

By: Senator(s) Tollison, Chamberlin

To: Universities and
Colleges; Appropriations

SENATE BILL NO. 2505

1 AN ACT TO CODIFY SECTION 37-101-44, MISSISSIPPI CODE OF 1972,
2 AND TO AMEND SECTIONS 37-101-41 AND 31-7-13, MISSISSIPPI CODE OF
3 1972, TO AUTHORIZE THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF
4 HIGHER LEARNING TO AWARD PUBLIC CONSTRUCTION CONTRACTS FOR THE
5 DESIGN AND FOR THE CONSTRUCTION OF DORMITORY FACILITIES ON CAMPUS;
6 AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** The following shall be codified as Section
9 37-101-44, Mississippi Code of 1972:

10 37-101-44. (1) In lieu of Section 37-101-43 and prior to
11 entering into or awarding any such lease under the provisions of
12 Section 37-101-41, the Board of Trustees of State Institutions of
13 Higher Learning may award contracts for privately financed design
14 and construction of dormitory facilities or parking structures on
15 the main campus of the university, provided that the entities
16 receiving the contract or contracts and those entities to which
17 work or services are subcontracted are duly licensed and are
18 qualified in the state to perform the contract or contracts.

19 (2) Such a design-build delivery system may be authorized
20 only when the Board of Trustees of State Institutions of Higher
21 Learning makes a determination, entered on its minutes, with
22 specific findings for each project demonstrating how it is in the
23 best interest of the public to enter into a design-build contract.
24 At a minimum, such determination shall give a detailed explanation
25 of why a design-build approach for a particular project satisfies
26 the public need better than the traditional design-bid-build
27 approach.



28 (3) For each proposed design-build project, a two-phase
29 procedure for awarding design-build contracts shall be adopted and
30 shall include the following:

31 (a) During Phase One, and prior to solicitation of
32 initial proposals, the board shall develop, with the assistance of
33 a registered architect or engineer, a scope of work statement that
34 provides prospective offerors with sufficient information
35 regarding the board's requirements. The scope of work statement
36 shall include floor plans showing spaces by name and number,
37 actual net area of each space, structural module, fixed equipment,
38 mechanical spaces, chases and circulation areas. Drawings shall
39 show overall building dimensions and major lines of dimensions,
40 and site plans which show topography, adjacent buildings and
41 utilities. Drawings shall include information to adequately
42 explain HVAC, electrical and structural requirements. Information
43 concerning furnishings, miscellaneous equipment, layouts, lists
44 and schedules necessary to explain the plans are to be indicated
45 on floor plans. The registered architect or engineer engaged by
46 the board shall also prepare preliminary specifications following
47 the Construction Specifications Institute format and giving basic
48 descriptions of essential building materials, finishes, components
49 and all systems. The scope of work statement shall also include
50 building elevations, sections and design details. Building
51 elevations shall show fenestration and proposed exterior
52 materials. The scope of work statement shall include general
53 budget parameters, schedule or delivery requirements, relevant
54 criteria for evaluation of proposals, and any other information
55 necessary to enable the design-builders to submit proposals which
56 meet the board's needs.

57 (b) The board shall cause to be published once a week
58 for at least three (3) consecutive weeks and not less than
59 twenty-one (21) days in at least one (1) newspaper having a
60 general circulation in the county in which the interested



61 institution is located and in one (1) newspaper with a general
62 statewide circulation, a notice inviting proposals for the
63 leasing, design-build deconstruction and leasing back of said land
64 and design-build constructed facility. Said notice shall inform
65 potential offerors of how to obtain the scope of work statement
66 developed for the project and the notice shall contain such other
67 information to describe adequately the general nature and scope of
68 the design-build project so as to promote full, equal and open
69 competition.

70 (c) The board shall accept initial proposals only from
71 an entity able to provide, either in-house or through contractual
72 arrangements, an experienced and qualified design-build team which
73 shall include, at a minimum, an architect or engineer registered
74 in Mississippi and a contractor properly licensed in Mississippi
75 for the type of work required. From evaluation of initial
76 proposals under Phase One, the board shall select a minimum of two
77 (2) and a maximum of five (5) design-builders to submit proposals
78 for Phase Two.

79 (d) During Phase Two, the shortlisted firms shall be
80 invited to submit detailed designs, specific technical concepts or
81 solutions, pricing, scheduling and other information deemed
82 appropriate by the board as necessary to evaluate and rank
83 acceptability of the Phase Two proposals. After evaluation of
84 these Phase Two proposals, the board shall award a contract to the
85 design-builder determined to offer the best value to the public in
86 accordance with evaluation criteria set forth in the request for
87 proposals, of which price must be one but not necessarily the only
88 criterion.

