

By: Senator(s) Burton

To: Universities and
Colleges; Finance

SENATE BILL NO. 2129

1 AN ACT TO CODIFY SECTION 37-101-44, MISSISSIPPI CODE OF 1972,
2 AND TO AMEND SECTIONS 37-101-41 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 FOR THE
5 DESIGN AND FOR THE CONSTRUCTION OF SPECIFIED 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 contracts for privately financed design
14 and construction of dormitory facilities or parking structures on
15 the main campus of the university, provided that the entities
16 receiving the contract or contracts and those entities to which
17 work or services are subcontracted are duly licensed and are
18 qualified in the state to perform the contract or contracts. The
19 entity shall not be authorized to construct apartment buildings
20 under the authority of this section. No (a) State General Fund
21 appropriations, (b) bonds backed by the state, or (c) university
22 self-generated funds from any source other than student housing
23 fees shall be used to finance the construction or maintenance of
24 any such dormitory facilities or parking structures. No student
25 housing fees charged at such dormitories shall exceed housing fees
26 charged at other public university housing facilities on campus.

27 (2) Such a design-build delivery system may be authorized
28 only when the Board of Trustees of State Institutions of Higher
29 Learning makes a determination, entered on its minutes, with



30 specific findings for each project demonstrating how it is in the
31 best interest of the public to enter into a design-build contract.
32 At a minimum, such determination shall give a detailed explanation
33 of why a design-build approach for a particular project satisfies
34 the public need better than the traditional design-bid-build
35 approach.

36 (3) For each proposed design-build project, a two-phase
37 procedure for awarding design-build contracts shall be adopted and
38 shall include the following:

39 (a) During Phase One, and prior to solicitation of
40 initial proposals, the board shall develop, with the assistance of
41 a registered architect or engineer, a scope of work statement that
42 provides prospective offerors with sufficient information
43 regarding the board's requirements. The scope of work statement
44 shall include floor plans showing spaces by name and number,
45 actual net area of each space, structural module, fixed equipment,
46 mechanical spaces, chases and circulation areas. Drawings shall
47 show overall building dimensions and major lines of dimensions,
48 and site plans which show topography, adjacent buildings and
49 utilities. Drawings shall include information to adequately
50 explain HVAC, electrical and structural requirements. Information
51 concerning furnishings, miscellaneous equipment, layouts, lists
52 and schedules necessary to explain the plans are to be indicated
53 on floor plans. The registered architect or engineer engaged by
54 the board shall also prepare preliminary specifications following
55 the Construction Specifications Institute format and giving basic
56 descriptions of essential building materials, finishes, components
57 and all systems. The scope of work statement shall also include
58 building elevations, sections and design details. Building
59 elevations shall show fenestration and proposed exterior
60 materials. The scope of work statement shall include general
61 budget parameters, schedule or delivery requirements, relevant
62 criteria for evaluation of proposals, and any other information



63 necessary to enable the design-builders to submit proposals which
64 meet the board's needs.

65 (b) The board shall cause to be published once a week
66 for at least three (3) consecutive weeks and not less than
67 twenty-one (21) days in at least one (1) newspaper having a
68 general circulation in the county in which the interested
69 institution is located and in one (1) newspaper with a general
70 statewide circulation, a notice inviting proposals for the
71 leasing, design-build deconstruction and leasing back of said land
72 and design-build constructed facility. Said notice shall inform
73 potential offerors of how to obtain the scope of work statement
74 developed for the project and the notice shall contain such other
75 information to describe adequately the general nature and scope of
76 the design-build project so as to promote full, equal and open
77 competition.

78 (c) The board shall accept initial proposals only from
79 an entity able to provide, either in-house or through contractual
80 arrangements, an experienced and qualified design-build team which
81 shall include, at a minimum, an architect or engineer registered
82 in Mississippi and a contractor properly licensed in Mississippi
83 for the type of work required. From evaluation of initial
84 proposals under Phase One, the board shall select a minimum of two
85 (2) and a maximum of five (5) design-builders to submit proposals
86 for Phase Two.

87 (d) During Phase Two, the shortlisted firms shall be
88 invited to submit detailed designs, specific technical concepts or
89 solutions, pricing, scheduling and other information deemed
90 appropriate by the board as necessary to evaluate and rank
91 acceptability of the Phase Two proposals. After evaluation of
92 these Phase Two proposals, the board shall award a contract to the
93 design-builder determined to offer the best value to the public in
94 accordance with evaluation criteria set forth in the request for



95 proposals, of which price must be one (1) but not necessarily the
96 only criterion.

97 (e) If the board accepts a proposal other than the
98 lowest dollar proposal actually submitted, the board shall enter
99 on its minutes detailed calculations and a narrative summary
100 showing why the accepted proposal was determined to provide the
101 best value, and the board shall specifically state on its minutes
102 the justification for its award.

