

By: Representative Smith (39th)

To: Ways and Means

HOUSE BILL NO. 1257

1 AN ACT TO AMEND SECTION 57-105-1, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE TIME WITHIN WHICH A QUALIFIED COMMUNITY DEVELOPMENT
3 ENTITY ALLOCATED A QUALIFIED EQUITY INVESTMENT TAX CREDIT MUST
4 ISSUE THE QUALIFIED EQUITY INVESTMENT FOR WHICH THE CREDIT WAS
5 ALLOCATED; TO DEFINE THE TERMS "NEW MARKETS TAX CREDIT
6 TRANSACTION," "PUBLIC BENEFIT CORPORATION," "PUBLIC ENTITY OR
7 PUBLIC ENTITIES" AND "PUBLIC PROPERTY OR FACILITIES"; TO AUTHORIZE
8 PUBLIC ENTITIES TO CREATE PUBLIC BENEFIT CORPORATIONS FOR THE
9 PURPOSE OF ENTERING INTO FINANCING AGREEMENTS AND ENGAGING IN NEW
10 MARKETS TAX CREDIT TRANSACTIONS; TO AUTHORIZE PUBLIC ENTITIES TO
11 ENTER INTO FINANCING ARRANGEMENTS IN ORDER TO TRANSFER PUBLIC
12 PROPERTY OR FACILITIES TO OR FROM PUBLIC BENEFIT CORPORATIONS; TO
13 AUTHORIZE PUBLIC ENTITIES AND PUBLIC BENEFIT CORPORATIONS, WITH
14 RESPECT TO NEW MARKETS TAX CREDIT TRANSACTIONS, TO ENTER INTO
15 FINANCING ARRANGEMENTS WITH GOVERNMENTAL, NONPROFIT OR FOR PROFIT
16 ENTITIES IN ORDER TO LEVERAGE FUNDS NOT OTHERWISE AVAILABLE TO
17 PUBLIC ENTITIES FOR THE ACQUISITION, CONSTRUCTION OR RENOVATION OF
18 PROPERTIES TRANSFERRED TO A PUBLIC BENEFIT CORPORATION; TO AMEND
19 SECTION 31-7-13, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;
20 AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 57-105-1, Mississippi Code of 1972, is
23 amended as follows:

24 57-105-1. (1) As used in this section:

25 (a) "Adjusted purchase price" means the investment in
26 the qualified community development entity for the qualified
27 equity investment, substantially all of the proceeds of which are
28 used to make qualified low-income community investments in
29 Mississippi.

30 For the purposes of calculating the amount of qualified
31 low-income community investments held by a qualified community
32 development entity, an investment will be considered held by a
33 qualified community development entity even if the investment has
34 been sold or repaid; provided that the qualified community



35 development entity reinvests an amount equal to the capital
36 returned to or recovered by the qualified community development
37 entity from the original investment, exclusive of any profits
38 realized, in another qualified low-income community investment in
39 Mississippi within twelve (12) months of the receipt of such
40 capital. A qualified community development entity will not be
41 required to reinvest capital returned from the qualified
42 low-income community investments after the sixth anniversary of
43 the issuance of the qualified equity investment, the proceeds of
44 which were used to make the qualified low-income community
45 investment, and the qualified low-income community investment will
46 be considered held by the qualified community development entity
47 through the seventh anniversary of the qualified equity
48 investment's issuance.

49 (b) "Applicable percentage" means:

50 (i) For any equity investment issued prior to July
51 1, 2008, four percent (4%) for each of the second through seventh
52 credit allowance dates for purposes of the taxes imposed by
53 Section 27-7-5 and one and one-third percent (1-1/3%) for each of
54 the second through seventh credit allowance dates for purposes of
55 the taxes imposed by Sections 27-15-103, 27-15-109 and 27-15-123.

56 (ii) For any equity investment issued from and
57 after July 1, 2008, eight percent (8%) for each of the first
58 through third credit allowance dates for purposes of the taxes
59 imposed by Section 27-7-5 or the taxes imposed by Sections
60 27-15-103, 27-15-109 and 27-15-123.

61 (c) "Credit allowance date" means, with respect to any
62 qualified equity investment:

63 (i) The date upon which the investment is
64 initially made; and

65 (ii) 1. For equity investments issued prior to
66 July 1, 2008, each of the subsequent six (6) anniversary dates of
67 the date upon which the investment is initially made; or



68 2. For equity investments issued from and
69 after July 1, 2008, each of the subsequent two (2) anniversary
70 dates of the date upon which the investment is initially made.

71 (d) "Qualified community development entity" shall have
72 the meaning ascribed to such term in Section 45D of the Internal
73 Revenue Code of 1986, as amended, if the entity has entered into
74 an Allocation Agreement with the Community Development Financial
75 Institutions Fund of the United States Department of the Treasury
76 with respect to credits authorized by Section 45D of the Internal
77 Revenue Code of 1986, as amended.

78 (e) "Qualified active low-income community business"
79 shall have the meaning ascribed to such term in Section 45D of the
80 Internal Revenue Code of 1986, as amended.

81 (f) "Qualified equity investment" shall have the
82 meaning ascribed to such term in Section 45D of the Internal
83 Revenue Code of 1986, as amended. The investment does not have to
84 be designated as a qualified equity investment by the Community
85 Development Financial Institutions Fund of the United States
86 Treasury to be considered a qualified equity investment under this
87 section but otherwise must meet the definition under the Internal
88 Revenue Code. In addition to meeting the definition in Section
89 45D of the Internal Revenue Code such investment must also:

90 (i) Have been acquired after January 1, 2007, at
91 its original issuance solely in exchange for cash; and

92 (ii) Have been allocated by the Mississippi
93 Development Authority.

94 (g) "Qualified low-income community investment" shall
95 have the meaning ascribed to such term in Section 45D of the
96 Internal Revenue Code of 1986, as amended; provided, however, that
97 the maximum amount of qualified low-income community investments
98 issued for a single qualified active low-income community
99 business, on an aggregate basis with all of its affiliates, that
100 may be included for purposes of allocating any credits under this



101 section shall not exceed Ten Million Dollars (\$10,000,000.00), in
102 the aggregate, whether issued by one (1) or several qualified
103 community development entities.

