

By: Representative Weathersby

To: Public Property;
Appropriations

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1537

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 31-11-3 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 OF STATE INSTITUTIONS OF HIGHER
11 LEARNING TO AUTHORIZE UNIVERSITIES TO CONTRACT WITH A SINGLE
12 ENTITY FOR THE DESIGN AND CONSTRUCTION OF FACILITIES AT
13 UNIVERSITIES; TO AMEND SECTION 37-101-43, MISSISSIPPI CODE OF
14 1972, IN CONFORMITY THERETO; TO CREATE NEW SECTION 31-7-13.2,
15 MISSISSIPPI CODE OF 1972, TO PRESCRIBE THE PROCEDURES FOR AWARDING
16 CONTRACTS FOR CONSTRUCTION MANAGERS AT RISK; TO DEFINE
17 QUALIFICATION-BASED SELECTION PROCEDURES FOR PURPOSES OF PROCURING
18 ARCHITECTS AND DESIGN ENGINEERS; TO AMEND SECTION 37-101-41,
19 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD OF TRUSTEES OF
20 STATE INSTITUTIONS OF HIGHER LEARNING TO AUTHORIZE UNIVERSITIES TO
21 LEASE LAND AT UNIVERSITIES FOR THE CONSTRUCTION OF AUXILIARY
22 FACILITIES BY PRIVATE FINANCING FOR A PERIOD NOT EXCEEDING
23 THIRTY-ONE YEARS; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF
24 1972, TO EXEMPT FROM STATE BID REQUIREMENTS CONTRACTS FOR THE
25 DUAL-PHASE DESIGN-BUILD METHOD OF CONFORMITY; AND FOR RELATED
26 PURPOSES.

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

28 **SECTION 1.** The following shall be codified as Section

29 31-7-13.1, Mississippi Code of 1972:

30 31-7-13.1. (1) The method of contracting for construction
31 described in this section shall be known as the "dual-phase
32 design-build method" of construction contracting. This method of
33 construction contracting may be used only when the Legislature has
34 specifically required or authorized the use of this method in the
35 legislation authorizing a project. At a minimum, the
36 determination must include a detailed explanation of why using the
37 dual-phase design-build method for a particular project satisfies
38 the public need better than the traditional design-bid-build
39 method based on the following criteria:

40 (a) The project provides a savings in time or cost over
41 traditional methods; and

42 (b) The size and type of the project is suitable for
43 design-build.

44 (2) For each proposed dual-phase design-build project, a
45 two-phase procedure for awarding a contract must be adopted.
46 During Phase One, and before solicitation of initial proposals,
47 the agency or governing authority shall develop, with the
48 assistance of an architectural or engineering firm, a scope of
49 work statement that provides prospective offerors with sufficient
50 information regarding the requirements of the agency or governing
51 authority. The scope of work statement must include, but is not
52 limited to, the following information:

53 (a) Drawings must show overall building dimensions and
54 major lines of dimensions, and site plans that show topography,
55 adjacent buildings and utilities;

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

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

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

65 (3) The agency or governing authority shall cause to be
66 published once a week, for at least two (2) consecutive weeks in a
67 regular newspaper published in the county in which the project is
68 to be located, or a newspaper with statewide circulation, a notice
69 inviting proposals for the dual-phase design-build construction
70 project. The proposals shall not be opened in less than fifteen
71 (15) working days after the last notice is published. The notice
72 must inform potential offerors of how to obtain the scope of work

73 statement developed for the project, and the notice must contain
74 such other information to describe adequately the general nature
75 and scope of the project so as to promote full, equal and open
76 competition.

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

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

97 (6) If the agency or governing authority accepts a proposal
98 other than the lowest dollar proposal actually submitted, the
99 agency or governing authority shall enter on its minutes detailed
100 calculations and a narrative summary showing why the accepted
101 proposal was determined to provide the best value, and the agency
102 or governing authority shall state specifically on its minutes the
103 justification for its award.

104 (7) All facilities that are governed by this section shall
105 be designed and constructed to comply with standards equal to or

106 exceeding the minimum building code standards employed by the
107 state as required under Section 31-11-33 in force at the time of
108 contracting. All private contractors or private entities
109 contracting or performing under this section must comply at all
110 times with all applicable laws, codes and other legal requirements
111 pertaining to the project.

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

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

140 (9) This section shall not authorize the awarding of
141 construction contracts according to any contracting method that
142 does not require the contractor to satisfactorily perform, at a
143 minimum, both any balance of design and construction of the
144 project for which the contract is awarded.

145 **SECTION 2.** The following shall be codified as Section
146 31-7-13.2, Mississippi Code of 1972:

147 31-7-13.2 (1) When procuring design professional services
148 under a construction manager at risk project delivery method, the
149 agency or governing authority shall procure the services of a
150 design professional pursuant to qualifications-based selection
151 procedures.

152 (2) Before the substantial completion of the design
153 documents, the agency or governing authority may elect to hire a
154 construction manager.

155 (3) When procuring construction management services, the
156 agency or governing authority shall follow the
157 qualifications-based selection procedures as outlined in
158 subsection (8) of this section or the competitive sealed proposal
159 procedures as outlined in Section 31-17-13.

160 (4) The agency or governing authority may require the
161 architect or engineer and the construction manager, by contract,
162 to cooperate in the design, planning and scheduling, and
163 construction process. The contract shall not make the primary
164 designer or construction manager a subcontractor or joint venture
165 partner to the other or limit the primary designer's or
166 construction manager's independent obligations to the agency or
167 governing authority.

168 (5) Notwithstanding anything to the contrary in this
169 chapter:

170 (a) Each project for construction under a construction
171 manager at risk contract shall be a specific, single project with
172 a minimum construction cost of Twenty-Five Million Dollars
173 (\$25,000,000.00).

174 (b) Each project under a construction manager at risk
175 contract shall be a specific, single project. For the purposes of
176 this paragraph, "specific, single project" means a project that is
177 constructed at a single location, at a common location or for a
178 common purpose.

179 (6) Agencies shall retain an independent architectural or
180 engineering firm to provide guidance and administration of the
181 professional engineering or professional architecture aspects of
182 the project throughout the development of the scope, design, and
183 construction of the project.

184 (7) The state shall, on an annual basis, compile and make
185 public all proceedings, records, contracts and other public
186 records relating to procurement transactions authorized under this
187 section.

188 (8) For purposes of this section, the "qualifications-based
189 selection procedure" shall include:

190 (a) Publicly announcing all requirements for
191 architectural, engineering, and land surveying services, to
192 procure these services on the basis of demonstrated competence and
193 qualifications, and to negotiate contracts at fair and reasonable
194 prices after the most qualified firm has been selected.

195 (b) Agencies or governing authorities shall establish
196 procedures to prequalify firms seeking to provide architectural,
197 engineering, and land surveying services or may use
198 prequalification lists from other state agencies or governing
199 authorities to meet the requirements of this section.

200 (c) Whenever a project requiring architectural,
201 engineering, or land surveying services is proposed for an agency
202 or governing authority, the agency or governing authority shall

203 provide advance notice published in a professional services
204 bulletin or advertised within the official State newspaper setting
205 forth the projects and services to be procured for not less than
206 fourteen (14) days. The professional services bulletin shall be
207 mailed to each firm that has requested the information or is
208 prequalified under Section 31-7-13. The professional services
209 bulletin shall include a description of each project and shall
210 state the time and place for interested firms to submit a letter
211 of interest and, if required by the public notice, a statement of
212 qualifications.

213 (d) The agency or governing authority shall evaluate
214 the firms submitting letters of interest and other prequalified
215 firms, taking into account qualifications. The agency or
216 governing authority may consider, but shall not be limited to,
217 considering:

218 (i) Ability of professional personnel;
219 (ii) Past record and experience;
220 (iii) Performance data on file;
221 (iv) Willingness to meet time requirements;
222 (v) Location;
223 (vi) Workload of the firm; and
224 (vii) Any other qualifications-based factors as
225 the agency or governing authority may determine in writing are
226 applicable.

227 The agency or governing authority may conduct discussions
228 with and require public presentations by firms deemed to be the
229 most qualified regarding their qualifications, approach to the
230 project and ability to furnish the required services.

231 (e) The agency or governing authority shall establish a
232 committee to select firms to provide architectural, engineering,
233 and land surveying services. A selection committee may include at
234 least one (1) public member nominated by a statewide association
235 of the profession affected. The public member may not be employed

236 or associated with any firm holding a contract with the agency or
237 governing authority nor may the public members' firm be considered
238 for a contract with that agency or governing authority while
239 serving as a public member of the committee. In no case shall the
240 agency or governing authority, before selecting a firm for
241 negotiation under paragraph (f) of this section, seek formal or
242 informal submission of verbal or written estimates of costs or
243 proposals in terms of dollars, hours required, percentage of
244 construction cost, or any other measure of compensation.