103 (4) All facilities governed by this section shall be
104 designed and constructed to equal or exceed the Southern Building
105 Code Standards in force at the time of contracting. In addition,
106 all private contracts or private entities contracting or
107 performing pursuant to this section shall at all times comply with
108 all applicable laws, codes and other legal requirements pertaining
109 to the project. In addition, all private contracts pursuant to
110 this section shall be approved by the Public Procurement Review
111 Board.

112 (5) (a) No public official or an employee of a state agency
113 who has duties or responsibilities related to the contracting,
114 constructing, leasing, acquiring or operating said facility may
115 become an employee, consultant or contract vendor to a private
116 entity providing such design-build services to the board within
117 one (1) year after the termination of his service or employment.

118 (b) Any person violating this section shall be guilty
119 of a misdemeanor and punished by a fine of not less than Five
120 Hundred Dollars (\$500.00) but not more than One Thousand Dollars
121 (\$1,000.00).

122 (6) The board shall promulgate rules and regulations,
123 consistent with this section, to ensure fair, uniform, clear and
124 effective procedures for full, equal and open competition for
125 design-build projects and for delivery of quality design-build
126 projects on time, within budget, and in the public interest.



127 (7) The board shall report annually to the Legislature the
128 following:

129 (a) The total number of design-build projects under
130 contract, commenced and completed;

131 (b) The dollar amounts of each design-build contract,
132 both as awarded and with any adjustments, and the total dollar
133 volume of all design-build contracts awarded; and

134 (c) For each design-build project, a listing of all
135 design-builders, architects, engineers, general contractors, and
136 first-tier subcontractors, to include the principal office address
137 of each such entity.

138 (8) This section shall stand repealed from and after June
139 30, 2003.

140 SECTION 2. Section 37-101-41, Mississippi Code of 1972, is
141 amended as follows:

142 37-101-41. The Board of Trustees of State Institutions of
143 Higher Learning is hereby authorized and empowered to lease to
144 private individuals or corporations, for a term not exceeding
145 thirty-one (31) years, any land at any of the following
146 state-supported institutions: University of Mississippi,
147 Mississippi State University of Agriculture and Applied Science,
148 Jackson State University, Mississippi Valley State University,
149 Alcorn State University, University of Southern Mississippi,
150 Mississippi University for Women and Delta State University, for
151 the purpose of erecting thereon parking structures or dormitories
152 on the main campus of the university for active faculty and
153 students. Said dormitories or parking structures shall be
154 constructed thereon by private financing, and shall be leased back
155 to said board for use by the concerned state-supported institution
156 of higher learning. The lease shall be for a fixed term of ten
157 (10), fifteen (15) or twenty (20) years. The lease shall contain
158 a provision permitting said board to purchase the building located



159 thereon for the sum of one dollar (\$1.00) after payment by said
160 board of all sums of money due under said lease.

161 SECTION 3. Section 31-7-13, Mississippi Code of 1972, is
162 amended as follows:

163 31-7-13. All agencies and governing authorities shall
164 purchase their commodities and printing; contract for garbage
165 collection or disposal; contract for solid waste collection or
166 disposal; contract for sewage collection or disposal; contract for
167 public construction; and contract for rentals as herein provided.

168 (a) **Bidding procedure for purchases not over \$1,500.00.**
169 Purchases which do not involve an expenditure of more than One
170 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or
171 shipping charges, may be made without advertising or otherwise
172 requesting competitive bids. Provided, however, that nothing
173 contained in this paragraph (a) shall be construed to prohibit any
174 agency or governing authority from establishing procedures which
175 require competitive bids on purchases of One Thousand Five Hundred
176 Dollars (\$1,500.00) or less.

177 (b) **Bidding procedure for purchases over \$1,500.00 but**
178 **not over \$10,000.00.** Purchases which involve an expenditure of
179 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
180 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
181 and shipping charges may be made from the lowest and best bidder
182 without publishing or posting advertisement for bids, provided at
183 least two (2) competitive written bids have been obtained. Any
184 governing authority purchasing commodities pursuant to this
185 paragraph (b) may authorize its purchasing agent, or his designee,
186 with regard to governing authorities other than counties, or its
187 purchase clerk, or his designee, with regard to counties, to
188 accept the lowest and best competitive written bid. Such
189 authorization shall be made in writing by the governing authority
190 and shall be maintained on file in the primary office of the
191 agency and recorded in the official minutes of the governing



192 authority, as appropriate. The purchasing agent or the purchase
193 clerk, or their designee, as the case may be, and not the
194 governing authority, shall be liable for any penalties and/or
195 damages as may be imposed by law for any act or omission of the
196 purchasing agent or purchase clerk, or their designee,
197 constituting a violation of law in accepting any bid without
198 approval by the governing authority. The term "competitive
199 written bid" shall mean a bid submitted on a bid form furnished by
200 the buying agency or governing authority and signed by authorized
201 personnel representing the vendor, or a bid submitted on a
202 vendor's letterhead or identifiable bid form and signed by
203 authorized personnel representing the vendor. Bids may be
204 submitted by facsimile, electronic mail or other generally
205 accepted method of information distribution. Bids submitted by
206 electronic transmission shall not require the signature of the
207 vendor's representative unless required by agencies or governing
208 authorities.

