

By: Senator(s) Mettetal, Jackson (32nd)

To: Public Property;
Appropriations

SENATE BILL NO. 2486
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 31-11-3, MISSISSIPPI CODE OF 1972, TO
2 ASSIGN ADDITIONAL POWERS AND DUTIES TO THE DEPARTMENT OF FINANCE
3 AND ADMINISTRATION RELATING TO PARKING SPACES FOR STATE EMPLOYEES
4 WHO WORK IN THE WOOLFOLK BUILDING, THE CARROLL GARTIN JUSTICE
5 BUILDING OR THE WALTER SILLERS OFFICE BUILDING; TO AMEND SECTIONS
6 27-104-7 AND 29-5-2, MISSISSIPPI CODE OF 1972, TO REVISE THE
7 DUTIES OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION RELATING TO
8 PARKING FOR STATE EMPLOYEES WHO WORK IN THE WOOLFOLK BUILDING, THE
9 CARROLL GARTIN JUSTICE BUILDING OR THE WALTER SILLERS OFFICE
10 BUILDING; TO AMEND SECTION 29-5-77, MISSISSIPPI CODE OF 1972, TO
11 AUTHORIZE THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO ENFORCE
12 LAWS ON CERTAIN PROPERTY OF THE BOARD OF TRUSTEES OF STATE
13 INSTITUTIONS OF HIGHER LEARNING AND THE DEPARTMENT OF AGRICULTURE;
14 TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO CLARIFY
15 THAT PUBLIC CONSTRUCTION CONTRACTS MAY ONLY INCLUDE ALLOWANCES FOR
16 CERTAIN LIMITED AND SPECIFIED ITEMS AND AMOUNTS; TO AUTHORIZE THE
17 DISPLAY OF "IN GOD WE TRUST," THE TEN COMMANDMENTS AND THE
18 BEATITUDES AT PUBLIC BUILDINGS AND PROPERTY IN MISSISSIPPI; TO
19 REQUIRE THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO LEASE TO
20 VENDORS UNTIL JANUARY 1, 2006, THE PROPERTY AT THE OLD FARMER'S
21 MARKET; AND FOR RELATED PURPOSES.

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

23 **SECTION 1.** Section 31-11-3, Mississippi Code of 1972, is
24 amended as follows:

25 31-11-3. (1) The Department of Finance and Administration,
26 for the purposes of carrying out the provisions of this chapter,
27 in addition to all other rights and powers granted by law, shall
28 have full power and authority to employ and compensate architects
29 or other employees necessary for the purpose of making
30 inspections, preparing plans and specifications, supervising the
31 erection of any buildings, and making any repairs or additions as
32 may be determined by the Department of Finance and Administration
33 to be necessary, pursuant to the rules and regulations of the
34 State Personnel Board. The department shall have entire control
35 and supervision of, and determine what, if any, buildings,
36 additions, repairs or improvements are to be made under the

37 provisions of this chapter, subject to the approval of the Public
38 Procurement Review Board.

39 (2) The department shall have full power to erect buildings,
40 make repairs, additions or improvements, and buy materials,
41 supplies and equipment for any of the institutions or departments
42 of the state subject to the approval of the Public Procurement
43 Review Board. In addition to other powers conferred, the
44 department shall have full power and authority as directed by the
45 Legislature, or when funds have been appropriated for its use for
46 these purposes, to:

47 (a) Build a state office building;

48 (b) Build suitable plants or buildings for the use and
49 housing of any state schools or institutions, including the
50 building of plants or buildings for new state schools or
51 institutions, as provided for by the Legislature;

52 (c) Provide state aid for the construction of school
53 buildings;

54 (d) Promote and develop the training of returned
55 veterans of the United States in all sorts of educational and
56 vocational learning to be supplied by the proper educational
57 institution of the State of Mississippi, and in so doing allocate
58 monies appropriated to it for these purposes to the Governor for
59 use by him in setting up, maintaining and operating an office and
60 employing a state director of on-the-job training for veterans and
61 the personnel necessary in carrying out Public Law No. 346 of the
62 United States;

63 (e) Build and equip a hospital and administration
64 building at the Mississippi State Penitentiary;

65 (f) Build and equip additional buildings and wards at
66 the Boswell Retardation Center;

67 (g) Construct a sewage disposal and treatment plant at
68 the state insane hospital, and in so doing acquire additional land

69 as may be necessary, and to exercise the right of eminent domain
70 in the acquisition of this land;

71 (h) Build and equip the Mississippi central market and
72 purchase or acquire by eminent domain, if necessary, any lands
73 needed for this purpose;

74 (i) Build and equip suitable facilities for a training
75 and employing center for the blind;

76 (j) Build and equip a gymnasium at Columbia Training
77 School;

78 (k) Approve or disapprove the expenditure of any money
79 appropriated by the Legislature when authorized by the bill making
80 the appropriation;

81 (l) Expend monies appropriated to it in paying the
82 state's part of the cost of any street paving;

83 (m) Sell and convey state lands when authorized by the
84 Legislature, cause said lands to be properly surveyed and platted,
85 execute all deeds or other legal instruments, and do any and all
86 other things required to effectively carry out the purpose and
87 intent of the Legislature. Any transaction which involves state
88 lands under the provisions of this paragraph shall be done in a
89 manner consistent with the provisions of Section 29-1-1;

90 (n) Collect and receive from educational institutions
91 of the State of Mississippi monies required to be paid by these
92 institutions to the state in carrying out any veterans'
93 educational programs;

94 (o) Purchase lands for building sites, or as additions
95 to building sites, for the erection of buildings and other
96 facilities which the department is authorized to erect, and
97 demolish and dispose of old buildings, when necessary for the
98 proper construction of new buildings. Any transaction which
99 involves state lands under the provisions of this paragraph shall
100 be done in a manner consistent with the provisions of Section
101 29-1-1; * * *

102 (p) Obtain business property insurance with a
103 deductible of not less than One Hundred Thousand Dollars
104 (\$100,000.00) on state-owned buildings under the management and
105 control of the department; and

106 (q) In consultation with and approval by the Chairmen
107 of the Public Property Committees of the Senate and the House of
108 Representatives, enter into contracts for the purpose of providing
109 parking spaces for state employees who work in the Woolfolk
110 Building, the Carroll Gartin Justice Building or the Walter
111 Sillers Office Building. The provisions of this paragraph (q)
112 shall stand repealed on July 1, 2006.