245 (f) On the basis of evaluations, discussions, and any
246 presentations, the agency or governing authority shall select no
247 less than three (3) firms that it determines to be qualified to
248 provide services for the project and rank them in order of
249 qualifications to provide services regarding the specific project.
250 The agency or governing authority shall then contact the firm
251 ranked most preferred to negotiate a contract at a fair and
252 reasonable compensation. If fewer than three (3) firms submit
253 letters of interest and the agency or governing authority
254 determines that one (1) or both of those firms are so qualified,
255 the agency or governing authority may proceed to negotiate a
256 contract under paragraph (g) of this section.

257 (g) The agency or governing authority shall prepare a
258 written description of the scope of the proposed services to be
259 used as a basis for negotiations and shall negotiate a contract
260 with the highest qualified firm at compensation that the agency or
261 governing authority determines in writing to be fair and
262 reasonable. In making this decision, the agency or governing
263 authority shall take into account the estimated value, scope,
264 complexity, and professional nature of the services to be
265 rendered. In no case may the agency or governing authority
266 establish a maximum overhead rate or other payment formula
267 designed to eliminate firms from contention or restrict
268 competition or negotiation of fees. If the agency or governing

269 authority is unable to negotiate a satisfactory contract with the
270 firm that is most preferred, negotiations with that firm shall be
271 terminated. The agency or governing authority shall then begin
272 negotiations with the firm that is next preferred. If the agency
273 or governing authority is unable to negotiate a satisfactory
274 contract with that firm, negotiations with that firm shall be
275 terminated. The agency or governing authority shall then begin
276 negotiations with the firm that is next preferred. If the agency
277 or governing authority is unable to negotiate a satisfactory
278 contract with any of the selected firms, the agency or governing
279 authority shall reevaluate the architectural, engineering, or land
280 surveying services requested, including the estimated value,
281 scope, complexity, and fee requirements. The agency or governing
282 authority shall then compile a second list of not less than three
283 (3) qualified firms and proceed in accordance with the provisions
284 of this section. A firm negotiating a contract with an agency or
285 governing authority shall negotiate subcontracts for
286 architectural, engineering, and land surveying services at
287 compensation that the firm determines in writing to be fair and
288 reasonable based upon a written description of the scope of the
289 proposed services.

290 **SECTION 3.** The following shall be codified as Section
291 37-101-44, Mississippi Code of 1972:

292 37-101-44. (1) In lieu of exercising the authority set
293 forth in Section 37-101-43 and before entering into or awarding
294 any lease under Section 37-101-41, the Board of Trustees of State
295 Institutions of Higher Learning may award contracts to a single
296 entity for privately financed design and construction of
297 facilities on university campuses if the entities receiving the
298 contract or contracts and those entities to which work or services
299 are subcontracted are duly licensed and qualified in the state to
300 perform the contract or contracts. State General Fund

301 appropriations or bonds backed by the state may not be used to
302 finance the construction or maintenance of any such facility.

303 (2) The design-build delivery system described under
304 subsection (1) of this section shall be administered pursuant to
305 Section 31-7-13.1 and may be authorized only when the Board of
306 Trustees of State Institutions of Higher Learning makes a
307 determination, entered on its minutes, with specific findings for
308 the project demonstrating how it is in the best interest of the
309 public to enter into a design-build contract.

310 **SECTION 4.** Section 37-101-43, Mississippi Code of 1972, is
311 amended as follows:

312 37-101-43. (a) Except as otherwise provided in Section
313 37-101-44, before entering into or awarding any such lease
314 contract under the provisions of Section 37-101-41, the Board of
315 Trustees of State Institutions of Higher Learning shall cause the
316 interested state-supported institution upon which a facility is
317 proposed to be constructed to select and submit three (3)
318 architects to the board. Thereupon, the board shall approve and
319 employ an architect, who shall be paid by the interested
320 institution from any funds available to the interested
321 institution. The architect, under the direction of the interested
322 institution, shall prepare complete plans and specifications for
323 the facility desired to be constructed on the leased property.

324 Upon completion of the plans and specifications and the
325 approval thereof by the board, and before entering into any lease
326 contract, the board shall cause to be published once a week for at
327 least three (3) consecutive weeks and not less than twenty-one
328 (21) days in at least one (1) newspaper having a general
329 circulation in the county in which the interested institution is
330 located and in one (1) newspaper with a general statewide
331 circulation, a notice inviting bids or proposals for the leasing,
332 construction and leasing back of the land and constructed
333 facility, the facility to be constructed in accordance with the

334 plans and specifications. The notice shall distinctly state the
335 thing to be done, and invite sealed proposals, to be filed with
336 the board, to do the thing to be done. The notice shall contain
337 the following specific provisions, together with such others as
338 the board in its discretion deems appropriate, to wit: bids shall
339 be accompanied by a bid security evidenced by a certified or
340 cashier's check or bid-bond payable to the board in a sum of not
341 less than five percent (5%) of the gross construction cost of the
342 facility to be constructed as estimated by the board and the bids
343 shall contain proof satisfactory to the board of interim and
344 permanent financing. The board shall state in the notice when
345 construction shall commence. The bid shall contain the proposed
346 contractor's certificate of responsibility number and bidder's
347 license. In all cases, before the notice shall be published, the
348 plans and specifications shall be filed with the board and also in
349 the office of the president of the interested institution, there
350 to remain.

351 The board shall award the lease contract to the lowest and
352 best bidder, who will comply with the terms imposed by the
353 contract documents. At the time of the awarding of the lease
354 contract the successful bidder shall enter into bond with
355 sufficient sureties, to be approved by the board, in such penalty
356 as may be fixed by the board, but in no case to be less than the
357 estimated gross construction cost of the facility to be
358 constructed as estimated by the board, conditioned for the prompt,
359 proper and efficient performance of the contract. The bond shall
360 be made by an authorized corporate surety bonding company.
361 The * * * bid security herein provided for shall be forfeited if
362 the successful bidder fails to enter into lease contract and
363 commence construction within the time limitation set forth in the
364 notice. At such time, and simultaneously with the signing of the
365 contract, the successful bidder shall deposit a sum of money, in
366 cash or certified or cashier's check, not less than the bid

367 security previously deposited as bid security to reimburse the
368 interested institution for all sums expended by it for
369 architectural services and other expenditures of the board and
370 interested institution connected with the bidden lease contract,
371 of which such other anticipated expenditures notice is to be given
372 to bidder in the notice. The bid security posted by an
373 unsuccessful bidder shall be refunded to him.

374 (b) Under the authority granted under Section
375 37-101-44, the requirements of paragraph (a) of this section shall
376 not apply to the Board of Trustees of State Institutions of Higher
377 Learning to grant to universities the authority to contract with a
378 single entity for privately financed design and construction of
379 facilities on university campuses.

380 **SECTION 5.** Section 37-101-41, Mississippi Code of 1972, is
381 amended as follows:

382 37-101-41. (1) (a) Except as otherwise provided in
383 paragraph (b) of this section, the Board of Trustees of State
384 Institutions of Higher Learning is * * * authorized and empowered
385 to lease to private individuals or corporations for a term not
386 exceeding thirty-one (31) years any land at any of the following
387 state-supported institutions: Mississippi State University of
388 Agriculture and Applied Science, Jackson State University,
389 Mississippi Valley State University, University of Mississippi,
390 Alcorn State University, University of Southern Mississippi,
391 Mississippi University for Women and Delta State University, for
392 the purpose of erecting auxiliary facilities thereon for active
393 faculty and students. The auxiliary facilities shall be
394 constructed thereon by private financing, and shall be leased back
395 to the board for use by the concerned state-supported institution
396 of higher learning. The lease shall contain a provision
397 permitting the board to purchase the building located thereon for
398 the sum of One Dollar (\$1.00) after payment by the board of all
399 sums of money due under said lease.

400 (b) The Board of Trustees of State Institutions of
401 Higher Learning may grant authority to universities to lease to
402 private individuals or corporations for a period not exceeding
403 thirty-one (31) years, any land at the university, for the purpose
404 of erecting auxiliary facilities thereon for active faculty and
405 students. The auxiliary facilities shall be constructed thereon
406 by private financing, and shall be leased back to the board for
407 use by the university. The lease shall contain a provision
408 permitting the board to purchase the auxiliary facilities located
409 thereon for the sum of One Dollar (\$1.00) after payment by the
410 board of all sums of money due under the lease.

