

By: Senator(s) King, Farris

To: Universities and
Colleges; Appropriations

SENATE BILL NO. 2936

1 AN ACT TO AUTHORIZE THE BOARD OF TRUSTEES OF STATE
 2 INSTITUTIONS OF HIGHER LEARNING TO AWARD CONTRACTS TO A SINGLE
 3 ENTITY FOR PRIVATELY FINANCED DESIGN AND CONSTRUCTION OF PARKING
 4 STRUCTURES; TO PROVIDE THE PROCEDURE FOR AWARDING SUCH CONTRACTS;
 5 TO AMEND SECTION 37-101-41, MISSISSIPPI CODE OF 1972, TO REMOVE
 6 PROVISIONS THAT AUTHORIZE CERTAIN INSTITUTIONS OF HIGHER LEARNING
 7 TO LEASE LAND FOR HOUSING AND DORMITORY FACILITIES AND TO
 8 AUTHORIZE SUCH LEASES FOR PARKING FACILITIES; TO AMEND SECTION
 9 31-7-13, MISSISSIPPI CODE OF 1972, TO EXEMPT DESIGN AND
 10 CONSTRUCTION CONTRACTS AWARDED PURSUANT TO THIS ACT FROM BIDDING
 11 REQUIREMENTS; AND FOR RELATED PURPOSES.

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

13 SECTION 1. (1) In lieu of Section 37-101-43 and prior to
 14 awarding any lease under Section 37-101-41, the Board of Trustees
 15 of State Institutions of Higher Learning may award contracts to a
 16 single entity for privately financed design and construction of
 17 parking structures. The entities that are awarded the contract
 18 and the subcontractors of such entities shall be duly licensed and
 19 qualified in this state to perform the contracts. No state
 20 general fund appropriations or the proceeds of any state general
 21 obligation bonds shall be utilized to finance the construction of
 22 maintenance of such parking structures.

23 (2) The design and construction of a parking facility
 24 pursuant to subsection (1) of this section may be authorized only
 25 after the Board of Trustees of State Institutions of Higher
 26 Learning makes a determination, entered upon its minutes with
 27 specific findings for a particular project, that it is in the best
 28 interest of the public to enter into such contracts.

29 (3) Any entity awarded a contract pursuant to this section
 30 shall have a design-build team which shall include a registered

31 engineer or architect and a contractor who shall be properly
32 licensed for the type of work required.

33 (4) For each project authorized pursuant to this section,
34 the Board of Trustees of State Institutions of Higher Learning
35 shall adopt a two-phase procedure for awarding a contract
36 authorized pursuant to subsection (1) of this section which shall
37 include the following:

38 (a) During Phase One, and prior to solicitation, the
39 board shall develop, with the assistance of a design professional,
40 a scope of work that defines the project and provides prospective
41 bidders with sufficient information regarding the board's
42 requirements. The scope of work shall include criteria and
43 preliminary design, general budget parameters and general schedule
44 or delivery requirements to enable prospective bidders to submit
45 proposals that meet the board's needs. Once the board has
46 developed and published a scope of work, it shall evaluate the
47 qualifications of entities and create a list of not more than five
48 (5) entities. In developing this list, preference shall be given
49 to residents of Mississippi.

50 (b) During Phase Two, the entities on the list shall be
51 invited to submit detailed specific technical concepts or
52 solutions, cost and scheduling information. After evaluation of
53 these submissions, a selection shall be made and the contract
54 awarded to the highest ranked entity.

55 (5) All parking structures authorized to be constructed
56 pursuant to this section shall be designed and constructed to meet
57 or exceed the Southern Building Code Standards at the time the
58 contract is awarded. All contractors and subcontractors shall at
59 all times comply with all applicable laws, codes and other legal
60 requirements pertaining to the project.

61 (6) The Board of Trustees of State Institutions of Higher
62 Learning shall promulgate rules and regulations to ensure fair,

63 uniform, clear and effective procedures that strive for the
64 delivery of a quality project on time and within budget.