89 (e) If the board accepts a proposal other than the
90 lowest dollar proposal actually submitted, the board shall enter
91 on its minutes detailed calculations and a narrative summary
92 showing why the accepted proposal was determined to provide the



93 best value, and the board shall specifically state on its minutes
94 the justification for its award.

95 (4) All facilities governed by this section shall be
96 designed and constructed to equal or exceed the Southern Building
97 Code Standards in force at the time of contracting. In addition,
98 all private contracts or private entities contracting or
99 performing pursuant to this section shall at all times comply with
100 all applicable laws, codes and other legal requirements pertaining
101 to the project.

102 (5) (a) No public official or an employee of a state agency
103 who has duties or responsibilities related to the contracting,
104 constructing, leasing, acquiring or operating said facility may
105 become an employee, consultant or contract vendor to a private
106 entity providing such design-build services to the board within
107 one (1) year after the termination of his service or employment.

108 (b) Any person violating this section shall be guilty
109 of a misdemeanor and punished by a fine of not less than Five
110 Hundred Dollars (\$500.00) but not more than One Thousand Dollars
111 (\$1,000.00).

112 (6) The board shall promulgate rules and regulations,
113 consistent with this section, to ensure fair, uniform, clear and
114 effective procedures for full, equal and open competition for
115 design-build projects and for delivery of quality design-build
116 projects on time, within budget, and in the public interest.

117 (7) The board shall report annually to the Legislature the
118 following:

119 (a) The total number of design-build projects under
120 contract, commenced and completed;

121 (b) The dollar amounts of each design-build contract,
122 both as awarded and with any adjustments, and the total dollar
123 volume of all design-build contracts awarded; and

124 (c) For each design-build project, a listing of all
125 design-builders, architects, engineers, general contractors and



126 first-tier subcontractors, to include the principal office address
127 of each such entity.

128 (8) This section shall stand repealed from and after June
129 30, 2003.

130 **SECTION 2.** Section 37-101-41, Mississippi Code of 1972, is
131 amended as follows:

132 37-101-41. The Board of Trustees of State Institutions of
133 Higher Learning is hereby authorized and empowered to lease to
134 private individuals or corporations, for a term not exceeding
135 thirty-one (31) years, any land at any of the following
136 state-supported institutions: University of Mississippi,
137 Mississippi State University of Agriculture and Applied Science,
138 Jackson State University, Mississippi Valley State University,
139 Alcorn State University, University of Southern Mississippi,
140 Mississippi University for Women and Delta State University, for
141 the purpose of erecting thereon parking structures or dormitories
142 on the main campus of the university for active faculty and
143 students. Said dormitories or parking structures shall be
144 constructed thereon by private financing, and shall be leased back
145 to said board for use by the concerned state-supported institution
146 of higher learning. The lease shall be for a fixed term of ten
147 (10), fifteen (15) or twenty (20) years. The lease shall contain
148 a provision permitting said board to purchase the building located
149 thereon for the sum of one dollar (\$1.00) after payment by said
150 board of all sums of money due under said lease.

151 **SECTION 3.** Section 31-7-13, Mississippi Code of 1972, is
152 amended as follows:

153 31-7-13. All agencies and governing authorities shall
154 purchase their commodities and printing; contract for garbage
155 collection or disposal; contract for solid waste collection or
156 disposal; contract for sewage collection or disposal; contract for
157 public construction; and contract for rentals as herein provided.



158 (a) **Bidding procedure for purchases not over \$1,500.00.**
159 Purchases which do not involve an expenditure of more than One
160 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or
161 shipping charges, may be made without advertising or otherwise
162 requesting competitive bids. Provided, however, that nothing
163 contained in this paragraph (a) shall be construed to prohibit any
164 agency or governing authority from establishing procedures which
165 require competitive bids on purchases of One Thousand Five Hundred
166 Dollars (\$1,500.00) or less.

167 (b) **Bidding procedure for purchases over \$1,500.00 but**
168 **not over \$10,000.00.** Purchases which involve an expenditure of
169 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
170 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
171 and shipping charges may be made from the lowest and best bidder
172 without publishing or posting advertisement for bids, provided at
173 least two (2) competitive written bids have been obtained. Any
174 governing authority purchasing commodities pursuant to this
175 paragraph (b) may authorize its purchasing agent, or his designee,
176 with regard to governing authorities other than counties, or its
177 purchase clerk, or his designee, with regard to counties, to
178 accept the lowest and best competitive written bid. Such
179 authorization shall be made in writing by the governing authority
180 and shall be maintained on file in the primary office of the
181 agency and recorded in the official minutes of the governing
182 authority, as appropriate. The purchasing agent or the purchase
183 clerk, or their designee, as the case may be, and not the
184 governing authority, shall be liable for any penalties and/or
185 damages as may be imposed by law for any act or omission of the
186 purchasing agent or purchase clerk, or their designee,
187 constituting a violation of law in accepting any bid without
188 approval by the governing authority. The term "competitive
189 written bid" shall mean a bid submitted on a bid form furnished by
190 the buying agency or governing authority and signed by authorized



191 personnel representing the vendor, or a bid submitted on a
192 vendor's letterhead or identifiable bid form and signed by
193 authorized personnel representing the vendor. Bids may be
194 submitted by facsimile, electronic mail or other generally
195 accepted method of information distribution. Bids submitted by
196 electronic transmission shall not require the signature of the
197 vendor's representative unless required by agencies or governing
198 authorities.

