

By: Representative Weathersby

To: Public Property;  
Appropriations

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

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

26 **SECTION 1.** The following shall be codified as Section  
 27 31-7-13.1, Mississippi Code of 1972:

28 31-7-13.1. (1) The method of contracting for construction  
 29 described in this section shall be known as the "dual-phase  
 30 design-build method" of construction contracting. This method of  
 31 construction contracting may be used only when the Legislature has  
 32 specifically required or authorized the use of this method in the  
 33 legislation authorizing a project, or when the Department of  
 34 Finance and Administration, the governing board or commission of  
 35 an agency or the governing authority makes a determination,  
 36 entered on its minutes, with specific findings for the project  
 37 demonstrating how it is in the best interest of the public to  
 38 enter into a dual-phase design-build construction contract. Use

39 of this method for projects funded by the Legislature or  
40 administered by the Department of Finance and Administration shall  
41 be at the discretion of the Bureau of Building, Grounds and Real  
42 Property Management. At a minimum, the determination must include  
43 a detailed explanation of why a dual-phase design-build approach  
44 for a particular project satisfies the public need better than the  
45 traditional design-bid-build approach based on the following  
46 criteria:

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

49 (b) The size and type of project suitable for  
50 design-build.

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

60 (a) Drawings must show overall building dimensions and  
61 major lines of dimensions, and site plans that show topography,  
62 adjacent buildings and utilities;

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

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

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

72           (3) The agency or governing authority shall cause to be  
73 published once a week, for at least two (2) consecutive weeks in a  
74 regular newspaper published in the county in which the project is  
75 to be located, or a newspaper with statewide circulation, a notice  
76 inviting proposals for the dual-phase design-build construction  
77 project. Such proposals shall not be opened in less than fifteen  
78 (15) working days after the last notice is published. The notice  
79 must inform potential offerors of how to obtain the scope of work  
80 statement developed for the project, and the notice must contain  
81 such other information to describe adequately the general nature  
82 and scope of the project so as to promote full, equal and open  
83 competition.

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

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

104           (6) If the agency or governing authority accepts a proposal  
105 other than the lowest dollar proposal actually submitted, the  
106 agency or governing authority shall enter on its minutes detailed  
107 calculations and a narrative summary showing why the accepted  
108 proposal was determined to provide the best value, and the agency  
109 or governing authority shall state specifically on its minutes the  
110 justification for its award.

111           (7) All facilities that are governed by this section shall  
112 be designed and constructed to comply with standards equal to or  
113 exceeding the minimum building code standards employed by the  
114 state as required under Section 31-11-33 in force at the time of  
115 contracting. All private contractors or private entities  
116 contracting or performing under this section must comply at all  
117 times with all applicable laws, codes and other legal requirements  
118 pertaining to the project.

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

137 any obligation to pay any additional compensation to the  
138 unsuccessful offerors. Notwithstanding the other provisions of  
139 this subsection, an unsuccessful short-list offeror may elect to  
140 waive the stipulated fee. If an unsuccessful short-list offeror  
141 elects to waive the stipulated fee, the agency or governing  
142 authority may not use ideas and information contained in the  
143 offeror's proposal, except that this restriction does not prevent  
144 the agency or governing authority from using any idea or  
145 information if the idea or information is also included in a  
146 proposal of an offeror that accepts the stipulated fee.

147 (9) This section shall not authorize the awarding of  
148 construction contracts according to any contracting method that  
149 does not require the contractor to satisfactorily perform, at a  
150 minimum, both any balance of design and construction of the  
151 project for which the contract is awarded.

152 **SECTION 2.** The following shall be codified as Section  
153 31-7-13.2, Mississippi Code of 1972:

154 31-7-13.2 (1) When procuring design professional services  
155 under a construction manager at risk project delivery method the  
156 agency or governing authority shall procure the services of a  
157 design professional pursuant to qualifications-based selection  
158 procedures.

159 (2) Before the substantial completion of the design  
160 documents, the agency or governing authority may elect to hire a  
161 construction manager.

162 (3) When procuring construction management services the  
163 agency or governing authority shall follow the  
164 qualifications-based selection procedures as outlined in  
165 subsection (8) of this section or the competitive sealed proposal  
166 procedures as outlined in Section 31-17-13.

167 (4) The agency or governing authority may require the  
168 architect or engineer and the construction manager, by contract,  
169 to cooperate in the design, planning and scheduling, and

170 construction process. The contract shall not make the primary  
171 designer or construction manager a subcontractor or joint venture  
172 partner to the other or limit the primary designer's or  
173 construction manager's independent obligations to the agency or  
174 governing authority.

175 (5) Notwithstanding anything to the contrary in this  
176 chapter:

177 (a) Each project for construction under a construction  
178 manager at risk contract shall be a specific, single project with  
179 a minimum construction cost of Twenty-Five Million Dollars  
180 (\$25,000,000.00).

181 (b) Each project under a construction manager at risk  
182 contract shall be a specific, single project. For the purposes of  
183 this paragraph, "specific, single project" means a project that is  
184 constructed at a single location, at a common location or for a  
185 common purpose.

186 (6) Agencies shall retain an independent architectural or  
187 engineering firm to provide guidance and administration of the  
188 professional engineering or professional architecture aspects of  
189 the project throughout the development of the scope, design, and  
190 construction of the project.

191 (7) The State shall, on an annual basis, compile and make  
192 public all proceedings, records, contracts and other public  
193 records relating to procurement transactions authorized under this  
194 section.

195 (8) For purposes of this section the "qualifications-based  
196 selection procedure" shall include:

197 (a) Publicly announcing all requirements for  
198 architectural, engineering, and land surveying services, to  
199 procure these services on the basis of demonstrated competence and  
200 qualifications, and to negotiate contracts at fair and reasonable  
201 prices after the most qualified firm has been selected.

202           (b) Agencies or governing authorities shall establish  
203 procedures to prequalify firms seeking to provide architectural,  
204 engineering, and land surveying services or may use  
205 prequalification lists from other state agencies or governing  
206 authorities to meet the requirements of this section.

207           (c) Whenever a project requiring architectural,  
208 engineering, or land surveying services is proposed for an agency  
209 or governing authority, the agency or governing authority shall  
210 provide advance notice published in a professional services  
211 bulletin or advertised within the official State newspaper setting  
212 forth the projects and services to be procured for not less than  
213 fourteen (14) days. The professional services bulletin shall be  
214 mailed to each firm that has requested the information or is  
215 prequalified under Section 31-7-13. The professional services  
216 bulletin shall include a description of each project and shall  
217 state the time and place for interested firms to submit a letter  
218 of interest and, if required by the public notice, a statement of  
219 qualifications.

220           (d) The agency or governing authority shall evaluate  
221 the firms submitting letters of interest and other prequalified  
222 firms, taking into account qualifications. The agency or  
223 governing authority may consider, but shall not be limited to,  
224 considering:

- 225                   (i) Ability of professional personnel;
- 226                   (ii) Past record and experience;
- 227                   (iii) Performance data on file;
- 228                   (iv) Willingness to meet time requirements;
- 229                   (v) Location;
- 230                   (vi) Workload of the firm; and
- 231                   (vii) Any other qualifications based factors as the  
232 State agency or governing authority may determine in writing are  
233 applicable.

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

238           (e) The agency or governing authority shall establish a  
239 committee to select firms to provide architectural, engineering,  
240 and land surveying services. A selection committee may include at  
241 least one (1) public member nominated by a statewide association  
242 of the profession affected. The public member may not be employed  
243 or associated with any firm holding a contract with the agency or  
244 governing authority nor may the public members' firm be considered  
245 for a contract with that agency or governing authority while  
246 serving as a public member of the committee. In no case shall the  
247 agency or governing authority, before selecting a firm for  
248 negotiation under paragraph (f) of this section, seek formal or  
249 informal submission of verbal or written estimates of costs or  
250 proposals in terms of dollars, hours required, percentage of  
251 construction cost, or any other measure of compensation.

