

By: Senator(s) Huggins

To: Public Property; Finance

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. At a
23 minimum, the determination must include a detailed explanation of
24 why a dual-phase design-build approach for a particular project
25 satisfies the public need better than the traditional
26 design-bid-build approach.

27 (2) For each proposed dual-phase design-build project, a
28 two-phase procedure for awarding a contract must be adopted.
29 During Phase One, and before solicitation of initial proposals,
30 the agency or governing authority shall develop, with the

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

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

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

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

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

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

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

61 (3) The agency or governing authority shall cause to be
62 published once a week, for at least three (3) consecutive weeks
63 and not less than twenty-one (21) days in at least one (1)

64 newspaper having a general circulation in the county in which the
65 project is to be located and in one (1) newspaper with a general
66 statewide circulation, a notice inviting proposals for the
67 dual-phase design-build constructed project. The notice must
68 inform potential offerors of how to obtain the scope of work
69 statement developed for the project, and the notice must contain
70 such other information to describe adequately the general nature
71 and scope of the project so as to promote full, equal and open
72 competition.

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

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

93 (6) If the agency or governing authority accepts a proposal
94 other than the lowest dollar proposal actually submitted, the
95 agency or governing authority shall enter on its minutes detailed
96 calculations and a narrative summary showing why the accepted

97 proposal was determined to provide the best value, and the agency
98 or governing authority shall state specifically on its minutes the
99 justification for its award.

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

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

130 information if the idea or information is also included in a
131 proposal of an offeror that accepts the stipulated fee.

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

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

139 31-7-13. All agencies and governing authorities shall
140 purchase their commodities and printing; contract for garbage
141 collection or disposal; contract for solid waste collection or
142 disposal; contract for sewage collection or disposal; contract for
143 public construction; and contract for rentals as herein provided.

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

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

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

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

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

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

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

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

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

245 (iv) **Specification restrictions.**

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

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

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

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

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

289 (ii) **Decision procedure for Certified Purchasing**
290 **Offices.** In addition to the decision procedure set forth in
291 paragraph (d)(i), Certified Purchasing Offices may also use the
292 following procedure: Purchases may be made from the bidder
293 offering the best value. In determining the best value bid,
294 freight and shipping charges shall be included. Life-cycle

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

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

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

311 (e) **Lease-purchase authorization.** For the purposes of
312 this section, the term "equipment" shall mean equipment, furniture
313 and, if applicable, associated software and other applicable
314 direct costs associated with the acquisition. Any lease-purchase
315 of equipment which an agency is not required to lease-purchase
316 under the master lease-purchase program pursuant to Section
317 31-7-10 and any lease-purchase of equipment which a governing
318 authority elects to lease-purchase may be acquired by a
319 lease-purchase agreement under this paragraph (e). Lease-purchase
320 financing may also be obtained from the vendor or from a
321 third-party source after having solicited and obtained at least
322 two (2) written competitive bids, as defined in paragraph (b) of
323 this section, for such financing without advertising for such
324 bids. Solicitation for the bids for financing may occur before or
325 after acceptance of bids for the purchase of such equipment or,
326 where no such bids for purchase are required, at any time before
327 the purchase thereof. No such lease-purchase agreement shall be