199 (c) **Bidding procedure for purchases over \$10,000.00.**

200 (i) **Publication requirement.** Purchases which
201 involve an expenditure of more than Ten Thousand Dollars
202 (\$10,000.00), exclusive of freight and shipping charges may be
203 made from the lowest and best bidder after advertising for
204 competitive sealed bids once each week for two (2) consecutive
205 weeks in a regular newspaper published in the county or
206 municipality in which such agency or governing authority is
207 located. The date as published for the bid opening shall not be
208 less than seven (7) working days after the last published notice;
209 however, if the purchase involves a construction project in which
210 the estimated cost is in excess of Fifteen Thousand Dollars
211 (\$15,000.00), such bids shall not be opened in less than fifteen
212 (15) working days after the last notice is published and the
213 notice for the purchase of such construction shall be published
214 once each week for two (2) consecutive weeks. The notice of
215 intention to let contracts or purchase equipment shall state the
216 time and place at which bids shall be received, list the contracts
217 to be made or types of equipment or supplies to be purchased, and,
218 if all plans and/or specifications are not published, refer to the
219 plans and/or specifications on file. If there is no newspaper
220 published in the county or municipality, then such notice shall be
221 given by posting same at the courthouse, or for municipalities at
222 the city hall, and at two (2) other public places in the county or
223 municipality, and also by publication once each week for two (2)



224 consecutive weeks in some newspaper having a general circulation
225 in the county or municipality in the above provided manner. On
226 the same date that the notice is submitted to the newspaper for
227 publication, the agency or governing authority involved shall mail
228 written notice to, or provide electronic notification to the main
229 office of the Mississippi Contract Procurement Center that
230 contains the same information as that in the published notice.

231 (ii) **Bidding process amendment procedure.** If all
232 plans and/or specifications are published in the notification,
233 then the plans and/or specifications may not be amended. If all
234 plans and/or specifications are not published in the notification,
235 then amendments to the plans/specifications, bid opening date, bid
236 opening time and place may be made, provided that the agency or
237 governing authority maintains a list of all prospective bidders
238 who are known to have received a copy of the bid documents and all
239 such prospective bidders are sent copies of all amendments. This
240 notification of amendments may be made via mail, facsimile,
241 electronic mail or other generally accepted method of information
242 distribution. No addendum to bid specifications may be issued
243 within forty-eight (48) working hours of the time established for
244 the receipt of bids unless such addendum also amends the bid
245 opening to a date not less than five (5) working days after the
246 date of the addendum.

247 (iii) **Filing requirement.** In all cases involving
248 governing authorities, before the notice shall be published or
249 posted, the plans or specifications for the construction or
250 equipment being sought shall be filed with the clerk of the board
251 of the governing authority. In addition to these requirements, a
252 bid file shall be established which shall indicate those vendors
253 to whom such solicitations and specifications were issued, and
254 such file shall also contain such information as is pertinent to
255 the bid.



256 (iv) **Specification restrictions.** Specifications
257 pertinent to such bidding shall be written so as not to exclude
258 comparable equipment of domestic manufacture. Provided, however,
259 that should valid justification be presented, the Department of
260 Finance and Administration or the board of a governing authority
261 may approve a request for specific equipment necessary to perform
262 a specific job. Further, such justification, when placed on the
263 minutes of the board of a governing authority, may serve as
264 authority for that governing authority to write specifications to
265 require a specific item of equipment needed to perform a specific
266 job. In addition to these requirements, from and after July 1,
267 1990, vendors of relocatable classrooms and the specifications for
268 the purchase of such relocatable classrooms published by local
269 school boards shall meet all pertinent regulations of the State
270 Board of Education, including prior approval of such bid by the
271 State Department of Education.

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

273 (i) **Decision procedure.** Purchases may be made
274 from the lowest and best bidder. In determining the lowest and
275 best bid, freight and shipping charges shall be included.
276 Life-cycle costing, total cost bids, warranties, guaranteed
277 buy-back provisions and other relevant provisions may be included
278 in the best bid calculation. All best bid procedures for state
279 agencies must be in compliance with regulations established by the
280 Department of Finance and Administration. If any governing
281 authority accepts a bid other than the lowest bid actually
282 submitted, it shall place on its minutes detailed calculations and
283 narrative summary showing that the accepted bid was determined to
284 be the lowest and best bid, including the dollar amount of the
285 accepted bid and the dollar amount of the lowest bid. No agency
286 or governing authority shall accept a bid based on items not
287 included in the specifications.