65 (7) (a) No public official or an employee of a state agency
66 who has duties or responsibilities related to the contracting,
67 constructing, leasing, acquiring or operating a facility
68 authorized to be constructed pursuant to this section may become
69 an employee, consultant or contract vendor to a private entity
70 awarded a contract pursuant to this section within one (1) year
71 after the termination of his service or employment.

72 (b) Any person violating the provisions of this
73 subsection shall be guilty of a misdemeanor and, upon conviction
74 thereof, shall be punished by a fine of not less than Five Hundred
75 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00).

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

78 37-101-41. The Board of Trustees of State Institutions of
79 Higher Learning is hereby authorized and empowered to lease to
80 private individuals or corporations, for a term not exceeding
81 thirty-one (31) years, any land at any of the following
82 state-supported institutions: Mississippi State University of
83 Agriculture and Applied Science, Jackson State University,
84 Mississippi Valley State University, Alcorn State University,
85 University of Southern Mississippi, Mississippi University for
86 Women and Delta State University, for the purpose of erecting
87 parking structures thereon * * *. Said structures shall be
88 constructed thereon by private financing, and shall be leased back
89 to said board for use by the concerned state-supported institution
90 of higher learning. The lease shall contain a provision
91 permitting said board to purchase the building located thereon for
92 the sum of One Dollar (\$1.00) after payment by said board of all
93 sums of money due under said lease.

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

96 31-7-13. All agencies and governing authorities shall
97 purchase their commodities and printing; contract for garbage
98 collection or disposal; contract for solid waste collection or
99 disposal; contract for sewage collection or disposal; contract for
100 public construction; and contract for rentals as herein provided.

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

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

129 purchasing agent or purchase clerk, or their designee,
130 constituting a violation of law in accepting any bid without
131 approval by the governing authority. The term "competitive
132 written bid" shall mean a bid submitted on a bid form furnished by
133 the buying agency or governing authority and signed by authorized
134 personnel representing the vendor, or a bid submitted on a
135 vendor's letterhead or identifiable bid form and signed by
136 authorized personnel representing the vendor. Bids may be
137 submitted by facsimile, electronic mail or other generally
138 accepted method of information distribution. Bids submitted by
139 electronic transmission shall not require the signature of the
140 vendor's representative unless required by agencies or governing
141 authorities.

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

143 (i) **Publication requirement.** Purchases which
144 involve an expenditure of more than Ten Thousand Dollars
145 (\$10,000.00), exclusive of freight and shipping charges may be
146 made from the lowest and best bidder after advertising for
147 competitive sealed bids once each week for two (2) consecutive
148 weeks in a regular newspaper published in the county or
149 municipality in which such agency or governing authority is
150 located. The date as published for the bid opening shall not be
151 less than seven (7) working days after the last published notice;
152 however, if the purchase involves a construction project in which
153 the estimated cost is in excess of Fifteen Thousand Dollars
154 (\$15,000.00), such bids shall not be opened in less than fifteen
155 (15) working days after the last notice is published and the
156 notice for the purchase of such construction shall be published
157 once each week for two (2) consecutive weeks. The notice of
158 intention to let contracts or purchase equipment shall state the
159 time and place at which bids shall be received, list the contracts
160 to be made or types of equipment or supplies to be purchased, and,
161 if all plans and/or specifications are not published, refer to the

162 plans and/or specifications on file. If there is no newspaper
163 published in the county or municipality, then such notice shall be
164 given by posting same at the courthouse, or for municipalities at
165 the city hall, and at two (2) other public places in the county or
166 municipality, and also by publication once each week for two (2)
167 consecutive weeks in some newspaper having a general circulation
168 in the county or municipality in the above provided manner. On
169 the same date that the notice is submitted to the newspaper for
170 publication, the agency or governing authority involved shall mail
171 written notice to, or provide electronic notification to the main
172 office of the Mississippi Contract Procurement Center that
173 contains the same information as that in the published notice.

