in paragraph (v) of this section. It is the intent
375 of this section to allow governmental entities to dispose of
376 and/or purchase commodities from other governmental entities at a
377 price that is agreed to by both parties. This shall allow for
378 purchases and/or sales at prices which may be determined to be
379 below the market value if the selling entity determines that the
380 sale at below market value is in the best interest of the
381 taxpayers of the state. Governing authorities shall place the
382 terms of the agreement and any justification on the minutes, and
383 state agencies shall obtain approval from the Department of
384 Finance and Administration, prior to releasing or taking
385 possession of the commodities.

386 (vii) **Perishable supplies or food.** Perishable
387 supplies or foods purchased for use in connection with hospitals,
388 the school lunch programs, homemaking programs and for the feeding
389 of county or municipal prisoners.

390 (viii) **Single source items.** Noncompetitive items
391 available from one (1) source only. In connection with the
392 purchase of noncompetitive items only available from one (1)
393 source, a certification of the conditions and circumstances
394 requiring the purchase shall be filed by the agency with the
395 Department of Finance and Administration and by the governing
396 authority with the board of the governing authority. Upon receipt
397 of that certification the Department of Finance and Administration
398 or the board of the governing authority, as the case may be, may,
399 in writing, authorize the purchase, which authority shall be noted

400 on the minutes of the body at the next regular meeting thereafter.

401 In those situations, a governing authority is not required to
402 obtain the approval of the Department of Finance and
403 Administration.

404 (ix) **Waste disposal facility construction**
405 **contracts.** Construction of incinerators and other facilities for
406 disposal of solid wastes in which products either generated
407 therein, such as steam, or recovered therefrom, such as materials
408 for recycling, are to be sold or otherwise disposed of; provided,
409 however, in constructing such facilities a governing authority or
410 agency shall publicly issue requests for proposals, advertised for
411 in the same manner as provided herein for seeking bids for public
412 construction projects, concerning the design, construction,
413 ownership, operation and/or maintenance of such facilities,
414 wherein such requests for proposals when issued shall contain
415 terms and conditions relating to price, financial responsibility,
416 technology, environmental compatibility, legal responsibilities
417 and such other matters as are determined by the governing
418 authority or agency to be appropriate for inclusion; and after
419 responses to the request for proposals have been duly received,
420 the governing authority or agency may select the most qualified
421 proposal or proposals on the basis of price, technology and other
422 relevant factors and from such proposals, but not limited to the
423 terms thereof, negotiate and enter contracts with one or more of
424 the persons or firms submitting proposals.

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

428 (xi) **Data processing equipment.** Purchases of data
429 processing equipment made by governing authorities under the
430 provisions of purchase agreements, contracts or maximum price
431 regulations executed or approved by the Mississippi Department of
432 Information Technology Services.

433 (xii) **Energy efficiency services and equipment.**

434 Energy efficiency services and equipment acquired by school
435 districts, junior colleges, institutions of higher learning and
436 state agencies or other applicable governmental entities on a
437 shared-savings, lease or lease-purchase basis pursuant to Section
438 31-7-14.

439 (xiii) **Insurance contracts.** Purchases of
440 contracts for fire insurance, automobile insurance, casualty
441 insurance, health insurance and liability insurance by governing
442 authorities or agencies.

443 (xiv) **Municipal electrical utility system fuel.**
444 Purchases of coal and/or natural gas by municipally-owned electric
445 power generating systems that have the capacity to use both coal
446 and natural gas for the generation of electric power.

447 (xv) **Library books and other reference materials.**
448 Purchases by libraries or for libraries of books and periodicals;
449 processed film, video cassette tapes, filmstrips and slides;
450 recorded audio tapes, cassettes and diskettes; and any such items
451 as would be used for teaching, research or other information
452 distribution; however, equipment such as projectors, recorders,
453 audio or video equipment, and monitor televisions are not exempt
454 under this paragraph.