288 (ii) **Construction project negotiations authority.**

289 If the lowest and best bid is not more than ten percent (10%)
290 above the amount of funds allocated for a public construction or
291 renovation project, then the agency or governing authority shall
292 be permitted to negotiate with the lowest bidder in order to enter
293 into a contract for an amount not to exceed the funds allocated.

294 (e) **Lease-purchase authorization.** For the purposes of
295 this section, the term "equipment" shall mean equipment, furniture
296 and, if applicable, associated software and other applicable
297 direct costs associated with the acquisition. Any lease-purchase
298 of equipment which an agency is not required to lease-purchase
299 under the master lease-purchase program pursuant to Section
300 31-7-10 and any lease-purchase of equipment which a governing
301 authority elects to lease-purchase may be acquired by a
302 lease-purchase agreement under this paragraph (e). Lease-purchase
303 financing may also be obtained from the vendor or from a
304 third-party source after having solicited and obtained at least
305 two (2) written competitive bids, as defined in paragraph (b) of
306 this section, for such financing without advertising for such
307 bids. Solicitation for the bids for financing may occur before or
308 after acceptance of bids for the purchase of such equipment or,
309 where no such bids for purchase are required, at any time before
310 the purchase thereof. No such lease-purchase agreement shall be
311 for an annual rate of interest which is greater than the overall
312 maximum interest rate to maturity on general obligation
313 indebtedness permitted under Section 75-17-101, and the term of
314 such lease-purchase agreement shall not exceed the useful life of
315 equipment covered thereby as determined according to the upper
316 limit of the asset depreciation range (ADR) guidelines for the
317 Class Life Asset Depreciation Range System established by the
318 Internal Revenue Service pursuant to the United States Internal
319 Revenue Code and regulations thereunder as in effect on December
320 31, 1980, or comparable depreciation guidelines with respect to



321 any equipment not covered by ADR guidelines. Any lease-purchase
322 agreement entered into pursuant to this paragraph (e) may contain
323 any of the terms and conditions which a master lease-purchase
324 agreement may contain under the provisions of Section 31-7-10(5),
325 and shall contain an annual allocation dependency clause
326 substantially similar to that set forth in Section 31-7-10(8).
327 Each agency or governing authority entering into a lease-purchase
328 transaction pursuant to this paragraph (e) shall maintain with
329 respect to each such lease-purchase transaction the same
330 information as required to be maintained by the Department of
331 Finance and Administration pursuant to Section 31-7-10(13).
332 However, nothing contained in this section shall be construed to
333 permit agencies to acquire items of equipment with a total
334 acquisition cost in the aggregate of less than Ten Thousand
335 Dollars (\$10,000.00) by a single lease-purchase transaction. All
336 equipment, and the purchase thereof by any lessor, acquired by
337 lease-purchase under this paragraph and all lease-purchase
338 payments with respect thereto shall be exempt from all Mississippi
339 sales, use and ad valorem taxes. Interest paid on any
340 lease-purchase agreement under this section shall be exempt from
341 State of Mississippi income taxation.

342 (f) **Alternate bid authorization.** When necessary to
343 ensure ready availability of commodities for public works and the
344 timely completion of public projects, no more than two (2)
345 alternate bids may be accepted by a governing authority for
346 commodities. No purchases may be made through use of such
347 alternate bids procedure unless the lowest and best bidder, for
348 reasons beyond his control, cannot deliver the commodities
349 contained in his bid. In that event, purchases of such
350 commodities may be made from one (1) of the bidders whose bid was
351 accepted as an alternate.

352 (g) **Construction contract change authorization.** In the
353 event a determination is made by an agency or governing authority



354 after a construction contract is let that changes or modifications
355 to the original contract are necessary or would better serve the
356 purpose of the agency or the governing authority, such agency or
357 governing authority may, in its discretion, order such changes
358 pertaining to the construction that are necessary under the
359 circumstances without the necessity of further public bids;
360 provided that such change shall be made in a commercially
361 reasonable manner and shall not be made to circumvent the public
362 purchasing statutes. In addition to any other authorized person,
363 the architect or engineer hired by an agency or governing
364 authority with respect to any public construction contract shall
365 have the authority, when granted by an agency or governing
366 authority, to authorize changes or modifications to the original
367 contract without the necessity of prior approval of the agency or
368 governing authority when any such change or modification is less
369 than one percent (1%) of the total contract amount. The agency or
370 governing authority may limit the number, manner or frequency of
371 such emergency changes or modifications.