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

264           (g) The agency or governing authority shall prepare a  
265 written description of the scope of the proposed services to be  
266 used as a basis for negotiations and shall negotiate a contract

267 with the highest qualified firm at compensation that the agency or  
268 governing authority determines in writing to be fair and  
269 reasonable. In making this decision, the agency or governing  
270 authority shall take into account the estimated value, scope,  
271 complexity, and professional nature of the services to be  
272 rendered. In no case may the agency or governing authority  
273 establish a maximum overhead rate or other payment formula  
274 designed to eliminate firms from contention or restrict  
275 competition or negotiation of fees. If the agency or governing  
276 authority is unable to negotiate a satisfactory contract with the  
277 firm that is most preferred, negotiations with that firm shall be  
278 terminated. The agency or governing authority shall then begin  
279 negotiations with the firm that is next preferred. If the agency  
280 or governing authority is unable to negotiate a satisfactory  
281 contract with that firm, negotiations with that firm shall be  
282 terminated. The agency or governing authority shall then begin  
283 negotiations with the firm that is next preferred. If the agency  
284 or governing authority is unable to negotiate a satisfactory  
285 contract with any of the selected firms, the agency or governing  
286 authority shall re-evaluate the architectural, engineering, or  
287 land surveying services requested, including the estimated value,  
288 scope, complexity, and fee requirements. The agency or governing  
289 authority shall then compile a second list of not less than three  
290 (3) qualified firms and proceed in accordance with the provisions  
291 of this section. A firm negotiating a contract with an agency or  
292 governing authority shall negotiate subcontracts for  
293 architectural, engineering, and land surveying services at  
294 compensation that the firm determines in writing to be fair and  
295 reasonable based upon a written description of the scope of the  
296 proposed services.

297       **SECTION 3.** The following shall be codified as Section  
298 37-101-44, Mississippi Code of 1972:

299           37-101-44. (1) In lieu of exercising the authority set  
300 forth in Section 37-101-43 and before entering into or awarding  
301 any lease under Section 37-101-41, the Board of Trustees of State  
302 Institutions of Higher Learning may award contracts to a single  
303 entity for privately financed design and construction of  
304 facilities on university campuses if the entities receiving the  
305 contract or contracts and those entities to which work or services  
306 are subcontracted are duly licensed and qualified in the state to  
307 perform the contract or contracts. State General Fund  
308 appropriations or bonds backed by the state may not be used to  
309 finance the construction or maintenance of any such facility.

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

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

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

331           Upon completion of the plans and specifications and the  
332 approval thereof by the board, and before entering into any lease  
333 contract, the board shall cause to be published once a week for at  
334 least three (3) consecutive weeks and not less than twenty-one  
335 (21) days in at least one (1) newspaper having a general  
336 circulation in the county in which the interested institution is  
337 located and in one (1) newspaper with a general statewide  
338 circulation, a notice inviting bids or proposals for the leasing,  
339 construction and leasing back of the land and constructed  
340 facility, the facility to be constructed in accordance with the  
341 plans and specifications. The notice shall distinctly state the  
342 thing to be done, and invite sealed proposals, to be filed with  
343 the board, to do the thing to be done. The notice shall contain  
344 the following specific provisions, together with such others as  
345 the board in its discretion deems appropriate, to wit: bids shall  
346 be accompanied by a bid security evidenced by a certified or  
347 cashier's check or bid-bond payable to the board in a sum of not  
348 less than five percent (5%) of the gross construction cost of the  
349 facility to be constructed as estimated by the board and the bids  
350 shall contain proof satisfactory to the board of interim and  
351 permanent financing. The board shall state in the notice when  
352 construction shall commence. The bid shall contain the proposed  
353 contractor's certificate of responsibility number and bidder's  
354 license. In all cases, before the notice shall be published, the  
355 plans and specifications shall be filed with the board and also in  
356 the office of the president of the interested institution, there  
357 to remain.

358           The board shall award the lease contract to the lowest and  
359 best bidder, who will comply with the terms imposed by the  
360 contract documents. At the time of the awarding of the lease  
361 contract the successful bidder shall enter into bond with  
362 sufficient sureties, to be approved by the board, in such penalty  
363 as may be fixed by the board, but in no case to be less than the

364 estimated gross construction cost of the facility to be  
365 constructed as estimated by the board, conditioned for the prompt,  
366 proper and efficient performance of the contract. The bond shall  
367 be made by an authorized corporate surety bonding company.  
368 The \* \* \* bid security herein provided for shall be forfeited if  
369 the successful bidder fails to enter into lease contract and  
370 commence construction within the time limitation set forth in the  
371 notice. At such time, and simultaneously with the signing of the  
372 contract, the successful bidder shall deposit a sum of money, in  
373 cash or certified or cashier's check, not less than the bid  
374 security previously deposited as bid security to reimburse the  
375 interested institution for all sums expended by it for  
376 architectural services and other expenditures of the board and  
377 interested institution connected with the bided lease contract, of  
378 which such other anticipated expenditures notice is to be given to  
379 bidder in the notice. The bid security posted by an unsuccessful  
380 bidder shall be refunded to him.

381 (b) Pursuant to the authority granted under Section  
382 37-101-44, the requirements of paragraph (a) of this section shall  
383 not apply to the Board of Trustees of State Institutions of Higher  
384 Learning to grant to universities the authority to contract with a  
385 single entity for privately financed design and construction of  
386 facilities on the university's campus.

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

389 37-101-41. (a) Except as otherwise provided in paragraph  
390 (b) of this section, the Board of Trustees of State Institutions  
391 of Higher Learning is hereby authorized and empowered to lease to  
392 private individuals or corporations \* \* \* any land at any of the  
393 following state-supported institutions: Mississippi State  
394 University of Agriculture and Applied Science, Jackson State  
395 University, Mississippi Valley State University, University of  
396 Mississippi, Alcorn State University, University of Southern

397 Mississippi, Mississippi University for Women and Delta State  
398 University, for the purpose of erecting auxiliary facilities  
399 thereon for active faculty and students. The auxiliary  
400 facilities shall be constructed thereon by private financing, and  
401 shall be leased back to the board for use by the concerned  
402 state-supported institution of higher learning. The lease shall  
403 contain a provision permitting the board to purchase the building  
404 located thereon for the sum of One Dollar (\$1.00) after payment by  
405 the board of all sums of money due under said lease.

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

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

419 31-7-13. All agencies and governing authorities shall  
420 purchase their commodities and printing; contract for garbage  
421 collection or disposal; contract for solid waste collection or  
422 disposal; contract for sewage collection or disposal; contract for  
423 public construction; and contract for rentals as herein provided.

424 (a) **Bidding procedure for purchases not over \$3,500.00.**  
425 Purchases which do not involve an expenditure of more than Three  
426 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or  
427 shipping charges, may be made without advertising or otherwise  
428 requesting competitive bids. However, nothing contained in this  
429 paragraph (a) shall be construed to prohibit any agency or

430 governing authority from establishing procedures which require  
431 competitive bids on purchases of Three Thousand Five Hundred  
432 Dollars (\$3,500.00) or less.

433           (b) **Bidding procedure for purchases over \$3,500.00 but**  
434 **not over \$15,000.00.** Purchases which involve an expenditure of  
435 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
436 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
437 freight and shipping charges may be made from the lowest and best  
438 bidder without publishing or posting advertisement for bids,  
439 provided at least two (2) competitive written bids have been  
440 obtained. Any governing authority purchasing commodities pursuant  
441 to this paragraph (b) may authorize its purchasing agent, or his  
442 designee, with regard to governing authorities other than  
443 counties, or its purchase clerk, or his designee, with regard to  
444 counties, to accept the lowest and best competitive written bid.  
445 Such authorization shall be made in writing by the governing  
446 authority and shall be maintained on file in the primary office of  
447 the agency and recorded in the official minutes of the governing  
448 authority, as appropriate. The purchasing agent or the purchase  
449 clerk, or their designee, as the case may be, and not the  
450 governing authority, shall be liable for any penalties and/or  
451 damages as may be imposed by law for any act or omission of the  
452 purchasing agent or purchase clerk, or their designee,  
453 constituting a violation of law in accepting any bid without  
454 approval by the governing authority. The term "competitive  
455 written bid" shall mean a bid submitted on a bid form furnished by  
456 the buying agency or governing authority and signed by authorized  
457 personnel representing the vendor, or a bid submitted on a  
458 vendor's letterhead or identifiable bid form and signed by  
459 authorized personnel representing the vendor. "Competitive" shall  
460 mean that the bids are developed based upon comparable  
461 identification of the needs and are developed independently and  
462 without knowledge of other bids or prospective bids. Bids may be

463 submitted by facsimile, electronic mail or other generally  
464 accepted method of information distribution. Bids submitted by  
465 electronic transmission shall not require the signature of the  
466 vendor's representative unless required by agencies or governing  
467 authorities.

