

By: Burton

To: Universities and
Colleges; Finance

SENATE BILL NO. 3177

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

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

32 (b) Any person violating this section shall be guilty
33 of a misdemeanor and punished by a fine of not less than Five
34 Hundred Dollars (\$500.00) but not more than One Thousand Dollars
35 (\$1,000.00).

36 SECTION 2. Section 37-101-43, Mississippi Code of 1972, is
37 amended as follows:[RDD1]

38 37-101-43. Prior to entering into or awarding any such lease
39 contract under the provisions of Section 37-101-41, the Board of
40 Trustees of State Institutions of Higher Learning may cause the
41 interested state-supported institution upon which a facility is
42 proposed to be constructed to select and submit three architects
43 to the board. Thereupon, the board may approve and employ an
44 architect, who shall be paid by said interested institution from
45 any funds available to said interested institution. Said
46 architect, under the direction of said interested institution,
47 shall prepare complete plans and specifications for the facility
48 desired to be constructed on the leased property.

49 Upon completion of said plans and specifications and the
50 approval thereof by said board, and before entering into any lease
51 contract, said board shall cause to be published once a week for
52 at least three consecutive weeks and not less than twenty-one (21)
53 days in at least one (1) newspaper having a general circulation in
54 the county in which the interested institution is located and in
55 one (1) newspaper with a general statewide circulation, a notice
56 inviting bids or proposals for the leasing, construction and
57 leasing back of said land and constructed facility, said facility
58 to be constructed in accordance with said plans and
59 specifications. Said notice shall distinctly state the thing to
60 be done, and invite sealed proposals, to be filed with said board,
61 to do the thing to be done. Said notice shall contain the
62 following specific provisions, together with such others as said
63 board in its discretion deems appropriate, to wit: bids shall be
64 accompanied by a bid security evidenced by a certified or
65 cashier's check or bid-bond payable to said board in a sum of not

66 less than five percent (5%) of the gross construction cost of the
67 facility to be constructed as estimated by said board and the bids
68 shall contain proof satisfactory to the board of interim and
69 permanent financing. The board shall state in the notice when
70 construction shall commence. The bid shall contain the proposed
71 contractor's certificate of responsibility number and bidder's
72 license. In all cases, before the notice shall be published, the
73 plans and specifications shall be filed with said board and also
74 in the office of the president of the interested institution,
75 there to remain.

76 The board shall award the lease contract to the lowest and
77 best bidder, who will comply with the terms imposed by said
78 contract documents. At the time of the awarding of the lease
79 contract the successful bidder shall enter into bond with
80 sufficient sureties, to be approved by the board, in such penalty
81 as may be fixed by the board, but in no case to be less than the
82 estimated gross construction cost of the facility to be
83 constructed as estimated by said board, conditioned for the
84 prompt, proper and efficient performance of the contract. The
85 bond shall be made by an authorized corporate surety bonding
86 company. The said bid security herein provided for shall be
87 forfeited if the successful bidder fails to enter into lease
88 contract and commence construction within the time limitation set
89 forth in the notice. At such time, and simultaneously with the
90 signing of said contract, the successful bidder shall deposit a
91 sum of money, in cash or certified or cashier's check, not less
92 than the bid security previously deposited as bid security to
93 reimburse the interested institution for all sums expended by it
94 for architectural services and other expenditures of the board and
95 interested institution connected with the bidden lease contract,
96 of which such other anticipated expenditures notice is to be given
97 to bidder in said notice. The bid security posted by an
98 unsuccessful bidder shall be refunded to him.

99 SECTION 3. Section 31-7-13, Mississippi Code of 1972, is
100 amended as follows:[RDD2]

101 31-7-13. All agencies and governing authorities shall
102 purchase their commodities and printing; contract for fire
103 insurance, automobile insurance, casualty insurance (other than
104 workers' compensation) and liability insurance; contract for
105 garbage collection or disposal; contract for solid waste
106 collection or disposal; contract for sewage collection or
107 disposal; and contract for public construction as herein provided.

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

109 Purchases which do not involve an expenditure of more than One
110 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or
111 shipping charges, may be made without advertising or otherwise
112 requesting competitive bids. Provided, however, that nothing
113 contained in this paragraph (a) shall be construed to prohibit any
114 agency or governing authority from establishing procedures which
115 require competitive bids on purchases of One Thousand Five Hundred
116 Dollars (\$1,500.00) or less.

