

Senate Amendments to House Bill No. 1537

TO THE CLERK OF THE HOUSE:

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

AMENDMENT NO. 1

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

28 **SECTION 1.** The following shall be codified as Section
29 31-7-13.1, Mississippi Code of 1972:

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

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

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

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

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

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

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

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

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

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

86 (5) During Phase Two, the short-listed firms will be invited
87 to submit detailed designs, specific technical concepts or

88 solutions, pricing, scheduling and other information deemed
89 appropriate by the agency or governing authority as necessary to
90 evaluate and rank acceptability of the Phase Two proposals. After
91 evaluation of these Phase Two proposals, the agency or governing
92 authority shall award a contract to the design-builder determined
93 to offer the best value to the public in accordance with
94 evaluation criteria set forth in the request for proposals, of
95 which price must be one, but not necessarily the only, criterion.

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

103 (7) All facilities that are governed by this section shall
104 be designed and constructed to comply with standards equal to or
105 exceeding the minimum building code standards employed by the
106 state as required under Section 31-11-33 in force at the time of
107 contracting. All private contractors or private entities
108 contracting or performing under this section must comply at all
109 times with all applicable laws, codes and other legal requirements
110 pertaining to the project.

111 (8) At its discretion, the agency or governing authority may
112 award a stipulated fee equal to a percentage, as prescribed in the
113 request for proposals, of the project's final design and
114 construction budget, as prescribed in the request for proposals,
115 but not less than two-tenths of one percent ($2/10$ of 1%) of the
116 project's final design and construction budget, to each short-list
117 offeror who provides a responsive, but unsuccessful, proposal. If
118 the agency or governing authority does not award a contract, all
119 responsive final list offerors shall receive the stipulated fee
120 based on the owner's estimate of the project final design and
121 construction budget as included in the request for proposals. The
122 agency or governing authority shall pay the stipulated fee to each

123 offeror within ninety (90) days after the award of the initial
124 contract or the decision not to award a contract. In
125 consideration for paying the stipulated fee, the agency or
126 governing authority may use any ideas or information contained in
127 the proposals in connection with any contract awarded for the
128 project, or in connection with a subsequent procurement, without
129 any obligation to pay any additional compensation to the
130 unsuccessful offerors. Notwithstanding the other provisions of
131 this subsection, an unsuccessful short-list offeror may elect to
132 waive the stipulated fee. If an unsuccessful short-list offeror
133 elects to waive the stipulated fee, the agency or governing
134 authority may not use ideas and information contained in the
135 offeror's proposal, except that this restriction does not prevent
136 the agency or governing authority from using any idea or
137 information if the idea or information is also included in a
138 proposal of an offeror that accepts the stipulated fee.

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

145 (10) The provisions of this section shall not affect any
146 procurement by the Mississippi Transportation Commission.

147 **SECTION 2.** The following shall be codified as Section
148 31-7-13.2, Mississippi Code of 1972:

149 31-7-13.2 (1) When used in this section, "construction
150 manager at risk" means a method of project delivery in which a
151 construction manager guarantees a maximum price for the
152 construction of a project and in which the governing authority or
153 board, before using this method of project delivery, shall include
154 a detailed explanation of why using the construction manager at
155 risk method of project delivery for a particular project satisfies
156 the public need better than that traditional design-bid-build
157 method based on the following criteria:

158 (a) The use of construction manager at risk for the
159 project provides a savings in time or cost over traditional
160 methods; and

161 (b) The size and type of the project is suitable for
162 use of the construction management at risk method of project
163 delivery.

164 (2) When the construction manager at risk method of project
165 delivery is used:

166 (a) There may be a separate contract for design
167 services and a separate contract for construction services;

168 (b) The contract for construction services may be
169 entered into at the same time as a contract for the design
170 services or later;

171 (c) Design and construction of the project may be in
172 sequential or concurrent phases; and

173 (d) Finance, maintenance, operation, reconstruction or
174 other related services may be included for a guaranteed maximum
175 price.

176 (3) When procuring design professional services under a
177 construction manager at risk project delivery method, the agency
178 or governing authority shall procure the services of a design
179 professional pursuant to qualifications-based selection
180 procedures.

181 (4) Before the substantial completion of the design
182 documents, the agency or governing authority may elect to hire a
183 construction manager.

184 (5) When procuring construction management services, the
185 agency or governing authority shall follow the
186 qualifications-based selection procedures as outlined in
187 subsection (10) of this section or the competitive sealed proposal
188 procedures as outlined in Section 31-17-13.

189 (6) The agency or governing authority may require the
190 architect or engineer and the construction manager, by contract,
191 to cooperate in the design, planning and scheduling, and
192 construction process. The contract shall not make the primary

193 designer or construction manager a subcontractor or joint venture
194 partner to the other or limit the primary designer's or
195 construction manager's independent obligations to the agency or
196 governing authority.

197 (7) Notwithstanding anything to the contrary in this
198 chapter:

199 (a) Each project for construction under a construction
200 manager at risk contract shall be a specific, single project with
201 a minimum construction cost of Twenty-Five Million Dollars
202 (\$25,000,000.00).

203 (b) Each project under a construction manager at risk
204 contract shall be a specific, single project. For the purposes of
205 this paragraph, "specific, single project" means a project that is
206 constructed at a single location, at a common location or for a
207 common purpose.

208 (8) Agencies shall retain an independent architectural or
209 engineering firm to provide guidance and administration of the
210 professional engineering or professional architecture aspects of
211 the project throughout the development of the scope, design, and
212 construction of the project.

213 (9) The state shall, on an annual basis, compile and make
214 public all proceedings, records, contracts and other public
215 records relating to procurement transactions authorized under this
216 section.

217 (10) For purposes of this section, the "qualifications-based
218 selection procedure" shall include:

219 (a) Publicly announcing all requirements for
220 architectural, engineering, and land surveying services, to
221 procure these services on the basis of demonstrated competence and
222 qualifications, and to negotiate contracts at fair and reasonable
223 prices after the most qualified firm has been selected.

224 (b) Agencies or governing authorities shall establish
225 procedures to prequalify firms seeking to provide architectural,
226 engineering, and land surveying services or may use

227 prequalification lists from other state agencies or governing
228 authorities to meet the requirements of this section.

229 (c) Whenever a project requiring architectural,
230 engineering, or land surveying services is proposed for an agency
231 or governing authority, the agency or governing authority shall
232 provide advance notice published in a professional services
233 bulletin or advertised within the official state newspaper setting
234 forth the projects and services to be procured for not less than
235 fourteen (14) days. The professional services bulletin shall be
236 mailed to each firm that has requested the information or is
237 prequalified under Section 31-7-13. The professional services
238 bulletin shall include a description of each project and shall
239 state the time and place for interested firms to submit a letter
240 of interest and, if required by the public notice, a statement of
241 qualifications.

242 (d) The agency or governing authority shall evaluate
243 the firms submitting letters of interest and other prequalified
244 firms, taking into account qualifications. The agency or
245 governing authority may consider, but shall not be limited to,
246 considering:

- 247 (i) Ability of professional personnel;
- 248 (ii) Past record and experience;
- 249 (iii) Performance data on file;
- 250 (iv) Willingness to meet time requirements;
- 251 (v) Location;
- 252 (vi) Workload of the firm; and
- 253 (vii) Any other qualifications-based factors as
254 the agency or governing authority may determine in writing are
255 applicable.

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

260 (e) The agency or governing authority shall establish a
261 committee to select firms to provide architectural, engineering,

262 and land surveying services. A selection committee may include at
263 least one (1) public member nominated by a statewide association
264 of the profession affected. The public member may not be employed
265 or associated with any firm holding a contract with the agency or
266 governing authority nor may the public members' firm be considered
267 for a contract with that agency or governing authority while
268 serving as a public member of the committee. In no case shall the
269 agency or governing authority, before selecting a firm for
270 negotiation under paragraph (f) of this section, seek formal or
271 informal submission of verbal or written estimates of costs or
272 proposals in terms of dollars, hours required, percentage of
273 construction cost, or any other measure of compensation.