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

469 (i) **Publication requirement.** Purchases which  
470 involve an expenditure of more than Fifteen Thousand Dollars  
471 (\$15,000.00), exclusive of freight and shipping charges, may be  
472 made from the lowest and best bidder after advertising for  
473 competitive sealed bids once each week for two (2) consecutive  
474 weeks in a regular newspaper published in the county or  
475 municipality in which such agency or governing authority is  
476 located. The date as published for the bid opening shall not be  
477 less than seven (7) working days after the last published notice;  
478 however, if the purchase involves a construction project in which  
479 the estimated cost is in excess of Fifteen Thousand Dollars  
480 (\$15,000.00), such bids shall not be opened in less than fifteen  
481 (15) working days after the last notice is published and the  
482 notice for the purchase of such construction shall be published  
483 once each week for two (2) consecutive weeks. The notice of  
484 intention to let contracts or purchase equipment shall state the  
485 time and place at which bids shall be received, list the contracts  
486 to be made or types of equipment or supplies to be purchased, and,  
487 if all plans and/or specifications are not published, refer to the  
488 plans and/or specifications on file. If there is no newspaper  
489 published in the county or municipality, then such notice shall be  
490 given by posting same at the courthouse, or for municipalities at  
491 the city hall, and at two (2) other public places in the county or  
492 municipality, and also by publication once each week for two (2)  
493 consecutive weeks in some newspaper having a general circulation  
494 in the county or municipality in the above provided manner. On  
495 the same date that the notice is submitted to the newspaper for

496 publication, the agency or governing authority involved shall mail  
497 written notice to, or provide electronic notification to the main  
498 office of the Mississippi Contract Procurement Center that  
499 contains the same information as that in the published notice.

500           (ii) **Bidding process amendment procedure.** If all  
501 plans and/or specifications are published in the notification,  
502 then the plans and/or specifications may not be amended. If all  
503 plans and/or specifications are not published in the notification,  
504 then amendments to the plans/specifications, bid opening date, bid  
505 opening time and place may be made, provided that the agency or  
506 governing authority maintains a list of all prospective bidders  
507 who are known to have received a copy of the bid documents and all  
508 such prospective bidders are sent copies of all amendments. This  
509 notification of amendments may be made via mail, facsimile,  
510 electronic mail or other generally accepted method of information  
511 distribution. No addendum to bid specifications may be issued  
512 within two (2) working days of the time established for the  
513 receipt of bids unless such addendum also amends the bid opening  
514 to a date not less than five (5) working days after the date of  
515 the addendum.

516           (iii) **Filing requirement.** In all cases involving  
517 governing authorities, before the notice shall be published or  
518 posted, the plans or specifications for the construction or  
519 equipment being sought shall be filed with the clerk of the board  
520 of the governing authority. In addition to these requirements, a  
521 bid file shall be established which shall indicate those vendors  
522 to whom such solicitations and specifications were issued, and  
523 such file shall also contain such information as is pertinent to  
524 the bid.

525           (iv) **Specification restrictions.**

526           1. Specifications pertinent to such bidding  
527 shall be written so as not to exclude comparable equipment of  
528 domestic manufacture. However, if valid justification is

529 presented, the Department of Finance and Administration or the  
530 board of a governing authority may approve a request for specific  
531 equipment necessary to perform a specific job. Further, such  
532 justification, when placed on the minutes of the board of a  
533 governing authority, may serve as authority for that governing  
534 authority to write specifications to require a specific item of  
535 equipment needed to perform a specific job. In addition to these  
536 requirements, from and after July 1, 1990, vendors of relocatable  
537 classrooms and the specifications for the purchase of such  
538 relocatable classrooms published by local school boards shall meet  
539 all pertinent regulations of the State Board of Education,  
540 including prior approval of such bid by the State Department of  
541 Education.

542                   2. Specifications for construction projects  
543 may include an allowance for commodities, equipment, furniture,  
544 construction materials or systems in which prospective bidders are  
545 instructed to include in their bids specified amounts for such  
546 items so long as the allowance items are acquired by the vendor in  
547 a commercially reasonable manner and approved by the  
548 agency/governing authority. Such acquisitions shall not be made  
549 to circumvent the public purchasing laws.

550                   (v) Agencies and governing authorities may  
551 establish secure procedures by which bids may be submitted via  
552 electronic means.

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

554                   (i) **Decision procedure.** Purchases may be made  
555 from the lowest and best bidder. In determining the lowest and  
556 best bid, freight and shipping charges shall be included.  
557 Life-cycle costing, total cost bids, warranties, guaranteed  
558 buy-back provisions and other relevant provisions may be included  
559 in the best bid calculation. All best bid procedures for state  
560 agencies must be in compliance with regulations established by the  
561 Department of Finance and Administration. If any governing

562 authority accepts a bid other than the lowest bid actually  
563 submitted, it shall place on its minutes detailed calculations and  
564 narrative summary showing that the accepted bid was determined to  
565 be the lowest and best bid, including the dollar amount of the  
566 accepted bid and the dollar amount of the lowest bid. No agency  
567 or governing authority shall accept a bid based on items not  
568 included in the specifications.

569                   (ii) **Decision procedure for Certified Purchasing**  
570 **Offices.** In addition to the decision procedure set forth in  
571 paragraph (d)(i), Certified Purchasing Offices may also use the  
572 following procedure: Purchases may be made from the bidder  
573 offering the best value. In determining the best value bid,  
574 freight and shipping charges shall be included. Life-cycle  
575 costing, total cost bids, warranties, guaranteed buy-back  
576 provisions, documented previous experience, training costs and  
577 other relevant provisions may be included in the best value  
578 calculation. This provision shall authorize Certified Purchasing  
579 Offices to utilize a Request For Proposals (RFP) process when  
580 purchasing commodities. All best value procedures for state  
581 agencies must be in compliance with regulations established by the  
582 Department of Finance and Administration. No agency or governing  
583 authority shall accept a bid based on items or criteria not  
584 included in the specifications.

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

591                   (e) **Lease-purchase authorization.** For the purposes of  
592 this section, the term "equipment" shall mean equipment, furniture  
593 and, if applicable, associated software and other applicable  
594 direct costs associated with the acquisition. Any lease-purchase

595 of equipment which an agency is not required to lease-purchase  
596 under the master lease-purchase program pursuant to Section  
597 31-7-10 and any lease-purchase of equipment which a governing  
598 authority elects to lease-purchase may be acquired by a  
599 lease-purchase agreement under this paragraph (e). Lease-purchase  
600 financing may also be obtained from the vendor or from a  
601 third-party source after having solicited and obtained at least  
602 two (2) written competitive bids, as defined in paragraph (b) of  
603 this section, for such financing without advertising for such  
604 bids. Solicitation for the bids for financing may occur before or  
605 after acceptance of bids for the purchase of such equipment or,  
606 where no such bids for purchase are required, at any time before  
607 the purchase thereof. No such lease-purchase agreement shall be  
608 for an annual rate of interest which is greater than the overall  
609 maximum interest rate to maturity on general obligation  
610 indebtedness permitted under Section 75-17-101, and the term of  
611 such lease-purchase agreement shall not exceed the useful life of  
612 equipment covered thereby as determined according to the upper  
613 limit of the asset depreciation range (ADR) guidelines for the  
614 Class Life Asset Depreciation Range System established by the  
615 Internal Revenue Service pursuant to the United States Internal  
616 Revenue Code and regulations thereunder as in effect on December  
617 31, 1980, or comparable depreciation guidelines with respect to  
618 any equipment not covered by ADR guidelines. Any lease-purchase  
619 agreement entered into pursuant to this paragraph (e) may contain  
620 any of the terms and conditions which a master lease-purchase  
621 agreement may contain under the provisions of Section 31-7-10(5),  
622 and shall contain an annual allocation dependency clause  
623 substantially similar to that set forth in Section 31-7-10(8).  
624 Each agency or governing authority entering into a lease-purchase  
625 transaction pursuant to this paragraph (e) shall maintain with  
626 respect to each such lease-purchase transaction the same  
627 information as required to be maintained by the Department of

628 Finance and Administration pursuant to Section 31-7-10(13).  
629 However, nothing contained in this section shall be construed to  
630 permit agencies to acquire items of equipment with a total  
631 acquisition cost in the aggregate of less than Ten Thousand  
632 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
633 equipment, and the purchase thereof by any lessor, acquired by  
634 lease-purchase under this paragraph and all lease-purchase  
635 payments with respect thereto shall be exempt from all Mississippi  
636 sales, use and ad valorem taxes. Interest paid on any  
637 lease-purchase agreement under this section shall be exempt from  
638 State of Mississippi income taxation.

639           (f) **Alternate bid authorization.** When necessary to  
640 ensure ready availability of commodities for public works and the  
641 timely completion of public projects, no more than two (2)  
642 alternate bids may be accepted by a governing authority for  
643 commodities. No purchases may be made through use of such  
644 alternate bids procedure unless the lowest and best bidder cannot  
645 deliver the commodities contained in his bid. In that event,  
646 purchases of such commodities may be made from one (1) of the  
647 bidders whose bid was accepted as an alternate.

