

By: Senator(s) Huggins

To: Public Property; Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2938

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

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

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

12 31-7-13.1. (1) The method of contracting for construction
13 described in this section shall be known as the "dual-phase
14 design-build method" of construction contracting. This method of
15 construction contracting may be used only when the Legislature has
16 specifically required or authorized the use of this method in the
17 legislation authorizing a project, or when the Department of
18 Finance and Administration, the governing board or commission of
19 an agency or the governing authority makes a determination,
20 entered on its minutes, with specific findings for the project
21 demonstrating how it is in the best interest of the public to
22 enter into a dual-phase design-build construction contract. Use
23 of this method for projects funded by the Legislature or
24 administered by the Department of Finance and Administration shall
25 be at the discretion of the Bureau of Building, Grounds and Real
26 Property Management. At a minimum, the determination must include
27 a detailed explanation of why a dual-phase design-build approach
28 for a particular project satisfies the public need better than the
29 traditional design-bid-build approach.

30 (2) For each proposed dual-phase design-build project, a
31 two-phase procedure for awarding a contract must be adopted.
32 During Phase One, and before solicitation of initial proposals,
33 the agency or governing authority shall develop, with the
34 assistance of an architectural or engineering firm, a scope of
35 work statement that provides prospective offerors with sufficient
36 information regarding the requirements of the agency or governing
37 authority. The scope of work statement must include, but is not
38 limited to, the following information:

39 (a) Drawings must show overall building dimensions and
40 major lines of dimensions, and site plans that show topography,
41 adjacent buildings and utilities;

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

44 (c) The scope of work statement also must include
45 building elevations, sections and design details; and

46 (d) The scope of work statement must include general
47 budget parameters, schedule or delivery requirements, relevant
48 criteria for evaluation of proposals, and any other information
49 necessary to enable the design-builders to submit proposals that
50 meet the needs of the agency or governing authority.

51 (3) The agency or governing authority shall cause to be
52 published once a week, for at least two (2) consecutive weeks in a
53 regular newspaper published in the county in which the project is
54 to be located, a notice inviting proposals for the dual-phase
55 design-build construction project. Such proposals shall not be
56 opened in less than fifteen (15) working days after the last
57 notice is published. The notice must inform potential offerors of
58 how to obtain the scope of work statement developed for the
59 project, and the notice must contain such other information to
60 describe adequately the general nature and scope of the project so
61 as to promote full, equal and open competition.

62 (4) The agency or governing authority shall accept initial
63 proposals only from entities able to provide, either in-house or
64 through contractual arrangements, an experienced and qualified
65 design-build team that includes, at a minimum, an architectural or
66 engineering firm registered in Mississippi and a contractor
67 properly licensed in Mississippi for the type of work required.
68 From evaluation of initial proposals under Phase One, the agency
69 or governing authority shall select a minimum of two (2) and a
70 maximum of five (5) design-builders as "short-listed firms" to
71 submit proposals for Phase Two.

72 (5) During Phase Two, the short-listed firms will be invited
73 to submit detailed designs, specific technical concepts or
74 solutions, pricing, scheduling and other information deemed
75 appropriate by the agency or governing authority as necessary to
76 evaluate and rank acceptability of the Phase Two proposals. After
77 evaluation of these Phase Two proposals, the agency or governing
78 authority shall award a contract to the design-builder determined
79 to offer the best value to the public in accordance with
80 evaluation criteria set forth in the request for proposals, of
81 which price must be one, but not necessarily the only, criterion.

82 (6) If the agency or governing authority accepts a proposal
83 other than the lowest dollar proposal actually submitted, the
84 agency or governing authority shall enter on its minutes detailed
85 calculations and a narrative summary showing why the accepted
86 proposal was determined to provide the best value, and the agency
87 or governing authority shall state specifically on its minutes the
88 justification for its award.

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

93 (8) At its discretion, the agency or governing authority may
94 award a stipulated fee equal to a percentage, as prescribed in the

95 request for proposals, of the project's final design and
96 construction budget, as prescribed in the request for proposals,
97 but not less than two-tenths of one percent (2/10 of 1%) of the
98 project's final design and construction budget, to each short-list
99 offeror who provides a responsive, but unsuccessful, proposal. If
100 the agency or governing authority does not award a contract, all
101 responsive final list offerors shall receive the stipulated fee
102 based on the owner's estimate of the project final design and
103 construction budget as included in the request for proposals. The
104 agency or governing authority shall pay the stipulated fee to each
105 offeror within ninety (90) days after the award of the initial
106 contract or the decision not to award a contract. In
107 consideration for paying the stipulated fee, the agency or
108 governing authority may use any ideas or information contained in
109 the proposals in connection with any contract awarded for the
110 project, or in connection with a subsequent procurement, without
111 any obligation to pay any additional compensation to the
112 unsuccessful offerors. Notwithstanding the other provisions of
113 this subsection, an unsuccessful short-list offeror may elect to
114 waive the stipulated fee. If an unsuccessful short-list offeror
115 elects to waive the stipulated fee, the agency or governing
116 authority may not use ideas and information contained in the
117 offeror's proposal, except that this restriction does not prevent
118 the agency or governing authority from using any idea or
119 information if the idea or information is also included in a
120 proposal of an offeror that accepts the stipulated fee.

121 (9) This section shall not authorize the awarding of
122 construction contracts according to any contracting method that
123 does not require the contractor to satisfactorily perform, at a
124 minimum, both any balance of design and construction of the
125 project for which the contract is awarded.

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

128 31-7-13. All agencies and governing authorities shall
129 purchase their commodities and printing; contract for garbage
130 collection or disposal; contract for solid waste collection or
131 disposal; contract for sewage collection or disposal; contract for
132 public construction; and contract for rentals as herein provided.

133 (a) **Bidding procedure for purchases not over \$3,500.00.**
134 Purchases which do not involve an expenditure of more than Three
135 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
136 shipping charges, may be made without advertising or otherwise
137 requesting competitive bids. However, nothing contained in this
138 paragraph (a) shall be construed to prohibit any agency or
139 governing authority from establishing procedures which require
140 competitive bids on purchases of Three Thousand Five Hundred
141 Dollars (\$3,500.00) or less.