274 (f) On the basis of evaluations, discussions, and any
275 presentations, the agency or governing authority shall select no
276 less than three (3) firms that it determines to be qualified to
277 provide services for the project and rank them in order of
278 qualifications to provide services regarding the specific project.
279 The agency or governing authority shall then contact the firm
280 ranked most preferred to negotiate a contract at a fair and
281 reasonable compensation. If fewer than three (3) firms submit
282 letters of interest and the agency or governing authority
283 determines that one (1) or both of those firms are so qualified,
284 the agency or governing authority may proceed to negotiate a
285 contract under paragraph (g) of this section.

286 (g) The agency or governing authority shall prepare a
287 written description of the scope of the proposed services to be
288 used as a basis for negotiations and shall negotiate a contract
289 with the highest qualified firm at compensation that the agency or
290 governing authority determines in writing to be fair and
291 reasonable. In making this decision, the agency or governing
292 authority shall take into account the estimated value, scope,
293 complexity, and professional nature of the services to be
294 rendered. In no case may the agency or governing authority
295 establish a maximum overhead rate or other payment formula
296 designed to eliminate firms from contention or restrict

297 competition or negotiation of fees. If the agency or governing
298 authority is unable to negotiate a satisfactory contract with the
299 firm that is most preferred, negotiations with that firm shall be
300 terminated. The agency or governing authority shall then begin
301 negotiations with the firm that is next preferred. If the agency
302 or governing authority is unable to negotiate a satisfactory
303 contract with that firm, negotiations with that firm shall be
304 terminated. The agency or governing authority shall then begin
305 negotiations with the firm that is next preferred. If the agency
306 or governing authority is unable to negotiate a satisfactory
307 contract with any of the selected firms, the agency or governing
308 authority shall reevaluate the architectural, engineering, or land
309 surveying services requested, including the estimated value,
310 scope, complexity, and fee requirements. The agency or governing
311 authority shall then compile a second list of not less than three
312 (3) qualified firms and proceed in accordance with the provisions
313 of this section. A firm negotiating a contract with an agency or
314 governing authority shall negotiate subcontracts for
315 architectural, engineering, and land surveying services at
316 compensation that the firm determines in writing to be fair and
317 reasonable based upon a written description of the scope of the
318 proposed services.

319 (11) The provisions of this section shall not affect any
320 procurement by the Mississippi Transportation Commission.

321 **SECTION 3.** The use of either the design-build method of
322 project delivery as provided in Section 31-7-13.1 or the
323 construction manager at risk method of project delivery as
324 provided in Section 31-7-13.2 must comply with the provisions of
325 Section 31-5-51.

326 **SECTION 4.** The following shall be codified as Section
327 37-101-44, Mississippi Code of 1972:

328 37-101-44. (1) In lieu of exercising the authority set
329 forth in Section 37-101-43 and before entering into or awarding
330 any lease under Section 37-101-41, the Board of Trustees of State
331 Institutions of Higher Learning, subject to the provisions of

332 Section 9 of this act, may award contracts to a single entity for
333 privately financed design and construction of facilities on
334 university campuses if the entities receiving the contract or
335 contracts and those entities to which work or services are
336 subcontracted are duly licensed and qualified in the state to
337 perform the contract or contracts. State General Fund
338 appropriations or bonds backed by the state may not be used to
339 finance the construction or maintenance of any such facility.

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

347 **SECTION 5.** Section 37-101-43, Mississippi Code of 1972, is
348 amended as follows:

349 37-101-43. (a) Except as otherwise provided in Section
350 37-101-44, and subject to the provisions of Section 9 of this act,
351 before entering into or awarding any such lease contract under the
352 provisions of Section 37-101-41, the Board of Trustees of State
353 Institutions of Higher Learning shall cause the interested
354 state-supported institution upon which a facility is proposed to
355 be constructed to select and submit three (3) architects to the
356 board. Thereupon, the board shall approve and employ an
357 architect, who shall be paid by the interested institution from
358 any funds available to the interested institution. The architect,
359 under the direction of the interested institution, shall prepare
360 complete plans and specifications for the facility desired to be
361 constructed on the leased property.

362 Upon completion of the plans and specifications and the
363 approval thereof by the board, and before entering into any lease
364 contract, the board shall cause to be published once a week for at
365 least three (3) consecutive weeks and not less than twenty-one
366 (21) days in at least one (1) newspaper having a general

367 circulation in the county in which the interested institution is
368 located and in one (1) newspaper with a general statewide
369 circulation, a notice inviting bids or proposals for the leasing,
370 construction and leasing back of the land and constructed
371 facility, the facility to be constructed in accordance with the
372 plans and specifications. The notice shall distinctly state the
373 thing to be done, and invite sealed proposals, to be filed with
374 the board, to do the thing to be done. The notice shall contain
375 the following specific provisions, together with such others as
376 the board in its discretion deems appropriate, to wit: bids shall
377 be accompanied by a bid security evidenced by a certified or
378 cashier's check or bid-bond payable to the board in a sum of not
379 less than five percent (5%) of the gross construction cost of the
380 facility to be constructed as estimated by the board and the bids
381 shall contain proof satisfactory to the board of interim and
382 permanent financing. The board shall state in the notice when
383 construction shall commence. The bid shall contain the proposed
384 contractor's certificate of responsibility number and bidder's
385 license. In all cases, before the notice shall be published, the
386 plans and specifications shall be filed with the board and also in
387 the office of the president of the interested institution, there
388 to remain.

389 The board shall award the lease contract to the lowest and
390 best bidder, who will comply with the terms imposed by the
391 contract documents. At the time of the awarding of the lease
392 contract the successful bidder shall enter into bond with
393 sufficient sureties, to be approved by the board, in such penalty
394 as may be fixed by the board, but in no case to be less than the
395 estimated gross construction cost of the facility to be
396 constructed as estimated by the board, conditioned for the prompt,
397 proper and efficient performance of the contract. The bond shall
398 be made by an authorized corporate surety bonding company.

399 The * * * bid security herein provided for shall be forfeited if
400 the successful bidder fails to enter into lease contract and
401 commence construction within the time limitation set forth in the

402 notice. At such time, and simultaneously with the signing of the
403 contract, the successful bidder shall deposit a sum of money, in
404 cash or certified or cashier's check, not less than the bid
405 security previously deposited as bid security to reimburse the
406 interested institution for all sums expended by it for
407 architectural services and other expenditures of the board and
408 interested institution connected with the bidden lease contract,
409 of which such other anticipated expenditures notice is to be given
410 to bidder in the notice. The bid security posted by an
411 unsuccessful bidder shall be refunded to him.

412 (b) Under the authority granted under Section
413 37-101-44, the requirements of paragraph (a) of this section shall
414 not apply to the Board of Trustees of State Institutions of Higher
415 Learning to grant to universities the authority to contract with a
416 single entity for privately financed design and construction of
417 facilities on university campuses.

418 **SECTION 6.** Section 37-101-41, Mississippi Code of 1972, is
419 amended as follows:

420 37-101-41. (1) (a) Except as otherwise provided in
421 paragraph (b) of this section, and subject to the provisions of
422 Section 9 of this act, the Board of Trustees of State Institutions
423 of Higher Learning is * * * authorized and empowered to lease to
424 private individuals or corporations for a term not exceeding
425 thirty-one (31) years any land at any of the following
426 state-supported institutions: Mississippi State University of
427 Agriculture and Applied Science, Jackson State University,
428 Mississippi Valley State University, University of Mississippi,
429 Alcorn State University, University of Southern Mississippi,
430 Mississippi University for Women and Delta State University, for
431 the purpose of erecting auxiliary facilities thereon for active
432 faculty and students. The auxiliary facilities shall be
433 constructed thereon by private financing, and shall be leased back
434 to the board for use by the concerned state-supported institution
435 of higher learning. The lease shall contain a provision
436 permitting the board to purchase the building located thereon for

437 the sum of One Dollar (\$1.00) after payment by the board of all
438 sums of money due under said lease.