648           (g) **Construction contract change authorization.** In the  
649 event a determination is made by an agency or governing authority  
650 after a construction contract is let that changes or modifications  
651 to the original contract are necessary or would better serve the  
652 purpose of the agency or the governing authority, such agency or  
653 governing authority may, in its discretion, order such changes  
654 pertaining to the construction that are necessary under the  
655 circumstances without the necessity of further public bids;  
656 provided that such change shall be made in a commercially  
657 reasonable manner and shall not be made to circumvent the public  
658 purchasing statutes. In addition to any other authorized person,  
659 the architect or engineer hired by an agency or governing  
660 authority with respect to any public construction contract shall

661 have the authority, when granted by an agency or governing  
662 authority, to authorize changes or modifications to the original  
663 contract without the necessity of prior approval of the agency or  
664 governing authority when any such change or modification is less  
665 than one percent (1%) of the total contract amount. The agency or  
666 governing authority may limit the number, manner or frequency of  
667 such emergency changes or modifications.

668           (h) **Petroleum purchase alternative.** In addition to  
669 other methods of purchasing authorized in this chapter, when any  
670 agency or governing authority shall have a need for gas, diesel  
671 fuel, oils and/or other petroleum products in excess of the amount  
672 set forth in paragraph (a) of this section, such agency or  
673 governing authority may purchase the commodity after having  
674 solicited and obtained at least two (2) competitive written bids,  
675 as defined in paragraph (b) of this section. If two (2)  
676 competitive written bids are not obtained, the entity shall comply  
677 with the procedures set forth in paragraph (c) of this section.  
678 In the event any agency or governing authority shall have  
679 advertised for bids for the purchase of gas, diesel fuel, oils and  
680 other petroleum products and coal and no acceptable bids can be  
681 obtained, such agency or governing authority is authorized and  
682 directed to enter into any negotiations necessary to secure the  
683 lowest and best contract available for the purchase of such  
684 commodities.

685           (i) **Road construction petroleum products price**  
686 **adjustment clause authorization.** Any agency or governing  
687 authority authorized to enter into contracts for the construction,  
688 maintenance, surfacing or repair of highways, roads or streets,  
689 may include in its bid proposal and contract documents a price  
690 adjustment clause with relation to the cost to the contractor,  
691 including taxes, based upon an industry-wide cost index, of  
692 petroleum products including asphalt used in the performance or  
693 execution of the contract or in the production or manufacture of

694 materials for use in such performance. Such industry-wide index  
695 shall be established and published monthly by the Mississippi  
696 Department of Transportation with a copy thereof to be mailed,  
697 upon request, to the clerks of the governing authority of each  
698 municipality and the clerks of each board of supervisors  
699 throughout the state. The price adjustment clause shall be based  
700 on the cost of such petroleum products only and shall not include  
701 any additional profit or overhead as part of the adjustment. The  
702 bid proposals or document contract shall contain the basis and  
703 methods of adjusting unit prices for the change in the cost of  
704 such petroleum products.

705           (j) **State agency emergency purchase procedure.** If the  
706 governing board or the executive head, or his designee, of any  
707 agency of the state shall determine that an emergency exists in  
708 regard to the purchase of any commodities or repair contracts, so  
709 that the delay incident to giving opportunity for competitive  
710 bidding would be detrimental to the interests of the state, then  
711 the provisions herein for competitive bidding shall not apply and  
712 the head of such agency shall be authorized to make the purchase  
713 or repair. Total purchases so made shall only be for the purpose  
714 of meeting needs created by the emergency situation. In the event  
715 such executive head is responsible to an agency board, at the  
716 meeting next following the emergency purchase, documentation of  
717 the purchase, including a description of the commodity purchased,  
718 the purchase price thereof and the nature of the emergency shall  
719 be presented to the board and placed on the minutes of the board  
720 of such agency. The head of such agency, or his designee, shall,  
721 at the earliest possible date following such emergency purchase,  
722 file with the Department of Finance and Administration (i) a  
723 statement explaining the conditions and circumstances of the  
724 emergency, which shall include a detailed description of the  
725 events leading up to the situation and the negative impact to the  
726 entity if the purchase is made following the statutory

727 requirements set forth in paragraph (a), (b) or (c) of this  
728 section, and (ii) a certified copy of the appropriate minutes of  
729 the board of such agency, if applicable. On or before September 1  
730 of each year, the State Auditor shall prepare and deliver to the  
731 Senate Fees, Salaries and Administration Committee, the House Fees  
732 and Salaries of Public Officers Committee and the Joint  
733 Legislative Budget Committee a report containing a list of all  
734 state agency emergency purchases and supporting documentation for  
735 each emergency purchase.

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

737 If the governing authority, or the governing authority acting  
738 through its designee, shall determine that an emergency exists in  
739 regard to the purchase of any commodities or repair contracts, so  
740 that the delay incident to giving opportunity for competitive  
741 bidding would be detrimental to the interest of the governing  
742 authority, then the provisions herein for competitive bidding  
743 shall not apply and any officer or agent of such governing  
744 authority having general or special authority therefor in making  
745 such purchase or repair shall approve the bill presented therefor,  
746 and he shall certify in writing thereon from whom such purchase  
747 was made, or with whom such a repair contract was made. At the  
748 board meeting next following the emergency purchase or repair  
749 contract, documentation of the purchase or repair contract,  
750 including a description of the commodity purchased, the price  
751 thereof and the nature of the emergency shall be presented to the  
752 board and shall be placed on the minutes of the board of such  
753 governing authority.

754 (l) **Hospital purchase, lease-purchase and lease**  
755 **authorization.**

756 (i) The commissioners or board of trustees of any  
757 public hospital may contract with such lowest and best bidder for  
758 the purchase or lease-purchase of any commodity under a contract

759 of purchase or lease-purchase agreement whose obligatory payment  
760 terms do not exceed five (5) years.

761 (ii) In addition to the authority granted in  
762 subparagraph (i) of this paragraph (1), the commissioners or board  
763 of trustees is authorized to enter into contracts for the lease of  
764 equipment or services, or both, which it considers necessary for  
765 the proper care of patients if, in its opinion, it is not  
766 financially feasible to purchase the necessary equipment or  
767 services. Any such contract for the lease of equipment or  
768 services executed by the commissioners or board shall not exceed a  
769 maximum of five (5) years' duration and shall include a  
770 cancellation clause based on unavailability of funds. If such  
771 cancellation clause is exercised, there shall be no further  
772 liability on the part of the lessee. Any such contract for the  
773 lease of equipment or services executed on behalf of the  
774 commissioners or board that complies with the provisions of this  
775 subparagraph (ii) shall be excepted from the bid requirements set  
776 forth in this section.

777 (m) **Exceptions from bidding requirements.** Excepted  
778 from bid requirements are:

779 (i) **Purchasing agreements approved by department.**  
780 Purchasing agreements, contracts and maximum price regulations  
781 executed or approved by the Department of Finance and  
782 Administration.

783 (ii) **Outside equipment repairs.** Repairs to  
784 equipment, when such repairs are made by repair facilities in the  
785 private sector; however, engines, transmissions, rear axles and/or  
786 other such components shall not be included in this exemption when  
787 replaced as a complete unit instead of being repaired and the need  
788 for such total component replacement is known before disassembly  
789 of the component; however, invoices identifying the equipment,  
790 specific repairs made, parts identified by number and name,  
791 supplies used in such repairs, and the number of hours of labor

792 and costs therefor shall be required for the payment for such  
793 repairs.

794 (iii) **In-house equipment repairs.** Purchases of  
795 parts for repairs to equipment, when such repairs are made by  
796 personnel of the agency or governing authority; however, entire  
797 assemblies, such as engines or transmissions, shall not be  
798 included in this exemption when the entire assembly is being  
799 replaced instead of being repaired.

800 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
801 of gravel or fill dirt which are to be removed and transported by  
802 the purchaser.

803 (v) **Governmental equipment auctions.** Motor  
804 vehicles or other equipment purchased from a federal agency or  
805 authority, another governing authority or state agency of the  
806 State of Mississippi, or any governing authority or state agency  
807 of another state at a public auction held for the purpose of  
808 disposing of such vehicles or other equipment. Any purchase by a  
809 governing authority under the exemption authorized by this  
810 subparagraph (v) shall require advance authorization spread upon  
811 the minutes of the governing authority to include the listing of  
812 the item or items authorized to be purchased and the maximum bid  
813 authorized to be paid for each item or items.