104 (2) A taxpayer that holds a qualified equity investment on
105 the credit allowance date of the qualified equity investment shall
106 be entitled to a credit applicable against the taxes imposed by
107 Sections 27-7-5, 27-15-103, 27-15-109 and 27-15-123 during the
108 taxable year that includes the credit allowance date. The amount
109 of the credit shall be equal to the applicable percentage of the
110 adjusted purchase price paid to the qualified community
111 development entity for the qualified equity investment. The
112 amount of the credit that may be utilized in any one (1) tax year
113 shall be limited to an amount not greater than the total tax
114 liability of the taxpayer for the taxes imposed by the
115 above-referenced sections. The credit shall not be refundable or
116 transferable. Any unused portion of the credit may be carried
117 forward for seven (7) taxable years beyond the credit allowance
118 date on which the credit was earned. The maximum aggregate amount
119 of qualified equity investments that may be allocated by the
120 Mississippi Development Authority may not exceed an amount that
121 would result in taxpayers claiming in any one (1) state fiscal
122 year credits in excess of Fifteen Million Dollars
123 (\$15,000,000.00), exclusive of credits that might be carried
124 forward from previous taxable years; however, a maximum of
125 one-third (1/3) of this amount may be allocated as credits for
126 taxes imposed by Sections 27-15-103, 27-15-109 and 27-15-123. Any
127 taxpayer claiming a credit under this section against the taxes
128 imposed by Sections 27-7-5, 27-15-103, 27-15-109 and 27-15-123
129 shall not be required to pay any additional tax under Section
130 27-15-123 as a result of claiming such credit. The Mississippi
131 Development Authority shall allocate credits within this limit as
132 provided for in subsection (4) of this section.



133 (3) Tax credits authorized by this section that are earned
134 by a partnership, limited liability company, S corporation or
135 other similar pass-through entity, shall be allocated among all
136 partners, members or shareholders, respectively, either in
137 proportion to their ownership interest in such entity or as the
138 partners, members or shareholders mutually agree as provided in an
139 executed document. Such allocation shall be made each taxable
140 year of such pass-through entity which contains a credit allowance
141 date.

142 (4) The qualified community development entity shall apply
143 for credits with the Mississippi Development Authority on forms
144 prescribed by the Mississippi Development Authority. The
145 qualified community development entity must pay an application fee
146 of One Thousand Dollars (\$1,000.00) to the Mississippi Development
147 Authority at the time the application is submitted. In the
148 application the qualified community development entity shall
149 certify to the Mississippi Development Authority the anticipated
150 dollar amount of the qualified equity investments to be made in
151 this state during the first twelve-month period following the
152 initial credit allowance date. The Mississippi Development
153 Authority shall allocate credits based on the anticipated dollar
154 amount of qualified equity investments as certified in the
155 application. Once the Mississippi Development Authority has
156 allocated credits to a qualified community development entity,
157 such entity shall have sixty (60) days from the date of such
158 allocation to issue the corresponding qualified equity
159 investments. If the qualified equity investment is not issued
160 within such time period, the allocation shall be cancelled and
161 returned to the Mississippi Development Authority for
162 reallocation. Upon final documentation of the qualified
163 low-income community investments, if the actual dollar amount of
164 the investments is lower than the amount estimated, the
165 Mississippi Development Authority shall adjust the tax credit



166 allowed under this section. The Department of Revenue may
167 recapture all of the credit allowed under this section if:

168 (a) Any amount of federal tax credits available with
169 respect to a qualified equity investment that is eligible for a
170 tax credit under this section is recaptured under Section 45D of
171 the Internal Revenue Code of 1986, as amended; or

172 (b) The qualified community development entity redeems
173 or makes any principal repayment with respect to a qualified
174 equity investment prior to the seventh anniversary of the issuance
175 of the qualified equity investment; or

176 (c) The qualified community development entity fails to
177 maintain at least eighty-five percent (85%) of the proceeds of the
178 qualified equity investment in qualified low-income community
179 investments in Mississippi at any time prior to the seventh
180 anniversary of the issuance of the qualified equity investment.

181 Any credits that are subject to recapture under this
182 subsection shall be recaptured from the taxpayer that actually
183 claimed the credit.

184 The Mississippi Development Authority shall not allocate any
185 credits under this section after January 1, 2014.

186 (5) Each qualified community development entity that
187 receives qualified equity investments to make qualified low-income
188 community investments in Mississippi must annually report to the
189 Mississippi Development Authority the North American Industry
190 Classification System Code, the county, the dollars invested, the
191 number of jobs assisted and the number of jobs assisted with wages
192 over one hundred percent (100%) of the federal poverty level for a
193 family of four (4) of each qualified low-income community
194 investment.

195 (6) The Mississippi Development Authority shall file an
196 annual report on all qualified low-income community investments
197 with the Governor, the Clerk of the House of Representatives, the
198 Secretary of the Senate and the Secretary of State describing the



199 North American Industry Classification System Code, the county,
200 the dollars invested, the number of jobs assisted and the number
201 of jobs assisted with wages over one hundred percent (100%) of the
202 federal poverty level for a family of four (4) of each qualified
203 low-income community investment. The annual report will be posted
204 on the Mississippi Development Authority's Internet website.

205 (7) (a) The purpose of this subsection is to authorize the
206 creation and establishment of public benefit corporations for
207 financing arrangements regarding public property and facilities.

208 (b) As used in this subsection:

209 (i) "New Markets Tax Credit transaction" means any
210 financing transaction which utilizes either this section or
211 Section 45D of the Internal Revenue Code of 1986, as amended.

212 (ii) "Public benefit corporation" means a nonprofit
213 corporation formed or designated by a public entity to carry out
214 the purposes of this subsection.

215 (iii) "Public entity or public entities" includes
216 utility districts, regional solid waste authorities, regional
217 utility authorities, community hospitals, regional airport
218 authorities, community and junior colleges, educational building
219 corporations established by or on behalf of the state institutions
220 of higher learning, school districts, planning and development
221 districts, county economic development districts, urban renewal
222 agencies, any other regional or local economic development
223 authority, agency or governmental entity, and any other regional
224 or local industrial development authority, agency or governmental
225 entity.

226 (iv) "Public property or facilities" means any
227 property or facilities owned or leased by a public entity or
228 public benefit corporation.

229 (b) Notwithstanding any other provision of law to the
230 contrary, public entities are authorized pursuant to this
231 subsection to create one or more public benefit corporations or



232 designate an existing corporation as a public benefit corporation
233 for the purpose of entering into financing agreements and engaging
234 in New Markets Tax Credit transactions, which shall include
235 without limitation, arrangements to plan, acquire, renovate,
236 construct, lease, sublease, manage, operate and/or improve new or
237 existing public property or facilities located within the
238 boundaries or service area of the public entity. Any financing
239 arrangement authorized under this subsection shall further any
240 purpose of the public entity and may include a term of up to fifty
241 (50) years.