439 (b) The Board of Trustees of State Institutions of
440 Higher Learning may grant authority to universities to lease to
441 private individuals or corporations for a period not exceeding
442 thirty-one (31) years, any land at the university, for the purpose
443 of erecting auxiliary facilities thereon for active faculty and
444 students. The auxiliary facilities shall be constructed thereon
445 by private financing, and shall be leased back to the board for
446 use by the university. The lease shall contain a provision
447 permitting the board to purchase the auxiliary facilities located
448 thereon for the sum of One Dollar (\$1.00) after payment by the
449 board of all sums of money due under the lease.

450 (2) Upon there being an agreement reached between the Board
451 of Trustees of State Institutions of Higher Learning and a
452 university upon whose land the auxiliary facility will be
453 constructed and a private individual or corporation to enter into
454 such lease agreement as described in subsection (1), it shall be
455 stipulated in the agreement that all newly constructed auxiliary
456 facilities shall be in compliance with the minimum building code
457 standards employed by the state as required under Section
458 31-11-33.

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

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

472 Before entering into contractual lease agreement for the
473 construction of privately financed auxiliary facilities, the Board
474 of Trustees for the State Institutions of Higher Learning shall
475 establish rules and procedures to ensure adequate public
476 advertisement of any requirement for the construction of privately
477 financed auxiliary facilities at a university in order to promote
478 full and open competition and which set forth the requirements for
479 evaluation of offers and award of the contract lease agreement to
480 the private entity.

481 **SECTION 7.** Section 31-7-13, Mississippi Code of 1972, is
482 amended as follows:

483 31-7-13. All agencies and governing authorities shall
484 purchase their commodities and printing; contract for garbage
485 collection or disposal; contract for solid waste collection or
486 disposal; contract for sewage collection or disposal; contract for
487 public construction; and contract for rentals as herein provided.

488 (a) **Bidding procedure for purchases not over \$3,500.00.**
489 Purchases which do not involve an expenditure of more than Three
490 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
491 shipping charges, may be made without advertising or otherwise
492 requesting competitive bids. However, nothing contained in this
493 paragraph (a) shall be construed to prohibit any agency or
494 governing authority from establishing procedures which require
495 competitive bids on purchases of Three Thousand Five Hundred
496 Dollars (\$3,500.00) or less.

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

507 counties, or its purchase clerk, or his designee, with regard to
508 counties, to accept the lowest and best competitive written bid.
509 Such authorization shall be made in writing by the governing
510 authority and shall be maintained on file in the primary office of
511 the agency and recorded in the official minutes of the governing
512 authority, as appropriate. The purchasing agent or the purchase
513 clerk, or their designee, as the case may be, and not the
514 governing authority, shall be liable for any penalties and/or
515 damages as may be imposed by law for any act or omission of the
516 purchasing agent or purchase clerk, or their designee,
517 constituting a violation of law in accepting any bid without
518 approval by the governing authority. The term "competitive
519 written bid" shall mean a bid submitted on a bid form furnished by
520 the buying agency or governing authority and signed by authorized
521 personnel representing the vendor, or a bid submitted on a
522 vendor's letterhead or identifiable bid form and signed by
523 authorized personnel representing the vendor. "Competitive" shall
524 mean that the bids are developed based upon comparable
525 identification of the needs and are developed independently and
526 without knowledge of other bids or prospective bids. Bids may be
527 submitted by facsimile, electronic mail or other generally
528 accepted method of information distribution. Bids submitted by
529 electronic transmission shall not require the signature of the
530 vendor's representative unless required by agencies or governing
531 authorities.

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

533 (i) **Publication requirement.**

534 1. Purchases which involve an expenditure of
535 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
536 freight and shipping charges, may be made from the lowest and best
537 bidder after advertising for competitive bids once each week for
538 two (2) consecutive weeks in a regular newspaper published in the
539 county or municipality in which such agency or governing authority
540 is located.

541 2. The purchasing entity may designate the
542 method by which the bids will be received, including, but not
543 limited to, bids sealed in an envelope, bids received
544 electronically in a secure system, bids received via a reverse
545 auction, or bids received by any other method that promotes open
546 competition and has been approved by the Office of Purchasing and
547 Travel. The provisions of this part 2 of subparagraph (i) shall
548 be repealed on July 1, 2008.

549 3. The date as published for the bid opening
550 shall not be less than seven (7) working days after the last
551 published notice; however, if the purchase involves a construction
552 project in which the estimated cost is in excess of Fifteen
553 Thousand Dollars (\$15,000.00), such bids shall not be opened in
554 less than fifteen (15) working days after the last notice is
555 published and the notice for the purchase of such construction
556 shall be published once each week for two (2) consecutive weeks.
557 The notice of intention to let contracts or purchase equipment
558 shall state the time and place at which bids shall be received,
559 list the contracts to be made or types of equipment or supplies to
560 be purchased, and, if all plans and/or specifications are not
561 published, refer to the plans and/or specifications on file. If
562 there is no newspaper published in the county or municipality,
563 then such notice shall be given by posting same at the courthouse,
564 or for municipalities at the city hall, and at two (2) other
565 public places in the county or municipality, and also by
566 publication once each week for two (2) consecutive weeks in some
567 newspaper having a general circulation in the county or
568 municipality in the above provided manner. On the same date that
569 the notice is submitted to the newspaper for publication, the
570 agency or governing authority involved shall mail written notice
571 to, or provide electronic notification to the main office of the
572 Mississippi Contract Procurement Center that contains the same
573 information as that in the published notice.

574 (ii) **Bidding process amendment procedure.** If all
575 plans and/or specifications are published in the notification,

576 then the plans and/or specifications may not be amended. If all
577 plans and/or specifications are not published in the notification,
578 then amendments to the plans/specifications, bid opening date, bid
579 opening time and place may be made, provided that the agency or
580 governing authority maintains a list of all prospective bidders
581 who are known to have received a copy of the bid documents and all
582 such prospective bidders are sent copies of all amendments. This
583 notification of amendments may be made via mail, facsimile,
584 electronic mail or other generally accepted method of information
585 distribution. No addendum to bid specifications may be issued
586 within two (2) working days of the time established for the
587 receipt of bids unless such addendum also amends the bid opening
588 to a date not less than five (5) working days after the date of
589 the addendum.

590 (iii) **Filing requirement.** In all cases involving
591 governing authorities, before the notice shall be published or
592 posted, the plans or specifications for the construction or
593 equipment being sought shall be filed with the clerk of the board
594 of the governing authority. In addition to these requirements, a
595 bid file shall be established which shall indicate those vendors
596 to whom such solicitations and specifications were issued, and
597 such file shall also contain such information as is pertinent to
598 the bid.

599 (iv) **Specification restrictions.**

600 1. Specifications pertinent to such bidding
601 shall be written so as not to exclude comparable equipment of
602 domestic manufacture. However, if valid justification is
603 presented, the Department of Finance and Administration or the
604 board of a governing authority may approve a request for specific
605 equipment necessary to perform a specific job. Further, such
606 justification, when placed on the minutes of the board of a
607 governing authority, may serve as authority for that governing
608 authority to write specifications to require a specific item of
609 equipment needed to perform a specific job. In addition to these
610 requirements, from and after July 1, 1990, vendors of relocatable

611 classrooms and the specifications for the purchase of such
612 relocatable classrooms published by local school boards shall meet
613 all pertinent regulations of the State Board of Education,
614 including prior approval of such bid by the State Department of
615 Education.

616 2. Specifications for construction projects
617 may include an allowance for commodities, equipment, furniture,
618 construction materials or systems in which prospective bidders are
619 instructed to include in their bids specified amounts for such
620 items so long as the allowance items are acquired by the vendor in
621 a commercially reasonable manner and approved by the
622 agency/governing authority. Such acquisitions shall not be made
623 to circumvent the public purchasing laws.

