

Senate Amendments to House Bill No. 992

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

21 **SECTION 1.** The following shall be codified as Section
22 31-7-13.1, Mississippi Code of 1972:

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

41 (2) For each proposed dual-phase design-build project, a
42 two-phase procedure for awarding a contract must be adopted.
43 During Phase One, and before solicitation of initial proposals,
44 the agency or governing authority shall develop, with the
45 assistance of an architectural or engineering firm, a scope of
46 work statement that provides prospective offerors with sufficient

47 information regarding the requirements of the agency or governing
48 authority. The scope of work statement must include, but is not
49 limited to, the following information:

50 (a) Drawings must show overall building dimensions and
51 major lines of dimensions, and site plans that show topography,
52 adjacent buildings and utilities;

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

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

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

62 (3) The agency or governing authority shall cause to be
63 published once a week, for at least two (2) consecutive weeks in a
64 regular newspaper published in the county in which the project is
65 to be located, a notice inviting proposals for the dual-phase
66 design-build construction project. Such proposals shall not be
67 opened in less than fifteen (15) working days after the last
68 notice is published. The notice must inform potential offerors of
69 how to obtain the scope of work statement developed for the
70 project, and the notice must contain such other information to
71 describe adequately the general nature and scope of the project so
72 as to promote full, equal and open 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 architectural or
77 engineering firm registered in Mississippi and a contractor
78 properly licensed in Mississippi for the type of work required.
79 From evaluation of initial proposals under Phase One, the agency
80 or 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.** The following shall be codified as Section
138 37-101-44, Mississippi Code of 1972:

139 37-101-44. (1) In lieu of exercising the authority set
140 forth in Section 37-101-43 and before entering into or awarding
141 any lease under Section 37-101-41, the Board of Trustees of State
142 Institutions of Higher Learning may award contracts to a single
143 entity for privately financed design and construction of
144 facilities on university campuses if the entities receiving the
145 contract or contracts and those entities to which work or services
146 are subcontracted are duly licensed and qualified in the state to
147 perform the contract or contracts. State General Fund
148 appropriations or bonds backed by the state may not be used to
149 finance the construction or maintenance of any such facility.

150 (2) The design-build delivery system described under
151 subsection (1) of this section shall be administered pursuant to
152 Section 31-7-13.1 and may be authorized only when the Board of
153 Trustees of State Institutions of Higher Learning makes a
154 determination, entered on its minutes, with specific findings for
155 the project demonstrating how it is in the best interest of the
156 public to enter into a design-build contract. At a minimum, the
157 determination must include a detailed explanation of why a
158 design-build approach for a particular project satisfies the
159 public need better than the traditional design-bid-build approach.

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

163 (a) During phase one, and before solicitation of
164 initial proposals, the board shall develop, with the assistance of
165 a registered architect or engineer, a scope of work statement that
166 provides prospective offerors with sufficient information
167 regarding the board's requirements. The scope of work statement
168 must include floor plans showing spaces by name and number, actual
169 net area of each space, structural module, fixed equipment,
170 mechanical spaces, chases and circulation areas. Drawings must
171 show overall structure dimensions and major lines of dimensions,
172 and site plans which show topography, adjacent buildings and
173 utilities. Drawings must include information to adequately
174 explain HVAC, electrical and structural requirements. Information
175 concerning furnishings, miscellaneous equipment, layouts, lists
176 and schedules necessary to explain the plans must be indicated on
177 floor plans. The registered architect or engineer engaged by the
178 board also shall prepare preliminary specifications following the
179 Construction Specifications Institute format and giving basic
180 descriptions of essential building materials, finishes, components
181 and all systems. The scope of work statement also must include
182 structure elevations, sections and design details. Structure
183 elevations must show fenestration and proposed exterior materials.
184 The scope of work statement must include general budget

185 parameters, schedule or delivery requirements, relevant criteria
186 for evaluation of proposals, and any other information necessary
187 to enable the design-builders to submit proposals that meet the
188 board's needs.

189 (b) The board shall cause to be published once a week,
190 for at least three (3) consecutive weeks and not less than
191 twenty-one (21) days in at least one (1) newspaper having a
192 general circulation in the county in which the institution is
193 located and in one (1) newspaper with a general statewide
194 circulation, a notice inviting proposals for the leasing,
195 design-build deconstruction and leasing back of the land and
196 design-build constructed facility. The notice must inform
197 potential offerors of how to obtain the scope of work statement
198 developed for the project, and the notice must contain such other
199 information to describe adequately the general nature and scope of
200 the design-build project so as to promote full, equal and open
201 competition.

202 (c) The board shall accept initial proposals only from
203 entities able to provide, either in-house or through contractual
204 arrangements, an experienced and qualified design-build team that
205 includes, at a minimum, an architect or engineer registered in
206 Mississippi and a contractor properly licensed in Mississippi for
207 the type of work required. From evaluation of initial proposals
208 under phase one, the board shall select a minimum of two (2) and a
209 maximum of five (5) design-builders to submit proposals for phase
210 two.

211 (d) During phase two, the shortlisted firms will be
212 invited to submit detailed designs, specific technical concepts or
213 solutions, pricing, scheduling and other information deemed
214 appropriate by the board as necessary to evaluate and rank
215 acceptability of the phase two proposals. After evaluation of
216 these phase two proposals, the board shall award a contract to the
217 design-builder determined to offer the best value to the public in
218 accordance with evaluation criteria set forth in the request for

219 proposals, of which price must be one, but not necessarily the
220 only, criterion.

221 (e) If the board accepts a proposal other than the
222 lowest dollar proposal actually submitted, the board shall enter
223 on its minutes detailed calculations and a narrative summary
224 showing why the accepted proposal was determined to provide the
225 best value, and the board shall state specifically on its minutes
226 the justification for its award.

227 (4) All facilities that are governed by this section must be
228 designed and constructed to equal or exceed the current
229 International Code Council Family of Codes applicable to
230 commercial construction in force at the time of contracting. All
231 private contractors or private entities contracting or performing
232 under this section must comply at all times with all applicable
233 laws, codes and other legal requirements pertaining to the
234 project.

235 (5) (a) A public official or employee of a state agency who
236 has duties or responsibilities related to the contracting,
237 constructing, leasing, acquiring or operating of a facility under
238 this section may not become an employee, consultant or contract
239 vendor to a private entity providing such facility or services to
240 the state for a period of one (1) year after the date of
241 termination of the person's public service or state employment.

242 (b) Any person violating this subsection shall be
243 guilty of a misdemeanor and punished by a fine of not less than
244 Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars
245 (\$1,000.00).

246 **SECTION 3.** Section 37-101-43, Mississippi Code of 1972, is
247 amended as follows:

248 37-101-43. (a) Except as otherwise provided in Section
249 37-101-44, before entering into or awarding any such lease
250 contract under the provisions of Section 37-101-41, the Board of
251 Trustees of State Institutions of Higher Learning shall cause the
252 interested state-supported institution upon which a facility is
253 proposed to be constructed to select and submit three (3)

254 architects to the board. Thereupon, the board shall approve and
255 employ an architect, who shall be paid by the interested
256 institution from any funds available to the interested
257 institution. The architect, under the direction of the interested
258 institution, shall prepare complete plans and specifications for
259 the facility desired to be constructed on the leased property.

260 Upon completion of the plans and specifications and the
261 approval thereof by the board, and before entering into any lease
262 contract, the board shall cause to be published once a week for at
263 least three (3) consecutive weeks and not less than twenty-one
264 (21) days in at least one (1) newspaper having a general
265 circulation in the county in which the interested institution is
266 located and in one (1) newspaper with a general statewide
267 circulation, a notice inviting bids or proposals for the leasing,
268 construction and leasing back of the land and constructed
269 facility, the facility to be constructed in accordance with the
270 plans and specifications. The notice shall distinctly state the
271 thing to be done, and invite sealed proposals, to be filed with
272 the board, to do the thing to be done. The notice shall contain
273 the following specific provisions, together with such others as
274 the board in its discretion deems appropriate, to wit: bids shall
275 be accompanied by a bid security evidenced by a certified or
276 cashier's check or bid-bond payable to the board in a sum of not
277 less than five percent (5%) of the gross construction cost of the
278 facility to be constructed as estimated by the board and the bids
279 shall contain proof satisfactory to the board of interim and
280 permanent financing. The board shall state in the notice when
281 construction shall commence. The bid shall contain the proposed
282 contractor's certificate of responsibility number and bidder's
283 license. In all cases, before the notice shall be published, the
284 plans and specifications shall be filed with the board and also in
285 the office of the president of the interested institution, there
286 to remain.

