

By: Representative Davis

To: Universities and
Colleges; Appropriations

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 105

1 AN ACT TO CREATE NEW SECTION 37-101-44, MISSISSIPPI CODE OF
2 1972, TO AUTHORIZE THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF
3 HIGHER LEARNING TO CONTRACT WITH A SINGLE ENTITY FOR THE DESIGN
4 AND CONSTRUCTION OF DORMITORIES, OTHER BUILDINGS AND FACILITIES
5 AND PARKING STRUCTURES; TO AMEND SECTION 37-101-43, MISSISSIPPI
6 CODE OF 1972, IN CONFORMITY THERETO; TO AMEND SECTION 37-101-41,
7 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD OF TRUSTEES TO
8 LEASE LAND AT CERTAIN STATE INSTITUTIONS OF HIGHER LEARNING FOR
9 THE CONSTRUCTION OF DORMITORIES, OTHER BUILDINGS AND FACILITIES
10 AND PARKING STRUCTURES BY PRIVATE FINANCING; TO AMEND SECTION
11 31-7-13, MISSISSIPPI CODE OF 1972, TO EXEMPT FROM STATE BID
12 REQUIREMENTS CONTRACTS FOR THE DESIGN AND CONSTRUCTION OF
13 DORMITORIES, OTHER BUILDINGS AND FACILITIES AND PARKING STRUCTURES
14 ENTERED INTO WITH A SINGLE ENTITY BY THE BOARD OF TRUSTEES OF
15 STATE INSTITUTIONS OF HIGHER LEARNING; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** The following shall be codified as Section
18 37-101-44, Mississippi Code of 1972:

19 37-101-44. (1) In lieu of exercising the authority set
20 forth in Section 37-101-43 and before entering into or awarding
21 any lease under Section 37-101-41, the Board of Trustees of State
22 Institutions of Higher Learning may award contracts to a single
23 entity for privately financed design and construction of
24 dormitories, other buildings and facilities and parking structures
25 if the entities receiving the contract or contracts and those
26 entities to which work or services are subcontracted are duly
27 licensed and qualified in the state to perform the contract or
28 contracts. State General Fund appropriations or bonds backed by
29 the state may not be used to finance the construction or
30 maintenance of any such dormitory, building or facility or parking
31 structure.

32 (2) The design-build delivery system described under
33 subsection (1) of this section may be authorized only when the



34 Board of Trustees of State Institutions of Higher Learning makes a
35 determination, entered on its minutes, with specific findings for
36 the project demonstrating how it is in the best interest of the
37 public to enter into a design-build contract. At a minimum, the
38 determination must include a detailed explanation of why a
39 design-build approach for a particular project satisfies the
40 public need better than the traditional design-bid-build approach.

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

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



67 for evaluation of proposals, and any other information necessary
68 to enable the design-builders to submit proposals that meet the
69 board's needs.

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

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

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



100 proposals, of which price must be one, but not necessarily the
101 only, criterion.

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

108 (4) All facilities that are governed by this section must be
109 designed and constructed to equal or exceed the Southern Building
110 Code Standards in force at the time of contracting. All private
111 contractors or private entities contracting or performing under
112 this section must comply at all times with all applicable laws,
113 codes and other legal requirements pertaining to the project.

114 (5) (a) A public official or employee of a state agency who
115 has duties or responsibilities related to the contracting,
116 constructing, leasing, acquiring or operating of a facility under
117 this section may not become an employee, consultant or contract
118 vendor to a private entity providing such facility or services to
119 the state for a period of one (1) year after the date of
120 termination of the person's public service or state employment.

121 (b) Any person violating this subsection shall be
122 guilty of a misdemeanor and punished by a fine of not less than
123 Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars
124 (\$1,000.00).

125 **SECTION 2.** Section 37-101-43, Mississippi Code of 1972, is
126 amended as follows:

127 37-101-43. As an alternative to the authority granted under
128 Section 37-101-44, before entering into or awarding any such lease
129 contract under the provisions of Section 37-101-41, the Board of
130 Trustees of State Institutions of Higher Learning, in its
131 discretion, may cause the interested state-supported institution
132 upon which a facility is proposed to be constructed to select and



133 submit three (3) architects to the board. Thereupon, the board
134 may approve and employ an architect, who shall be paid by the
135 interested institution from any funds available to the interested
136 institution. The architect, under the direction of the interested
137 institution, shall prepare complete plans and specifications for
138 the facility desired to be constructed on the leased property.