242 (d) Notwithstanding any other provision of law to the
243 contrary and in order to facilitate the acquisition, renovation,
244 construction, leasing, subleasing, management, operating and/or
245 improvement of new or existing public property or facilities to
246 further any purpose of a public entity, public entities are
247 authorized to enter into financing arrangements in order to
248 transfer public property or facilities to and/or from public
249 benefit corporations, including, without limitation, sales,
250 sale-leasebacks, leases and lease-leasebacks, provided such
251 transfer is related to any New Markets Tax Credit transaction
252 furthering any purpose of the public entity. Any such transfer
253 under this paragraph (d) and the public property or facilities
254 transferred in connection therewith shall be exempted from any
255 limitation or requirements with respect to leasing, acquiring,
256 and/or constructing public property or facilities.

257 (e) With respect to a New Markets Tax Credit
258 transaction, public entities and public benefit corporations are
259 authorized to enter into financing arrangements with any
260 governmental, nonprofit or for-profit entity in order to leverage
261 funds not otherwise available to public entities for the
262 acquisition, construction and/or renovation of properties
263 transferred to such public benefit corporations. The use of any
264 funds loaned by or contributed by a public benefit corporation or



265 borrowed by or otherwise made available to a public benefit
266 corporation in such financing arrangement shall be dedicated
267 solely to (i) the development of new properties or facilities
268 and/or the renovation of existing properties or facilities or
269 operation of properties or facilities, and/or (ii) the payment of
270 costs and expenditures related to any such financing arrangements
271 including, but not limited to, funding any reserves required in
272 connection therewith, the repayment of any indebtedness incurred
273 in connection therewith, and the payment of fees and expenses
274 incurred in connection with the closing, administration,
275 accounting and/or compliance with respect to the New Markets Tax
276 Credit transaction.

277 (f) A public benefit corporation created pursuant to
278 this subsection shall not be a political subdivision of the state
279 but shall be a nonprofit corporation organized and governed under
280 the provisions of the laws of this state and shall be a special
281 purpose corporation established to facilitate New Markets Tax
282 Credit transactions consistent with the requirements of this
283 section.

284 (g) Neither this subsection nor anything herein
285 contained is or shall be construed as a restriction or limitation
286 upon any powers which the public entity or public benefit
287 corporation might otherwise have under any laws of this state, and
288 this subsection is cumulative to any such powers. This subsection
289 does and shall be construed to provide a complete additional and
290 alternative method for the doing of the things authorized thereby
291 and shall be regarded as supplemental and additional to powers
292 conferred by other laws.

293 (8) The Mississippi Development Authority shall promulgate
294 rules and regulations to implement the provisions of this section.

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



297 31-7-13. All agencies and governing authorities shall
298 purchase their commodities and printing; contract for garbage
299 collection or disposal; contract for solid waste collection or
300 disposal; contract for sewage collection or disposal; contract for
301 public construction; and contract for rentals as herein provided.

302 (a) **Bidding procedure for purchases not over \$5,000.00.**

303 Purchases which do not involve an expenditure of more than Five
304 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
305 charges, may be made without advertising or otherwise requesting
306 competitive bids. However, nothing contained in this paragraph

307 (a) shall be construed to prohibit any agency or governing
308 authority from establishing procedures which require competitive
309 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

310 (b) **Bidding procedure for purchases over \$5,000.00 but**

311 **not over \$50,000.00.** Purchases which involve an expenditure of
312 more than Five Thousand Dollars (\$5,000.00) but not more than
313 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
314 shipping charges may be made from the lowest and best bidder
315 without publishing or posting advertisement for bids, provided at
316 least two (2) competitive written bids have been obtained. Any
317 state agency or community/junior college purchasing commodities or
318 procuring construction pursuant to this paragraph (b) may
319 authorize its purchasing agent, or his designee, to accept the
320 lowest competitive written bid under Fifty Thousand Dollars
321 (\$50,000.00). Any governing authority purchasing commodities
322 pursuant to this paragraph (b) may authorize its purchasing agent,
323 or his designee, with regard to governing authorities other than
324 counties, or its purchase clerk, or his designee, with regard to
325 counties, to accept the lowest and best competitive written bid.

326 Such authorization shall be made in writing by the governing
327 authority and shall be maintained on file in the primary office of
328 the agency and recorded in the official minutes of the governing
329 authority, as appropriate. The purchasing agent or the purchase



330 clerk, or their designee, as the case may be, and not the
331 governing authority, shall be liable for any penalties and/or
332 damages as may be imposed by law for any act or omission of the
333 purchasing agent or purchase clerk, or their designee,
334 constituting a violation of law in accepting any bid without
335 approval by the governing authority. The term "competitive
336 written bid" shall mean a bid submitted on a bid form furnished by
337 the buying agency or governing authority and signed by authorized
338 personnel representing the vendor, or a bid submitted on a
339 vendor's letterhead or identifiable bid form and signed by
340 authorized personnel representing the vendor. "Competitive" shall
341 mean that the bids are developed based upon comparable
342 identification of the needs and are developed independently and
343 without knowledge of other bids or prospective bids. Any bid item
344 for construction in excess of Five Thousand Dollars (\$5,000.00)
345 shall be broken down by components to provide detail of component
346 description and pricing. These details shall be submitted with
347 the written bids and become part of the bid evaluation criteria.
348 Bids may be submitted by facsimile, electronic mail or other
349 generally accepted method of information distribution. Bids
350 submitted by electronic transmission shall not require the
351 signature of the vendor's representative unless required by
352 agencies or governing authorities.

353 (c) **Bidding procedure for purchases over \$50,000.00.**

354 (i) **Publication requirement.**

355 1. Purchases which involve an expenditure of
356 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
357 freight and shipping charges, may be made from the lowest and best
358 bidder after advertising for competitive bids once each week for
359 two (2) consecutive weeks in a regular newspaper published in the
360 county or municipality in which such agency or governing authority
361 is located. However, all American Recovery and Reinvestment Act
362 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)



363 shall be bid. All references to American Recovery and
364 Reinvestment Act projects in this section shall not apply to
365 programs identified in Division B of the American Recovery and
366 Reinvestment Act.

367 2. The purchasing entity may designate the
368 method by which the bids will be received, including, but not
369 limited to, bids sealed in an envelope, bids received
370 electronically in a secure system, bids received via a reverse
371 auction, or bids received by any other method that promotes open
372 competition and has been approved by the Office of Purchasing and
373 Travel. However, reverse auction shall not be used for any public
374 contract for design or construction of public facilities,
375 including buildings, roads and bridges.