117 (b) **Bidding procedure for purchases over \$1,500.00 but**
118 **not over \$10,000.00.** Purchases which involve an expenditure of
119 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
120 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
121 and shipping charges may be made from the lowest and best bidder
122 without publishing or posting advertisement for bids, provided at
123 least two (2) competitive written bids have been obtained. Any
124 governing authority purchasing commodities pursuant to this
125 paragraph (b) may authorize its purchasing agent, or his designee,
126 with regard to governing authorities other than counties, or its
127 purchase clerk, or his designee, with regard to counties, to
128 accept the lowest and best competitive written bid. Such
129 authorization shall be made in writing by the governing authority
130 and shall be maintained on file in the primary office of the
131 agency and recorded in the official minutes of the governing

132 authority, as appropriate. The purchasing agent or the purchase
133 clerk, or their designee, as the case may be, and not the
134 governing authority, shall be liable for any penalties and/or
135 damages as may be imposed by law for any act or omission of the
136 purchasing agent or purchase clerk, or their designee,
137 constituting a violation of law in accepting any bid without
138 approval by the governing authority. The term "competitive
139 written bid" shall mean a bid submitted on a bid form furnished by
140 the buying agency or governing authority and signed by authorized
141 personnel representing the vendor, or a bid submitted on a
142 vendor's letterhead or identifiable bid form and signed by
143 authorized personnel representing the vendor. Bids may be
144 submitted by facsimile, electronic mail or other generally
145 accepted method of information distribution. Bids submitted by
146 electronic transmission shall not require the signature of the
147 vendor's representative unless required by agencies or governing
148 authorities.

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

150 Purchases which involve an expenditure of more than Ten Thousand
151 Dollars (\$10,000.00), exclusive of freight and shipping charges
152 may be made from the lowest and best bidder after advertising for
153 competitive sealed bids once each week for two (2) consecutive
154 weeks in a regular newspaper published in the county or
155 municipality in which such agency or governing authority is
156 located. The date as published for the bid opening shall not be
157 less than seven (7) working days after the last published notice;
158 however, if the purchase involves a construction project in which
159 the estimated cost is in excess of Fifteen Thousand Dollars
160 (\$15,000.00), such bids shall not be opened in less than fifteen
161 (15) working days after the last notice is published and the
162 notice for the purchase of such construction shall be published
163 once each week for two (2) consecutive weeks. The notice of
164 intention to let contracts or purchase equipment shall state the

165 time and place at which bids shall be received, list the contracts
166 to be made or types of equipment or supplies to be purchased, and,
167 if all plans and/or specifications are not published, refer to the
168 plans and/or specifications on file. If all plans and/or
169 specifications are published in the notification, then the plans
170 and/or specifications may not be amended. If all plans and/or
171 specifications are not published in the notification, then
172 amendments to the plans/specifications, bid opening date, bid
173 opening time and place may be made, provided that the agency or
174 governing authority maintains a list of all prospective bidders
175 who are known to have received a copy of the bid documents and all
176 such prospective bidders are sent copies of all amendments. This
177 notification of amendments may be made via mail, facsimile,
178 electronic mail or other generally accepted method of information
179 distribution. In all cases involving governing authorities,
180 before the notice shall be published or posted, the plans or
181 specifications for the construction or equipment being sought
182 shall be filed with the clerk of the board of the governing
183 authority, and there remain. If there is no newspaper published
184 in the county or municipality, then such notice shall be given by
185 posting same at the courthouse, or for municipalities at the city
186 hall, and at two (2) other public places in the county or
187 municipality, and also by publication once each week for two (2)
188 consecutive weeks in some newspaper having a general circulation
189 in the county or municipality in the above provided manner. On
190 the same date that the notice is submitted to the newspaper for
191 publication, the agency or governing authority involved shall mail
192 written notice to the main office of the Mississippi Contract
193 Procurement Center that contains the same information as that in
194 the published notice. In addition to these requirements, agencies
195 shall maintain a vendor file and vendors of the equipment or
196 commodities being sought may be mailed solicitations and
197 specifications, and a bid file shall be established which shall