455 (xvi) **Unmarked vehicles.** Purchases of unmarked
456 vehicles when such purchases are made in accordance with
457 purchasing regulations adopted by the Department of Finance and
458 Administration pursuant to Section 31-7-9(2).

459 (xvii) **Sales and transfers between governing**
460 **authorities.** Sales, transfers or trades of any personal property
461 between governing authorities within a county or any such
462 transaction involving governing authorities of two (2) or more
463 counties.

464 (xviii) **Election ballots.** Purchases of ballots
465 printed pursuant to Section 23-15-351.

466 (xix) **Educational television contracts.** From and
467 after July 1, 1990, contracts by Mississippi Authority for
468 Educational Television with any private educational institution or
469 private nonprofit organization whose purposes are educational in
470 regard to the construction, purchase, lease or lease-purchase of
471 facilities and equipment and the employment of personnel for
472 providing multichannel interactive video systems (ITSF) in the
473 school districts of this state.

474 (xx) **Prison industry products.** From and after
475 January 1, 1991, purchases made by state agencies involving any
476 item that is manufactured, processed, grown or produced from the
477 state's prison industries.

478 (xxi) **Undercover operations equipment.** Purchases
479 of surveillance equipment or any other high-tech equipment to be
480 used by narcotics agents in undercover operations, provided that
481 any such purchase shall be in compliance with regulations
482 established by the Department of Finance and Administration.

483 (xxii) **Junior college books for rent.** Purchases
484 by community or junior colleges of textbooks which are obtained
485 for the purpose of renting such books to students as part of a
486 book service system.

487 (xxiii) **School purchases from county/municipal**
488 **contracts.** Purchases of commodities made by school districts from
489 vendors with which any levying authority of the school district,
490 as defined in Section 37-57-1, has contracted through competitive
491 bidding procedures for purchases of the same commodities.

492 (xxiv) **Emergency purchases by retirement system.**
493 Emergency purchases made by the Public Employees' Retirement
494 System pursuant to Section 25-11-15(7).

495 (xxv) Repealed.

496 (xxvi) **Garbage, solid waste and sewage contracts.**
497 Contracts for garbage collection or disposal, contracts for solid
498 waste collection or disposal and contracts for sewage collection

499 or disposal.

500 (xxvii) **Municipal water tank maintenance**
501 **contracts.** Professional maintenance program contracts for the
502 repair or maintenance of municipal water tanks, which provide
503 professional services needed to maintain municipal water storage
504 tanks for a fixed annual fee for a duration of two (2) or more
505 years.

506 (xxviii) **Industries for the Blind products.**
507 Purchases made by state agencies involving any item that is
508 manufactured, processed or produced by the Mississippi Industries
509 for the Blind.

510 (xxix) **Purchases of state-adopted textbooks.**
511 Purchases of state-adopted textbooks by public school districts.

512 (xxx) **Procurement of design and construction**
513 **services from a single source.** The Board of Trustees of State
514 Institutions of Higher Learning may award public construction
515 contracts to a single entity for the design and construction of a
516 public work, provided that the entity or entities receiving the
517 contract or contracts, or those entities to which work or services
518 are subcontracted, are duly licensed and qualified in the state to
519 perform the contract or contracts.

520 (n) (i) **Term contract authorization.** All contracts
521 for the purchase of:

522 (A) Commodities, equipment and public
523 construction (including, but not limited to, repair and
524 maintenance), and

525 (B) Water lines, sewer lines, storm drains,
526 drainage ditches, asphalt milling, traffic striping, asphalt
527 overlay of streets, and curb and gutter (not to exceed One Hundred
528 Fifty Thousand Dollars (\$150,000.00) per project listed in this
529 item B) may be let for periods of not more than twenty-four (24)
530 months in advance, subject to applicable statutory provisions
531 prohibiting the letting of contracts during specified periods near

532 the end of terms of office.

