

By: Representative Dedeaux

To: Judiciary B; Ways and
Means

HOUSE BILL NO. 1371

1 AN ACT TO CREATE NEW SECTION 31-7-13.1, MISSISSIPPI CODE OF
2 1972 MISSISSIPPI CODE OF 1972, TO AUTHORIZE AND PRESCRIBE THE
3 PROCEDURES FOR USING THE DUAL-PHASE DESIGN-BUILD METHOD OF
4 CONSTRUCTION CONTRACTING; TO PROVIDE THAT A TWO-PHASE PROCEDURE
5 FOR AWARDED A CONTRACT MUST BE ADOPTED FOR EACH PROPOSED
6 DUAL-PHASE DESIGN-BUILD PROJECT; TO PRESCRIBE THE PROCEDURES TO BE
7 FOLLOWED FOR EACH PHASE; TO AMEND SECTIONS 31-7-13, 31-11-3 AND
8 65-1-85, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING
9 PROVISIONS; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** The following shall be codified as Section
12 31-7-13.1, Mississippi Code of 1972:

13 31-7-13.1. (1) The method of contracting for construction
14 described in this section shall be known as the "dual-phase
15 design-build method" of construction contracting. This method of
16 construction contracting may be used only when the Legislature has
17 specifically required or authorized the use of this method in the
18 legislation authorizing a project, or when the Department of
19 Finance and Administration, the governing board or commission of
20 an agency or the governing authority makes a determination,
21 entered on its minutes, with specific findings for the project
22 demonstrating how it is in the best interest of the public to
23 enter into a dual-phase design-build construction contract. At a
24 minimum, the determination must include a detailed explanation of
25 why a dual-phase design-build approach for a particular project
26 satisfies the public need better than the traditional
27 design-bid-build approach.

28 (2) For each proposed dual-phase design-build project, a
29 two-phase procedure for awarding a contract must be adopted.
30 During Phase One, and before solicitation of initial proposals,

31 the agency or governing authority shall develop, with the
32 assistance of a registered architect or engineer, a scope of work
33 statement that provides prospective offerors with sufficient
34 information regarding the requirements of the agency or governing
35 authority. The scope of work statement must include, but is not
36 limited to, the following information:

37 (a) Floor plans showing spaces by name and number,
38 actual net area of each space, structural module, fixed equipment,
39 mechanical spaces, chases and circulation areas. Drawings must
40 show overall building dimensions and major lines of dimensions,
41 and site plans that show topography, adjacent buildings and
42 utilities;

43 (b) Drawings must include information to adequately
44 explain HVAC, electrical and structural requirements;

45 (c) Information concerning furnishings, miscellaneous
46 equipment, layouts, lists and schedules necessary to explain the
47 plans must be indicated on floor plans;

48 (d) The registered architect or engineer engaged by the
49 board also shall prepare preliminary specifications following the
50 Construction Specifications Institute format and giving basic
51 descriptions of essential building materials, finishes, components
52 and all systems;

53 (e) The scope of work statement also must include
54 building elevations, sections and design details. Building
55 elevations must show fenestration and proposed exterior materials;
56 and

57 (f) The scope of work statement must include general
58 budget parameters, schedule or delivery requirements, relevant
59 criteria for evaluation of proposals, and any other information
60 necessary to enable the design-builders to submit proposals that
61 meet the needs of the agency or governing authority.

62 (3) The agency or governing authority shall cause to be
63 published once a week, for at least three (3) consecutive weeks

64 and not less than twenty-one (21) days in at least one (1)
65 newspaper having a general circulation in the county in which the
66 project is to be located and in one (1) newspaper with a general
67 statewide circulation, a notice inviting proposals for the
68 dual-phase design-build constructed project. The notice must
69 inform potential offerors of how to obtain the scope of work
70 statement developed for the project, and the notice must contain
71 such other information to describe adequately the general nature
72 and scope of the project so as to promote full, equal and open
73 competition.

74 (4) The agency or governing authority shall accept initial
75 proposals only from entities able to provide, either in-house or
76 through contractual arrangements, an experienced and qualified
77 design-build team that includes, at a minimum, an architect or
78 engineer registered in Mississippi and a contractor properly
79 licensed in Mississippi for the type of work required. From
80 evaluation of initial proposals under Phase One, the agency or
81 governing authority shall select a minimum of two (2) and a
82 maximum of five (5) design-builders as "short-listed firms" to
83 submit proposals for Phase Two.

84 (5) During Phase Two, the short-listed firms will be invited
85 to submit detailed designs, specific technical concepts or
86 solutions, pricing, scheduling and other information deemed
87 appropriate by the agency or governing authority as necessary to
88 evaluate and rank acceptability of the Phase Two proposals. After
89 evaluation of these Phase Two proposals, the agency or governing
90 authority shall award a contract to the design-builder determined
91 to offer the best value to the public in accordance with
92 evaluation criteria set forth in the request for proposals, of
93 which price must be one, but not necessarily the only, criterion.

94 (6) If the agency or governing authority accepts a proposal
95 other than the lowest dollar proposal actually submitted, the
96 agency or governing authority shall enter on its minutes detailed

97 calculations and a narrative summary showing why the accepted
98 proposal was determined to provide the best value, and the agency
99 or governing authority shall state specifically on its minutes the
100 justification for its award.

101 (7) All private contractors or private entities contracting
102 or performing under this section must comply at all times with all
103 applicable laws, codes and other legal requirements pertaining to
104 the project.