198 indicate those vendors to whom such solicitations and
199 specifications were mailed, and such file shall also contain such
200 information as is pertinent to the bid. Specifications pertinent
201 to such bidding shall be written so as not to exclude comparable
202 equipment of domestic manufacture. Provided, however, that should
203 valid justification be presented, the Department of Finance and
204 Administration or the board of a governing authority may approve a
205 request for specific equipment necessary to perform a specific
206 job. Provided further, that a registered professional engineer or
207 architect may write specifications for a governing authority to
208 require a specific item of equipment available only from limited
209 sources or vendors when such specifications conform with the rules
210 and regulations promulgated by an appropriate federal agency
211 regulating such matters under the federal procurement laws.
212 Further, such justification, when placed on the minutes of the
213 board of a governing authority, may serve as authority for that
214 governing authority to write specifications to require a specific
215 item of equipment needed to perform a specific job. In addition
216 to these requirements, from and after July 1, 1990, vendors of
217 relocatable classrooms and the specifications for the purchase of
218 such relocatable classrooms published by local school boards shall
219 meet all pertinent regulations of the State Board of Education,
220 including prior approval of such bid by the State Department of
221 Education. Nothing in this section shall prohibit any agency or
222 governing authority from writing specifications to include
223 life-cycle costing, total cost bids, extended warranties or
224 guaranteed buy-back provisions, provided that such bid
225 requirements shall be in compliance with regulations established
226 by the Department of Audit.

227 (d) **Lowest and best bid decision procedure.** (i)
228 Purchases may be made from the lowest and best bidder. In
229 determining the lowest and best bid, freight and shipping charges
230 shall be included. If any governing authority accepts a bid other

231 than the lowest bid actually submitted, it shall place on its
232 minutes detailed calculations and narrative summary showing that
233 the accepted bid was determined to be the lowest and best bid,
234 including the dollar amount of the accepted bid and the dollar
235 amount of the lowest bid. No agency or governing authority shall
236 accept a bid based on items not included in the specifications.

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

243 (iii) Whenever bids are solicited for a public
244 construction or renovation project and only one (1) bid is
245 received, the agency or the governing authority may accept such
246 bid if the bid is opened, it is within the funds allocated for the
247 project, it is responsive to the solicitation and the contractor
248 is capable of performing the contract in accordance with the
249 solicitation.

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

254 (e) **Lease-purchase authorization.** Any lease-purchase
255 of equipment which an agency is not required to lease-purchase
256 under the master lease-purchase program pursuant to Section
257 31-7-10 and any lease-purchase of equipment which a governing
258 authority elects to lease-purchase may be acquired by a
259 lease-purchase agreement under this paragraph (e). Lease-purchase
260 financing may also be obtained from the vendor or from a
261 third-party source after having solicited and obtained at least
262 two (2) written competitive bids, as defined in paragraph (b) of
263 this section, for such financing without advertising for such

264 bids. Solicitation for the bids for financing may occur before or
265 after acceptance of bids for the purchase of such equipment or,
266 where no such bids for purchase are required, at any time before
267 the purchase thereof. No such lease-purchase agreement shall be
268 for an annual rate of interest which is greater than the overall
269 maximum interest rate to maturity on general obligation
270 indebtedness permitted under Section 75-17-101, and the term of
271 such lease-purchase agreement shall not exceed the useful life of
272 property covered thereby as determined according to the upper
273 limit of the asset depreciation range (ADR) guidelines for the
274 Class Life Asset Depreciation Range System established by the
275 Internal Revenue Service pursuant to the United States Internal
276 Revenue Code and regulations thereunder as in effect on December
277 31, 1980, or comparable depreciation guidelines with respect to
278 any equipment not covered by ADR guidelines. Any lease-purchase
279 agreement entered into pursuant to this paragraph (e) may contain
280 any of the terms and conditions which a master lease-purchase
281 agreement may contain under the provisions of Section 31-7-10(5),
282 and shall contain an annual allocation dependency clause
283 substantially similar to that set forth in Section 31-7-10(8).
284 Each agency or governing authority entering into a lease-purchase
285 transaction pursuant to this paragraph (e) shall maintain with
286 respect to each such lease-purchase transaction the same
287 information as required to be maintained by the Department of
288 Finance and Administration pursuant to Section 31-7-10(13).
289 However, nothing contained in this section shall be construed to
290 permit agencies to acquire items of equipment with a total
291 acquisition cost in the aggregate of less than Ten Thousand
292 Dollars (\$10,000.00) by a single lease-purchase transaction. All
293 equipment, and the purchase thereof by any lessor, acquired by
294 lease-purchase under this paragraph and all lease-purchase
295 payments with respect thereto shall be exempt from all Mississippi
296 sales, use and ad valorem taxes. Interest paid on any

297 lease-purchase agreement under this section shall be exempt from
298 State of Mississippi income taxation.

