SENATE BILL NO. 2129

AN ACT TO CODIFY SECTION 37-101-44, MISSISSIPPI CODE OF 1972, AND TO AMEND SECTIONS 37-101-41 AND 31-7-13, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING TO AWARD PUBLIC CONSTRUCTION CONTRACTS FOR THE DESIGN AND FOR THE CONSTRUCTION OF SPECIFIED PUBLIC WORK ON CAMPUS; AND FOR RELATED PURPOSES.

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

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

37-101-44. (1) In lieu of Section 37-101-43 and prior to entering into or awarding any such lease under the provisions of Section 37-101-41, the Board of Trustees of State Institutions of Higher Learning may award contracts for privately financed design and construction of dormitory facilities or parking structures on the main campus of the university, provided that the entities receiving the contract or contracts and those entities to which work or services are subcontracted are duly licensed and are qualified in the state to perform the contract or contracts. The entity shall not be authorized to construct apartment buildings under the authority of this section. No (a) State General Fund appropriations, (b) bonds backed by the state, or (c) university self-generated funds from any source other than student housing fees shall be used to finance the construction or maintenance of any such dormitory facilities or parking structures. No student housing fees charged at such dormitories shall exceed housing fees charged at other public university housing facilities on campus.

(2) Such a design-build delivery system may be authorized only when the Board of Trustees of State Institutions of Higher Learning makes a determination, entered on its minutes, with
specific findings for each project demonstrating how it is in the best interest of the public to enter into a design-build contract. At a minimum, such determination shall give a detailed explanation of why a design-build approach for a particular project satisfies the public need better than the traditional design-bid-build approach.

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

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

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

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

(d) During Phase Two, the shortlisted firms shall be invited to submit detailed designs, specific technical concepts or solutions, pricing, scheduling and other information deemed appropriate by the board as necessary to evaluate and rank acceptability of the Phase Two proposals. After evaluation of these Phase Two proposals, the board shall award a contract to the design-builder determined to offer the best value to the public in accordance with evaluation criteria set forth in the request for
proposals, of which price must be one (1) but not necessarily the only criterion.

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

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

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

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

(6) The board shall promulgate rules and regulations, consistent with this section, to ensure fair, uniform, clear and effective procedures for full, equal and open competition for design-build projects and for delivery of quality design-build projects on time, within budget, and in the public interest.
(7) The board shall report annually to the Legislature the following:

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

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

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

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

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

37-101-41. The Board of Trustees of State Institutions of Higher Learning is hereby authorized and empowered to lease to private individuals or corporations, for a term not exceeding thirty-one (31) years, any land at any of the following state-supported institutions: University of Mississippi, Mississippi State University of Agriculture and Applied Science, Jackson State University, Mississippi Valley State University, Alcorn State University, University of Southern Mississippi, Mississippi University for Women and Delta State University, for the purpose of erecting thereon parking structures or dormitories on the main campus of the university for active faculty and students. Said dormitories or parking structures shall be constructed thereon by private financing, and shall be leased back to said board for use by the concerned state-supported institution of higher learning. The lease shall be for a fixed term of ten (10), fifteen (15) or twenty (20) years. The lease shall contain a provision permitting said board to purchase the building located
thereon for the sum of one dollar ($1.00) after payment by said
board of all sums of money due under said lease.

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

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

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

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

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

(i) Publication requirement. Purchases which
involve an expenditure of more than Ten Thousand Dollars
($10,000.00), exclusive of freight and shipping charges may be
made from the lowest and best bidder after advertising for
competitive sealed bids once each week for two (2) consecutive
weeks in a regular newspaper published in the county or
municipality in which such agency or governing authority is
located. The date as published for the bid opening shall not be
less than seven (7) working days after the last published notice;
however, if the purchase involves a construction project in which
the estimated cost is in excess of Fifteen Thousand Dollars
($15,000.00), such bids shall not be opened in less than fifteen
(15) working days after the last notice is published and the
notice of the purchase of such construction shall be published
once each week for two (2) consecutive weeks. The notice of
intention to let contracts or purchase equipment shall state the
time and place at which bids shall be received, list the contracts
to be made or types of equipment or supplies to be purchased, and,
if all plans and/or specifications are not published, refer to the
plans and/or specifications on file. If there is no newspaper
published in the county or municipality, then such notice shall be
given by posting same at the courthouse, or for municipalities at
the city hall, and at two (2) other public places in the county or
municipality, and also by publication once each week for two (2)
consecutive weeks in some newspaper having a general circulation
in the county or municipality in the above provided manner. On
the same date that the notice is submitted to the newspaper for
publication, the agency or governing authority involved shall mail
written notice to, or provide electronic notification to the main
office of the Mississippi Contract Procurement Center that
contains the same information as that in the published notice.