105 (8) At its discretion, the agency or governing authority may
106 award a stipulated fee equal to a percentage, as prescribed in the
107 request for proposals, of the project's final design and
108 construction budget, as prescribed in the request for proposals,
109 but not less than two-tenths of one percent (2/10 of 1%) of the
110 project's final design and construction budget, to each short-list
111 offeror who provides a responsive, but unsuccessful, proposal. If
112 the agency or governing authority does not award a contract, all
113 responsive final list offerors shall receive the stipulated fee
114 based on the owner's estimate of the project final design and
115 construction budget as included in the request for proposals. The
116 agency or governing authority shall pay the stipulated fee to each
117 offeror within ninety (90) days after the award of the initial
118 contract or the decision not to award a contract. In
119 consideration for paying the stipulated fee, the agency or
120 governing authority may use any ideas or information contained in
121 the proposals in connection with any contract awarded for the
122 project, or in connection with a subsequent procurement, without
123 any obligation to pay any additional compensation to the
124 unsuccessful offerors. Notwithstanding the other provisions of
125 this subsection, an unsuccessful short-list offeror may elect to
126 waive the stipulated fee. If an unsuccessful short-list offeror
127 elects to waive the stipulated fee, the agency or governing
128 authority may not use ideas and information contained in the
129 offeror's proposal, except that this restriction does not prevent

130 the agency or governing authority from using any idea or
131 information if the idea or information is also included in a
132 proposal of an offeror that accepts the stipulated fee.

133 (9) This section shall not authorize the awarding of
134 construction contracts according to any contracting method that
135 does not require the contractor to satisfactorily perform, at a
136 minimum, both any balance of design and construction of the
137 project for which the contract is awarded.

138 **SECTION 2.** Section 31-7-13, Mississippi Code of 1972, is
139 amended as follows:

140 31-7-13. All agencies and governing authorities shall
141 purchase their commodities and printing; contract for garbage
142 collection or disposal; contract for solid waste collection or
143 disposal; contract for sewage collection or disposal; contract for
144 public construction; and contract for rentals as herein provided.

145 (a) **Bidding procedure for purchases not over \$3,500.00.**
146 Purchases which do not involve an expenditure of more than Three
147 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
148 shipping charges, may be made without advertising or otherwise
149 requesting competitive bids. However, nothing contained in this
150 paragraph (a) shall be construed to prohibit any agency or
151 governing authority from establishing procedures which require
152 competitive bids on purchases of Three Thousand Five Hundred
153 Dollars (\$3,500.00) or less.

154 (b) **Bidding procedure for purchases over \$3,500.00 but**
155 **not over \$15,000.00.** Purchases which involve an expenditure of
156 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
157 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
158 freight and shipping charges may be made from the lowest and best
159 bidder without publishing or posting advertisement for bids,
160 provided at least two (2) competitive written bids have been
161 obtained. Any governing authority purchasing commodities pursuant
162 to this paragraph (b) may authorize its purchasing agent, or his

163 designee, with regard to governing authorities other than
164 counties, or its purchase clerk, or his designee, with regard to
165 counties, to accept the lowest and best competitive written bid.
166 Such authorization shall be made in writing by the governing
167 authority and shall be maintained on file in the primary office of
168 the agency and recorded in the official minutes of the governing
169 authority, as appropriate. The purchasing agent or the purchase
170 clerk, or their designee, as the case may be, and not the
171 governing authority, shall be liable for any penalties and/or
172 damages as may be imposed by law for any act or omission of the
173 purchasing agent or purchase clerk, or their designee,
174 constituting a violation of law in accepting any bid without
175 approval by the governing authority. The term "competitive
176 written bid" shall mean a bid submitted on a bid form furnished by
177 the buying agency or governing authority and signed by authorized
178 personnel representing the vendor, or a bid submitted on a
179 vendor's letterhead or identifiable bid form and signed by
180 authorized personnel representing the vendor. "Competitive" shall
181 mean that the bids are developed based upon comparable
182 identification of the needs and are developed independently and
183 without knowledge of other bids or prospective bids. Bids may be
184 submitted by facsimile, electronic mail or other generally
185 accepted method of information distribution. Bids submitted by
186 electronic transmission shall not require the signature of the
187 vendor's representative unless required by agencies or governing
188 authorities.

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

190 (i) **Publication requirement.** Purchases which
191 involve an expenditure of more than Fifteen Thousand Dollars
192 (\$15,000.00), exclusive of freight and shipping charges, may be
193 made from the lowest and best bidder after advertising for
194 competitive sealed bids once each week for two (2) consecutive
195 weeks in a regular newspaper published in the county or

196 municipality in which such agency or governing authority is
197 located. The date as published for the bid opening shall not be
198 less than seven (7) working days after the last published notice;
199 however, if the purchase involves a construction project in which
200 the estimated cost is in excess of Fifteen Thousand Dollars
201 (\$15,000.00), such bids shall not be opened in less than fifteen
202 (15) working days after the last notice is published and the
203 notice for the purchase of such construction shall be published
204 once each week for two (2) consecutive weeks. The notice of
205 intention to let contracts or purchase equipment shall state the
206 time and place at which bids shall be received, list the contracts
207 to be made or types of equipment or supplies to be purchased, and,
208 if all plans and/or specifications are not published, refer to the
209 plans and/or specifications on file. If there is no newspaper
210 published in the county or municipality, then such notice shall be
211 given by posting same at the courthouse, or for municipalities at
212 the city hall, and at two (2) other public places in the county or
213 municipality, and also by publication once each week for two (2)
214 consecutive weeks in some newspaper having a general circulation
215 in the county or municipality in the above provided manner. On
216 the same date that the notice is submitted to the newspaper for
217 publication, the agency or governing authority involved shall mail
218 written notice to, or provide electronic notification to the main
219 office of the Mississippi Contract Procurement Center that
220 contains the same information as that in the published notice.

