

By: Representative Weathersby

To: Public Property;  
AppropriationsHOUSE BILL NO. 1537  
(As Passed the House)

1 AN ACT TO CREATE NEW SECTION 31-7-13.1, MISSISSIPPI CODE OF  
 2 1972, TO AUTHORIZE AND PRESCRIBE THE PROCEDURES FOR USING THE  
 3 DUAL-PHASE DESIGN-BUILD METHOD OF CONSTRUCTION CONTRACTING; TO  
 4 PROVIDE THAT A TWO-PHASE PROCEDURE FOR AWARDING A CONTRACT MUST BE  
 5 ADOPTED FOR EACH PROPOSED DUAL-PHASE DESIGN-BUILD PROJECT; TO  
 6 PRESCRIBE THE PROCEDURES TO BE FOLLOWED FOR EACH PHASE; TO AMEND  
 7 SECTIONS 31-11-3 AND 65-1-85, MISSISSIPPI CODE OF 1972, TO CONFORM  
 8 TO THE PRECEDING PROVISIONS; TO CREATE A NEW SECTION TO BE  
 9 CODIFIED AS SECTION 37-101-44, MISSISSIPPI CODE OF 1972, TO  
 10 AUTHORIZE THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER  
 11 LEARNING TO AUTHORIZE UNIVERSITIES TO CONTRACT WITH A SINGLE  
 12 ENTITY FOR THE DESIGN AND CONSTRUCTION OF FACILITIES AT  
 13 UNIVERSITIES; TO AMEND SECTION 37-101-43, MISSISSIPPI CODE OF  
 14 1972, IN CONFORMITY THERETO; TO CREATE NEW SECTION 31-7-13.2,  
 15 MISSISSIPPI CODE OF 1972, TO PRESCRIBE THE PROCEDURES FOR AWARDING  
 16 CONTRACTS FOR CONSTRUCTION MANAGERS AT RISK; TO DEFINE  
 17 QUALIFICATION-BASED SELECTION PROCEDURES FOR PURPOSES OF PROCURING  
 18 ARCHITECTS AND DESIGN ENGINEERS; TO AMEND SECTION 37-101-41,  
 19 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD OF TRUSTEES OF  
 20 STATE INSTITUTIONS OF HIGHER LEARNING TO AUTHORIZE UNIVERSITIES TO  
 21 LEASE LAND AT UNIVERSITIES FOR THE CONSTRUCTION OF AUXILIARY  
 22 FACILITIES BY PRIVATE FINANCING FOR A PERIOD NOT EXCEEDING  
 23 THIRTY-ONE YEARS; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF  
 24 1972, TO EXEMPT FROM STATE BID REQUIREMENTS CONTRACTS FOR THE  
 25 DESIGN-BUILD METHOD AND DUAL-PHASE DESIGN-BUILD METHOD OF  
 26 CONTRACTING; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

292 37-101-44. (1) In lieu of exercising the authority set  
293 forth in Section 37-101-43 and before entering into or awarding  
294 any lease under Section 37-101-41, the Board of Trustees of State  
295 Institutions of Higher Learning, subject to the provisions of  
296 Section 9 of this act, may award contracts to a single entity for  
297 privately financed design and construction of facilities on  
298 university campuses if the entities receiving the contract or  
299 contracts and those entities to which work or services are  
300 subcontracted are duly licensed and qualified in the state to  
301 perform the contract or contracts. State General Fund

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

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

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

313 37-101-43. (a) Except as otherwise provided in Section  
314 37-101-44, and subject to the provisions of Section 9 of this act,  
315 before entering into or awarding any such lease contract under the  
316 provisions of Section 37-101-41, the Board of Trustees of State  
317 Institutions of Higher Learning shall cause the interested  
318 state-supported institution upon which a facility is proposed to  
319 be constructed to select and submit three (3) architects to the  
320 board. Thereupon, the board shall approve and employ an  
321 architect, who shall be paid by the interested institution from  
322 any funds available to the interested institution. The architect,  
323 under the direction of the interested institution, shall prepare  
324 complete plans and specifications for the facility desired to be  
325 constructed on the leased property.