814 (vi) **Intergovernmental sales and transfers.**  
815 Purchases, sales, transfers or trades by governing authorities or  
816 state agencies when such purchases, sales, transfers or trades are  
817 made by a private treaty agreement or through means of  
818 negotiation, from any federal agency or authority, another  
819 governing authority or state agency of the State of Mississippi,  
820 or any state agency or governing authority of another state.  
821 Nothing in this section shall permit such purchases through public  
822 auction except as provided for in subparagraph (v) of this  
823 section. It is the intent of this section to allow governmental  
824 entities to dispose of and/or purchase commodities from other

825 governmental entities at a price that is agreed to by both  
826 parties. This shall allow for purchases and/or sales at prices  
827 which may be determined to be below the market value if the  
828 selling entity determines that the sale at below market value is  
829 in the best interest of the taxpayers of the state. Governing  
830 authorities shall place the terms of the agreement and any  
831 justification on the minutes, and state agencies shall obtain  
832 approval from the Department of Finance and Administration, prior  
833 to releasing or taking possession of the commodities.

834 (vii) **Perishable supplies or food.** Perishable  
835 supplies or food purchased for use in connection with hospitals,  
836 the school lunch programs, homemaking programs and for the feeding  
837 of county or municipal prisoners.

838 (viii) **Single source items.** Noncompetitive items  
839 available from one (1) source only. In connection with the  
840 purchase of noncompetitive items only available from one (1)  
841 source, a certification of the conditions and circumstances  
842 requiring the purchase shall be filed by the agency with the  
843 Department of Finance and Administration and by the governing  
844 authority with the board of the governing authority. Upon receipt  
845 of that certification the Department of Finance and Administration  
846 or the board of the governing authority, as the case may be, may,  
847 in writing, authorize the purchase, which authority shall be noted  
848 on the minutes of the body at the next regular meeting thereafter.  
849 In those situations, a governing authority is not required to  
850 obtain the approval of the Department of Finance and  
851 Administration.

852 (ix) **Waste disposal facility construction**  
853 **contracts.** Construction of incinerators and other facilities for  
854 disposal of solid wastes in which products either generated  
855 therein, such as steam, or recovered therefrom, such as materials  
856 for recycling, are to be sold or otherwise disposed of; however,  
857 in constructing such facilities, a governing authority or agency

858 shall publicly issue requests for proposals, advertised for in the  
859 same manner as provided herein for seeking bids for public  
860 construction projects, concerning the design, construction,  
861 ownership, operation and/or maintenance of such facilities,  
862 wherein such requests for proposals when issued shall contain  
863 terms and conditions relating to price, financial responsibility,  
864 technology, environmental compatibility, legal responsibilities  
865 and such other matters as are determined by the governing  
866 authority or agency to be appropriate for inclusion; and after  
867 responses to the request for proposals have been duly received,  
868 the governing authority or agency may select the most qualified  
869 proposal or proposals on the basis of price, technology and other  
870 relevant factors and from such proposals, but not limited to the  
871 terms thereof, negotiate and enter contracts with one or more of  
872 the persons or firms submitting proposals.

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

876                   (xi) **Information technology products.** Purchases  
877 of information technology products made by governing authorities  
878 under the provisions of purchase schedules, or contracts executed  
879 or approved by the Mississippi Department of Information  
880 Technology Services and designated for use by governing  
881 authorities.

882                   (xii) **Energy efficiency services and equipment.**  
883 Energy efficiency services and equipment acquired by school  
884 districts, community and junior colleges, institutions of higher  
885 learning and state agencies or other applicable governmental  
886 entities on a shared-savings, lease or lease-purchase basis  
887 pursuant to Section 31-7-14.

888                   (xiii) **Municipal electrical utility system fuel.**  
889 Purchases of coal and/or natural gas by municipally-owned electric

890 power generating systems that have the capacity to use both coal  
891 and natural gas for the generation of electric power.

892 (xiv) **Library books and other reference materials.**

893 Purchases by libraries or for libraries of books and periodicals;  
894 processed film, video cassette tapes, filmstrips and slides;  
895 recorded audio tapes, cassettes and diskettes; and any such items  
896 as would be used for teaching, research or other information  
897 distribution; however, equipment such as projectors, recorders,  
898 audio or video equipment, and monitor televisions are not exempt  
899 under this subparagraph.

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

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

906 (xvii) **Multichannel interactive video systems.**  
907 From and after July 1, 1990, contracts by Mississippi Authority  
908 for Educational Television with any private educational  
909 institution or private nonprofit organization whose purposes are  
910 educational in regard to the construction, purchase, lease or  
911 lease-purchase of facilities and equipment and the employment of  
912 personnel for providing multichannel interactive video systems  
913 (ITSF) in the school districts of this state.

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

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

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

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

932                   (xxii) **Garbage, solid waste and sewage contracts.**  
933 Contracts for garbage collection or disposal, contracts for solid  
934 waste collection or disposal and contracts for sewage collection  
935 or disposal.

936                   (xxiii) **Municipal water tank maintenance**  
937 **contracts.** Professional maintenance program contracts for the  
938 repair or maintenance of municipal water tanks, which provide  
939 professional services needed to maintain municipal water storage  
940 tanks for a fixed annual fee for a duration of two (2) or more  
941 years.

942                   (xxiv) **Purchases of Mississippi Industries for the**  
943 **Blind products.** Purchases made by state agencies or governing  
944 authorities involving any item that is manufactured, processed or  
945 produced by the Mississippi Industries for the Blind.

946                   (xxv) **Purchases of state-adopted textbooks.**  
947 Purchases of state-adopted textbooks by public school districts.

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

951                   (xxvii) **Used heavy or specialized machinery or**  
952 **equipment for installation of soil and water conservation**  
953 **practices purchased at auction.** Used heavy or specialized  
954 machinery or equipment used for the installation and  
955 implementation of soil and water conservation practices or

956 measures purchased subject to the restrictions provided in  
957 Sections 69-27-331 through 69-27-341. Any purchase by the State  
958 Soil and Water Conservation Commission under the exemption  
959 authorized by this subparagraph shall require advance  
960 authorization spread upon the minutes of the commission to include  
961 the listing of the item or items authorized to be purchased and  
962 the maximum bid authorized to be paid for each item or items.

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

966 (xxix) **Purchases made pursuant to qualified**  
967 **cooperative purchasing agreements.** Purchases made by certified  
968 purchasing offices of state agencies or governing authorities  
969 under cooperative purchasing agreements previously approved by the  
970 Office of Purchasing and Travel and established by or for any  
971 municipality, county, parish or state government or the federal  
972 government, provided that the notification to potential  
973 contractors includes a clause that sets forth the availability of  
974 the cooperative purchasing agreement to other governmental  
975 entities. Such purchases shall only be made if the use of the  
976 cooperative purchasing agreements is determined to be in the best  
977 interest of the governmental entity.

978 (xxx) **School yearbooks.** Purchases of school  
979 yearbooks by state agencies or governing authorities; provided,  
980 however, that state agencies and governing authorities shall use  
981 for these purchases the RFP process as set forth in the  
982 Mississippi Procurement Manual adopted by the Office of Purchasing  
983 and Travel.

984 (xxxii) **Dual-phase design-build method \* \* \* of**  
985 **contracting.** Contracts entered into the provisions of Section  
986 31-7-13.1 or 37-101-44.

987 (n) **Term contract authorization.** All contracts for the  
988 purchase of:

989                   (i) All contracts for the purchase of commodities,  
990 equipment and public construction (including, but not limited to,  
991 repair and maintenance), may be let for periods of not more than  
992 sixty (60) months in advance, subject to applicable statutory  
993 provisions prohibiting the letting of contracts during specified  
994 periods near the end of terms of office. Term contracts for a  
995 period exceeding twenty-four (24) months shall also be subject to  
996 ratification or cancellation by governing authority boards taking  
997 office subsequent to the governing authority board entering the  
998 contract.

999                   (ii) Bid proposals and contracts may include price  
1000 adjustment clauses with relation to the cost to the contractor  
1001 based upon a nationally published industry-wide or nationally  
1002 published and recognized cost index. The cost index used in a  
1003 price adjustment clause shall be determined by the Department of  
1004 Finance and Administration for the state agencies and by the  
1005 governing board for governing authorities. The bid proposal and  
1006 contract documents utilizing a price adjustment clause shall  
1007 contain the basis and method of adjusting unit prices for the  
1008 change in the cost of such commodities, equipment and public  
1009 construction.