376 3. The date as published for the bid opening
377 shall not be less than seven (7) working days after the last
378 published notice; however, if the purchase involves a construction
379 project in which the estimated cost is in excess of Fifty Thousand
380 Dollars (\$50,000.00), such bids shall not be opened in less than
381 fifteen (15) working days after the last notice is published and
382 the notice for the purchase of such construction shall be
383 published once each week for two (2) consecutive weeks. However,
384 all American Recovery and Reinvestment Act projects in excess of
385 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
386 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
387 under the American Recovery and Reinvestment Act, publication
388 shall be made one (1) time and the bid opening for construction
389 projects shall not be less than ten (10) working days after the
390 date of the published notice. The notice of intention to let
391 contracts or purchase equipment shall state the time and place at
392 which bids shall be received, list the contracts to be made or
393 types of equipment or supplies to be purchased, and, if all plans
394 and/or specifications are not published, refer to the plans and/or
395 specifications on file. If there is no newspaper published in the



396 county or municipality, then such notice shall be given by posting
397 same at the courthouse, or for municipalities at the city hall,
398 and at two (2) other public places in the county or municipality,
399 and also by publication once each week for two (2) consecutive
400 weeks in some newspaper having a general circulation in the county
401 or municipality in the above-provided manner. On the same date
402 that the notice is submitted to the newspaper for publication, the
403 agency or governing authority involved shall mail written notice
404 to, or provide electronic notification to the main office of the
405 Mississippi Procurement Technical Assistance Program under the
406 Mississippi Development Authority that contains the same
407 information as that in the published notice. Submissions received
408 by the Mississippi Procurement Technical Assistance Program for
409 projects funded by the American Recovery and Reinvestment Act
410 shall be displayed on a separate and unique Internet Web page
411 accessible to the public and maintained by the Mississippi
412 Development Authority for the Mississippi Procurement Technical
413 Assistance Program. Those American Recovery and Reinvestment Act
414 related submissions shall be publicly posted within twenty-four
415 (24) hours of receipt by the Mississippi Development Authority and
416 the bid opening shall not occur until the submission has been
417 posted for ten (10) consecutive days. The Department of Finance
418 and Administration shall maintain information regarding contracts
419 and other expenditures from the American Recovery and Reinvestment
420 Act, on a unique Internet Web page accessible to the public. The
421 Department of Finance and Administration shall promulgate rules
422 regarding format, content and deadlines, unless otherwise
423 specified by law, of the posting of award notices, contract
424 execution and subsequent amendments, links to the contract
425 documents, expenditures against the awarded contracts and general
426 expenditures of funds from the American Recovery and Reinvestment
427 Act. Within one (1) working day of the contract award, the agency
428 or governing authority shall post to the designated Web page



429 maintained by the Department of Finance and Administration, notice
430 of the award, including the award recipient, the contract amount,
431 and a brief summary of the contract in accordance with rules
432 promulgated by the department. Within one (1) working day of the
433 contract execution, the agency or governing authority shall post
434 to the designated Web page maintained by the Department of Finance
435 and Administration a summary of the executed contract and make a
436 copy of the appropriately redacted contract documents available
437 for linking to the designated Web page in accordance with the
438 rules promulgated by the department. The information provided by
439 the agency or governing authority shall be posted to the Web page
440 for the duration of the American Recovery and Reinvestment Act
441 funding or until the project is completed, whichever is longer.

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

458 (iii) **Filing requirement.** In all cases involving
459 governing authorities, before the notice shall be published or
460 posted, the plans or specifications for the construction or
461 equipment being sought shall be filed with the clerk of the board



462 of the governing authority. In addition to these requirements, a
463 bid file shall be established which shall indicate those vendors
464 to whom such solicitations and specifications were issued, and
465 such file shall also contain such information as is pertinent to
466 the bid.

467 (iv) **Specification restrictions.**

468 1. Specifications pertinent to such bidding
469 shall be written so as not to exclude comparable equipment of
470 domestic manufacture. However, if valid justification is
471 presented, the Department of Finance and Administration or the
472 board of a governing authority may approve a request for specific
473 equipment necessary to perform a specific job. Further, such
474 justification, when placed on the minutes of the board of a
475 governing authority, may serve as authority for that governing
476 authority to write specifications to require a specific item of
477 equipment needed to perform a specific job. In addition to these
478 requirements, from and after July 1, 1990, vendors of relocatable
479 classrooms and the specifications for the purchase of such
480 relocatable classrooms published by local school boards shall meet
481 all pertinent regulations of the State Board of Education,
482 including prior approval of such bid by the State Department of
483 Education.

484 2. Specifications for construction projects
485 may include an allowance for commodities, equipment, furniture,
486 construction materials or systems in which prospective bidders are
487 instructed to include in their bids specified amounts for such
488 items so long as the allowance items are acquired by the vendor in
489 a commercially reasonable manner and approved by the
490 agency/governing authority. Such acquisitions shall not be made
491 to circumvent the public purchasing laws.

492 (v) Agencies and governing authorities may
493 establish secure procedures by which bids may be submitted via
494 electronic means.



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

496 (i) **Decision procedure.** Purchases may be made
497 from the lowest and best bidder. In determining the lowest and
498 best bid, freight and shipping charges shall be included.
499 Life-cycle costing, total cost bids, warranties, guaranteed
500 buy-back provisions and other relevant provisions may be included
501 in the best bid calculation. All best bid procedures for state
502 agencies must be in compliance with regulations established by the
503 Department of Finance and Administration. If any governing
504 authority accepts a bid other than the lowest bid actually
505 submitted, it shall place on its minutes detailed calculations and
506 narrative summary showing that the accepted bid was determined to
507 be the lowest and best bid, including the dollar amount of the
508 accepted bid and the dollar amount of the lowest bid. No agency
509 or governing authority shall accept a bid based on items not
510 included in the specifications.

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



527 (iii) **Decision procedure for Mississippi**
528 **Landmarks.** In addition to the decision procedure set forth in
529 paragraph (d)(i), where purchase involves renovation, restoration
530 or both, of the State Capitol Building or any other historical
531 building designated for at least five (5) years as a Mississippi
532 Landmark by the Board of Trustees of the Department of Archives
533 and History under the authority of Sections 39-7-7 and 39-7-11,
534 the agency or governing authority may use the following procedure:
535 Purchases may be made from the lowest and best prequalified
536 bidder. Prequalification of bidders shall be determined not less
537 than fifteen (15) working days before the first published notice
538 of bid opening. Prequalification criteria shall be limited to
539 bidder's knowledge and experience in historical restoration,
540 preservation and renovation. In determining the lowest and best
541 bid, freight and shipping charges shall be included. Life-cycle
542 costing, total cost bids, warranties, guaranteed buy-back
543 provisions and other relevant provisions may be included in the
544 best bid calculation. All best bid and prequalification
545 procedures for state agencies must be in compliance with
546 regulations established by the Department of Finance and
547 Administration. If any governing authority accepts a bid other
548 than the lowest bid actually submitted, it shall place on its
549 minutes detailed calculations and narrative summary showing that
550 the accepted bid was determined to be the lowest and best bid,
551 including the dollar amount of the accepted bid and the dollar
552 amount of the lowest bid. No agency or governing authority shall
553 accept a bid based on items not included in the specifications.