624 (v) Agencies and governing authorities may
625 establish secure procedures by which bids may be submitted via
626 electronic means.

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

628 (i) **Decision procedure.** Purchases may be made
629 from the lowest and best bidder. In determining the lowest and
630 best bid, freight and shipping charges shall be included.
631 Life-cycle costing, total cost bids, warranties, guaranteed
632 buy-back provisions and other relevant provisions may be included
633 in the best bid calculation. All best bid procedures for state
634 agencies must be in compliance with regulations established by the
635 Department of Finance and Administration. If any governing
636 authority accepts a bid other than the lowest bid actually
637 submitted, it shall place on its minutes detailed calculations and
638 narrative summary showing that the accepted bid was determined to
639 be the lowest and best bid, including the dollar amount of the
640 accepted bid and the dollar amount of the lowest bid. No agency
641 or governing authority shall accept a bid based on items not
642 included in the specifications.

643 (ii) **Decision procedure for Certified Purchasing**
644 **Offices.** In addition to the decision procedure set forth in
645 paragraph (d)(i), Certified Purchasing Offices may also use the

646 following procedure: Purchases may be made from the bidder
647 offering the best value. In determining the best value bid,
648 freight and shipping charges shall be included. Life-cycle
649 costing, total cost bids, warranties, guaranteed buy-back
650 provisions, documented previous experience, training costs and
651 other relevant provisions may be included in the best value
652 calculation. This provision shall authorize Certified Purchasing
653 Offices to utilize a Request For Proposals (RFP) process when
654 purchasing commodities. All best value procedures for state
655 agencies must be in compliance with regulations established by the
656 Department of Finance and Administration. No agency or governing
657 authority shall accept a bid based on items or criteria not
658 included in the specifications.

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

665 (e) **Lease-purchase authorization.** For the purposes of
666 this section, the term "equipment" shall mean equipment, furniture
667 and, if applicable, associated software and other applicable
668 direct costs associated with the acquisition. Any lease-purchase
669 of equipment which an agency is not required to lease-purchase
670 under the master lease-purchase program pursuant to Section
671 31-7-10 and any lease-purchase of equipment which a governing
672 authority elects to lease-purchase may be acquired by a
673 lease-purchase agreement under this paragraph (e). Lease-purchase
674 financing may also be obtained from the vendor or from a
675 third-party source after having solicited and obtained at least
676 two (2) written competitive bids, as defined in paragraph (b) of
677 this section, for such financing without advertising for such
678 bids. Solicitation for the bids for financing may occur before or
679 after acceptance of bids for the purchase of such equipment or,
680 where no such bids for purchase are required, at any time before

681 the purchase thereof. No such lease-purchase agreement shall be
682 for an annual rate of interest which is greater than the overall
683 maximum interest rate to maturity on general obligation
684 indebtedness permitted under Section 75-17-101, and the term of
685 such lease-purchase agreement shall not exceed the useful life of
686 equipment covered thereby as determined according to the upper
687 limit of the asset depreciation range (ADR) guidelines for the
688 Class Life Asset Depreciation Range System established by the
689 Internal Revenue Service pursuant to the United States Internal
690 Revenue Code and regulations thereunder as in effect on December
691 31, 1980, or comparable depreciation guidelines with respect to
692 any equipment not covered by ADR guidelines. Any lease-purchase
693 agreement entered into pursuant to this paragraph (e) may contain
694 any of the terms and conditions which a master lease-purchase
695 agreement may contain under the provisions of Section 31-7-10(5),
696 and shall contain an annual allocation dependency clause
697 substantially similar to that set forth in Section 31-7-10(8).
698 Each agency or governing authority entering into a lease-purchase
699 transaction pursuant to this paragraph (e) shall maintain with
700 respect to each such lease-purchase transaction the same
701 information as required to be maintained by the Department of
702 Finance and Administration pursuant to Section 31-7-10(13).
703 However, nothing contained in this section shall be construed to
704 permit agencies to acquire items of equipment with a total
705 acquisition cost in the aggregate of less than Ten Thousand
706 Dollars (\$10,000.00) by a single lease-purchase transaction. All
707 equipment, and the purchase thereof by any lessor, acquired by
708 lease-purchase under this paragraph and all lease-purchase
709 payments with respect thereto shall be exempt from all Mississippi
710 sales, use and ad valorem taxes. Interest paid on any
711 lease-purchase agreement under this section shall be exempt from
712 State of Mississippi income taxation.

713 (f) **Alternate bid authorization.** When necessary to
714 ensure ready availability of commodities for public works and the
715 timely completion of public projects, no more than two (2)

716 alternate bids may be accepted by a governing authority for
717 commodities. No purchases may be made through use of such
718 alternate bids procedure unless the lowest and best bidder cannot
719 deliver the commodities contained in his bid. In that event,
720 purchases of such commodities may be made from one (1) of the
721 bidders whose bid was accepted as an alternate.

722 (g) **Construction contract change authorization.** In the
723 event a determination is made by an agency or governing authority
724 after a construction contract is let that changes or modifications
725 to the original contract are necessary or would better serve the
726 purpose of the agency or the governing authority, such agency or
727 governing authority may, in its discretion, order such changes
728 pertaining to the construction that are necessary under the
729 circumstances without the necessity of further public bids;
730 provided that such change shall be made in a commercially
731 reasonable manner and shall not be made to circumvent the public
732 purchasing statutes. In addition to any other authorized person,
733 the architect or engineer hired by an agency or governing
734 authority with respect to any public construction contract shall
735 have the authority, when granted by an agency or governing
736 authority, to authorize changes or modifications to the original
737 contract without the necessity of prior approval of the agency or
738 governing authority when any such change or modification is less
739 than one percent (1%) of the total contract amount. The agency or
740 governing authority may limit the number, manner or frequency of
741 such emergency changes or modifications.

742 (h) **Petroleum purchase alternative.** In addition to
743 other methods of purchasing authorized in this chapter, when any
744 agency or governing authority shall have a need for gas, diesel
745 fuel, oils and/or other petroleum products in excess of the amount
746 set forth in paragraph (a) of this section, such agency or
747 governing authority may purchase the commodity after having
748 solicited and obtained at least two (2) competitive written bids,
749 as defined in paragraph (b) of this section. If two (2)
750 competitive written bids are not obtained, the entity shall comply

751 with the procedures set forth in paragraph (c) of this section.
752 In the event any agency or governing authority shall have
753 advertised for bids for the purchase of gas, diesel fuel, oils and
754 other petroleum products and coal and no acceptable bids can be
755 obtained, such agency or governing authority is authorized and
756 directed to enter into any negotiations necessary to secure the
757 lowest and best contract available for the purchase of such
758 commodities.

759 (i) **Road construction petroleum products price**
760 **adjustment clause authorization.** Any agency or governing
761 authority authorized to enter into contracts for the construction,
762 maintenance, surfacing or repair of highways, roads or streets,
763 may include in its bid proposal and contract documents a price
764 adjustment clause with relation to the cost to the contractor,
765 including taxes, based upon an industry-wide cost index, of
766 petroleum products including asphalt used in the performance or
767 execution of the contract or in the production or manufacture of
768 materials for use in such performance. Such industry-wide index
769 shall be established and published monthly by the Mississippi
770 Department of Transportation with a copy thereof to be mailed,
771 upon request, to the clerks of the governing authority of each
772 municipality and the clerks of each board of supervisors
773 throughout the state. The price adjustment clause shall be based
774 on the cost of such petroleum products only and shall not include
775 any additional profit or overhead as part of the adjustment. The
776 bid proposals or document contract shall contain the basis and
777 methods of adjusting unit prices for the change in the cost of
778 such petroleum products.

