

By: Burton

To: Universities and  
Colleges; Finance

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 3177

1 AN ACT TO CODIFY SECTION 37-101-44, MISSISSIPPI CODE OF 1972,  
2 AND TO AMEND SECTIONS 37-101-41, 37-101-43 AND 31-7-13,  
3 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD OF TRUSTEES OF  
4 STATE INSTITUTIONS OF HIGHER LEARNING TO AWARD PUBLIC CONSTRUCTION  
5 CONTRACTS TO A SINGLE ENTITY FOR THE DESIGN AND FOR THE  
6 CONSTRUCTION OF PUBLIC WORK ON CAMPUS; AND FOR RELATED PURPOSES.

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

8 SECTION 1. The following shall be codified as Section  
9 37-101-44, Mississippi Code of 1972:

10 37-101-44. (1) In lieu of Section 37-101-43 and prior to  
11 entering into or awarding any such lease under the provisions of  
12 Section 37-101-41, the Board of Trustees of State Institutions of  
13 Higher Learning may award public constructions contracts to a  
14 single entity for the design and for the construction of public  
15 work, provided that the entity or entities receiving the contract  
16 or contracts or those entities to which work or services are  
17 subcontracted, are duly licensed, and are qualified in the state  
18 to perform the contract or contracts.

19 (2) All facilities that are governed by this chapter shall  
20 be designed and constructed in accordance with the Southern  
21 Building Code Standards in force at the time of contracting. In  
22 addition, all private contracts or private entities contracting or  
23 performing pursuant to this chapter shall at all times comply with  
24 al federal and state constitutional standards, federal, state and  
25 local laws, and all court orders.

26 (3) (a) No public official or an employee of a state agency  
27 who has duties or responsibilities related to the contracting,  
28 constructing, leasing, acquiring or operating said facility may

become an employee, consultant or contract vendor to a private entity providing such facility or services to the state within one (1) year after the termination of his service or employment.

(b) Any person violating this section shall be guilty of a misdemeanor and punished by a fine of not less than Five Hundred Dollars (\$500.00) but not more than One Thousand Dollars (\$1,000.00).

SECTION 2. Section 37-101-41, Mississippi Code of 1972, is amended as follows:[CRG1]

37-101-41. The board of trustees of state institutions of higher learning is hereby authorized and empowered to lease to private individuals or corporations, for a term not exceeding thirty-one (31) years, any land at any of the following state-supported institutions: Mississippi State University of Agriculture and Applied Science, Jackson State University, Mississippi Valley State University, Alcorn State University, University of Southern Mississippi, Mississippi University for Women and Delta State University, for the purpose of erecting housing and dormitory facilities thereon for active faculty and students. Said housing facilities may be constructed thereon by private financing, and may be leased back to said board for use by the concerned state-supported institution of higher learning. The lease shall contain a provision permitting said board to purchase the building located thereon for the sum of one dollar (\$1.00) after payment by said board of all sums of money due under said lease.

SECTION 3. Section 37-101-43, Mississippi Code of 1972, is amended as follows:[RDD2]

37-101-43. Prior to entering into or awarding any such lease contract under the provisions of Section 37-101-41, the Board of Trustees of State Institutions of Higher Learning may cause the interested state-supported institution upon which a facility is proposed to be constructed to select and submit three architects to the board. Thereupon, the board may approve and employ an architect, who shall be paid by said interested institution from any funds available to said interested institution. Said architect, under the direction of said interested institution,

66 shall prepare complete plans and specifications for the facility  
67 desired to be constructed on the leased property.

68       Upon completion of said plans and specifications and the  
69 approval thereof by said board, and before entering into any lease  
70 contract, said board shall cause to be published once a week for  
71 at least three consecutive weeks and not less than twenty-one (21)  
72 days in at least one (1) newspaper having a general circulation in  
73 the county in which the interested institution is located and in  
74 one (1) newspaper with a general statewide circulation, a notice  
75 inviting bids or proposals for the leasing, construction and  
76 leasing back of said land and constructed facility, said facility  
77 to be constructed in accordance with said plans and  
78 specifications. Said notice shall distinctly state the thing to  
79 be done, and invite sealed proposals, to be filed with said board,  
80 to do the thing to be done. Said notice shall contain the  
81 following specific provisions, together with such others as said  
82 board in its discretion deems appropriate, to wit: bids shall be  
83 accompanied by a bid security evidenced by a certified or  
84 cashier's check or bid-bond payable to said board in a sum of not  
85 less than five percent (5%) of the gross construction cost of the  
86 facility to be constructed as estimated by said board and the bids  
87 shall contain proof satisfactory to the board of interim and  
88 permanent financing. The board shall state in the notice when  
89 construction shall commence. The bid shall contain the proposed  
90 contractor's certificate of responsibility number and bidder's  
91 license. In all cases, before the notice shall be published, the  
92 plans and specifications shall be filed with said board and also  
93 in the office of the president of the interested institution,  
94 there to remain.