174 (ii) **Bidding process amendment procedure.** If all
175 plans and/or specifications are published in the notification,
176 then the plans and/or specifications may not be amended. If all
177 plans and/or specifications are not published in the notification,
178 then amendments to the plans/specifications, bid opening date, bid
179 opening time and place may be made, provided that the agency or
180 governing authority maintains a list of all prospective bidders
181 who are known to have received a copy of the bid documents and all
182 such prospective bidders are sent copies of all amendments. This
183 notification of amendments may be made via mail, facsimile,
184 electronic mail or other generally accepted method of information
185 distribution. No addendum to bid specifications may be issued
186 within forty-eight (48) working hours of the time established for
187 the receipt of bids unless such addendum also amends the bid
188 opening to a date not less than five (5) working days after the
189 date of the addendum.

190 (iii) **Filing requirement.** In all cases involving
191 governing authorities, before the notice shall be published or
192 posted, the plans or specifications for the construction or
193 equipment being sought shall be filed with the clerk of the board
194 of the governing authority. In addition to these requirements, a

195 bid file shall be established which shall indicate those vendors
196 to whom such solicitations and specifications were issued, and
197 such file shall also contain such information as is pertinent to
198 the bid.

199 (iv) **Specification restrictions.** Specifications
200 pertinent to such bidding shall be written so as not to exclude
201 comparable equipment of domestic manufacture. Provided, however,
202 that should valid justification be presented, the Department of
203 Finance and Administration or the board of a governing authority
204 may approve a request for specific equipment necessary to perform
205 a specific job. Further, such justification, when placed on the
206 minutes of the board of a governing authority, may serve as
207 authority for that governing authority to write specifications to
208 require a specific item of equipment needed to perform a specific
209 job. In addition to these requirements, from and after July 1,
210 1990, vendors of relocatable classrooms and the specifications for
211 the purchase of such relocatable classrooms published by local
212 school boards shall meet all pertinent regulations of the State
213 Board of Education, including prior approval of such bid by the
214 State Department of Education.

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

216 (i) **Decision procedure.** Purchases may be made
217 from the lowest and best bidder. In determining the lowest and
218 best bid, freight and shipping charges shall be included.
219 Life-cycle costing, total cost bids, warranties, guaranteed
220 buy-back provisions and other relevant provisions may be included
221 in the best bid calculation. All best bid procedures for state
222 agencies must be in compliance with regulations established by the
223 Department of Finance and Administration. If any governing
224 authority accepts a bid other than the lowest bid actually
225 submitted, it shall place on its minutes detailed calculations and
226 narrative summary showing that the accepted bid was determined to
227 be the lowest and best bid, including the dollar amount of the

228 accepted bid and the dollar amount of the lowest bid. No agency
229 or governing authority shall accept a bid based on items not
230 included in the specifications.

231 (ii) **Construction project negotiations authority.**

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

237 (e) **Lease-purchase authorization.** For the purposes of
238 this section, the term "equipment" shall mean equipment, furniture
239 and, if applicable, associated software and other applicable
240 direct costs associated with the acquisition. Any lease-purchase
241 of equipment which an agency is not required to lease-purchase
242 under the master lease-purchase program pursuant to Section
243 31-7-10 and any lease-purchase of equipment which a governing
244 authority elects to lease-purchase may be acquired by a
245 lease-purchase agreement under this paragraph (e). Lease-purchase
246 financing may also be obtained from the vendor or from a
247 third-party source after having solicited and obtained at least
248 two (2) written competitive bids, as defined in paragraph (b) of
249 this section, for such financing without advertising for such
250 bids. Solicitation for the bids for financing may occur before or
251 after acceptance of bids for the purchase of such equipment or,
252 where no such bids for purchase are required, at any time before
253 the purchase thereof. No such lease-purchase agreement shall be
254 for an annual rate of interest which is greater than the overall
255 maximum interest rate to maturity on general obligation
256 indebtedness permitted under Section 75-17-101, and the term of
257 such lease-purchase agreement shall not exceed the useful life of
258 equipment covered thereby as determined according to the upper
259 limit of the asset depreciation range (ADR) guidelines for the
260 Class Life Asset Depreciation Range System established by the