113 (3) The department shall survey state-owned and
114 state-utilized buildings to establish an estimate of the costs of
115 architectural alterations, pursuant to the Americans With
116 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The
117 department shall establish priorities for making the identified
118 architectural alterations and shall make known to the Legislative
119 Budget Office and to the Legislature the required cost to
120 effectuate such alterations. To meet the requirements of this
121 section, the department shall use standards of accessibility that
122 are at least as stringent as any applicable federal requirements
123 and may consider:

124 (a) Federal minimum guidelines and requirements issued
125 by the United States Architectural and Transportation Barriers
126 Compliance Board and standards issued by other federal agencies;

127 (b) The criteria contained in the American Standard
128 Specifications for Making Buildings Accessible and Usable by the
129 Physically Handicapped and any amendments thereto as approved by
130 the American Standards Association, Incorporated (ANSI Standards);

131 (c) Design manuals;

132 (d) Applicable federal guidelines;

133 (e) Current literature in the field;

134 (f) Applicable safety standards; and

135 (g) Any applicable environmental impact statements.

136 (4) The department shall observe the provisions of Section
137 31-5-23, in letting contracts and shall use Mississippi products,
138 including paint, varnish and lacquer which contain as vehicles
139 tung oil and either ester gum or modified resin (with rosin as the
140 principal base of constituents), and turpentine shall be used as a
141 solvent or thinner, where these products are available at a cost
142 not to exceed the cost of products grown, produced, prepared, made
143 or manufactured outside of the State of Mississippi.

144 (5) The department shall have authority to accept grants,
145 loans or donations from the United States government or from any
146 other sources for the purpose of matching funds in carrying out
147 the provisions of this chapter.

148 (6) The department shall build a wheelchair ramp at the War
149 Memorial Building which complies with all applicable federal laws,
150 regulations and specifications regarding wheelchair ramps.

151 (7) The department shall review and preapprove all
152 architectural or engineering service contracts entered into by any
153 state agency, institution, commission, board or authority
154 regardless of the source of funding used to defray the costs of
155 the construction or renovation project for which services are to
156 be obtained. The provisions of this subsection (7) shall not
157 apply to any architectural or engineering contract paid for by
158 self-generated funds of any of the state institutions of higher
159 learning, nor shall they apply to community college projects that
160 are funded from local funds or other nonstate sources which are
161 outside the Department of Finance and Administration's
162 appropriations or as directed by the Legislature. The provisions
163 of this subsection (7) shall not apply to any construction or
164 design projects of the State Military Department that are funded
165 from federal funds or other nonstate sources.

166 (8) The department shall have the authority to obtain
167 annually from the state institutions of higher learning

168 information on all building, construction and renovation projects
169 including duties, responsibilities and costs of any architect or
170 engineer hired by any such institutions.

171 (9) (a) As an alternative to other methods of awarding
172 contracts as prescribed by law, the department may use the
173 design-build method or the design-build bridging method of
174 contracting for new capital construction projects to be used as a
175 pilot program for the following projects:

176 (i) Projects for the Mississippi Development
177 Authority pursuant to agreements between both governmental
178 entities;

179 (ii) Any project with an estimated cost of not
180 more than Ten Million Dollars (\$10,000,000.00), not to exceed two
181 (2) projects per fiscal year; and

182 (iii) Any project which has an estimated cost of
183 more than Fifty Million Dollars (\$50,000,000.00), not to exceed
184 one (1) project per fiscal year.

185 (b) As used in this subsection:

186 (i) "Design-build method of contracting" means a
187 contract that combines the design and construction phases of a
188 project into a single contract and the contractor is required to
189 satisfactorily perform, at a minimum, both the design and
190 construction of the project.

191 (ii) "Design-build bridging method of contracting"
192 means a contract that requires design through the design
193 development phase by a professional designer, after which a
194 request for qualifications for design completion and construction
195 is required for the completion of the project from a single
196 contractor that combines the balance of design and construction
197 phases of a project into a single contract. The contractor is
198 required to satisfactorily perform, at a minimum, both the balance
199 of design and construction of the project.

200 (c) The department shall establish detailed criteria
201 for the selection of the successful design-build/design-build
202 bridging contractor in each request for design-build/design-build
203 bridging proposals. The request for qualifications evaluation of
204 the selection committee is a public record and shall be maintained
205 for a minimum of three (3) years after project completion.

206 (d) The department shall maintain detailed records on
207 projects separate and apart from its regular record keeping. The
208 department shall file a report to the Legislature evaluating the
209 design-build/design-build bridging method of contracting by
210 comparing it to the low-bid method of contracting. At a minimum,
211 the report must include:

212 (i) The management goals and objectives for the
213 design-build/design-build bridging system of management;

214 (ii) A complete description of the components of
215 the design-build/design-build bridging management system,
216 including a description of the system the department put into
217 place on all projects managed under the system to insure that it
218 has the complete information on building segment costs and to
219 insure proper analysis of any proposal the department receives
220 from a contractor;

221 (iii) The accountability systems the department
222 established to monitor any design-build/design-build bridging
223 project's compliance with specific goals and objectives for the
224 project;

225 (iv) The outcome of any project or any interim
226 report on an ongoing project let under a design-build/design-build
227 bridging management system showing compliance with the goals,
228 objectives, policies and procedures the department set for the
229 project; and

230 (v) The method used by the department to select
231 projects to be let under the design-build/design-build bridging
232 system of management and all other systems, policies and

233 procedures that the department considered as necessary components
234 to a design-build/design-build bridging management system.

235 (e) All contracts let under the provisions of this
236 subsection shall be subject to oversight and review by the State
237 Auditor.