299 (f) **Alternate bid authorization.** When necessary to
300 ensure ready availability of commodities for public works and the
301 timely completion of public projects, no more than two (2)
302 alternate bids may be accepted by a governing authority for
303 commodities. No purchases may be made through use of such
304 alternate bids procedure unless the lowest and best bidder, for
305 reasons beyond his control, cannot deliver the commodities
306 contained in his bid. In that event, purchases of such
307 commodities may be made from one (1) of the bidders whose bid was
308 accepted as an alternate.

309 (g) **Construction contract change authorization.** In the
310 event a determination is made by an agency or governing authority
311 after a construction contract is let that changes or modifications
312 to the original contract are necessary or would better serve the
313 purpose of the agency or the governing authority, such agency or
314 governing authority may, in its discretion, order such changes
315 pertaining to the construction that are necessary under the
316 circumstances without the necessity of further public bids;
317 provided that such change shall be made in a commercially
318 reasonable manner and shall not be made to circumvent the public
319 purchasing statutes. In addition to any other authorized person,
320 the architect or engineer hired by an agency or governing
321 authority with respect to any public construction contract shall
322 have the authority, when granted by an agency or governing
323 authority, to authorize changes or modifications to the original
324 contract without the necessity of prior approval of the agency or
325 governing authority when any such change or modification is less
326 than one percent (1%) of the total contract amount. The agency or
327 governing authority may limit the number, manner or frequency of
328 such emergency changes or modifications.

329 (h) **Petroleum purchase alternative.** In the event any

330 agency or governing authority shall have advertised for bids for
331 the purchase of gas, diesel fuel, oils and other petroleum
332 products and coal and no acceptable bids can be obtained, such
333 agency or governing authority is authorized and directed to enter
334 into any negotiations necessary to secure the lowest and best
335 contract available for the purchase of such commodities.

336 (i) **Road construction petroleum products price**
337 **adjustment clause authorization.** Any agency or governing
338 authority authorized to enter into contracts for the construction,
339 maintenance, surfacing or repair of highways, roads or streets,
340 may include in its bid proposal and contract documents a price
341 adjustment clause with relation to the cost to the contractor,
342 including taxes, based upon an industry-wide cost index, of
343 petroleum products including asphalt used in the performance or
344 execution of the contract or in the production or manufacture of
345 materials for use in such performance. Such industry-wide index
346 shall be established and published monthly by the State Department
347 of Transportation with a copy thereof to be mailed, upon request,
348 to the clerks of the governing authority of each municipality and
349 the clerks of each board of supervisors throughout the state. The
350 price adjustment clause shall be based on the cost of such
351 petroleum products only and shall not include any additional
352 profit or overhead as part of the adjustment. The bid proposals
353 or document contract shall contain the basis and methods of
354 adjusting unit prices for the change in the cost of such petroleum
355 products.

356 (j) **State agency emergency purchase procedure.** If the
357 executive head of any agency of the state shall determine that an
358 emergency exists in regard to the purchase of any commodities or
359 repair contracts, so that the delay incident to giving opportunity
360 for competitive bidding would be detrimental to the interests of
361 the state, then the provisions herein for competitive bidding
362 shall not apply and the head of such agency shall be authorized to

363 make the purchase or repair. Total purchases so made shall only
364 be for the purpose of meeting needs created by the emergency
365 situation. In the event such executive head is responsible to an
366 agency board, at the meeting next following the emergency
367 purchase, documentation of the purchase, including a description
368 of the commodity purchased, the purchase price thereof and the
369 nature of the emergency shall be presented to the board and placed
370 on the minutes of the board of such agency. The head of such
371 agency shall, at the earliest possible date following such
372 emergency purchase, file with the Department of Finance and
373 Administration (i) a statement under oath certifying the
374 conditions and circumstances of the emergency, and (ii) a
375 certified copy of the appropriate minutes of the board of such
376 agency, if applicable.