139 Upon completion of the plans and specifications and the
140 approval thereof by the board, and before entering into any lease
141 contract, the board shall cause to be published once a week for at
142 least three (3) consecutive weeks and not less than twenty-one
143 (21) days in at least one (1) newspaper having a general
144 circulation in the county in which the interested institution is
145 located and in one (1) newspaper with a general statewide
146 circulation, a notice inviting bids or proposals for the leasing,
147 construction and leasing back of the land and constructed
148 facility, which facility must be constructed in accordance with
149 the plans and specifications. The notice shall distinctly state
150 the thing to be done, and invite sealed proposals, to be filed
151 with the board, to do the thing to be done. The notice shall
152 contain the following specific provisions, together with such
153 others as the board, in its discretion, deems appropriate, to wit:
154 bids shall be accompanied by a bid security evidenced by a
155 certified or cashier's check or bid-bond payable to the board in a
156 sum of not less than five percent (5%) of the gross construction
157 cost of the facility to be constructed, as estimated by the board,
158 and the bids shall contain proof satisfactory to the board of
159 interim and permanent financing. The board shall state in the
160 notice when construction shall commence. The bid shall contain
161 the proposed contractor's certificate of responsibility number and
162 bidder's license. In all cases, before the notice shall be
163 published, the plans and specifications shall be filed with the
164 board and also in the office of the president of the interested
165 institution, there to remain.



166 The board shall award the lease contract to the lowest and
167 best bidder, who will comply with the terms imposed by the
168 contract documents. At the time of the awarding of the lease
169 contract, the successful bidder shall enter into bond with
170 sufficient sureties, to be approved by the board, in such penalty
171 as may be fixed by the board, but in no case to be less than the
172 estimated gross construction cost of the facility to be
173 constructed as estimated by the board, conditioned for the prompt,
174 proper and efficient performance of the contract. The bond shall
175 be made by an authorized corporate surety bonding company.
176 The * * * bid security herein provided for shall be forfeited if
177 the successful bidder fails to enter into lease contract and
178 commence construction within the time limitation set forth in the
179 notice. At such time, and simultaneously with the signing of the
180 contract, the successful bidder shall deposit a sum of money, in
181 cash or certified or cashier's check, not less than the bid
182 security previously deposited as bid security to reimburse the
183 interested institution for all sums expended by it for
184 architectural services and other expenditures of the board and
185 interested institution connected with the bidden lease contract,
186 of which such other anticipated expenditures notice is to be given
187 to bidder in the notice. The bid security posted by an
188 unsuccessful bidder shall be refunded to him.

189 **SECTION 3.** Section 37-101-41, Mississippi Code of 1972, is
190 amended as follows:

191 37-101-41. The Board of Trustees of State Institutions of
192 Higher Learning is * * * authorized and empowered to lease to
193 private individuals or corporations, for a term not exceeding
194 thirty-one (31) years, any land at any of the following
195 state-supported institutions: the University of Mississippi,
196 Mississippi State University of Agriculture and Applied Science,
197 Jackson State University, Mississippi Valley State University,
198 Alcorn State University, University of Southern Mississippi,



199 Mississippi University for Women and Delta State University, for
200 the purpose of erecting dormitories, other buildings and
201 facilities and parking structures thereon for active faculty and
202 students. The dormitories, other buildings or facilities or
203 parking structures shall be constructed thereon by private
204 financing, and shall be leased back to the board for use by the
205 concerned state-supported institution of higher learning. The
206 lease shall contain a provision permitting the board to purchase
207 the dormitory, other building or facility or parking structure
208 located thereon for the sum of One Dollar (\$1.00) after payment by
209 the board of all sums of money due under said lease.

210 **SECTION 4.** Section 31-7-13, Mississippi Code of 1972, is
211 amended as follows:

212 31-7-13. All agencies and governing authorities shall
213 purchase their commodities and printing; contract for garbage
214 collection or disposal; contract for solid waste collection or
215 disposal; contract for sewage collection or disposal; contract for
216 public construction; and contract for rentals as herein provided.