221 (ii) **Bidding process amendment procedure.** If all
222 plans and/or specifications are published in the notification,
223 then the plans and/or specifications may not be amended. If all
224 plans and/or specifications are not published in the notification,
225 then amendments to the plans/specifications, bid opening date, bid
226 opening time and place may be made, provided that the agency or
227 governing authority maintains a list of all prospective bidders
228 who are known to have received a copy of the bid documents and all

229 such prospective bidders are sent copies of all amendments. This
230 notification of amendments may be made via mail, facsimile,
231 electronic mail or other generally accepted method of information
232 distribution. No addendum to bid specifications may be issued
233 within two (2) working days of the time established for the
234 receipt of bids unless such addendum also amends the bid opening
235 to a date not less than five (5) working days after the date of
236 the addendum.

237 (iii) **Filing requirement.** In all cases involving
238 governing authorities, before the notice shall be published or
239 posted, the plans or specifications for the construction or
240 equipment being sought shall be filed with the clerk of the board
241 of the governing authority. In addition to these requirements, a
242 bid file shall be established which shall indicate those vendors
243 to whom such solicitations and specifications were issued, and
244 such file shall also contain such information as is pertinent to
245 the bid.

246 (iv) **Specification restrictions.**

247 1. Specifications pertinent to such bidding
248 shall be written so as not to exclude comparable equipment of
249 domestic manufacture. However, if valid justification is
250 presented, the Department of Finance and Administration or the
251 board of a governing authority may approve a request for specific
252 equipment necessary to perform a specific job. Further, such
253 justification, when placed on the minutes of the board of a
254 governing authority, may serve as authority for that governing
255 authority to write specifications to require a specific item of
256 equipment needed to perform a specific job. In addition to these
257 requirements, from and after July 1, 1990, vendors of relocatable
258 classrooms and the specifications for the purchase of such
259 relocatable classrooms published by local school boards shall meet
260 all pertinent regulations of the State Board of Education,

261 including prior approval of such bid by the State Department of
262 Education.

263 2. Specifications for construction projects
264 may include an allowance for commodities, equipment, furniture,
265 construction materials or systems in which prospective bidders are
266 instructed to include in their bids specified amounts for such
267 items so long as the allowance items are acquired by the vendor in
268 a commercially reasonable manner and approved by the
269 agency/governing authority. Such acquisitions shall not be made
270 to circumvent the public purchasing laws.

271 (v) Agencies and governing authorities may
272 establish secure procedures by which bids may be submitted via
273 electronic means.

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

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

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

294 offering the best value. In determining the best value bid,
295 freight and shipping charges shall be included. Life-cycle
296 costing, total cost bids, warranties, guaranteed buy-back
297 provisions, documented previous experience, training costs and
298 other relevant provisions may be included in the best value
299 calculation. This provision shall authorize Certified Purchasing
300 Offices to utilize a Request For Proposals (RFP) process when
301 purchasing commodities. All best value procedures for state
302 agencies must be in compliance with regulations established by the
303 Department of Finance and Administration. No agency or governing
304 authority shall accept a bid based on items or criteria not
305 included in the specifications.

306 (iii) **Construction project negotiations authority.**

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

312 (e) **Lease-purchase authorization.** For the purposes of
313 this section, the term "equipment" shall mean equipment, furniture
314 and, if applicable, associated software and other applicable
315 direct costs associated with the acquisition. Any lease-purchase
316 of equipment which an agency is not required to lease-purchase
317 under the master lease-purchase program pursuant to Section
318 31-7-10 and any lease-purchase of equipment which a governing
319 authority elects to lease-purchase may be acquired by a
320 lease-purchase agreement under this paragraph (e). Lease-purchase
321 financing may also be obtained from the vendor or from a
322 third-party source after having solicited and obtained at least
323 two (2) written competitive bids, as defined in paragraph (b) of
324 this section, for such financing without advertising for such
325 bids. Solicitation for the bids for financing may occur before or
326 after acceptance of bids for the purchase of such equipment or,

327 where no such bids for purchase are required, at any time before
328 the purchase thereof. No such lease-purchase agreement shall be
329 for an annual rate of interest which is greater than the overall
330 maximum interest rate to maturity on general obligation
331 indebtedness permitted under Section 75-17-101, and the term of
332 such lease-purchase agreement shall not exceed the useful life of
333 equipment covered thereby as determined according to the upper
334 limit of the asset depreciation range (ADR) guidelines for the
335 Class Life Asset Depreciation Range System established by the
336 Internal Revenue Service pursuant to the United States Internal
337 Revenue Code and regulations thereunder as in effect on December
338 31, 1980, or comparable depreciation guidelines with respect to
339 any equipment not covered by ADR guidelines. Any lease-purchase
340 agreement entered into pursuant to this paragraph (e) may contain
341 any of the terms and conditions which a master lease-purchase
342 agreement may contain under the provisions of Section 31-7-10(5),
343 and shall contain an annual allocation dependency clause
344 substantially similar to that set forth in Section 31-7-10(8).
345 Each agency or governing authority entering into a lease-purchase
346 transaction pursuant to this paragraph (e) shall maintain with
347 respect to each such lease-purchase transaction the same
348 information as required to be maintained by the Department of
349 Finance and Administration pursuant to Section 31-7-10(13).
350 However, nothing contained in this section shall be construed to
351 permit agencies to acquire items of equipment with a total
352 acquisition cost in the aggregate of less than Ten Thousand
353 Dollars (\$10,000.00) by a single lease-purchase transaction. All
354 equipment, and the purchase thereof by any lessor, acquired by
355 lease-purchase under this paragraph and all lease-purchase
356 payments with respect thereto shall be exempt from all Mississippi
357 sales, use and ad valorem taxes. Interest paid on any
358 lease-purchase agreement under this section shall be exempt from
359 State of Mississippi income taxation.