779 (j) **State agency emergency purchase procedure.** If the
780 governing board or the executive head, or his designee, of any
781 agency of the state shall determine that an emergency exists in
782 regard to the purchase of any commodities or repair contracts, so
783 that the delay incident to giving opportunity for competitive
784 bidding would be detrimental to the interests of the state, then
785 the provisions herein for competitive bidding shall not apply and

786 the head of such agency shall be authorized to make the purchase
787 or repair. Total purchases so made shall only be for the purpose
788 of meeting needs created by the emergency situation. In the event
789 such executive head is responsible to an agency board, at the
790 meeting next following the emergency purchase, documentation of
791 the purchase, including a description of the commodity purchased,
792 the purchase price thereof and the nature of the emergency shall
793 be presented to the board and placed on the minutes of the board
794 of such agency. The head of such agency, or his designee, shall,
795 at the earliest possible date following such emergency purchase,
796 file with the Department of Finance and Administration (i) a
797 statement explaining the conditions and circumstances of the
798 emergency, which shall include a detailed description of the
799 events leading up to the situation and the negative impact to the
800 entity if the purchase is made following the statutory
801 requirements set forth in paragraph (a), (b) or (c) of this
802 section, and (ii) a certified copy of the appropriate minutes of
803 the board of such agency, if applicable. On or before September 1
804 of each year, the State Auditor shall prepare and deliver to the
805 Senate Fees, Salaries and Administration Committee, the House Fees
806 and Salaries of Public Officers Committee and the Joint
807 Legislative Budget Committee a report containing a list of all
808 state agency emergency purchases and supporting documentation for
809 each emergency purchase.

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

811 If the governing authority, or the governing authority acting
812 through its designee, shall determine that an emergency exists in
813 regard to the purchase of any commodities or repair contracts, so
814 that the delay incident to giving opportunity for competitive
815 bidding would be detrimental to the interest of the governing
816 authority, then the provisions herein for competitive bidding
817 shall not apply and any officer or agent of such governing
818 authority having general or special authority therefor in making
819 such purchase or repair shall approve the bill presented therefor,
820 and he shall certify in writing thereon from whom such purchase

821 was made, or with whom such a repair contract was made. At the
822 board meeting next following the emergency purchase or repair
823 contract, documentation of the purchase or repair contract,
824 including a description of the commodity purchased, the price
825 thereof and the nature of the emergency shall be presented to the
826 board and shall be placed on the minutes of the board of such
827 governing authority.

828 (1) **Hospital purchase, lease-purchase and lease**
829 **authorization.**

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

835 (ii) In addition to the authority granted in
836 subparagraph (i) of this paragraph (1), the commissioners or board
837 of trustees is authorized to enter into contracts for the lease of
838 equipment or services, or both, which it considers necessary for
839 the proper care of patients if, in its opinion, it is not
840 financially feasible to purchase the necessary equipment or
841 services. Any such contract for the lease of equipment or
842 services executed by the commissioners or board shall not exceed a
843 maximum of five (5) years' duration and shall include a
844 cancellation clause based on unavailability of funds. If such
845 cancellation clause is exercised, there shall be no further
846 liability on the part of the lessee. Any such contract for the
847 lease of equipment or services executed on behalf of the
848 commissioners or board that complies with the provisions of this
849 subparagraph (ii) shall be excepted from the bid requirements set
850 forth in this section.

851 (m) **Exceptions from bidding requirements.** Excepted
852 from bid requirements are:

853 (i) **Purchasing agreements approved by department.**
854 Purchasing agreements, contracts and maximum price regulations

855 executed or approved by the Department of Finance and
856 Administration.

857 (ii) **Outside equipment repairs.** Repairs to
858 equipment, when such repairs are made by repair facilities in the
859 private sector; however, engines, transmissions, rear axles and/or
860 other such components shall not be included in this exemption when
861 replaced as a complete unit instead of being repaired and the need
862 for such total component replacement is known before disassembly
863 of the component; however, invoices identifying the equipment,
864 specific repairs made, parts identified by number and name,
865 supplies used in such repairs, and the number of hours of labor
866 and costs therefor shall be required for the payment for such
867 repairs.

868 (iii) **In-house equipment repairs.** Purchases of
869 parts for repairs to equipment, when such repairs are made by
870 personnel of the agency or governing authority; however, entire
871 assemblies, such as engines or transmissions, shall not be
872 included in this exemption when the entire assembly is being
873 replaced instead of being repaired.

874 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
875 of gravel or fill dirt which are to be removed and transported by
876 the purchaser.

877 (v) **Governmental equipment auctions.** Motor
878 vehicles or other equipment purchased from a federal agency or
879 authority, another governing authority or state agency of the
880 State of Mississippi, or any governing authority or state agency
881 of another state at a public auction held for the purpose of
882 disposing of such vehicles or other equipment. Any purchase by a
883 governing authority under the exemption authorized by this
884 subparagraph (v) shall require advance authorization spread upon
885 the minutes of the governing authority to include the listing of
886 the item or items authorized to be purchased and the maximum bid
887 authorized to be paid for each item or items.

888 (vi) **Intergovernmental sales and transfers.**
889 Purchases, sales, transfers or trades by governing authorities or

890 state agencies when such purchases, sales, transfers or trades are
891 made by a private treaty agreement or through means of
892 negotiation, from any federal agency or authority, another
893 governing authority or state agency of the State of Mississippi,
894 or any state agency or governing authority of another state.
895 Nothing in this section shall permit such purchases through public
896 auction except as provided for in subparagraph (v) of this
897 section. It is the intent of this section to allow governmental
898 entities to dispose of and/or purchase commodities from other
899 governmental entities at a price that is agreed to by both
900 parties. This shall allow for purchases and/or sales at prices
901 which may be determined to be below the market value if the
902 selling entity determines that the sale at below market value is
903 in the best interest of the taxpayers of the state. Governing
904 authorities shall place the terms of the agreement and any
905 justification on the minutes, and state agencies shall obtain
906 approval from the Department of Finance and Administration, prior
907 to releasing or taking possession of the commodities.

908 (vii) **Perishable supplies or food.** Perishable
909 supplies or food purchased for use in connection with hospitals,
910 the school lunch programs, homemaking programs and for the feeding
911 of county or municipal prisoners.

912 (viii) **Single source items.** Noncompetitive items
913 available from one (1) source only. In connection with the
914 purchase of noncompetitive items only available from one (1)
915 source, a certification of the conditions and circumstances
916 requiring the purchase shall be filed by the agency with the
917 Department of Finance and Administration and by the governing
918 authority with the board of the governing authority. Upon receipt
919 of that certification the Department of Finance and Administration
920 or the board of the governing authority, as the case may be, may,
921 in writing, authorize the purchase, which authority shall be noted
922 on the minutes of the body at the next regular meeting thereafter.
923 In those situations, a governing authority is not required to

924 obtain the approval of the Department of Finance and
925 Administration.

926 (ix) **Waste disposal facility construction**
927 **contracts.** Construction of incinerators and other facilities for
928 disposal of solid wastes in which products either generated
929 therein, such as steam, or recovered therefrom, such as materials
930 for recycling, are to be sold or otherwise disposed of; however,
931 in constructing such facilities, a governing authority or agency
932 shall publicly issue requests for proposals, advertised for in the
933 same manner as provided herein for seeking bids for public
934 construction projects, concerning the design, construction,
935 ownership, operation and/or maintenance of such facilities,
936 wherein such requests for proposals when issued shall contain
937 terms and conditions relating to price, financial responsibility,
938 technology, environmental compatibility, legal responsibilities
939 and such other matters as are determined by the governing
940 authority or agency to be appropriate for inclusion; and after
941 responses to the request for proposals have been duly received,
942 the governing authority or agency may select the most qualified
943 proposal or proposals on the basis of price, technology and other
944 relevant factors and from such proposals, but not limited to the
945 terms thereof, negotiate and enter contracts with one or more of
946 the persons or firms submitting proposals.

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

950 (xi) **Information technology products.** Purchases
951 of information technology products made by governing authorities
952 under the provisions of purchase schedules, or contracts executed
953 or approved by the Mississippi Department of Information
954 Technology Services and designated for use by governing
955 authorities.