328 for an annual rate of interest which is greater than the overall
329 maximum interest rate to maturity on general obligation
330 indebtedness permitted under Section 75-17-101, and the term of
331 such lease-purchase agreement shall not exceed the useful life of
332 equipment covered thereby as determined according to the upper
333 limit of the asset depreciation range (ADR) guidelines for the
334 Class Life Asset Depreciation Range System established by the
335 Internal Revenue Service pursuant to the United States Internal
336 Revenue Code and regulations thereunder as in effect on December
337 31, 1980, or comparable depreciation guidelines with respect to
338 any equipment not covered by ADR guidelines. Any lease-purchase
339 agreement entered into pursuant to this paragraph (e) may contain
340 any of the terms and conditions which a master lease-purchase
341 agreement may contain under the provisions of Section 31-7-10(5),
342 and shall contain an annual allocation dependency clause
343 substantially similar to that set forth in Section 31-7-10(8).
344 Each agency or governing authority entering into a lease-purchase
345 transaction pursuant to this paragraph (e) shall maintain with
346 respect to each such lease-purchase transaction the same
347 information as required to be maintained by the Department of
348 Finance and Administration pursuant to Section 31-7-10(13).
349 However, nothing contained in this section shall be construed to
350 permit agencies to acquire items of equipment with a total
351 acquisition cost in the aggregate of less than Ten Thousand
352 Dollars (\$10,000.00) by a single lease-purchase transaction. All
353 equipment, and the purchase thereof by any lessor, acquired by
354 lease-purchase under this paragraph and all lease-purchase
355 payments with respect thereto shall be exempt from all Mississippi
356 sales, use and ad valorem taxes. Interest paid on any
357 lease-purchase agreement under this section shall be exempt from
358 State of Mississippi income taxation.

359 (f) **Alternate bid authorization.** When necessary to
360 ensure ready availability of commodities for public works and the

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

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

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

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

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

425 (j) **State agency emergency purchase procedure.** If the
426 governing board or the executive head, or his designee, of any

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

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

457 If the governing authority, or the governing authority acting
458 through its designee, shall determine that an emergency exists in
459 regard to the purchase of any commodities or repair contracts, so

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

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

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

481 (ii) In addition to the authority granted in
482 subparagraph (i) of this paragraph (1), the commissioners or board
483 of trustees is authorized to enter into contracts for the lease of
484 equipment or services, or both, which it considers necessary for
485 the proper care of patients if, in its opinion, it is not
486 financially feasible to purchase the necessary equipment or
487 services. Any such contract for the lease of equipment or
488 services executed by the commissioners or board shall not exceed a
489 maximum of five (5) years' duration and shall include a
490 cancellation clause based on unavailability of funds. If such
491 cancellation clause is exercised, there shall be no further
492 liability on the part of the lessee. Any such contract for the

493 lease of equipment or services executed on behalf of the
494 commissioners or board that complies with the provisions of this
495 subparagraph (ii) shall be excepted from the bid requirements set
496 forth in this section.

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

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

500 Purchasing agreements, contracts and maximum price regulations
501 executed or approved by the Department of Finance and
502 Administration.

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

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

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

523 (v) **Governmental equipment auctions.** Motor
524 vehicles or other equipment purchased from a federal agency or
525 authority, another governing authority or state agency of the

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

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

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

554 (vii) **Perishable supplies or food.** Perishable
555 supplies or food purchased for use in connection with hospitals,
556 the school lunch programs, homemaking programs and for the feeding
557 of county or municipal prisoners.

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

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

591 terms thereof, negotiate and enter contracts with one or more of
592 the persons or firms submitting proposals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

686 (xxix) **Purchases made pursuant to qualified**
687 **cooperative purchasing agreements.** Purchases made by certified
688 purchasing offices of state agencies or governing authorities

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

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

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

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

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

719 (ii) Bid proposals and contracts may include price
720 adjustment clauses with relation to the cost to the contractor
721 based upon a nationally published industry-wide or nationally

722 published and recognized cost index. The cost index used in a
723 price adjustment clause shall be determined by the Department of
724 Finance and Administration for the state agencies and by the
725 governing board for governing authorities. The bid proposal and
726 contract documents utilizing a price adjustment clause shall
727 contain the basis and method of adjusting unit prices for the
728 change in the cost of such commodities, equipment and public
729 construction.