142 (b) **Bidding procedure for purchases over \$3,500.00 but**
143 **not over \$15,000.00.** Purchases which involve an expenditure of
144 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
145 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
146 freight and shipping charges may be made from the lowest and best
147 bidder without publishing or posting advertisement for bids,
148 provided at least two (2) competitive written bids have been
149 obtained. Any governing authority purchasing commodities pursuant
150 to this paragraph (b) may authorize its purchasing agent, or his
151 designee, with regard to governing authorities other than
152 counties, or its purchase clerk, or his designee, with regard to
153 counties, to accept the lowest and best competitive written bid.
154 Such authorization shall be made in writing by the governing
155 authority and shall be maintained on file in the primary office of
156 the agency and recorded in the official minutes of the governing
157 authority, as appropriate. The purchasing agent or the purchase
158 clerk, or their designee, as the case may be, and not the
159 governing authority, shall be liable for any penalties and/or
160 damages as may be imposed by law for any act or omission of the

161 purchasing agent or purchase clerk, or their designee,
162 constituting a violation of law in accepting any bid without
163 approval by the governing authority. The term "competitive
164 written bid" shall mean a bid submitted on a bid form furnished by
165 the buying agency or governing authority and signed by authorized
166 personnel representing the vendor, or a bid submitted on a
167 vendor's letterhead or identifiable bid form and signed by
168 authorized personnel representing the vendor. "Competitive" shall
169 mean that the bids are developed based upon comparable
170 identification of the needs and are developed independently and
171 without knowledge of other bids or prospective bids. Bids may be
172 submitted by facsimile, electronic mail or other generally
173 accepted method of information distribution. Bids submitted by
174 electronic transmission shall not require the signature of the
175 vendor's representative unless required by agencies or governing
176 authorities.

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

178 (i) **Publication requirement.** Purchases which
179 involve an expenditure of more than Fifteen Thousand Dollars
180 (\$15,000.00), exclusive of freight and shipping charges, may be
181 made from the lowest and best bidder after advertising for
182 competitive sealed bids once each week for two (2) consecutive
183 weeks in a regular newspaper published in the county or
184 municipality in which such agency or governing authority is
185 located. The date as published for the bid opening shall not be
186 less than seven (7) working days after the last published notice;
187 however, if the purchase involves a construction project in which
188 the estimated cost is in excess of Fifteen Thousand Dollars
189 (\$15,000.00), such bids shall not be opened in less than fifteen
190 (15) working days after the last notice is published and the
191 notice for the purchase of such construction shall be published
192 once each week for two (2) consecutive weeks. The notice of
193 intention to let contracts or purchase equipment shall state the

194 time and place at which bids shall be received, list the contracts
195 to be made or types of equipment or supplies to be purchased, and,
196 if all plans and/or specifications are not published, refer to the
197 plans and/or specifications on file. If there is no newspaper
198 published in the county or municipality, then such notice shall be
199 given by posting same at the courthouse, or for municipalities at
200 the city hall, and at two (2) other public places in the county or
201 municipality, and also by publication once each week for two (2)
202 consecutive weeks in some newspaper having a general circulation
203 in the county or municipality in the above provided manner. On
204 the same date that the notice is submitted to the newspaper for
205 publication, the agency or governing authority involved shall mail
206 written notice to, or provide electronic notification to the main
207 office of the Mississippi Contract Procurement Center that
208 contains the same information as that in the published notice.

209 (ii) **Bidding process amendment procedure.** If all
210 plans and/or specifications are published in the notification,
211 then the plans and/or specifications may not be amended. If all
212 plans and/or specifications are not published in the notification,
213 then amendments to the plans/specifications, bid opening date, bid
214 opening time and place may be made, provided that the agency or
215 governing authority maintains a list of all prospective bidders
216 who are known to have received a copy of the bid documents and all
217 such prospective bidders are sent copies of all amendments. This
218 notification of amendments may be made via mail, facsimile,
219 electronic mail or other generally accepted method of information
220 distribution. No addendum to bid specifications may be issued
221 within two (2) working days of the time established for the
222 receipt of bids unless such addendum also amends the bid opening
223 to a date not less than five (5) working days after the date of
224 the addendum.

225 (iii) **Filing requirement.** In all cases involving
226 governing authorities, before the notice shall be published or

227 posted, the plans or specifications for the construction or
228 equipment being sought shall be filed with the clerk of the board
229 of the governing authority. In addition to these requirements, a
230 bid file shall be established which shall indicate those vendors
231 to whom such solicitations and specifications were issued, and
232 such file shall also contain such information as is pertinent to
233 the bid.

234 (iv) **Specification restrictions.**

235 1. Specifications pertinent to such bidding
236 shall be written so as not to exclude comparable equipment of
237 domestic manufacture. However, if valid justification is
238 presented, the Department of Finance and Administration or the
239 board of a governing authority may approve a request for specific
240 equipment necessary to perform a specific job. Further, such
241 justification, when placed on the minutes of the board of a
242 governing authority, may serve as authority for that governing
243 authority to write specifications to require a specific item of
244 equipment needed to perform a specific job. In addition to these
245 requirements, from and after July 1, 1990, vendors of relocatable
246 classrooms and the specifications for the purchase of such
247 relocatable classrooms published by local school boards shall meet
248 all pertinent regulations of the State Board of Education,
249 including prior approval of such bid by the State Department of
250 Education.

251 2. Specifications for construction projects
252 may include an allowance for commodities, equipment, furniture,
253 construction materials or systems in which prospective bidders are
254 instructed to include in their bids specified amounts for such
255 items so long as the allowance items are acquired by the vendor in
256 a commercially reasonable manner and approved by the
257 agency/governing authority. Such acquisitions shall not be made
258 to circumvent the public purchasing laws.

259 (v) Agencies and governing authorities may
260 establish secure procedures by which bids may be submitted via
261 electronic means.

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

263 (i) **Decision procedure.** Purchases may be made
264 from the lowest and best bidder. In determining the lowest and
265 best bid, freight and shipping charges shall be included.
266 Life-cycle costing, total cost bids, warranties, guaranteed
267 buy-back provisions and other relevant provisions may be included
268 in the best bid calculation. All best bid procedures for state
269 agencies must be in compliance with regulations established by the
270 Department of Finance and Administration. If any governing
271 authority accepts a bid other than the lowest bid actually
272 submitted, it shall place on its minutes detailed calculations and
273 narrative summary showing that the accepted bid was determined to
274 be the lowest and best bid, including the dollar amount of the
275 accepted bid and the dollar amount of the lowest bid. No agency
276 or governing authority shall accept a bid based on items not
277 included in the specifications.

278 (ii) **Decision procedure for Certified Purchasing**
279 **Offices.** In addition to the decision procedure set forth in
280 paragraph (d)(i), Certified Purchasing Offices may also use the
281 following procedure: Purchases may be made from the bidder
282 offering the best value. In determining the best value bid,
283 freight and shipping charges shall be included. Life-cycle
284 costing, total cost bids, warranties, guaranteed buy-back
285 provisions, documented previous experience, training costs and
286 other relevant provisions may be included in the best value
287 calculation. This provision shall authorize Certified Purchasing
288 Offices to utilize a Request For Proposals (RFP) process when
289 purchasing commodities. All best value procedures for state
290 agencies must be in compliance with regulations established by the
291 Department of Finance and Administration. No agency or governing

292 authority shall accept a bid based on items or criteria not
293 included in the specifications.