377 (k) **Governing authority emergency purchase procedure.**

378 If the governing authority, or the governing authority acting
379 through its designee, shall determine that an emergency exists in
380 regard to the purchase of any commodities or repair contracts, so
381 that the delay incident to giving opportunity for competitive
382 bidding would be detrimental to the interest of the governing
383 authority, then the provisions herein for competitive bidding
384 shall not apply and any officer or agent of such governing
385 authority having general or special authority therefor in making
386 such purchase or repair shall approve the bill presented therefor,
387 and he shall certify in writing thereon from whom such purchase
388 was made, or with whom such a repair contract was made. At the
389 board meeting next following the emergency purchase or repair
390 contract, documentation of the purchase or repair contract,
391 including a description of the commodity purchased, the price
392 thereof and the nature of the emergency shall be presented to the
393 board and shall be placed on the minutes of the board of such
394 governing authority.

395 (l) **Hospital purchase or lease authorization.** The

396 commissioners or board of trustees of any hospital owned or owned
397 and operated separately or jointly by one or more counties,
398 cities, towns, supervisors districts or election districts, or
399 combinations thereof, may contract with such lowest and best
400 bidder for the purchase or lease of any commodity under a contract
401 of purchase or lease-purchase agreement whose obligatory terms do
402 not exceed five (5) years. In addition to the authority granted
403 herein, the commissioners or board of trustees are authorized to
404 enter into contracts for the lease of equipment or services, or
405 both, which it considers necessary for the proper care of patients
406 if, in its opinion, it is not financially feasible to purchase the
407 necessary equipment or services. Any such contract for the lease
408 of equipment or services executed by the commissioners or board
409 shall not exceed a maximum of five (5) years' duration and shall
410 include a cancellation clause based on unavailability of funds.
411 If such cancellation clause is exercised, there shall be no
412 further liability on the part of the lessee.

413 (m) **Exceptions from bidding requirements.** Excepted
414 from bid requirements are:

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

416 Purchasing agreements, contracts and maximum price regulations
417 executed or approved by the Department of Finance and
418 Administration.

419 (ii) **Outside equipment repairs.** Repairs to
420 equipment, when such repairs are made by repair facilities in the
421 private sector; however, engines, transmissions, rear axles and/or
422 other such components shall not be included in this exemption when
423 replaced as a complete unit instead of being repaired and the need
424 for such total component replacement is known before disassembly
425 of the component; provided, however, that invoices identifying the
426 equipment, specific repairs made, parts identified by number and
427 name, supplies used in such repairs, and the number of hours of
428 labor and costs therefor shall be required for the payment for

429 such repairs.

430 (iii) **In-house equipment repairs.** Purchases of
431 parts for repairs to equipment, when such repairs are made by
432 personnel of the agency or governing authority; however, entire
433 assemblies, such as engines or transmissions, shall not be
434 included in this exemption when the entire assembly is being
435 replaced instead of being repaired.

436 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
437 of gravel or fill dirt which are to be removed and transported by
438 the purchaser.

439 (v) **Governmental equipment auctions.** Motor
440 vehicles or other equipment purchased from a federal or state
441 agency or a governing authority at a public auction held for the
442 purpose of disposing of such vehicles or other equipment. Any
443 purchase by a governing authority under the exemption authorized
444 by this paragraph (v) shall require advance authorization spread
445 upon the minutes of the governing authority to include the listing
446 of the item or items authorized to be purchased and the maximum
447 bid authorized to be paid for each item or items.

448 (vi) **Intergovernmental sales and transfers.**
449 Purchases, sales, transfers or trades by governing authorities or
450 state agencies when such purchases, sales, transfers or trades are
451 made by a private treaty agreement or through means of
452 negotiation, from any federal agency or authority, another
453 governing authority or state agency of the State of Mississippi,
454 or any state agency of another state. Nothing in this section
455 shall permit such purchases through public auction except as
456 provided for in paragraph (v) of this section. It is the intent
457 of this section to allow governmental entities to dispose of
458 and/or purchase commodities from other governmental entities at a
459 price that is agreed to by both parties. This shall allow for
460 purchases and/or sales at prices which may be determined to be
461 below the market value if the selling entity determines that the

462 sale at below market value is in the best interest of the
463 taxpayers of the state. Governing authorities shall place the
464 terms of the agreement and any justification on the minutes, and
465 state agencies shall obtain approval from the Department of
466 Finance and Administration, prior to releasing or taking
467 possession of the commodities.