287 The board shall award the lease contract to the lowest and
288 best bidder, who will comply with the terms imposed by the

289 contract documents. At the time of the awarding of the lease
290 contract the successful bidder shall enter into bond with
291 sufficient sureties, to be approved by the board, in such penalty
292 as may be fixed by the board, but in no case to be less than the
293 estimated gross construction cost of the facility to be
294 constructed as estimated by the board, conditioned for the prompt,
295 proper and efficient performance of the contract. The bond shall
296 be made by an authorized corporate surety bonding company.
297 The * * * bid security herein provided for shall be forfeited if
298 the successful bidder fails to enter into lease contract and
299 commence construction within the time limitation set forth in the
300 notice. At such time, and simultaneously with the signing of the
301 contract, the successful bidder shall deposit a sum of money, in
302 cash or certified or cashier's check, not less than the bid
303 security previously deposited as bid security to reimburse the
304 interested institution for all sums expended by it for
305 architectural services and other expenditures of the board and
306 interested institution connected with the bided lease contract, of
307 which such other anticipated expenditures notice is to be given to
308 bidder in the notice. The bid security posted by an unsuccessful
309 bidder shall be refunded to him.

310 (b) Pursuant to the authority granted under Section
311 37-101-44, the requirements of paragraph (a) of this section shall
312 not apply to the Board of Trustees of State Institutions of Higher
313 Learning to grant to universities the authority to contract with a
314 single entity for privately financed design and construction of
315 facilities on the university's campus.

316 **SECTION 4.** Section 37-101-41, Mississippi Code of 1972, is
317 amended as follows:

318 37-101-41. (a) Except as otherwise provided in paragraph
319 (b) of this section, the Board of Trustees of State Institutions
320 of Higher Learning is hereby authorized and empowered to lease to
321 private individuals or corporations, for a term not exceeding
322 thirty-one (31) years, any land at any of the following
323 state-supported institutions: Mississippi State University of

324 Agriculture and Applied Science, Jackson State University,
325 Mississippi Valley State University, Alcorn State University,
326 University of Southern Mississippi, Mississippi University for
327 Women and Delta State University, for the purpose of erecting
328 housing and dormitory facilities thereon for active faculty and
329 students. The housing facilities shall be constructed thereon by
330 private financing, and shall be leased back to the board for use
331 by the concerned state-supported institution of higher learning.
332 The lease shall contain a provision permitting the board to
333 purchase the building located thereon for the sum of One Dollar
334 (\$1.00) after payment by the board of all sums of money due under
335 said lease.

336 (b) Pursuant to the authority granted under Section
337 37-101-44, the Board of Trustees of State Institutions of Higher
338 Learning may grant authority to universities to lease to private
339 individuals or corporations, for a term not exceeding thirty-one
340 (31) years, any land at the university, for the purpose of
341 erecting facilities thereon for active faculty and students. The
342 facilities shall be constructed thereon by private financing, and
343 shall be leased back to the board for use by the university. The
344 lease shall contain a provision permitting the board to purchase
345 the facilities located thereon for the sum of One Dollar (\$1.00)
346 after payment by the board of all sums of money due under said
347 lease.

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

350 31-7-13. All agencies and governing authorities shall
351 purchase their commodities and printing; contract for garbage
352 collection or disposal; contract for solid waste collection or
353 disposal; contract for sewage collection or disposal; contract for
354 public construction; and contract for rentals as herein provided.

355 (a) **Bidding procedure for purchases not over \$3,500.00.**
356 Purchases which do not involve an expenditure of more than Three
357 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
358 shipping charges, may be made without advertising or otherwise

359 requesting competitive bids. However, nothing contained in this
360 paragraph (a) shall be construed to prohibit any agency or
361 governing authority from establishing procedures which require
362 competitive bids on purchases of Three Thousand Five Hundred
363 Dollars (\$3,500.00) or less.

364 (b) **Bidding procedure for purchases over \$3,500.00 but**
365 **not over \$15,000.00.** Purchases which involve an expenditure of
366 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
367 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
368 freight and shipping charges may be made from the lowest and best
369 bidder without publishing or posting advertisement for bids,
370 provided at least two (2) competitive written bids have been
371 obtained. Any governing authority purchasing commodities pursuant
372 to this paragraph (b) may authorize its purchasing agent, or his
373 designee, with regard to governing authorities other than
374 counties, or its purchase clerk, or his designee, with regard to
375 counties, to accept the lowest and best competitive written bid.
376 Such authorization shall be made in writing by the governing
377 authority and shall be maintained on file in the primary office of
378 the agency and recorded in the official minutes of the governing
379 authority, as appropriate. The purchasing agent or the purchase
380 clerk, or their designee, as the case may be, and not the
381 governing authority, shall be liable for any penalties and/or
382 damages as may be imposed by law for any act or omission of the
383 purchasing agent or purchase clerk, or their designee,
384 constituting a violation of law in accepting any bid without
385 approval by the governing authority. The term "competitive
386 written bid" shall mean a bid submitted on a bid form furnished by
387 the buying agency or governing authority and signed by authorized
388 personnel representing the vendor, or a bid submitted on a
389 vendor's letterhead or identifiable bid form and signed by
390 authorized personnel representing the vendor. "Competitive" shall
391 mean that the bids are developed based upon comparable
392 identification of the needs and are developed independently and
393 without knowledge of other bids or prospective bids. Bids may be

394 submitted by facsimile, electronic mail or other generally
395 accepted method of information distribution. Bids submitted by
396 electronic transmission shall not require the signature of the
397 vendor's representative unless required by agencies or governing
398 authorities.

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

400 (i) **Publication requirement.** Purchases which
401 involve an expenditure of more than Fifteen Thousand Dollars
402 (\$15,000.00), exclusive of freight and shipping charges, may be
403 made from the lowest and best bidder after advertising for
404 competitive sealed bids once each week for two (2) consecutive
405 weeks in a regular newspaper published in the county or
406 municipality in which such agency or governing authority is
407 located. The date as published for the bid opening shall not be
408 less than seven (7) working days after the last published notice;
409 however, if the purchase involves a construction project in which
410 the estimated cost is in excess of Fifteen Thousand Dollars
411 (\$15,000.00), such bids shall not be opened in less than fifteen
412 (15) working days after the last notice is published and the
413 notice for the purchase of such construction shall be published
414 once each week for two (2) consecutive weeks. The notice of
415 intention to let contracts or purchase equipment shall state the
416 time and place at which bids shall be received, list the contracts
417 to be made or types of equipment or supplies to be purchased, and,
418 if all plans and/or specifications are not published, refer to the
419 plans and/or specifications on file. If there is no newspaper
420 published in the county or municipality, then such notice shall be
421 given by posting same at the courthouse, or for municipalities at
422 the city hall, and at two (2) other public places in the county or
423 municipality, and also by publication once each week for two (2)
424 consecutive weeks in some newspaper having a general circulation
425 in the county or municipality in the above provided manner. On
426 the same date that the notice is submitted to the newspaper for
427 publication, the agency or governing authority involved shall mail
428 written notice to, or provide electronic notification to the main

429 office of the Mississippi Contract Procurement Center that
430 contains the same information as that in the published notice.

431 (ii) **Bidding process amendment procedure.** If all
432 plans and/or specifications are published in the notification,
433 then the plans and/or specifications may not be amended. If all
434 plans and/or specifications are not published in the notification,
435 then amendments to the plans/specifications, bid opening date, bid
436 opening time and place may be made, provided that the agency or
437 governing authority maintains a list of all prospective bidders
438 who are known to have received a copy of the bid documents and all
439 such prospective bidders are sent copies of all amendments. This
440 notification of amendments may be made via mail, facsimile,
441 electronic mail or other generally accepted method of information
442 distribution. No addendum to bid specifications may be issued
443 within two (2) working days of the time established for the
444 receipt of bids unless such addendum also amends the bid opening
445 to a date not less than five (5) working days after the date of
446 the addendum.