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

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

353         The board shall award the lease contract to the lowest and  
354 best bidder, who will comply with the terms imposed by the  
355 contract documents. At the time of the awarding of the lease  
356 contract the successful bidder shall enter into bond with  
357 sufficient sureties, to be approved by the board, in such penalty  
358 as may be fixed by the board, but in no case to be less than the  
359 estimated gross construction cost of the facility to be  
360 constructed as estimated by the board, conditioned for the prompt,  
361 proper and efficient performance of the contract. The bond shall  
362 be made by an authorized corporate surety bonding company.  
363 The \* \* \* bid security herein provided for shall be forfeited if  
364 the successful bidder fails to enter into lease contract and  
365 commence construction within the time limitation set forth in the  
366 notice. At such time, and simultaneously with the signing of the  
367 contract, the successful bidder shall deposit a sum of money, in

368 cash or certified or cashier's check, not less than the bid  
369 security previously deposited as bid security to reimburse the  
370 interested institution for all sums expended by it for  
371 architectural services and other expenditures of the board and  
372 interested institution connected with the bidden lease contract,  
373 of which such other anticipated expenditures notice is to be given  
374 to bidder in the notice. The bid security posted by an  
375 unsuccessful bidder shall be refunded to him.

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

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

384 37-101-41. (1) (a) Except as otherwise provided in  
385 paragraph (b) of this section, and subject to the provisions of  
386 Section 9 of this act, the Board of Trustees of State Institutions  
387 of Higher Learning is \* \* \* authorized and empowered to lease to  
388 private individuals or corporations for a term not exceeding  
389 thirty-one (31) years any land at any of the following  
390 state-supported institutions: Mississippi State University of  
391 Agriculture and Applied Science, Jackson State University,  
392 Mississippi Valley State University, University of Mississippi,  
393 Alcorn State University, University of Southern Mississippi,  
394 Mississippi University for Women and Delta State University, for  
395 the purpose of erecting auxiliary facilities thereon for active  
396 faculty and students. The auxiliary facilities shall be  
397 constructed thereon by private financing, and shall be leased back  
398 to the board for use by the concerned state-supported institution  
399 of higher learning. The lease shall contain a provision  
400 permitting the board to purchase the building located thereon for

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

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

414 (2) Upon there being an agreement reached between the Board  
415 of Trustees of State Institutions of Higher Learning and a  
416 university upon whose land the auxiliary facility will be  
417 constructed and a private individual or corporation to enter into  
418 such lease agreement as described in subsection (1), it shall be  
419 stipulated in the agreement that all newly constructed auxiliary  
420 facilities shall be in compliance with the minimum building code  
421 standards employed by the state as required under Section  
422 31-11-33.

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

430 (4) No contractual lease agreement for the construction of  
431 privately financed auxiliary facilities shall be entered into by a  
432 university without prior approval of the Board of Trustees of  
433 State Institutions of Higher Learning. An auxiliary facility is a

434 facility that is defined by the Higher Education General  
435 Information Survey (HEGIS) categories 500/600/700/800/900.

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

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

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

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

461 (b) **Bidding procedure for purchases over \$3,500.00 but**  
462 **not over \$15,000.00.** Purchases which involve an expenditure of  
463 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
464 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
465 freight and shipping charges may be made from the lowest and best  
466 bidder without publishing or posting advertisement for bids,

467 provided at least two (2) competitive written bids have been  
468 obtained. Any governing authority purchasing commodities pursuant  
469 to this paragraph (b) may authorize its purchasing agent, or his  
470 designee, with regard to governing authorities other than  
471 counties, or its purchase clerk, or his designee, with regard to  
472 counties, to accept the lowest and best competitive written bid.  
473 Such authorization shall be made in writing by the governing  
474 authority and shall be maintained on file in the primary office of  
475 the agency and recorded in the official minutes of the governing  
476 authority, as appropriate. The purchasing agent or the purchase  
477 clerk, or their designee, as the case may be, and not the  
478 governing authority, shall be liable for any penalties and/or  
479 damages as may be imposed by law for any act or omission of the  
480 purchasing agent or purchase clerk, or their designee,  
481 constituting a violation of law in accepting any bid without  
482 approval by the governing authority. The term "competitive  
483 written bid" shall mean a bid submitted on a bid form furnished by  
484 the buying agency or governing authority and signed by authorized  
485 personnel representing the vendor, or a bid submitted on a  
486 vendor's letterhead or identifiable bid form and signed by  
487 authorized personnel representing the vendor. "Competitive" shall  
488 mean that the bids are developed based upon comparable  
489 identification of the needs and are developed independently and  
490 without knowledge of other bids or prospective bids. Bids may be  
491 submitted by facsimile, electronic mail or other generally  
492 accepted method of information distribution. Bids submitted by  
493 electronic transmission shall not require the signature of the  
494 vendor's representative unless required by agencies or governing  
495 authorities.

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

497 (i) **Publication requirement.**

498 1. Purchases which involve an expenditure of  
499 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of

500 freight and shipping charges, may be made from the lowest and best  
501 bidder after advertising for competitive bids once each week for  
502 two (2) consecutive weeks in a regular newspaper published in the  
503 county or municipality in which such agency or governing authority  
504 is located.