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

210 (i) **Publication requirement.** Purchases which
211 involve an expenditure of more than Ten Thousand Dollars
212 (\$10,000.00), exclusive of freight and shipping charges may be
213 made from the lowest and best bidder after advertising for
214 competitive sealed bids once each week for two (2) consecutive
215 weeks in a regular newspaper published in the county or
216 municipality in which such agency or governing authority is
217 located. The date as published for the bid opening shall not be
218 less than seven (7) working days after the last published notice;
219 however, if the purchase involves a construction project in which
220 the estimated cost is in excess of Fifteen Thousand Dollars
221 (\$15,000.00), such bids shall not be opened in less than fifteen
222 (15) working days after the last notice is published and the
223 notice for the purchase of such construction shall be published
224 once each week for two (2) consecutive weeks. The notice of



225 intention to let contracts or purchase equipment shall state the
226 time and place at which bids shall be received, list the contracts
227 to be made or types of equipment or supplies to be purchased, and,
228 if all plans and/or specifications are not published, refer to the
229 plans and/or specifications on file. If there is no newspaper
230 published in the county or municipality, then such notice shall be
231 given by posting same at the courthouse, or for municipalities at
232 the city hall, and at two (2) other public places in the county or
233 municipality, and also by publication once each week for two (2)
234 consecutive weeks in some newspaper having a general circulation
235 in the county or municipality in the above provided manner. On
236 the same date that the notice is submitted to the newspaper for
237 publication, the agency or governing authority involved shall mail
238 written notice to, or provide electronic notification to the main
239 office of the Mississippi Contract Procurement Center that
240 contains the same information as that in the published notice.

241 (ii) **Bidding process amendment procedure.** If all
242 plans and/or specifications are published in the notification,
243 then the plans and/or specifications may not be amended. If all
244 plans and/or specifications are not published in the notification,
245 then amendments to the plans/specifications, bid opening date, bid
246 opening time and place may be made, provided that the agency or
247 governing authority maintains a list of all prospective bidders
248 who are known to have received a copy of the bid documents and all
249 such prospective bidders are sent copies of all amendments. This
250 notification of amendments may be made via mail, facsimile,
251 electronic mail or other generally accepted method of information
252 distribution. No addendum to bid specifications may be issued
253 within forty-eight (48) working hours of the time established for
254 the receipt of bids unless such addendum also amends the bid
255 opening to a date not less than five (5) working days after the
256 date of the addendum.



257 (iii) **Filing requirement.** In all cases involving
258 governing authorities, before the notice shall be published or
259 posted, the plans or specifications for the construction or
260 equipment being sought shall be filed with the clerk of the board
261 of the governing authority. In addition to these requirements, a
262 bid file shall be established which shall indicate those vendors
263 to whom such solicitations and specifications were issued, and
264 such file shall also contain such information as is pertinent to
265 the bid.

266 (iv) **Specification restrictions.** Specifications
267 pertinent to such bidding shall be written so as not to exclude
268 comparable equipment of domestic manufacture. Provided, however,
269 that should valid justification be presented, the Department of
270 Finance and Administration or the board of a governing authority
271 may approve a request for specific equipment necessary to perform
272 a specific job. Further, such justification, when placed on the
273 minutes of the board of a governing authority, may serve as
274 authority for that governing authority to write specifications to
275 require a specific item of equipment needed to perform a specific
276 job. In addition to these requirements, from and after July 1,
277 1990, vendors of relocatable classrooms and the specifications for
278 the purchase of such relocatable classrooms published by local
279 school boards shall meet all pertinent regulations of the State
280 Board of Education, including prior approval of such bid by the
281 State Department of Education.

282 (d) **Lowest and best bid decision procedure.**

283 (i) **Decision procedure.** Purchases may be made
284 from the lowest and best bidder. In determining the lowest and
285 best bid, freight and shipping charges shall be included.
286 Life-cycle costing, total cost bids, warranties, guaranteed
287 buy-back provisions and other relevant provisions may be included
288 in the best bid calculation. All best bid procedures for state
289 agencies must be in compliance with regulations established by the



290 Department of Finance and Administration. If any governing
291 authority accepts a bid other than the lowest bid actually
292 submitted, it shall place on its minutes detailed calculations and
293 narrative summary showing that the accepted bid was determined to
294 be the lowest and best bid, including the dollar amount of the
295 accepted bid and the dollar amount of the lowest bid. No agency
296 or governing authority shall accept a bid based on items not
297 included in the specifications.