554 (iv) **Construction project negotiations authority.**
555 If the lowest and best bid is not more than ten percent (10%)
556 above the amount of funds allocated for a public construction or
557 renovation project, then the agency or governing authority shall
558 be permitted to negotiate with the lowest bidder in order to enter
559 into a contract for an amount not to exceed the funds allocated.



560 (e) **Lease-purchase authorization.** For the purposes of
561 this section, the term "equipment" shall mean equipment, furniture
562 and, if applicable, associated software and other applicable
563 direct costs associated with the acquisition. Any lease-purchase
564 of equipment which an agency is not required to lease-purchase
565 under the master lease-purchase program pursuant to Section
566 31-7-10 and any lease-purchase of equipment which a governing
567 authority elects to lease-purchase may be acquired by a
568 lease-purchase agreement under this paragraph (e). Lease-purchase
569 financing may also be obtained from the vendor or from a
570 third-party source after having solicited and obtained at least
571 two (2) written competitive bids, as defined in paragraph (b) of
572 this section, for such financing without advertising for such
573 bids. Solicitation for the bids for financing may occur before or
574 after acceptance of bids for the purchase of such equipment or,
575 where no such bids for purchase are required, at any time before
576 the purchase thereof. No such lease-purchase agreement shall be
577 for an annual rate of interest which is greater than the overall
578 maximum interest rate to maturity on general obligation
579 indebtedness permitted under Section 75-17-101, and the term of
580 such lease-purchase agreement shall not exceed the useful life of
581 equipment covered thereby as determined according to the upper
582 limit of the asset depreciation range (ADR) guidelines for the
583 Class Life Asset Depreciation Range System established by the
584 Internal Revenue Service pursuant to the United States Internal
585 Revenue Code and regulations thereunder as in effect on December
586 31, 1980, or comparable depreciation guidelines with respect to
587 any equipment not covered by ADR guidelines. Any lease-purchase
588 agreement entered into pursuant to this paragraph (e) may contain
589 any of the terms and conditions which a master lease-purchase
590 agreement may contain under the provisions of Section 31-7-10(5),
591 and shall contain an annual allocation dependency clause
592 substantially similar to that set forth in Section 31-7-10(8).



593 Each agency or governing authority entering into a lease-purchase
594 transaction pursuant to this paragraph (e) shall maintain with
595 respect to each such lease-purchase transaction the same
596 information as required to be maintained by the Department of
597 Finance and Administration pursuant to Section 31-7-10(13).
598 However, nothing contained in this section shall be construed to
599 permit agencies to acquire items of equipment with a total
600 acquisition cost in the aggregate of less than Ten Thousand
601 Dollars (\$10,000.00) by a single lease-purchase transaction. All
602 equipment, and the purchase thereof by any lessor, acquired by
603 lease-purchase under this paragraph and all lease-purchase
604 payments with respect thereto shall be exempt from all Mississippi
605 sales, use and ad valorem taxes. Interest paid on any
606 lease-purchase agreement under this section shall be exempt from
607 State of Mississippi income taxation.

608 (f) **Alternate bid authorization.** When necessary to
609 ensure ready availability of commodities for public works and the
610 timely completion of public projects, no more than two (2)
611 alternate bids may be accepted by a governing authority for
612 commodities. No purchases may be made through use of such
613 alternate bids procedure unless the lowest and best bidder cannot
614 deliver the commodities contained in his bid. In that event,
615 purchases of such commodities may be made from one (1) of the
616 bidders whose bid was accepted as an alternate.

617 (g) **Construction contract change authorization.** In the
618 event a determination is made by an agency or governing authority
619 after a construction contract is let that changes or modifications
620 to the original contract are necessary or would better serve the
621 purpose of the agency or the governing authority, such agency or
622 governing authority may, in its discretion, order such changes
623 pertaining to the construction that are necessary under the
624 circumstances without the necessity of further public bids;
625 provided that such change shall be made in a commercially



626 reasonable manner and shall not be made to circumvent the public
627 purchasing statutes. In addition to any other authorized person,
628 the architect or engineer hired by an agency or governing
629 authority with respect to any public construction contract shall
630 have the authority, when granted by an agency or governing
631 authority, to authorize changes or modifications to the original
632 contract without the necessity of prior approval of the agency or
633 governing authority when any such change or modification is less
634 than one percent (1%) of the total contract amount. The agency or
635 governing authority may limit the number, manner or frequency of
636 such emergency changes or modifications.

637 (h) **Petroleum purchase alternative.** In addition to
638 other methods of purchasing authorized in this chapter, when any
639 agency or governing authority shall have a need for gas, diesel
640 fuel, oils and/or other petroleum products in excess of the amount
641 set forth in paragraph (a) of this section, such agency or
642 governing authority may purchase the commodity after having
643 solicited and obtained at least two (2) competitive written bids,
644 as defined in paragraph (b) of this section. If two (2)
645 competitive written bids are not obtained, the entity shall comply
646 with the procedures set forth in paragraph (c) of this section.
647 In the event any agency or governing authority shall have
648 advertised for bids for the purchase of gas, diesel fuel, oils and
649 other petroleum products and coal and no acceptable bids can be
650 obtained, such agency or governing authority is authorized and
651 directed to enter into any negotiations necessary to secure the
652 lowest and best contract available for the purchase of such
653 commodities.

654 (i) **Road construction petroleum products price**
655 **adjustment clause authorization.** Any agency or governing
656 authority authorized to enter into contracts for the construction,
657 maintenance, surfacing or repair of highways, roads or streets,
658 may include in its bid proposal and contract documents a price



659 adjustment clause with relation to the cost to the contractor,
660 including taxes, based upon an industry-wide cost index, of
661 petroleum products including asphalt used in the performance or
662 execution of the contract or in the production or manufacture of
663 materials for use in such performance. Such industry-wide index
664 shall be established and published monthly by the Mississippi
665 Department of Transportation with a copy thereof to be mailed,
666 upon request, to the clerks of the governing authority of each
667 municipality and the clerks of each board of supervisors
668 throughout the state. The price adjustment clause shall be based
669 on the cost of such petroleum products only and shall not include
670 any additional profit or overhead as part of the adjustment. The
671 bid proposals or document contract shall contain the basis and
672 methods of adjusting unit prices for the change in the cost of
673 such petroleum products.