238 **SECTION 2.** Section 27-104-7, Mississippi Code of 1972, is
239 amended as follows:

240 27-104-7. (1) There is hereby created within the Department
241 of Finance and Administration the Public Procurement Review Board,
242 which shall be composed of the Executive Director of the
243 Department of Finance and Administration, the head of the Office
244 of Budget and Policy Development and an employee of the Office of
245 General Services who is familiar with the purchasing laws of this
246 state. The Executive Director of the Department of Finance and
247 Administration shall be chairman and shall preside over the
248 meetings of the board. The board shall annually elect a vice
249 chairman, who shall serve in the absence of the chairman. No
250 business shall be transacted, including adoption of rules of
251 procedure, without the presence of a quorum of the board. Two (2)
252 members shall be a quorum. No action shall be valid unless
253 approved by the chairman and one (1) other of those members
254 present and voting, entered upon the minutes of the board and
255 signed by the chairman. The board shall meet on a monthly basis
256 and at any other time when notified by the chairman. Necessary
257 clerical and administrative support for the board shall be
258 provided by the Department of Finance and Administration. Minutes
259 shall be kept of the proceedings of each meeting, copies of which
260 shall be filed on a monthly basis with the Legislative Budget
261 Office.

262 (2) The Public Procurement Review Board shall have the
263 following powers and responsibilities:

264 (a) Approve all purchasing regulations governing the
265 purchase or lease by any agency, as defined in Section 31-7-1, of

266 commodities and equipment, except computer equipment acquired
267 pursuant to Sections 25-53-1 through 25-53-29;

268 (b) Adopt regulations governing the approval of
269 contracts let for the construction and maintenance of state
270 buildings and other state facilities;

271 (c) Adopt regulations governing any lease or rental
272 agreement by any state agency or department, including any state
273 agency financed entirely by federal funds, for space outside the
274 buildings under the jurisdiction of the Department of Finance and
275 Administration; * * *

276 (d) Adopt, in its discretion, regulations to set aside
277 at least five percent (5%) of anticipated annual expenditures for
278 the purchase of commodities from minority businesses; however, all
279 such set-aside purchases shall comply with all purchasing
280 regulations promulgated by the department and shall be subject to
281 all bid requirements. Set-aside purchases for which competitive
282 bids are required shall be made from the lowest and best minority
283 business bidder; however, if no minority bid is available or if
284 the minority bid is more than two percent (2%) higher than the
285 lowest bid, then bids shall be accepted and awarded to the lowest
286 and best bidder. Provided, however, that the provisions herein
287 shall not be construed to prohibit the rejection of a bid when
288 only one (1) bid is received. Such rejection shall be placed in
289 the minutes. For the purposes of this paragraph, the term
290 "minority business" means a business which is owned by a person
291 who is a citizen or lawful permanent resident of the United States
292 and who is:

293 (i) Black: having origins in any of the black
294 racial groups of Africa.

295 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
296 Central or South American, or other Spanish or Portuguese culture
297 or origin regardless of race.

298 (iii) Asian American: having origins in any of
299 the original peoples of the Far East, Southeast Asia, the Indian
300 subcontinent, or the Pacific Islands.

301 (iv) American Indian or Alaskan Native: having
302 origins in any of the original peoples of North America.

303 (v) Female;

304 (e) In consultation with and approval by the Chairmen
305 of the Senate and House Public Property Committees, approve
306 leases, for a term not to exceed eighteen (18) months, entered
307 into by state agencies for the purpose of providing parking
308 arrangements for state employees who work in the Woolfolk
309 Building, the Carroll Gartin Justice Building or the Walter
310 Sillers Office Building. The provisions of this paragraph (e)
311 shall stand repealed on July 1, 2006.

312 (3) No member of the Public Procurement Review Board shall
313 use his official authority or influence to coerce, by threat of
314 discharge from employment, or otherwise, the purchase of
315 commodities or the contracting for public construction under this
316 chapter.

317 **SECTION 3.** Section 29-5-2, Mississippi Code of 1972, is
318 amended as follows:

319 29-5-2. The duties of the Department of Finance and
320 Administration shall be as follows:

321 (a) (i) To exercise general supervision and care over
322 and keep in good condition the following state property located in
323 the City of Jackson: the New State Capitol Building, the Woolfolk
324 State Office Building, the Carroll Gartin Justice Building, the
325 Walter Sillers Office Building, the War Veterans' Memorial
326 Building, the Charlotte Capers Building, the William F. Winter
327 Archives and History Building, the Ike Sanford Veterans Affairs
328 Building, the Old State Capitol Building, the Governor's Mansion,
329 the Heber Ladner Building, the Burroughs Building, the Robert E.
330 Lee Office Building, the Robert E. Lee Parking Garage, the Manship

331 House Restoration and Visitor Center, the State Records Center,
332 the Robert G. Clark, Jr., Building, and all other properties
333 acquired in the same transaction at the time of the purchase of
334 the Robert E. Lee Hotel property from the First Federal Savings
335 and Loan Association of Jackson, Mississippi, which properties are
336 more particularly described in a warranty deed heretofore executed
337 and delivered on April 22, 1969, and filed for record in the
338 Office of the Chancery Clerk of the First Judicial District of
339 Hinds County, Mississippi, located in Jackson, Mississippi, on
340 April 25, 1969, at 9:00 a.m., and recorded in Deed Book No. 1822,
341 page 136 et seq., and the Central High Building and 101 Capitol
342 Centre.

343 (ii) To exercise general supervision and care over
344 and keep in good condition the Dr. Eldon Langston Bolton Building
345 located in Biloxi, Mississippi.

346 (iii) To exercise general supervision and care
347 over and keep in good condition the State Service Center, located
348 at the intersection of State Highway 49 and John Merl Tatum
349 Industrial Drive in Hattiesburg, Mississippi.