468 (vii) **Perishable supplies or food.** Perishable
469 supplies or foods purchased for use in connection with hospitals,
470 the school lunch programs, homemaking programs and for the feeding
471 of county or municipal prisoners.

472 (viii) **Single source items.** Noncompetitive items
473 available from one (1) source only. In connection with the
474 purchase of noncompetitive items only available from one (1)
475 source, a certification of the conditions and circumstances
476 requiring the purchase shall be filed by the agency with the
477 Department of Finance and Administration and by the governing
478 authority with the board of the governing authority. Upon receipt
479 of that certification the Department of Finance and Administration
480 or the board of the governing authority, as the case may be, may,
481 in writing, authorize the purchase, which authority shall be noted
482 on the minutes of the body at the next regular meeting thereafter.

483 In those situations, a governing authority is not required to
484 obtain the approval of the Department of Finance and
485 Administration.

486 (ix) **Waste disposal facility construction**
487 **contracts.** Construction of incinerators and other facilities for
488 disposal of solid wastes in which products either generated
489 therein, such as steam, or recovered therefrom, such as materials
490 for recycling, are to be sold or otherwise disposed of; provided,
491 however, in constructing such facilities a governing authority or
492 agency shall publicly issue requests for proposals, advertised for
493 in the same manner as provided herein for seeking bids for public
494 construction projects, concerning the design, construction,

495 ownership, operation and/or maintenance of such facilities,
496 wherein such requests for proposals when issued shall contain
497 terms and conditions relating to price, financial responsibility,
498 technology, environmental compatibility, legal responsibilities
499 and such other matters as are determined by the governing
500 authority or agency to be appropriate for inclusion; and after
501 responses to the request for proposals have been duly received,
502 the governing authority or agency may select the most qualified
503 proposal or proposals on the basis of price, technology and other
504 relevant factors and from such proposals, but not limited to the
505 terms thereof, negotiate and enter contracts with one or more of
506 the persons or firms submitting proposals.

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

510 (xi) **Data processing equipment.** Purchases of data
511 processing equipment made by governing authorities under the
512 provisions of purchase agreements, contracts or maximum price
513 regulations executed or approved by the Mississippi Department of
514 Information Technology Services.

515 (xii) **Energy efficiency services and equipment.**
516 Energy efficiency services and equipment acquired by school
517 districts, junior colleges, institutions of higher learning and
518 state agencies or other applicable governmental entities on a
519 shared-savings, lease or lease-purchase basis pursuant to Section
520 31-7-14.

521 (xiii) **Insurance contracts.** Purchases of
522 contracts for fire insurance, automobile insurance, casualty
523 insurance, health insurance and liability insurance by governing
524 authorities or agencies.

525 (xiv) **Municipal electrical utility system fuel.**
526 Purchases of coal and/or natural gas by municipally-owned electric
527 power generating systems that have the capacity to use both coal

528 and natural gas for the generation of electric power.

529 (xv) **Library books and other reference materials.**

530 Purchases by libraries or for libraries of books and periodicals;
531 processed film, video cassette tapes, filmstrips and slides;
532 recorded audio tapes, cassettes and diskettes; and any such items
533 as would be used for teaching, research or other information
534 distribution; however, equipment such as projectors, recorders,
535 audio or video equipment, and monitor televisions are not exempt
536 under this paragraph.

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

541 (xvii) **Sales and transfers between governing**
542 **authorities.** Sales, transfers or trades of any personal property
543 between governing authorities within a county or any such
544 transaction involving governing authorities of two (2) or more
545 counties.

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

548 (xix) **Educational television contracts.** From and
549 after July 1, 1990, contracts by Mississippi Authority for
550 Educational Television with any private educational institution or
551 private nonprofit organization whose purposes are educational in
552 regard to the construction, purchase, lease or lease-purchase of
553 facilities and equipment and the employment of personnel for
554 providing multichannel interactive video systems (ITSF) in the
555 school districts of this state.

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

560 (xxi) **Undercover operations equipment.** Purchases

561 of surveillance equipment or any other high-tech equipment to be
562 used by narcotics agents in undercover operations, provided that
563 any such purchase shall be in compliance with regulations
564 established by the Department of Finance and Administration.