674 (j) **State agency emergency purchase procedure.** If the
675 governing board or the executive head, or his designee, of any
676 agency of the state shall determine that an emergency exists in
677 regard to the purchase of any commodities or repair contracts, so
678 that the delay incident to giving opportunity for competitive
679 bidding would be detrimental to the interests of the state, then
680 the provisions herein for competitive bidding shall not apply and
681 the head of such agency shall be authorized to make the purchase
682 or repair. Total purchases so made shall only be for the purpose
683 of meeting needs created by the emergency situation. In the event
684 such executive head is responsible to an agency board, at the
685 meeting next following the emergency purchase, documentation of
686 the purchase, including a description of the commodity purchased,
687 the purchase price thereof and the nature of the emergency shall
688 be presented to the board and placed on the minutes of the board
689 of such agency. The head of such agency, or his designee, shall,
690 at the earliest possible date following such emergency purchase,
691 file with the Department of Finance and Administration (i) a



692 statement explaining the conditions and circumstances of the
693 emergency, which shall include a detailed description of the
694 events leading up to the situation and the negative impact to the
695 entity if the purchase is made following the statutory
696 requirements set forth in paragraph (a), (b) or (c) of this
697 section, and (ii) a certified copy of the appropriate minutes of
698 the board of such agency, if applicable.

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

700 If the governing authority, or the governing authority acting
701 through its designee, shall determine that an emergency exists in
702 regard to the purchase of any commodities or repair contracts, so
703 that the delay incident to giving opportunity for competitive
704 bidding would be detrimental to the interest of the governing
705 authority, then the provisions herein for competitive bidding
706 shall not apply and any officer or agent of such governing
707 authority having general or special authority therefor in making
708 such purchase or repair shall approve the bill presented therefor,
709 and he shall certify in writing thereon from whom such purchase
710 was made, or with whom such a repair contract was made. At the
711 board meeting next following the emergency purchase or repair
712 contract, documentation of the purchase or repair contract,
713 including a description of the commodity purchased, the price
714 thereof and the nature of the emergency shall be presented to the
715 board and shall be placed on the minutes of the board of such
716 governing authority.

717 (l) **Hospital purchase, lease-purchase and lease**
718 **authorization.**

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



724 (ii) In addition to the authority granted in
725 subparagraph (i) of this paragraph (1), the commissioners or board
726 of trustees is authorized to enter into contracts for the lease of
727 equipment or services, or both, which it considers necessary for
728 the proper care of patients if, in its opinion, it is not
729 financially feasible to purchase the necessary equipment or
730 services. Any such contract for the lease of equipment or
731 services executed by the commissioners or board shall not exceed a
732 maximum of five (5) years' duration and shall include a
733 cancellation clause based on unavailability of funds. If such
734 cancellation clause is exercised, there shall be no further
735 liability on the part of the lessee. Any such contract for the
736 lease of equipment or services executed on behalf of the
737 commissioners or board that complies with the provisions of this
738 subparagraph (ii) shall be excepted from the bid requirements set
739 forth in this section.

740 (m) **Exceptions from bidding requirements.** Excepted
741 from bid requirements are:

742 (i) **Purchasing agreements approved by department.**
743 Purchasing agreements, contracts and maximum price regulations
744 executed or approved by the Department of Finance and
745 Administration.

746 (ii) **Outside equipment repairs.** Repairs to
747 equipment, when such repairs are made by repair facilities in the
748 private sector; however, engines, transmissions, rear axles and/or
749 other such components shall not be included in this exemption when
750 replaced as a complete unit instead of being repaired and the need
751 for such total component replacement is known before disassembly
752 of the component; however, invoices identifying the equipment,
753 specific repairs made, parts identified by number and name,
754 supplies used in such repairs, and the number of hours of labor
755 and costs therefor shall be required for the payment for such
756 repairs.



757 (iii) **In-house equipment repairs.** Purchases of
758 parts for repairs to equipment, when such repairs are made by
759 personnel of the agency or governing authority; however, entire
760 assemblies, such as engines or transmissions, shall not be
761 included in this exemption when the entire assembly is being
762 replaced instead of being repaired.

763 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
764 of gravel or fill dirt which are to be removed and transported by
765 the purchaser.

766 (v) **Governmental equipment auctions.** Motor
767 vehicles or other equipment purchased from a federal agency or
768 authority, another governing authority or state agency of the
769 State of Mississippi, or any governing authority or state agency
770 of another state at a public auction held for the purpose of
771 disposing of such vehicles or other equipment. Any purchase by a
772 governing authority under the exemption authorized by this
773 subparagraph (v) shall require advance authorization spread upon
774 the minutes of the governing authority to include the listing of
775 the item or items authorized to be purchased and the maximum bid
776 authorized to be paid for each item or items.

777 (vi) **Intergovernmental sales and transfers.**
778 Purchases, sales, transfers or trades by governing authorities or
779 state agencies when such purchases, sales, transfers or trades are
780 made by a private treaty agreement or through means of
781 negotiation, from any federal agency or authority, another
782 governing authority or state agency of the State of Mississippi,
783 or any state agency or governing authority of another state.
784 Nothing in this section shall permit such purchases through public
785 auction except as provided for in subparagraph (v) of this
786 section. It is the intent of this section to allow governmental
787 entities to dispose of and/or purchase commodities from other
788 governmental entities at a price that is agreed to by both
789 parties. This shall allow for purchases and/or sales at prices



790 which may be determined to be below the market value if the
791 selling entity determines that the sale at below market value is
792 in the best interest of the taxpayers of the state. Governing
793 authorities shall place the terms of the agreement and any
794 justification on the minutes, and state agencies shall obtain
795 approval from the Department of Finance and Administration, prior
796 to releasing or taking possession of the commodities.

797 (vii) **Perishable supplies or food.** Perishable
798 supplies or food purchased for use in connection with hospitals,
799 the school lunch programs, homemaking programs and for the feeding
800 of county or municipal prisoners.

801 (viii) **Single source items.** Noncompetitive items
802 available from one (1) source only. In connection with the
803 purchase of noncompetitive items only available from one (1)
804 source, a certification of the conditions and circumstances
805 requiring the purchase shall be filed by the agency with the
806 Department of Finance and Administration and by the governing
807 authority with the board of the governing authority. Upon receipt
808 of that certification the Department of Finance and Administration
809 or the board of the governing authority, as the case may be, may,
810 in writing, authorize the purchase, which authority shall be noted
811 on the minutes of the body at the next regular meeting thereafter.
812 In those situations, a governing authority is not required to
813 obtain the approval of the Department of Finance and
814 Administration.