372 (h) **Petroleum purchase alternative.** In addition to
373 other methods of purchasing authorized in this chapter, when any
374 agency or governing authority shall have a need for gas, diesel
375 fuel, oils and/or other petroleum products in excess of the amount
376 set forth in paragraph (a) of this section, such agency or
377 governing authority may purchase the commodity after having
378 solicited and obtained at least two (2) competitive written bids,
379 as defined in paragraph (b) of this section. If two (2)
380 competitive written bids are not obtained the entity shall comply
381 with the procedures set forth in paragraph (c) of this section.
382 In the event any agency or governing authority shall have
383 advertised for bids for the purchase of gas, diesel fuel, oils and
384 other petroleum products and coal and no acceptable bids can be
385 obtained, such agency or governing authority is authorized and
386 directed to enter into any negotiations necessary to secure the



387 lowest and best contract available for the purchase of such
388 commodities.

389 (i) **Road construction petroleum products price**
390 **adjustment clause authorization.** Any agency or governing
391 authority authorized to enter into contracts for the construction,
392 maintenance, surfacing or repair of highways, roads or streets,
393 may include in its bid proposal and contract documents a price
394 adjustment clause with relation to the cost to the contractor,
395 including taxes, based upon an industry-wide cost index, of
396 petroleum products including asphalt used in the performance or
397 execution of the contract or in the production or manufacture of
398 materials for use in such performance. Such industry-wide index
399 shall be established and published monthly by the Mississippi
400 Department of Transportation with a copy thereof to be mailed,
401 upon request, to the clerks of the governing authority of each
402 municipality and the clerks of each board of supervisors
403 throughout the state. The price adjustment clause shall be based
404 on the cost of such petroleum products only and shall not include
405 any additional profit or overhead as part of the adjustment. The
406 bid proposals or document contract shall contain the basis and
407 methods of adjusting unit prices for the change in the cost of
408 such petroleum products.

409 (j) **State agency emergency purchase procedure.** If the
410 executive head of any agency of the state shall determine that an
411 emergency exists in regard to the purchase of any commodities or
412 repair contracts, so that the delay incident to giving opportunity
413 for competitive bidding would be detrimental to the interests of
414 the state, then the provisions herein for competitive bidding
415 shall not apply and the head of such agency shall be authorized to
416 make the purchase or repair. Total purchases so made shall only
417 be for the purpose of meeting needs created by the emergency
418 situation. In the event such executive head is responsible to an
419 agency board, at the meeting next following the emergency



420 purchase, documentation of the purchase, including a description
421 of the commodity purchased, the purchase price thereof and the
422 nature of the emergency shall be presented to the board and placed
423 on the minutes of the board of such agency. The head of such
424 agency shall, at the earliest possible date following such
425 emergency purchase, file with the Department of Finance and
426 Administration (i) a statement under oath certifying the
427 conditions and circumstances of the emergency, and (ii) a
428 certified copy of the appropriate minutes of the board of such
429 agency, if applicable.

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

431 If the governing authority, or the governing authority acting
432 through its designee, shall determine that an emergency exists in
433 regard to the purchase of any commodities or repair contracts, so
434 that the delay incident to giving opportunity for competitive
435 bidding would be detrimental to the interest of the governing
436 authority, then the provisions herein for competitive bidding
437 shall not apply and any officer or agent of such governing
438 authority having general or special authority therefor in making
439 such purchase or repair shall approve the bill presented therefor,
440 and he shall certify in writing thereon from whom such purchase
441 was made, or with whom such a repair contract was made. At the
442 board meeting next following the emergency purchase or repair
443 contract, documentation of the purchase or repair contract,
444 including a description of the commodity purchased, the price
445 thereof and the nature of the emergency shall be presented to the
446 board and shall be placed on the minutes of the board of such
447 governing authority.

448 (l) **Hospital purchase or lease authorization.** The

449 commissioners or board of trustees of any hospital owned or owned
450 and operated separately or jointly by one or more counties,
451 cities, towns, supervisors districts or election districts, or
452 combinations thereof, may contract with such lowest and best



453 bidder for the purchase or lease of any commodity under a contract
454 of purchase or lease-purchase agreement whose obligatory terms do
455 not exceed five (5) years. In addition to the authority granted
456 herein, the commissioners or board of trustees are authorized to
457 enter into contracts for the lease of equipment or services, or
458 both, which it considers necessary for the proper care of patients
459 if, in its opinion, it is not financially feasible to purchase the
460 necessary equipment or services. Any such contract for the lease
461 of equipment or services executed by the commissioners or board
462 shall not exceed a maximum of five (5) years' duration and shall
463 include a cancellation clause based on unavailability of funds.
464 If such cancellation clause is exercised, there shall be no
465 further liability on the part of the lessee.

466 (m) **Exceptions from bidding requirements.** Excepted
467 from bid requirements are:

468 (i) **Purchasing agreements approved by department.**
469 Purchasing agreements, contracts and maximum price regulations
470 executed or approved by the Department of Finance and
471 Administration.