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

226 (b) **Bidding procedure for purchases over \$1,500.00 but**
227 **not over \$10,000.00.** Purchases which involve an expenditure of
228 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
229 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
230 and shipping charges may be made from the lowest and best bidder
231 without publishing or posting advertisement for bids, provided at



232 least two (2) competitive written bids have been obtained. Any
233 governing authority purchasing commodities pursuant to this
234 paragraph (b) may authorize its purchasing agent, or his designee,
235 with regard to governing authorities other than counties, or its
236 purchase clerk, or his designee, with regard to counties, to
237 accept the lowest and best competitive written bid. Such
238 authorization shall be made in writing by the governing authority
239 and shall be maintained on file in the primary office of the
240 agency and recorded in the official minutes of the governing
241 authority, as appropriate. The purchasing agent or the purchase
242 clerk, or their designee, as the case may be, and not the
243 governing authority, shall be liable for any penalties and/or
244 damages as may be imposed by law for any act or omission of the
245 purchasing agent or purchase clerk, or their designee,
246 constituting a violation of law in accepting any bid without
247 approval by the governing authority. The term "competitive
248 written bid" shall mean a bid submitted on a bid form furnished by
249 the buying agency or governing authority and signed by authorized
250 personnel representing the vendor, or a bid submitted on a
251 vendor's letterhead or identifiable bid form and signed by
252 authorized personnel representing the vendor. Bids may be
253 submitted by facsimile, electronic mail or other generally
254 accepted method of information distribution. Bids submitted by
255 electronic transmission shall not require the signature of the
256 vendor's representative unless required by agencies or governing
257 authorities.

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

259 (i) **Publication requirement.** Purchases which
260 involve an expenditure of more than Ten Thousand Dollars
261 (\$10,000.00), exclusive of freight and shipping charges may be
262 made from the lowest and best bidder after advertising for
263 competitive sealed bids once each week for two (2) consecutive
264 weeks in a regular newspaper published in the county or



265 municipality in which such agency or governing authority is
266 located. The date as published for the bid opening shall not be
267 less than seven (7) working days after the last published notice;
268 however, if the purchase involves a construction project in which
269 the estimated cost is in excess of Fifteen Thousand Dollars
270 (\$15,000.00), such bids shall not be opened in less than fifteen
271 (15) working days after the last notice is published and the
272 notice for the purchase of such construction shall be published
273 once each week for two (2) consecutive weeks. The notice of
274 intention to let contracts or purchase equipment shall state the
275 time and place at which bids shall be received, list the contracts
276 to be made or types of equipment or supplies to be purchased, and,
277 if all plans and/or specifications are not published, refer to the
278 plans and/or specifications on file. If there is no newspaper
279 published in the county or municipality, then such notice shall be
280 given by posting same at the courthouse, or for municipalities at
281 the city hall, and at two (2) other public places in the county or
282 municipality, and also by publication once each week for two (2)
283 consecutive weeks in some newspaper having a general circulation
284 in the county or municipality in the above provided manner. On
285 the same date that the notice is submitted to the newspaper for
286 publication, the agency or governing authority involved shall mail
287 written notice to, or provide electronic notification to the main
288 office of the Mississippi Contract Procurement Center that
289 contains the same information as that in the published notice.

290 (ii) **Bidding process amendment procedure.** If all
291 plans and/or specifications are published in the notification,
292 then the plans and/or specifications may not be amended. If all
293 plans and/or specifications are not published in the notification,
294 then amendments to the plans/specifications, bid opening date, bid
295 opening time and place may be made, provided that the agency or
296 governing authority maintains a list of all prospective bidders
297 who are known to have received a copy of the bid documents and all



298 such prospective bidders are sent copies of all amendments. This
299 notification of amendments may be made via mail, facsimile,
300 electronic mail or other generally accepted method of information
301 distribution. No addendum to bid specifications may be issued
302 within forty-eight (48) working hours of the time established for
303 the receipt of bids unless such addendum also amends the bid
304 opening to a date not less than five (5) working days after the
305 date of the addendum.

306 (iii) **Filing requirement.** In all cases involving
307 governing authorities, before the notice shall be published or
308 posted, the plans or specifications for the construction or
309 equipment being sought shall be filed with the clerk of the board
310 of the governing authority. In addition to these requirements, a
311 bid file shall be established which shall indicate those vendors
312 to whom such solicitations and specifications were issued, and
313 such file shall also contain such information as is pertinent to
314 the bid.