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

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

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

393 set forth in paragraph (a) of this section, such agency or
394 governing authority may purchase the commodity after having
395 solicited and obtained at least two (2) competitive written bids,
396 as defined in paragraph (b) of this section. If two (2)
397 competitive written bids are not obtained, the entity shall comply
398 with the procedures set forth in paragraph (c) of this section.
399 In the event any agency or governing authority shall have
400 advertised for bids for the purchase of gas, diesel fuel, oils and
401 other petroleum products and coal and no acceptable bids can be
402 obtained, such agency or governing authority is authorized and
403 directed to enter into any negotiations necessary to secure the
404 lowest and best contract available for the purchase of such
405 commodities.

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

426 (j) **State agency emergency purchase procedure.** If the
427 governing board or the executive head, or his designee, of any
428 agency of the state shall determine that an emergency exists in
429 regard to the purchase of any commodities or repair contracts, so
430 that the delay incident to giving opportunity for competitive
431 bidding would be detrimental to the interests of the state, then
432 the provisions herein for competitive bidding shall not apply and
433 the head of such agency shall be authorized to make the purchase
434 or repair. Total purchases so made shall only be for the purpose
435 of meeting needs created by the emergency situation. In the event
436 such executive head is responsible to an agency board, at the
437 meeting next following the emergency purchase, documentation of
438 the purchase, including a description of the commodity purchased,
439 the purchase price thereof and the nature of the emergency shall
440 be presented to the board and placed on the minutes of the board
441 of such agency. The head of such agency, or his designee, shall,
442 at the earliest possible date following such emergency purchase,
443 file with the Department of Finance and Administration (i) a
444 statement explaining the conditions and circumstances of the
445 emergency, which shall include a detailed description of the
446 events leading up to the situation and the negative impact to the
447 entity if the purchase is made following the statutory
448 requirements set forth in paragraph (a), (b) or (c) of this
449 section, and (ii) a certified copy of the appropriate minutes of
450 the board of such agency, if applicable. On or before September 1
451 of each year, the State Auditor shall prepare and deliver to the
452 Senate Fees, Salaries and Administration Committee, the House Fees
453 and Salaries of Public Officers Committee and the Joint
454 Legislative Budget Committee a report containing a list of all
455 state agency emergency purchases and supporting documentation for
456 each emergency purchase.

457 (k) **Governing authority emergency purchase procedure.**
458 If the governing authority, or the governing authority acting

459 through its designee, shall determine that an emergency exists in
460 regard to the purchase of any commodities or repair contracts, so
461 that the delay incident to giving opportunity for competitive
462 bidding would be detrimental to the interest of the governing
463 authority, then the provisions herein for competitive bidding
464 shall not apply and any officer or agent of such governing
465 authority having general or special authority therefor in making
466 such purchase or repair shall approve the bill presented therefor,
467 and he shall certify in writing thereon from whom such purchase
468 was made, or with whom such a repair contract was made. At the
469 board meeting next following the emergency purchase or repair
470 contract, documentation of the purchase or repair contract,
471 including a description of the commodity purchased, the price
472 thereof and the nature of the emergency shall be presented to the
473 board and shall be placed on the minutes of the board of such
474 governing authority.

475 (1) **Hospital purchase, lease-purchase and lease**
476 **authorization.**

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

482 (ii) In addition to the authority granted in
483 subparagraph (i) of this paragraph (1), the commissioners or board
484 of trustees is authorized to enter into contracts for the lease of
485 equipment or services, or both, which it considers necessary for
486 the proper care of patients if, in its opinion, it is not
487 financially feasible to purchase the necessary equipment or
488 services. Any such contract for the lease of equipment or
489 services executed by the commissioners or board shall not exceed a
490 maximum of five (5) years' duration and shall include a
491 cancellation clause based on unavailability of funds. If such

492 cancellation clause is exercised, there shall be no further
493 liability on the part of the lessee. Any such contract for the
494 lease of equipment or services executed on behalf of the
495 commissioners or board that complies with the provisions of this
496 subparagraph (ii) shall be excepted from the bid requirements set
497 forth in this section.

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

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

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

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

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

524 (v) **Governmental equipment auctions.** Motor
525 vehicles or other equipment purchased from a federal agency or
526 authority, another governing authority or state agency of the
527 State of Mississippi, or any governing authority or state agency
528 of another state at a public auction held for the purpose of
529 disposing of such vehicles or other equipment. Any purchase by a
530 governing authority under the exemption authorized by this
531 subparagraph (v) shall require advance authorization spread upon
532 the minutes of the governing authority to include the listing of
533 the item or items authorized to be purchased and the maximum bid
534 authorized to be paid for each item or items.

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

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

557 the school lunch programs, homemaking programs and for the feeding
558 of county or municipal prisoners.

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

573 (ix) **Waste disposal facility construction**
574 **contracts.** Construction of incinerators and other facilities for
575 disposal of solid wastes in which products either generated
576 therein, such as steam, or recovered therefrom, such as materials
577 for recycling, are to be sold or otherwise disposed of; however,
578 in constructing such facilities, a governing authority or agency
579 shall publicly issue requests for proposals, advertised for in the
580 same manner as provided herein for seeking bids for public
581 construction projects, concerning the design, construction,
582 ownership, operation and/or maintenance of such facilities,
583 wherein such requests for proposals when issued shall contain
584 terms and conditions relating to price, financial responsibility,
585 technology, environmental compatibility, legal responsibilities
586 and such other matters as are determined by the governing
587 authority or agency to be appropriate for inclusion; and after
588 responses to the request for proposals have been duly received,
589 the governing authority or agency may select the most qualified

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

655 waste collection or disposal and contracts for sewage collection
656 or disposal.

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

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

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

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

672 (xxvii) **Used heavy or specialized machinery or**
673 **equipment for installation of soil and water conservation**
674 **practices purchased at auction.** Used heavy or specialized
675 machinery or equipment used for the installation and
676 implementation of soil and water conservation practices or
677 measures purchased subject to the restrictions provided in
678 Sections 69-27-331 through 69-27-341. Any purchase by the State
679 Soil and Water Conservation Commission under the exemption
680 authorized by this subparagraph shall require advance
681 authorization spread upon the minutes of the commission to include
682 the listing of the item or items authorized to be purchased and
683 the maximum bid authorized to be paid for each item or items.