472 (ii) **Outside equipment repairs.** Repairs to
473 equipment, when such repairs are made by repair facilities in the
474 private sector; however, engines, transmissions, rear axles and/or
475 other such components shall not be included in this exemption when
476 replaced as a complete unit instead of being repaired and the need
477 for such total component replacement is known before disassembly
478 of the component; provided, however, that invoices identifying the
479 equipment, specific repairs made, parts identified by number and
480 name, supplies used in such repairs, and the number of hours of
481 labor and costs therefor shall be required for the payment for
482 such repairs.

483 (iii) **In-house equipment repairs.** Purchases of
484 parts for repairs to equipment, when such repairs are made by
485 personnel of the agency or governing authority; however, entire



486 assemblies, such as engines or transmissions, shall not be
487 included in this exemption when the entire assembly is being
488 replaced instead of being repaired.

489 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
490 of gravel or fill dirt which are to be removed and transported by
491 the purchaser.

492 (v) **Governmental equipment auctions.** Motor
493 vehicles or other equipment purchased from a federal or state
494 agency or a governing authority at a public auction held for the
495 purpose of disposing of such vehicles or other equipment. Any
496 purchase by a governing authority under the exemption authorized
497 by this subparagraph (v) shall require advance authorization
498 spread upon the minutes of the governing authority to include the
499 listing of the item or items authorized to be purchased and the
500 maximum bid authorized to be paid for each item or items.

501 (vi) **Intergovernmental sales and transfers.**
502 Purchases, sales, transfers or trades by governing authorities or
503 state agencies when such purchases, sales, transfers or trades are
504 made by a private treaty agreement or through means of
505 negotiation, from any federal agency or authority, another
506 governing authority or state agency of the State of Mississippi,
507 or any state agency of another state. Nothing in this section
508 shall permit such purchases through public auction except as
509 provided for in subparagraph (v) of this section. It is the
510 intent of this section to allow governmental entities to dispose
511 of and/or purchase commodities from other governmental entities at
512 a price that is agreed to by both parties. This shall allow for
513 purchases and/or sales at prices which may be determined to be
514 below the market value if the selling entity determines that the
515 sale at below market value is in the best interest of the
516 taxpayers of the state. Governing authorities shall place the
517 terms of the agreement and any justification on the minutes, and
518 state agencies shall obtain approval from the Department of



519 Finance and Administration, prior to releasing or taking
520 possession of the commodities.

521 (vii) **Perishable supplies or food.** Perishable
522 supplies or foods purchased for use in connection with hospitals,
523 the school lunch programs, homemaking programs and for the feeding
524 of county or municipal prisoners.

525 (viii) **Single source items.** Noncompetitive items
526 available from one (1) source only. In connection with the
527 purchase of noncompetitive items only available from one (1)
528 source, a certification of the conditions and circumstances
529 requiring the purchase shall be filed by the agency with the
530 Department of Finance and Administration and by the governing
531 authority with the board of the governing authority. Upon receipt
532 of that certification the Department of Finance and Administration
533 or the board of the governing authority, as the case may be, may,
534 in writing, authorize the purchase, which authority shall be noted
535 on the minutes of the body at the next regular meeting thereafter.
536 In those situations, a governing authority is not required to
537 obtain the approval of the Department of Finance and
538 Administration.

539 (ix) **Waste disposal facility construction**
540 **contracts.** Construction of incinerators and other facilities for
541 disposal of solid wastes in which products either generated
542 therein, such as steam, or recovered therefrom, such as materials
543 for recycling, are to be sold or otherwise disposed of; provided,
544 however, in constructing such facilities a governing authority or
545 agency shall publicly issue requests for proposals, advertised for
546 in the same manner as provided herein for seeking bids for public
547 construction projects, concerning the design, construction,
548 ownership, operation and/or maintenance of such facilities,
549 wherein such requests for proposals when issued shall contain
550 terms and conditions relating to price, financial responsibility,
551 technology, environmental compatibility, legal responsibilities



552 and such other matters as are determined by the governing
553 authority or agency to be appropriate for inclusion; and after
554 responses to the request for proposals have been duly received,
555 the governing authority or agency may select the most qualified
556 proposal or proposals on the basis of price, technology and other
557 relevant factors and from such proposals, but not limited to the
558 terms thereof, negotiate and enter contracts with one or more of
559 the persons or firms submitting proposals.

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

563 (xi) **Information technology products.** Purchases
564 of information technology products made by governing authorities
565 under the provisions of purchase schedules, or contracts executed
566 or approved by the Mississippi Department of Information
567 Technology Services and designated for use by governing
568 authorities.

569 (xii) **Energy efficiency services and equipment.**
570 Energy efficiency services and equipment acquired by school
571 districts, community and junior colleges, institutions of higher
572 learning and state agencies or other applicable governmental
573 entities on a shared-savings, lease or lease-purchase basis
574 pursuant to Section 31-7-14.