815 (ix) **Waste disposal facility construction**
816 **contracts.** Construction of incinerators and other facilities for
817 disposal of solid wastes in which products either generated
818 therein, such as steam, or recovered therefrom, such as materials
819 for recycling, are to be sold or otherwise disposed of; however,
820 in constructing such facilities, a governing authority or agency
821 shall publicly issue requests for proposals, advertised for in the
822 same manner as provided herein for seeking bids for public



823 construction projects, concerning the design, construction,
824 ownership, operation and/or maintenance of such facilities,
825 wherein such requests for proposals when issued shall contain
826 terms and conditions relating to price, financial responsibility,
827 technology, environmental compatibility, legal responsibilities
828 and such other matters as are determined by the governing
829 authority or agency to be appropriate for inclusion; and after
830 responses to the request for proposals have been duly received,
831 the governing authority or agency may select the most qualified
832 proposal or proposals on the basis of price, technology and other
833 relevant factors and from such proposals, but not limited to the
834 terms thereof, negotiate and enter contracts with one or more of
835 the persons or firms submitting proposals.

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

839 (xi) **Information technology products.** Purchases
840 of information technology products made by governing authorities
841 under the provisions of purchase schedules, or contracts executed
842 or approved by the Mississippi Department of Information
843 Technology Services and designated for use by governing
844 authorities.

845 (xii) **Energy efficiency services and equipment.**
846 Energy efficiency services and equipment acquired by school
847 districts, community and junior colleges, institutions of higher
848 learning and state agencies or other applicable governmental
849 entities on a shared-savings, lease or lease-purchase basis
850 pursuant to Section 31-7-14.

851 (xiii) **Municipal electrical utility system fuel.**
852 Purchases of coal and/or natural gas by municipally owned electric
853 power generating systems that have the capacity to use both coal
854 and natural gas for the generation of electric power.



855 (xiv) **Library books and other reference materials.**
856 Purchases by libraries or for libraries of books and periodicals;
857 processed film, video cassette tapes, filmstrips and slides;
858 recorded audio tapes, cassettes and diskettes; and any such items
859 as would be used for teaching, research or other information
860 distribution; however, equipment such as projectors, recorders,
861 audio or video equipment, and monitor televisions are not exempt
862 under this subparagraph.

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

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

869 (xvii) **Multichannel interactive video systems.**
870 From and after July 1, 1990, contracts by Mississippi Authority
871 for Educational Television with any private educational
872 institution or private nonprofit organization whose purposes are
873 educational in regard to the construction, purchase, lease or
874 lease-purchase of facilities and equipment and the employment of
875 personnel for providing multichannel interactive video systems
876 (ITSF) in the school districts of this state.

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

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

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



888 the purpose of renting such books to students as part of a book
889 service system.

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

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

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

896 Contracts for garbage collection or disposal, contracts for solid
897 waste collection or disposal and contracts for sewage collection
898 or disposal.

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

900 **contracts.** Professional maintenance program contracts for the
901 repair or maintenance of municipal water tanks, which provide
902 professional services needed to maintain municipal water storage
903 tanks for a fixed annual fee for a duration of two (2) or more
904 years.

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

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

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

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

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

912 **Major Economic Impact Act.** Contracts entered into pursuant to the
913 provisions of Section 57-75-9(2), (3) and (4).

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

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

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

917 machinery or equipment used for the installation and

918 implementation of soil and water conservation practices or

919 measures purchased subject to the restrictions provided in

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



921 Soil and Water Conservation Commission under the exemption
922 authorized by this subparagraph shall require advance
923 authorization spread upon the minutes of the commission to include
924 the listing of the item or items authorized to be purchased and
925 the maximum bid authorized to be paid for each item or items.

926 (xxviii) **Hospital lease of equipment or services.**

927 Leases by hospitals of equipment or services if the leases are in
928 compliance with paragraph (1)(ii).

929 (xxix) **Purchases made pursuant to qualified**

930 **cooperative purchasing agreements.** Purchases made by certified
931 purchasing offices of state agencies or governing authorities
932 under cooperative purchasing agreements previously approved by the
933 Office of Purchasing and Travel and established by or for any
934 municipality, county, parish or state government or the federal
935 government, provided that the notification to potential
936 contractors includes a clause that sets forth the availability of
937 the cooperative purchasing agreement to other governmental
938 entities. Such purchases shall only be made if the use of the
939 cooperative purchasing agreements is determined to be in the best
940 interest of the governmental entity.

941 (xxx) **School yearbooks.** Purchases of school

942 yearbooks by state agencies or governing authorities; provided,
943 however, that state agencies and governing authorities shall use
944 for these purchases the RFP process as set forth in the
945 Mississippi Procurement Manual adopted by the Office of Purchasing
946 and Travel.

947 (xxxii) **Design-build method and dual-phase**

948 **design-build method of contracting.** Contracts entered into under
949 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

950 (xxxii) **Toll roads and bridge construction**

951 **projects.** Contracts entered into under the provisions of Section
952 65-43-1 or 65-43-3.



953 (xxxiii) **Certain purchases under Section**
954 **57-1-221.** Contracts entered into pursuant to the provisions of
955 Section 57-1-221.

956 (xxxiv) Certain transfers made pursuant to the
957 provisions of Section 57-105-1(7). Transfers of public property
958 or facilities under Section 57-105-1(7) and construction related
959 to such public property or facilities.

960 (n) **Term contract authorization.** All contracts for the
961 purchase of:

962 (i) All contracts for the purchase of commodities,
963 equipment and public construction (including, but not limited to,
964 repair and maintenance), may be let for periods of not more than
965 sixty (60) months in advance, subject to applicable statutory
966 provisions prohibiting the letting of contracts during specified
967 periods near the end of terms of office. Term contracts for a
968 period exceeding twenty-four (24) months shall also be subject to
969 ratification or cancellation by governing authority boards taking
970 office subsequent to the governing authority board entering the
971 contract.

972 (ii) Bid proposals and contracts may include price
973 adjustment clauses with relation to the cost to the contractor
974 based upon a nationally published industry-wide or nationally
975 published and recognized cost index. The cost index used in a
976 price adjustment clause shall be determined by the Department of
977 Finance and Administration for the state agencies and by the
978 governing board for governing authorities. The bid proposal and
979 contract documents utilizing a price adjustment clause shall
980 contain the basis and method of adjusting unit prices for the
981 change in the cost of such commodities, equipment and public
982 construction.

983 (o) **Purchase law violation prohibition and vendor**
984 **penalty.** No contract or purchase as herein authorized shall be
985 made for the purpose of circumventing the provisions of this



986 section requiring competitive bids, nor shall it be lawful for any
987 person or concern to submit individual invoices for amounts within
988 those authorized for a contract or purchase where the actual value
989 of the contract or commodity purchased exceeds the authorized
990 amount and the invoices therefor are split so as to appear to be
991 authorized as purchases for which competitive bids are not
992 required. Submission of such invoices shall constitute a
993 misdemeanor punishable by a fine of not less than Five Hundred
994 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
995 or by imprisonment for thirty (30) days in the county jail, or
996 both such fine and imprisonment. In addition, the claim or claims
997 submitted shall be forfeited.