95       The board shall award the lease contract to the lowest and  
96 best bidder, who will comply with the terms imposed by said  
97 contract documents. At the time of the awarding of the lease  
98 contract the successful bidder shall enter into bond with

sufficient sureties, to be approved by the board, in such penalty as may be fixed by the board, but in no case to be less than the estimated gross construction cost of the facility to be constructed as estimated by said board, conditioned for the prompt, proper and efficient performance of the contract. The bond shall be made by an authorized corporate surety bonding company. The said bid security herein provided for shall be forfeited if the successful bidder fails to enter into lease contract and commence construction within the time limitation set forth in the notice. At such time, and simultaneously with the signing of said contract, the successful bidder shall deposit a sum of money, in cash or certified or cashier's check, not less than the bid security previously deposited as bid security to reimburse the interested institution for all sums expended by it for architectural services and other expenditures of the board and interested institution connected with the bidden lease contract, of which such other anticipated expenditures notice is to be given to bidder in said notice. The bid security posted by an unsuccessful bidder shall be refunded to him.

SECTION 4. Section 31-7-13, Mississippi Code of 1972, is amended as follows:[RDD3]

31-7-13. 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; contract for garbage collection or disposal; contract for solid waste collection or disposal; contract for sewage collection or disposal; and contract for public construction as herein provided.

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

Purchases which do not involve an expenditure of more than One Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. Provided, however, that nothing

contained in this paragraph (a) shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive bids on purchases of One Thousand Five Hundred Dollars (\$1,500.00) or less.

(b) **Bidding procedure for purchases over \$1,500.00 but not over \$10,000.00.** Purchases which involve an expenditure of more than One Thousand Five Hundred Dollars (\$1,500.00) but not more than Ten Thousand Dollars (\$10,000.00), 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, or his designee, with regard to governing authorities other than counties, or its purchase clerk, or his designee, 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, or their designee, 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, or their designee, 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. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by

165 electronic transmission shall not require the signature of the  
166 vendor's representative unless required by agencies or governing  
167 authorities.

168 (c) **Bidding procedure for purchases over \$10,000.00.**

169 Purchases which involve an expenditure of more than Ten Thousand  
170 Dollars (\$10,000.00), exclusive of freight and shipping charges  
171 may be made from the lowest and best bidder after advertising for  
172 competitive sealed bids once each week for two (2) consecutive  
173 weeks in a regular newspaper published in the county or  
174 municipality in which such agency or governing authority is  
175 located. The date as published for the bid opening shall not be  
176 less than seven (7) working days after the last published notice;  
177 however, if the purchase involves a construction project in which  
178 the estimated cost is in excess of Fifteen Thousand Dollars  
179 (\$15,000.00), such bids shall not be opened in less than fifteen  
180 (15) working days after the last notice is published and the  
181 notice for the purchase of such construction shall be published  
182 once each week for two (2) consecutive weeks. The notice of  
183 intention to let contracts or purchase equipment shall state the  
184 time and place at which bids shall be received, list the contracts  
185 to be made or types of equipment or supplies to be purchased, and,  
186 if all plans and/or specifications are not published, refer to the  
187 plans and/or specifications on file. If all plans and/or  
188 specifications are published in the notification, then the plans  
189 and/or specifications may not be amended. If all plans and/or  
190 specifications are not published in the notification, then  
191 amendments to the plans/specifications, bid opening date, bid  
192 opening time and place may be made, provided that the agency or  
193 governing authority maintains a list of all prospective bidders  
194 who are known to have received a copy of the bid documents and all  
195 such prospective bidders are sent copies of all amendments. This  
196 notification of amendments may be made via mail, facsimile,  
197 electronic mail or other generally accepted method of information