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

579 (xiv) **Library books and other reference materials.**
580 Purchases by libraries or for libraries of books and periodicals;
581 processed film, video cassette tapes, filmstrips and slides;
582 recorded audio tapes, cassettes and diskettes; and any such items
583 as would be used for teaching, research or other information
584 distribution; however, equipment such as projectors, recorders,



585 audio or video equipment, and monitor televisions are not exempt
586 under this subparagraph.

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

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

593 (xvii) **Multichannel interactive video systems.**
594 From and after July 1, 1990, contracts by Mississippi Authority
595 for Educational Television with any private educational
596 institution or private nonprofit organization whose purposes are
597 educational in regard to the construction, purchase, lease or
598 lease-purchase of facilities and equipment and the employment of
599 personnel for providing multichannel interactive video systems
600 (ITSF) in the school districts of this state.

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

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

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

614 (xxi) **Certain school district purchases.**
615 Purchases of commodities made by school districts from vendors
616 with which any levying authority of the school district, as



617 defined in Section 37-57-1, has contracted through competitive
618 bidding procedures for purchases of the same commodities.

619 (xxii) **Garbage, solid waste and sewage contracts.**
620 Contracts for garbage collection or disposal, contracts for solid
621 waste collection or disposal and contracts for sewage collection
622 or disposal.

623 (xxiii) **Municipal water tank maintenance**
624 **contracts.** Professional maintenance program contracts for the
625 repair or maintenance of municipal water tanks, which provide
626 professional services needed to maintain municipal water storage
627 tanks for a fixed annual fee for a duration of two (2) or more
628 years.

629 (xxiv) **Purchases of Mississippi Industries for the**
630 **Blind products.** Purchases made by state agencies or governing
631 authorities involving any item that is manufactured, processed or
632 produced by the Mississippi Industries for the Blind.

633 (xxv) **Purchases of state-adopted textbooks.**
634 Purchases of state-adopted textbooks by public school districts.

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

638 (xxvii) **Used heavy or specialized machinery or**
639 **equipment for installation of soil and water conservation**
640 **practices purchased at auction.** Used heavy or specialized
641 machinery or equipment used for the installation and
642 implementation of soil and water conservation practices or
643 measures purchased subject to the restrictions provided in
644 Sections 69-27-331 through 69-27-341. Any purchase by the State
645 Soil and Water Conservation Commission under the exemption
646 authorized by this subparagraph shall require advance
647 authorization spread upon the minutes of the commission to include
648 the listing of the item or items authorized to be purchased and
649 the maximum bid authorized to be paid for each item or items.



650 (xxviii) Procurement of design and construction
651 services by universities. Nothing in this section restricts the
652 right of the Board of Trustees of State Institutions of Higher
653 Learning to award privately financed contracts for the design and
654 for the construction of dormitories or parking structures on the
655 main campus of the university, as provided in Section 37-101-44.

656 This subparagraph (xxviii) shall stand repealed
657 from and after June 30, 2004.

658 (n) **Term contract authorization.** All contracts for the
659 purchase of:

660 (i) All contracts for the purchase of commodities,
661 equipment and public construction (including, but not limited to,
662 repair and maintenance), may be let for periods of not more than
663 sixty (60) months in advance, subject to applicable statutory
664 provisions prohibiting the letting of contracts during specified
665 periods near the end of terms of office. Term contracts for a
666 period exceeding twenty-four (24) months shall also be subject to
667 ratification or cancellation by governing authority boards taking
668 office subsequent to the governing authority board entering the
669 contract.

670 (ii) Bid proposals and contracts may include price
671 adjustment clauses with relation to the cost to the contractor
672 based upon a nationally published industry-wide or nationally
673 published and recognized cost index. The cost index used in a
674 price adjustment clause shall be determined by the Department of
675 Finance and Administration for the state agencies and by the
676 governing board for governing authorities. The bid proposal and
677 contract documents utilizing a price adjustment clause shall
678 contain the basis and method of adjusting unit prices for the
679 change in the cost of such commodities, equipment and public
680 construction.

681 (o) **Purchase law violation prohibition and vendor**
682 **penalty.** No contract or purchase as herein authorized shall be



683 made for the purpose of circumventing the provisions of this
684 section requiring competitive bids, nor shall it be lawful for any
685 person or concern to submit individual invoices for amounts within
686 those authorized for a contract or purchase where the actual value
687 of the contract or commodity purchased exceeds the authorized
688 amount and the invoices therefor are split so as to appear to be
689 authorized as purchases for which competitive bids are not
690 required. Submission of such invoices shall constitute a
691 misdemeanor punishable by a fine of not less than Five Hundred
692 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
693 or by imprisonment for thirty (30) days in the county jail, or
694 both such fine and imprisonment. In addition, the claim or claims
695 submitted shall be forfeited.