411 (2) Upon there being an agreement reached between the Board
412 of Trustees of State Institutions of Higher Learning and a
413 university upon whose land the auxiliary facility will be
414 constructed and a private individual or corporation to enter into
415 such lease agreement as described in subsection (1), it shall be
416 stipulated in the agreement that all newly constructed auxiliary
417 facilities shall be in compliance with the minimum building code
418 standards employed by the state as required under Section
419 31-11-33.

420 (3) The board, in conjunction with the university, shall
421 have sole discretion to decide the placement of auxiliary
422 facilities upon the university's campus. However, the scope of
423 any such construction by private entities shall be limited to two
424 (2) projects per year for each university, and shall not exceed in
425 the aggregate five percent (5%) of the university's total main or
426 satellite campus property under the original lease period.

427 (4) No contractual lease agreement for the construction of
428 privately financed auxiliary facilities shall be entered into by a
429 university without prior approval of the Board of Trustees of
430 State Institutions of Higher Learning. An auxiliary facility is a
431 facility that is defined by the Higher Education General
432 Information Survey (HEGIS) categories 500/600/700/800/900.

433 Before entering into contractual lease agreement for the
434 construction of privately financed auxiliary facilities, the Board
435 of Trustees for the State Institutions of Higher Learning shall
436 establish rules and procedures to ensure adequate public
437 advertisement of any requirement for the construction of privately
438 financed auxiliary facilities at a university in order to promote
439 full and open competition and which set forth the requirements for
440 evaluation of offers and award of the contract lease agreement to
441 the private entity.

442 **SECTION 6.** Section 31-7-13, Mississippi Code of 1972, is
443 amended as follows:

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

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

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

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

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

494 (i) **Publication requirement.**

495 1. Purchases which involve an expenditure of
496 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
497 freight and shipping charges, may be made from the lowest and best
498 bidder after advertising for competitive bids once each week for

499 two (2) consecutive weeks in a regular newspaper published in the
500 county or municipality in which such agency or governing authority
501 is located.

502 2. The purchasing entity may designate the
503 method by which the bids will be received, including, but not
504 limited to, bids sealed in an envelope, bids received
505 electronically in a secure system, bids received via a reverse
506 auction, or bids received by any other method that promotes open
507 competition and has been approved by the Office of Purchasing and
508 Travel. The provisions of this part 2 of subparagraph (i) shall
509 be repealed on July 1, 2008.

510 3. The date as published for the bid opening
511 shall not be less than seven (7) working days after the last
512 published notice; however, if the purchase involves a construction
513 project in which the estimated cost is in excess of Fifteen
514 Thousand Dollars (\$15,000.00), such bids shall not be opened in
515 less than fifteen (15) working days after the last notice is
516 published and the notice for the purchase of such construction
517 shall be published once each week for two (2) consecutive weeks.
518 The notice of intention to let contracts or purchase equipment
519 shall state the time and place at which bids shall be received,
520 list the contracts to be made or types of equipment or supplies to
521 be purchased, and, if all plans and/or specifications are not
522 published, refer to the plans and/or specifications on file. If
523 there is no newspaper published in the county or municipality,
524 then such notice shall be given by posting same at the courthouse,
525 or for municipalities at the city hall, and at two (2) other
526 public places in the county or municipality, and also by
527 publication once each week for two (2) consecutive weeks in some
528 newspaper having a general circulation in the county or
529 municipality in the above provided manner. On the same date that
530 the notice is submitted to the newspaper for publication, the
531 agency or governing authority involved shall mail written notice

532 to, or provide electronic notification to the main office of the
533 Mississippi Contract Procurement Center that contains the same
534 information as that in the published notice.

535 (ii) **Bidding process amendment procedure.** If all
536 plans and/or specifications are published in the notification,
537 then the plans and/or specifications may not be amended. If all
538 plans and/or specifications are not published in the notification,
539 then amendments to the plans/specifications, bid opening date, bid
540 opening time and place may be made, provided that the agency or
541 governing authority maintains a list of all prospective bidders
542 who are known to have received a copy of the bid documents and all
543 such prospective bidders are sent copies of all amendments. This
544 notification of amendments may be made via mail, facsimile,
545 electronic mail or other generally accepted method of information
546 distribution. No addendum to bid specifications may be issued
547 within two (2) working days of the time established for the
548 receipt of bids unless such addendum also amends the bid opening
549 to a date not less than five (5) working days after the date of
550 the addendum.

551 (iii) **Filing requirement.** In all cases involving
552 governing authorities, before the notice shall be published or
553 posted, the plans or specifications for the construction or
554 equipment being sought shall be filed with the clerk of the board
555 of the governing authority. In addition to these requirements, a
556 bid file shall be established which shall indicate those vendors
557 to whom such solicitations and specifications were issued, and
558 such file shall also contain such information as is pertinent to
559 the bid.

560 (iv) **Specification restrictions.**

561 1. Specifications pertinent to such bidding
562 shall be written so as not to exclude comparable equipment of
563 domestic manufacture. However, if valid justification is
564 presented, the Department of Finance and Administration or the

565 board of a governing authority may approve a request for specific
566 equipment necessary to perform a specific job. Further, such
567 justification, when placed on the minutes of the board of a
568 governing authority, may serve as authority for that governing
569 authority to write specifications to require a specific item of
570 equipment needed to perform a specific job. In addition to these
571 requirements, from and after July 1, 1990, vendors of relocatable
572 classrooms and the specifications for the purchase of such
573 relocatable classrooms published by local school boards shall meet
574 all pertinent regulations of the State Board of Education,
575 including prior approval of such bid by the State Department of
576 Education.

577 2. Specifications for construction projects
578 may include an allowance for commodities, equipment, furniture,
579 construction materials or systems in which prospective bidders are
580 instructed to include in their bids specified amounts for such
581 items so long as the allowance items are acquired by the vendor in
582 a commercially reasonable manner and approved by the
583 agency/governing authority. Such acquisitions shall not be made
584 to circumvent the public purchasing laws.

585 (v) Agencies and governing authorities may
586 establish secure procedures by which bids may be submitted via
587 electronic means.

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

589 (i) **Decision procedure.** Purchases may be made
590 from the lowest and best bidder. In determining the lowest and
591 best bid, freight and shipping charges shall be included.
592 Life-cycle costing, total cost bids, warranties, guaranteed
593 buy-back provisions and other relevant provisions may be included
594 in the best bid calculation. All best bid procedures for state
595 agencies must be in compliance with regulations established by the
596 Department of Finance and Administration. If any governing
597 authority accepts a bid other than the lowest bid actually

598 submitted, it shall place on its minutes detailed calculations and
599 narrative summary showing that the accepted bid was determined to
600 be the lowest and best bid, including the dollar amount of the
601 accepted bid and the dollar amount of the lowest bid. No agency
602 or governing authority shall accept a bid based on items not
603 included in the specifications.

604 (ii) **Decision procedure for Certified Purchasing**
605 **Offices.** In addition to the decision procedure set forth in
606 paragraph (d)(i), Certified Purchasing Offices may also use the
607 following procedure: Purchases may be made from the bidder
608 offering the best value. In determining the best value bid,
609 freight and shipping charges shall be included. Life-cycle
610 costing, total cost bids, warranties, guaranteed buy-back
611 provisions, documented previous experience, training costs and
612 other relevant provisions may be included in the best value
613 calculation. This provision shall authorize Certified Purchasing
614 Offices to utilize a Request For Proposals (RFP) process when
615 purchasing commodities. All best value procedures for state
616 agencies must be in compliance with regulations established by the
617 Department of Finance and Administration. No agency or governing
618 authority shall accept a bid based on items or criteria not
619 included in the specifications.

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

626 (e) **Lease-purchase authorization.** For the purposes of
627 this section, the term "equipment" shall mean equipment, furniture
628 and, if applicable, associated software and other applicable
629 direct costs associated with the acquisition. Any lease-purchase
630 of equipment which an agency is not required to lease-purchase

631 under the master lease-purchase program pursuant to Section
632 31-7-10 and any lease-purchase of equipment which a governing
633 authority elects to lease-purchase may be acquired by a
634 lease-purchase agreement under this paragraph (e). Lease-purchase
635 financing may also be obtained from the vendor or from a
636 third-party source after having solicited and obtained at least
637 two (2) written competitive bids, as defined in paragraph (b) of
638 this section, for such financing without advertising for such
639 bids. Solicitation for the bids for financing may occur before or
640 after acceptance of bids for the purchase of such equipment or,
641 where no such bids for purchase are required, at any time before
642 the purchase thereof. No such lease-purchase agreement shall be
643 for an annual rate of interest which is greater than the overall
644 maximum interest rate to maturity on general obligation
645 indebtedness permitted under Section 75-17-101, and the term of
646 such lease-purchase agreement shall not exceed the useful life of
647 equipment covered thereby as determined according to the upper
648 limit of the asset depreciation range (ADR) guidelines for the
649 Class Life Asset Depreciation Range System established by the
650 Internal Revenue Service pursuant to the United States Internal
651 Revenue Code and regulations thereunder as in effect on December
652 31, 1980, or comparable depreciation guidelines with respect to
653 any equipment not covered by ADR guidelines. Any lease-purchase
654 agreement entered into pursuant to this paragraph (e) may contain
655 any of the terms and conditions which a master lease-purchase
656 agreement may contain under the provisions of Section 31-7-10(5),
657 and shall contain an annual allocation dependency clause
658 substantially similar to that set forth in Section 31-7-10(8).
659 Each agency or governing authority entering into a lease-purchase
660 transaction pursuant to this paragraph (e) shall maintain with
661 respect to each such lease-purchase transaction the same
662 information as required to be maintained by the Department of
663 Finance and Administration pursuant to Section 31-7-10(13).