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

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

300 (e) **Lease-purchase authorization.** For the purposes of
301 this section, the term "equipment" shall mean equipment, furniture
302 and, if applicable, associated software and other applicable
303 direct costs associated with the acquisition. Any lease-purchase
304 of equipment which an agency is not required to lease-purchase
305 under the master lease-purchase program pursuant to Section
306 31-7-10 and any lease-purchase of equipment which a governing
307 authority elects to lease-purchase may be acquired by a
308 lease-purchase agreement under this paragraph (e). Lease-purchase
309 financing may also be obtained from the vendor or from a
310 third-party source after having solicited and obtained at least
311 two (2) written competitive bids, as defined in paragraph (b) of
312 this section, for such financing without advertising for such
313 bids. Solicitation for the bids for financing may occur before or
314 after acceptance of bids for the purchase of such equipment or,
315 where no such bids for purchase are required, at any time before
316 the purchase thereof. No such lease-purchase agreement shall be
317 for an annual rate of interest which is greater than the overall
318 maximum interest rate to maturity on general obligation
319 indebtedness permitted under Section 75-17-101, and the term of
320 such lease-purchase agreement shall not exceed the useful life of
321 equipment covered thereby as determined according to the upper
322 limit of the asset depreciation range (ADR) guidelines for the
323 Class Life Asset Depreciation Range System established by the
324 Internal Revenue Service pursuant to the United States Internal

325 Revenue Code and regulations thereunder as in effect on December
326 31, 1980, or comparable depreciation guidelines with respect to
327 any equipment not covered by ADR guidelines. Any lease-purchase
328 agreement entered into pursuant to this paragraph (e) may contain
329 any of the terms and conditions which a master lease-purchase
330 agreement may contain under the provisions of Section 31-7-10(5),
331 and shall contain an annual allocation dependency clause
332 substantially similar to that set forth in Section 31-7-10(8).
333 Each agency or governing authority entering into a lease-purchase
334 transaction pursuant to this paragraph (e) shall maintain with
335 respect to each such lease-purchase transaction the same
336 information as required to be maintained by the Department of
337 Finance and Administration pursuant to Section 31-7-10(13).
338 However, nothing contained in this section shall be construed to
339 permit agencies to acquire items of equipment with a total
340 acquisition cost in the aggregate of less than Ten Thousand
341 Dollars (\$10,000.00) by a single lease-purchase transaction. All
342 equipment, and the purchase thereof by any lessor, acquired by
343 lease-purchase under this paragraph and all lease-purchase
344 payments with respect thereto shall be exempt from all Mississippi
345 sales, use and ad valorem taxes. Interest paid on any
346 lease-purchase agreement under this section shall be exempt from
347 State of Mississippi income taxation.

348 (f) **Alternate bid authorization.** When necessary to
349 ensure ready availability of commodities for public works and the
350 timely completion of public projects, no more than two (2)
351 alternate bids may be accepted by a governing authority for
352 commodities. No purchases may be made through use of such
353 alternate bids procedure unless the lowest and best bidder cannot
354 deliver the commodities contained in his bid. In that event,
355 purchases of such commodities may be made from one (1) of the
356 bidders whose bid was accepted as an alternate.

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

377 (h) **Petroleum purchase alternative.** In addition to
378 other methods of purchasing authorized in this chapter, when any
379 agency or governing authority shall have a need for gas, diesel
380 fuel, oils and/or other petroleum products in excess of the amount
381 set forth in paragraph (a) of this section, such agency or
382 governing authority may purchase the commodity after having
383 solicited and obtained at least two (2) competitive written bids,
384 as defined in paragraph (b) of this section. If two (2)
385 competitive written bids are not obtained, the entity shall comply
386 with the procedures set forth in paragraph (c) of this section.
387 In the event any agency or governing authority shall have
388 advertised for bids for the purchase of gas, diesel fuel, oils and
389 other petroleum products and coal and no acceptable bids can be

390 obtained, such agency or governing authority is authorized and
391 directed to enter into any negotiations necessary to secure the
392 lowest and best contract available for the purchase of such
393 commodities.

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

414 (j) **State agency emergency purchase procedure.** If the
415 governing board or the executive head, or his designee, of any
416 agency of the state shall determine that an emergency exists in
417 regard to the purchase of any commodities or repair contracts, so
418 that the delay incident to giving opportunity for competitive
419 bidding would be detrimental to the interests of the state, then
420 the provisions herein for competitive bidding shall not apply and
421 the head of such agency shall be authorized to make the purchase
422 or repair. Total purchases so made shall only be for the purpose

423 of meeting needs created by the emergency situation. In the event
424 such executive head is responsible to an agency board, at the
425 meeting next following the emergency purchase, documentation of
426 the purchase, including a description of the commodity purchased,
427 the purchase price thereof and the nature of the emergency shall
428 be presented to the board and placed on the minutes of the board
429 of such agency. The head of such agency, or his designee, shall,
430 at the earliest possible date following such emergency purchase,
431 file with the Department of Finance and Administration (i) a
432 statement explaining the conditions and circumstances of the
433 emergency, which shall include a detailed description of the
434 events leading up to the situation and the negative impact to the
435 entity if the purchase is made following the statutory
436 requirements set forth in paragraph (a), (b) or (c) of this
437 section, and (ii) a certified copy of the appropriate minutes of
438 the board of such agency, if applicable. On or before September 1
439 of each year, the State Auditor shall prepare and deliver to the
440 Senate Fees, Salaries and Administration Committee, the House Fees
441 and Salaries of Public Officers Committee and the Joint
442 Legislative Budget Committee a report containing a list of all
443 state agency emergency purchases and supporting documentation for
444 each emergency purchase.

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

446 If the governing authority, or the governing authority acting
447 through its designee, shall determine that an emergency exists in
448 regard to the purchase of any commodities or repair contracts, so
449 that the delay incident to giving opportunity for competitive
450 bidding would be detrimental to the interest of the governing
451 authority, then the provisions herein for competitive bidding
452 shall not apply and any officer or agent of such governing
453 authority having general or special authority therefor in making
454 such purchase or repair shall approve the bill presented therefor,
455 and he shall certify in writing thereon from whom such purchase

456 was made, or with whom such a repair contract was made. At the
457 board meeting next following the emergency purchase or repair
458 contract, documentation of the purchase or repair contract,
459 including a description of the commodity purchased, the price
460 thereof and the nature of the emergency shall be presented to the
461 board and shall be placed on the minutes of the board of such
462 governing authority.