696 (p) **Electrical utility petroleum-based equipment**
697 **purchase procedure.** When in response to a proper advertisement
698 therefor, no bid firm as to price is submitted to an electric
699 utility for power transformers, distribution transformers, power
700 breakers, reclosers or other articles containing a petroleum
701 product, the electric utility may accept the lowest and best bid
702 therefor although the price is not firm.

703 (q) **Fuel management system bidding procedure.** Any
704 governing authority or agency of the state shall, before
705 contracting for the services and products of a fuel management or
706 fuel access system, enter into negotiations with not fewer than
707 two (2) sellers of fuel management or fuel access systems for
708 competitive written bids to provide the services and products for
709 the systems. In the event that the governing authority or agency
710 cannot locate two (2) sellers of such systems or cannot obtain
711 bids from two (2) sellers of such systems, it shall show proof
712 that it made a diligent, good-faith effort to locate and negotiate
713 with two (2) sellers of such systems. Such proof shall include,
714 but not be limited to, publications of a request for proposals and
715 letters soliciting negotiations and bids. For purposes of this



716 paragraph (q), a fuel management or fuel access system is an
717 automated system of acquiring fuel for vehicles as well as
718 management reports detailing fuel use by vehicles and drivers, and
719 the term "competitive written bid" shall have the meaning as
720 defined in paragraph (b) of this section. Governing authorities
721 and agencies shall be exempt from this process when contracting
722 for the services and products of a fuel management or fuel access
723 systems under the terms of a state contract established by the
724 Office of Purchasing and Travel.

725 (r) **Solid waste contract proposal procedure.** Before
726 entering into any contract for garbage collection or disposal,
727 contract for solid waste collection or disposal or contract for
728 sewage collection or disposal, which involves an expenditure of
729 more than Fifty Thousand Dollars (\$50,000.00), a governing
730 authority or agency shall issue publicly a request for proposals
731 concerning the specifications for such services which shall be
732 advertised for in the same manner as provided in this section for
733 seeking bids for purchases which involve an expenditure of more
734 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
735 when issued shall contain terms and conditions relating to price,
736 financial responsibility, technology, legal responsibilities and
737 other relevant factors as are determined by the governing
738 authority or agency to be appropriate for inclusion; all factors
739 determined relevant by the governing authority or agency or
740 required by this paragraph (r) shall be duly included in the
741 advertisement to elicit proposals. After responses to the request
742 for proposals have been duly received, the governing authority or
743 agency shall select the most qualified proposal or proposals on
744 the basis of price, technology and other relevant factors and from
745 such proposals, but not limited to the terms thereof, negotiate
746 and enter contracts with one or more of the persons or firms
747 submitting proposals. If the governing authority or agency deems
748 none of the proposals to be qualified or otherwise acceptable, the



749 request for proposals process may be reinitiated. Notwithstanding
750 any other provisions of this paragraph, where a county with at
751 least thirty-five thousand (35,000) nor more than forty thousand
752 (40,000) population, according to the 1990 federal decennial
753 census, owns or operates a solid waste landfill, the governing
754 authorities of any other county or municipality may contract with
755 the governing authorities of the county owning or operating the
756 landfill, pursuant to a resolution duly adopted and spread upon
757 the minutes of each governing authority involved, for garbage or
758 solid waste collection or disposal services through contract
759 negotiations.

760 (s) **Minority set aside authorization.** Notwithstanding
761 any provision of this section to the contrary, any agency or
762 governing authority, by order placed on its minutes, may, in its
763 discretion, set aside not more than twenty percent (20%) of its
764 anticipated annual expenditures for the purchase of commodities
765 from minority businesses; however, all such set-aside purchases
766 shall comply with all purchasing regulations promulgated by the
767 Department of Finance and Administration and shall be subject to
768 bid requirements under this section. Set-aside purchases for
769 which competitive bids are required shall be made from the lowest
770 and best minority business bidder. For the purposes of this
771 paragraph, the term "minority business" means a business which is
772 owned by a majority of persons who are United States citizens or
773 permanent resident aliens (as defined by the Immigration and
774 Naturalization Service) of the United States, and who are Asian,
775 Black, Hispanic or Native American, according to the following
776 definitions:

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

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



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

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

788 (t) **Construction punch list restriction.** The
789 architect, engineer or other representative designated by the
790 agency or governing authority that is contracting for public
791 construction or renovation may prepare and submit to the
792 contractor only one (1) preliminary punch list of items that do
793 not meet the contract requirements at the time of substantial
794 completion and one (1) final list immediately before final
795 completion and final payment.

796 (u) **Purchase authorization clarification.** Nothing in
797 this section shall be construed as authorizing any purchase not
798 authorized by law.

799 **SECTION 4.** This act shall take effect and be in force from
800 and after its passage.