198 distribution. In all cases involving governing authorities,  
199 before the notice shall be published or posted, the plans or  
200 specifications for the construction or equipment being sought  
201 shall be filed with the clerk of the board of the governing  
202 authority, and there remain. If there is no newspaper published  
203 in the county or municipality, then such notice shall be given by  
204 posting same at the courthouse, or for municipalities at the city  
205 hall, and at two (2) other public places in the county or  
206 municipality, and also by publication once each week for two (2)  
207 consecutive weeks in some newspaper having a general circulation  
208 in the county or municipality in the above provided manner. On  
209 the same date that the notice is submitted to the newspaper for  
210 publication, the agency or governing authority involved shall mail  
211 written notice to the main office of the Mississippi Contract  
212 Procurement Center that contains the same information as that in  
213 the published notice. In addition to these requirements, agencies  
214 shall maintain a vendor file and vendors of the equipment or  
215 commodities being sought may be mailed solicitations and  
216 specifications, and a bid file shall be established which shall  
217 indicate those vendors to whom such solicitations and  
218 specifications were mailed, and such file shall also contain such  
219 information as is pertinent to the bid. Specifications pertinent  
220 to such bidding shall be written so as not to exclude comparable  
221 equipment of domestic manufacture. Provided, however, that should  
222 valid justification be presented, the Department of Finance and  
223 Administration or the board of a governing authority may approve a  
224 request for specific equipment necessary to perform a specific  
225 job. Provided further, that a registered professional engineer or  
226 architect may write specifications for a governing authority to  
227 require a specific item of equipment available only from limited  
228 sources or vendors when such specifications conform with the rules  
229 and regulations promulgated by an appropriate federal agency  
230 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) **Lowest and best bid decision procedure.** (i)

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.

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

(iii) Whenever bids are solicited for a public construction or renovation project and only one (1) bid is



received, the agency or the governing authority may accept such bid if the bid is opened, it is within the funds allocated for the project, it is responsive to the solicitation and the contractor is capable of performing the contract in accordance with the solicitation.

(iv) No addendum to bid specifications for such projects may be issued by the agency or governing authority within twelve (12) hours of the time established by the agency or governing authority for the receipt of bids.

(e) **Lease-purchase authorization.** 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) **Alternate bid authorization.** When necessary to ensure 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) **Construction contract change authorization.** 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. In addition to any other authorized person, the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original contract without the necessity of prior approval of the agency or governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

(h) **Petroleum purchase alternative.** 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) **Road construction petroleum products price adjustment clause authorization.** 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 Department of Transportation 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) **State agency emergency purchase procedure.** 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. 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) **Governing authority emergency purchase procedure.**

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) **Hospital purchase or lease authorization.** 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) **Exceptions from bidding requirements.** Excepted  
from bid requirements are:

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

(ii) **Outside equipment repairs.** 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) **In-house equipment repairs.** 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 gravel or dirt.** Raw unprocessed deposits  
of gravel or fill dirt which are to be removed and transported by  
the purchaser.

(v) **Governmental equipment auctions.** Motor  
vehicles or other equipment purchased from a federal or state  
agency or a governing authority at a public auction held for the  
purpose of disposing of such vehicles or other equipment. Any

purchase by a governing authority under the exemption authorized by this paragraph (v) shall require advance authorization spread upon the minutes of the governing authority to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

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

Purchases, sales, transfers or trades by governing authorities or state agencies when such purchases, sales, transfers or trades 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. Nothing in this section shall permit such purchases through public auction except as provided for in paragraph (v) of this section. It is the intent of this section to allow governmental entities to dispose of and/or purchase commodities from other governmental entities at a price that is agreed to by both parties. This shall allow for purchases and/or sales at prices which may be determined to be below the market value if the selling entity determines that the sale at below market value is in the best interest of the taxpayers of the state. Governing authorities shall place the terms of the agreement and any justification on the minutes, and state agencies shall obtain approval from the Department of Finance and Administration, prior to releasing or taking possession of the commodities.

(vii) **Perishable supplies or food.** 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) **Single source items.** Noncompetitive items

available from one (1) source only. 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 that 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 those situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration.

(ix) **Waste disposal facility construction contracts.** 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) **Hospital group purchase contracts.** Supplies, commodities and equipment purchased by hospitals through group



purchase programs pursuant to Section 31-7-38.

(xi) **Data processing equipment.** 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 Mississippi Department of Information Technology Services.

(xii) **Energy efficiency services and equipment.** 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) **Insurance contracts.** Purchases of contracts for fire insurance, automobile insurance, casualty insurance, health insurance and liability insurance by governing authorities or agencies.

(xiv) **Municipal electrical utility system fuel.** 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) **Library books and other reference materials.** 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) **Unmarked vehicles.** 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 and transfers between governing**

**authorities.** 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) **Election ballots.** Purchases of ballots printed pursuant to Section 23-15-351.

(xix) **Educational television contracts.** 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 multichannel interactive video systems (ITSF) in the school districts of this state.

(xx) **Prison industry products.** 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) **Undercover operations equipment.** 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) **Junior college books for rent.** 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.