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

304 (e) **Lease-purchase authorization.** For the purposes of
305 this section, the term "equipment" shall mean equipment, furniture
306 and, if applicable, associated software and other applicable
307 direct costs associated with the acquisition. Any lease-purchase
308 of equipment which an agency is not required to lease-purchase
309 under the master lease-purchase program pursuant to Section
310 31-7-10 and any lease-purchase of equipment which a governing
311 authority elects to lease-purchase may be acquired by a
312 lease-purchase agreement under this paragraph (e). Lease-purchase
313 financing may also be obtained from the vendor or from a
314 third-party source after having solicited and obtained at least
315 two (2) written competitive bids, as defined in paragraph (b) of
316 this section, for such financing without advertising for such
317 bids. Solicitation for the bids for financing may occur before or
318 after acceptance of bids for the purchase of such equipment or,
319 where no such bids for purchase are required, at any time before
320 the purchase thereof. No such lease-purchase agreement shall be
321 for an annual rate of interest which is greater than the overall
322 maximum interest rate to maturity on general obligation



323 indebtedness permitted under Section 75-17-101, and the term of
324 such lease-purchase agreement shall not exceed the useful life of
325 equipment covered thereby as determined according to the upper
326 limit of the asset depreciation range (ADR) guidelines for the
327 Class Life Asset Depreciation Range System established by the
328 Internal Revenue Service pursuant to the United States Internal
329 Revenue Code and regulations thereunder as in effect on December
330 31, 1980, or comparable depreciation guidelines with respect to
331 any equipment not covered by ADR guidelines. Any lease-purchase
332 agreement entered into pursuant to this paragraph (e) may contain
333 any of the terms and conditions which a master lease-purchase
334 agreement may contain under the provisions of Section 31-7-10(5),
335 and shall contain an annual allocation dependency clause
336 substantially similar to that set forth in Section 31-7-10(8).
337 Each agency or governing authority entering into a lease-purchase
338 transaction pursuant to this paragraph (e) shall maintain with
339 respect to each such lease-purchase transaction the same
340 information as required to be maintained by the Department of
341 Finance and Administration pursuant to Section 31-7-10(13).
342 However, nothing contained in this section shall be construed to
343 permit agencies to acquire items of equipment with a total
344 acquisition cost in the aggregate of less than Ten Thousand
345 Dollars (\$10,000.00) by a single lease-purchase transaction. All
346 equipment, and the purchase thereof by any lessor, acquired by
347 lease-purchase under this paragraph and all lease-purchase
348 payments with respect thereto shall be exempt from all Mississippi
349 sales, use and ad valorem taxes. Interest paid on any
350 lease-purchase agreement under this section shall be exempt from
351 State of Mississippi income taxation.

352 (f) **Alternate bid authorization.** When necessary to
353 ensure ready availability of commodities for public works and the
354 timely completion of public projects, no more than two (2)
355 alternate bids may be accepted by a governing authority for



356 commodities. No purchases may be made through use of such
357 alternate bids procedure unless the lowest and best bidder, for
358 reasons beyond his control, cannot deliver the commodities
359 contained in his bid. In that event, purchases of such
360 commodities may be made from one (1) of the bidders whose bid was
361 accepted as an alternate.

362 (g) **Construction contract change authorization.** In the
363 event a determination is made by an agency or governing authority
364 after a construction contract is let that changes or modifications
365 to the original contract are necessary or would better serve the
366 purpose of the agency or the governing authority, such agency or
367 governing authority may, in its discretion, order such changes
368 pertaining to the construction that are necessary under the
369 circumstances without the necessity of further public bids;
370 provided that such change shall be made in a commercially
371 reasonable manner and shall not be made to circumvent the public
372 purchasing statutes. In addition to any other authorized person,
373 the architect or engineer hired by an agency or governing
374 authority with respect to any public construction contract shall
375 have the authority, when granted by an agency or governing
376 authority, to authorize changes or modifications to the original
377 contract without the necessity of prior approval of the agency or
378 governing authority when any such change or modification is less
379 than one percent (1%) of the total contract amount. The agency or
380 governing authority may limit the number, manner or frequency of
381 such emergency changes or modifications.