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

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

752 (q) **Fuel management system bidding procedure.** Any
753 governing authority or agency of the state shall, before
754 contracting for the services and products of a fuel management or

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

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

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

809 (s) **Minority set-aside authorization.** Notwithstanding
810 any provision of this section to the contrary, any agency or
811 governing authority, by order placed on its minutes, may, in its
812 discretion, set aside not more than twenty percent (20%) of its
813 anticipated annual expenditures for the purchase of commodities
814 from minority businesses; however, all such set-aside purchases
815 shall comply with all purchasing regulations promulgated by the
816 Department of Finance and Administration and shall be subject to
817 bid requirements under this section. Set-aside purchases for
818 which competitive bids are required shall be made from the lowest
819 and best minority business bidder. For the purposes of this
820 paragraph, the term "minority business" means a business which is

821 owned by a majority of persons who are United States citizens or
822 permanent resident aliens (as defined by the Immigration and
823 Naturalization Service) of the United States, and who are Asian,
824 Black, Hispanic or Native American, according to the following
825 definitions:

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

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

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

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

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

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

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

850 31-11-3. (1) The Department of Finance and Administration,
851 for the purposes of carrying out the provisions of this chapter,
852 in addition to all other rights and powers granted by law, shall
853 have full power and authority to employ and compensate architects

854 or other employees necessary for the purpose of making
855 inspections, preparing plans and specifications, supervising the
856 erection of any buildings, and making any repairs or additions as
857 may be determined by the Department of Finance and Administration
858 to be necessary, pursuant to the rules and regulations of the
859 State Personnel Board. The department shall have entire control
860 and supervision of, and determine what, if any, buildings,
861 additions, repairs or improvements are to be made under the
862 provisions of this chapter, subject to the approval of the Public
863 Procurement Review Board.

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

872 (a) Build a state office building;

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

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

879 (d) Promote and develop the training of returned
880 veterans of the United States in all sorts of educational and
881 vocational learning to be supplied by the proper educational
882 institution of the State of Mississippi, and in so doing allocate
883 monies appropriated to it for these purposes to the Governor for
884 use by him in setting up, maintaining and operating an office and
885 employing a state director of on-the-job training for veterans and

886 the personnel necessary in carrying out Public Law No. 346 of the
887 United States;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

956 (c) Design manuals;

957 (d) Applicable federal guidelines;

958 (e) Current literature in the field;

959 (f) Applicable safety standards; and

960 (g) Any applicable environmental impact statements.

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

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

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

976 (7) The department shall review and preapprove all
977 architectural or engineering service contracts entered into by any
978 state agency, institution, commission, board or authority
979 regardless of the source of funding used to defray the costs of
980 the construction or renovation project for which services are to
981 be obtained. The provisions of this subsection (7) shall not
982 apply to any architectural or engineering contract paid for by
983 self-generated funds of any of the state institutions of higher
984 learning, nor shall they apply to community college projects that

985 are funded from local funds or other nonstate sources which are
986 outside the Department of Finance and Administration's
987 appropriations or as directed by the Legislature. The provisions
988 of this subsection (7) shall not apply to any construction or
989 design projects of the State Military Department that are funded
990 from federal funds or other nonstate sources.

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

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

1001 (i) Projects for the Mississippi Development
1002 Authority pursuant to agreements between both governmental
1003 entities;

1004 (ii) Any project with an estimated cost of not
1005 more than Ten Million Dollars (\$10,000,000.00), not to exceed two
1006 (2) projects per fiscal year; and

1007 (iii) Any project which has an estimated cost of
1008 more than Fifty Million Dollars (\$50,000,000.00), not to exceed
1009 one (1) project per fiscal year.

1010 (b) As used in this subsection:

1011 (i) "Design-build method of contracting" means a
1012 contract that combines the design and construction phases of a
1013 project into a single contract and the contractor is required to
1014 satisfactorily perform, at a minimum, both the design and
1015 construction of the project.

1016 (ii) "Design-build bridging method of contracting"
1017 means a contract that requires design through the design

1018 development phase by a professional designer, after which a
1019 request for qualifications for design completion and construction
1020 is required for the completion of the project from a single
1021 contractor that combines the balance of design and construction
1022 phases of a project into a single contract. The contractor is
1023 required to satisfactorily perform, at a minimum, both the balance
1024 of design and construction of the project.

1025 (c) The department shall establish detailed criteria
1026 for the selection of the successful design-build/design-build
1027 bridging contractor in each request for design-build/design-build
1028 bridging proposals. The request for qualifications evaluation of
1029 the selection committee is a public record and shall be maintained
1030 for a minimum of three (3) years after project completion.