463 (1) **Hospital purchase, lease-purchase and lease**
464 **authorization.**

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

470 (ii) In addition to the authority granted in
471 subparagraph (i) of this paragraph (1), the commissioners or board
472 of trustees is authorized to enter into contracts for the lease of
473 equipment or services, or both, which it considers necessary for
474 the proper care of patients if, in its opinion, it is not
475 financially feasible to purchase the necessary equipment or
476 services. Any such contract for the lease of equipment or
477 services executed by the commissioners or board shall not exceed a
478 maximum of five (5) years' duration and shall include a
479 cancellation clause based on unavailability of funds. If such
480 cancellation clause is exercised, there shall be no further
481 liability on the part of the lessee. Any such contract for the
482 lease of equipment or services executed on behalf of the
483 commissioners or board that complies with the provisions of this
484 subparagraph (ii) shall be excepted from the bid requirements set
485 forth in this section.

486 (m) **Exceptions from bidding requirements.** Excepted
487 from bid requirements are:

488 (i) **Purchasing agreements approved by department.**

489 Purchasing agreements, contracts and maximum price regulations
490 executed or approved by the Department of Finance and
491 Administration.

492 (ii) **Outside equipment repairs.** Repairs to
493 equipment, when such repairs are made by repair facilities in the
494 private sector; however, engines, transmissions, rear axles and/or
495 other such components shall not be included in this exemption when
496 replaced as a complete unit instead of being repaired and the need
497 for such total component replacement is known before disassembly
498 of the component; however, invoices identifying the equipment,
499 specific repairs made, parts identified by number and name,
500 supplies used in such repairs, and the number of hours of labor
501 and costs therefor shall be required for the payment for such
502 repairs.

503 (iii) **In-house equipment repairs.** Purchases of
504 parts for repairs to equipment, when such repairs are made by
505 personnel of the agency or governing authority; however, entire
506 assemblies, such as engines or transmissions, shall not be
507 included in this exemption when the entire assembly is being
508 replaced instead of being repaired.

509 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
510 of gravel or fill dirt which are to be removed and transported by
511 the purchaser.

512 (v) **Governmental equipment auctions.** Motor
513 vehicles or other equipment purchased from a federal agency or
514 authority, another governing authority or state agency of the
515 State of Mississippi, or any governing authority or state agency
516 of another state at a public auction held for the purpose of
517 disposing of such vehicles or other equipment. Any purchase by a
518 governing authority under the exemption authorized by this
519 subparagraph (v) shall require advance authorization spread upon
520 the minutes of the governing authority to include the listing of

521 the item or items authorized to be purchased and the maximum bid
522 authorized to be paid for each item or items.

523 (vi) **Intergovernmental sales and transfers.**

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

543 (vii) **Perishable supplies or food.** Perishable
544 supplies or food purchased for use in connection with hospitals,
545 the school lunch programs, homemaking programs and for the feeding
546 of county or municipal prisoners.

547 (viii) **Single source items.** Noncompetitive items
548 available from one (1) source only. In connection with the
549 purchase of noncompetitive items only available from one (1)
550 source, a certification of the conditions and circumstances
551 requiring the purchase shall be filed by the agency with the
552 Department of Finance and Administration and by the governing
553 authority with the board of the governing authority. Upon receipt

554 of that certification the Department of Finance and Administration
555 or the board of the governing authority, as the case may be, may,
556 in writing, authorize the purchase, which authority shall be noted
557 on the minutes of the body at the next regular meeting thereafter.
558 In those situations, a governing authority is not required to
559 obtain the approval of the Department of Finance and
560 Administration.

561 (ix) **Waste disposal facility construction**
562 **contracts.** Construction of incinerators and other facilities for
563 disposal of solid wastes in which products either generated
564 therein, such as steam, or recovered therefrom, such as materials
565 for recycling, are to be sold or otherwise disposed of; however,
566 in constructing such facilities, a governing authority or agency
567 shall publicly issue requests for proposals, advertised for in the
568 same manner as provided herein for seeking bids for public
569 construction projects, concerning the design, construction,
570 ownership, operation and/or maintenance of such facilities,
571 wherein such requests for proposals when issued shall contain
572 terms and conditions relating to price, financial responsibility,
573 technology, environmental compatibility, legal responsibilities
574 and such other matters as are determined by the governing
575 authority or agency to be appropriate for inclusion; and after
576 responses to the request for proposals have been duly received,
577 the governing authority or agency may select the most qualified
578 proposal or proposals on the basis of price, technology and other
579 relevant factors and from such proposals, but not limited to the
580 terms thereof, negotiate and enter contracts with one or more of
581 the persons or firms submitting proposals.

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

585 (xi) **Information technology products.** Purchases
586 of information technology products made by governing authorities

587 under the provisions of purchase schedules, or contracts executed
588 or approved by the Mississippi Department of Information
589 Technology Services and designated for use by governing
590 authorities.

591 (xii) **Energy efficiency services and equipment.**
592 Energy efficiency services and equipment acquired by school
593 districts, community and junior colleges, institutions of higher
594 learning and state agencies or other applicable governmental
595 entities on a shared-savings, lease or lease-purchase basis
596 pursuant to Section 31-7-14.

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

601 (xiv) **Library books and other reference materials.**
602 Purchases by libraries or for libraries of books and periodicals;
603 processed film, video cassette tapes, filmstrips and slides;
604 recorded audio tapes, cassettes and diskettes; and any such items
605 as would be used for teaching, research or other information
606 distribution; however, equipment such as projectors, recorders,
607 audio or video equipment, and monitor televisions are not exempt
608 under this subparagraph.

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

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

615 (xvii) **Multichannel interactive video systems.**
616 From and after July 1, 1990, contracts by Mississippi Authority
617 for Educational Television with any private educational
618 institution or private nonprofit organization whose purposes are
619 educational in regard to the construction, purchase, lease or

620 lease-purchase of facilities and equipment and the employment of
621 personnel for providing multichannel interactive video systems
622 (ITSF) in the school districts of this state.

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

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

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

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

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

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

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

642 Contracts for garbage collection or disposal, contracts for solid
643 waste collection or disposal and contracts for sewage collection
644 or disposal.

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

646 **contracts.** Professional maintenance program contracts for the
647 repair or maintenance of municipal water tanks, which provide
648 professional services needed to maintain municipal water storage
649 tanks for a fixed annual fee for a duration of two (2) or more
650 years.