350 (b) To assign suitable office space for the various
351 state departments, officers and employees who are provided with an
352 office in any of the buildings under the jurisdiction or control
353 of the Department of Finance and Administration. However, the
354 assignment of space in the New Capitol Building shall be
355 designated by duly passed resolution of the combined Senate Rules
356 Committee and the House Management Committee, meeting as a joint
357 committee, approved by the Lieutenant Governor and Speaker of the
358 House of Representatives. A majority vote of the members of the
359 Senate Rules Committee and a majority vote of the members of the
360 House Management Committee shall be required on all actions taken,
361 resolutions or reports adopted, and all other matters considered
362 by the full combined committee on occasions when the Senate Rules

363 Committee and the House Management Committee shall meet as a full
364 combined committee.

365 (c) To approve or disapprove with the concurrence of
366 the Public Procurement Review Board, any lease or rental
367 agreements by any state agency or department, including any state
368 agency financed entirely by federal and special funds, for space
369 outside the buildings under the jurisdiction of the Department of
370 Finance and Administration, including space necessary for parking
371 to be used by state employees who work in the Woolfolk Building,
372 the Carroll Gartin Justice Building or the Walter Sillers Office
373 Building. In no event shall any employee, officer, department,
374 federally funded agency or bureau of the state be authorized to
375 enter a lease or rental agreement without prior approval of the
376 Department of Finance and Administration and the Public
377 Procurement Review Board.

378 The Department of Finance and Administration is authorized to
379 use architects, engineers, building inspectors and other personnel
380 for the purpose of making inspections as may be deemed necessary
381 in carrying out its duties and maintaining the facilities.

382 The provisions of this paragraph (c) shall stand repealed on
383 July 1, 2006.

384 (d) To acquire by lease, lease-purchase agreement, or
385 otherwise, as provided in Section 27-104-107, and to assign
386 through the Office of General Services, by lease or sublease
387 agreement from the office, and with the concurrence of the Public
388 Procurement Review Board, to any state agency or department,
389 including any state agency financed entirely by federal and
390 special funds, appropriate office space in the buildings acquired.

391 **SECTION 4.** Section 29-5-77, Mississippi Code of 1972, is
392 amended as follows:

393 29-5-77. The Department of Finance and Administration shall
394 have jurisdiction relative to the enforcement of all laws of the
395 State of Mississippi on the properties set forth in Section

396 29-5-2, the Court of Appeals Building, the Mississippi Department
397 of Transportation Building and the Public Employees' Retirement
398 System Building. The Department of Finance and Administration
399 shall, through any person or persons appointed by the Department
400 of Finance and Administration, or through the Department of Public
401 Safety when requested by the Department of Finance and
402 Administration, make arrests for any violation of any law of the
403 State of Mississippi on those grounds of or within those
404 properties. The Department of Finance and Administration shall
405 enforce the provisions of Sections 29-5-57 through 29-5-67,
406 29-5-71 through 29-5-77, and 29-5-81 through 29-5-95, and
407 prescribe such rules and regulations as are necessary therefor.

408 When in the opinion of the Governor or, in his absence, the
409 Lieutenant Governor, it is readily apparent that an emergency
410 exists that the persons appointed by the Department of Finance and
411 Administration are unable to control in the accomplishment of the
412 provisions of Sections 29-5-57 through 29-5-67, 29-5-71 through
413 29-5-77, and 29-5-81 through 29-5-95 in regard to law enforcement,
414 then the Governor, or in his absence, the Lieutenant Governor, may
415 call upon the Department of Public Safety, members of which shall
416 have power to arrest and detain any persons violating the
417 provisions of those sections of law, until the person can be
418 brought before the proper authorities for trial.

419 Subject to the approval of the Board of Trustees of State
420 Institutions of Higher Learning, the Board of Trustees and the
421 Department of Finance and Administration shall be authorized to
422 enter into a contract for the Department of Finance and
423 Administration to supply the security personnel with jurisdiction
424 to enforce all laws of the State of Mississippi on the property of
425 the Board of Trustees located at the corner of Ridgewood Road and
426 Lakeland Drive in the City of Jackson.

427 The Department of Finance and Administration and the
428 Department of Agriculture are authorized to enter into a contract

429 for the Department of Finance and Administration to have
430 jurisdiction and enforce all laws of the State of Mississippi on
431 the property of the Department of Agriculture located at 121 North
432 Jefferson Street and the new Farmer's Market Building located at
433 the corner of High and Jefferson Streets in the City of Jackson,
434 Hinds County, Mississippi. It is the intent of the Legislature
435 that the Department of Finance and Administration will not post
436 any security personnel at such buildings, but will provide regular
437 vehicle patrols and responses to security system alarms.

438 **SECTION 5.** Section 31-7-13, Mississippi Code of 1972, is
439 amended as follows:

440 31-7-13. All agencies and governing authorities shall
441 purchase their commodities and printing; contract for garbage
442 collection or disposal; contract for solid waste collection or
443 disposal; contract for sewage collection or disposal; contract for
444 public construction; and contract for rentals as herein provided.

445 (a) **Bidding procedure for purchases not over \$3,500.00.**
446 Purchases which do not involve an expenditure of more than Three
447 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
448 shipping charges, may be made without advertising or otherwise
449 requesting competitive bids. However, nothing contained in this
450 paragraph (a) shall be construed to prohibit any agency or
451 governing authority from establishing procedures which require
452 competitive bids on purchases of Three Thousand Five Hundred
453 Dollars (\$3,500.00) or less.

454 (b) **Bidding procedure for purchases over \$3,500.00 but**
455 **not over \$15,000.00.** Purchases which involve an expenditure of
456 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
457 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
458 freight and shipping charges may be made from the lowest and best
459 bidder without publishing or posting advertisement for bids,
460 provided at least two (2) competitive written bids have been
461 obtained. Any governing authority purchasing commodities pursuant

462 to this paragraph (b) may authorize its purchasing agent, or his
463 designee, with regard to governing authorities other than
464 counties, or its purchase clerk, or his designee, with regard to
465 counties, to accept the lowest and best competitive written bid.
466 Such authorization shall be made in writing by the governing
467 authority and shall be maintained on file in the primary office of
468 the agency and recorded in the official minutes of the governing
469 authority, as appropriate. The purchasing agent or the purchase
470 clerk, or their designee, as the case may be, and not the
471 governing authority, shall be liable for any penalties and/or
472 damages as may be imposed by law for any act or omission of the
473 purchasing agent or purchase clerk, or their designee,
474 constituting a violation of law in accepting any bid without
475 approval by the governing authority. The term "competitive
476 written bid" shall mean a bid submitted on a bid form furnished by
477 the buying agency or governing authority and signed by authorized
478 personnel representing the vendor, or a bid submitted on a
479 vendor's letterhead or identifiable bid form and signed by
480 authorized personnel representing the vendor. "Competitive" shall
481 mean that the bids are developed based upon comparable
482 identification of the needs and are developed independently and
483 without knowledge of other bids or prospective bids. Bids may be
484 submitted by facsimile, electronic mail or other generally
485 accepted method of information distribution. Bids submitted by
486 electronic transmission shall not require the signature of the
487 vendor's representative unless required by agencies or governing
488 authorities.

