

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 AWARDED 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.