447 (iii) **Filing requirement.** In all cases involving
448 governing authorities, before the notice shall be published or
449 posted, the plans or specifications for the construction or
450 equipment being sought shall be filed with the clerk of the board
451 of the governing authority. In addition to these requirements, a
452 bid file shall be established which shall indicate those vendors
453 to whom such solicitations and specifications were issued, and
454 such file shall also contain such information as is pertinent to
455 the bid.

456 (iv) **Specification restrictions.**

457 1. Specifications pertinent to such bidding
458 shall be written so as not to exclude comparable equipment of
459 domestic manufacture. However, if valid justification is
460 presented, the Department of Finance and Administration or the
461 board of a governing authority may approve a request for specific
462 equipment necessary to perform a specific job. Further, such
463 justification, when placed on the minutes of the board of a

464 governing authority, may serve as authority for that governing
465 authority to write specifications to require a specific item of
466 equipment needed to perform a specific job. In addition to these
467 requirements, from and after July 1, 1990, vendors of relocatable
468 classrooms and the specifications for the purchase of such
469 relocatable classrooms published by local school boards shall meet
470 all pertinent regulations of the State Board of Education,
471 including prior approval of such bid by the State Department of
472 Education.

473 2. Specifications for construction projects
474 may include an allowance for commodities, equipment, furniture,
475 construction materials or systems in which prospective bidders are
476 instructed to include in their bids specified amounts for such
477 items so long as the allowance items are acquired by the vendor in
478 a commercially reasonable manner and approved by the
479 agency/governing authority. Such acquisitions shall not be made
480 to circumvent the public purchasing laws.

481 (v) Agencies and governing authorities may
482 establish secure procedures by which bids may be submitted via
483 electronic means.

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

485 (i) **Decision procedure.** Purchases may be made
486 from the lowest and best bidder. In determining the lowest and
487 best bid, freight and shipping charges shall be included.
488 Life-cycle costing, total cost bids, warranties, guaranteed
489 buy-back provisions and other relevant provisions may be included
490 in the best bid calculation. All best bid procedures for state
491 agencies must be in compliance with regulations established by the
492 Department of Finance and Administration. If any governing
493 authority accepts a bid other than the lowest bid actually
494 submitted, it shall place on its minutes detailed calculations and
495 narrative summary showing that the accepted bid was determined to
496 be the lowest and best bid, including the dollar amount of the
497 accepted bid and the dollar amount of the lowest bid. No agency

498 or governing authority shall accept a bid based on items not
499 included in the specifications.

500 (ii) **Decision procedure for Certified Purchasing**
501 **Offices.** In addition to the decision procedure set forth in
502 paragraph (d)(i), Certified Purchasing Offices may also use the
503 following procedure: Purchases may be made from the bidder
504 offering the best value. In determining the best value bid,
505 freight and shipping charges shall be included. Life-cycle
506 costing, total cost bids, warranties, guaranteed buy-back
507 provisions, documented previous experience, training costs and
508 other relevant provisions may be included in the best value
509 calculation. This provision shall authorize Certified Purchasing
510 Offices to utilize a Request For Proposals (RFP) process when
511 purchasing commodities. All best value procedures for state
512 agencies must be in compliance with regulations established by the
513 Department of Finance and Administration. No agency or governing
514 authority shall accept a bid based on items or criteria not
515 included in the specifications.

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

522 (e) **Lease-purchase authorization.** For the purposes of
523 this section, the term "equipment" shall mean equipment, furniture
524 and, if applicable, associated software and other applicable
525 direct costs associated with the acquisition. Any lease-purchase
526 of equipment which an agency is not required to lease-purchase
527 under the master lease-purchase program pursuant to Section
528 31-7-10 and any lease-purchase of equipment which a governing
529 authority elects to lease-purchase may be acquired by a
530 lease-purchase agreement under this paragraph (e). Lease-purchase
531 financing may also be obtained from the vendor or from a
532 third-party source after having solicited and obtained at least

533 two (2) written competitive bids, as defined in paragraph (b) of
534 this section, for such financing without advertising for such
535 bids. Solicitation for the bids for financing may occur before or
536 after acceptance of bids for the purchase of such equipment or,
537 where no such bids for purchase are required, at any time before
538 the purchase thereof. No such lease-purchase agreement shall be
539 for an annual rate of interest which is greater than the overall
540 maximum interest rate to maturity on general obligation
541 indebtedness permitted under Section 75-17-101, and the term of
542 such lease-purchase agreement shall not exceed the useful life of
543 equipment covered thereby as determined according to the upper
544 limit of the asset depreciation range (ADR) guidelines for the
545 Class Life Asset Depreciation Range System established by the
546 Internal Revenue Service pursuant to the United States Internal
547 Revenue Code and regulations thereunder as in effect on December
548 31, 1980, or comparable depreciation guidelines with respect to
549 any equipment not covered by ADR guidelines. Any lease-purchase
550 agreement entered into pursuant to this paragraph (e) may contain
551 any of the terms and conditions which a master lease-purchase
552 agreement may contain under the provisions of Section 31-7-10(5),
553 and shall contain an annual allocation dependency clause
554 substantially similar to that set forth in Section 31-7-10(8).
555 Each agency or governing authority entering into a lease-purchase
556 transaction pursuant to this paragraph (e) shall maintain with
557 respect to each such lease-purchase transaction the same
558 information as required to be maintained by the Department of
559 Finance and Administration pursuant to Section 31-7-10(13).
560 However, nothing contained in this section shall be construed to
561 permit agencies to acquire items of equipment with a total
562 acquisition cost in the aggregate of less than Ten Thousand
563 Dollars (\$10,000.00) by a single lease-purchase transaction. All
564 equipment, and the purchase thereof by any lessor, acquired by
565 lease-purchase under this paragraph and all lease-purchase
566 payments with respect thereto shall be exempt from all Mississippi
567 sales, use and ad valorem taxes. Interest paid on any

568 lease-purchase agreement under this section shall be exempt from
569 State of Mississippi income taxation.

570 (f) **Alternate bid authorization.** When necessary to
571 ensure ready availability of commodities for public works and the
572 timely completion of public projects, no more than two (2)
573 alternate bids may be accepted by a governing authority for
574 commodities. No purchases may be made through use of such
575 alternate bids procedure unless the lowest and best bidder cannot
576 deliver the commodities contained in his bid. In that event,
577 purchases of such commodities may be made from one (1) of the
578 bidders whose bid was accepted as an alternate.

579 (g) **Construction contract change authorization.** In the
580 event a determination is made by an agency or governing authority
581 after a construction contract is let that changes or modifications
582 to the original contract are necessary or would better serve the
583 purpose of the agency or the governing authority, such agency or
584 governing authority may, in its discretion, order such changes
585 pertaining to the construction that are necessary under the
586 circumstances without the necessity of further public bids;
587 provided that such change shall be made in a commercially
588 reasonable manner and shall not be made to circumvent the public
589 purchasing statutes. In addition to any other authorized person,
590 the architect or engineer hired by an agency or governing
591 authority with respect to any public construction contract shall
592 have the authority, when granted by an agency or governing
593 authority, to authorize changes or modifications to the original
594 contract without the necessity of prior approval of the agency or
595 governing authority when any such change or modification is less
596 than one percent (1%) of the total contract amount. The agency or
597 governing authority may limit the number, manner or frequency of
598 such emergency changes or modifications.

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

603 set forth in paragraph (a) of this section, such agency or
604 governing authority may purchase the commodity after having
605 solicited and obtained at least two (2) competitive written bids,
606 as defined in paragraph (b) of this section. If two (2)
607 competitive written bids are not obtained, the entity shall comply
608 with the procedures set forth in paragraph (c) of this section.
609 In the event any agency or governing authority shall have
610 advertised for bids for the purchase of gas, diesel fuel, oils and
611 other petroleum products and coal and no acceptable bids can be
612 obtained, such agency or governing authority is authorized and
613 directed to enter into any negotiations necessary to secure the
614 lowest and best contract available for the purchase of such
615 commodities.