489 (c) **Bidding procedure for purchases over \$15,000.00.**

490 (i) **Publication requirement.** Purchases which
491 involve an expenditure of more than Fifteen Thousand Dollars
492 (\$15,000.00), exclusive of freight and shipping charges, may be
493 made from the lowest and best bidder after advertising for
494 competitive sealed bids once each week for two (2) consecutive

495 weeks in a regular newspaper published in the county or
496 municipality in which such agency or governing authority is
497 located. The date as published for the bid opening shall not be
498 less than seven (7) working days after the last published notice;
499 however, if the purchase involves a construction project in which
500 the estimated cost is in excess of Fifteen Thousand Dollars
501 (\$15,000.00), such bids shall not be opened in less than fifteen
502 (15) working days after the last notice is published and the
503 notice for the purchase of such construction shall be published
504 once each week for two (2) consecutive weeks. The notice of
505 intention to let contracts or purchase equipment shall state the
506 time and place at which bids shall be received, list the contracts
507 to be made or types of equipment or supplies to be purchased, and,
508 if all plans and/or specifications are not published, refer to the
509 plans and/or specifications on file. If there is no newspaper
510 published in the county or municipality, then such notice shall be
511 given by posting same at the courthouse, or for municipalities at
512 the city hall, and at two (2) other public places in the county or
513 municipality, and also by publication once each week for two (2)
514 consecutive weeks in some newspaper having a general circulation
515 in the county or municipality in the above provided manner. On
516 the same date that the notice is submitted to the newspaper for
517 publication, the agency or governing authority involved shall mail
518 written notice to, or provide electronic notification to the main
519 office of the Mississippi Contract Procurement Center that
520 contains the same information as that in the published notice.

521 (ii) **Bidding process amendment procedure.** If all
522 plans and/or specifications are published in the notification,
523 then the plans and/or specifications may not be amended. If all
524 plans and/or specifications are not published in the notification,
525 then amendments to the plans/specifications, bid opening date, bid
526 opening time and place may be made, provided that the agency or
527 governing authority maintains a list of all prospective bidders

528 who are known to have received a copy of the bid documents and all
529 such prospective bidders are sent copies of all amendments. This
530 notification of amendments may be made via mail, facsimile,
531 electronic mail or other generally accepted method of information
532 distribution. No addendum to bid specifications may be issued
533 within two (2) working days of the time established for the
534 receipt of bids unless such addendum also amends the bid opening
535 to a date not less than five (5) working days after the date of
536 the addendum.

537 (iii) **Filing requirement.** In all cases involving
538 governing authorities, before the notice shall be published or
539 posted, the plans or specifications for the construction or
540 equipment being sought shall be filed with the clerk of the board
541 of the governing authority. In addition to these requirements, a
542 bid file shall be established which shall indicate those vendors
543 to whom such solicitations and specifications were issued, and
544 such file shall also contain such information as is pertinent to
545 the bid.

546 (iv) **Specification restrictions.**

547 1. Specifications pertinent to such bidding
548 shall be written so as not to exclude comparable equipment of
549 domestic manufacture. However, if valid justification is
550 presented, the Department of Finance and Administration or the
551 board of a governing authority may approve a request for specific
552 equipment necessary to perform a specific job. Further, such
553 justification, when placed on the minutes of the board of a
554 governing authority, may serve as authority for that governing
555 authority to write specifications to require a specific item of
556 equipment needed to perform a specific job. In addition to these
557 requirements, from and after July 1, 1990, vendors of relocatable
558 classrooms and the specifications for the purchase of such
559 relocatable classrooms published by local school boards shall meet
560 all pertinent regulations of the State Board of Education,

561 including prior approval of such bid by the State Department of
562 Education.

563 2. Specifications for construction projects
564 may include an allowance for commodities, equipment, furniture,
565 construction materials or systems in which prospective bidders are
566 instructed to include in their bids specified amounts for such
567 items so long as the allowance items are acquired by the vendor in
568 a commercially reasonable manner and approved by the
569 agency/governing authority. Such acquisitions shall not be made
570 to circumvent the public purchasing laws.

571 (v) Agencies and governing authorities may
572 establish secure procedures by which bids may be submitted via
573 electronic means.

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

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

590 (ii) **Decision procedure for Certified Purchasing**
591 **Offices.** In addition to the decision procedure set forth in
592 paragraph (d)(i), Certified Purchasing Offices may also use the
593 following procedure: Purchases may be made from the bidder

594 offering the best value. In determining the best value bid,
595 freight and shipping charges shall be included. Life-cycle
596 costing, total cost bids, warranties, guaranteed buy-back
597 provisions, documented previous experience, training costs and
598 other relevant provisions may be included in the best value
599 calculation. This provision shall authorize Certified Purchasing
600 Offices to utilize a Request For Proposals (RFP) process when
601 purchasing commodities. All best value procedures for state
602 agencies must be in compliance with regulations established by the
603 Department of Finance and Administration. No agency or governing
604 authority shall accept a bid based on items or criteria not
605 included in the specifications.