261 Internal Revenue Service pursuant to the United States Internal
262 Revenue Code and regulations thereunder as in effect on December
263 31, 1980, or comparable depreciation guidelines with respect to
264 any equipment not covered by ADR guidelines. Any lease-purchase
265 agreement entered into pursuant to this paragraph (e) may contain
266 any of the terms and conditions which a master lease-purchase
267 agreement may contain under the provisions of Section 31-7-10(5),
268 and shall contain an annual allocation dependency clause
269 substantially similar to that set forth in Section 31-7-10(8).
270 Each agency or governing authority entering into a lease-purchase
271 transaction pursuant to this paragraph (e) shall maintain with
272 respect to each such lease-purchase transaction the same
273 information as required to be maintained by the Department of
274 Finance and Administration pursuant to Section 31-7-10(13).
275 However, nothing contained in this section shall be construed to
276 permit agencies to acquire items of equipment with a total
277 acquisition cost in the aggregate of less than Ten Thousand
278 Dollars (\$10,000.00) by a single lease-purchase transaction. All
279 equipment, and the purchase thereof by any lessor, acquired by
280 lease-purchase under this paragraph and all lease-purchase
281 payments with respect thereto shall be exempt from all Mississippi
282 sales, use and ad valorem taxes. Interest paid on any
283 lease-purchase agreement under this section shall be exempt from
284 State of Mississippi income taxation.

285 (f) **Alternate bid authorization.** When necessary to
286 ensure ready availability of commodities for public works and the
287 timely completion of public projects, no more than two (2)
288 alternate bids may be accepted by a governing authority for
289 commodities. No purchases may be made through use of such
290 alternate bids procedure unless the lowest and best bidder, for
291 reasons beyond his control, cannot deliver the commodities
292 contained in his bid. In that event, purchases of such

293 commodities may be made from one (1) of the bidders whose bid was
294 accepted as an alternate.

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

315 (h) **Petroleum purchase alternative.** In addition to
316 other methods of purchasing authorized in this chapter, when any
317 agency or governing authority shall have a need for gas, diesel
318 fuel, oils and/or other petroleum products in excess of the amount
319 set forth in paragraph (a) of this section, such agency or
320 governing authority may purchase the commodity after having
321 solicited and obtained at least two (2) competitive written bids,
322 as defined in paragraph (b) of this section. If two (2)
323 competitive written bids are not obtained the entity shall comply
324 with the procedures set forth in paragraph (c) of this section.
325 In the event any agency or governing authority shall have

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

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

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

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

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

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

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

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

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

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

424 labor and costs therefor shall be required for the payment for
425 such repairs.

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

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

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

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

457 below the market value if the selling entity determines that the
458 sale at below market value is in the best interest of the
459 taxpayers of the state. Governing authorities shall place the
460 terms of the agreement and any justification on the minutes, and
461 state agencies shall obtain approval from the Department of
462 Finance and Administration, prior to releasing or taking
463 possession of the commodities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

553 (xx) **Junior college books for rent.** Purchases by
554 community or junior colleges of textbooks which are obtained for

555 the purpose of renting such books to students as part of a book
556 service system.

557 (xxi) **Certain school district purchases.**

558 Purchases of commodities made by school districts from vendors
559 with which any levying authority of the school district, as
560 defined in Section 37-57-1, has contracted through competitive
561 bidding procedures for purchases of the same commodities.

562 (xxii) **Garbage, solid waste and sewage contracts.**

563 Contracts for garbage collection or disposal, contracts for solid
564 waste collection or disposal and contracts for sewage collection
565 or disposal.