616 (i) **Road construction petroleum products price**
617 **adjustment clause authorization.** Any agency or governing
618 authority authorized to enter into contracts for the construction,
619 maintenance, surfacing or repair of highways, roads or streets,
620 may include in its bid proposal and contract documents a price
621 adjustment clause with relation to the cost to the contractor,
622 including taxes, based upon an industry-wide cost index, of
623 petroleum products including asphalt used in the performance or
624 execution of the contract or in the production or manufacture of
625 materials for use in such performance. Such industry-wide index
626 shall be established and published monthly by the Mississippi
627 Department of Transportation with a copy thereof to be mailed,
628 upon request, to the clerks of the governing authority of each
629 municipality and the clerks of each board of supervisors
630 throughout the state. The price adjustment clause shall be based
631 on the cost of such petroleum products only and shall not include
632 any additional profit or overhead as part of the adjustment. The
633 bid proposals or document contract shall contain the basis and
634 methods of adjusting unit prices for the change in the cost of
635 such petroleum products.

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

638 agency of the state shall determine that an emergency exists in
639 regard to the purchase of any commodities or repair contracts, so
640 that the delay incident to giving opportunity for competitive
641 bidding would be detrimental to the interests of the state, then
642 the provisions herein for competitive bidding shall not apply and
643 the head of such agency shall be authorized to make the purchase
644 or repair. Total purchases so made shall only be for the purpose
645 of meeting needs created by the emergency situation. In the event
646 such executive head is responsible to an agency board, at the
647 meeting next following the emergency purchase, documentation of
648 the purchase, including a description of the commodity purchased,
649 the purchase price thereof and the nature of the emergency shall
650 be presented to the board and placed on the minutes of the board
651 of such agency. The head of such agency, or his designee, shall,
652 at the earliest possible date following such emergency purchase,
653 file with the Department of Finance and Administration (i) a
654 statement explaining the conditions and circumstances of the
655 emergency, which shall include a detailed description of the
656 events leading up to the situation and the negative impact to the
657 entity if the purchase is made following the statutory
658 requirements set forth in paragraph (a), (b) or (c) of this
659 section, and (ii) a certified copy of the appropriate minutes of
660 the board of such agency, if applicable. On or before September 1
661 of each year, the State Auditor shall prepare and deliver to the
662 Senate Fees, Salaries and Administration Committee, the House Fees
663 and Salaries of Public Officers Committee and the Joint
664 Legislative Budget Committee a report containing a list of all
665 state agency emergency purchases and supporting documentation for
666 each emergency purchase.

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

668 If the governing authority, or the governing authority acting
669 through its designee, shall determine that an emergency exists in
670 regard to the purchase of any commodities or repair contracts, so
671 that the delay incident to giving opportunity for competitive
672 bidding would be detrimental to the interest of the governing

673 authority, then the provisions herein for competitive bidding
674 shall not apply and any officer or agent of such governing
675 authority having general or special authority therefor in making
676 such purchase or repair shall approve the bill presented therefor,
677 and he shall certify in writing thereon from whom such purchase
678 was made, or with whom such a repair contract was made. At the
679 board meeting next following the emergency purchase or repair
680 contract, documentation of the purchase or repair contract,
681 including a description of the commodity purchased, the price
682 thereof and the nature of the emergency shall be presented to the
683 board and shall be placed on the minutes of the board of such
684 governing authority.

685 (1) **Hospital purchase, lease-purchase and lease**
686 **authorization.**

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

692 (ii) In addition to the authority granted in
693 subparagraph (i) of this paragraph (1), the commissioners or board
694 of trustees is authorized to enter into contracts for the lease of
695 equipment or services, or both, which it considers necessary for
696 the proper care of patients if, in its opinion, it is not
697 financially feasible to purchase the necessary equipment or
698 services. Any such contract for the lease of equipment or
699 services executed by the commissioners or board shall not exceed a
700 maximum of five (5) years' duration and shall include a
701 cancellation clause based on unavailability of funds. If such
702 cancellation clause is exercised, there shall be no further
703 liability on the part of the lessee. Any such contract for the
704 lease of equipment or services executed on behalf of the
705 commissioners or board that complies with the provisions of this
706 subparagraph (ii) shall be excepted from the bid requirements set
707 forth in this section.

708 (m) **Exceptions from bidding requirements.** Excepted
709 from bid requirements are:

710 (i) **Purchasing agreements approved by department.**
711 Purchasing agreements, contracts and maximum price regulations
712 executed or approved by the Department of Finance and
713 Administration.

714 (ii) **Outside equipment repairs.** Repairs to
715 equipment, when such repairs are made by repair facilities in the
716 private sector; however, engines, transmissions, rear axles and/or
717 other such components shall not be included in this exemption when
718 replaced as a complete unit instead of being repaired and the need
719 for such total component replacement is known before disassembly
720 of the component; however, invoices identifying the equipment,
721 specific repairs made, parts identified by number and name,
722 supplies used in such repairs, and the number of hours of labor
723 and costs therefor shall be required for the payment for such
724 repairs.

725 (iii) **In-house equipment repairs.** Purchases of
726 parts for repairs to equipment, when such repairs are made by
727 personnel of the agency or governing authority; however, entire
728 assemblies, such as engines or transmissions, shall not be
729 included in this exemption when the entire assembly is being
730 replaced instead of being repaired.

731 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
732 of gravel or fill dirt which are to be removed and transported by
733 the purchaser.

734 (v) **Governmental equipment auctions.** Motor
735 vehicles or other equipment purchased from a federal agency or
736 authority, another governing authority or state agency of the
737 State of Mississippi, or any governing authority or state agency
738 of another state at a public auction held for the purpose of
739 disposing of such vehicles or other equipment. Any purchase by a
740 governing authority under the exemption authorized by this
741 subparagraph (v) shall require advance authorization spread upon
742 the minutes of the governing authority to include the listing of

743 the item or items authorized to be purchased and the maximum bid
744 authorized to be paid for each item or items.

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

746 Purchases, sales, transfers or trades by governing authorities or
747 state agencies when such purchases, sales, transfers or trades are
748 made by a private treaty agreement or through means of
749 negotiation, from any federal agency or authority, another
750 governing authority or state agency of the State of Mississippi,
751 or any state agency or governing authority of another state.
752 Nothing in this section shall permit such purchases through public
753 auction except as provided for in subparagraph (v) of this
754 section. It is the intent of this section to allow governmental
755 entities to dispose of and/or purchase commodities from other
756 governmental entities at a price that is agreed to by both
757 parties. This shall allow for purchases and/or sales at prices
758 which may be determined to be below the market value if the
759 selling entity determines that the sale at below market value is
760 in the best interest of the taxpayers of the state. Governing
761 authorities shall place the terms of the agreement and any
762 justification on the minutes, and state agencies shall obtain
763 approval from the Department of Finance and Administration, prior
764 to releasing or taking possession of the commodities.

765 (vii) **Perishable supplies or food.** Perishable
766 supplies or food purchased for use in connection with hospitals,
767 the school lunch programs, homemaking programs and for the feeding
768 of county or municipal prisoners.

769 (viii) **Single source items.** Noncompetitive items
770 available from one (1) source only. In connection with the
771 purchase of noncompetitive items only available from one (1)
772 source, a certification of the conditions and circumstances
773 requiring the purchase shall be filed by the agency with the
774 Department of Finance and Administration and by the governing
775 authority with the board of the governing authority. Upon receipt
776 of that certification the Department of Finance and Administration
777 or the board of the governing authority, as the case may be, may,

778 in writing, authorize the purchase, which authority shall be noted
779 on the minutes of the body at the next regular meeting thereafter.
780 In those situations, a governing authority is not required to
781 obtain the approval of the Department of Finance and
782 Administration.