664 However, nothing contained in this section shall be construed to
665 permit agencies to acquire items of equipment with a total
666 acquisition cost in the aggregate of less than Ten Thousand
667 Dollars (\$10,000.00) by a single lease-purchase transaction. All
668 equipment, and the purchase thereof by any lessor, acquired by
669 lease-purchase under this paragraph and all lease-purchase
670 payments with respect thereto shall be exempt from all Mississippi
671 sales, use and ad valorem taxes. Interest paid on any
672 lease-purchase agreement under this section shall be exempt from
673 State of Mississippi income taxation.

674 (f) **Alternate bid authorization.** When necessary to
675 ensure ready availability of commodities for public works and the
676 timely completion of public projects, no more than two (2)
677 alternate bids may be accepted by a governing authority for
678 commodities. No purchases may be made through use of such
679 alternate bids procedure unless the lowest and best bidder cannot
680 deliver the commodities contained in his bid. In that event,
681 purchases of such commodities may be made from one (1) of the
682 bidders whose bid was accepted as an alternate.

683 (g) **Construction contract change authorization.** In the
684 event a determination is made by an agency or governing authority
685 after a construction contract is let that changes or modifications
686 to the original contract are necessary or would better serve the
687 purpose of the agency or the governing authority, such agency or
688 governing authority may, in its discretion, order such changes
689 pertaining to the construction that are necessary under the
690 circumstances without the necessity of further public bids;
691 provided that such change shall be made in a commercially
692 reasonable manner and shall not be made to circumvent the public
693 purchasing statutes. In addition to any other authorized person,
694 the architect or engineer hired by an agency or governing
695 authority with respect to any public construction contract shall
696 have the authority, when granted by an agency or governing

697 authority, to authorize changes or modifications to the original
698 contract without the necessity of prior approval of the agency or
699 governing authority when any such change or modification is less
700 than one percent (1%) of the total contract amount. The agency or
701 governing authority may limit the number, manner or frequency of
702 such emergency changes or modifications.

703 (h) **Petroleum purchase alternative.** In addition to
704 other methods of purchasing authorized in this chapter, when any
705 agency or governing authority shall have a need for gas, diesel
706 fuel, oils and/or other petroleum products in excess of the amount
707 set forth in paragraph (a) of this section, such agency or
708 governing authority may purchase the commodity after having
709 solicited and obtained at least two (2) competitive written bids,
710 as defined in paragraph (b) of this section. If two (2)
711 competitive written bids are not obtained, the entity shall comply
712 with the procedures set forth in paragraph (c) of this section.
713 In the event any agency or governing authority shall have
714 advertised for bids for the purchase of gas, diesel fuel, oils and
715 other petroleum products and coal and no acceptable bids can be
716 obtained, such agency or governing authority is authorized and
717 directed to enter into any negotiations necessary to secure the
718 lowest and best contract available for the purchase of such
719 commodities.

720 (i) **Road construction petroleum products price**
721 **adjustment clause authorization.** Any agency or governing
722 authority authorized to enter into contracts for the construction,
723 maintenance, surfacing or repair of highways, roads or streets,
724 may include in its bid proposal and contract documents a price
725 adjustment clause with relation to the cost to the contractor,
726 including taxes, based upon an industry-wide cost index, of
727 petroleum products including asphalt used in the performance or
728 execution of the contract or in the production or manufacture of
729 materials for use in such performance. Such industry-wide index

730 shall be established and published monthly by the Mississippi
731 Department of Transportation with a copy thereof to be mailed,
732 upon request, to the clerks of the governing authority of each
733 municipality and the clerks of each board of supervisors
734 throughout the state. The price adjustment clause shall be based
735 on the cost of such petroleum products only and shall not include
736 any additional profit or overhead as part of the adjustment. The
737 bid proposals or document contract shall contain the basis and
738 methods of adjusting unit prices for the change in the cost of
739 such petroleum products.

740 (j) **State agency emergency purchase procedure.** If the
741 governing board or the executive head, or his designee, of any
742 agency of the state shall determine that an emergency exists in
743 regard to the purchase of any commodities or repair contracts, so
744 that the delay incident to giving opportunity for competitive
745 bidding would be detrimental to the interests of the state, then
746 the provisions herein for competitive bidding shall not apply and
747 the head of such agency shall be authorized to make the purchase
748 or repair. Total purchases so made shall only be for the purpose
749 of meeting needs created by the emergency situation. In the event
750 such executive head is responsible to an agency board, at the
751 meeting next following the emergency purchase, documentation of
752 the purchase, including a description of the commodity purchased,
753 the purchase price thereof and the nature of the emergency shall
754 be presented to the board and placed on the minutes of the board
755 of such agency. The head of such agency, or his designee, shall,
756 at the earliest possible date following such emergency purchase,
757 file with the Department of Finance and Administration (i) a
758 statement explaining the conditions and circumstances of the
759 emergency, which shall include a detailed description of the
760 events leading up to the situation and the negative impact to the
761 entity if the purchase is made following the statutory
762 requirements set forth in paragraph (a), (b) or (c) of this

763 section, and (ii) a certified copy of the appropriate minutes of
764 the board of such agency, if applicable. On or before September 1
765 of each year, the State Auditor shall prepare and deliver to the
766 Senate Fees, Salaries and Administration Committee, the House Fees
767 and Salaries of Public Officers Committee and the Joint
768 Legislative Budget Committee a report containing a list of all
769 state agency emergency purchases and supporting documentation for
770 each emergency purchase.

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

772 If the governing authority, or the governing authority acting
773 through its designee, shall determine that an emergency exists in
774 regard to the purchase of any commodities or repair contracts, so
775 that the delay incident to giving opportunity for competitive
776 bidding would be detrimental to the interest of the governing
777 authority, then the provisions herein for competitive bidding
778 shall not apply and any officer or agent of such governing
779 authority having general or special authority therefor in making
780 such purchase or repair shall approve the bill presented therefor,
781 and he shall certify in writing thereon from whom such purchase
782 was made, or with whom such a repair contract was made. At the
783 board meeting next following the emergency purchase or repair
784 contract, documentation of the purchase or repair contract,
785 including a description of the commodity purchased, the price
786 thereof and the nature of the emergency shall be presented to the
787 board and shall be placed on the minutes of the board of such
788 governing authority.

789 (l) **Hospital purchase, lease-purchase and lease**
790 **authorization.**

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

796 (ii) In addition to the authority granted in
797 subparagraph (i) of this paragraph (1), the commissioners or board
798 of trustees is authorized to enter into contracts for the lease of
799 equipment or services, or both, which it considers necessary for
800 the proper care of patients if, in its opinion, it is not
801 financially feasible to purchase the necessary equipment or
802 services. Any such contract for the lease of equipment or
803 services executed by the commissioners or board shall not exceed a
804 maximum of five (5) years' duration and shall include a
805 cancellation clause based on unavailability of funds. If such
806 cancellation clause is exercised, there shall be no further
807 liability on the part of the lessee. Any such contract for the
808 lease of equipment or services executed on behalf of the
809 commissioners or board that complies with the provisions of this
810 subparagraph (ii) shall be excepted from the bid requirements set
811 forth in this section.

812 (m) **Exceptions from bidding requirements.** Excepted
813 from bid requirements are:

814 (i) **Purchasing agreements approved by department.**
815 Purchasing agreements, contracts and maximum price regulations
816 executed or approved by the Department of Finance and
817 Administration.

818 (ii) **Outside equipment repairs.** Repairs to
819 equipment, when such repairs are made by repair facilities in the
820 private sector; however, engines, transmissions, rear axles and/or
821 other such components shall not be included in this exemption when
822 replaced as a complete unit instead of being repaired and the need
823 for such total component replacement is known before disassembly
824 of the component; however, invoices identifying the equipment,
825 specific repairs made, parts identified by number and name,
826 supplies used in such repairs, and the number of hours of labor
827 and costs therefor shall be required for the payment for such
828 repairs.