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

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



533 the notice is submitted to the newspaper for publication, the  
534 agency or governing authority involved shall mail written notice  
535 to, or provide electronic notification to the main office of the  
536 Mississippi Contract Procurement Center that contains the same  
537 information as that in the published notice.

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

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

563           (iv) **Specification restrictions.**

564                   1. Specifications pertinent to such bidding  
565 shall be written so as not to exclude comparable equipment of

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

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

588                   (v) Agencies and governing authorities may  
589 establish secure procedures by which bids may be submitted via  
590 electronic means.

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

592                   (i) **Decision procedure.** Purchases may be made  
593 from the lowest and best bidder. In determining the lowest and  
594 best bid, freight and shipping charges shall be included.  
595 Life-cycle costing, total cost bids, warranties, guaranteed  
596 buy-back provisions and other relevant provisions may be included  
597 in the best bid calculation. All best bid procedures for state  
598 agencies must be in compliance with regulations established by the

599 Department of Finance and Administration. If any governing  
600 authority accepts a bid other than the lowest bid actually  
601 submitted, it shall place on its minutes detailed calculations and  
602 narrative summary showing that the accepted bid was determined to  
603 be the lowest and best bid, including the dollar amount of the  
604 accepted bid and the dollar amount of the lowest bid. No agency  
605 or governing authority shall accept a bid based on items not  
606 included in the specifications.

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

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

629                   (e) **Lease-purchase authorization.** For the purposes of  
630 this section, the term "equipment" shall mean equipment, furniture  
631 and, if applicable, associated software and other applicable

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

665 information as required to be maintained by the Department of  
666 Finance and Administration pursuant to Section 31-7-10(13).  
667 However, nothing contained in this section shall be construed to  
668 permit agencies to acquire items of equipment with a total  
669 acquisition cost in the aggregate of less than Ten Thousand  
670 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
671 equipment, and the purchase thereof by any lessor, acquired by  
672 lease-purchase under this paragraph and all lease-purchase  
673 payments with respect thereto shall be exempt from all Mississippi  
674 sales, use and ad valorem taxes. Interest paid on any  
675 lease-purchase agreement under this section shall be exempt from  
676 State of Mississippi income taxation.

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

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

698 authority with respect to any public construction contract shall  
699 have the authority, when granted by an agency or governing  
700 authority, to authorize changes or modifications to the original  
701 contract without the necessity of prior approval of the agency or  
702 governing authority when any such change or modification is less  
703 than one percent (1%) of the total contract amount. The agency or  
704 governing authority may limit the number, manner or frequency of  
705 such emergency changes or modifications.

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

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

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

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

764 entity if the purchase is made following the statutory  
765 requirements set forth in paragraph (a), (b) or (c) of this  
766 section, and (ii) a certified copy of the appropriate minutes of  
767 the board of such agency, if applicable. On or before September 1  
768 of each year, the State Auditor shall prepare and deliver to the  
769 Senate Fees, Salaries and Administration Committee, the House Fees  
770 and Salaries of Public Officers Committee and the Joint  
771 Legislative Budget Committee a report containing a list of all  
772 state agency emergency purchases and supporting documentation for  
773 each emergency purchase.

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

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

792 (l) **Hospital purchase, lease-purchase and lease**  
793 **authorization.**

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



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

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

815 (m) **Exceptions from bidding requirements.** Excepted  
816 from bid requirements are:

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

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

830 and costs therefor shall be required for the payment for such  
831 repairs.

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

838                   (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
839 of gravel or fill dirt which are to be removed and transported by  
840 the purchaser.

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

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

863 governmental entities at a price that is agreed to by both  
864 parties. This shall allow for purchases and/or sales at prices  
865 which may be determined to be below the market value if the  
866 selling entity determines that the sale at below market value is  
867 in the best interest of the taxpayers of the state. Governing  
868 authorities shall place the terms of the agreement and any  
869 justification on the minutes, and state agencies shall obtain  
870 approval from the Department of Finance and Administration, prior  
871 to releasing or taking possession of the commodities.

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

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

890 (ix) **Waste disposal facility construction**  
891 **contracts.** Construction of incinerators and other facilities for  
892 disposal of solid wastes in which products either generated  
893 therein, such as steam, or recovered therefrom, such as materials  
894 for recycling, are to be sold or otherwise disposed of; however,  
895 in constructing such facilities, a governing authority or agency

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

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

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

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

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

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

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

931 Purchases by libraries or for libraries of books and periodicals;  
932 processed film, video cassette tapes, filmstrips and slides;  
933 recorded audio tapes, cassettes and diskettes; and any such items  
934 as would be used for teaching, research or other information  
935 distribution; however, equipment such as projectors, recorders,  
936 audio or video equipment, and monitor televisions are not exempt  
937 under this subparagraph.