566 (xxiii) **Municipal water tank maintenance**

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

572 (xxiv) **Purchases of Mississippi Industries for the**

573 **Blind products.** Purchases made by state agencies or governing
574 authorities involving any item that is manufactured, processed or
575 produced by the Mississippi Industries for the Blind.

576 (xxv) **Purchases of state-adopted textbooks.**

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

578 (xxvi) **Certain purchases under the Mississippi**

579 **Major Economic Impact Act.** Contracts entered into pursuant to the
580 provisions of Section 57-75-9(2) and (3).

581 (xxvii) **Procurement of design and construction**

582 **services from a single source for parking facilities at state**

583 **institutions of higher learning.** Contracts for the design and

584 **construction of parking structures entered into pursuant to**

585 **Section 1 of Senate Bill No. _____, 2001 Regular Session.**

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

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

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

609 (o) **Purchase law violation prohibition and vendor**
610 **penalty.** No contract or purchase as herein authorized shall be
611 made for the purpose of circumventing the provisions of this
612 section requiring competitive bids, nor shall it be lawful for any
613 person or concern to submit individual invoices for amounts within
614 those authorized for a contract or purchase where the actual value
615 of the contract or commodity purchased exceeds the authorized
616 amount and the invoices therefor are split so as to appear to be
617 authorized as purchases for which competitive bids are not
618 required. Submission of such invoices shall constitute a
619 misdemeanor punishable by a fine of not less than Five Hundred
620 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),

621 or by imprisonment for thirty (30) days in the county jail, or
622 both such fine and imprisonment. In addition, the claim or claims
623 submitted shall be forfeited.

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

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

653 (r) **Solid waste contract proposal procedure.** Before
654 entering into any contract for garbage collection or disposal,
655 contract for solid waste collection or disposal or contract for
656 sewage collection or disposal, which involves an expenditure of
657 more than Fifty Thousand Dollars (\$50,000.00), a governing
658 authority or agency shall issue publicly a request for proposals
659 concerning the specifications for such services which shall be
660 advertised for in the same manner as provided in this section for
661 seeking bids for purchases which involve an expenditure of more
662 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
663 when issued shall contain terms and conditions relating to price,
664 financial responsibility, technology, legal responsibilities and
665 other relevant factors as are determined by the governing
666 authority or agency to be appropriate for inclusion; all factors
667 determined relevant by the governing authority or agency or
668 required by this paragraph (r) shall be duly included in the
669 advertisement to elicit proposals. After responses to the request
670 for proposals have been duly received, the governing authority or
671 agency shall select the most qualified proposal or proposals on
672 the basis of price, technology and other relevant factors and from
673 such proposals, but not limited to the terms thereof, negotiate
674 and enter contracts with one or more of the persons or firms
675 submitting proposals. If the governing authority or agency deems
676 none of the proposals to be qualified or otherwise acceptable, the
677 request for proposals process may be reinitiated. Notwithstanding
678 any other provisions of this paragraph, where a county with at
679 least thirty-five thousand (35,000) nor more than forty thousand
680 (40,000) population, according to the 1990 federal decennial
681 census, owns or operates a solid waste landfill, the governing
682 authorities of any other county or municipality may contract with
683 the governing authorities of the county owning or operating the
684 landfill, pursuant to a resolution duly adopted and spread upon
685 the minutes of each governing authority involved, for garbage or

686 solid waste collection or disposal services through contract
687 negotiations.

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

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

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

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

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

716 (t) **Construction punch list restriction.** The
717 architect, engineer or other representative designated by the
718 agency or governing authority that is contracting for public

719 construction or renovation may prepare and submit to the
720 contractor only one (1) preliminary punch list of items that do
721 not meet the contract requirements at the time of substantial
722 completion and one (1) final list immediately before final
723 completion and final payment.

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

727 SECTION 4. This act shall take effect and be in force from
728 and after July 1, 2001.