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

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

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

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

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

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

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

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

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

663 machinery or equipment used for the installation and

664 implementation of soil and water conservation practices or

665 measures purchased subject to the restrictions provided in

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

667 Soil and Water Conservation Commission under the exemption

668 authorized by this subparagraph shall require advance

669 authorization spread upon the minutes of the commission to include

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

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

672 (xxviii) **Hospital lease of equipment or services.**

673 Leases by hospitals of equipment or services if the leases are in

674 compliance with paragraph (1)(ii).

675 (xxix) **Purchases made pursuant to qualified**

676 **cooperative purchasing agreements.** Purchases made by certified

677 purchasing offices of state agencies or governing authorities

678 under cooperative purchasing agreements previously approved by the

679 Office of Purchasing and Travel and established by or for any

680 municipality, county, parish or state government or the federal

681 government, provided that the notification to potential

682 contractors includes a clause that sets forth the availability of

683 the cooperative purchasing agreement to other governmental

684 entities. Such purchases shall only be made if the use of the

685 cooperative purchasing agreements is determined to be in the best
686 interest of the governmental entity.

687 (xxx) **School yearbooks.** Purchases of school
688 yearbooks by state agencies or governing authorities; provided,
689 however, that state agencies and governing authorities shall use
690 for these purchases the RFP process as set forth in the
691 Mississippi Procurement Manual adopted by the Office of Purchasing
692 and Travel.

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

696 (n) **Term contract authorization.** All contracts for the
697 purchase of:

698 (i) All contracts for the purchase of commodities,
699 equipment and public construction (including, but not limited to,
700 repair and maintenance), may be let for periods of not more than
701 sixty (60) months in advance, subject to applicable statutory
702 provisions prohibiting the letting of contracts during specified
703 periods near the end of terms of office. Term contracts for a
704 period exceeding twenty-four (24) months shall also be subject to
705 ratification or cancellation by governing authority boards taking
706 office subsequent to the governing authority board entering the
707 contract.

708 (ii) Bid proposals and contracts may include price
709 adjustment clauses with relation to the cost to the contractor
710 based upon a nationally published industry-wide or nationally
711 published and recognized cost index. The cost index used in a
712 price adjustment clause shall be determined by the Department of
713 Finance and Administration for the state agencies and by the
714 governing board for governing authorities. The bid proposal and
715 contract documents utilizing a price adjustment clause shall
716 contain the basis and method of adjusting unit prices for the

717 change in the cost of such commodities, equipment and public
718 construction.

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

734 (p) **Electrical utility petroleum-based equipment**
735 **purchase procedure.** When in response to a proper advertisement
736 therefor, no bid firm as to price is submitted to an electric
737 utility for power transformers, distribution transformers, power
738 breakers, reclosers or other articles containing a petroleum
739 product, the electric utility may accept the lowest and best bid
740 therefor although the price is not firm.

741 (q) **Fuel management system bidding procedure.** Any
742 governing authority or agency of the state shall, before
743 contracting for the services and products of a fuel management or
744 fuel access system, enter into negotiations with not fewer than
745 two (2) sellers of fuel management or fuel access systems for
746 competitive written bids to provide the services and products for
747 the systems. In the event that the governing authority or agency
748 cannot locate two (2) sellers of such systems or cannot obtain
749 bids from two (2) sellers of such systems, it shall show proof

750 that it made a diligent, good-faith effort to locate and negotiate
751 with two (2) sellers of such systems. Such proof shall include,
752 but not be limited to, publications of a request for proposals and
753 letters soliciting negotiations and bids. For purposes of this
754 paragraph (q), a fuel management or fuel access system is an
755 automated system of acquiring fuel for vehicles as well as
756 management reports detailing fuel use by vehicles and drivers, and
757 the term "competitive written bid" shall have the meaning as
758 defined in paragraph (b) of this section. Governing authorities
759 and agencies shall be exempt from this process when contracting
760 for the services and products of a fuel management or fuel access
761 systems under the terms of a state contract established by the
762 Office of Purchasing and Travel.

763 (r) **Solid waste contract proposal procedure.** Before
764 entering into any contract for garbage collection or disposal,
765 contract for solid waste collection or disposal or contract for
766 sewage collection or disposal, which involves an expenditure of
767 more than Fifty Thousand Dollars (\$50,000.00), a governing
768 authority or agency shall issue publicly a request for proposals
769 concerning the specifications for such services which shall be
770 advertised for in the same manner as provided in this section for
771 seeking bids for purchases which involve an expenditure of more
772 than the amount provided in paragraph (c) of this section. Any
773 request for proposals when issued shall contain terms and
774 conditions relating to price, financial responsibility,
775 technology, legal responsibilities and other relevant factors as
776 are determined by the governing authority or agency to be
777 appropriate for inclusion; all factors determined relevant by the
778 governing authority or agency or required by this paragraph (r)
779 shall be duly included in the advertisement to elicit proposals.
780 After responses to the request for proposals have been duly
781 received, the governing authority or agency shall select the most
782 qualified proposal or proposals on the basis of price, technology

783 and other relevant factors and from such proposals, but not
784 limited to the terms thereof, negotiate and enter contracts with
785 one or more of the persons or firms submitting proposals. If the
786 governing authority or agency deems none of the proposals to be
787 qualified or otherwise acceptable, the request for proposals
788 process may be reinitiated. Notwithstanding any other provisions
789 of this paragraph, where a county with at least thirty-five
790 thousand (35,000) nor more than forty thousand (40,000)
791 population, according to the 1990 federal decennial census, owns
792 or operates a solid waste landfill, the governing authorities of
793 any other county or municipality may contract with the governing
794 authorities of the county owning or operating the landfill,
795 pursuant to a resolution duly adopted and spread upon the minutes
796 of each governing authority involved, for garbage or solid waste
797 collection or disposal services through contract negotiations.

798 (s) **Minority set-aside authorization.** Notwithstanding
799 any provision of this section to the contrary, any agency or
800 governing authority, by order placed on its minutes, may, in its
801 discretion, set aside not more than twenty percent (20%) of its
802 anticipated annual expenditures for the purchase of commodities
803 from minority businesses; however, all such set-aside purchases
804 shall comply with all purchasing regulations promulgated by the
805 Department of Finance and Administration and shall be subject to
806 bid requirements under this section. Set-aside purchases for
807 which competitive bids are required shall be made from the lowest
808 and best minority business bidder. For the purposes of this
809 paragraph, the term "minority business" means a business which is
810 owned by a majority of persons who are United States citizens or
811 permanent resident aliens (as defined by the Immigration and
812 Naturalization Service) of the United States, and who are Asian,
813 Black, Hispanic or Native American, according to the following
814 definitions:

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

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

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

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

826 (t) **Construction punch list restriction.** The
827 architect, engineer or other representative designated by the
828 agency or governing authority that is contracting for public
829 construction or renovation may prepare and submit to the
830 contractor only one (1) preliminary punch list of items that do
831 not meet the contract requirements at the time of substantial
832 completion and one (1) final list immediately before final
833 completion and final payment.