315 (iv) **Specification restrictions.** Specifications
316 pertinent to such bidding shall be written so as not to exclude
317 comparable equipment of domestic manufacture. Provided, however,
318 that should valid justification be presented, the Department of
319 Finance and Administration or the board of a governing authority
320 may approve a request for specific equipment necessary to perform
321 a specific job. Further, such justification, when placed on the
322 minutes of the board of a governing authority, may serve as
323 authority for that governing authority to write specifications to
324 require a specific item of equipment needed to perform a specific
325 job. In addition to these requirements, from and after July 1,
326 1990, vendors of relocatable classrooms and the specifications for
327 the purchase of such relocatable classrooms published by local
328 school boards shall meet all pertinent regulations of the State
329 Board of Education, including prior approval of such bid by the
330 State Department of Education.



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

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

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

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

353 (e) **Lease-purchase authorization.** For the purposes of
354 this section, the term "equipment" shall mean equipment, furniture
355 and, if applicable, associated software and other applicable
356 direct costs associated with the acquisition. Any lease-purchase
357 of equipment which an agency is not required to lease-purchase
358 under the master lease-purchase program pursuant to Section
359 31-7-10 and any lease-purchase of equipment which a governing
360 authority elects to lease-purchase may be acquired by a
361 lease-purchase agreement under this paragraph (e). Lease-purchase
362 financing may also be obtained from the vendor or from a
363 third-party source after having solicited and obtained at least



364 two (2) written competitive bids, as defined in paragraph (b) of
365 this section, for such financing without advertising for such
366 bids. Solicitation for the bids for financing may occur before or
367 after acceptance of bids for the purchase of such equipment or,
368 where no such bids for purchase are required, at any time before
369 the purchase thereof. No such lease-purchase agreement shall be
370 for an annual rate of interest which is greater than the overall
371 maximum interest rate to maturity on general obligation
372 indebtedness permitted under Section 75-17-101, and the term of
373 such lease-purchase agreement shall not exceed the useful life of
374 equipment covered thereby as determined according to the upper
375 limit of the asset depreciation range (ADR) guidelines for the
376 Class Life Asset Depreciation Range System established by the
377 Internal Revenue Service pursuant to the United States Internal
378 Revenue Code and regulations thereunder as in effect on December
379 31, 1980, or comparable depreciation guidelines with respect to
380 any equipment not covered by ADR guidelines. Any lease-purchase
381 agreement entered into pursuant to this paragraph (e) may contain
382 any of the terms and conditions which a master lease-purchase
383 agreement may contain under the provisions of Section 31-7-10(5),
384 and shall contain an annual allocation dependency clause
385 substantially similar to that set forth in Section 31-7-10(8).
386 Each agency or governing authority entering into a lease-purchase
387 transaction pursuant to this paragraph (e) shall maintain with
388 respect to each such lease-purchase transaction the same
389 information as required to be maintained by the Department of
390 Finance and Administration pursuant to Section 31-7-10(13).
391 However, nothing contained in this section shall be construed to
392 permit agencies to acquire items of equipment with a total
393 acquisition cost in the aggregate of less than Ten Thousand
394 Dollars (\$10,000.00) by a single lease-purchase transaction. All
395 equipment, and the purchase thereof by any lessor, acquired by
396 lease-purchase under this paragraph and all lease-purchase



397 payments with respect thereto shall be exempt from all Mississippi
398 sales, use and ad valorem taxes. Interest paid on any
399 lease-purchase agreement under this section shall be exempt from
400 State of Mississippi income taxation.

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

411 (g) **Construction contract change authorization.** In the
412 event a determination is made by an agency or governing authority
413 after a construction contract is let that changes or modifications
414 to the original contract are necessary or would better serve the
415 purpose of the agency or the governing authority, such agency or
416 governing authority may, in its discretion, order such changes
417 pertaining to the construction that are necessary under the
418 circumstances without the necessity of further public bids;
419 provided that such change shall be made in a commercially
420 reasonable manner and shall not be made to circumvent the public
421 purchasing statutes. In addition to any other authorized person,
422 the architect or engineer hired by an agency or governing
423 authority with respect to any public construction contract shall
424 have the authority, when granted by an agency or governing
425 authority, to authorize changes or modifications to the original
426 contract without the necessity of prior approval of the agency or
427 governing authority when any such change or modification is less
428 than one percent (1%) of the total contract amount. The agency or



429 governing authority may limit the number, manner or frequency of
430 such emergency changes or modifications.