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

(xxiv) **Emergency purchases by retirement system.**

594 Emergency purchases made by the Public Employees' Retirement  
595 System pursuant to Section 25-11-15(7).

596 (xxv) Repealed.

597 (xxvi) **Garbage, solid waste and sewage contracts.**

598 Contracts for garbage collection or disposal, contracts for solid  
599 waste collection or disposal and contracts for sewage collection  
600 or disposal.

601 (xxvii) **Municipal water tank maintenance**

602 **contracts.** Professional maintenance program contracts for the  
603 repair or maintenance of municipal water tanks, which provide  
604 professional services needed to maintain municipal water storage  
605 tanks for a fixed annual fee for a duration of two (2) or more  
606 years.

607 (xxviii) **Industries for the Blind products.**

608 Purchases made by state agencies involving any item that is  
609 manufactured, processed or produced by the Mississippi Industries  
610 for the Blind.

611 (xxix) **Purchases of state-adopted textbooks.**

612 Purchases of state-adopted textbooks by public school districts.

613 (xxx) **Procurement of design and construction**

614 **services by universities from a single source.** The Board of  
615 Trustees of State Institutions of Higher Learning may be permitted  
616 to award public construction contracts to a single entity for the  
617 design and for the construction of the public work, provided that  
618 the entity or entities receiving the contract or contracts or  
619 those entities to which work or services are subcontracted, are  
620 duly licensed, and are qualified in the state to perform the  
621 contract or contracts.

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

624 (A) Commodities, equipment and public  
625 construction (including, but not limited to, repair and  
626 maintenance), and

(B) Water lines, sewer lines, storm drains, drainage ditches, asphalt milling, traffic striping, asphalt overlay of streets, and curb and gutter (not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00) per project listed in this item B) 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) **Purchase law violation prohibition and vendor penalty.** 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

660 of the contract or commodity purchased exceeds the authorized  
661 amount and the invoices therefor are split so as to appear to be  
662 authorized as purchases for which competitive bids are not  
663 required. Submission of such invoices shall constitute a  
664 misdemeanor punishable by a fine of not less than Five Hundred  
665 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
666 or by imprisonment for thirty (30) days in the county jail, or  
667 both such fine and imprisonment. In addition, the claim or claims  
668 submitted shall be forfeited.

669           (p) **Electrical utility petroleum-based equipment**  
670 **purchase procedure.** When in response to a proper advertisement  
671 therefor, no bid firm as to price is submitted to an electric  
672 utility for power transformers, distribution transformers, power  
673 breakers, reclosers or other articles containing a petroleum  
674 product, the electric utility may accept the lowest and best bid  
675 therefor although the price is not firm.

676           (q) **Exception to county/municipal budget limitations.**  
677 The prohibitions and restrictions set forth in Sections 19-11-27,  
678 21-35-27 and 31-7-49 shall not apply to a contract, lease or  
679 lease-purchase agreement entered pursuant to the requirements of  
680 this chapter.

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

684           (s) **Fuel management system bidding procedure.** Any  
685 governing authority or agency of the state shall, before  
686 contracting for the services and products of a fuel management or  
687 fuel access system, enter into negotiations with not fewer than  
688 two (2) sellers of fuel management or fuel access systems for  
689 competitive written bids to provide the services and products for  
690 the systems. In the event that the governing authority or agency  
691 cannot locate two (2) sellers of such systems or cannot obtain  
692 bids from two (2) sellers of such systems, it shall show proof

that it made a diligent, good-faith effort to locate and negotiate with two (2) sellers of such systems. Such proof shall include, but not be limited to, publications of a request for proposals and letters soliciting negotiations and bids. For purposes of this paragraph (s), 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, and the term "competitive written bid" shall have the meaning as defined in paragraph (b) of this section.

(t) **Solid waste contract proposal procedure.** Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars (\$50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than Ten Thousand Dollars (\$10,000.00). Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (t) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall 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. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the

request for proposals process may be reinitiated. Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand (40,000) population, according to the 1990 federal decennial census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.

(u) **Minority set aside authorization.** 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.

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

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

765                   (v) **Construction punch list restriction.** The  
766 architect, engineer or other representative designated by the  
767 agency or governing authority that is contracting for public  
768 construction or renovation may prepare and submit to the  
769 contractor only one (1) preliminary punch list of items that do  
770 not meet the contract requirements at the time of substantial  
771 completion and one (1) final list immediately before final  
772 completion and final payment.

773                   (w) **Purchase authorization clarification.** Nothing in  
774 this section shall be construed as authorizing any purchase not  
775 authorized by law.

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