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

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

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

577 (xxv) Repealed.

578 (xxvi) **Garbage, solid waste and sewage contracts.**
579 Contracts for garbage collection or disposal, contracts for solid
580 waste collection or disposal and contracts for sewage collection
581 or disposal.

582 (xxvii) **Municipal water tank maintenance**
583 **contracts.** Professional maintenance program contracts for the
584 repair or maintenance of municipal water tanks, which provide
585 professional services needed to maintain municipal water storage
586 tanks for a fixed annual fee for a duration of two (2) or more
587 years.

588 (xxviii) **Industries for the Blind products.**
589 Purchases made by state agencies involving any item that is
590 manufactured, processed or produced by the Mississippi Industries
591 for the Blind.

592 (xxix) **Purchases of state-adopted textbooks.**
593 Purchases of state-adopted textbooks by public school districts.

594 (xxx) Procurement of design and construction
595 services by universities from a single source. The Board of
596 Trustees of State Institutions of Higher Learning may be permitted
597 to award public construction contracts to a single entity for the
598 design and for the construction of the public work, provided that
599 the entity or entities receiving the contract or contracts or
600 those entities to which work or services are subcontracted, are
601 duly licensed, and are qualified in the state to perform the
602 contract or contracts.

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

605 (A) Commodities, equipment and public
606 construction (including, but not limited to, repair and
607 maintenance), and

608 (B) Water lines, sewer lines, storm drains,
609 drainage ditches, asphalt milling, traffic striping, asphalt
610 overlay of streets, and curb and gutter (not to exceed One Hundred
611 Fifty Thousand Dollars (\$150,000.00) per project listed in this
612 item B) may be let for periods of not more than twenty-four (24)
613 months in advance, subject to applicable statutory provisions
614 prohibiting the letting of contracts during specified periods near
615 the end of terms of office.

616 (ii) All purchases made by governing authorities,
617 including purchases made pursuant to the provisions of
618 subparagraph (i) of this paragraph (n), may be made upon one (1)
619 purchase order issued per month to each individual vendor prior to
620 delivery of such commodities provided that each individual
621 delivery, load or shipment purchased is properly requisitioned and
622 is properly received and receipted by signed ticket, receipt or
623 invoice, indicating thereon the point of delivery, and provided
624 that, with respect to counties, such commodities are properly
625 accounted for by the receiving clerk or an assistant receiving
626 clerk as provided by Section 31-7-109. Such purchase order shall

627 be invalid on the first calendar day of the month immediately
628 following the month in which it was issued. Purchases in such
629 month immediately following may be made only if a purchase order
630 is issued for such month. Each monthly purchase order shall be
631 retained in the records of the governing authority. Agencies may
632 make purchases as authorized under this subparagraph (ii) in
633 accordance with such regulations, policies and procedures as are
634 promulgated by the Department of Finance and Administration.

635 (o) **Purchase law violation prohibition and vendor**
636 **penalty.** No contract or purchase as herein authorized shall be
637 made for the purpose of circumventing the provisions of this
638 section requiring competitive bids, nor shall it be lawful for any
639 person or concern to submit individual invoices for amounts within
640 those authorized for a contract or purchase where the actual value
641 of the contract or commodity purchased exceeds the authorized
642 amount and the invoices therefor are split so as to appear to be
643 authorized as purchases for which competitive bids are not
644 required. Submission of such invoices shall constitute a
645 misdemeanor punishable by a fine of not less than Five Hundred
646 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
647 or by imprisonment for thirty (30) days in the county jail, or
648 both such fine and imprisonment. In addition, the claim or claims
649 submitted shall be forfeited.

650 (p) **Electrical utility petroleum-based equipment**
651 **purchase procedure.** When in response to a proper advertisement
652 therefor, no bid firm as to price is submitted to an electric
653 utility for power transformers, distribution transformers, power
654 breakers, reclosers or other articles containing a petroleum
655 product, the electric utility may accept the lowest and best bid
656 therefor although the price is not firm.

657 (q) **Exception to county/municipal budget limitations.**
658 The prohibitions and restrictions set forth in Sections 19-11-27,
659 21-35-27 and 31-7-49 shall not apply to a contract, lease or

660 lease-purchase agreement entered pursuant to the requirements of
661 this chapter.