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

687 (xxix) **Purchases made pursuant to qualified**
688 **cooperative purchasing agreements.** Purchases made by certified
689 purchasing offices of state agencies or governing authorities
690 under cooperative purchasing agreements previously approved by the
691 Office of Purchasing and Travel and established by or for any
692 municipality, county, parish or state government or the federal
693 government, provided that the notification to potential
694 contractors includes a clause that sets forth the availability of
695 the cooperative purchasing agreement to other governmental
696 entities. Such purchases shall only be made if the use of the
697 cooperative purchasing agreements is determined to be in the best
698 interest of the governmental entity.

699 (xxx) **School yearbooks.** Purchases of school
700 yearbooks by state agencies or governing authorities; provided,
701 however, that state agencies and governing authorities shall use
702 for these purchases the RFP process as set forth in the
703 Mississippi Procurement Manual adopted by the Office of Purchasing
704 and Travel.

705 (xxxi) **Design-build method or the design-build**
706 **bridging method of contracting.** Contracts entered into under the
707 provisions of Section 31-11-3(9) or Section 31-7-13.1.

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

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

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

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

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

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

775 (r) **Solid waste contract proposal procedure.** Before
776 entering into any contract for garbage collection or disposal,
777 contract for solid waste collection or disposal or contract for
778 sewage collection or disposal, which involves an expenditure of
779 more than Fifty Thousand Dollars (\$50,000.00), a governing
780 authority or agency shall issue publicly a request for proposals
781 concerning the specifications for such services which shall be
782 advertised for in the same manner as provided in this section for
783 seeking bids for purchases which involve an expenditure of more
784 than the amount provided in paragraph (c) of this section. Any
785 request for proposals when issued shall contain terms and

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

810 (s) **Minority set-aside authorization.** Notwithstanding
811 any provision of this section to the contrary, any agency or
812 governing authority, by order placed on its minutes, may, in its
813 discretion, set aside not more than twenty percent (20%) of its
814 anticipated annual expenditures for the purchase of commodities
815 from minority businesses; however, all such set-aside purchases
816 shall comply with all purchasing regulations promulgated by the
817 Department of Finance and Administration and shall be subject to
818 bid requirements under this section. Set-aside purchases for

819 which competitive bids are required shall be made from the lowest
820 and best minority business bidder. For the purposes of this
821 paragraph, the term "minority business" means a business which is
822 owned by a majority of persons who are United States citizens or
823 permanent resident aliens (as defined by the Immigration and
824 Naturalization Service) of the United States, and who are Asian,
825 Black, Hispanic or Native American, according to the following
826 definitions:

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

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

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

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

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

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

849 **SECTION 3.** Section 31-11-3, Mississippi Code of 1972, is
850 amended as follows:

851 31-11-3. (1) The Department of Finance and Administration,
852 for the purposes of carrying out the provisions of this chapter,
853 in addition to all other rights and powers granted by law, shall
854 have full power and authority to employ and compensate architects
855 or other employees necessary for the purpose of making
856 inspections, preparing plans and specifications, supervising the
857 erection of any buildings, and making any repairs or additions as
858 may be determined by the Department of Finance and Administration
859 to be necessary, pursuant to the rules and regulations of the
860 State Personnel Board. The department shall have entire control
861 and supervision of, and determine what, if any, buildings,
862 additions, repairs or improvements are to be made under the
863 provisions of this chapter, subject to the approval of the Public
864 Procurement Review Board.

865 (2) The department shall have full power to erect buildings,
866 make repairs, additions or improvements, and buy materials,
867 supplies and equipment for any of the institutions or departments
868 of the state subject to the approval of the Public Procurement
869 Review Board. In addition to other powers conferred, the
870 department shall have full power and authority as directed by the
871 Legislature, or when funds have been appropriated for its use for
872 these purposes, to:

873 (a) Build a state office building;

874 (b) Build suitable plants or buildings for the use and
875 housing of any state schools or institutions, including the
876 building of plants or buildings for new state schools or
877 institutions, as provided for by the Legislature;

878 (c) Provide state aid for the construction of school
879 buildings;

880 (d) Promote and develop the training of returned
881 veterans of the United States in all sorts of educational and
882 vocational learning to be supplied by the proper educational
883 institution of the State of Mississippi, and in so doing allocate

884 monies appropriated to it for these purposes to the Governor for
885 use by him in setting up, maintaining and operating an office and
886 employing a state director of on-the-job training for veterans and
887 the personnel necessary in carrying out Public Law No. 346 of the
888 United States;

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

891 (f) Build and equip additional buildings and wards at
892 the Boswell Retardation Center;

893 (g) Construct a sewage disposal and treatment plant at
894 the state insane hospital, and in so doing acquire additional land
895 as may be necessary, and to exercise the right of eminent domain
896 in the acquisition of this land;

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

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

902 (j) Build and equip a gymnasium at Columbia Training
903 School;

904 (k) Approve or disapprove the expenditure of any money
905 appropriated by the Legislature when authorized by the bill making
906 the appropriation;

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

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

916 (n) Collect and receive from educational institutions
917 of the State of Mississippi monies required to be paid by these
918 institutions to the state in carrying out any veterans'
919 educational programs;

920 (o) Purchase lands for building sites, or as additions
921 to building sites, for the erection of buildings and other
922 facilities which the department is authorized to erect, and
923 demolish and dispose of old buildings, when necessary for the
924 proper construction of new buildings. Any transaction which
925 involves state lands under the provisions of this paragraph shall
926 be done in a manner consistent with the provisions of Section
927 29-1-1;

928 (p) Obtain business property insurance with a
929 deductible of not less than One Hundred Thousand Dollars
930 (\$100,000.00) on state-owned buildings under the management and
931 control of the department; and

932 (q) In consultation with and approval by the Chairmen
933 of the Public Property Committees of the Senate and the House of
934 Representatives, enter into contracts for the purpose of providing
935 parking spaces for state employees who work in the Woolfolk
936 Building, the Carroll Gartin Justice Building or the Walter
937 Sillers Office Building. The provisions of this paragraph (q)
938 shall stand repealed on July 1, 2006.