783 (ix) **Waste disposal facility construction**
784 **contracts.** Construction of incinerators and other facilities for
785 disposal of solid wastes in which products either generated
786 therein, such as steam, or recovered therefrom, such as materials
787 for recycling, are to be sold or otherwise disposed of; however,
788 in constructing such facilities, a governing authority or agency
789 shall publicly issue requests for proposals, advertised for in the
790 same manner as provided herein for seeking bids for public
791 construction projects, concerning the design, construction,
792 ownership, operation and/or maintenance of such facilities,
793 wherein such requests for proposals when issued shall contain
794 terms and conditions relating to price, financial responsibility,
795 technology, environmental compatibility, legal responsibilities
796 and such other matters as are determined by the governing
797 authority or agency to be appropriate for inclusion; and after
798 responses to the request for proposals have been duly received,
799 the governing authority or agency may select the most qualified
800 proposal or proposals on the basis of price, technology and other
801 relevant factors and from such proposals, but not limited to the
802 terms thereof, negotiate and enter contracts with one or more of
803 the persons or firms submitting proposals.

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

807 (xi) **Information technology products.** Purchases
808 of information technology products made by governing authorities
809 under the provisions of purchase schedules, or contracts executed
810 or approved by the Mississippi Department of Information
811 Technology Services and designated for use by governing
812 authorities.

813 (xii) **Energy efficiency services and equipment.**
814 Energy efficiency services and equipment acquired by school
815 districts, community and junior colleges, institutions of higher
816 learning and state agencies or other applicable governmental
817 entities on a shared-savings, lease or lease-purchase basis
818 pursuant to Section 31-7-14.

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

823 (xiv) **Library books and other reference materials.**
824 Purchases by libraries or for libraries of books and periodicals;
825 processed film, video cassette tapes, filmstrips and slides;
826 recorded audio tapes, cassettes and diskettes; and any such items
827 as would be used for teaching, research or other information
828 distribution; however, equipment such as projectors, recorders,
829 audio or video equipment, and monitor televisions are not exempt
830 under this subparagraph.

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

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

837 (xvii) **Multichannel interactive video systems.**
838 From and after July 1, 1990, contracts by Mississippi Authority
839 for Educational Television with any private educational
840 institution or private nonprofit organization whose purposes are
841 educational in regard to the construction, purchase, lease or
842 lease-purchase of facilities and equipment and the employment of
843 personnel for providing multichannel interactive video systems
844 (ITSF) in the school districts of this state.

845 (xviii) **Purchases of prison industry products.**
846 From and after January 1, 1991, purchases made by state agencies

847 or governing authorities involving any item that is manufactured,
848 processed, grown or produced from the state's prison industries.

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

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

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

863 (xxii) **Garbage, solid waste and sewage contracts.**
864 Contracts for garbage collection or disposal, contracts for solid
865 waste collection or disposal and contracts for sewage collection
866 or disposal.

867 (xxiii) **Municipal water tank maintenance**
868 **contracts.** Professional maintenance program contracts for the
869 repair or maintenance of municipal water tanks, which provide
870 professional services needed to maintain municipal water storage
871 tanks for a fixed annual fee for a duration of two (2) or more
872 years.

873 (xxiv) **Purchases of Mississippi Industries for the**
874 **Blind products.** Purchases made by state agencies or governing
875 authorities involving any item that is manufactured, processed or
876 produced by the Mississippi Industries for the Blind.

877 (xxv) **Purchases of state-adopted textbooks.**
878 Purchases of state-adopted textbooks by public school districts.

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

882 (xxvii) **Used heavy or specialized machinery or**
883 **equipment for installation of soil and water conservation**
884 **practices purchased at auction.** Used heavy or specialized
885 machinery or equipment used for the installation and
886 implementation of soil and water conservation practices or
887 measures purchased subject to the restrictions provided in
888 Sections 69-27-331 through 69-27-341. Any purchase by the State
889 Soil and Water Conservation Commission under the exemption
890 authorized by this subparagraph shall require advance
891 authorization spread upon the minutes of the commission to include
892 the listing of the item or items authorized to be purchased and
893 the maximum bid authorized to be paid for each item or items.

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

897 (xxix) **Purchases made pursuant to qualified**
898 **cooperative purchasing agreements.** Purchases made by certified
899 purchasing offices of state agencies or governing authorities
900 under cooperative purchasing agreements previously approved by the
901 Office of Purchasing and Travel and established by or for any
902 municipality, county, parish or state government or the federal
903 government, provided that the notification to potential
904 contractors includes a clause that sets forth the availability of
905 the cooperative purchasing agreement to other governmental
906 entities. Such purchases shall only be made if the use of the
907 cooperative purchasing agreements is determined to be in the best
908 interest of the governmental entity.

909 (xxx) **School yearbooks.** Purchases of school
910 yearbooks by state agencies or governing authorities; provided,
911 however, that state agencies and governing authorities shall use
912 for these purchases the RFP process as set forth in the
913 Mississippi Procurement Manual adopted by the Office of Purchasing
914 and Travel.

915 (xxxii) **Dual-phase design-build method * * * of**
916 **contracting.** Contracts entered into the provisions of Section
917 31-7-13.1 or 37-101-44.

918 (n) **Term contract authorization.** All contracts for the
919 purchase of:

920 (i) All contracts for the purchase of commodities,
921 equipment and public construction (including, but not limited to,
922 repair and maintenance), may be let for periods of not more than
923 sixty (60) months in advance, subject to applicable statutory
924 provisions prohibiting the letting of contracts during specified
925 periods near the end of terms of office. Term contracts for a
926 period exceeding twenty-four (24) months shall also be subject to
927 ratification or cancellation by governing authority boards taking
928 office subsequent to the governing authority board entering the
929 contract.

930 (ii) Bid proposals and contracts may include price
931 adjustment clauses with relation to the cost to the contractor
932 based upon a nationally published industry-wide or nationally
933 published and recognized cost index. The cost index used in a
934 price adjustment clause shall be determined by the Department of
935 Finance and Administration for the state agencies and by the
936 governing board for governing authorities. The bid proposal and
937 contract documents utilizing a price adjustment clause shall
938 contain the basis and method of adjusting unit prices for the
939 change in the cost of such commodities, equipment and public
940 construction.

941 (o) **Purchase law violation prohibition and vendor**
942 **penalty.** No contract or purchase as herein authorized shall be
943 made for the purpose of circumventing the provisions of this
944 section requiring competitive bids, nor shall it be lawful for any
945 person or concern to submit individual invoices for amounts within
946 those authorized for a contract or purchase where the actual value
947 of the contract or commodity purchased exceeds the authorized
948 amount and the invoices therefor are split so as to appear to be
949 authorized as purchases for which competitive bids are not

950 required. Submission of such invoices shall constitute a
951 misdemeanor punishable by a fine of not less than Five Hundred
952 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
953 or by imprisonment for thirty (30) days in the county jail, or
954 both such fine and imprisonment. In addition, the claim or claims
955 submitted shall be forfeited.

956 (p) **Electrical utility petroleum-based equipment**
957 **purchase procedure.** When in response to a proper advertisement
958 therefor, no bid firm as to price is submitted to an electric
959 utility for power transformers, distribution transformers, power
960 breakers, reclosers or other articles containing a petroleum
961 product, the electric utility may accept the lowest and best bid
962 therefor although the price is not firm.

963 (q) **Fuel management system bidding procedure.** Any
964 governing authority or agency of the state shall, before
965 contracting for the services and products of a fuel management or
966 fuel access system, enter into negotiations with not fewer than
967 two (2) sellers of fuel management or fuel access systems for
968 competitive written bids to provide the services and products for
969 the systems. In the event that the governing authority or agency
970 cannot locate two (2) sellers of such systems or cannot obtain
971 bids from two (2) sellers of such systems, it shall show proof
972 that it made a diligent, good-faith effort to locate and negotiate
973 with two (2) sellers of such systems. Such proof shall include,
974 but not be limited to, publications of a request for proposals and
975 letters soliciting negotiations and bids. For purposes of this
976 paragraph (q), a fuel management or fuel access system is an
977 automated system of acquiring fuel for vehicles as well as
978 management reports detailing fuel use by vehicles and drivers, and
979 the term "competitive written bid" shall have the meaning as
980 defined in paragraph (b) of this section. Governing authorities
981 and agencies shall be exempt from this process when contracting
982 for the services and products of a fuel management or fuel access
983 systems under the terms of a state contract established by the
984 Office of Purchasing and Travel.