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

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

944 (xvii) **Multichannel interactive video systems.**

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

952 (xviii) **Purchases of prison industry products.**

953 From and after January 1, 1991, purchases made by state agencies  
954 or governing authorities involving any item that is manufactured,  
955 processed, grown or produced from the state's prison industries.

956 (xix) **Undercover operations equipment.** Purchases

957 of surveillance equipment or any other high-tech equipment to be  
958 used by law enforcement agents in undercover operations, provided  
959 that any such purchase shall be in compliance with regulations  
960 established by the Department of Finance and Administration.

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

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

970                   (xxii) **Garbage, solid waste and sewage contracts.**  
971 Contracts for garbage collection or disposal, contracts for solid  
972 waste collection or disposal and contracts for sewage collection  
973 or disposal.

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

980                   (xxiv) **Purchases of Mississippi Industries for the**  
981 **Blind products.** Purchases made by state agencies or governing  
982 authorities involving any item that is manufactured, processed or  
983 produced by the Mississippi Industries for the Blind.

984                   (xxv) **Purchases of state-adopted textbooks.**  
985 Purchases of state-adopted textbooks by public school districts.

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

989                   (xxvii) **Used heavy or specialized machinery or**  
990 **equipment for installation of soil and water conservation**  
991 **practices purchased at auction.** Used heavy or specialized  
992 machinery or equipment used for the installation and  
993 implementation of soil and water conservation practices or

994 measures purchased subject to the restrictions provided in  
995 Sections 69-27-331 through 69-27-341. Any purchase by the State  
996 Soil and Water Conservation Commission under the exemption  
997 authorized by this subparagraph shall require advance  
998 authorization spread upon the minutes of the commission to include  
999 the listing of the item or items authorized to be purchased and  
1000 the maximum bid authorized to be paid for each item or items.

1001 (xxviii) **Hospital lease of equipment or services.**

1002 Leases by hospitals of equipment or services if the leases are in  
1003 compliance with paragraph (1)(ii).

1004 (xxix) **Purchases made pursuant to qualified**

1005 **cooperative purchasing agreements.** Purchases made by certified  
1006 purchasing offices of state agencies or governing authorities  
1007 under cooperative purchasing agreements previously approved by the  
1008 Office of Purchasing and Travel and established by or for any  
1009 municipality, county, parish or state government or the federal  
1010 government, provided that the notification to potential  
1011 contractors includes a clause that sets forth the availability of  
1012 the cooperative purchasing agreement to other governmental  
1013 entities. Such purchases shall only be made if the use of the  
1014 cooperative purchasing agreements is determined to be in the best  
1015 interest of the governmental entity.

1016 (xxx) **School yearbooks.** Purchases of school

1017 yearbooks by state agencies or governing authorities; provided,  
1018 however, that state agencies and governing authorities shall use  
1019 for these purchases the RFP process as set forth in the  
1020 Mississippi Procurement Manual adopted by the Office of Purchasing  
1021 and Travel.

1022 (xxxii) *Design-build method and dual-phase*

1023 *design-build \* \* \* method of contracting. Contracts entered into*  
1024 *under the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.*

1025 (n) **Term contract authorization.** All contracts for the  
1026 purchase of:

1027 (i) All contracts for the purchase of commodities,  
1028 equipment and public construction (including, but not limited to,  
1029 repair and maintenance), may be let for periods of not more than  
1030 sixty (60) months in advance, subject to applicable statutory  
1031 provisions prohibiting the letting of contracts during specified  
1032 periods near the end of terms of office. Term contracts for a  
1033 period exceeding twenty-four (24) months shall also be subject to  
1034 ratification or cancellation by governing authority boards taking  
1035 office subsequent to the governing authority board entering the  
1036 contract.

1037 (ii) Bid proposals and contracts may include price  
1038 adjustment clauses with relation to the cost to the contractor  
1039 based upon a nationally published industry-wide or nationally  
1040 published and recognized cost index. The cost index used in a  
1041 price adjustment clause shall be determined by the Department of  
1042 Finance and Administration for the state agencies and by the  
1043 governing board for governing authorities. The bid proposal and  
1044 contract documents utilizing a price adjustment clause shall  
1045 contain the basis and method of adjusting unit prices for the  
1046 change in the cost of such commodities, equipment and public  
1047 construction.