956 (xii) **Energy efficiency services and equipment.**
957 Energy efficiency services and equipment acquired by school
958 districts, community and junior colleges, institutions of higher

959 learning and state agencies or other applicable governmental
960 entities on a shared-savings, lease or lease-purchase basis
961 pursuant to Section 31-7-14.

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

966 (xiv) **Library books and other reference materials.**
967 Purchases by libraries or for libraries of books and periodicals;
968 processed film, video cassette tapes, filmstrips and slides;
969 recorded audio tapes, cassettes and diskettes; and any such items
970 as would be used for teaching, research or other information
971 distribution; however, equipment such as projectors, recorders,
972 audio or video equipment, and monitor televisions are not exempt
973 under this subparagraph.

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

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

980 (xvii) **Multichannel interactive video systems.**
981 From and after July 1, 1990, contracts by Mississippi Authority
982 for Educational Television with any private educational
983 institution or private nonprofit organization whose purposes are
984 educational in regard to the construction, purchase, lease or
985 lease-purchase of facilities and equipment and the employment of
986 personnel for providing multichannel interactive video systems
987 (ITSF) in the school districts of this state.

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

992 (xix) **Undercover operations equipment.** Purchases
993 of surveillance equipment or any other high-tech equipment to be

994 used by law enforcement agents in undercover operations, provided
995 that any such purchase shall be in compliance with regulations
996 established by the Department of Finance and Administration.

997 (xx) **Junior college books for rent.** Purchases by
998 community or junior colleges of textbooks which are obtained for
999 the purpose of renting such books to students as part of a book
1000 service system.

1001 (xxi) **Certain school district purchases.**
1002 Purchases of commodities made by school districts from vendors
1003 with which any levying authority of the school district, as
1004 defined in Section 37-57-1, has contracted through competitive
1005 bidding procedures for purchases of the same commodities.

1006 (xxii) **Garbage, solid waste and sewage contracts.**
1007 Contracts for garbage collection or disposal, contracts for solid
1008 waste collection or disposal and contracts for sewage collection
1009 or disposal.

1010 (xxiii) **Municipal water tank maintenance**
1011 **contracts.** Professional maintenance program contracts for the
1012 repair or maintenance of municipal water tanks, which provide
1013 professional services needed to maintain municipal water storage
1014 tanks for a fixed annual fee for a duration of two (2) or more
1015 years.

1016 (xxiv) **Purchases of Mississippi Industries for the**
1017 **Blind products.** Purchases made by state agencies or governing
1018 authorities involving any item that is manufactured, processed or
1019 produced by the Mississippi Industries for the Blind.

1020 (xxv) **Purchases of state-adopted textbooks.**
1021 Purchases of state-adopted textbooks by public school districts.

1022 (xxvi) **Certain purchases under the Mississippi**
1023 **Major Economic Impact Act.** Contracts entered into pursuant to the
1024 provisions of Section 57-75-9(2) and (3).

1025 (xxvii) **Used heavy or specialized machinery or**
1026 **equipment for installation of soil and water conservation**
1027 **practices purchased at auction.** Used heavy or specialized
1028 machinery or equipment used for the installation and

1029 implementation of soil and water conservation practices or
1030 measures purchased subject to the restrictions provided in
1031 Sections 69-27-331 through 69-27-341. Any purchase by the State
1032 Soil and Water Conservation Commission under the exemption
1033 authorized by this subparagraph shall require advance
1034 authorization spread upon the minutes of the commission to include
1035 the listing of the item or items authorized to be purchased and
1036 the maximum bid authorized to be paid for each item or items.

1037 (xxviii) **Hospital lease of equipment or services.**
1038 Leases by hospitals of equipment or services if the leases are in
1039 compliance with paragraph (1)(ii).

1040 (xxix) **Purchases made pursuant to qualified**
1041 **cooperative purchasing agreements.** Purchases made by certified
1042 purchasing offices of state agencies or governing authorities
1043 under cooperative purchasing agreements previously approved by the
1044 Office of Purchasing and Travel and established by or for any
1045 municipality, county, parish or state government or the federal
1046 government, provided that the notification to potential
1047 contractors includes a clause that sets forth the availability of
1048 the cooperative purchasing agreement to other governmental
1049 entities. Such purchases shall only be made if the use of the
1050 cooperative purchasing agreements is determined to be in the best
1051 interest of the governmental entity.

1052 (xxx) **School yearbooks.** Purchases of school
1053 yearbooks by state agencies or governing authorities; provided,
1054 however, that state agencies and governing authorities shall use
1055 for these purchases the RFP process as set forth in the
1056 Mississippi Procurement Manual adopted by the Office of Purchasing
1057 and Travel.

1058 (xxxii) **Design-build method and dual-phase**
1059 **design-build * * * method of contracting.** Contracts entered into
1060 under the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

1061 (n) **Term contract authorization.** All contracts for the
1062 purchase of:

1063 (i) All contracts for the purchase of commodities,
1064 equipment and public construction (including, but not limited to,
1065 repair and maintenance), may be let for periods of not more than
1066 sixty (60) months in advance, subject to applicable statutory
1067 provisions prohibiting the letting of contracts during specified
1068 periods near the end of terms of office. Term contracts for a
1069 period exceeding twenty-four (24) months shall also be subject to
1070 ratification or cancellation by governing authority boards taking
1071 office subsequent to the governing authority board entering the
1072 contract.

1073 (ii) Bid proposals and contracts may include price
1074 adjustment clauses with relation to the cost to the contractor
1075 based upon a nationally published industry-wide or nationally
1076 published and recognized cost index. The cost index used in a
1077 price adjustment clause shall be determined by the Department of
1078 Finance and Administration for the state agencies and by the
1079 governing board for governing authorities. The bid proposal and
1080 contract documents utilizing a price adjustment clause shall
1081 contain the basis and method of adjusting unit prices for the
1082 change in the cost of such commodities, equipment and public
1083 construction.

1084 (o) **Purchase law violation prohibition and vendor**
1085 **penalty.** No contract or purchase as herein authorized shall be
1086 made for the purpose of circumventing the provisions of this
1087 section requiring competitive bids, nor shall it be lawful for any
1088 person or concern to submit individual invoices for amounts within
1089 those authorized for a contract or purchase where the actual value
1090 of the contract or commodity purchased exceeds the authorized
1091 amount and the invoices therefor are split so as to appear to be
1092 authorized as purchases for which competitive bids are not
1093 required. Submission of such invoices shall constitute a
1094 misdemeanor punishable by a fine of not less than Five Hundred
1095 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1096 or by imprisonment for thirty (30) days in the county jail, or

1097 both such fine and imprisonment. In addition, the claim or claims
1098 submitted shall be forfeited.

1099 (p) **Electrical utility petroleum-based equipment**
1100 **purchase procedure.** When in response to a proper advertisement
1101 therefor, no bid firm as to price is submitted to an electric
1102 utility for power transformers, distribution transformers, power
1103 breakers, reclosers or other articles containing a petroleum
1104 product, the electric utility may accept the lowest and best bid
1105 therefor although the price is not firm.

1106 (q) **Fuel management system bidding procedure.** Any
1107 governing authority or agency of the state shall, before
1108 contracting for the services and products of a fuel management or
1109 fuel access system, enter into negotiations with not fewer than
1110 two (2) sellers of fuel management or fuel access systems for
1111 competitive written bids to provide the services and products for
1112 the systems. In the event that the governing authority or agency
1113 cannot locate two (2) sellers of such systems or cannot obtain
1114 bids from two (2) sellers of such systems, it shall show proof
1115 that it made a diligent, good-faith effort to locate and negotiate
1116 with two (2) sellers of such systems. Such proof shall include,
1117 but not be limited to, publications of a request for proposals and
1118 letters soliciting negotiations and bids. For purposes of this
1119 paragraph (q), a fuel management or fuel access system is an
1120 automated system of acquiring fuel for vehicles as well as
1121 management reports detailing fuel use by vehicles and drivers, and
1122 the term "competitive written bid" shall have the meaning as
1123 defined in paragraph (b) of this section. Governing authorities
1124 and agencies shall be exempt from this process when contracting
1125 for the services and products of a fuel management or fuel access
1126 systems under the terms of a state contract established by the
1127 Office of Purchasing and Travel.