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

612 (e) **Lease-purchase authorization.** For the purposes of
613 this section, the term "equipment" shall mean equipment, furniture
614 and, if applicable, associated software and other applicable
615 direct costs associated with the acquisition. Any lease-purchase
616 of equipment which an agency is not required to lease-purchase
617 under the master lease-purchase program pursuant to Section
618 31-7-10 and any lease-purchase of equipment which a governing
619 authority elects to lease-purchase may be acquired by a
620 lease-purchase agreement under this paragraph (e). Lease-purchase
621 financing may also be obtained from the vendor or from a
622 third-party source after having solicited and obtained at least
623 two (2) written competitive bids, as defined in paragraph (b) of
624 this section, for such financing without advertising for such
625 bids. Solicitation for the bids for financing may occur before or
626 after acceptance of bids for the purchase of such equipment or,

627 where no such bids for purchase are required, at any time before
628 the purchase thereof. No such lease-purchase agreement shall be
629 for an annual rate of interest which is greater than the overall
630 maximum interest rate to maturity on general obligation
631 indebtedness permitted under Section 75-17-101, and the term of
632 such lease-purchase agreement shall not exceed the useful life of
633 equipment covered thereby as determined according to the upper
634 limit of the asset depreciation range (ADR) guidelines for the
635 Class Life Asset Depreciation Range System established by the
636 Internal Revenue Service pursuant to the United States Internal
637 Revenue Code and regulations thereunder as in effect on December
638 31, 1980, or comparable depreciation guidelines with respect to
639 any equipment not covered by ADR guidelines. Any lease-purchase
640 agreement entered into pursuant to this paragraph (e) may contain
641 any of the terms and conditions which a master lease-purchase
642 agreement may contain under the provisions of Section 31-7-10(5),
643 and shall contain an annual allocation dependency clause
644 substantially similar to that set forth in Section 31-7-10(8).
645 Each agency or governing authority entering into a lease-purchase
646 transaction pursuant to this paragraph (e) shall maintain with
647 respect to each such lease-purchase transaction the same
648 information as required to be maintained by the Department of
649 Finance and Administration pursuant to Section 31-7-10(13).
650 However, nothing contained in this section shall be construed to
651 permit agencies to acquire items of equipment with a total
652 acquisition cost in the aggregate of less than Ten Thousand
653 Dollars (\$10,000.00) by a single lease-purchase transaction. All
654 equipment, and the purchase thereof by any lessor, acquired by
655 lease-purchase under this paragraph and all lease-purchase
656 payments with respect thereto shall be exempt from all Mississippi
657 sales, use and ad valorem taxes. Interest paid on any
658 lease-purchase agreement under this section shall be exempt from
659 State of Mississippi income taxation.

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

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

689 (h) **Petroleum purchase alternative.** In addition to
690 other methods of purchasing authorized in this chapter, when any
691 agency or governing authority shall have a need for gas, diesel
692 fuel, oils and/or other petroleum products in excess of the amount

693 set forth in paragraph (a) of this section, such agency or
694 governing authority may purchase the commodity after having
695 solicited and obtained at least two (2) competitive written bids,
696 as defined in paragraph (b) of this section. If two (2)
697 competitive written bids are not obtained, the entity shall comply
698 with the procedures set forth in paragraph (c) of this section.
699 In the event any agency or governing authority shall have
700 advertised for bids for the purchase of gas, diesel fuel, oils and
701 other petroleum products and coal and no acceptable bids can be
702 obtained, such agency or governing authority is authorized and
703 directed to enter into any negotiations necessary to secure the
704 lowest and best contract available for the purchase of such
705 commodities.

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

726 (j) **State agency emergency purchase procedure.** If the
727 governing board or the executive head, or his designee, of any
728 agency of the state shall determine that an emergency exists in
729 regard to the purchase of any commodities or repair contracts, so
730 that the delay incident to giving opportunity for competitive
731 bidding would be detrimental to the interests of the state, then
732 the provisions herein for competitive bidding shall not apply and
733 the head of such agency shall be authorized to make the purchase
734 or repair. Total purchases so made shall only be for the purpose
735 of meeting needs created by the emergency situation. In the event
736 such executive head is responsible to an agency board, at the
737 meeting next following the emergency purchase, documentation of
738 the purchase, including a description of the commodity purchased,
739 the purchase price thereof and the nature of the emergency shall
740 be presented to the board and placed on the minutes of the board
741 of such agency. The head of such agency, or his designee, shall,
742 at the earliest possible date following such emergency purchase,
743 file with the Department of Finance and Administration (i) a
744 statement explaining the conditions and circumstances of the
745 emergency, which shall include a detailed description of the
746 events leading up to the situation and the negative impact to the
747 entity if the purchase is made following the statutory
748 requirements set forth in paragraph (a), (b) or (c) of this
749 section, and (ii) a certified copy of the appropriate minutes of
750 the board of such agency, if applicable. On or before September 1
751 of each year, the State Auditor shall prepare and deliver to the
752 Senate Fees, Salaries and Administration Committee, the House Fees
753 and Salaries of Public Officers Committee and the Joint
754 Legislative Budget Committee a report containing a list of all
755 state agency emergency purchases and supporting documentation for
756 each emergency purchase.

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

758 If the governing authority, or the governing authority acting

759 through its designee, shall determine that an emergency exists in
760 regard to the purchase of any commodities or repair contracts, so
761 that the delay incident to giving opportunity for competitive
762 bidding would be detrimental to the interest of the governing
763 authority, then the provisions herein for competitive bidding
764 shall not apply and any officer or agent of such governing
765 authority having general or special authority therefor in making
766 such purchase or repair shall approve the bill presented therefor,
767 and he shall certify in writing thereon from whom such purchase
768 was made, or with whom such a repair contract was made. At the
769 board meeting next following the emergency purchase or repair
770 contract, documentation of the purchase or repair contract,
771 including a description of the commodity purchased, the price
772 thereof and the nature of the emergency shall be presented to the
773 board and shall be placed on the minutes of the board of such
774 governing authority.

775 (1) **Hospital purchase, lease-purchase and lease**
776 **authorization.**

777 (i) The commissioners or board of trustees of any
778 public hospital may contract with such lowest and best bidder for
779 the purchase or lease-purchase of any commodity under a contract
780 of purchase or lease-purchase agreement whose obligatory payment
781 terms do not exceed five (5) years.

782 (ii) In addition to the authority granted in
783 subparagraph (i) of this paragraph (1), the commissioners or board
784 of trustees is authorized to enter into contracts for the lease of
785 equipment or services, or both, which it considers necessary for
786 the proper care of patients if, in its opinion, it is not
787 financially feasible to purchase the necessary equipment or
788 services. Any such contract for the lease of equipment or
789 services executed by the commissioners or board shall not exceed a
790 maximum of five (5) years' duration and shall include a
791 cancellation clause based on unavailability of funds. If such

792 cancellation clause is exercised, there shall be no further
793 liability on the part of the lessee. Any such contract for the
794 lease of equipment or services executed on behalf of the
795 commissioners or board that complies with the provisions of this
796 subparagraph (ii) shall be excepted from the bid requirements set
797 forth in this section.