939 (3) The department shall survey state-owned and
940 state-utilized buildings to establish an estimate of the costs of
941 architectural alterations, pursuant to the Americans With
942 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The
943 department shall establish priorities for making the identified
944 architectural alterations and shall make known to the Legislative
945 Budget Office and to the Legislature the required cost to
946 effectuate such alterations. To meet the requirements of this
947 section, the department shall use standards of accessibility that

948 are at least as stringent as any applicable federal requirements
949 and may consider:

950 (a) Federal minimum guidelines and requirements issued
951 by the United States Architectural and Transportation Barriers
952 Compliance Board and standards issued by other federal agencies;

953 (b) The criteria contained in the American Standard
954 Specifications for Making Buildings Accessible and Usable by the
955 Physically Handicapped and any amendments thereto as approved by
956 the American Standards Association, Incorporated (ANSI Standards);

957 (c) Design manuals;

958 (d) Applicable federal guidelines;

959 (e) Current literature in the field;

960 (f) Applicable safety standards; and

961 (g) Any applicable environmental impact statements.

962 (4) The department shall observe the provisions of Section
963 31-5-23, in letting contracts and shall use Mississippi products,
964 including paint, varnish and lacquer which contain as vehicles
965 tung oil and either ester gum or modified resin (with rosin as the
966 principal base of constituents), and turpentine shall be used as a
967 solvent or thinner, where these products are available at a cost
968 not to exceed the cost of products grown, produced, prepared, made
969 or manufactured outside of the State of Mississippi.

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

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

977 (7) The department shall review and preapprove all
978 architectural or engineering service contracts entered into by any
979 state agency, institution, commission, board or authority
980 regardless of the source of funding used to defray the costs of

981 the construction or renovation project for which services are to
982 be obtained. The provisions of this subsection (7) shall not
983 apply to any architectural or engineering contract paid for by
984 self-generated funds of any of the state institutions of higher
985 learning, nor shall they apply to community college projects that
986 are funded from local funds or other nonstate sources which are
987 outside the Department of Finance and Administration's
988 appropriations or as directed by the Legislature. The provisions
989 of this subsection (7) shall not apply to any construction or
990 design projects of the State Military Department that are funded
991 from federal funds or other nonstate sources.

992 (8) The department shall have the authority to obtain
993 annually from the state institutions of higher learning
994 information on all building, construction and renovation projects
995 including duties, responsibilities and costs of any architect or
996 engineer hired by any such institutions.

997 (9) (a) As an alternative to other methods of awarding
998 contracts as prescribed by law, the department may use the
999 design-build method or the design-build bridging method of
1000 contracting for new capital construction projects to be used as a
1001 pilot program for the following projects:

1002 (i) Projects for the Mississippi Development
1003 Authority pursuant to agreements between both governmental
1004 entities;

1005 (ii) Any project with an estimated cost of not
1006 more than Ten Million Dollars (\$10,000,000.00), not to exceed two
1007 (2) projects per fiscal year; and

1008 (iii) Any project which has an estimated cost of
1009 more than Fifty Million Dollars (\$50,000,000.00), not to exceed
1010 one (1) project per fiscal year.

1011 (b) As used in this subsection:

1012 (i) "Design-build method of contracting" means a
1013 contract that combines the design and construction phases of a

1014 project into a single contract and the contractor is required to
1015 satisfactorily perform, at a minimum, both the design and
1016 construction of the project.

1017 (ii) "Design-build bridging method of contracting"
1018 means a contract that requires design through the design
1019 development phase by a professional designer, after which a
1020 request for qualifications for design completion and construction
1021 is required for the completion of the project from a single
1022 contractor that combines the balance of design and construction
1023 phases of a project into a single contract. The contractor is
1024 required to satisfactorily perform, at a minimum, both the balance
1025 of design and construction of the project.

1026 (c) The department shall establish detailed criteria
1027 for the selection of the successful design-build/design-build
1028 bridging contractor in each request for design-build/design-build
1029 bridging proposals. The request for qualifications evaluation of
1030 the selection committee is a public record and shall be maintained
1031 for a minimum of three (3) years after project completion.

1032 (d) The department shall maintain detailed records on
1033 projects separate and apart from its regular record keeping. The
1034 department shall file a report to the Legislature evaluating the
1035 design-build/design-build bridging method of contracting by
1036 comparing it to the low-bid method of contracting. At a minimum,
1037 the report must include:

1038 (i) The management goals and objectives for the
1039 design-build/design-build bridging system of management;

1040 (ii) A complete description of the components of
1041 the design-build/design-build bridging management system,
1042 including a description of the system the department put into
1043 place on all projects managed under the system to insure that it
1044 has the complete information on building segment costs and to
1045 insure proper analysis of any proposal the department receives
1046 from a contractor;

1047 (iii) The accountability systems the department
1048 established to monitor any design-build/design-build bridging
1049 project's compliance with specific goals and objectives for the
1050 project;

1051 (iv) The outcome of any project or any interim
1052 report on an ongoing project let under a design-build/design-build
1053 bridging management system showing compliance with the goals,
1054 objectives, policies and procedures the department set for the
1055 project; and

1056 (v) The method used by the department to select
1057 projects to be let under the design-build/design-build bridging
1058 system of management and all other systems, policies and
1059 procedures that the department considered as necessary components
1060 to a design-build/design-build bridging management system.