985 (r) **Solid waste contract proposal procedure.** Before
986 entering into any contract for garbage collection or disposal,
987 contract for solid waste collection or disposal or contract for
988 sewage collection or disposal, which involves an expenditure of
989 more than Fifty Thousand Dollars (\$50,000.00), a governing
990 authority or agency shall issue publicly a request for proposals
991 concerning the specifications for such services which shall be
992 advertised for in the same manner as provided in this section for
993 seeking bids for purchases which involve an expenditure of more
994 than the amount provided in paragraph (c) of this section. Any
995 request for proposals when issued shall contain terms and
996 conditions relating to price, financial responsibility,
997 technology, legal responsibilities and other relevant factors as
998 are determined by the governing authority or agency to be
999 appropriate for inclusion; all factors determined relevant by the
1000 governing authority or agency or required by this paragraph (r)
1001 shall be duly included in the advertisement to elicit proposals.
1002 After responses to the request for proposals have been duly
1003 received, the governing authority or agency shall select the most
1004 qualified proposal or proposals on the basis of price, technology
1005 and other relevant factors and from such proposals, but not
1006 limited to the terms thereof, negotiate and enter contracts with
1007 one or more of the persons or firms submitting proposals. If the
1008 governing authority or agency deems none of the proposals to be
1009 qualified or otherwise acceptable, the request for proposals
1010 process may be reinitiated. Notwithstanding any other provisions
1011 of this paragraph, where a county with at least thirty-five
1012 thousand (35,000) nor more than forty thousand (40,000)
1013 population, according to the 1990 federal decennial census, owns
1014 or operates a solid waste landfill, the governing authorities of
1015 any other county or municipality may contract with the governing
1016 authorities of the county owning or operating the landfill,
1017 pursuant to a resolution duly adopted and spread upon the minutes
1018 of each governing authority involved, for garbage or solid waste
1019 collection or disposal services through contract negotiations.

1020 (s) **Minority set-aside authorization.** Notwithstanding
1021 any provision of this section to the contrary, any agency or
1022 governing authority, by order placed on its minutes, may, in its
1023 discretion, set aside not more than twenty percent (20%) of its
1024 anticipated annual expenditures for the purchase of commodities
1025 from minority businesses; however, all such set-aside purchases
1026 shall comply with all purchasing regulations promulgated by the
1027 Department of Finance and Administration and shall be subject to
1028 bid requirements under this section. Set-aside purchases for
1029 which competitive bids are required shall be made from the lowest
1030 and best minority business bidder. For the purposes of this
1031 paragraph, the term "minority business" means a business which is
1032 owned by a majority of persons who are United States citizens or
1033 permanent resident aliens (as defined by the Immigration and
1034 Naturalization Service) of the United States, and who are Asian,
1035 Black, Hispanic or Native American, according to the following
1036 definitions:

1037 (i) "Asian" means persons having origins in any of
1038 the original people of the Far East, Southeast Asia, the Indian
1039 subcontinent, or the Pacific Islands.

1040 (ii) "Black" means persons having origins in any
1041 black racial group of Africa.

1042 (iii) "Hispanic" means persons of Spanish or
1043 Portuguese culture with origins in Mexico, South or Central
1044 America, or the Caribbean Islands, regardless of race.

1045 (iv) "Native American" means persons having
1046 origins in any of the original people of North America, including
1047 American Indians, Eskimos and Aleuts.

1048 (t) **Construction punch list restriction.** The
1049 architect, engineer or other representative designated by the
1050 agency or governing authority that is contracting for public
1051 construction or renovation may prepare and submit to the
1052 contractor only one (1) preliminary punch list of items that do
1053 not meet the contract requirements at the time of substantial

1054 completion and one (1) final list immediately before final
1055 completion and final payment.

1056 (u) **Purchase authorization clarification.** Nothing in
1057 this section shall be construed as authorizing any purchase not
1058 authorized by law.

1059 **SECTION 6.** Section 31-11-3, Mississippi Code of 1972, is
1060 amended as follows:

1061 31-11-3. (1) The Department of Finance and Administration,
1062 for the purposes of carrying out the provisions of this chapter,
1063 in addition to all other rights and powers granted by law, shall
1064 have full power and authority to employ and compensate architects
1065 or other employees necessary for the purpose of making
1066 inspections, preparing plans and specifications, supervising the
1067 erection of any buildings, and making any repairs or additions as
1068 may be determined by the Department of Finance and Administration
1069 to be necessary, pursuant to the rules and regulations of the
1070 State Personnel Board. The department shall have entire control
1071 and supervision of, and determine what, if any, buildings,
1072 additions, repairs or improvements are to be made under the
1073 provisions of this chapter, pursuant to regulations adopted by the
1074 Public Procurement Review Board.

1075 (2) The department shall have full power to erect buildings,
1076 make repairs, additions or improvements, and buy materials,
1077 supplies and equipment for any of the institutions or departments
1078 of the state pursuant to regulations adopted by the Public
1079 Procurement Review Board. In addition to other powers conferred,
1080 the department shall have full power and authority as directed by
1081 the Legislature, or when funds have been appropriated for its use
1082 for these purposes, to:

1083 (a) Build a state office building;

1084 (b) Build suitable plants or buildings for the use and
1085 housing of any state schools or institutions, including the
1086 building of plants or buildings for new state schools or
1087 institutions, as provided for by the Legislature;

1088 (c) Provide state aid for the construction of school
1089 buildings;

1090 (d) Promote and develop the training of returned
1091 veterans of the United States in all sorts of educational and
1092 vocational learning to be supplied by the proper educational
1093 institution of the State of Mississippi, and in so doing allocate
1094 monies appropriated to it for these purposes to the Governor for
1095 use by him in setting up, maintaining and operating an office and
1096 employing a state director of on-the-job training for veterans and
1097 the personnel necessary in carrying out Public Law No. 346 of the
1098 United States;

1099 (e) Build and equip a hospital and administration
1100 building at the Mississippi State Penitentiary;

1101 (f) Build and equip additional buildings and wards at
1102 the Boswell Retardation Center;

1103 (g) Construct a sewage disposal and treatment plant at
1104 the state insane hospital, and in so doing acquire additional land
1105 as may be necessary, and to exercise the right of eminent domain
1106 in the acquisition of this land;

1107 (h) Build and equip the Mississippi central market and
1108 purchase or acquire by eminent domain, if necessary, any lands
1109 needed for this purpose;

1110 (i) Build and equip suitable facilities for a training
1111 and employing center for the blind;

1112 (j) Build and equip a gymnasium at Columbia Training
1113 School;

1114 (k) Approve or disapprove the expenditure of any money
1115 appropriated by the Legislature when authorized by the bill making
1116 the appropriation;

1117 (l) Expend monies appropriated to it in paying the
1118 state's part of the cost of any street paving;

1119 (m) Sell and convey state lands when authorized by the
1120 Legislature, cause said lands to be properly surveyed and platted,
1121 execute all deeds or other legal instruments, and do any and all
1122 other things required to effectively carry out the purpose and

1123 intent of the Legislature. Any transaction which involves state
1124 lands under the provisions of this paragraph shall be done in a
1125 manner consistent with the provisions of Section 29-1-1;

1126 (n) Collect and receive from educational institutions
1127 of the State of Mississippi monies required to be paid by these
1128 institutions to the state in carrying out any veterans'
1129 educational programs;

1130 (o) Purchase lands for building sites, or as additions
1131 to building sites, for the erection of buildings and other
1132 facilities which the department is authorized to erect, and
1133 demolish and dispose of old buildings, when necessary for the
1134 proper construction of new buildings. Any transaction which
1135 involves state lands under the provisions of this paragraph shall
1136 be done in a manner consistent with the provisions of Section
1137 29-1-1;

1138 (p) Obtain business property insurance with a
1139 deductible of not less than One Hundred Thousand Dollars
1140 (\$100,000.00) on state-owned buildings under the management and
1141 control of the department; and

1142 (q) In consultation with and approval by the Chairmen
1143 of the Public Property Committees of the Senate and the House of
1144 Representatives, enter into contracts for the purpose of providing
1145 parking spaces for state employees who work in the Woolfolk
1146 Building, the Carroll Gartin Justice Building or the Walter
1147 Sillers Office Building. The provisions of this paragraph (q)
1148 shall stand repealed on July 1, 2010.