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

665 (s) **Fuel management system bidding procedure.** Any
666 governing authority or agency of the state shall, before
667 contracting for the services and products of a fuel management or
668 fuel access system, enter into negotiations with not fewer than
669 two (2) sellers of fuel management or fuel access systems for
670 competitive written bids to provide the services and products for
671 the systems. In the event that the governing authority or agency
672 cannot locate two (2) sellers of such systems or cannot obtain
673 bids from two (2) sellers of such systems, it shall show proof
674 that it made a diligent, good-faith effort to locate and negotiate
675 with two (2) sellers of such systems. Such proof shall include,
676 but not be limited to, publications of a request for proposals and
677 letters soliciting negotiations and bids. For purposes of this
678 paragraph (s), a fuel management or fuel access system is an
679 automated system of acquiring fuel for vehicles as well as
680 management reports detailing fuel use by vehicles and drivers, and
681 the term "competitive written bid" shall have the meaning as
682 defined in paragraph (b) of this section.

683 (t) **Solid waste contract proposal procedure.** Before
684 entering into any contract for garbage collection or disposal,
685 contract for solid waste collection or disposal or contract for
686 sewage collection or disposal, which involves an expenditure of
687 more than Fifty Thousand Dollars (\$50,000.00), a governing
688 authority or agency shall issue publicly a request for proposals
689 concerning the specifications for such services which shall be
690 advertised for in the same manner as provided in this section for
691 seeking bids for purchases which involve an expenditure of more
692 than Ten Thousand Dollars (\$10,000.00). Any request for proposals

693 when issued shall contain terms and conditions relating to price,
694 financial responsibility, technology, legal responsibilities and
695 other relevant factors as are determined by the governing
696 authority or agency to be appropriate for inclusion; all factors
697 determined relevant by the governing authority or agency or
698 required by this paragraph (t) shall be duly included in the
699 advertisement to elicit proposals. After responses to the request
700 for proposals have been duly received, the governing authority or
701 agency shall select the most qualified proposal or proposals on
702 the basis of price, technology and other relevant factors and from
703 such proposals, but not limited to the terms thereof, negotiate
704 and enter contracts with one or more of the persons or firms
705 submitting proposals. If the governing authority or agency deems
706 none of the proposals to be qualified or otherwise acceptable, the
707 request for proposals process may be reinitiated. Notwithstanding
708 any other provisions of this paragraph, where a county with at
709 least thirty-five thousand (35,000) nor more than forty thousand
710 (40,000) population, according to the 1990 federal decennial
711 census, owns or operates a solid waste landfill, the governing
712 authorities of any other county or municipality may contract with
713 the governing authorities of the county owning or operating the
714 landfill, pursuant to a resolution duly adopted and spread upon
715 the minutes of each governing authority involved, for garbage or
716 solid waste collection or disposal services through contract
717 negotiations.

718 (u) **Minority set aside authorization.** Notwithstanding
719 any provision of this section to the contrary, any agency or
720 governing authority, by order placed on its minutes, may, in its
721 discretion, set aside not more than twenty percent (20%) of its
722 anticipated annual expenditures for the purchase of commodities
723 from minority businesses; however, all such set-aside purchases
724 shall comply with all purchasing regulations promulgated by the
725 Department of Finance and Administration and shall be subject to

726 bid requirements under this section. Set-aside purchases for
727 which competitive bids are required shall be made from the lowest
728 and best minority business bidder. For the purposes of this
729 paragraph, the term "minority business" means a business which is
730 owned by a majority of persons who are United States citizens or
731 permanent resident aliens (as defined by the Immigration and
732 Naturalization Service) of the United States, and who are Asian,
733 Black, Hispanic or Native American, according to the following
734 definitions:

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

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

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

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

746 (v) **Construction punch list restriction.** The
747 architect, engineer or other representative designated by the
748 agency or governing authority that is contracting for public
749 construction or renovation may prepare and submit to the
750 contractor only one (1) preliminary punch list of items that do
751 not meet the contract requirements at the time of substantial
752 completion and one (1) final list immediately before final
753 completion and final payment.

754 (w) **Purchase authorization clarification.** Nothing in
755 this section shall be construed as authorizing any purchase not
756 authorized by law.

757 SECTION 4. This act shall take effect and be in force from
758 and after July 1, 2000.