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

448 (i) **Road construction petroleum products price**
449 **adjustment clause authorization.** Any agency or governing
450 authority authorized to enter into contracts for the construction,
451 maintenance, surfacing or repair of highways, roads or streets,
452 may include in its bid proposal and contract documents a price
453 adjustment clause with relation to the cost to the contractor,
454 including taxes, based upon an industry-wide cost index, of
455 petroleum products including asphalt used in the performance or
456 execution of the contract or in the production or manufacture of
457 materials for use in such performance. Such industry-wide index
458 shall be established and published monthly by the Mississippi
459 Department of Transportation with a copy thereof to be mailed,
460 upon request, to the clerks of the governing authority of each
461 municipality and the clerks of each board of supervisors



462 throughout the state. The price adjustment clause shall be based
463 on the cost of such petroleum products only and shall not include
464 any additional profit or overhead as part of the adjustment. The
465 bid proposals or document contract shall contain the basis and
466 methods of adjusting unit prices for the change in the cost of
467 such petroleum products.

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

489 (k) **Governing authority emergency purchase procedure.**
490 If the governing authority, or the governing authority acting
491 through its designee, shall determine that an emergency exists in
492 regard to the purchase of any commodities or repair contracts, so
493 that the delay incident to giving opportunity for competitive
494 bidding would be detrimental to the interest of the governing



495 authority, then the provisions herein for competitive bidding
496 shall not apply and any officer or agent of such governing
497 authority having general or special authority therefor in making
498 such purchase or repair shall approve the bill presented therefor,
499 and he shall certify in writing thereon from whom such purchase
500 was made, or with whom such a repair contract was made. At the
501 board meeting next following the emergency purchase or repair
502 contract, documentation of the purchase or repair contract,
503 including a description of the commodity purchased, the price
504 thereof and the nature of the emergency shall be presented to the
505 board and shall be placed on the minutes of the board of such
506 governing authority.

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

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



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

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

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

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

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



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

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

584 (viii) **Single source items.** Noncompetitive items
585 available from one (1) source only. In connection with the
586 purchase of noncompetitive items only available from one (1)
587 source, a certification of the conditions and circumstances
588 requiring the purchase shall be filed by the agency with the
589 Department of Finance and Administration and by the governing
590 authority with the board of the governing authority. Upon receipt
591 of that certification the Department of Finance and Administration
592 or the board of the governing authority, as the case may be, may,



593 in writing, authorize the purchase, which authority shall be noted
594 on the minutes of the body at the next regular meeting thereafter.
595 In those situations, a governing authority is not required to
596 obtain the approval of the Department of Finance and
597 Administration.

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

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

622 (xi) **Information technology products.** Purchases
623 of information technology products made by governing authorities
624 under the provisions of purchase schedules, or contracts executed
625 or approved by the Mississippi Department of Information



626 Technology Services and designated for use by governing
627 authorities.

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

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

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

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

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

652 (xvii) **Multichannel interactive video systems.**
653 From and after July 1, 1990, contracts by Mississippi Authority
654 for Educational Television with any private educational
655 institution or private nonprofit organization whose purposes are
656 educational in regard to the construction, purchase, lease or
657 lease-purchase of facilities and equipment and the employment of



658 personnel for providing multichannel interactive video systems
659 (ITSF) in the school districts of this state.

660 (xviii) **Purchases of prison industry products.**

661 From and after January 1, 1991, purchases made by state agencies
662 or governing authorities involving any item that is manufactured,
663 processed, grown or produced from the state's prison industries.

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

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

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

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

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

679 Contracts for garbage collection or disposal, contracts for solid
680 waste collection or disposal and contracts for sewage collection
681 or disposal.

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

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

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

689 **Blind products.** Purchases made by state agencies or governing



690 authorities involving any item that is manufactured, processed or
691 produced by the Mississippi Industries for the Blind.

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

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

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

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

697 (xxvii) **Used heavy or specialized machinery or**
698 **equipment for installation of soil and water conservation**

699 **practices purchased at auction.** Used heavy or specialized

700 machinery or equipment used for the installation and

701 implementation of soil and water conservation practices or

702 measures purchased subject to the restrictions provided in

703 Sections 69-27-331 through 69-27-341. Any purchase by the State

704 Soil and Water Conservation Commission under the exemption

705 authorized by this subparagraph shall require advance

706 authorization spread upon the minutes of the commission to include

707 the listing of the item or items authorized to be purchased and

708 the maximum bid authorized to be paid for each item or items.