533 (ii) All purchases made by governing authorities,
534 including purchases made pursuant to the provisions of
535 subparagraph (i) of this paragraph (n), may be made upon one (1)
536 purchase order issued per month to each individual vendor prior to
537 delivery of such commodities provided that each individual
538 delivery, load or shipment purchased is properly requisitioned and
539 is properly received and receipted by signed ticket, receipt or
540 invoice, indicating thereon the point of delivery, and provided
541 that, with respect to counties, such commodities are properly
542 accounted for by the receiving clerk or an assistant receiving
543 clerk as provided by Section 31-7-109. Such purchase order shall
544 be invalid on the first calendar day of the month immediately
545 following the month in which it was issued. Purchases in such
546 month immediately following may be made only if a purchase order
547 is issued for such month. Each monthly purchase order shall be
548 retained in the records of the governing authority. Agencies may
549 make purchases as authorized under this subparagraph (ii) in
550 accordance with such regulations, policies and procedures as are
551 promulgated by the Department of Finance and Administration.

552 (o) **Purchase law violation prohibition and vendor**
553 **penalty.** No contract or purchase as herein authorized shall be
554 made for the purpose of circumventing the provisions of this
555 section requiring competitive bids, nor shall it be lawful for any
556 person or concern to submit individual invoices for amounts within
557 those authorized for a contract or purchase where the actual value
558 of the contract or commodity purchased exceeds the authorized
559 amount and the invoices therefor are split so as to appear to be
560 authorized as purchases for which competitive bids are not
561 required. Submission of such invoices shall constitute a
562 misdemeanor punishable by a fine of not less than Five Hundred
563 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
564 or by imprisonment for thirty (30) days in the county jail, or

565 both such fine and imprisonment. In addition, the claim or claims
566 submitted shall be forfeited.

567 (p) **Electrical utility petroleum-based equipment**
568 **purchase procedure.** When in response to a proper advertisement
569 therefor, no bid firm as to price is submitted to an electric
570 utility for power transformers, distribution transformers, power
571 breakers, reclosers or other articles containing a petroleum
572 product, the electric utility may accept the lowest and best bid
573 therefor although the price is not firm.

574 (q) **Exception to county/municipal budget limitations.**
575 The prohibitions and restrictions set forth in Sections 19-11-27,
576 21-35-27 and 31-7-49 shall not apply to a contract, lease or
577 lease-purchase agreement entered pursuant to the requirements of
578 this chapter.

579 (r) **Definition of purchase.** For the purposes of this
580 section, the term "purchase" shall mean the total amount of money
581 encumbered by a single purchase order.

582 (s) **Fuel management system bidding procedure.** Any
583 governing authority or agency of the state shall, before
584 contracting for the services and products of a fuel management or
585 fuel access system, enter into negotiations with not fewer than
586 two (2) sellers of fuel management or fuel access systems for
587 competitive written bids to provide the services and products for
588 the systems. In the event that the governing authority or agency
589 cannot locate two (2) sellers of such systems or cannot obtain
590 bids from two (2) sellers of such systems, it shall show proof
591 that it made a diligent, good-faith effort to locate and negotiate
592 with two (2) sellers of such systems. Such proof shall include,
593 but not be limited to, publications of a request for proposals and
594 letters soliciting negotiations and bids. For purposes of this
595 paragraph (s), a fuel management or fuel access system is an
596 automated system of acquiring fuel for vehicles as well as
597 management reports detailing fuel use by vehicles and drivers, and

598 the term "competitive written bid" shall have the meaning as
599 defined in paragraph (b) of this section.