829 (iii) **In-house equipment repairs.** Purchases of
830 parts for repairs to equipment, when such repairs are made by
831 personnel of the agency or governing authority; however, entire
832 assemblies, such as engines or transmissions, shall not be
833 included in this exemption when the entire assembly is being
834 replaced instead of being repaired.

835 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
836 of gravel or fill dirt which are to be removed and transported by
837 the purchaser.

838 (v) **Governmental equipment auctions.** Motor
839 vehicles or other equipment purchased from a federal agency or
840 authority, another governing authority or state agency of the
841 State of Mississippi, or any governing authority or state agency
842 of another state at a public auction held for the purpose of
843 disposing of such vehicles or other equipment. Any purchase by a
844 governing authority under the exemption authorized by this
845 subparagraph (v) shall require advance authorization spread upon
846 the minutes of the governing authority to include the listing of
847 the item or items authorized to be purchased and the maximum bid
848 authorized to be paid for each item or items.

849 (vi) **Intergovernmental sales and transfers.**
850 Purchases, sales, transfers or trades by governing authorities or
851 state agencies when such purchases, sales, transfers or trades are
852 made by a private treaty agreement or through means of
853 negotiation, from any federal agency or authority, another
854 governing authority or state agency of the State of Mississippi,
855 or any state agency or governing authority of another state.
856 Nothing in this section shall permit such purchases through public
857 auction except as provided for in subparagraph (v) of this
858 section. It is the intent of this section to allow governmental
859 entities to dispose of and/or purchase commodities from other
860 governmental entities at a price that is agreed to by both
861 parties. This shall allow for purchases and/or sales at prices

862 which may be determined to be below the market value if the
863 selling entity determines that the sale at below market value is
864 in the best interest of the taxpayers of the state. Governing
865 authorities shall place the terms of the agreement and any
866 justification on the minutes, and state agencies shall obtain
867 approval from the Department of Finance and Administration, prior
868 to releasing or taking possession of the commodities.

869 (vii) **Perishable supplies or food.** Perishable
870 supplies or food purchased for use in connection with hospitals,
871 the school lunch programs, homemaking programs and for the feeding
872 of county or municipal prisoners.

873 (viii) **Single source items.** Noncompetitive items
874 available from one (1) source only. In connection with the
875 purchase of noncompetitive items only available from one (1)
876 source, a certification of the conditions and circumstances
877 requiring the purchase shall be filed by the agency with the
878 Department of Finance and Administration and by the governing
879 authority with the board of the governing authority. Upon receipt
880 of that certification the Department of Finance and Administration
881 or the board of the governing authority, as the case may be, may,
882 in writing, authorize the purchase, which authority shall be noted
883 on the minutes of the body at the next regular meeting thereafter.
884 In those situations, a governing authority is not required to
885 obtain the approval of the Department of Finance and
886 Administration.

887 (ix) **Waste disposal facility construction**
888 **contracts.** Construction of incinerators and other facilities for
889 disposal of solid wastes in which products either generated
890 therein, such as steam, or recovered therefrom, such as materials
891 for recycling, are to be sold or otherwise disposed of; however,
892 in constructing such facilities, a governing authority or agency
893 shall publicly issue requests for proposals, advertised for in the
894 same manner as provided herein for seeking bids for public

895 construction projects, concerning the design, construction,
896 ownership, operation and/or maintenance of such facilities,
897 wherein such requests for proposals when issued shall contain
898 terms and conditions relating to price, financial responsibility,
899 technology, environmental compatibility, legal responsibilities
900 and such other matters as are determined by the governing
901 authority or agency to be appropriate for inclusion; and after
902 responses to the request for proposals have been duly received,
903 the governing authority or agency may select the most qualified
904 proposal or proposals on the basis of price, technology and other
905 relevant factors and from such proposals, but not limited to the
906 terms thereof, negotiate and enter contracts with one or more of
907 the persons or firms submitting proposals.

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

911 (xi) **Information technology products.** Purchases
912 of information technology products made by governing authorities
913 under the provisions of purchase schedules, or contracts executed
914 or approved by the Mississippi Department of Information
915 Technology Services and designated for use by governing
916 authorities.

917 (xii) **Energy efficiency services and equipment.**
918 Energy efficiency services and equipment acquired by school
919 districts, community and junior colleges, institutions of higher
920 learning and state agencies or other applicable governmental
921 entities on a shared-savings, lease or lease-purchase basis
922 pursuant to Section 31-7-14.

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

927 (xiv) **Library books and other reference materials.**
928 Purchases by libraries or for libraries of books and periodicals;
929 processed film, video cassette tapes, filmstrips and slides;
930 recorded audio tapes, cassettes and diskettes; and any such items
931 as would be used for teaching, research or other information
932 distribution; however, equipment such as projectors, recorders,
933 audio or video equipment, and monitor televisions are not exempt
934 under this subparagraph.

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

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

941 (xvii) **Multichannel interactive video systems.**
942 From and after July 1, 1990, contracts by Mississippi Authority
943 for Educational Television with any private educational
944 institution or private nonprofit organization whose purposes are
945 educational in regard to the construction, purchase, lease or
946 lease-purchase of facilities and equipment and the employment of
947 personnel for providing multichannel interactive video systems
948 (ITSF) in the school districts of this state.

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

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

958 (xx) **Junior college books for rent.** Purchases by
959 community or junior colleges of textbooks which are obtained for

960 the purpose of renting such books to students as part of a book
961 service system.

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

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

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

968 Contracts for garbage collection or disposal, contracts for solid
969 waste collection or disposal and contracts for sewage collection
970 or disposal.

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

972 **contracts.** Professional maintenance program contracts for the
973 repair or maintenance of municipal water tanks, which provide
974 professional services needed to maintain municipal water storage
975 tanks for a fixed annual fee for a duration of two (2) or more
976 years.

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

978 **Blind products.** Purchases made by state agencies or governing
979 authorities involving any item that is manufactured, processed or
980 produced by the Mississippi Industries for the Blind.

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

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

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

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

986 (xxvii) **Used heavy or specialized machinery or**

987 **equipment for installation of soil and water conservation**

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

989 machinery or equipment used for the installation and

990 implementation of soil and water conservation practices or

991 measures purchased subject to the restrictions provided in

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

993 Soil and Water Conservation Commission under the exemption
994 authorized by this subparagraph shall require advance
995 authorization spread upon the minutes of the commission to include
996 the listing of the item or items authorized to be purchased and
997 the maximum bid authorized to be paid for each item or items.

998 (xxviii) **Hospital lease of equipment or services.**
999 Leases by hospitals of equipment or services if the leases are in
1000 compliance with paragraph (1)(ii).

1001 (xxix) **Purchases made pursuant to qualified**
1002 **cooperative purchasing agreements.** Purchases made by certified
1003 purchasing offices of state agencies or governing authorities
1004 under cooperative purchasing agreements previously approved by the
1005 Office of Purchasing and Travel and established by or for any
1006 municipality, county, parish or state government or the federal
1007 government, provided that the notification to potential
1008 contractors includes a clause that sets forth the availability of
1009 the cooperative purchasing agreement to other governmental
1010 entities. Such purchases shall only be made if the use of the
1011 cooperative purchasing agreements is determined to be in the best
1012 interest of the governmental entity.

1013 (xxx) **School yearbooks.** Purchases of school
1014 yearbooks by state agencies or governing authorities; provided,
1015 however, that state agencies and governing authorities shall use
1016 for these purchases the RFP process as set forth in the
1017 Mississippi Procurement Manual adopted by the Office of Purchasing
1018 and Travel.

1019 (xxxii) **Dual-phase design-build method * * * of**
1020 **contracting.** Contracts entered into the provisions of Section
1021 31-7-13.1 or 37-101-44.

1022 (n) **Term contract authorization.** All contracts for the
1023 purchase of:

1024 (i) All contracts for the purchase of commodities,
1025 equipment and public construction (including, but not limited to,

1026 repair and maintenance), may be let for periods of not more than
1027 sixty (60) months in advance, subject to applicable statutory
1028 provisions prohibiting the letting of contracts during specified
1029 periods near the end of terms of office. Term contracts for a
1030 period exceeding twenty-four (24) months shall also be subject to
1031 ratification or cancellation by governing authority boards taking
1032 office subsequent to the governing authority board entering the
1033 contract.

1034 (ii) Bid proposals and contracts may include price
1035 adjustment clauses with relation to the cost to the contractor
1036 based upon a nationally published industry-wide or nationally
1037 published and recognized cost index. The cost index used in a
1038 price adjustment clause shall be determined by the Department of
1039 Finance and Administration for the state agencies and by the
1040 governing board for governing authorities. The bid proposal and
1041 contract documents utilizing a price adjustment clause shall
1042 contain the basis and method of adjusting unit prices for the
1043 change in the cost of such commodities, equipment and public
1044 construction.