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

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

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

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

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

824 (v) **Governmental equipment auctions.** Motor
825 vehicles or other equipment purchased from a federal agency or
826 authority, another governing authority or state agency of the
827 State of Mississippi, or any governing authority or state agency
828 of another state at a public auction held for the purpose of
829 disposing of such vehicles or other equipment. Any purchase by a
830 governing authority under the exemption authorized by this
831 subparagraph (v) shall require advance authorization spread upon
832 the minutes of the governing authority to include the listing of
833 the item or items authorized to be purchased and the maximum bid
834 authorized to be paid for each item or items.

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

855 (vii) **Perishable supplies or food.** Perishable
856 supplies or food purchased for use in connection with hospitals,

857 the school lunch programs, homemaking programs and for the feeding
858 of county or municipal prisoners.

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

873 (ix) **Waste disposal facility construction**
874 **contracts.** Construction of incinerators and other facilities for
875 disposal of solid wastes in which products either generated
876 therein, such as steam, or recovered therefrom, such as materials
877 for recycling, are to be sold or otherwise disposed of; however,
878 in constructing such facilities, a governing authority or agency
879 shall publicly issue requests for proposals, advertised for in the
880 same manner as provided herein for seeking bids for public
881 construction projects, concerning the design, construction,
882 ownership, operation and/or maintenance of such facilities,
883 wherein such requests for proposals when issued shall contain
884 terms and conditions relating to price, financial responsibility,
885 technology, environmental compatibility, legal responsibilities
886 and such other matters as are determined by the governing
887 authority or agency to be appropriate for inclusion; and after
888 responses to the request for proposals have been duly received,
889 the governing authority or agency may select the most qualified

890 proposal or proposals on the basis of price, technology and other
891 relevant factors and from such proposals, but not limited to the
892 terms thereof, negotiate and enter contracts with one or more of
893 the persons or firms submitting proposals.

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

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

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

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

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

921 (xv) **Unmarked vehicles.** Purchases of unmarked
922 vehicles when such purchases are made in accordance with

923 purchasing regulations adopted by the Department of Finance and
924 Administration pursuant to Section 31-7-9(2).

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

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

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

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

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

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

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

955 waste collection or disposal and contracts for sewage collection
956 or disposal.

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

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

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

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

972 (xxvii) **Used heavy or specialized machinery or**
973 **equipment for installation of soil and water conservation**
974 **practices purchased at auction.** Used heavy or specialized
975 machinery or equipment used for the installation and
976 implementation of soil and water conservation practices or
977 measures purchased subject to the restrictions provided in
978 Sections 69-27-331 through 69-27-341. Any purchase by the State
979 Soil and Water Conservation Commission under the exemption
980 authorized by this subparagraph shall require advance
981 authorization spread upon the minutes of the commission to include
982 the listing of the item or items authorized to be purchased and
983 the maximum bid authorized to be paid for each item or items.

984 (xxviii) **Hospital lease of equipment or services.**
985 Leases by hospitals of equipment or services if the leases are in
986 compliance with paragraph (1)(ii).

987 (xxix) **Purchases made pursuant to qualified**
988 **cooperative purchasing agreements.** Purchases made by certified
989 purchasing offices of state agencies or governing authorities
990 under cooperative purchasing agreements previously approved by the
991 Office of Purchasing and Travel and established by or for any
992 municipality, county, parish or state government or the federal
993 government, provided that the notification to potential
994 contractors includes a clause that sets forth the availability of
995 the cooperative purchasing agreement to other governmental
996 entities. Such purchases shall only be made if the use of the
997 cooperative purchasing agreements is determined to be in the best
998 interest of the governmentall entity.

999 (xxx) **School yearbooks.** Purchases of school
1000 yearbooks by state agencies or governing authorities; provided,
1001 however, that state agencies and governing authorities shall use
1002 for these purchases the RFP process as set forth in the
1003 Mississippi Procurement Manual adopted by the Office of Purchasing
1004 and Travel.

1005 (xxxi) **Design-build method or the design-build**
1006 **bridging method of contracting.** Contracts entered into the
1007 provisions of Section 31-11-3(9).

1008 (n) **Term contract authorization.** All contracts for the
1009 purchase of:

1010 (i) All contracts for the purchase of commodities,
1011 equipment and public construction (including, but not limited to,
1012 repair and maintenance), may be let for periods of not more than
1013 sixty (60) months in advance, subject to applicable statutory
1014 provisions prohibiting the letting of contracts during specified
1015 periods near the end of terms of office. Term contracts for a
1016 period exceeding twenty-four (24) months shall also be subject to
1017 ratification or cancellation by governing authority boards taking
1018 office subsequent to the governing authority board entering the
1019 contract.

1020 (ii) Bid proposals and contracts may include price
1021 adjustment clauses with relation to the cost to the contractor
1022 based upon a nationally published industry-wide or nationally
1023 published and recognized cost index. The cost index used in a
1024 price adjustment clause shall be determined by the Department of
1025 Finance and Administration for the state agencies and by the
1026 governing board for governing authorities. The bid proposal and
1027 contract documents utilizing a price adjustment clause shall
1028 contain the basis and method of adjusting unit prices for the
1029 change in the cost of such commodities, equipment and public
1030 construction.

1031 (o) **Purchase law violation prohibition and vendor**
1032 **penalty.** No contract or purchase as herein authorized shall be
1033 made for the purpose of circumventing the provisions of this
1034 section requiring competitive bids, nor shall it be lawful for any
1035 person or concern to submit individual invoices for amounts within
1036 those authorized for a contract or purchase where the actual value
1037 of the contract or commodity purchased exceeds the authorized
1038 amount and the invoices therefor are split so as to appear to be
1039 authorized as purchases for which competitive bids are not
1040 required. Submission of such invoices shall constitute a
1041 misdemeanor punishable by a fine of not less than Five Hundred
1042 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1043 or by imprisonment for thirty (30) days in the county jail, or
1044 both such fine and imprisonment. In addition, the claim or claims
1045 submitted shall be forfeited.