382 (h) **Petroleum purchase alternative.** In addition to
383 other methods of purchasing authorized in this chapter, when any
384 agency or governing authority shall have a need for gas, diesel
385 fuel, oils and/or other petroleum products in excess of the amount
386 set forth in paragraph (a) of this section, such agency or
387 governing authority may purchase the commodity after having
388 solicited and obtained at least two (2) competitive written bids,



389 as defined in paragraph (b) of this section. If two (2)
390 competitive written bids are not obtained the entity shall comply
391 with the procedures set forth in paragraph (c) of this section.
392 In the event any agency or governing authority shall have
393 advertised for bids for the purchase of gas, diesel fuel, oils and
394 other petroleum products and coal and no acceptable bids can be
395 obtained, such agency or governing authority is authorized and
396 directed to enter into any negotiations necessary to secure the
397 lowest and best contract available for the purchase of such
398 commodities.

399 (i) **Road construction petroleum products price**
400 **adjustment clause authorization.** Any agency or governing
401 authority authorized to enter into contracts for the construction,
402 maintenance, surfacing or repair of highways, roads or streets,
403 may include in its bid proposal and contract documents a price
404 adjustment clause with relation to the cost to the contractor,
405 including taxes, based upon an industry-wide cost index, of
406 petroleum products including asphalt used in the performance or
407 execution of the contract or in the production or manufacture of
408 materials for use in such performance. Such industry-wide index
409 shall be established and published monthly by the Mississippi
410 Department of Transportation with a copy thereof to be mailed,
411 upon request, to the clerks of the governing authority of each
412 municipality and the clerks of each board of supervisors
413 throughout the state. The price adjustment clause shall be based
414 on the cost of such petroleum products only and shall not include
415 any additional profit or overhead as part of the adjustment. The
416 bid proposals or document contract shall contain the basis and
417 methods of adjusting unit prices for the change in the cost of
418 such petroleum products.

419 (j) **State agency emergency purchase procedure.** If the
420 executive head of any agency of the state shall determine that an
421 emergency exists in regard to the purchase of any commodities or



422 repair contracts, so that the delay incident to giving opportunity
423 for competitive bidding would be detrimental to the interests of
424 the state, then the provisions herein for competitive bidding
425 shall not apply and the head of such agency shall be authorized to
426 make the purchase or repair. Total purchases so made shall only
427 be for the purpose of meeting needs created by the emergency
428 situation. In the event such executive head is responsible to an
429 agency board, at the meeting next following the emergency
430 purchase, documentation of the purchase, including a description
431 of the commodity purchased, the purchase price thereof and the
432 nature of the emergency shall be presented to the board and placed
433 on the minutes of the board of such agency. The head of such
434 agency shall, at the earliest possible date following such
435 emergency purchase, file with the Department of Finance and
436 Administration (i) a statement under oath certifying the
437 conditions and circumstances of the emergency, and (ii) a
438 certified copy of the appropriate minutes of the board of such
439 agency, if applicable.

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

441 If the governing authority, or the governing authority acting
442 through its designee, shall determine that an emergency exists in
443 regard to the purchase of any commodities or repair contracts, so
444 that the delay incident to giving opportunity for competitive
445 bidding would be detrimental to the interest of the governing
446 authority, then the provisions herein for competitive bidding
447 shall not apply and any officer or agent of such governing
448 authority having general or special authority therefor in making
449 such purchase or repair shall approve the bill presented therefor,
450 and he shall certify in writing thereon from whom such purchase
451 was made, or with whom such a repair contract was made. At the
452 board meeting next following the emergency purchase or repair
453 contract, documentation of the purchase or repair contract,
454 including a description of the commodity purchased, the price



455 thereof and the nature of the emergency shall be presented to the
456 board and shall be placed on the minutes of the board of such
457 governing authority.

458 (1) **Hospital purchase or lease authorization.** The
459 commissioners or board of trustees of any hospital owned or owned
460 and operated separately or jointly by one or more counties,
461 cities, towns, supervisors districts or election districts, or
462 combinations thereof, may contract with such lowest and best
463 bidder for the purchase or lease of any commodity under a contract
464 of purchase or lease-purchase agreement whose obligatory terms do
465 not exceed five (5) years. In addition to the authority granted
466 herein, the commissioners or board of trustees are authorized to
467 enter into contracts for the lease of equipment or services, or
468 both, which it considers necessary for the proper care of patients
469 if, in its opinion, it is not financially feasible to purchase the
470 necessary equipment or services. Any such contract for the lease
471 of equipment or services executed by the commissioners or board
472 shall not exceed a maximum of five (5) years' duration and shall
473 include a cancellation clause based on unavailability of funds.
474 If such cancellation clause is exercised, there shall be no
475 further liability on the part of the lessee.