1048 (o) **Purchase law violation prohibition and vendor**  
1049 **penalty.** No contract or purchase as herein authorized shall be  
1050 made for the purpose of circumventing the provisions of this  
1051 section requiring competitive bids, nor shall it be lawful for any  
1052 person or concern to submit individual invoices for amounts within  
1053 those authorized for a contract or purchase where the actual value  
1054 of the contract or commodity purchased exceeds the authorized  
1055 amount and the invoices therefor are split so as to appear to be  
1056 authorized as purchases for which competitive bids are not  
1057 required. Submission of such invoices shall constitute a  
1058 misdemeanor punishable by a fine of not less than Five Hundred  
1059 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),



1060 or by imprisonment for thirty (30) days in the county jail, or  
1061 both such fine and imprisonment. In addition, the claim or claims  
1062 submitted shall be forfeited.

1063 (p) **Electrical utility petroleum-based equipment**  
1064 **purchase procedure.** When in response to a proper advertisement  
1065 therefor, no bid firm as to price is submitted to an electric  
1066 utility for power transformers, distribution transformers, power  
1067 breakers, reclosers or other articles containing a petroleum  
1068 product, the electric utility may accept the lowest and best bid  
1069 therefor although the price is not firm.

1070 (q) **Fuel management system bidding procedure.** Any  
1071 governing authority or agency of the state shall, before  
1072 contracting for the services and products of a fuel management or  
1073 fuel access system, enter into negotiations with not fewer than  
1074 two (2) sellers of fuel management or fuel access systems for  
1075 competitive written bids to provide the services and products for  
1076 the systems. In the event that the governing authority or agency  
1077 cannot locate two (2) sellers of such systems or cannot obtain  
1078 bids from two (2) sellers of such systems, it shall show proof  
1079 that it made a diligent, good-faith effort to locate and negotiate  
1080 with two (2) sellers of such systems. Such proof shall include,  
1081 but not be limited to, publications of a request for proposals and  
1082 letters soliciting negotiations and bids. For purposes of this  
1083 paragraph (q), a fuel management or fuel access system is an  
1084 automated system of acquiring fuel for vehicles as well as  
1085 management reports detailing fuel use by vehicles and drivers, and  
1086 the term "competitive written bid" shall have the meaning as  
1087 defined in paragraph (b) of this section. Governing authorities  
1088 and agencies shall be exempt from this process when contracting  
1089 for the services and products of a fuel management or fuel access  
1090 systems under the terms of a state contract established by the  
1091 Office of Purchasing and Travel.

1092           (r) **Solid waste contract proposal procedure.** Before  
1093 entering into any contract for garbage collection or disposal,  
1094 contract for solid waste collection or disposal or contract for  
1095 sewage collection or disposal, which involves an expenditure of  
1096 more than Fifty Thousand Dollars (\$50,000.00), a governing  
1097 authority or agency shall issue publicly a request for proposals  
1098 concerning the specifications for such services which shall be  
1099 advertised for in the same manner as provided in this section for  
1100 seeking bids for purchases which involve an expenditure of more  
1101 than the amount provided in paragraph (c) of this section. Any  
1102 request for proposals when issued shall contain terms and  
1103 conditions relating to price, financial responsibility,  
1104 technology, legal responsibilities and other relevant factors as  
1105 are determined by the governing authority or agency to be  
1106 appropriate for inclusion; all factors determined relevant by the  
1107 governing authority or agency or required by this paragraph (r)  
1108 shall be duly included in the advertisement to elicit proposals.  
1109 After responses to the request for proposals have been duly  
1110 received, the governing authority or agency shall select the most  
1111 qualified proposal or proposals on the basis of price, technology  
1112 and other relevant factors and from such proposals, but not  
1113 limited to the terms thereof, negotiate and enter contracts with  
1114 one or more of the persons or firms submitting proposals. If the  
1115 governing authority or agency deems none of the proposals to be  
1116 qualified or otherwise acceptable, the request for proposals  
1117 process may be reinitiated. Notwithstanding any other provisions  
1118 of this paragraph, where a county with at least thirty-five  
1119 thousand (35,000) nor more than forty thousand (40,000)  
1120 population, according to the 1990 federal decennial census, owns  
1121 or operates a solid waste landfill, the governing authorities of  
1122 any other county or municipality may contract with the governing  
1123 authorities of the county owning or operating the landfill,  
1124 pursuant to a resolution duly adopted and spread upon the minutes

1125 of each governing authority involved, for garbage or solid waste  
1126 collection or disposal services through contract negotiations.