1010                   (o) **Purchase law violation prohibition and vendor**  
1011 **penalty.** No contract or purchase as herein authorized shall be  
1012 made for the purpose of circumventing the provisions of this  
1013 section requiring competitive bids, nor shall it be lawful for any  
1014 person or concern to submit individual invoices for amounts within  
1015 those authorized for a contract or purchase where the actual value  
1016 of the contract or commodity purchased exceeds the authorized  
1017 amount and the invoices therefor are split so as to appear to be  
1018 authorized as purchases for which competitive bids are not  
1019 required. Submission of such invoices shall constitute a  
1020 misdemeanor punishable by a fine of not less than Five Hundred  
1021 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),

1022 or by imprisonment for thirty (30) days in the county jail, or  
1023 both such fine and imprisonment. In addition, the claim or claims  
1024 submitted shall be forfeited.

1025 (p) **Electrical utility petroleum-based equipment**  
1026 **purchase procedure.** When in response to a proper advertisement  
1027 therefor, no bid firm as to price is submitted to an electric  
1028 utility for power transformers, distribution transformers, power  
1029 breakers, reclosers or other articles containing a petroleum  
1030 product, the electric utility may accept the lowest and best bid  
1031 therefor although the price is not firm.

1032 (q) **Fuel management system bidding procedure.** Any  
1033 governing authority or agency of the state shall, before  
1034 contracting for the services and products of a fuel management or  
1035 fuel access system, enter into negotiations with not fewer than  
1036 two (2) sellers of fuel management or fuel access systems for  
1037 competitive written bids to provide the services and products for  
1038 the systems. In the event that the governing authority or agency  
1039 cannot locate two (2) sellers of such systems or cannot obtain  
1040 bids from two (2) sellers of such systems, it shall show proof  
1041 that it made a diligent, good-faith effort to locate and negotiate  
1042 with two (2) sellers of such systems. Such proof shall include,  
1043 but not be limited to, publications of a request for proposals and  
1044 letters soliciting negotiations and bids. For purposes of this  
1045 paragraph (q), a fuel management or fuel access system is an  
1046 automated system of acquiring fuel for vehicles as well as  
1047 management reports detailing fuel use by vehicles and drivers, and  
1048 the term "competitive written bid" shall have the meaning as  
1049 defined in paragraph (b) of this section. Governing authorities  
1050 and agencies shall be exempt from this process when contracting  
1051 for the services and products of a fuel management or fuel access  
1052 systems under the terms of a state contract established by the  
1053 Office of Purchasing and Travel.

1054           (r) **Solid waste contract proposal procedure.** Before  
1055 entering into any contract for garbage collection or disposal,  
1056 contract for solid waste collection or disposal or contract for  
1057 sewage collection or disposal, which involves an expenditure of  
1058 more than Fifty Thousand Dollars (\$50,000.00), a governing  
1059 authority or agency shall issue publicly a request for proposals  
1060 concerning the specifications for such services which shall be  
1061 advertised for in the same manner as provided in this section for  
1062 seeking bids for purchases which involve an expenditure of more  
1063 than the amount provided in paragraph (c) of this section. Any  
1064 request for proposals when issued shall contain terms and  
1065 conditions relating to price, financial responsibility,  
1066 technology, legal responsibilities and other relevant factors as  
1067 are determined by the governing authority or agency to be  
1068 appropriate for inclusion; all factors determined relevant by the  
1069 governing authority or agency or required by this paragraph (r)  
1070 shall be duly included in the advertisement to elicit proposals.  
1071 After responses to the request for proposals have been duly  
1072 received, the governing authority or agency shall select the most  
1073 qualified proposal or proposals on the basis of price, technology  
1074 and other relevant factors and from such proposals, but not  
1075 limited to the terms thereof, negotiate and enter contracts with  
1076 one or more of the persons or firms submitting proposals. If the  
1077 governing authority or agency deems none of the proposals to be  
1078 qualified or otherwise acceptable, the request for proposals  
1079 process may be reinitiated. Notwithstanding any other provisions  
1080 of this paragraph, where a county with at least thirty-five  
1081 thousand (35,000) nor more than forty thousand (40,000)  
1082 population, according to the 1990 federal decennial census, owns  
1083 or operates a solid waste landfill, the governing authorities of  
1084 any other county or municipality may contract with the governing  
1085 authorities of the county owning or operating the landfill,  
1086 pursuant to a resolution duly adopted and spread upon the minutes

1087 of each governing authority involved, for garbage or solid waste  
1088 collection or disposal services through contract negotiations.

1089 (s) **Minority set-aside authorization.** Notwithstanding  
1090 any provision of this section to the contrary, any agency or  
1091 governing authority, by order placed on its minutes, may, in its  
1092 discretion, set aside not more than twenty percent (20%) of its  
1093 anticipated annual expenditures for the purchase of commodities  
1094 from minority businesses; however, all such set-aside purchases  
1095 shall comply with all purchasing regulations promulgated by the  
1096 Department of Finance and Administration and shall be subject to  
1097 bid requirements under this section. Set-aside purchases for  
1098 which competitive bids are required shall be made from the lowest  
1099 and best minority business bidder. For the purposes of this  
1100 paragraph, the term "minority business" means a business which is  
1101 owned by a majority of persons who are United States citizens or  
1102 permanent resident aliens (as defined by the Immigration and  
1103 Naturalization Service) of the United States, and who are Asian,  
1104 Black, Hispanic or Native American, according to the following  
1105 definitions:

1106 (i) "Asian" means persons having origins in any of  
1107 the original people of the Far East, Southeast Asia, the Indian  
1108 subcontinent, or the Pacific Islands.

1109 (ii) "Black" means persons having origins in any  
1110 black racial group of Africa.

1111 (iii) "Hispanic" means persons of Spanish or  
1112 Portuguese culture with origins in Mexico, South or Central  
1113 America, or the Caribbean Islands, regardless of race.

1114 (iv) "Native American" means persons having  
1115 origins in any of the original people of North America, including  
1116 American Indians, Eskimos and Aleuts.

1117 (t) **Construction punch list restriction.** The  
1118 architect, engineer or other representative designated by the  
1119 agency or governing authority that is contracting for public

1120 construction or renovation may prepare and submit to the  
1121 contractor only one (1) preliminary punch list of items that do  
1122 not meet the contract requirements at the time of substantial  
1123 completion and one (1) final list immediately before final  
1124 completion and final payment.

1125 (u) **Purchase authorization clarification.** Nothing in  
1126 this section shall be construed as authorizing any purchase not  
1127 authorized by law.

1128 **SECTION 7.** Section 31-11-3, Mississippi Code of 1972, is  
1129 amended as follows:

1130 31-11-3. (1) The Department of Finance and Administration,  
1131 for the purposes of carrying out the provisions of this chapter,  
1132 in addition to all other rights and powers granted by law, shall  
1133 have full power and authority to employ and compensate architects  
1134 or other employees necessary for the purpose of making  
1135 inspections, preparing plans and specifications, supervising the  
1136 erection of any buildings, and making any repairs or additions as  
1137 may be determined by the Department of Finance and Administration  
1138 to be necessary, pursuant to the rules and regulations of the  
1139 State Personnel Board. The department shall have entire control  
1140 and supervision of, and determine what, if any, buildings,  
1141 additions, repairs or improvements are to be made under the  
1142 provisions of this chapter, pursuant to regulations adopted by the  
1143 Public Procurement Review Board.

1144 (2) The department shall have full power to erect buildings,  
1145 make repairs, additions or improvements, and buy materials,  
1146 supplies and equipment for any of the institutions or departments  
1147 of the state pursuant to regulations adopted by the Public  
1148 Procurement Review Board. In addition to other powers conferred,  
1149 the department shall have full power and authority as directed by  
1150 the Legislature, or when funds have been appropriated for its use  
1151 for these purposes, to:

1152 (a) Build a state office building;

1153           (b) Build suitable plants or buildings for the use and  
1154 housing of any state schools or institutions, including the  
1155 building of plants or buildings for new state schools or  
1156 institutions, as provided for by the Legislature;

1157           (c) Provide state aid for the construction of school  
1158 buildings;

1159           (d) Promote and develop the training of returned  
1160 veterans of the United States in all sorts of educational and  
1161 vocational learning to be supplied by the proper educational  
1162 institution of the State of Mississippi, and in so doing allocate  
1163 monies appropriated to it for these purposes to the Governor for  
1164 use by him in setting up, maintaining and operating an office and  
1165 employing a state director of on-the-job training for veterans and  
1166 the personnel necessary in carrying out Public Law No. 346 of the  
1167 United States;

1168           (e) Build and equip a hospital and administration  
1169 building at the Mississippi State Penitentiary;

1170           (f) Build and equip additional buildings and wards at  
1171 the Boswell Retardation Center;