1031 (d) The department shall maintain detailed records on
1032 projects separate and apart from its regular record keeping. The
1033 department shall file a report to the Legislature evaluating the
1034 design-build/design-build bridging method of contracting by
1035 comparing it to the low-bid method of contracting. At a minimum,
1036 the report must include:

1037 (i) The management goals and objectives for the
1038 design-build/design-build bridging system of management;

1039 (ii) A complete description of the components of
1040 the design-build/design-build bridging management system,
1041 including a description of the system the department put into
1042 place on all projects managed under the system to insure that it
1043 has the complete information on building segment costs and to
1044 insure proper analysis of any proposal the department receives
1045 from a contractor;

1046 (iii) The accountability systems the department
1047 established to monitor any design-build/design-build bridging
1048 project's compliance with specific goals and objectives for the
1049 project;

1050 (iv) The outcome of any project or any interim
1051 report on an ongoing project let under a design-build/design-build
1052 bridging management system showing compliance with the goals,
1053 objectives, policies and procedures the department set for the
1054 project; and

1055 (v) The method used by the department to select
1056 projects to be let under the design-build/design-build bridging
1057 system of management and all other systems, policies and
1058 procedures that the department considered as necessary components
1059 to a design-build/design-build bridging management system.

1060 (e) All contracts let under the provisions of this
1061 subsection shall be subject to oversight and review by the State
1062 Auditor.

1063 (f) As an alternative to the authority granted to the
1064 department in this subsection, the department may elect to use the
1065 method of contracting for construction projects set out in Section
1066 31-7-13.1.

1067 **SECTION 4.** Section 65-1-85, Mississippi Code of 1972, is
1068 amended as follows:

1069 65-1-85. (1) All contracts by or on behalf of the
1070 commission for the purchase of materials, equipment and supplies
1071 shall be made in compliance with Section 31-7-1 et seq. All
1072 contracts by or on behalf of the commission for construction,
1073 reconstruction or other public work authorized to be done under
1074 the provisions of this chapter, except maintenance, shall be made
1075 by the executive director, subject to the approval of the
1076 commission, only upon competitive bids after due advertisement as
1077 follows, to wit:

1078 (a) Advertisement for bids shall be in accordance with
1079 such rules and regulations, in addition to those herein provided,
1080 as may be adopted therefor by the commission, and the commission
1081 is authorized and empowered to make and promulgate such rules and
1082 regulations as it may deem proper, to provide and adopt standard

1083 specifications for road and bridge construction, and to amend such
1084 rules and regulations from time to time.

1085 (b) The advertisement shall be inserted twice, being
1086 once a week for two (2) successive weeks in a newspaper published
1087 at the seat of government in Jackson, Mississippi, having a
1088 general circulation throughout the state, and no letting shall be
1089 less than fourteen (14) days nor more than sixty (60) days after
1090 the publication of the first notice of such letting, and notices
1091 of such letting may be placed in a metropolitan paper or national
1092 trade publication.

1093 (c) Before advertising for such work, the executive
1094 director shall cause to be prepared and filed in the department
1095 detailed plans and specifications covering the work proposed to be
1096 done and copies of the plans and specifications shall be subject
1097 to inspection by any citizen during all office hours and made
1098 available to all prospective bidders upon such reasonable terms
1099 and conditions as may be required by the commission. A fee shall
1100 be charged equal to the cost of producing a copy of any such plans
1101 and specifications.

1102 (d) All such contracts shall be let to a responsible
1103 bidder with the lowest and best bid, and a record of all bids
1104 received for construction and reconstruction shall be preserved.

1105 (e) Each bid for such a construction and reconstruction
1106 contract must be accompanied by a cashier's check, a certified
1107 check or bidders bond executed by a surety company authorized to
1108 do business in the State of Mississippi, in the principal amount
1109 of not less than five percent (5%) of the bid, guaranteeing that
1110 the bidder will give bond and enter into a contract for the
1111 faithful performance of the contract according to plans and
1112 specifications on file.