476 (m) **Exceptions from bidding requirements.** Excepted
477 from bid requirements are:

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

482 (ii) **Outside equipment repairs.** Repairs to
483 equipment, when such repairs are made by repair facilities in the
484 private sector; however, engines, transmissions, rear axles and/or
485 other such components shall not be included in this exemption when
486 replaced as a complete unit instead of being repaired and the need
487 for such total component replacement is known before disassembly



488 of the component; provided, however, that invoices identifying the
489 equipment, specific repairs made, parts identified by number and
490 name, supplies used in such repairs, and the number of hours of
491 labor and costs therefor shall be required for the payment for
492 such repairs.

493 (iii) **In-house equipment repairs.** Purchases of
494 parts for repairs to equipment, when such repairs are made by
495 personnel of the agency or governing authority; however, entire
496 assemblies, such as engines or transmissions, shall not be
497 included in this exemption when the entire assembly is being
498 replaced instead of being repaired.

499 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
500 of gravel or fill dirt which are to be removed and transported by
501 the purchaser.

502 (v) **Governmental equipment auctions.** Motor
503 vehicles or other equipment purchased from a federal or state
504 agency or a governing authority at a public auction held for the
505 purpose of disposing of such vehicles or other equipment. Any
506 purchase by a governing authority under the exemption authorized
507 by this subparagraph (v) shall require advance authorization
508 spread upon the minutes of the governing authority to include the
509 listing of the item or items authorized to be purchased and the
510 maximum bid authorized to be paid for each item or items.

511 (vi) **Intergovernmental sales and transfers.**
512 Purchases, sales, transfers or trades by governing authorities or
513 state agencies when such purchases, sales, transfers or trades are
514 made by a private treaty agreement or through means of
515 negotiation, from any federal agency or authority, another
516 governing authority or state agency of the State of Mississippi,
517 or any state agency of another state. Nothing in this section
518 shall permit such purchases through public auction except as
519 provided for in subparagraph (v) of this section. It is the
520 intent of this section to allow governmental entities to dispose



521 of and/or purchase commodities from other governmental entities at
522 a price that is agreed to by both parties. This shall allow for
523 purchases and/or sales at prices which may be determined to be
524 below the market value if the selling entity determines that the
525 sale at below market value is in the best interest of the
526 taxpayers of the state. Governing authorities shall place the
527 terms of the agreement and any justification on the minutes, and
528 state agencies shall obtain approval from the Department of
529 Finance and Administration, prior to releasing or taking
530 possession of the commodities.

531 (vii) **Perishable supplies or food.** Perishable
532 supplies or foods purchased for use in connection with hospitals,
533 the school lunch programs, homemaking programs and for the feeding
534 of county or municipal prisoners.

535 (viii) **Single source items.** Noncompetitive items
536 available from one (1) source only. In connection with the
537 purchase of noncompetitive items only available from one (1)
538 source, a certification of the conditions and circumstances
539 requiring the purchase shall be filed by the agency with the
540 Department of Finance and Administration and by the governing
541 authority with the board of the governing authority. Upon receipt
542 of that certification the Department of Finance and Administration
543 or the board of the governing authority, as the case may be, may,
544 in writing, authorize the purchase, which authority shall be noted
545 on the minutes of the body at the next regular meeting thereafter.
546 In those situations, a governing authority is not required to
547 obtain the approval of the Department of Finance and
548 Administration.

549 (ix) **Waste disposal facility construction**
550 **contracts.** Construction of incinerators and other facilities for
551 disposal of solid wastes in which products either generated
552 therein, such as steam, or recovered therefrom, such as materials
553 for recycling, are to be sold or otherwise disposed of; provided,



554 however, in constructing such facilities a governing authority or
555 agency shall publicly issue requests for proposals, advertised for
556 in the same manner as provided herein for seeking bids for public
557 construction projects, concerning the design, construction,
558 ownership, operation and/or maintenance of such facilities,
559 wherein such requests for proposals when issued shall contain
560 terms and conditions relating to price, financial responsibility,
561 technology, environmental compatibility, legal responsibilities
562 and such other matters as are determined by the governing
563 authority or agency to be appropriate for inclusion; and after
564 responses to the request for proposals have been duly received,
565 the governing authority or agency may select the most qualified
566 proposal or proposals on the basis of price, technology and other
567 relevant factors and from such proposals, but not limited to the
568 terms thereof, negotiate and enter contracts with one or more of
569 the persons or firms submitting proposals.

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

573 (xi) **Information technology products.** Purchases
574 of information technology products made by governing authorities
575 under the provisions of purchase schedules, or contracts executed
576 or approved by the Mississippi Department of Information
577 Technology Services and designated for use by governing
578 authorities.

579 (xii) **Energy efficiency services and equipment.**
580 Energy efficiency services and equipment acquired by school
581 districts, community and junior colleges, institutions of higher
582 learning and state agencies or other applicable governmental
583 entities on a shared-savings, lease or lease-purchase basis
584 pursuant to Section 31-7-14.