1046 (p) **Electrical utility petroleum-based equipment**
1047 **purchase procedure.** When in response to a proper advertisement
1048 therefor, no bid firm as to price is submitted to an electric
1049 utility for power transformers, distribution transformers, power
1050 breakers, reclosers or other articles containing a petroleum
1051 product, the electric utility may accept the lowest and best bid
1052 therefor although the price is not firm.

1053 (q) **Fuel management system bidding procedure.** Any
1054 governing authority or agency of the state shall, before
1055 contracting for the services and products of a fuel management or
1056 fuel access system, enter into negotiations with not fewer than
1057 two (2) sellers of fuel management or fuel access systems for
1058 competitive written bids to provide the services and products for
1059 the systems. In the event that the governing authority or agency
1060 cannot locate two (2) sellers of such systems or cannot obtain
1061 bids from two (2) sellers of such systems, it shall show proof
1062 that it made a diligent, good-faith effort to locate and negotiate
1063 with two (2) sellers of such systems. Such proof shall include,
1064 but not be limited to, publications of a request for proposals and
1065 letters soliciting negotiations and bids. For purposes of this
1066 paragraph (q), a fuel management or fuel access system is an
1067 automated system of acquiring fuel for vehicles as well as
1068 management reports detailing fuel use by vehicles and drivers, and
1069 the term "competitive written bid" shall have the meaning as
1070 defined in paragraph (b) of this section. Governing authorities
1071 and agencies shall be exempt from this process when contracting
1072 for the services and products of a fuel management or fuel access
1073 systems under the terms of a state contract established by the
1074 Office of Purchasing and Travel.

1075 (r) **Solid waste contract proposal procedure.** Before
1076 entering into any contract for garbage collection or disposal,
1077 contract for solid waste collection or disposal or contract for
1078 sewage collection or disposal, which involves an expenditure of
1079 more than Fifty Thousand Dollars (\$50,000.00), a governing
1080 authority or agency shall issue publicly a request for proposals
1081 concerning the specifications for such services which shall be
1082 advertised for in the same manner as provided in this section for
1083 seeking bids for purchases which involve an expenditure of more
1084 than the amount provided in paragraph (c) of this section. Any
1085 request for proposals when issued shall contain terms and

1086 conditions relating to price, financial responsibility,
1087 technology, legal responsibilities and other relevant factors as
1088 are determined by the governing authority or agency to be
1089 appropriate for inclusion; all factors determined relevant by the
1090 governing authority or agency or required by this paragraph (r)
1091 shall be duly included in the advertisement to elicit proposals.
1092 After responses to the request for proposals have been duly
1093 received, the governing authority or agency shall select the most
1094 qualified proposal or proposals on the basis of price, technology
1095 and other relevant factors and from such proposals, but not
1096 limited to the terms thereof, negotiate and enter contracts with
1097 one or more of the persons or firms submitting proposals. If the
1098 governing authority or agency deems none of the proposals to be
1099 qualified or otherwise acceptable, the request for proposals
1100 process may be reinitiated. Notwithstanding any other provisions
1101 of this paragraph, where a county with at least thirty-five
1102 thousand (35,000) nor more than forty thousand (40,000)
1103 population, according to the 1990 federal decennial census, owns
1104 or operates a solid waste landfill, the governing authorities of
1105 any other county or municipality may contract with the governing
1106 authorities of the county owning or operating the landfill,
1107 pursuant to a resolution duly adopted and spread upon the minutes
1108 of each governing authority involved, for garbage or solid waste
1109 collection or disposal services through contract negotiations.

1110 (s) **Minority set-aside authorization.** Notwithstanding
1111 any provision of this section to the contrary, any agency or
1112 governing authority, by order placed on its minutes, may, in its
1113 discretion, set aside not more than twenty percent (20%) of its
1114 anticipated annual expenditures for the purchase of commodities
1115 from minority businesses; however, all such set-aside purchases
1116 shall comply with all purchasing regulations promulgated by the
1117 Department of Finance and Administration and shall be subject to
1118 bid requirements under this section. Set-aside purchases for

1119 which competitive bids are required shall be made from the lowest
1120 and best minority business bidder. For the purposes of this
1121 paragraph, the term "minority business" means a business which is
1122 owned by a majority of persons who are United States citizens or
1123 permanent resident aliens (as defined by the Immigration and
1124 Naturalization Service) of the United States, and who are Asian,
1125 Black, Hispanic or Native American, according to the following
1126 definitions:

1127 (i) "Asian" means persons having origins in any of
1128 the original people of the Far East, Southeast Asia, the Indian
1129 subcontinent, or the Pacific Islands.

1130 (ii) "Black" means persons having origins in any
1131 black racial group of Africa.

1132 (iii) "Hispanic" means persons of Spanish or
1133 Portuguese culture with origins in Mexico, South or Central
1134 America, or the Caribbean Islands, regardless of race.

1135 (iv) "Native American" means persons having
1136 origins in any of the original people of North America, including
1137 American Indians, Eskimos and Aleuts.

1138 (t) **Construction punch list restriction.** The
1139 architect, engineer or other representative designated by the
1140 agency or governing authority that is contracting for public
1141 construction or renovation may prepare and submit to the
1142 contractor only one (1) preliminary punch list of items that do
1143 not meet the contract requirements at the time of substantial
1144 completion and one (1) final list immediately before final
1145 completion and final payment.

1146 (u) **Purchase authorization clarification.** Nothing in
1147 this section shall be construed as authorizing any purchase not
1148 authorized by law.

1149 **SECTION 6.** (1) "In God We Trust" and the Ten Commandments
1150 may be displayed in all public buildings at the discretion of the
1151 governing authorities.

1152 (2) The Beatitudes and the Ten Commandments may be displayed
1153 on any government property in Mississippi.

1154 **SECTION 7.** The Department of Finance and Administration
1155 shall continue to lease to vendors until January 1, 2006, the
1156 property at the old Farmer's Market located at the corner of
1157 Woodrow Wilson Drive and West Street.

1158 **SECTION 8.** This act shall take effect and be in force from
1159 and after its passage.