1127           (s) **Minority set-aside authorization.** Notwithstanding  
1128 any provision of this section to the contrary, any agency or  
1129 governing authority, by order placed on its minutes, may, in its  
1130 discretion, set aside not more than twenty percent (20%) of its  
1131 anticipated annual expenditures for the purchase of commodities  
1132 from minority businesses; however, all such set-aside purchases  
1133 shall comply with all purchasing regulations promulgated by the  
1134 Department of Finance and Administration and shall be subject to  
1135 bid requirements under this section. Set-aside purchases for  
1136 which competitive bids are required shall be made from the lowest  
1137 and best minority business bidder. For the purposes of this  
1138 paragraph, the term "minority business" means a business which is  
1139 owned by a majority of persons who are United States citizens or  
1140 permanent resident aliens (as defined by the Immigration and  
1141 Naturalization Service) of the United States, and who are Asian,  
1142 Black, Hispanic or Native American, according to the following  
1143 definitions:

1144           (i) "Asian" means persons having origins in any of  
1145 the original people of the Far East, Southeast Asia, the Indian  
1146 subcontinent, or the Pacific Islands.

1147           (ii) "Black" means persons having origins in any  
1148 black racial group of Africa.

1149           (iii) "Hispanic" means persons of Spanish or  
1150 Portuguese culture with origins in Mexico, South or Central  
1151 America, or the Caribbean Islands, regardless of race.

1152           (iv) "Native American" means persons having  
1153 origins in any of the original people of North America, including  
1154 American Indians, Eskimos and Aleuts.

1155           (t) **Construction punch list restriction.** The  
1156 architect, engineer or other representative designated by the  
1157 agency or governing authority that is contracting for public

1158 construction or renovation may prepare and submit to the  
1159 contractor only one (1) preliminary punch list of items that do  
1160 not meet the contract requirements at the time of substantial  
1161 completion and one (1) final list immediately before final  
1162 completion and final payment.

1163 (u) **Procurement of construction services by state**  
1164 **institutions of higher learning.** Contracts for privately financed  
1165 construction of auxiliary facilities on the campus of a state  
1166 institution of higher learning may be awarded by the Board of  
1167 Trustees of State Institutions of Higher Learning to the lowest  
1168 and best bidder, where sealed bids are solicited, or to the  
1169 offeror whose proposal is determined to represent the best value  
1170 to the citizens of the State of Mississippi, where requests for  
1171 proposals are solicited.

1172 (v) **Purchase authorization clarification.** Nothing in  
1173 this section shall be construed as authorizing any purchase not  
1174 authorized by law.

1175 **SECTION 7.** Section 31-11-3, Mississippi Code of 1972, is  
1176 amended as follows:

1177 31-11-3. (1) The Department of Finance and Administration,  
1178 for the purposes of carrying out the provisions of this chapter,  
1179 in addition to all other rights and powers granted by law, shall  
1180 have full power and authority to employ and compensate architects  
1181 or other employees necessary for the purpose of making  
1182 inspections, preparing plans and specifications, supervising the  
1183 erection of any buildings, and making any repairs or additions as  
1184 may be determined by the Department of Finance and Administration  
1185 to be necessary, pursuant to the rules and regulations of the  
1186 State Personnel Board. The department shall have entire control  
1187 and supervision of, and determine what, if any, buildings,  
1188 additions, repairs or improvements are to be made under the  
1189 provisions of this chapter, under regulations adopted by the  
1190 Public Procurement Review Board.

1191           (2) The department shall have full power to erect buildings,  
1192 make repairs, additions or improvements, and buy materials,  
1193 supplies and equipment for any of the institutions or departments  
1194 of the state under regulations adopted by the Public Procurement  
1195 Review Board. In addition to other powers conferred, the  
1196 department shall have full power and authority as directed by the  
1197 Legislature, or when funds have been appropriated for its use for  
1198 these purposes, to:

1199           (a) Build a state office building;

1200           (b) Build suitable plants or buildings for the use and  
1201 housing of any state schools or institutions, including the  
1202 building of plants or buildings for new state schools or  
1203 institutions, as provided for by the Legislature;

1204           (c) Provide state aid for the construction of school  
1205 buildings;

1206           (d) Promote and develop the training of returned  
1207 veterans of the United States in all sorts of educational and  
1208 vocational learning to be supplied by the proper educational  
1209 institution of the State of Mississippi, and in so doing allocate  
1210 monies appropriated to it for these purposes to the Governor for  
1211 use by him in setting up, maintaining and operating an office and  
1212 employing a state director of on-the-job training for veterans and  
1213 the personnel necessary in carrying out Public Law No. 346 of the  
1214 United States;