585 (xiii) **Municipal electrical utility system fuel.**
586 Purchases of coal and/or natural gas by municipally-owned electric



587 power generating systems that have the capacity to use both coal
588 and natural gas for the generation of electric power.

589 (xiv) **Library books and other reference materials.**

590 Purchases by libraries or for libraries of books and periodicals;
591 processed film, video cassette tapes, filmstrips and slides;
592 recorded audio tapes, cassettes and diskettes; and any such items
593 as would be used for teaching, research or other information
594 distribution; however, equipment such as projectors, recorders,
595 audio or video equipment, and monitor televisions are not exempt
596 under this subparagraph.

597 (xv) **Unmarked vehicles.** Purchases of unmarked
598 vehicles when such purchases are made in accordance with
599 purchasing regulations adopted by the Department of Finance and
600 Administration pursuant to Section 31-7-9(2).

601 (xvi) **Election ballots.** Purchases of ballots
602 printed pursuant to Section 23-15-351.

603 (xvii) **Multichannel interactive video systems.**
604 From and after July 1, 1990, contracts by Mississippi Authority
605 for Educational Television with any private educational
606 institution or private nonprofit organization whose purposes are
607 educational in regard to the construction, purchase, lease or
608 lease-purchase of facilities and equipment and the employment of
609 personnel for providing multichannel interactive video systems
610 (ITSF) in the school districts of this state.

611 (xviii) **Purchases of prison industry products.**
612 From and after January 1, 1991, purchases made by state agencies
613 or governing authorities involving any item that is manufactured,
614 processed, grown or produced from the state's prison industries.

615 (xix) **Undercover operations equipment.** Purchases
616 of surveillance equipment or any other high-tech equipment to be
617 used by law enforcement agents in undercover operations, provided
618 that any such purchase shall be in compliance with regulations
619 established by the Department of Finance and Administration.



620 (xx) **Junior college books for rent.** Purchases by
621 community or junior colleges of textbooks which are obtained for
622 the purpose of renting such books to students as part of a book
623 service system.

624 (xxi) **Certain school district purchases.**
625 Purchases of commodities made by school districts from vendors
626 with which any levying authority of the school district, as
627 defined in Section 37-57-1, has contracted through competitive
628 bidding procedures for purchases of the same commodities.

629 (xxii) **Garbage, solid waste and sewage contracts.**
630 Contracts for garbage collection or disposal, contracts for solid
631 waste collection or disposal and contracts for sewage collection
632 or disposal.

633 (xxiii) **Municipal water tank maintenance**
634 **contracts.** Professional maintenance program contracts for the
635 repair or maintenance of municipal water tanks, which provide
636 professional services needed to maintain municipal water storage
637 tanks for a fixed annual fee for a duration of two (2) or more
638 years.

639 (xxiv) **Purchases of Mississippi Industries for the**
640 **Blind products.** Purchases made by state agencies or governing
641 authorities involving any item that is manufactured, processed or
642 produced by the Mississippi Industries for the Blind.

643 (xxv) **Purchases of state-adopted textbooks.**
644 Purchases of state-adopted textbooks by public school districts.

645 (xxvi) **Certain purchases under the Mississippi**
646 **Major Economic Impact Act.** Contracts entered into pursuant to the
647 provisions of Section 57-75-9(2) and (3).

648 (xxvii) **Procurement of design and construction**
649 **services by universities.** Nothing in this section restricts the
650 right of the Board of Trustees of State Institutions of Higher
651 Learning to award privately financed contracts for the design and



652 for the construction of dormitories or parking structures on the
653 main campus of the university, as provided in Section 37-101-44.

654 This subparagraph (xxvii) shall stand repealed from
655 and after June 30, 2004.

656 (n) **Term contract authorization.** All contracts for the
657 purchase of:

658 (i) All contracts for the purchase of commodities,
659 equipment and public construction (including, but not limited to,
660 repair and maintenance), may be let for periods of not more than
661 sixty (60) months in advance, subject to applicable statutory
662 provisions prohibiting the letting of contracts during specified
663 periods near the end of terms of office. Term contracts for a
664 period exceeding twenty-four (24) months shall also be subject to
665 ratification or cancellation by governing authority boards taking
666 office subsequent to the governing authority board entering the
667 contract.

668 (ii) Bid proposals and contracts may include price
669 adjustment clauses with relation to the cost to the contractor
670 based upon a nationally published industry-wide or nationally
671 published and recognized cost index. The cost index used in a
672 price adjustment clause shall be determined by the Department of
673 Finance and Administration for the state agencies and by the
674 governing board for governing authorities. The bid proposal and
675 contract documents utilizing a price adjustment clause shall
676 contain the basis and method of adjusting unit prices for the
677 change in the cost of such commodities, equipment and public
678 construction.