1045 (o) **Purchase law violation prohibition and vendor**
1046 **penalty.** No contract or purchase as herein authorized shall be
1047 made for the purpose of circumventing the provisions of this
1048 section requiring competitive bids, nor shall it be lawful for any
1049 person or concern to submit individual invoices for amounts within
1050 those authorized for a contract or purchase where the actual value
1051 of the contract or commodity purchased exceeds the authorized
1052 amount and the invoices therefor are split so as to appear to be
1053 authorized as purchases for which competitive bids are not
1054 required. Submission of such invoices shall constitute a
1055 misdemeanor punishable by a fine of not less than Five Hundred
1056 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1057 or by imprisonment for thirty (30) days in the county jail, or

1058 both such fine and imprisonment. In addition, the claim or claims
1059 submitted shall be forfeited.

1060 (p) **Electrical utility petroleum-based equipment**
1061 **purchase procedure.** When in response to a proper advertisement
1062 therefor, no bid firm as to price is submitted to an electric
1063 utility for power transformers, distribution transformers, power
1064 breakers, reclosers or other articles containing a petroleum
1065 product, the electric utility may accept the lowest and best bid
1066 therefor although the price is not firm.

1067 (q) **Fuel management system bidding procedure.** Any
1068 governing authority or agency of the state shall, before
1069 contracting for the services and products of a fuel management or
1070 fuel access system, enter into negotiations with not fewer than
1071 two (2) sellers of fuel management or fuel access systems for
1072 competitive written bids to provide the services and products for
1073 the systems. In the event that the governing authority or agency
1074 cannot locate two (2) sellers of such systems or cannot obtain
1075 bids from two (2) sellers of such systems, it shall show proof
1076 that it made a diligent, good-faith effort to locate and negotiate
1077 with two (2) sellers of such systems. Such proof shall include,
1078 but not be limited to, publications of a request for proposals and
1079 letters soliciting negotiations and bids. For purposes of this
1080 paragraph (q), a fuel management or fuel access system is an
1081 automated system of acquiring fuel for vehicles as well as
1082 management reports detailing fuel use by vehicles and drivers, and
1083 the term "competitive written bid" shall have the meaning as
1084 defined in paragraph (b) of this section. Governing authorities
1085 and agencies shall be exempt from this process when contracting
1086 for the services and products of a fuel management or fuel access
1087 systems under the terms of a state contract established by the
1088 Office of Purchasing and Travel.

1089 (r) **Solid waste contract proposal procedure.** Before
1090 entering into any contract for garbage collection or disposal,

1091 contract for solid waste collection or disposal or contract for
1092 sewage collection or disposal, which involves an expenditure of
1093 more than Fifty Thousand Dollars (\$50,000.00), a governing
1094 authority or agency shall issue publicly a request for proposals
1095 concerning the specifications for such services which shall be
1096 advertised for in the same manner as provided in this section for
1097 seeking bids for purchases which involve an expenditure of more
1098 than the amount provided in paragraph (c) of this section. Any
1099 request for proposals when issued shall contain terms and
1100 conditions relating to price, financial responsibility,
1101 technology, legal responsibilities and other relevant factors as
1102 are determined by the governing authority or agency to be
1103 appropriate for inclusion; all factors determined relevant by the
1104 governing authority or agency or required by this paragraph (r)
1105 shall be duly included in the advertisement to elicit proposals.
1106 After responses to the request for proposals have been duly
1107 received, the governing authority or agency shall select the most
1108 qualified proposal or proposals on the basis of price, technology
1109 and other relevant factors and from such proposals, but not
1110 limited to the terms thereof, negotiate and enter contracts with
1111 one or more of the persons or firms submitting proposals. If the
1112 governing authority or agency deems none of the proposals to be
1113 qualified or otherwise acceptable, the request for proposals
1114 process may be reinitiated. Notwithstanding any other provisions
1115 of this paragraph, where a county with at least thirty-five
1116 thousand (35,000) nor more than forty thousand (40,000)
1117 population, according to the 1990 federal decennial census, owns
1118 or operates a solid waste landfill, the governing authorities of
1119 any other county or municipality may contract with the governing
1120 authorities of the county owning or operating the landfill,
1121 pursuant to a resolution duly adopted and spread upon the minutes
1122 of each governing authority involved, for garbage or solid waste
1123 collection or disposal services through contract negotiations.

1124 (s) **Minority set-aside authorization.** Notwithstanding
1125 any provision of this section to the contrary, any agency or
1126 governing authority, by order placed on its minutes, may, in its
1127 discretion, set aside not more than twenty percent (20%) of its
1128 anticipated annual expenditures for the purchase of commodities
1129 from minority businesses; however, all such set-aside purchases
1130 shall comply with all purchasing regulations promulgated by the
1131 Department of Finance and Administration and shall be subject to
1132 bid requirements under this section. Set-aside purchases for
1133 which competitive bids are required shall be made from the lowest
1134 and best minority business bidder. For the purposes of this
1135 paragraph, the term "minority business" means a business which is
1136 owned by a majority of persons who are United States citizens or
1137 permanent resident aliens (as defined by the Immigration and
1138 Naturalization Service) of the United States, and who are Asian,
1139 Black, Hispanic or Native American, according to the following
1140 definitions:

1141 (i) "Asian" means persons having origins in any of
1142 the original people of the Far East, Southeast Asia, the Indian
1143 subcontinent, or the Pacific Islands.

1144 (ii) "Black" means persons having origins in any
1145 black racial group of Africa.

1146 (iii) "Hispanic" means persons of Spanish or
1147 Portuguese culture with origins in Mexico, South or Central
1148 America, or the Caribbean Islands, regardless of race.

1149 (iv) "Native American" means persons having
1150 origins in any of the original people of North America, including
1151 American Indians, Eskimos and Aleuts.

1152 (t) **Construction punch list restriction.** The
1153 architect, engineer or other representative designated by the
1154 agency or governing authority that is contracting for public
1155 construction or renovation may prepare and submit to the
1156 contractor only one (1) preliminary punch list of items that do

1157 not meet the contract requirements at the time of substantial
1158 completion and one (1) final list immediately before final
1159 completion and final payment.

1160 (u) **Procurement of construction services by state**
1161 **institutions of higher learning.** Contracts for privately financed
1162 construction of auxiliary facilities on the campus of a state
1163 institution of higher learning may be awarded by the Board of
1164 Trustees of State Institutions of Higher Learning to the lowest
1165 and best bidder, where sealed bids are solicited, or to the
1166 offeror whose proposal is determined to represent the best value
1167 to the citizens of the State of Mississippi, where requests for
1168 proposals are solicited.

1169 (v) **Purchase authorization clarification.** Nothing in
1170 this section shall be construed as authorizing any purchase not
1171 authorized by law.

1172 **SECTION 7.** Section 31-11-3, Mississippi Code of 1972, is
1173 amended as follows:

1174 31-11-3. (1) The Department of Finance and Administration,
1175 for the purposes of carrying out the provisions of this chapter,
1176 in addition to all other rights and powers granted by law, shall
1177 have full power and authority to employ and compensate architects
1178 or other employees necessary for the purpose of making
1179 inspections, preparing plans and specifications, supervising the
1180 erection of any buildings, and making any repairs or additions as
1181 may be determined by the Department of Finance and Administration
1182 to be necessary, pursuant to the rules and regulations of the
1183 State Personnel Board. The department shall have entire control
1184 and supervision of, and determine what, if any, buildings,
1185 additions, repairs or improvements are to be made under the
1186 provisions of this chapter, under regulations adopted by the
1187 Public Procurement Review Board.