1128 (r) **Solid waste contract proposal procedure.** Before
1129 entering into any contract for garbage collection or disposal,
1130 contract for solid waste collection or disposal or contract for
1131 sewage collection or disposal, which involves an expenditure of

1132 more than Fifty Thousand Dollars (\$50,000.00), a governing
1133 authority or agency shall issue publicly a request for proposals
1134 concerning the specifications for such services which shall be
1135 advertised for in the same manner as provided in this section for
1136 seeking bids for purchases which involve an expenditure of more
1137 than the amount provided in paragraph (c) of this section. Any
1138 request for proposals when issued shall contain terms and
1139 conditions relating to price, financial responsibility,
1140 technology, legal responsibilities and other relevant factors as
1141 are determined by the governing authority or agency to be
1142 appropriate for inclusion; all factors determined relevant by the
1143 governing authority or agency or required by this paragraph (r)
1144 shall be duly included in the advertisement to elicit proposals.
1145 After responses to the request for proposals have been duly
1146 received, the governing authority or agency shall select the most
1147 qualified proposal or proposals on the basis of price, technology
1148 and other relevant factors and from such proposals, but not
1149 limited to the terms thereof, negotiate and enter contracts with
1150 one or more of the persons or firms submitting proposals. If the
1151 governing authority or agency deems none of the proposals to be
1152 qualified or otherwise acceptable, the request for proposals
1153 process may be reinitiated. Notwithstanding any other provisions
1154 of this paragraph, where a county with at least thirty-five
1155 thousand (35,000) nor more than forty thousand (40,000)
1156 population, according to the 1990 federal decennial census, owns
1157 or operates a solid waste landfill, the governing authorities of
1158 any other county or municipality may contract with the governing
1159 authorities of the county owning or operating the landfill,
1160 pursuant to a resolution duly adopted and spread upon the minutes
1161 of each governing authority involved, for garbage or solid waste
1162 collection or disposal services through contract negotiations.

1163 (s) **Minority set-aside authorization.** Notwithstanding
1164 any provision of this section to the contrary, any agency or
1165 governing authority, by order placed on its minutes, may, in its
1166 discretion, set aside not more than twenty percent (20%) of its

1167 anticipated annual expenditures for the purchase of commodities
1168 from minority businesses; however, all such set-aside purchases
1169 shall comply with all purchasing regulations promulgated by the
1170 Department of Finance and Administration and shall be subject to
1171 bid requirements under this section. Set-aside purchases for
1172 which competitive bids are required shall be made from the lowest
1173 and best minority business bidder. For the purposes of this
1174 paragraph, the term "minority business" means a business which is
1175 owned by a majority of persons who are United States citizens or
1176 permanent resident aliens (as defined by the Immigration and
1177 Naturalization Service) of the United States, and who are Asian,
1178 Black, Hispanic or Native American, according to the following
1179 definitions:

1180 (i) "Asian" means persons having origins in any of
1181 the original people of the Far East, Southeast Asia, the Indian
1182 subcontinent, or the Pacific Islands.

1183 (ii) "Black" means persons having origins in any
1184 black racial group of Africa.

1185 (iii) "Hispanic" means persons of Spanish or
1186 Portuguese culture with origins in Mexico, South or Central
1187 America, or the Caribbean Islands, regardless of race.

1188 (iv) "Native American" means persons having
1189 origins in any of the original people of North America, including
1190 American Indians, Eskimos and Aleuts.

1191 (t) **Construction punch list restriction.** The
1192 architect, engineer or other representative designated by the
1193 agency or governing authority that is contracting for public
1194 construction or renovation may prepare and submit to the
1195 contractor only one (1) preliminary punch list of items that do
1196 not meet the contract requirements at the time of substantial
1197 completion and one (1) final list immediately before final
1198 completion and final payment.

1199 (u) **Procurement of construction services by state**
1200 **institutions of higher learning.** Contracts for privately financed
1201 **construction of auxiliary facilities on the campus of a state**

1202 institution of higher learning may be awarded by the Board of
1203 Trustees of State Institutions of Higher Learning to the lowest
1204 and best bidder, where sealed bids are solicited, or to the
1205 offeror whose proposal is determined to represent the best value
1206 to the citizens of the State of Mississippi, where requests for
1207 proposals are solicited.

1208 (v) Purchase authorization clarification. Nothing in
1209 this section shall be construed as authorizing any purchase not
1210 authorized by law.

1211 **SECTION 8.** Section 31-11-3, Mississippi Code of 1972, is
1212 amended as follows:

1213 31-11-3. (1) The Department of Finance and Administration,
1214 for the purposes of carrying out the provisions of this chapter,
1215 in addition to all other rights and powers granted by law, shall
1216 have full power and authority to employ and compensate architects
1217 or other employees necessary for the purpose of making
1218 inspections, preparing plans and specifications, supervising the
1219 erection of any buildings, and making any repairs or additions as
1220 may be determined by the Department of Finance and Administration
1221 to be necessary, pursuant to the rules and regulations of the
1222 State Personnel Board. The department shall have entire control
1223 and supervision of, and determine what, if any, buildings,
1224 additions, repairs or improvements are to be made under the
1225 provisions of this chapter, under regulations adopted by the
1226 Public Procurement Review Board.

1227 (2) The department shall have full power to erect buildings,
1228 make repairs, additions or improvements, and buy materials,
1229 supplies and equipment for any of the institutions or departments
1230 of the state under regulations adopted by the Public Procurement
1231 Review Board. In addition to other powers conferred, the
1232 department shall have full power and authority as directed by the
1233 Legislature, or when funds have been appropriated for its use for
1234 these purposes, to:

1235 (a) Build a state office building;

1236 (b) Build suitable plants or buildings for the use and
1237 housing of any state schools or institutions, including the
1238 building of plants or buildings for new state schools or
1239 institutions, as provided for by the Legislature;

1240 (c) Provide state aid for the construction of school
1241 buildings;

1242 (d) Promote and develop the training of returned
1243 veterans of the United States in all sorts of educational and
1244 vocational learning to be supplied by the proper educational
1245 institution of the State of Mississippi, and in so doing allocate
1246 monies appropriated to it for these purposes to the Governor for
1247 use by him in setting up, maintaining and operating an office and
1248 employing a state director of on-the-job training for veterans and
1249 the personnel necessary in carrying out Public Law No. 346 of the
1250 United States;

1251 (e) Build and equip a hospital and administration
1252 building at the Mississippi State Penitentiary;

1253 (f) Build and equip additional buildings and wards at
1254 the Boswell Retardation Center;

1255 (g) Construct a sewage disposal and treatment plant at
1256 the state insane hospital, and in so doing acquire additional land
1257 as may be necessary, and to exercise the right of eminent domain
1258 in the acquisition of this land;

1259 (h) Build and equip the Mississippi central market and
1260 purchase or acquire by eminent domain, if necessary, any lands
1261 needed for this purpose;

1262 (i) Build and equip suitable facilities for a training
1263 and employing center for the blind;

1264 (j) Build and equip a gymnasium at Columbia Training
1265 School;

1266 (k) Approve or disapprove the expenditure of any money
1267 appropriated by the Legislature when authorized by the bill making
1268 the appropriation;

1269 (l) Expend monies appropriated to it in paying the
1270 state's part of the cost of any street paving;

1271 (m) Sell and convey state lands when authorized by the
1272 Legislature, cause said lands to be properly surveyed and platted,
1273 execute all deeds or other legal instruments, and do any and all
1274 other things required to effectively carry out the purpose and
1275 intent of the Legislature. Any transaction which involves state
1276 lands under the provisions of this paragraph shall be done in a
1277 manner consistent with the provisions of Section 29-1-1;

1278 (n) Collect and receive from educational institutions
1279 of the State of Mississippi monies required to be paid by these
1280 institutions to the state in carrying out any veterans'
1281 educational programs;

1282 (o) Purchase lands for building sites, or as additions
1283 to building sites, for the erection of buildings and other
1284 facilities which the department is authorized to erect, and
1285 demolish and dispose of old buildings, when necessary for the
1286 proper construction of new buildings. Any transaction which
1287 involves state lands under the provisions of this paragraph shall
1288 be done in a manner consistent with the provisions of Section
1289 29-1-1;

1290 (p) Obtain business property insurance with a
1291 deductible of not less than One Hundred Thousand Dollars
1292 (\$100,000.00) on state-owned buildings under the management and
1293 control of the department; and

1294 (q) In consultation with and approval by the Chairmen
1295 of the Public Property Committees of the Senate and the House of
1296 Representatives, enter into contracts for the purpose of providing
1297 parking spaces for state employees who work in the Woolfolk
1298 Building, the Carroll Gartin Justice Building or the Walter
1299 Sillers Office Building. The provisions of this paragraph (q)
1300 shall stand repealed on July 1, 2010.