834 (u) **Purchase authorization clarification.** Nothing in
835 this section shall be construed as authorizing any purchase not
836 authorized by law.

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

839 31-11-3. (1) The Department of Finance and Administration,
840 for the purposes of carrying out the provisions of this chapter,
841 in addition to all other rights and powers granted by law, shall
842 have full power and authority to employ and compensate architects
843 or other employees necessary for the purpose of making
844 inspections, preparing plans and specifications, supervising the
845 erection of any buildings, and making any repairs or additions as
846 may be determined by the Department of Finance and Administration
847 to be necessary, pursuant to the rules and regulations of the

848 State Personnel Board. The department shall have entire control
849 and supervision of, and determine what, if any, buildings,
850 additions, repairs or improvements are to be made under the
851 provisions of this chapter, subject to the approval of the Public
852 Procurement Review Board.

853 (2) The department shall have full power to erect buildings,
854 make repairs, additions or improvements, and buy materials,
855 supplies and equipment for any of the institutions or departments
856 of the state subject to the approval of the Public Procurement
857 Review Board. In addition to other powers conferred, the
858 department shall have full power and authority as directed by the
859 Legislature, or when funds have been appropriated for its use for
860 these purposes, to:

861 (a) Build a state office building;

862 (b) Build suitable plants or buildings for the use and
863 housing of any state schools or institutions, including the
864 building of plants or buildings for new state schools or
865 institutions, as provided for by the Legislature;

866 (c) Provide state aid for the construction of school
867 buildings;

868 (d) Promote and develop the training of returned
869 veterans of the United States in all sorts of educational and
870 vocational learning to be supplied by the proper educational
871 institution of the State of Mississippi, and in so doing allocate
872 monies appropriated to it for these purposes to the Governor for
873 use by him in setting up, maintaining and operating an office and
874 employing a state director of on-the-job training for veterans and
875 the personnel necessary in carrying out Public Law No. 346 of the
876 United States;

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

879 (f) Build and equip additional buildings and wards at
880 the Boswell Retardation Center;

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

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

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

890 (j) Build and equip a gymnasium at Columbia Training
891 School;

892 (k) Approve or disapprove the expenditure of any money
893 appropriated by the Legislature when authorized by the bill making
894 the appropriation;

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

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

904 (n) Collect and receive from educational institutions
905 of the State of Mississippi monies required to be paid by these
906 institutions to the state in carrying out any veterans'
907 educational programs;

908 (o) Purchase lands for building sites, or as additions
909 to building sites, for the erection of buildings and other
910 facilities which the department is authorized to erect, and
911 demolish and dispose of old buildings, when necessary for the
912 proper construction of new buildings. Any transaction which
913 involves state lands under the provisions of this paragraph shall

914 be done in a manner consistent with the provisions of Section
915 29-1-1;

916 (p) Obtain business property insurance with a
917 deductible of not less than One Hundred Thousand Dollars
918 (\$100,000.00) on state-owned buildings under the management and
919 control of the department; and

920 (q) In consultation with and approval by the Chairmen
921 of the Public Property Committees of the Senate and the House of
922 Representatives, enter into contracts for the purpose of providing
923 parking spaces for state employees who work in the Woolfolk
924 Building, the Carroll Gartin Justice Building or the Walter
925 Sillers Office Building. The provisions of this paragraph (q)
926 shall stand repealed on July 1, 2006.

927 (3) The department shall survey state-owned and
928 state-utilized buildings to establish an estimate of the costs of
929 architectural alterations, pursuant to the Americans With
930 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The
931 department shall establish priorities for making the identified
932 architectural alterations and shall make known to the Legislative
933 Budget Office and to the Legislature the required cost to
934 effectuate such alterations. To meet the requirements of this
935 section, the department shall use standards of accessibility that
936 are at least as stringent as any applicable federal requirements
937 and may consider:

938 (a) Federal minimum guidelines and requirements issued
939 by the United States Architectural and Transportation Barriers
940 Compliance Board and standards issued by other federal agencies;

941 (b) The criteria contained in the American Standard
942 Specifications for Making Buildings Accessible and Usable by the
943 Physically Handicapped and any amendments thereto as approved by
944 the American Standards Association, Incorporated (ANSI Standards);

945 (c) Design manuals;

946 (d) Applicable federal guidelines;

- 947 (e) Current literature in the field;
948 (f) Applicable safety standards; and
949 (g) Any applicable environmental impact statements.

950 (4) The department shall observe the provisions of Section
951 31-5-23, in letting contracts and shall use Mississippi products,
952 including paint, varnish and lacquer which contain as vehicles
953 tung oil and either ester gum or modified resin (with rosin as the
954 principal base of constituents), and turpentine shall be used as a
955 solvent or thinner, where these products are available at a cost
956 not to exceed the cost of products grown, produced, prepared, made
957 or manufactured outside of the State of Mississippi.

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

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

965 (7) The department shall review and preapprove all
966 architectural or engineering service contracts entered into by any
967 state agency, institution, commission, board or authority
968 regardless of the source of funding used to defray the costs of
969 the construction or renovation project for which services are to
970 be obtained. The provisions of this subsection (7) shall not
971 apply to any architectural or engineering contract paid for by
972 self-generated funds of any of the state institutions of higher
973 learning, nor shall they apply to community college projects that
974 are funded from local funds or other nonstate sources which are
975 outside the Department of Finance and Administration's
976 appropriations or as directed by the Legislature. The provisions
977 of this subsection (7) shall not apply to any construction or
978 design projects of the State Military Department that are funded
979 from federal funds or other nonstate sources.

980 (8) The department shall have the authority to obtain
981 annually from the state institutions of higher learning
982 information on all building, construction and renovation projects
983 including duties, responsibilities and costs of any architect or
984 engineer hired by any such institutions.

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

990 (i) Projects for the Mississippi Development
991 Authority pursuant to agreements between both governmental
992 entities;

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

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

999 (b) As used in this subsection:

1000 (i) "Design-build method of contracting" means a
1001 contract that combines the design and construction phases of a
1002 project into a single contract and the contractor is required to
1003 satisfactorily perform, at a minimum, both the design and
1004 construction of the project.