1113 (f) Bonds shall be required of the successful bidder in
1114 an amount equal to the contract price. The contract price shall
1115 mean the entire cost of the particular contract let. In the event

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

1134 (2) With respect to equipment used in the construction,
1135 reconstruction or other public work authorized to be done under
1136 the provisions of this chapter: the word "equipment," in addition
1137 to all equipment incorporated into or fully consumed in connection
1138 with such project, shall include the reasonable value of the use
1139 of all equipment of every kind and character and all accessories
1140 and attachments thereto which are reasonably necessary to be used
1141 and which are used in carrying out the performance of the
1142 contract, and the reasonable value of the use thereof, during the
1143 period of time the same are used in carrying out the performance
1144 of the contract, shall be the amount as agreed upon by the persons
1145 furnishing the equipment and those using the same to be paid
1146 therefor, which amount, however, shall not be in excess of the
1147 maximum current rates and charges allowable for leasing or renting
1148 as specified in Section 65-7-95; the word "labor" shall include

1149 all work performed in repairing equipment used in carrying out the
1150 performance of the contract, which repair labor is reasonably
1151 necessary to the efficient operation of said equipment; and the
1152 words "materials" and "supplies" shall include all repair parts
1153 installed in or on equipment used in carrying out the performance
1154 of the contract, which repair parts are reasonably necessary to
1155 the efficient operation of said equipment.

1156 (3) The executive director, subject to the approval of the
1157 commission, shall have the right to reject any and all bids,
1158 whether such right is reserved in the notice or not.

1159 (4) The commission may require the pre-qualification of any
1160 and all bidders and the failure to comply with pre-qualification
1161 requirements may be the basis for the rejection of any bid by the
1162 commission. The commission may require the pre-qualification of
1163 any and all subcontractors before they are approved to participate
1164 in any contract awarded under this section.

1165 (5) The commission may adopt rules and regulations for the
1166 termination of any previously awarded contract which is not timely
1167 proceeding toward completion. The failure of a contractor to
1168 comply with such rules and regulations shall be a lawful basis for
1169 the commission to terminate the contract with such contractor. In
1170 the event of a termination under such rules and regulations, the
1171 contractor shall not be entitled to any payment, benefit or
1172 damages beyond the cost of the work actually completed.

1173 (6) Any contract for construction or paving of any highway
1174 may be entered into for any cost which does not exceed the amount
1175 of funds that may be made available therefor through bond issues
1176 or from other sources of revenue, and the letting of contracts for
1177 such construction or paving shall not necessarily be delayed until
1178 the funds are actually on hand, provided authorization for the
1179 issuance of necessary bonds has been granted by law to supplement
1180 other anticipated revenue, or when the department certifies to the
1181 Department of Finance and Administration and the Legislative

1182 Budget Office that projected receipts of funds by the department
1183 will be sufficient to pay such contracts as they become due and
1184 the Department of Finance and Administration determines that the
1185 projections are reasonable and receipts will be sufficient to pay
1186 the contracts as they become due. The Department of Finance and
1187 Administration shall spread such determination on its minutes
1188 prior to the letting of any contracts based on projected receipts.
1189 Nothing in this subsection shall prohibit the issuance of bonds,
1190 which have been authorized, at any time in the discretion of the
1191 State Bond Commission, nor to prevent investment of surplus funds
1192 in United States government bonds or State of Mississippi bonds as
1193 presently authorized by Section 12, Chapter 312, Laws of 1956.

1194 (7) All other contracts for work to be done under the
1195 provisions of this chapter and for the purchase of materials,
1196 equipment and supplies to be used as provided for in this chapter
1197 shall be made in compliance with Section 31-7-1 et seq.