1215           (e) Build and equip a hospital and administration  
1216 building at the Mississippi State Penitentiary;

1217           (f) Build and equip additional buildings and wards at  
1218 the Boswell Retardation Center;

1219           (g) Construct a sewage disposal and treatment plant at  
1220 the state insane hospital, and in so doing acquire additional land  
1221 as may be necessary, and to exercise the right of eminent domain  
1222 in the acquisition of this land;

1223           (h) Build and equip the Mississippi central market and  
1224 purchase or acquire by eminent domain, if necessary, any lands  
1225 needed for this purpose;

1226           (i) Build and equip suitable facilities for a training  
1227 and employing center for the blind;

1228           (j) Build and equip a gymnasium at Columbia Training  
1229 School;

1230           (k) Approve or disapprove the expenditure of any money  
1231 appropriated by the Legislature when authorized by the bill making  
1232 the appropriation;

1233           (l) Expend monies appropriated to it in paying the  
1234 state's part of the cost of any street paving;

1235           (m) Sell and convey state lands when authorized by the  
1236 Legislature, cause said lands to be properly surveyed and platted,  
1237 execute all deeds or other legal instruments, and do any and all  
1238 other things required to effectively carry out the purpose and  
1239 intent of the Legislature. Any transaction which involves state  
1240 lands under the provisions of this paragraph shall be done in a  
1241 manner consistent with the provisions of Section 29-1-1;

1242           (n) Collect and receive from educational institutions  
1243 of the State of Mississippi monies required to be paid by these  
1244 institutions to the state in carrying out any veterans'  
1245 educational programs;

1246           (o) Purchase lands for building sites, or as additions  
1247 to building sites, for the erection of buildings and other  
1248 facilities which the department is authorized to erect, and  
1249 demolish and dispose of old buildings, when necessary for the  
1250 proper construction of new buildings. Any transaction which  
1251 involves state lands under the provisions of this paragraph shall  
1252 be done in a manner consistent with the provisions of Section  
1253 29-1-1;

1254           (p) Obtain business property insurance with a  
1255 deductible of not less than One Hundred Thousand Dollars

1256 (\$100,000.00) on state-owned buildings under the management and  
1257 control of the department; and

1258 (q) In consultation with and approval by the Chairmen  
1259 of the Public Property Committees of the Senate and the House of  
1260 Representatives, enter into contracts for the purpose of providing  
1261 parking spaces for state employees who work in the Woolfolk  
1262 Building, the Carroll Gartin Justice Building or the Walter  
1263 Sillers Office Building. The provisions of this paragraph (q)  
1264 shall stand repealed on July 1, 2010.

1265 (3) The department shall survey state-owned and  
1266 state-utilized buildings to establish an estimate of the costs of  
1267 architectural alterations, pursuant to the Americans With  
1268 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The  
1269 department shall establish priorities for making the identified  
1270 architectural alterations and shall make known to the Legislative  
1271 Budget Office and to the Legislature the required cost to  
1272 effectuate such alterations. To meet the requirements of this  
1273 section, the department shall use standards of accessibility that  
1274 are at least as stringent as any applicable federal requirements  
1275 and may consider:

1276 (a) Federal minimum guidelines and requirements issued  
1277 by the United States Architectural and Transportation Barriers  
1278 Compliance Board and standards issued by other federal agencies;

1279 (b) The criteria contained in the American Standard  
1280 Specifications for Making Buildings Accessible and Usable by the  
1281 Physically Handicapped and any amendments thereto as approved by  
1282 the American Standards Association, Incorporated (ANSI Standards);

1283 (c) Design manuals;

1284 (d) Applicable federal guidelines;

1285 (e) Current literature in the field;

1286 (f) Applicable safety standards; and

1287 (g) Any applicable environmental impact statements.

1288           (4) The department shall observe the provisions of Section  
1289 31-5-23, in letting contracts and shall use Mississippi products,  
1290 including paint, varnish and lacquer which contain as vehicles  
1291 tung oil and either ester gum or modified resin (with rosin as the  
1292 principal base of constituents), and turpentine shall be used as a  
1293 solvent or thinner, where these products are available at a cost  
1294 not to exceed the cost of products grown, produced, prepared, made  
1295 or manufactured outside of the State of Mississippi.

1296           (5) The department shall have authority to accept grants,  
1297 loans or donations from the United States government or from any  
1298 other sources for the purpose of matching funds in carrying out  
1299 the provisions of this chapter.

1300           (6) The department shall build a wheelchair ramp at the War  
1301 Memorial Building which complies with all applicable federal laws,  
1302 regulations and specifications regarding wheelchair ramps.