1061 (e) All contracts let under the provisions of this
1062 subsection shall be subject to oversight and review by the State
1063 Auditor.

1064 (f) As an alternative to the authority granted to the
1065 department in this subsection, the department may elect to use the
1066 method of contracting for construction projects set out in Section
1067 31-7-13.1.

1068 **SECTION 4.** Section 65-1-85, Mississippi Code of 1972, is
1069 amended as follows:

1070 65-1-85. (1) All contracts by or on behalf of the
1071 commission for the purchase of materials, equipment and supplies
1072 shall be made in compliance with Section 31-7-1 et seq. All
1073 contracts by or on behalf of the commission for construction,
1074 reconstruction or other public work authorized to be done under
1075 the provisions of this chapter, except maintenance, shall be made
1076 by the executive director, subject to the approval of the
1077 commission, only upon competitive bids after due advertisement as
1078 follows, to wit:

1079 (a) Advertisement for bids shall be in accordance with
1080 such rules and regulations, in addition to those herein provided,
1081 as may be adopted therefor by the commission, and the commission
1082 is authorized and empowered to make and promulgate such rules and
1083 regulations as it may deem proper, to provide and adopt standard
1084 specifications for road and bridge construction, and to amend such
1085 rules and regulations from time to time.

1086 (b) The advertisement shall be inserted twice, being
1087 once a week for two (2) successive weeks in a newspaper published
1088 at the seat of government in Jackson, Mississippi, having a
1089 general circulation throughout the state, and no letting shall be
1090 less than fourteen (14) days nor more than sixty (60) days after
1091 the publication of the first notice of such letting, and notices
1092 of such letting may be placed in a metropolitan paper or national
1093 trade publication.

1094 (c) Before advertising for such work, the executive
1095 director shall cause to be prepared and filed in the department
1096 detailed plans and specifications covering the work proposed to be
1097 done and copies of the plans and specifications shall be subject
1098 to inspection by any citizen during all office hours and made
1099 available to all prospective bidders upon such reasonable terms
1100 and conditions as may be required by the commission. A fee shall
1101 be charged equal to the cost of producing a copy of any such plans
1102 and specifications.

1103 (d) All such contracts shall be let to a responsible
1104 bidder with the lowest and best bid, and a record of all bids
1105 received for construction and reconstruction shall be preserved.

1106 (e) Each bid for such a construction and reconstruction
1107 contract must be accompanied by a cashier's check, a certified
1108 check or bidders bond executed by a surety company authorized to
1109 do business in the State of Mississippi, in the principal amount
1110 of not less than five percent (5%) of the bid, guaranteeing that
1111 the bidder will give bond and enter into a contract for the

1112 faithful performance of the contract according to plans and
1113 specifications on file.

1114 (f) Bonds shall be required of the successful bidder in
1115 an amount equal to the contract price. The contract price shall
1116 mean the entire cost of the particular contract let. In the event
1117 change orders are made after the execution of a contract which
1118 results in increasing the total contract price, additional bond in
1119 the amount of the increased cost may be required. The surety or
1120 sureties on such bonds shall be a surety company or surety
1121 companies authorized to do business in the State of Mississippi,
1122 all bonds to be payable to the State of Mississippi and to be
1123 conditioned for the prompt, faithful and efficient performance of
1124 the contract according to plans and specifications, and for the
1125 prompt payment of all persons furnishing labor, material,
1126 equipment and supplies therefor. Such bonds shall be subject to
1127 the additional obligation that the principal and surety or
1128 sureties executing the same shall be liable to the state in a
1129 civil action instituted by the state at the instance of the
1130 commission or any officer of the state authorized in such cases,
1131 for double any amount in money or property the state may lose or
1132 be overcharged or otherwise defrauded of by reason of any wrongful
1133 or criminal act, if any, of the contractor, his agent or
1134 employees.

1135 (2) With respect to equipment used in the construction,
1136 reconstruction or other public work authorized to be done under
1137 the provisions of this chapter: the word "equipment," in addition
1138 to all equipment incorporated into or fully consumed in connection
1139 with such project, shall include the reasonable value of the use
1140 of all equipment of every kind and character and all accessories
1141 and attachments thereto which are reasonably necessary to be used
1142 and which are used in carrying out the performance of the
1143 contract, and the reasonable value of the use thereof, during the
1144 period of time the same are used in carrying out the performance

1145 of the contract, shall be the amount as agreed upon by the persons
1146 furnishing the equipment and those using the same to be paid
1147 therefor, which amount, however, shall not be in excess of the
1148 maximum current rates and charges allowable for leasing or renting
1149 as specified in Section 65-7-95; the word "labor" shall include
1150 all work performed in repairing equipment used in carrying out the
1151 performance of the contract, which repair labor is reasonably
1152 necessary to the efficient operation of said equipment; and the
1153 words "materials" and "supplies" shall include all repair parts
1154 installed in or on equipment used in carrying out the performance
1155 of the contract, which repair parts are reasonably necessary to
1156 the efficient operation of said equipment.

1157 (3) The executive director, subject to the approval of the
1158 commission, shall have the right to reject any and all bids,
1159 whether such right is reserved in the notice or not.

1160 (4) The commission may require the pre-qualification of any
1161 and all bidders and the failure to comply with pre-qualification
1162 requirements may be the basis for the rejection of any bid by the
1163 commission. The commission may require the pre-qualification of
1164 any and all subcontractors before they are approved to participate
1165 in any contract awarded under this section.

1166 (5) The commission may adopt rules and regulations for the
1167 termination of any previously awarded contract which is not timely
1168 proceeding toward completion. The failure of a contractor to
1169 comply with such rules and regulations shall be a lawful basis for
1170 the commission to terminate the contract with such contractor. In
1171 the event of a termination under such rules and regulations, the
1172 contractor shall not be entitled to any payment, benefit or
1173 damages beyond the cost of the work actually completed.