709 (xxviii) **Procurement of design and construction**

710 **services by state institutions of higher learning.** Privately

711 financed contracts awarded by the Board of Trustees of State

712 Institutions of Higher Learning for the design and construction of

713 dormitories, other buildings or facilities or parking structures

714 on the campus of a state institution of higher learning, as

715 provided in Section 32-101-44.

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

718 (i) All contracts for the purchase of commodities,

719 equipment and public construction (including, but not limited to,

720 repair and maintenance), may be let for periods of not more than

721 sixty (60) months in advance, subject to applicable statutory

722 provisions prohibiting the letting of contracts during specified



723 periods near the end of terms of office. Term contracts for a
724 period exceeding twenty-four (24) months shall also be subject to
725 ratification or cancellation by governing authority boards taking
726 office subsequent to the governing authority board entering the
727 contract.

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

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

754 (p) **Electrical utility petroleum-based equipment**
755 **purchase procedure.** When in response to a proper advertisement



756 therefor, no bid firm as to price is submitted to an electric
757 utility for power transformers, distribution transformers, power
758 breakers, reclosers or other articles containing a petroleum
759 product, the electric utility may accept the lowest and best bid
760 therefor although the price is not firm.

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

783 (r) **Solid waste contract proposal procedure.** Before
784 entering into any contract for garbage collection or disposal,
785 contract for solid waste collection or disposal or contract for
786 sewage collection or disposal, which involves an expenditure of
787 more than Fifty Thousand Dollars (\$50,000.00), a governing
788 authority or agency shall issue publicly a request for proposals



789 concerning the specifications for such services which shall be
790 advertised for in the same manner as provided in this section for
791 seeking bids for purchases which involve an expenditure of more
792 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
793 when issued shall contain terms and conditions relating to price,
794 financial responsibility, technology, legal responsibilities and
795 other relevant factors as are determined by the governing
796 authority or agency to be appropriate for inclusion; all factors
797 determined relevant by the governing authority or agency or
798 required by this paragraph (r) shall be duly included in the
799 advertisement to elicit proposals. After responses to the request
800 for proposals have been duly received, the governing authority or
801 agency shall select the most qualified proposal or proposals on
802 the basis of price, technology and other relevant factors and from
803 such proposals, but not limited to the terms thereof, negotiate
804 and enter contracts with one or more of the persons or firms
805 submitting proposals. If the governing authority or agency deems
806 none of the proposals to be qualified or otherwise acceptable, the
807 request for proposals process may be reinitiated. Notwithstanding
808 any other provisions of this paragraph, where a county with at
809 least thirty-five thousand (35,000) nor more than forty thousand
810 (40,000) population, according to the 1990 federal decennial
811 census, owns or operates a solid waste landfill, the governing
812 authorities of any other county or municipality may contract with
813 the governing authorities of the county owning or operating the
814 landfill, pursuant to a resolution duly adopted and spread upon
815 the minutes of each governing authority involved, for garbage or
816 solid waste collection or disposal services through contract
817 negotiations.

818 (s) **Minority set aside authorization.** Notwithstanding
819 any provision of this section to the contrary, any agency or
820 governing authority, by order placed on its minutes, may, in its
821 discretion, set aside not more than twenty percent (20%) of its



822 anticipated annual expenditures for the purchase of commodities
823 from minority businesses; however, all such set-aside purchases
824 shall comply with all purchasing regulations promulgated by the
825 Department of Finance and Administration and shall be subject to
826 bid requirements under this section. Set-aside purchases for
827 which competitive bids are required shall be made from the lowest
828 and best minority business bidder. For the purposes of this
829 paragraph, the term "minority business" means a business which is
830 owned by a majority of persons who are United States citizens or
831 permanent resident aliens (as defined by the Immigration and
832 Naturalization Service) of the United States, and who are Asian,
833 Black, Hispanic or Native American, according to the following
834 definitions:

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

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

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

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

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



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

857 **SECTION 5.** This act shall take effect and be in force from
858 and after July 1, 2002.