1005 (ii) "Design-build bridging method of contracting"
1006 means a contract that requires design through the design
1007 development phase by a professional designer, after which a
1008 request for qualifications for design completion and construction
1009 is required for the completion of the project from a single
1010 contractor that combines the balance of design and construction
1011 phases of a project into a single contract. The contractor is

1012 required to satisfactorily perform, at a minimum, both the balance
1013 of design and construction of the project.

1014 (c) The department shall establish detailed criteria
1015 for the selection of the successful design-build/design-build
1016 bridging contractor in each request for design-build/design-build
1017 bridging proposals. The request for qualifications evaluation of
1018 the selection committee is a public record and shall be maintained
1019 for a minimum of three (3) years after project completion.

1020 (d) The department shall maintain detailed records on
1021 projects separate and apart from its regular record keeping. The
1022 department shall file a report to the Legislature evaluating the
1023 design-build/design-build bridging method of contracting by
1024 comparing it to the low-bid method of contracting. At a minimum,
1025 the report must include:

1026 (i) The management goals and objectives for the
1027 design-build/design-build bridging system of management;

1028 (ii) A complete description of the components of
1029 the design-build/design-build bridging management system,
1030 including a description of the system the department put into
1031 place on all projects managed under the system to insure that it
1032 has the complete information on building segment costs and to
1033 insure proper analysis of any proposal the department receives
1034 from a contractor;

1035 (iii) The accountability systems the department
1036 established to monitor any design-build/design-build bridging
1037 project's compliance with specific goals and objectives for the
1038 project;

1039 (iv) The outcome of any project or any interim
1040 report on an ongoing project let under a design-build/design-build
1041 bridging management system showing compliance with the goals,
1042 objectives, policies and procedures the department set for the
1043 project; and

1044 (v) The method used by the department to select
1045 projects to be let under the design-build/design-build bridging
1046 system of management and all other systems, policies and
1047 procedures that the department considered as necessary components
1048 to a design-build/design-build bridging management system.

1049 (e) All contracts let under the provisions of this
1050 subsection shall be subject to oversight and review by the State
1051 Auditor.

1052 (f) As an alternative to the authority granted to the
1053 department in this subsection, the department may elect to use the
1054 method of contracting for construction projects set out in Section
1055 31-7-13.1.

1056 **SECTION 4.** Section 65-1-85, Mississippi Code of 1972, is
1057 amended as follows:

1058 65-1-85. (1) All contracts by or on behalf of the
1059 commission for the purchase of materials, equipment and supplies
1060 shall be made in compliance with Section 31-7-1 et seq. All
1061 contracts by or on behalf of the commission for construction,
1062 reconstruction or other public work authorized to be done under
1063 the provisions of this chapter, except maintenance, shall be made
1064 by the executive director, subject to the approval of the
1065 commission, only upon competitive bids after due advertisement as
1066 follows, to wit:

1067 (a) Advertisement for bids shall be in accordance with
1068 such rules and regulations, in addition to those herein provided,
1069 as may be adopted therefor by the commission, and the commission
1070 is authorized and empowered to make and promulgate such rules and
1071 regulations as it may deem proper, to provide and adopt standard
1072 specifications for road and bridge construction, and to amend such
1073 rules and regulations from time to time.

1074 (b) The advertisement shall be inserted twice, being
1075 once a week for two (2) successive weeks in a newspaper published
1076 at the seat of government in Jackson, Mississippi, having a

1077 general circulation throughout the state, and no letting shall be
1078 less than fourteen (14) days nor more than sixty (60) days after
1079 the publication of the first notice of such letting, and notices
1080 of such letting may be placed in a metropolitan paper or national
1081 trade publication.

1082 (c) Before advertising for such work, the executive
1083 director shall cause to be prepared and filed in the department
1084 detailed plans and specifications covering the work proposed to be
1085 done and copies of the plans and specifications shall be subject
1086 to inspection by any citizen during all office hours and made
1087 available to all prospective bidders upon such reasonable terms
1088 and conditions as may be required by the commission. A fee shall
1089 be charged equal to the cost of producing a copy of any such plans
1090 and specifications.

1091 (d) All such contracts shall be let to a responsible
1092 bidder with the lowest and best bid, and a record of all bids
1093 received for construction and reconstruction shall be preserved.

1094 (e) Each bid for such a construction and reconstruction
1095 contract must be accompanied by a cashier's check, a certified
1096 check or bidders bond executed by a surety company authorized to
1097 do business in the State of Mississippi, in the principal amount
1098 of not less than five percent (5%) of the bid, guaranteeing that
1099 the bidder will give bond and enter into a contract for the
1100 faithful performance of the contract according to plans and
1101 specifications on file.

1102 (f) Bonds shall be required of the successful bidder in
1103 an amount equal to the contract price. The contract price shall
1104 mean the entire cost of the particular contract let. In the event
1105 change orders are made after the execution of a contract which
1106 results in increasing the total contract price, additional bond in
1107 the amount of the increased cost may be required. The surety or
1108 sureties on such bonds shall be a surety company or surety
1109 companies authorized to do business in the State of Mississippi,

1110 all bonds to be payable to the State of Mississippi and to be
1111 conditioned for the prompt, faithful and efficient performance of
1112 the contract according to plans and specifications, and for the
1113 prompt payment of all persons furnishing labor, material,
1114 equipment and supplies therefor. Such bonds shall be subject to
1115 the additional obligation that the principal and surety or
1116 sureties executing the same shall be liable to the state in a
1117 civil action instituted by the state at the instance of the
1118 commission or any officer of the state authorized in such cases,
1119 for double any amount in money or property the state may lose or
1120 be overcharged or otherwise defrauded of by reason of any wrongful
1121 or criminal act, if any, of the contractor, his agent or
1122 employees.

1123 (2) With respect to equipment used in the construction,
1124 reconstruction or other public work authorized to be done under
1125 the provisions of this chapter: the word "equipment," in addition
1126 to all equipment incorporated into or fully consumed in connection
1127 with such project, shall include the reasonable value of the use
1128 of all equipment of every kind and character and all accessories
1129 and attachments thereto which are reasonably necessary to be used
1130 and which are used in carrying out the performance of the
1131 contract, and the reasonable value of the use thereof, during the
1132 period of time the same are used in carrying out the performance
1133 of the contract, shall be the amount as agreed upon by the persons
1134 furnishing the equipment and those using the same to be paid
1135 therefor, which amount, however, shall not be in excess of the
1136 maximum current rates and charges allowable for leasing or renting
1137 as specified in Section 65-7-95; the word "labor" shall include
1138 all work performed in repairing equipment used in carrying out the
1139 performance of the contract, which repair labor is reasonably
1140 necessary to the efficient operation of said equipment; and the
1141 words "materials" and "supplies" shall include all repair parts
1142 installed in or on equipment used in carrying out the performance

1143 of the contract, which repair parts are reasonably necessary to
1144 the efficient operation of said equipment.