1172           (g) Construct a sewage disposal and treatment plant at  
1173 the state insane hospital, and in so doing acquire additional land  
1174 as may be necessary, and to exercise the right of eminent domain  
1175 in the acquisition of this land;

1176           (h) Build and equip the Mississippi central market and  
1177 purchase or acquire by eminent domain, if necessary, any lands  
1178 needed for this purpose;

1179           (i) Build and equip suitable facilities for a training  
1180 and employing center for the blind;

1181           (j) Build and equip a gymnasium at Columbia Training  
1182 School;

1183           (k) Approve or disapprove the expenditure of any money  
1184 appropriated by the Legislature when authorized by the bill making  
1185 the appropriation;

1186           (1) Expend monies appropriated to it in paying the  
1187 state's part of the cost of any street paving;

1188           (m) Sell and convey state lands when authorized by the  
1189 Legislature, cause said lands to be properly surveyed and platted,  
1190 execute all deeds or other legal instruments, and do any and all  
1191 other things required to effectively carry out the purpose and  
1192 intent of the Legislature. Any transaction which involves state  
1193 lands under the provisions of this paragraph shall be done in a  
1194 manner consistent with the provisions of Section 29-1-1;

1195           (n) Collect and receive from educational institutions  
1196 of the State of Mississippi monies required to be paid by these  
1197 institutions to the state in carrying out any veterans'  
1198 educational programs;

1199           (o) Purchase lands for building sites, or as additions  
1200 to building sites, for the erection of buildings and other  
1201 facilities which the department is authorized to erect, and  
1202 demolish and dispose of old buildings, when necessary for the  
1203 proper construction of new buildings. Any transaction which  
1204 involves state lands under the provisions of this paragraph shall  
1205 be done in a manner consistent with the provisions of Section  
1206 29-1-1;

1207           (p) Obtain business property insurance with a  
1208 deductible of not less than One Hundred Thousand Dollars  
1209 (\$100,000.00) on state-owned buildings under the management and  
1210 control of the department; and

1211           (q) In consultation with and approval by the Chairmen  
1212 of the Public Property Committees of the Senate and the House of  
1213 Representatives, enter into contracts for the purpose of providing  
1214 parking spaces for state employees who work in the Woolfolk  
1215 Building, the Carroll Gartin Justice Building or the Walter  
1216 Sillers Office Building. The provisions of this paragraph (q)  
1217 shall stand repealed on July 1, 2010.

1218           (3) The department shall survey state-owned and  
1219 state-utilized buildings to establish an estimate of the costs of  
1220 architectural alterations, pursuant to the Americans With  
1221 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The  
1222 department shall establish priorities for making the identified  
1223 architectural alterations and shall make known to the Legislative  
1224 Budget Office and to the Legislature the required cost to  
1225 effectuate such alterations. To meet the requirements of this  
1226 section, the department shall use standards of accessibility that  
1227 are at least as stringent as any applicable federal requirements  
1228 and may consider:

1229           (a) Federal minimum guidelines and requirements issued  
1230 by the United States Architectural and Transportation Barriers  
1231 Compliance Board and standards issued by other federal agencies;

1232           (b) The criteria contained in the American Standard  
1233 Specifications for Making Buildings Accessible and Usable by the  
1234 Physically Handicapped and any amendments thereto as approved by  
1235 the American Standards Association, Incorporated (ANSI Standards);

1236           (c) Design manuals;

1237           (d) Applicable federal guidelines;

1238           (e) Current literature in the field;

1239           (f) Applicable safety standards; and

1240           (g) Any applicable environmental impact statements.

1241           (4) The department shall observe the provisions of Section  
1242 31-5-23, in letting contracts and shall use Mississippi products,  
1243 including paint, varnish and lacquer which contain as vehicles  
1244 tung oil and either ester gum or modified resin (with rosin as the  
1245 principal base of constituents), and turpentine shall be used as a  
1246 solvent or thinner, where these products are available at a cost  
1247 not to exceed the cost of products grown, produced, prepared, made  
1248 or manufactured outside of the State of Mississippi.

1249           (5) The department shall have authority to accept grants,  
1250 loans or donations from the United States government or from any

1251 other sources for the purpose of matching funds in carrying out  
1252 the provisions of this chapter.

1253 (6) The department shall build a wheelchair ramp at the War  
1254 Memorial Building which complies with all applicable federal laws,  
1255 regulations and specifications regarding wheelchair ramps.

1256 (7) The department shall review and preapprove all  
1257 architectural or engineering service contracts entered into by any  
1258 state agency, institution, commission, board or authority  
1259 regardless of the source of funding used to defray the costs of  
1260 the construction or renovation project for which services are to  
1261 be obtained. The provisions of this subsection (7) shall not  
1262 apply to any architectural or engineering contract paid for by  
1263 self-generated funds of any of the state institutions of higher  
1264 learning, nor shall they apply to community college projects that  
1265 are funded from local funds or other nonstate sources which are  
1266 outside the Department of Finance and Administration's  
1267 appropriations or as directed by the Legislature. The provisions  
1268 of this subsection (7) shall not apply to any construction or  
1269 design projects of the State Military Department that are funded  
1270 from federal funds or other nonstate sources.

1271 (8) The department shall have the authority to obtain  
1272 annually from the state institutions of higher learning  
1273 information on all building, construction and renovation projects  
1274 including duties, responsibilities and costs of any architect or  
1275 engineer hired by any such institutions.

1276 (9) \* \* \* As an alternative to other methods of awarding  
1277 contracts as prescribed by law, the department may elect to use  
1278 the method of contracting for construction projects set out in  
1279 Sections 31-7-13.1 and 31-7-13.2.

1280 \* \* \*

1281 **SECTION 8.** Section 65-1-85, Mississippi Code of 1972, is  
1282 amended as follows:

1283           65-1-85. (1) All contracts by or on behalf of the  
1284 commission for the purchase of materials, equipment and supplies  
1285 shall be made in compliance with Section 31-7-1 et seq. All  
1286 contracts by or on behalf of the commission for construction,  
1287 reconstruction or other public work authorized to be done under  
1288 the provisions of this chapter, except maintenance, shall be made  
1289 by the executive director, subject to the approval of the  
1290 commission, only upon competitive bids after due advertisement as  
1291 follows, to wit:

1292           (a) Advertisement for bids shall be in accordance with  
1293 such rules and regulations, in addition to those herein provided,  
1294 as may be adopted therefor by the commission, and the commission  
1295 is authorized and empowered to make and promulgate such rules and  
1296 regulations as it may deem proper, to provide and adopt standard  
1297 specifications for road and bridge construction, and to amend such  
1298 rules and regulations from time to time.

1299           (b) The advertisement shall be inserted twice, being  
1300 once a week for two (2) successive weeks in a newspaper published  
1301 at the seat of government in Jackson, Mississippi, having a  
1302 general circulation throughout the state, and no letting shall be  
1303 less than fourteen (14) days nor more than sixty (60) days after  
1304 the publication of the first notice of such letting, and notices  
1305 of such letting may be placed in a metropolitan paper or national  
1306 trade publication.

1307           (c) Before advertising for such work, the executive  
1308 director shall cause to be prepared and filed in the department  
1309 detailed plans and specifications covering the work proposed to be  
1310 done and copies of the plans and specifications shall be subject  
1311 to inspection by any citizen during all office hours and made  
1312 available to all prospective bidders upon such reasonable terms  
1313 and conditions as may be required by the commission. A fee shall  
1314 be charged equal to the cost of producing a copy of any such plans  
1315 and specifications.

1316 (d) All such contracts shall be let to a responsible  
1317 bidder with the lowest and best bid, and a record of all bids  
1318 received for construction and reconstruction shall be preserved.

1319 (e) Each bid for such a construction and reconstruction  
1320 contract must be accompanied by a cashier's check, a certified  
1321 check or bidders bond executed by a surety company authorized to  
1322 do business in the State of Mississippi, in the principal amount  
1323 of not less than five percent (5%) of the bid, guaranteeing that  
1324 the bidder will give bond and enter into a contract for the  
1325 faithful performance of the contract according to plans and  
1326 specifications on file.