600 (t) **Solid waste contract proposal procedure.** Before
601 entering into any contract for garbage collection or disposal,
602 contract for solid waste collection or disposal or contract for
603 sewage collection or disposal, which involves an expenditure of
604 more than Fifty Thousand Dollars (\$50,000.00), a governing
605 authority or agency shall issue publicly a request for proposals
606 concerning the specifications for such services which shall be
607 advertised for in the same manner as provided in this section for
608 seeking bids for purchases which involve an expenditure of more
609 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
610 when issued shall contain terms and conditions relating to price,
611 financial responsibility, technology, legal responsibilities and
612 other relevant factors as are determined by the governing
613 authority or agency to be appropriate for inclusion; all factors
614 determined relevant by the governing authority or agency or
615 required by this paragraph (t) shall be duly included in the
616 advertisement to elicit proposals. After responses to the request
617 for proposals have been duly received, the governing authority or
618 agency shall select the most qualified proposal or proposals on
619 the basis of price, technology and other relevant factors and from
620 such proposals, but not limited to the terms thereof, negotiate
621 and enter contracts with one or more of the persons or firms
622 submitting proposals. If the governing authority or agency deems
623 none of the proposals to be qualified or otherwise acceptable, the
624 request for proposals process may be reinitiated. Notwithstanding
625 any other provisions of this paragraph, where a county with at
626 least thirty-five thousand (35,000) nor more than forty thousand
627 (40,000) population, according to the 1990 federal decennial
628 census, owns or operates a solid waste landfill, the governing
629 authorities of any other county or municipality may contract with
630 the governing authorities of the county owning or operating the

631 landfill, pursuant to a resolution duly adopted and spread upon
632 the minutes of each governing authority involved, for garbage or
633 solid waste collection or disposal services through contract
634 negotiations.

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

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

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

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

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

663 (v) **Construction punch list restriction.** The

664 architect, engineer or other representative designated by the
665 agency or governing authority that is contracting for public
666 construction or renovation may prepare and submit to the
667 contractor only one (1) preliminary punch list of items that do
668 not meet the contract requirements at the time of substantial
669 completion and one (1) final list immediately before final
670 completion and final payment.

671 (w) **Purchase authorization clarification.** Nothing in
672 this section shall be construed as authorizing any purchase not
673 authorized by law.

674 SECTION 2. Section 37-101-43, Mississippi Code of 1972, is
675 amended as follows:[LH2]

676 37-101-43. Prior to entering into or awarding any such lease
677 contract under the provisions of Section 37-101-41, the Board of
678 Trustees of State Institutions of Higher Learning, in its
679 discretion, may cause the interested state-supported institution
680 upon which a facility is proposed to be constructed to select and
681 submit three (3) architects to the board. Thereupon, the board
682 may approve and employ an architect, who shall be paid by the
683 interested institution from any funds available to the interested
684 institution. The architect, under the direction of the interested
685 institution, shall prepare complete plans and specifications for
686 the facility desired to be constructed on the leased property.

687 Upon completion of the plans and specifications and the
688 approval thereof by the board, and before entering into any lease
689 contract, the board shall cause to be published once a week for at
690 least three (3) consecutive weeks and not less than twenty-one
691 (21) days in at least one (1) newspaper having a general
692 circulation in the county in which the interested institution is
693 located and in one (1) newspaper with a general statewide
694 circulation, a notice inviting bids or proposals for the leasing,
695 construction and leasing back of the land and constructed
696 facility, which facility must be constructed in accordance with

697 the plans and specifications. The notice shall distinctly state
698 the thing to be done, and invite sealed proposals, to be filed
699 with the board, to do the thing to be done. The notice shall
700 contain the following specific provisions, together with such
701 others as the board, in its discretion, deems appropriate, to wit:
702 bids shall be accompanied by a bid security evidenced by a
703 certified or cashier's check or bid-bond payable to the board in a
704 sum of not less than five percent (5%) of the gross construction
705 cost of the facility to be constructed, as estimated by the board,
706 and the bids shall contain proof satisfactory to the board of
707 interim and permanent financing. The board shall state in the
708 notice when construction shall commence. The bid shall contain
709 the proposed contractor's certificate of responsibility number and
710 bidder's license. In all cases, before the notice shall be
711 published, the plans and specifications shall be filed with the
712 board and also in the office of the president of the interested
713 institution, there to remain.