1301 (3) The department shall survey state-owned and
1302 state-utilized buildings to establish an estimate of the costs of
1303 architectural alterations, pursuant to the Americans With
1304 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The
1305 department shall establish priorities for making the identified

1306 architectural alterations and shall make known to the Legislative
1307 Budget Office and to the Legislature the required cost to
1308 effectuate such alterations. To meet the requirements of this
1309 section, the department shall use standards of accessibility that
1310 are at least as stringent as any applicable federal requirements
1311 and may consider:

1312 (a) Federal minimum guidelines and requirements issued
1313 by the United States Architectural and Transportation Barriers
1314 Compliance Board and standards issued by other federal agencies;

1315 (b) The criteria contained in the American Standard
1316 Specifications for Making Buildings Accessible and Usable by the
1317 Physically Handicapped and any amendments thereto as approved by
1318 the American Standards Association, Incorporated (ANSI Standards);

1319 (c) Design manuals;

1320 (d) Applicable federal guidelines;

1321 (e) Current literature in the field;

1322 (f) Applicable safety standards; and

1323 (g) Any applicable environmental impact statements.

1324 (4) The department shall observe the provisions of Section
1325 31-5-23, in letting contracts and shall use Mississippi products,
1326 including paint, varnish and lacquer which contain as vehicles
1327 tung oil and either ester gum or modified resin (with rosin as the
1328 principal base of constituents), and turpentine shall be used as a
1329 solvent or thinner, where these products are available at a cost
1330 not to exceed the cost of products grown, produced, prepared, made
1331 or manufactured outside of the State of Mississippi.

1332 (5) The department shall have authority to accept grants,
1333 loans or donations from the United States government or from any
1334 other sources for the purpose of matching funds in carrying out
1335 the provisions of this chapter.

1336 (6) The department shall build a wheelchair ramp at the War
1337 Memorial Building which complies with all applicable federal laws,
1338 regulations and specifications regarding wheelchair ramps.

1339 (7) The department shall review and preapprove all
1340 architectural or engineering service contracts entered into by any

1341 state agency, institution, commission, board or authority
1342 regardless of the source of funding used to defray the costs of
1343 the construction or renovation project for which services are to
1344 be obtained. The provisions of this subsection (7) shall not
1345 apply to any architectural or engineering contract paid for by
1346 self-generated funds of any of the state institutions of higher
1347 learning, nor shall they apply to community college projects that
1348 are funded from local funds or other nonstate sources which are
1349 outside the Department of Finance and Administration's
1350 appropriations or as directed by the Legislature. The provisions
1351 of this subsection (7) shall not apply to any construction or
1352 design projects of the State Military Department that are funded
1353 from federal funds or other nonstate sources.

1354 (8) The department shall have the authority to obtain
1355 annually from the state institutions of higher learning
1356 information on all building, construction and renovation projects
1357 including duties, responsibilities and costs of any architect or
1358 engineer hired by any such institutions.

1359 (9) * * * As an alternative to other methods of awarding
1360 contracts as prescribed by law, the department may elect to use
1361 the method of contracting for construction projects set out in
1362 Sections 31-7-13.1 and 31-7-13.2; however, the dual-phase
1363 design-build method of construction contracting authorized under
1364 Section 31-7-13.1 may be used only when the Legislature has
1365 specifically required or authorized the use of this method in the
1366 legislation authorizing a project.

1367 * * *

1368 **SECTION 9.** There is created an advisory committee to the
1369 Board of Trustees of State Institutions of Higher Learning for the
1370 lease of the property described in Sections 4, 5 and 6 of this
1371 act, which shall be composed of the following members:

1372 (a) The respective Chairmen of the Public Property
1373 Committees of the House of Representatives and the Senate;

1374 (b) The respective Chairmen of the Universities and
1375 Colleges Committees of the House of Representatives and the
1376 Senate;

1377 (c) One (1) member of the House of Representatives, to
1378 be appointed by the Speaker of the House; and

1379 (d) One (1) member of the Senate, to be appointed by
1380 the Lieutenant Governor.

1381 Before selecting the private developer to which to lease the
1382 property described in Sections 4, 5 and 6, and while negotiating
1383 the terms of the lease with the private developer that has been
1384 selected, the Board of Trustees of State Institutions of Higher
1385 Learning shall consult with the advisory committee and consider
1386 any suggestions and recommendations made by the advisory committee
1387 regarding the lease of the property.

1388 **SECTION 10.** This act shall take effect and be in force from
1389 and after July 1, 2007.

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

1 AN ACT TO CREATE NEW SECTION 31-7-13.1, MISSISSIPPI CODE OF
2 1972, TO AUTHORIZE AND PRESCRIBE THE PROCEDURES FOR USING THE
3 DUAL-PHASE DESIGN-BUILD METHOD OF CONSTRUCTION CONTRACTING; TO
4 PROVIDE THAT A TWO-PHASE PROCEDURE FOR AWARDED A CONTRACT MUST BE
5 ADOPTED FOR EACH PROPOSED DUAL-PHASE DESIGN-BUILD PROJECT; TO
6 PRESCRIBE THE PROCEDURES TO BE FOLLOWED FOR EACH PHASE; TO AMEND
7 SECTION 31-11-3, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE
8 PRECEDING PROVISIONS; TO CREATE A NEW SECTION TO BE CODIFIED AS
9 SECTION 37-101-44, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
10 BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING TO
11 AUTHORIZE UNIVERSITIES TO CONTRACT WITH A SINGLE ENTITY FOR THE
12 DESIGN AND CONSTRUCTION OF FACILITIES AT UNIVERSITIES; TO AMEND
13 SECTION 37-101-43, MISSISSIPPI CODE OF 1972, IN CONFORMITY
14 THERETO; TO CREATE NEW SECTION 31-7-13.2, MISSISSIPPI CODE OF
15 1972, TO PRESCRIBE THE PROCEDURES FOR AWARDED CONTRACTS FOR
16 CONSTRUCTION MANAGERS AT RISK; TO DEFINE QUALIFICATION-BASED
17 SELECTION PROCEDURES FOR PURPOSES OF PROCURING ARCHITECTS AND
18 DESIGN ENGINEERS; TO AMEND SECTION 37-101-41, MISSISSIPPI CODE OF
19 1972, TO AUTHORIZE THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF
20 HIGHER LEARNING TO AUTHORIZE UNIVERSITIES TO LEASE LAND AT
21 UNIVERSITIES FOR THE CONSTRUCTION OF AUXILIARY FACILITIES BY
22 PRIVATE FINANCING FOR A PERIOD NOT EXCEEDING THIRTY-ONE YEARS; TO
23 AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO EXEMPT FROM
24 STATE BID REQUIREMENTS CONTRACTS FOR THE DESIGN-BUILD METHOD AND
25 DUAL-PHASE DESIGN-BUILD METHOD OF CONTRACTING; AND FOR RELATED
26 PURPOSES.

SS26\HB1537A.2J

John O. Gilbert
Secretary of the Senate