1327 (f) Bonds shall be required of the successful bidder in  
1328 an amount equal to the contract price. The contract price shall  
1329 mean the entire cost of the particular contract let. In the event  
1330 change orders are made after the execution of a contract which  
1331 results in increasing the total contract price, additional bond in  
1332 the amount of the increased cost may be required. The surety or  
1333 sureties on such bonds shall be a surety company or surety  
1334 companies authorized to do business in the State of Mississippi,  
1335 all bonds to be payable to the State of Mississippi and to be  
1336 conditioned for the prompt, faithful and efficient performance of  
1337 the contract according to plans and specifications, and for the  
1338 prompt payment of all persons furnishing labor, material,  
1339 equipment and supplies therefor. Such bonds shall be subject to  
1340 the additional obligation that the principal and surety or  
1341 sureties executing the same shall be liable to the state in a  
1342 civil action instituted by the state at the instance of the  
1343 commission or any officer of the state authorized in such cases,  
1344 for double any amount in money or property the state may lose or  
1345 be overcharged or otherwise defrauded of by reason of any wrongful  
1346 or criminal act, if any, of the contractor, his agent or  
1347 employees.

1348           (2) With respect to equipment used in the construction,  
1349 reconstruction or other public work authorized to be done under  
1350 the provisions of this chapter: the word "equipment," in addition  
1351 to all equipment incorporated into or fully consumed in connection  
1352 with such project, shall include the reasonable value of the use  
1353 of all equipment of every kind and character and all accessories  
1354 and attachments thereto which are reasonably necessary to be used  
1355 and which are used in carrying out the performance of the  
1356 contract, and the reasonable value of the use thereof, during the  
1357 period of time the same are used in carrying out the performance  
1358 of the contract, shall be the amount as agreed upon by the persons  
1359 furnishing the equipment and those using the same to be paid  
1360 therefor, which amount, however, shall not be in excess of the  
1361 maximum current rates and charges allowable for leasing or renting  
1362 as specified in Section 65-7-95; the word "labor" shall include  
1363 all work performed in repairing equipment used in carrying out the  
1364 performance of the contract, which repair labor is reasonably  
1365 necessary to the efficient operation of said equipment; and the  
1366 words "materials" and "supplies" shall include all repair parts  
1367 installed in or on equipment used in carrying out the performance  
1368 of the contract, which repair parts are reasonably necessary to  
1369 the efficient operation of said equipment.

1370           (3) The executive director, subject to the approval of the  
1371 commission, shall have the right to reject any and all bids,  
1372 whether such right is reserved in the notice or not.

1373           (4) The commission may require the pre-qualification of any  
1374 and all bidders and the failure to comply with pre-qualification  
1375 requirements may be the basis for the rejection of any bid by the  
1376 commission. The commission may require the pre-qualification of  
1377 any and all subcontractors before they are approved to participate  
1378 in any contract awarded under this section.

1379           (5) The commission may adopt rules and regulations for the  
1380 termination of any previously awarded contract which is not timely

1381 proceeding toward completion. The failure of a contractor to  
1382 comply with such rules and regulations shall be a lawful basis for  
1383 the commission to terminate the contract with such contractor. In  
1384 the event of a termination under such rules and regulations, the  
1385 contractor shall not be entitled to any payment, benefit or  
1386 damages beyond the cost of the work actually completed.

1387 (6) Any contract for construction or paving of any highway  
1388 may be entered into for any cost which does not exceed the amount  
1389 of funds that may be made available therefor through bond issues  
1390 or from other sources of revenue, and the letting of contracts for  
1391 such construction or paving shall not necessarily be delayed until  
1392 the funds are actually on hand, provided authorization for the  
1393 issuance of necessary bonds has been granted by law to supplement  
1394 other anticipated revenue, or when the department certifies to the  
1395 Department of Finance and Administration and the Legislative  
1396 Budget Office that projected receipts of funds by the department  
1397 will be sufficient to pay such contracts as they become due and  
1398 the Department of Finance and Administration determines that the  
1399 projections are reasonable and receipts will be sufficient to pay  
1400 the contracts as they become due. The Department of Finance and  
1401 Administration shall spread such determination on its minutes  
1402 prior to the letting of any contracts based on projected receipts.  
1403 Nothing in this subsection shall prohibit the issuance of bonds,  
1404 which have been authorized, at any time in the discretion of the  
1405 State Bond Commission, nor to prevent investment of surplus funds  
1406 in United States government bonds or State of Mississippi bonds as  
1407 presently authorized by Section 12, Chapter 312, Laws of 1956.

1408 (7) All other contracts for work to be done under the  
1409 provisions of this chapter and for the purchase of materials,  
1410 equipment and supplies to be used as provided for in this chapter  
1411 shall be made in compliance with Section 31-7-1 et seq.

1412 (8) The commission shall not empower or authorize the  
1413 executive director, or any one or more of its members, or any

1414 engineer or other person to let or make contracts for the  
1415 construction or repair of public roads, or building bridges, or  
1416 for the purchase of material, equipment or supplies contrary to  
1417 the provisions of this chapter as set forth in this section,  
1418 except in cases of flood or other cases of emergency where the  
1419 public interest requires that the work be done or the materials,  
1420 equipment or supplies be purchased without the delay incident to  
1421 advertising for competitive bids. Such emergency contracts may be  
1422 made without advertisement under such rules and regulations as the  
1423 commission may prescribe.

1424 (9) The executive director, subject to the approval of the  
1425 commission, is authorized to negotiate and make agreements with  
1426 communities and/or civic organizations for landscaping,  
1427 beautification and maintenance of highway rights-of-way; however,  
1428 nothing in this subsection shall be construed as authorization for  
1429 the executive director or commission to participate in such a  
1430 project to an extent greater than the average cost for maintenance  
1431 of shoulders, backslopes and median areas with respect thereto.

1432 (10) The executive director may negotiate and enter into  
1433 contracts with private parties for the mowing of grass and  
1434 trimming of vegetation on the rights-of-way of state highways  
1435 whenever such practice is possible and cost effective.

1436 (11) (a) As an alternative to the method of awarding  
1437 contracts as otherwise provided in this section, the commission  
1438 may use the design-build method of contracting for the following:

1439 (i) Projects for the Mississippi Development  
1440 Authority pursuant to agreements between both governmental  
1441 entities;

1442 (ii) Any project with an estimated cost of not  
1443 more than Ten Million Dollars (\$10,000,000.00), not to exceed two

1444 (2) projects per fiscal year; and

1445 (iii) Any project which has an estimated cost of  
1446 more than Fifty Million Dollars (\$50,000,000.00), not to exceed  
1447 one (1) project per fiscal year.

1448 (b) As used in this subsection, the term "design-build"  
1449 method of contracting means a contract that combines the design  
1450 and construction phases of a project into a single contract and  
1451 the contractor is required to satisfactorily perform, at a  
1452 minimum, both the design and construction of the project.

1453 (c) The commission shall establish detailed criteria  
1454 for the selection of the successful design-build contractor in  
1455 each request for design-build proposals. The evaluation of the  
1456 selection committee is a public record and shall be maintained for  
1457 a minimum of ten (10) years after project completion.

1458 (d) The commission shall maintain detailed records on  
1459 projects separate and apart from its regular record keeping. The  
1460 commission shall file a report to the Legislature evaluating the  
1461 design-build method of contracting by comparing it to the low-bid  
1462 method of contracting. At a minimum, the report must include:

1463 (i) The management goals and objectives for the  
1464 design-build system of management;

1465 (ii) A complete description of the components of  
1466 the design-build management system, including a description of the  
1467 system the department put into place on all projects managed under  
1468 the system to insure that it has the complete information on  
1469 highway segment costs and to insure proper analysis of any  
1470 proposal the commission receives from a highway contractor;

1471 (iii) The accountability systems the  
1472 Transportation Department established to monitor any design-build  
1473 project's compliance with specific goals and objectives for the  
1474 project;

1475 (iv) The outcome of any project or any interim  
1476 report on an ongoing project let under a design-build management

1477 system showing compliance with the goals, objectives, policies and  
1478 procedures the department set for the project; and

1479 (v) The method used by the department to select  
1480 projects to be let under the design-build system of management and  
1481 all other systems, policies and procedures that the department  
1482 considered as necessary components to a design-build management  
1483 system.

1484 (e) All contracts let under the provisions of this  
1485 subsection shall be subject to oversight and review by the State  
1486 Auditor. The State Auditor shall file a report with the  
1487 Legislature on or before January 1 of each year detailing his  
1488 findings with regard to any contract let or project performed in  
1489 violation of the provisions of this subsection. The actual and  
1490 necessary expenses incurred by the State Auditor in complying with  
1491 this paragraph (e) shall be paid for and reimbursed by the  
1492 Mississippi Department of Transportation out of funds made  
1493 available for the contract or contracts let and project or  
1494 projects performed.

1495 (f) As an alternative to the authority granted to the  
1496 commission in this subsection, the commission may elect to use the  
1497 method of contracting for construction projects set out in Section  
1498 31-7-13.1 and 31-7-13.2.

1499 **SECTION 9.** This act shall take effect and be in force from  
1500 and after July 1, 2007.