679 (o) **Purchase law violation prohibition and vendor**
680 **penalty.** No contract or purchase as herein authorized shall be
681 made for the purpose of circumventing the provisions of this
682 section requiring competitive bids, nor shall it be lawful for any
683 person or concern to submit individual invoices for amounts within
684 those authorized for a contract or purchase where the actual value



685 of the contract or commodity purchased exceeds the authorized
686 amount and the invoices therefor are split so as to appear to be
687 authorized as purchases for which competitive bids are not
688 required. Submission of such invoices shall constitute a
689 misdemeanor punishable by a fine of not less than Five Hundred
690 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
691 or by imprisonment for thirty (30) days in the county jail, or
692 both such fine and imprisonment. In addition, the claim or claims
693 submitted shall be forfeited.

694 (p) **Electrical utility petroleum-based equipment**
695 **purchase procedure.** When in response to a proper advertisement
696 therefor, no bid firm as to price is submitted to an electric
697 utility for power transformers, distribution transformers, power
698 breakers, reclosers or other articles containing a petroleum
699 product, the electric utility may accept the lowest and best bid
700 therefor although the price is not firm.

701 (q) **Fuel management system bidding procedure.** Any
702 governing authority or agency of the state shall, before
703 contracting for the services and products of a fuel management or
704 fuel access system, enter into negotiations with not fewer than
705 two (2) sellers of fuel management or fuel access systems for
706 competitive written bids to provide the services and products for
707 the systems. In the event that the governing authority or agency
708 cannot locate two (2) sellers of such systems or cannot obtain
709 bids from two (2) sellers of such systems, it shall show proof
710 that it made a diligent, good-faith effort to locate and negotiate
711 with two (2) sellers of such systems. Such proof shall include,
712 but not be limited to, publications of a request for proposals and
713 letters soliciting negotiations and bids. For purposes of this
714 paragraph (q), a fuel management or fuel access system is an
715 automated system of acquiring fuel for vehicles as well as
716 management reports detailing fuel use by vehicles and drivers, and
717 the term "competitive written bid" shall have the meaning as



718 defined in paragraph (b) of this section. Governing authorities
719 and agencies shall be exempt from this process when contracting
720 for the services and products of a fuel management or fuel access
721 systems under the terms of a state contract established by the
722 Office of Purchasing and Travel.

723 (r) **Solid waste contract proposal procedure.** Before
724 entering into any contract for garbage collection or disposal,
725 contract for solid waste collection or disposal or contract for
726 sewage collection or disposal, which involves an expenditure of
727 more than Fifty Thousand Dollars (\$50,000.00), a governing
728 authority or agency shall issue publicly a request for proposals
729 concerning the specifications for such services which shall be
730 advertised for in the same manner as provided in this section for
731 seeking bids for purchases which involve an expenditure of more
732 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
733 when issued shall contain terms and conditions relating to price,
734 financial responsibility, technology, legal responsibilities and
735 other relevant factors as are determined by the governing
736 authority or agency to be appropriate for inclusion; all factors
737 determined relevant by the governing authority or agency or
738 required by this paragraph (r) shall be duly included in the
739 advertisement to elicit proposals. After responses to the request
740 for proposals have been duly received, the governing authority or
741 agency shall select the most qualified proposal or proposals on
742 the basis of price, technology and other relevant factors and from
743 such proposals, but not limited to the terms thereof, negotiate
744 and enter contracts with one or more of the persons or firms
745 submitting proposals. If the governing authority or agency deems
746 none of the proposals to be qualified or otherwise acceptable, the
747 request for proposals process may be reinitiated. Notwithstanding
748 any other provisions of this paragraph, where a county with at
749 least thirty-five thousand (35,000) nor more than forty thousand
750 (40,000) population, according to the 1990 federal decennial



751 census, owns or operates a solid waste landfill, the governing
752 authorities of any other county or municipality may contract with
753 the governing authorities of the county owning or operating the
754 landfill, pursuant to a resolution duly adopted and spread upon
755 the minutes of each governing authority involved, for garbage or
756 solid waste collection or disposal services through contract
757 negotiations.

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

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

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

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



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

786 (t) **Construction punch list restriction.** The
787 architect, engineer or other representative designated by the
788 agency or governing authority that is contracting for public
789 construction or renovation may prepare and submit to the
790 contractor only one (1) preliminary punch list of items that do
791 not meet the contract requirements at the time of substantial
792 completion and one (1) final list immediately before final
793 completion and final payment.

794 (u) **Purchase authorization clarification.** Nothing in
795 this section shall be construed as authorizing any purchase not
796 authorized by law.

797 SECTION 4. This act shall take effect and be in force from
798 and after its passage.