1198 (8) The commission shall not empower or authorize the
1199 executive director, or any one or more of its members, or any
1200 engineer or other person to let or make contracts for the
1201 construction or repair of public roads, or building bridges, or
1202 for the purchase of material, equipment or supplies contrary to
1203 the provisions of this chapter as set forth in this section,
1204 except in cases of flood or other cases of emergency where the
1205 public interest requires that the work be done or the materials,
1206 equipment or supplies be purchased without the delay incident to
1207 advertising for competitive bids. Such emergency contracts may be
1208 made without advertisement under such rules and regulations as the
1209 commission may prescribe.

1210 (9) The executive director, subject to the approval of the
1211 commission, is authorized to negotiate and make agreements with
1212 communities and/or civic organizations for landscaping,
1213 beautification and maintenance of highway rights-of-way; however,
1214 nothing in this subsection shall be construed as authorization for

1215 the executive director or commission to participate in such a
1216 project to an extent greater than the average cost for maintenance
1217 of shoulders, backslopes and median areas with respect thereto.

1218 (10) The executive director may negotiate and enter into
1219 contracts with private parties for the mowing of grass and
1220 trimming of vegetation on the rights-of-way of state highways
1221 whenever such practice is possible and cost effective.

1222 (11) (a) As an alternative to the method of awarding
1223 contracts as otherwise provided in this section, the commission
1224 may use the design-build method of contracting for the following:

1225 (i) Projects for the Mississippi Development
1226 Authority pursuant to agreements between both governmental
1227 entities;

1228 (ii) Any project with an estimated cost of not
1229 more than Ten Million Dollars (\$10,000,000.00), not to exceed two
1230 (2) projects per fiscal year; and

1231 (iii) Any project which has an estimated cost of
1232 more than Fifty Million Dollars (\$50,000,000.00), not to exceed
1233 one (1) project per fiscal year.

1234 (b) As used in this subsection, the term "design-build"
1235 method of contracting means a contract that combines the design
1236 and construction phases of a project into a single contract and
1237 the contractor is required to satisfactorily perform, at a
1238 minimum, both the design and construction of the project.

1239 (c) The commission shall establish detailed criteria
1240 for the selection of the successful design-build contractor in
1241 each request for design-build proposals. The evaluation of the
1242 selection committee is a public record and shall be maintained for
1243 a minimum of ten (10) years after project completion.

1244 (d) The commission shall maintain detailed records on
1245 projects separate and apart from its regular record keeping. The
1246 commission shall file a report to the Legislature evaluating the

1247 design-build method of contracting by comparing it to the low-bid
1248 method of contracting. At a minimum, the report must include:

1249 (i) The management goals and objectives for the
1250 design-build system of management;

1251 (ii) A complete description of the components of
1252 the design-build management system, including a description of the
1253 system the department put into place on all projects managed under
1254 the system to insure that it has the complete information on
1255 highway segment costs and to insure proper analysis of any
1256 proposal the commission receives from a highway contractor;

1257 (iii) The accountability systems the
1258 Transportation Department established to monitor any design-build
1259 project's compliance with specific goals and objectives for the
1260 project;

1261 (iv) The outcome of any project or any interim
1262 report on an ongoing project let under a design-build management
1263 system showing compliance with the goals, objectives, policies and
1264 procedures the department set for the project; and

1265 (v) The method used by the department to select
1266 projects to be let under the design-build system of management and
1267 all other systems, policies and procedures that the department
1268 considered as necessary components to a design-build management
1269 system.

1270 (e) All contracts let under the provisions of this
1271 subsection shall be subject to oversight and review by the State
1272 Auditor. The State Auditor shall file a report with the
1273 Legislature on or before January 1 of each year detailing his
1274 findings with regard to any contract let or project performed in
1275 violation of the provisions of this subsection. The actual and
1276 necessary expenses incurred by the State Auditor in complying with
1277 this paragraph (e) shall be paid for and reimbursed by the
1278 Mississippi Department of Transportation out of funds made

1279 available for the contract or contracts let and project or
1280 projects performed.

1281 (f) As an alternative to the authority granted to the
1282 commission in this subsection, the commission may elect to use the
1283 method of contracting for construction projects set out in Section
1284 31-7-13.1.

1285 **SECTION 5.** This act shall take effect and be in force from
1286 and after July 1, 2006.