714 The board shall award the lease contract to the lowest and
715 best bidder, who will comply with the terms imposed by the
716 contract documents. At the time of the awarding of the lease
717 contract, the successful bidder shall enter into bond with
718 sufficient sureties, to be approved by the board, in such penalty
719 as may be fixed by the board, but in no case to be less than the
720 estimated gross construction cost of the facility to be
721 constructed as estimated by the board, conditioned for the prompt,
722 proper and efficient performance of the contract. The bond shall
723 be made by an authorized corporate surety bonding company.
724 The * * * bid security herein provided for shall be forfeited if
725 the successful bidder fails to enter into lease contract and
726 commence construction within the time limitation set forth in the
727 notice. At such time, and simultaneously with the signing of the
728 contract, the successful bidder shall deposit a sum of money, in
729 cash or certified or cashier's check, not less than the bid

730 security previously deposited as bid security to reimburse the
731 interested institution for all sums expended by it for
732 architectural services and other expenditures of the board and
733 interested institution connected with the bidden lease contract,
734 of which such other anticipated expenditures notice is to be given
735 to bidder in the notice. The bid security posted by an
736 unsuccessful bidder shall be refunded to him.

737 SECTION 3. The following shall be codified as Section
738 37-101-44, Mississippi Code of 1972:

739 37-101-44. (1) In lieu of exercising the authority set
740 forth in Section 37-101-43 and before entering into or awarding
741 any lease under Section 37-101-41, the Board of Trustees of State
742 Institutions of Higher Learning may award public construction
743 contracts to a single entity for the design and construction of a
744 public work, provided that the entity or entities receiving the
745 contract or contracts, or those entities to which work or services
746 are subcontracted, are duly licensed and qualified in the state to
747 perform the contract or contracts.

748 (2) All facilities that are governed by this section shall
749 be designed and constructed in accordance with the Southern
750 Building Code Standards in force at the time of contracting. In
751 addition, all private contractors or private entities contracting
752 or performing pursuant to this section shall comply at all times
753 with all federal and state constitutional standards, federal,
754 state and local laws, and all court orders.

755 (3) (a) A public official or employee of a state agency who
756 has duties or responsibilities related to the contracting,
757 constructing, leasing, acquiring or operating of a facility under
758 this section may not become an employee, consultant or contract
759 vendor to a private entity providing such facility or services to
760 the state for a period of one (1) year after the date of
761 termination of his service or employment.

762 (b) Any person violating this subsection shall be

763 guilty of a misdemeanor and punished by a fine of not less than
764 Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars
765 (\$1,000.00).

766 SECTION 4. Section 37-101-41, Mississippi Code of 1972, is
767 brought forward as follows:[LH3]

768 37-101-41. The Board of Trustees of State Institutions of
769 Higher Learning is hereby authorized and empowered to lease to
770 private individuals or corporations, for a term not exceeding
771 thirty-one (31) years, any land at any of the following
772 state-supported institutions: Mississippi State University of
773 Agriculture and Applied Science, Jackson State University,
774 Mississippi Valley State University, Alcorn State University,
775 University of Southern Mississippi, Mississippi University for
776 Women and Delta State University, for the purpose of erecting
777 housing and dormitory facilities thereon for active faculty and
778 students. Said housing facilities shall be constructed thereon by
779 private financing, and shall be leased back to said board for use
780 by the concerned state-supported institution of higher learning.
781 The lease shall contain a provision permitting said board to
782 purchase the building located thereon for the sum of One Dollar
783 (\$1.00) after payment by said board of all sums of money due under
784 said lease.

785 SECTION 5. This act shall take effect and be in force from
786 and after July 1, 2000.