1174 (6) Any contract for construction or paving of any highway
1175 may be entered into for any cost which does not exceed the amount
1176 of funds that may be made available therefor through bond issues
1177 or from other sources of revenue, and the letting of contracts for

1178 such construction or paving shall not necessarily be delayed until
1179 the funds are actually on hand, provided authorization for the
1180 issuance of necessary bonds has been granted by law to supplement
1181 other anticipated revenue, or when the department certifies to the
1182 Department of Finance and Administration and the Legislative
1183 Budget Office that projected receipts of funds by the department
1184 will be sufficient to pay such contracts as they become due and
1185 the Department of Finance and Administration determines that the
1186 projections are reasonable and receipts will be sufficient to pay
1187 the contracts as they become due. The Department of Finance and
1188 Administration shall spread such determination on its minutes
1189 prior to the letting of any contracts based on projected receipts.
1190 Nothing in this subsection shall prohibit the issuance of bonds,
1191 which have been authorized, at any time in the discretion of the
1192 State Bond Commission, nor to prevent investment of surplus funds
1193 in United States government bonds or State of Mississippi bonds as
1194 presently authorized by Section 12, Chapter 312, Laws of 1956.

1195 (7) All other contracts for work to be done under the
1196 provisions of this chapter and for the purchase of materials,
1197 equipment and supplies to be used as provided for in this chapter
1198 shall be made in compliance with Section 31-7-1 et seq.

1199 (8) The commission shall not empower or authorize the
1200 executive director, or any one or more of its members, or any
1201 engineer or other person to let or make contracts for the
1202 construction or repair of public roads, or building bridges, or
1203 for the purchase of material, equipment or supplies contrary to
1204 the provisions of this chapter as set forth in this section,
1205 except in cases of flood or other cases of emergency where the
1206 public interest requires that the work be done or the materials,
1207 equipment or supplies be purchased without the delay incident to
1208 advertising for competitive bids. Such emergency contracts may be
1209 made without advertisement under such rules and regulations as the
1210 commission may prescribe.

1211 (9) The executive director, subject to the approval of the
1212 commission, is authorized to negotiate and make agreements with
1213 communities and/or civic organizations for landscaping,
1214 beautification and maintenance of highway rights-of-way; however,
1215 nothing in this subsection shall be construed as authorization for
1216 the executive director or commission to participate in such a
1217 project to an extent greater than the average cost for maintenance
1218 of shoulders, backslopes and median areas with respect thereto.

1219 (10) The executive director may negotiate and enter into
1220 contracts with private parties for the mowing of grass and
1221 trimming of vegetation on the rights-of-way of state highways
1222 whenever such practice is possible and cost effective.

1223 (11) (a) As an alternative to the method of awarding
1224 contracts as otherwise provided in this section, the commission
1225 may use the design-build method of contracting for the following:

1226 (i) Projects for the Mississippi Development
1227 Authority pursuant to agreements between both governmental
1228 entities;

1229 (ii) Any project with an estimated cost of not
1230 more than Ten Million Dollars (\$10,000,000.00), not to exceed two
1231 (2) projects per fiscal year; and

1232 (iii) Any project which has an estimated cost of
1233 more than Fifty Million Dollars (\$50,000,000.00), not to exceed
1234 one (1) project per fiscal year.

1235 (b) As used in this subsection, the term "design-build"
1236 method of contracting means a contract that combines the design
1237 and construction phases of a project into a single contract and
1238 the contractor is required to satisfactorily perform, at a
1239 minimum, both the design and construction of the project.

1240 (c) The commission shall establish detailed criteria
1241 for the selection of the successful design-build contractor in
1242 each request for design-build proposals. The evaluation of the

1243 selection committee is a public record and shall be maintained for
1244 a minimum of ten (10) years after project completion.

1245 (d) The commission shall maintain detailed records on
1246 projects separate and apart from its regular record keeping. The
1247 commission shall file a report to the Legislature evaluating the
1248 design-build method of contracting by comparing it to the low-bid
1249 method of contracting. At a minimum, the report must include:

1250 (i) The management goals and objectives for the
1251 design-build system of management;

1252 (ii) A complete description of the components of
1253 the design-build management system, including a description of the
1254 system the department put into place on all projects managed under
1255 the system to insure that it has the complete information on
1256 highway segment costs and to insure proper analysis of any
1257 proposal the commission receives from a highway contractor;

1258 (iii) The accountability systems the
1259 Transportation Department established to monitor any design-build
1260 project's compliance with specific goals and objectives for the
1261 project;

1262 (iv) The outcome of any project or any interim
1263 report on an ongoing project let under a design-build management
1264 system showing compliance with the goals, objectives, policies and
1265 procedures the department set for the project; and

1266 (v) The method used by the department to select
1267 projects to be let under the design-build system of management and
1268 all other systems, policies and procedures that the department
1269 considered as necessary components to a design-build management
1270 system.

1271 (e) All contracts let under the provisions of this
1272 subsection shall be subject to oversight and review by the State
1273 Auditor. The State Auditor shall file a report with the
1274 Legislature on or before January 1 of each year detailing his
1275 findings with regard to any contract let or project performed in

1276 violation of the provisions of this subsection. The actual and
1277 necessary expenses incurred by the State Auditor in complying with
1278 this paragraph (e) shall be paid for and reimbursed by the
1279 Mississippi Department of Transportation out of funds made
1280 available for the contract or contracts let and project or
1281 projects performed.

1282 (f) As an alternative to the authority granted to the
1283 commission in this subsection, the commission may elect to use the
1284 method of contracting for construction projects set out in Section
1285 31-7-13.1.

1286 **SECTION 5.** This act shall take effect and be in force from
1287 and after July 1, 2006.