1149 (3) The department shall survey state-owned and
1150 state-utilized buildings to establish an estimate of the costs of
1151 architectural alterations, pursuant to the Americans With
1152 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The
1153 department shall establish priorities for making the identified
1154 architectural alterations and shall make known to the Legislative
1155 Budget Office and to the Legislature the required cost to
1156 effectuate such alterations. To meet the requirements of this
1157 section, the department shall use standards of accessibility that

1158 are at least as stringent as any applicable federal requirements
1159 and may consider:

1160 (a) Federal minimum guidelines and requirements issued
1161 by the United States Architectural and Transportation Barriers
1162 Compliance Board and standards issued by other federal agencies;

1163 (b) The criteria contained in the American Standard
1164 Specifications for Making Buildings Accessible and Usable by the
1165 Physically Handicapped and any amendments thereto as approved by
1166 the American Standards Association, Incorporated (ANSI Standards);

1167 (c) Design manuals;

1168 (d) Applicable federal guidelines;

1169 (e) Current literature in the field;

1170 (f) Applicable safety standards; and

1171 (g) Any applicable environmental impact statements.

1172 (4) The department shall observe the provisions of Section
1173 31-5-23, in letting contracts and shall use Mississippi products,
1174 including paint, varnish and lacquer which contain as vehicles
1175 tung oil and either ester gum or modified resin (with rosin as the
1176 principal base of constituents), and turpentine shall be used as a
1177 solvent or thinner, where these products are available at a cost
1178 not to exceed the cost of products grown, produced, prepared, made
1179 or manufactured outside of the State of Mississippi.

1180 (5) The department shall have authority to accept grants,
1181 loans or donations from the United States government or from any
1182 other sources for the purpose of matching funds in carrying out
1183 the provisions of this chapter.

1184 (6) The department shall build a wheelchair ramp at the War
1185 Memorial Building which complies with all applicable federal laws,
1186 regulations and specifications regarding wheelchair ramps.

1187 (7) The department shall review and preapprove all
1188 architectural or engineering service contracts entered into by any
1189 state agency, institution, commission, board or authority
1190 regardless of the source of funding used to defray the costs of
1191 the construction or renovation project for which services are to
1192 be obtained. The provisions of this subsection (7) shall not

1193 apply to any architectural or engineering contract paid for by
1194 self-generated funds of any of the state institutions of higher
1195 learning, nor shall they apply to community college projects that
1196 are funded from local funds or other nonstate sources which are
1197 outside the Department of Finance and Administration's
1198 appropriations or as directed by the Legislature. The provisions
1199 of this subsection (7) shall not apply to any construction or
1200 design projects of the State Military Department that are funded
1201 from federal funds or other nonstate sources.

1202 (8) The department shall have the authority to obtain
1203 annually from the state institutions of higher learning
1204 information on all building, construction and renovation projects
1205 including duties, responsibilities and costs of any architect or
1206 engineer hired by any such institutions.

1207 (9) * * * As an alternative to other methods of awarding
1208 contracts as prescribed by law, the department may elect to use
1209 the method of contracting for construction projects set out in
1210 Section 31-7-13.1.

1211 * * *

1212 **SECTION 7.** Section 65-1-85, Mississippi Code of 1972, is
1213 amended as follows:

1214 65-1-85. (1) All contracts by or on behalf of the
1215 commission for the purchase of materials, equipment and supplies
1216 shall be made in compliance with Section 31-7-1 et seq. All
1217 contracts by or on behalf of the commission for construction,
1218 reconstruction or other public work authorized to be done under
1219 the provisions of this chapter, except maintenance, shall be made
1220 by the executive director, subject to the approval of the
1221 commission, only upon competitive bids after due advertisement as
1222 follows, to wit:

1223 (a) Advertisement for bids shall be in accordance with
1224 such rules and regulations, in addition to those herein provided,
1225 as may be adopted therefor by the commission, and the commission
1226 is authorized and empowered to make and promulgate such rules and
1227 regulations as it may deem proper, to provide and adopt standard

1228 specifications for road and bridge construction, and to amend such
1229 rules and regulations from time to time.

1230 (b) The advertisement shall be inserted twice, being
1231 once a week for two (2) successive weeks in a newspaper published
1232 at the seat of government in Jackson, Mississippi, having a
1233 general circulation throughout the state, and no letting shall be
1234 less than fourteen (14) days nor more than sixty (60) days after
1235 the publication of the first notice of such letting, and notices
1236 of such letting may be placed in a metropolitan paper or national
1237 trade publication.

1238 (c) Before advertising for such work, the executive
1239 director shall cause to be prepared and filed in the department
1240 detailed plans and specifications covering the work proposed to be
1241 done and copies of the plans and specifications shall be subject
1242 to inspection by any citizen during all office hours and made
1243 available to all prospective bidders upon such reasonable terms
1244 and conditions as may be required by the commission. A fee shall
1245 be charged equal to the cost of producing a copy of any such plans
1246 and specifications.

1247 (d) All such contracts shall be let to a responsible
1248 bidder with the lowest and best bid, and a record of all bids
1249 received for construction and reconstruction shall be preserved.

1250 (e) Each bid for such a construction and reconstruction
1251 contract must be accompanied by a cashier's check, a certified
1252 check or bidders bond executed by a surety company authorized to
1253 do business in the State of Mississippi, in the principal amount
1254 of not less than five percent (5%) of the bid, guaranteeing that
1255 the bidder will give bond and enter into a contract for the
1256 faithful performance of the contract according to plans and
1257 specifications on file.

1258 (f) Bonds shall be required of the successful bidder in
1259 an amount equal to the contract price. The contract price shall
1260 mean the entire cost of the particular contract let. In the event
1261 change orders are made after the execution of a contract which
1262 results in increasing the total contract price, additional bond in

1263 the amount of the increased cost may be required. The surety or
1264 sureties on such bonds shall be a surety company or surety
1265 companies authorized to do business in the State of Mississippi,
1266 all bonds to be payable to the State of Mississippi and to be
1267 conditioned for the prompt, faithful and efficient performance of
1268 the contract according to plans and specifications, and for the
1269 prompt payment of all persons furnishing labor, material,
1270 equipment and supplies therefor. Such bonds shall be subject to
1271 the additional obligation that the principal and surety or
1272 sureties executing the same shall be liable to the state in a
1273 civil action instituted by the state at the instance of the
1274 commission or any officer of the state authorized in such cases,
1275 for double any amount in money or property the state may lose or
1276 be overcharged or otherwise defrauded of by reason of any wrongful
1277 or criminal act, if any, of the contractor, his agent or
1278 employees.

1279 (2) With respect to equipment used in the construction,
1280 reconstruction or other public work authorized to be done under
1281 the provisions of this chapter: the word "equipment," in addition
1282 to all equipment incorporated into or fully consumed in connection
1283 with such project, shall include the reasonable value of the use
1284 of all equipment of every kind and character and all accessories
1285 and attachments thereto which are reasonably necessary to be used
1286 and which are used in carrying out the performance of the
1287 contract, and the reasonable value of the use thereof, during the
1288 period of time the same are used in carrying out the performance
1289 of the contract, shall be the amount as agreed upon by the persons
1290 furnishing the equipment and those using the same to be paid
1291 therefor, which amount, however, shall not be in excess of the
1292 maximum current rates and charges allowable for leasing or renting
1293 as specified in Section 65-7-95; the word "labor" shall include
1294 all work performed in repairing equipment used in carrying out the
1295 performance of the contract, which repair labor is reasonably
1296 necessary to the efficient operation of said equipment; and the
1297 words "materials" and "supplies" shall include all repair parts

1298 installed in or on equipment used in carrying out the performance
1299 of the contract, which repair parts are reasonably necessary to
1300 the efficient operation of said equipment.