1188 (2) The department shall have full power to erect buildings,
1189 make repairs, additions or improvements, and buy materials,

1190 supplies and equipment for any of the institutions or departments
1191 of the state under regulations adopted by the Public Procurement
1192 Review Board. In addition to other powers conferred, the
1193 department shall have full power and authority as directed by the
1194 Legislature, or when funds have been appropriated for its use for
1195 these purposes, to:

1196 (a) Build a state office building;

1197 (b) Build suitable plants or buildings for the use and
1198 housing of any state schools or institutions, including the
1199 building of plants or buildings for new state schools or
1200 institutions, as provided for by the Legislature;

1201 (c) Provide state aid for the construction of school
1202 buildings;

1203 (d) Promote and develop the training of returned
1204 veterans of the United States in all sorts of educational and
1205 vocational learning to be supplied by the proper educational
1206 institution of the State of Mississippi, and in so doing allocate
1207 monies appropriated to it for these purposes to the Governor for
1208 use by him in setting up, maintaining and operating an office and
1209 employing a state director of on-the-job training for veterans and
1210 the personnel necessary in carrying out Public Law No. 346 of the
1211 United States;

1212 (e) Build and equip a hospital and administration
1213 building at the Mississippi State Penitentiary;

1214 (f) Build and equip additional buildings and wards at
1215 the Boswell Retardation Center;

1216 (g) Construct a sewage disposal and treatment plant at
1217 the state insane hospital, and in so doing acquire additional land
1218 as may be necessary, and to exercise the right of eminent domain
1219 in the acquisition of this land;

1220 (h) Build and equip the Mississippi central market and
1221 purchase or acquire by eminent domain, if necessary, any lands
1222 needed for this purpose;

1223 (i) Build and equip suitable facilities for a training
1224 and employing center for the blind;

1225 (j) Build and equip a gymnasium at Columbia Training
1226 School;

1227 (k) Approve or disapprove the expenditure of any money
1228 appropriated by the Legislature when authorized by the bill making
1229 the appropriation;

1230 (l) Expend monies appropriated to it in paying the
1231 state's part of the cost of any street paving;

1232 (m) Sell and convey state lands when authorized by the
1233 Legislature, cause said lands to be properly surveyed and platted,
1234 execute all deeds or other legal instruments, and do any and all
1235 other things required to effectively carry out the purpose and
1236 intent of the Legislature. Any transaction which involves state
1237 lands under the provisions of this paragraph shall be done in a
1238 manner consistent with the provisions of Section 29-1-1;

1239 (n) Collect and receive from educational institutions
1240 of the State of Mississippi monies required to be paid by these
1241 institutions to the state in carrying out any veterans'
1242 educational programs;

1243 (o) Purchase lands for building sites, or as additions
1244 to building sites, for the erection of buildings and other
1245 facilities which the department is authorized to erect, and
1246 demolish and dispose of old buildings, when necessary for the
1247 proper construction of new buildings. Any transaction which
1248 involves state lands under the provisions of this paragraph shall
1249 be done in a manner consistent with the provisions of Section
1250 29-1-1;

1251 (p) Obtain business property insurance with a
1252 deductible of not less than One Hundred Thousand Dollars
1253 (\$100,000.00) on state-owned buildings under the management and
1254 control of the department; and

1255 (q) In consultation with and approval by the Chairmen
1256 of the Public Property Committees of the Senate and the House of
1257 Representatives, enter into contracts for the purpose of providing
1258 parking spaces for state employees who work in the Woolfolk
1259 Building, the Carroll Gartin Justice Building or the Walter
1260 Sillers Office Building. The provisions of this paragraph (q)
1261 shall stand repealed on July 1, 2010.

1262 (3) The department shall survey state-owned and
1263 state-utilized buildings to establish an estimate of the costs of
1264 architectural alterations, pursuant to the Americans With
1265 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The
1266 department shall establish priorities for making the identified
1267 architectural alterations and shall make known to the Legislative
1268 Budget Office and to the Legislature the required cost to
1269 effectuate such alterations. To meet the requirements of this
1270 section, the department shall use standards of accessibility that
1271 are at least as stringent as any applicable federal requirements
1272 and may consider:

1273 (a) Federal minimum guidelines and requirements issued
1274 by the United States Architectural and Transportation Barriers
1275 Compliance Board and standards issued by other federal agencies;

1276 (b) The criteria contained in the American Standard
1277 Specifications for Making Buildings Accessible and Usable by the
1278 Physically Handicapped and any amendments thereto as approved by
1279 the American Standards Association, Incorporated (ANSI Standards);

1280 (c) Design manuals;

1281 (d) Applicable federal guidelines;

1282 (e) Current literature in the field;

1283 (f) Applicable safety standards; and

1284 (g) Any applicable environmental impact statements.

1285 (4) The department shall observe the provisions of Section
1286 31-5-23, in letting contracts and shall use Mississippi products,
1287 including paint, varnish and lacquer which contain as vehicles

1288 tung oil and either ester gum or modified resin (with rosin as the
1289 principal base of constituents), and turpentine shall be used as a
1290 solvent or thinner, where these products are available at a cost
1291 not to exceed the cost of products grown, produced, prepared, made
1292 or manufactured outside of the State of Mississippi.

1293 (5) The department shall have authority to accept grants,
1294 loans or donations from the United States government or from any
1295 other sources for the purpose of matching funds in carrying out
1296 the provisions of this chapter.

1297 (6) The department shall build a wheelchair ramp at the War
1298 Memorial Building which complies with all applicable federal laws,
1299 regulations and specifications regarding wheelchair ramps.

1300 (7) The department shall review and preapprove all
1301 architectural or engineering service contracts entered into by any
1302 state agency, institution, commission, board or authority
1303 regardless of the source of funding used to defray the costs of
1304 the construction or renovation project for which services are to
1305 be obtained. The provisions of this subsection (7) shall not
1306 apply to any architectural or engineering contract paid for by
1307 self-generated funds of any of the state institutions of higher
1308 learning, nor shall they apply to community college projects that
1309 are funded from local funds or other nonstate sources which are
1310 outside the Department of Finance and Administration's
1311 appropriations or as directed by the Legislature. The provisions
1312 of this subsection (7) shall not apply to any construction or
1313 design projects of the State Military Department that are funded
1314 from federal funds or other nonstate sources.

1315 (8) The department shall have the authority to obtain
1316 annually from the state institutions of higher learning
1317 information on all building, construction and renovation projects
1318 including duties, responsibilities and costs of any architect or
1319 engineer hired by any such institutions.

1320 (9) * * * As an alternative to other methods of awarding
1321 contracts as prescribed by law, the department may elect to use
1322 the method of contracting for construction projects set out in
1323 Sections 31-7-13.1 and 31-7-13.2; however, the dual-phase
1324 design-build method of construction contracting authorized under
1325 Section 31-7-13.1 may be used only when the Legislature has
1326 specifically required or authorized the use of this method in the
1327 legislation authorizing a project.

1328 * * *

1329 **SECTION 8.** Section 65-1-85, Mississippi Code of 1972, is
1330 amended as follows:

1331 65-1-85. (1) All contracts by or on behalf of the
1332 commission for the purchase of materials, equipment and supplies
1333 shall be made in compliance with Section 31-7-1 et seq. All
1334 contracts by or on behalf of the commission for construction,
1335 reconstruction or other public work authorized to be done under
1336 the provisions of this chapter, except maintenance, shall be made
1337 by the executive director, subject to the approval of the
1338 commission, only upon competitive bids after due advertisement as
1339 follows, to wit:

1340 (a) Advertisement for bids shall be in accordance with
1341 such rules and regulations, in addition to those herein provided,
1342 as may be adopted therefor by the commission, and the commission
1343 is authorized and empowered to make and promulgate such rules and
1344 regulations as it may deem proper, to provide and adopt standard
1345 specifications for road and bridge construction, and to amend such
1346 rules and regulations from time to time.

1347 (b) The advertisement shall be inserted twice, being
1348 once a week for two (2) successive weeks in a newspaper published
1349 at the seat of government in Jackson, Mississippi, having a
1350 general circulation throughout the state, and no letting shall be
1351 less than fourteen (14) days nor more than sixty (60) days after
1352 the publication of the first notice of such letting, and notices

1353 of such letting may be placed in a metropolitan paper or national
1354 trade publication.

1355 (c) Before advertising for such work, the executive
1356 director shall cause to be prepared and filed in the department
1357 detailed plans and specifications covering the work proposed to be
1358 done and copies of the plans and specifications shall be subject
1359 to inspection by any citizen during all office hours and made
1360 available to all prospective bidders upon such reasonable terms
1361 and conditions as may be required by the commission. A fee shall
1362 be charged equal to the cost of producing a copy of any such plans
1363 and specifications.

1364 (d) All such contracts shall be let to a responsible
1365 bidder with the lowest and best bid, and a record of all bids
1366 received for construction and reconstruction shall be preserved.

1367 (e) Each bid for such a construction and reconstruction
1368 contract must be accompanied by a cashier's check, a certified
1369 check or bidders bond executed by a surety company authorized to
1370 do business in the State of Mississippi, in the principal amount
1371 of not less than five percent (5%) of the bid, guaranteeing that
1372 the bidder will give bond and enter into a contract for the
1373 faithful performance of the contract according to plans and
1374 specifications on file.