998 (p) **Electrical utility petroleum-based equipment**
999 **purchase procedure.** When in response to a proper advertisement
1000 therefor, no bid firm as to price is submitted to an electric
1001 utility for power transformers, distribution transformers, power
1002 breakers, reclosers or other articles containing a petroleum
1003 product, the electric utility may accept the lowest and best bid
1004 therefor although the price is not firm.

1005 (q) **Fuel management system bidding procedure.** Any
1006 governing authority or agency of the state shall, before
1007 contracting for the services and products of a fuel management or
1008 fuel access system, enter into negotiations with not fewer than
1009 two (2) sellers of fuel management or fuel access systems for
1010 competitive written bids to provide the services and products for
1011 the systems. In the event that the governing authority or agency
1012 cannot locate two (2) sellers of such systems or cannot obtain
1013 bids from two (2) sellers of such systems, it shall show proof
1014 that it made a diligent, good-faith effort to locate and negotiate
1015 with two (2) sellers of such systems. Such proof shall include,
1016 but not be limited to, publications of a request for proposals and
1017 letters soliciting negotiations and bids. For purposes of this
1018 paragraph (q), a fuel management or fuel access system is an



1019 automated system of acquiring fuel for vehicles as well as
1020 management reports detailing fuel use by vehicles and drivers, and
1021 the term "competitive written bid" shall have the meaning as
1022 defined in paragraph (b) of this section. Governing authorities
1023 and agencies shall be exempt from this process when contracting
1024 for the services and products of fuel management or fuel access
1025 systems under the terms of a state contract established by the
1026 Office of Purchasing and Travel.

1027 (r) **Solid waste contract proposal procedure.** Before
1028 entering into any contract for garbage collection or disposal,
1029 contract for solid waste collection or disposal or contract for
1030 sewage collection or disposal, which involves an expenditure of
1031 more than Fifty Thousand Dollars (\$50,000.00), a governing
1032 authority or agency shall issue publicly a request for proposals
1033 concerning the specifications for such services which shall be
1034 advertised for in the same manner as provided in this section for
1035 seeking bids for purchases which involve an expenditure of more
1036 than the amount provided in paragraph (c) of this section. Any
1037 request for proposals when issued shall contain terms and
1038 conditions relating to price, financial responsibility,
1039 technology, legal responsibilities and other relevant factors as
1040 are determined by the governing authority or agency to be
1041 appropriate for inclusion; all factors determined relevant by the
1042 governing authority or agency or required by this paragraph (r)
1043 shall be duly included in the advertisement to elicit proposals.
1044 After responses to the request for proposals have been duly
1045 received, the governing authority or agency shall select the most
1046 qualified proposal or proposals on the basis of price, technology
1047 and other relevant factors and from such proposals, but not
1048 limited to the terms thereof, negotiate and enter into contracts
1049 with one or more of the persons or firms submitting proposals. If
1050 the governing authority or agency deems none of the proposals to
1051 be qualified or otherwise acceptable, the request for proposals



1052 process may be reinitiated. Notwithstanding any other provisions
1053 of this paragraph, where a county with at least thirty-five
1054 thousand (35,000) nor more than forty thousand (40,000)
1055 population, according to the 1990 federal decennial census, owns
1056 or operates a solid waste landfill, the governing authorities of
1057 any other county or municipality may contract with the governing
1058 authorities of the county owning or operating the landfill,
1059 pursuant to a resolution duly adopted and spread upon the minutes
1060 of each governing authority involved, for garbage or solid waste
1061 collection or disposal services through contract negotiations.

1062 (s) **Minority set-aside authorization.** Notwithstanding
1063 any provision of this section to the contrary, any agency or
1064 governing authority, by order placed on its minutes, may, in its
1065 discretion, set aside not more than twenty percent (20%) of its
1066 anticipated annual expenditures for the purchase of commodities
1067 from minority businesses; however, all such set-aside purchases
1068 shall comply with all purchasing regulations promulgated by the
1069 Department of Finance and Administration and shall be subject to
1070 bid requirements under this section. Set-aside purchases for
1071 which competitive bids are required shall be made from the lowest
1072 and best minority business bidder. For the purposes of this
1073 paragraph, the term "minority business" means a business which is
1074 owned by a majority of persons who are United States citizens or
1075 permanent resident aliens (as defined by the Immigration and
1076 Naturalization Service) of the United States, and who are Asian,
1077 Black, Hispanic or Native American, according to the following
1078 definitions:

1079 (i) "Asian" means persons having origins in any of
1080 the original people of the Far East, Southeast Asia, the Indian
1081 subcontinent, or the Pacific Islands.

1082 (ii) "Black" means persons having origins in any
1083 black racial group of Africa.



1084 (iii) "Hispanic" means persons of Spanish or
1085 Portuguese culture with origins in Mexico, South or Central
1086 America, or the Caribbean Islands, regardless of race.

1087 (iv) "Native American" means persons having
1088 origins in any of the original people of North America, including
1089 American Indians, Eskimos and Aleuts.

1090 (t) **Construction punch list restriction.** The
1091 architect, engineer or other representative designated by the
1092 agency or governing authority that is contracting for public
1093 construction or renovation may prepare and submit to the
1094 contractor only one (1) preliminary punch list of items that do
1095 not meet the contract requirements at the time of substantial
1096 completion and one (1) final list immediately before final
1097 completion and final payment.

1098 (u) **Procurement of construction services by state**
1099 **institutions of higher learning.** Contracts for privately financed
1100 construction of auxiliary facilities on the campus of a state
1101 institution of higher learning may be awarded by the Board of
1102 Trustees of State Institutions of Higher Learning to the lowest
1103 and best bidder, where sealed bids are solicited, or to the
1104 offeror whose proposal is determined to represent the best value
1105 to the citizens of the State of Mississippi, where requests for
1106 proposals are solicited.

1107 (v) **Insurability of bidders for public construction or**
1108 **other public contracts.** In any solicitation for bids to perform
1109 public construction or other public contracts to which this
1110 section applies including, but not limited to, contracts for
1111 repair and maintenance, for which the contract will require
1112 insurance coverage in an amount of not less than One Million
1113 Dollars (\$1,000,000.00), bidders shall be permitted to either
1114 submit proof of current insurance coverage in the specified amount
1115 or demonstrate ability to obtain the required coverage amount of
1116 insurance if the contract is awarded to the bidder. Proof of



1117 insurance coverage shall be submitted within five (5) business
1118 days from bid acceptance.

1119 (w) **Purchase authorization clarification.** Nothing in
1120 this section shall be construed as authorizing any purchase not
1121 authorized by law.

1122 **SECTION 3.** This act shall take effect and be in force from
1123 and after July 1, 2012.