1145 (3) The executive director, subject to the approval of the
1146 commission, shall have the right to reject any and all bids,
1147 whether such right is reserved in the notice or not.

1148 (4) The commission may require the pre-qualification of any
1149 and all bidders and the failure to comply with pre-qualification
1150 requirements may be the basis for the rejection of any bid by the
1151 commission. The commission may require the pre-qualification of
1152 any and all subcontractors before they are approved to participate
1153 in any contract awarded under this section.

1154 (5) The commission may adopt rules and regulations for the
1155 termination of any previously awarded contract which is not timely
1156 proceeding toward completion. The failure of a contractor to
1157 comply with such rules and regulations shall be a lawful basis for
1158 the commission to terminate the contract with such contractor. In
1159 the event of a termination under such rules and regulations, the
1160 contractor shall not be entitled to any payment, benefit or
1161 damages beyond the cost of the work actually completed.

1162 (6) Any contract for construction or paving of any highway
1163 may be entered into for any cost which does not exceed the amount
1164 of funds that may be made available therefor through bond issues
1165 or from other sources of revenue, and the letting of contracts for
1166 such construction or paving shall not necessarily be delayed until
1167 the funds are actually on hand, provided authorization for the
1168 issuance of necessary bonds has been granted by law to supplement
1169 other anticipated revenue, or when the department certifies to the
1170 Department of Finance and Administration and the Legislative
1171 Budget Office that projected receipts of funds by the department
1172 will be sufficient to pay such contracts as they become due and
1173 the Department of Finance and Administration determines that the
1174 projections are reasonable and receipts will be sufficient to pay
1175 the contracts as they become due. The Department of Finance and

1176 Administration shall spread such determination on its minutes
1177 prior to the letting of any contracts based on projected receipts.
1178 Nothing in this subsection shall prohibit the issuance of bonds,
1179 which have been authorized, at any time in the discretion of the
1180 State Bond Commission, nor to prevent investment of surplus funds
1181 in United States government bonds or State of Mississippi bonds as
1182 presently authorized by Section 12, Chapter 312, Laws of 1956.

1183 (7) All other contracts for work to be done under the
1184 provisions of this chapter and for the purchase of materials,
1185 equipment and supplies to be used as provided for in this chapter
1186 shall be made in compliance with Section 31-7-1 et seq.

1187 (8) The commission shall not empower or authorize the
1188 executive director, or any one or more of its members, or any
1189 engineer or other person to let or make contracts for the
1190 construction or repair of public roads, or building bridges, or
1191 for the purchase of material, equipment or supplies contrary to
1192 the provisions of this chapter as set forth in this section,
1193 except in cases of flood or other cases of emergency where the
1194 public interest requires that the work be done or the materials,
1195 equipment or supplies be purchased without the delay incident to
1196 advertising for competitive bids. Such emergency contracts may be
1197 made without advertisement under such rules and regulations as the
1198 commission may prescribe.

1199 (9) The executive director, subject to the approval of the
1200 commission, is authorized to negotiate and make agreements with
1201 communities and/or civic organizations for landscaping,
1202 beautification and maintenance of highway rights-of-way; however,
1203 nothing in this subsection shall be construed as authorization for
1204 the executive director or commission to participate in such a
1205 project to an extent greater than the average cost for maintenance
1206 of shoulders, backslopes and median areas with respect thereto.

1207 (10) The executive director may negotiate and enter into
1208 contracts with private parties for the mowing of grass and

1209 trimming of vegetation on the rights-of-way of state highways
1210 whenever such practice is possible and cost effective.

1211 (11) (a) As an alternative to the method of awarding
1212 contracts as otherwise provided in this section, the commission
1213 may use the design-build method of contracting for the following:

1214 (i) Projects for the Mississippi Development
1215 Authority pursuant to agreements between both governmental
1216 entities;

1217 (ii) Any project with an estimated cost of not
1218 more than Ten Million Dollars (\$10,000,000.00), not to exceed two
1219 (2) projects per fiscal year; and

1220 (iii) Any project which has an estimated cost of
1221 more than Fifty Million Dollars (\$50,000,000.00), not to exceed
1222 one (1) project per fiscal year.

1223 (b) As used in this subsection, the term "design-build"
1224 method of contracting means a contract that combines the design
1225 and construction phases of a project into a single contract and
1226 the contractor is required to satisfactorily perform, at a
1227 minimum, both the design and construction of the project.

1228 (c) The commission shall establish detailed criteria
1229 for the selection of the successful design-build contractor in
1230 each request for design-build proposals. The evaluation of the
1231 selection committee is a public record and shall be maintained for
1232 a minimum of ten (10) years after project completion.

1233 (d) The commission shall maintain detailed records on
1234 projects separate and apart from its regular record keeping. The
1235 commission shall file a report to the Legislature evaluating the
1236 design-build method of contracting by comparing it to the low-bid
1237 method of contracting. At a minimum, the report must include:

1238 (i) The management goals and objectives for the
1239 design-build system of management;

1240 (ii) A complete description of the components of
1241 the design-build management system, including a description of the

1242 system the department put into place on all projects managed under
1243 the system to insure that it has the complete information on
1244 highway segment costs and to insure proper analysis of any
1245 proposal the commission receives from a highway contractor;

1246 (iii) The accountability systems the
1247 Transportation Department established to monitor any design-build
1248 project's compliance with specific goals and objectives for the
1249 project;

1250 (iv) The outcome of any project or any interim
1251 report on an ongoing project let under a design-build management
1252 system showing compliance with the goals, objectives, policies and
1253 procedures the department set for the project; and

1254 (v) The method used by the department to select
1255 projects to be let under the design-build system of management and
1256 all other systems, policies and procedures that the department
1257 considered as necessary components to a design-build management
1258 system.

1259 (e) All contracts let under the provisions of this
1260 subsection shall be subject to oversight and review by the State
1261 Auditor. The State Auditor shall file a report with the
1262 Legislature on or before January 1 of each year detailing his
1263 findings with regard to any contract let or project performed in
1264 violation of the provisions of this subsection. The actual and
1265 necessary expenses incurred by the State Auditor in complying with
1266 this paragraph (e) shall be paid for and reimbursed by the
1267 Mississippi Department of Transportation out of funds made
1268 available for the contract or contracts let and project or
1269 projects performed.

1270 (f) As an alternative to the authority granted to the
1271 commission in this subsection, the commission may elect to use the
1272 method of contracting for construction projects set out in Section
1273 31-7-13.1.

1274 **SECTION 5.** This act shall take effect and be in force from
1275 and after July 1, 2006.