1375 (f) Bonds shall be required of the successful bidder in
1376 an amount equal to the contract price. The contract price shall
1377 mean the entire cost of the particular contract let. In the event
1378 change orders are made after the execution of a contract which
1379 results in increasing the total contract price, additional bond in
1380 the amount of the increased cost may be required. The surety or
1381 sureties on such bonds shall be a surety company or surety
1382 companies authorized to do business in the State of Mississippi,
1383 all bonds to be payable to the State of Mississippi and to be
1384 conditioned for the prompt, faithful and efficient performance of
1385 the contract according to plans and specifications, and for the

1386 prompt payment of all persons furnishing labor, material,
1387 equipment and supplies therefor. Such bonds shall be subject to
1388 the additional obligation that the principal and surety or
1389 sureties executing the same shall be liable to the state in a
1390 civil action instituted by the state at the instance of the
1391 commission or any officer of the state authorized in such cases,
1392 for double any amount in money or property the state may lose or
1393 be overcharged or otherwise defrauded of by reason of any wrongful
1394 or criminal act, if any, of the contractor, his agent or
1395 employees.

1396 (2) With respect to equipment used in the construction,
1397 reconstruction or other public work authorized to be done under
1398 the provisions of this chapter: the word "equipment," in addition
1399 to all equipment incorporated into or fully consumed in connection
1400 with such project, shall include the reasonable value of the use
1401 of all equipment of every kind and character and all accessories
1402 and attachments thereto which are reasonably necessary to be used
1403 and which are used in carrying out the performance of the
1404 contract, and the reasonable value of the use thereof, during the
1405 period of time the same are used in carrying out the performance
1406 of the contract, shall be the amount as agreed upon by the persons
1407 furnishing the equipment and those using the same to be paid
1408 therefor, which amount, however, shall not be in excess of the
1409 maximum current rates and charges allowable for leasing or renting
1410 as specified in Section 65-7-95; the word "labor" shall include
1411 all work performed in repairing equipment used in carrying out the
1412 performance of the contract, which repair labor is reasonably
1413 necessary to the efficient operation of said equipment; and the
1414 words "materials" and "supplies" shall include all repair parts
1415 installed in or on equipment used in carrying out the performance
1416 of the contract, which repair parts are reasonably necessary to
1417 the efficient operation of said equipment.

1418 (3) The executive director, subject to the approval of the
1419 commission, shall have the right to reject any and all bids,
1420 whether such right is reserved in the notice or not.

1421 (4) The commission may require the pre-qualification of any
1422 and all bidders and the failure to comply with pre-qualification
1423 requirements may be the basis for the rejection of any bid by the
1424 commission. The commission may require the pre-qualification of
1425 any and all subcontractors before they are approved to participate
1426 in any contract awarded under this section.

1427 (5) The commission may adopt rules and regulations for the
1428 termination of any previously awarded contract which is not timely
1429 proceeding toward completion. The failure of a contractor to
1430 comply with such rules and regulations shall be a lawful basis for
1431 the commission to terminate the contract with such contractor. In
1432 the event of a termination under such rules and regulations, the
1433 contractor shall not be entitled to any payment, benefit or
1434 damages beyond the cost of the work actually completed.

1435 (6) Any contract for construction or paving of any highway
1436 may be entered into for any cost which does not exceed the amount
1437 of funds that may be made available therefor through bond issues
1438 or from other sources of revenue, and the letting of contracts for
1439 such construction or paving shall not necessarily be delayed until
1440 the funds are actually on hand, provided authorization for the
1441 issuance of necessary bonds has been granted by law to supplement
1442 other anticipated revenue, or when the department certifies to the
1443 Department of Finance and Administration and the Legislative
1444 Budget Office that projected receipts of funds by the department
1445 will be sufficient to pay such contracts as they become due and
1446 the Department of Finance and Administration determines that the
1447 projections are reasonable and receipts will be sufficient to pay
1448 the contracts as they become due. The Department of Finance and
1449 Administration shall spread such determination on its minutes
1450 prior to the letting of any contracts based on projected receipts.

1451 Nothing in this subsection shall prohibit the issuance of bonds,
1452 which have been authorized, at any time in the discretion of the
1453 State Bond Commission, nor to prevent investment of surplus funds
1454 in United States government bonds or State of Mississippi bonds as
1455 presently authorized by Section 12, Chapter 312, Laws of 1956.

1456 (7) All other contracts for work to be done under the
1457 provisions of this chapter and for the purchase of materials,
1458 equipment and supplies to be used as provided for in this chapter
1459 shall be made in compliance with Section 31-7-1 et seq.

1460 (8) The commission shall not empower or authorize the
1461 executive director, or any one or more of its members, or any
1462 engineer or other person to let or make contracts for the
1463 construction or repair of public roads, or building bridges, or
1464 for the purchase of material, equipment or supplies contrary to
1465 the provisions of this chapter as set forth in this section,
1466 except in cases of flood or other cases of emergency where the
1467 public interest requires that the work be done or the materials,
1468 equipment or supplies be purchased without the delay incident to
1469 advertising for competitive bids. Such emergency contracts may be
1470 made without advertisement under such rules and regulations as the
1471 commission may prescribe.

1472 (9) The executive director, subject to the approval of the
1473 commission, is authorized to negotiate and make agreements with
1474 communities and/or civic organizations for landscaping,
1475 beautification and maintenance of highway rights-of-way; however,
1476 nothing in this subsection shall be construed as authorization for
1477 the executive director or commission to participate in such a
1478 project to an extent greater than the average cost for maintenance
1479 of shoulders, backslopes and median areas with respect thereto.

1480 (10) The executive director may negotiate and enter into
1481 contracts with private parties for the mowing of grass and
1482 trimming of vegetation on the rights-of-way of state highways
1483 whenever such practice is possible and cost effective.

1484 (11) (a) As an alternative to the method of awarding
1485 contracts as otherwise provided in this section, the commission
1486 may use the design-build method of contracting for the following:

1487 (i) Projects for the Mississippi Development
1488 Authority pursuant to agreements between both governmental
1489 entities;

1490 (ii) Any project with an estimated cost of * * *
1491 more than Ten Million Dollars (\$10,000,000.00), not to exceed two
1492 (2) projects per fiscal year; and

1493 (iii) Any project which has an estimated cost of
1494 more than Fifty Million Dollars (\$50,000,000.00), not to exceed
1495 one (1) project per fiscal year.

1496 (b) As used in this subsection, the term "design-build"
1497 method of contracting means a contract that combines the design
1498 and construction phases of a project into a single contract and
1499 the contractor is required to satisfactorily perform, at a
1500 minimum, both the design and construction of the project.

1501 (c) The commission shall establish detailed criteria
1502 for the selection of the successful design-build contractor in
1503 each request for design-build proposals. The evaluation of the
1504 selection committee is a public record and shall be maintained for
1505 a minimum of ten (10) years after project completion.

1506 (d) The commission shall maintain detailed records on
1507 projects separate and apart from its regular record keeping. The
1508 commission shall file a report to the Legislature evaluating the
1509 design-build method of contracting by comparing it to the low-bid
1510 method of contracting. At a minimum, the report must include:

1511 (i) The management goals and objectives for the
1512 design-build system of management;

1513 (ii) A complete description of the components of
1514 the design-build management system, including a description of the
1515 system the department put into place on all projects managed under
1516 the system to insure that it has the complete information on

1517 highway segment costs and to insure proper analysis of any
1518 proposal the commission receives from a highway contractor;

1519 (iii) The accountability systems the
1520 Transportation Department established to monitor any design-build
1521 project's compliance with specific goals and objectives for the
1522 project;

1523 (iv) The outcome of any project or any interim
1524 report on an ongoing project let under a design-build management
1525 system showing compliance with the goals, objectives, policies and
1526 procedures the department set for the project; and

1527 (v) The method used by the department to select
1528 projects to be let under the design-build system of management and
1529 all other systems, policies and procedures that the department
1530 considered as necessary components to a design-build management
1531 system.

1532 (e) All contracts let under the provisions of this
1533 subsection shall be subject to oversight and review by the State
1534 Auditor. The State Auditor shall file a report with the
1535 Legislature on or before January 1 of each year detailing his
1536 findings with regard to any contract let or project performed in
1537 violation of the provisions of this subsection. The actual and
1538 necessary expenses incurred by the State Auditor in complying with
1539 this paragraph (e) shall be paid for and reimbursed by the
1540 Mississippi Department of Transportation out of funds made
1541 available for the contract or contracts let and project or
1542 projects performed.

1543 (f) As an alternative to the authority granted to the
1544 commission in this subsection, the commission may elect to use the
1545 method of contracting for construction projects set out in Section
1546 31-7-13.1 and 31-7-13.2; however, the dual-phase design-build
1547 method of construction contracting authorized under Section
1548 31-7-13.1 may be used only when the Legislature has specifically

1549 required or authorized the use of this method in the legislation
1550 authorizing a project.

1551 **SECTION 9.** This act shall take effect and be in force from
1552 and after July 1, 2007.