(ii) **Bidding process amendment procedure.** If all
plans and/or specifications are published in the notification,
then the plans and/or specifications may not be amended. If all
plans and/or specifications are not published in the notification,
then amendments to the plans/specifications, bid opening date, bid
opening time and place may be made, provided that the agency or
governing authority maintains a list of all prospective bidders
who are known to have received a copy of the bid documents and all
such prospective bidders are sent copies of all amendments. This
notification of amendments may be made via mail, facsimile,
electronic mail or other generally accepted method of information
distribution. No addendum to bid specifications may be issued
within forty-eight (48) working hours of the time established for
the receipt of bids unless such addendum also amends the bid
opening to a date not less than five (5) working days after the
date of the addendum.
(iii) **Filing requirement.** In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority. In addition to these requirements, a bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were issued, and such file shall also contain such information as is pertinent to the bid.

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

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

(i) **Decision procedure.** Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid procedures for state agencies must be in compliance with regulations established by the
Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

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

(e) **Lease-purchase authorization.** For the purposes of this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation bonds.
indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of equipment covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8). Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10(13). However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten Thousand Dollars ($10,000.00) by a single lease-purchase transaction. All equipment, and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

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

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

(h) Petroleum purchase alternative. In addition to other methods of purchasing authorized in this chapter, when any agency or governing authority shall have a need for gas, diesel fuel, oils and/or other petroleum products in excess of the amount set forth in paragraph (a) of this section, such agency or governing authority may purchase the commodity after having solicited and obtained at least two (2) competitive written bids,
as defined in paragraph (b) of this section. If two (2)
competitive written bids are not obtained the entity shall comply
with the procedures set forth in paragraph (c) of this section.
In the event any agency or governing authority shall have
advertised for bids for the purchase of gas, diesel fuel, oils and
other petroleum products and coal and no acceptable bids can be
obtained, such agency or governing authority is authorized and
directed to enter into any negotiations necessary to secure the
lowest and best contract available for the purchase of such
commodities.

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

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

(k) Governing authority emergency purchase procedure.
If the governing authority, or the governing authority acting
through its designee, shall determine that an emergency exists in
regard to the purchase of any commodities or repair contracts, so
that the delay incident to giving opportunity for competitive
bidding would be detrimental to the interest of the governing
authority, then the provisions herein for competitive bidding
shall not apply and any officer or agent of such governing
authority having general or special authority therefor in making
such purchase or repair shall approve the bill presented therefor,
and he shall certify in writing thereon from whom such purchase
was made, or with whom such a repair contract was made. At the
board meeting next following the emergency purchase or repair
contract, documentation of the purchase or repair contract,
including a description of the commodity purchased, the price
thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xiv) Library books and other reference materials. Purchases by libraries or for libraries of books and periodicals;
processed film, video cassette tapes, filmstrips and slides;
recorded audio tapes, cassettes and diskettes; and any such items
as would be used for teaching, research or other information
distribution; however, equipment such as projectors, recorders,
audio or video equipment, and monitor televisions are not exempt
under this subparagraph.

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

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

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

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

(xix) Undercover operations equipment. Purchases of surveillance equipment or any other high-tech equipment to be
used by law enforcement agents in undercover operations, provided
that any such purchase shall be in compliance with regulations
established by the Department of Finance and Administration.
(xx) **Junior college books for rent.** Purchases by community or junior colleges of textbooks which are obtained for the purpose of renting such books to students as part of a book service system.

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

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

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

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

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

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

(xxvii) **Procurement of design and construction services by universities.** Nothing in this section restricts the right of the Board of Trustees of State Institutions of Higher Learning to award privately financed contracts for the design and
for the construction of dormitories or parking structures on the
main campus of the university, as provided in Section 37-101-44.
This subparagraph (xxvii) shall stand repealed from

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

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

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

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

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

(q) **Fuel management system bidding procedure.** Any governing authority or agency of the state shall, before contracting for the services and products of a fuel management or fuel access system, enter into negotiations with not fewer than two (2) sellers of fuel management or fuel access systems for competitive written bids to provide the services and products for the systems. In the event that the governing authority or agency cannot locate two (2) sellers of such systems or cannot obtain bids from two (2) sellers of such systems, it shall show proof that it made a diligent, good-faith effort to locate and negotiate with two (2) sellers of such systems. Such proof shall include, but not be limited to, publications of a request for proposals and letters soliciting negotiations and bids. For purposes of this paragraph (q), a fuel management or fuel access system is an automated system of acquiring fuel for vehicles as well as management reports detailing fuel use by vehicles and drivers, and the term "competitive written bid" shall have the meaning as
defined in paragraph (b) of this section. Governing authorities and agencies shall be exempt from this process when contracting for the services and products of a fuel management or fuel access systems under the terms of a state contract established by the Office of Purchasing and Travel.

(r) Solid waste contract proposal procedure. Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars ($50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than Ten Thousand Dollars ($10,000.00). Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (r) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated. Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand (40,000) population, according to the 1990 federal decennial
census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.

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

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

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

(iii) "Hispanic" means persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race.
(iv) "Native American" means persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

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

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

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