1301 (3) The executive director, subject to the approval of the
1302 commission, shall have the right to reject any and all bids,
1303 whether such right is reserved in the notice or not.

1304 (4) The commission may require the pre-qualification of any
1305 and all bidders and the failure to comply with pre-qualification
1306 requirements may be the basis for the rejection of any bid by the
1307 commission. The commission may require the pre-qualification of
1308 any and all subcontractors before they are approved to participate
1309 in any contract awarded under this section.

1310 (5) The commission may adopt rules and regulations for the
1311 termination of any previously awarded contract which is not timely
1312 proceeding toward completion. The failure of a contractor to
1313 comply with such rules and regulations shall be a lawful basis for
1314 the commission to terminate the contract with such contractor. In
1315 the event of a termination under such rules and regulations, the
1316 contractor shall not be entitled to any payment, benefit or
1317 damages beyond the cost of the work actually completed.

1318 (6) Any contract for construction or paving of any highway
1319 may be entered into for any cost which does not exceed the amount
1320 of funds that may be made available therefor through bond issues
1321 or from other sources of revenue, and the letting of contracts for
1322 such construction or paving shall not necessarily be delayed until
1323 the funds are actually on hand, provided authorization for the
1324 issuance of necessary bonds has been granted by law to supplement
1325 other anticipated revenue, or when the department certifies to the
1326 Department of Finance and Administration and the Legislative
1327 Budget Office that projected receipts of funds by the department
1328 will be sufficient to pay such contracts as they become due and
1329 the Department of Finance and Administration determines that the
1330 projections are reasonable and receipts will be sufficient to pay
1331 the contracts as they become due. The Department of Finance and
1332 Administration shall spread such determination on its minutes

1333 prior to the letting of any contracts based on projected receipts.
1334 Nothing in this subsection shall prohibit the issuance of bonds,
1335 which have been authorized, at any time in the discretion of the
1336 State Bond Commission, nor to prevent investment of surplus funds
1337 in United States government bonds or State of Mississippi bonds as
1338 presently authorized by Section 12, Chapter 312, Laws of 1956.

1339 (7) All other contracts for work to be done under the
1340 provisions of this chapter and for the purchase of materials,
1341 equipment and supplies to be used as provided for in this chapter
1342 shall be made in compliance with Section 31-7-1 et seq.

1343 (8) The commission shall not empower or authorize the
1344 executive director, or any one or more of its members, or any
1345 engineer or other person to let or make contracts for the
1346 construction or repair of public roads, or building bridges, or
1347 for the purchase of material, equipment or supplies contrary to
1348 the provisions of this chapter as set forth in this section,
1349 except in cases of flood or other cases of emergency where the
1350 public interest requires that the work be done or the materials,
1351 equipment or supplies be purchased without the delay incident to
1352 advertising for competitive bids. Such emergency contracts may be
1353 made without advertisement under such rules and regulations as the
1354 commission may prescribe.

1355 (9) The executive director, subject to the approval of the
1356 commission, is authorized to negotiate and make agreements with
1357 communities and/or civic organizations for landscaping,
1358 beautification and maintenance of highway rights-of-way; however,
1359 nothing in this subsection shall be construed as authorization for
1360 the executive director or commission to participate in such a
1361 project to an extent greater than the average cost for maintenance
1362 of shoulders, backslopes and median areas with respect thereto.

1363 (10) The executive director may negotiate and enter into
1364 contracts with private parties for the mowing of grass and
1365 trimming of vegetation on the rights-of-way of state highways
1366 whenever such practice is possible and cost effective.

1367 (11) (a) As an alternative to the method of awarding
1368 contracts as otherwise provided in this section, the commission
1369 may use the design-build method of contracting for the following:

1370 (i) Projects for the Mississippi Development
1371 Authority pursuant to agreements between both governmental
1372 entities;

1373 (ii) Any project with an estimated cost of not
1374 more than Ten Million Dollars (\$10,000,000.00), not to exceed two
1375 (2) projects per fiscal year; and

1376 (iii) Any project which has an estimated cost of
1377 more than Fifty Million Dollars (\$50,000,000.00), not to exceed
1378 one (1) project per fiscal year.

1379 (b) As used in this subsection, the term "design-build"
1380 method of contracting means a contract that combines the design
1381 and construction phases of a project into a single contract and
1382 the contractor is required to satisfactorily perform, at a
1383 minimum, both the design and construction of the project.

1384 (c) The commission shall establish detailed criteria
1385 for the selection of the successful design-build contractor in
1386 each request for design-build proposals. The evaluation of the
1387 selection committee is a public record and shall be maintained for
1388 a minimum of ten (10) years after project completion.

1389 (d) The commission shall maintain detailed records on
1390 projects separate and apart from its regular record keeping. The
1391 commission shall file a report to the Legislature evaluating the
1392 design-build method of contracting by comparing it to the low-bid
1393 method of contracting. At a minimum, the report must include:

1394 (i) The management goals and objectives for the
1395 design-build system of management;

1396 (ii) A complete description of the components of
1397 the design-build management system, including a description of the
1398 system the department put into place on all projects managed under
1399 the system to insure that it has the complete information on
1400 highway segment costs and to insure proper analysis of any
1401 proposal the commission receives from a highway contractor;

1402 (iii) The accountability systems the
1403 Transportation Department established to monitor any design-build
1404 project's compliance with specific goals and objectives for the
1405 project;

1406 (iv) The outcome of any project or any interim
1407 report on an ongoing project let under a design-build management
1408 system showing compliance with the goals, objectives, policies and
1409 procedures the department set for the project; and

1410 (v) The method used by the department to select
1411 projects to be let under the design-build system of management and
1412 all other systems, policies and procedures that the department
1413 considered as necessary components to a design-build management
1414 system.

1415 (e) All contracts let under the provisions of this
1416 subsection shall be subject to oversight and review by the State
1417 Auditor. The State Auditor shall file a report with the
1418 Legislature on or before January 1 of each year detailing his
1419 findings with regard to any contract let or project performed in
1420 violation of the provisions of this subsection. The actual and
1421 necessary expenses incurred by the State Auditor in complying with
1422 this paragraph (e) shall be paid for and reimbursed by the
1423 Mississippi Department of Transportation out of funds made
1424 available for the contract or contracts let and project or
1425 projects performed.

1426 (f) As an alternative to the authority granted to the
1427 commission in this subsection, the commission may elect to use the
1428 method of contracting for construction projects set out in Section
1429 31-7-13.1.

1430 **SECTION 8.** This act shall take effect and be in force from
1431 and after July 1, 2006.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 AWARDED 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 31-11-3 AND 65-1-85, MISSISSIPPI CODE OF 1972, TO CONFORM
8 TO THE PRECEDING PROVISIONS; TO CREATE A NEW SECTION TO BE
9 CODIFIED AS SECTION 37-101-44, MISSISSIPPI CODE OF 1972, TO
10 AUTHORIZE THE BOARD OF TRUSTEES TO AUTHORIZE UNIVERSITIES TO
11 CONTRACT WITH A SINGLE ENTITY FOR THE DESIGN AND CONSTRUCTION OF
12 FACILITIES AT UNIVERSITIES; TO AMEND SECTION 37-101-43,
13 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND SECTION
14 37-101-41, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD OF
15 TRUSTEES TO AUTHORIZE UNIVERSITIES TO LEASE LAND AT THE UNIVERSITY
16 FOR THE CONSTRUCTION OF FACILITIES BY PRIVATE FINANCING; TO AMEND
17 SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO EXEMPT FROM STATE
18 BID REQUIREMENTS CONTRACTS FOR THE DUAL-PHASE DESIGN-BUILD METHOD
19 OF CONFORMITY; AND FOR RELATED PURPOSES.

SS26\HB992A.2J

John O. Gilbert
Secretary of the Senate