1303           (7) The department shall review and preapprove all  
1304 architectural or engineering service contracts entered into by any  
1305 state agency, institution, commission, board or authority  
1306 regardless of the source of funding used to defray the costs of  
1307 the construction or renovation project for which services are to  
1308 be obtained. The provisions of this subsection (7) shall not  
1309 apply to any architectural or engineering contract paid for by  
1310 self-generated funds of any of the state institutions of higher  
1311 learning, nor shall they apply to community college projects that  
1312 are funded from local funds or other nonstate sources which are  
1313 outside the Department of Finance and Administration's  
1314 appropriations or as directed by the Legislature. The provisions  
1315 of this subsection (7) shall not apply to any construction or  
1316 design projects of the State Military Department that are funded  
1317 from federal funds or other nonstate sources.

1318           (8) The department shall have the authority to obtain  
1319 annually from the state institutions of higher learning  
1320 information on all building, construction and renovation projects



1321 including duties, responsibilities and costs of any architect or  
1322 engineer hired by any such institutions.

1323 (9) \* \* \* As an alternative to other methods of awarding  
1324 contracts as prescribed by law, the department may elect to use  
1325 the method of contracting for construction projects set out in  
1326 Sections 31-7-13.1 and 31-7-13.2; however, the dual-phase  
1327 design-build method of construction contracting authorized under  
1328 Section 31-7-13.1 may be used only when the Legislature has  
1329 specifically required or authorized the use of this method in the  
1330 legislation authorizing a project.

1331 \* \* \*

1332 **SECTION 8.** Section 65-1-85, Mississippi Code of 1972, is  
1333 amended as follows:

1334 65-1-85. (1) All contracts by or on behalf of the  
1335 commission for the purchase of materials, equipment and supplies  
1336 shall be made in compliance with Section 31-7-1 et seq. All  
1337 contracts by or on behalf of the commission for construction,  
1338 reconstruction or other public work authorized to be done under  
1339 the provisions of this chapter, except maintenance, shall be made  
1340 by the executive director, subject to the approval of the  
1341 commission, only upon competitive bids after due advertisement as  
1342 follows, to wit:

1343 (a) Advertisement for bids shall be in accordance with  
1344 such rules and regulations, in addition to those herein provided,  
1345 as may be adopted therefor by the commission, and the commission  
1346 is authorized and empowered to make and promulgate such rules and  
1347 regulations as it may deem proper, to provide and adopt standard  
1348 specifications for road and bridge construction, and to amend such  
1349 rules and regulations from time to time.

1350 (b) The advertisement shall be inserted twice, being  
1351 once a week for two (2) successive weeks in a newspaper published  
1352 at the seat of government in Jackson, Mississippi, having a  
1353 general circulation throughout the state, and no letting shall be

1354 less than fourteen (14) days nor more than sixty (60) days after  
1355 the publication of the first notice of such letting, and notices  
1356 of such letting may be placed in a metropolitan paper or national  
1357 trade publication.

1358 (c) Before advertising for such work, the executive  
1359 director shall cause to be prepared and filed in the department  
1360 detailed plans and specifications covering the work proposed to be  
1361 done and copies of the plans and specifications shall be subject  
1362 to inspection by any citizen during all office hours and made  
1363 available to all prospective bidders upon such reasonable terms  
1364 and conditions as may be required by the commission. A fee shall  
1365 be charged equal to the cost of producing a copy of any such plans  
1366 and specifications.

1367 (d) All such contracts shall be let to a responsible  
1368 bidder with the lowest and best bid, and a record of all bids  
1369 received for construction and reconstruction shall be preserved.

1370 (e) Each bid for such a construction and reconstruction  
1371 contract must be accompanied by a cashier's check, a certified  
1372 check or bidders bond executed by a surety company authorized to  
1373 do business in the State of Mississippi, in the principal amount  
1374 of not less than five percent (5%) of the bid, guaranteeing that  
1375 the bidder will give bond and enter into a contract for the  
1376 faithful performance of the contract according to plans and  
1377 specifications on file.

1378 (f) Bonds shall be required of the successful bidder in  
1379 an amount equal to the contract price. The contract price shall  
1380 mean the entire cost of the particular contract let. In the event  
1381 change orders are made after the execution of a contract which  
1382 results in increasing the total contract price, additional bond in  
1383 the amount of the increased cost may be required. The surety or  
1384 sureties on such bonds shall be a surety company or surety  
1385 companies authorized to do business in the State of Mississippi,  
1386 all bonds to be payable to the State of Mississippi and to be

1387 conditioned for the prompt, faithful and efficient performance of  
1388 the contract according to plans and specifications, and for the  
1389 prompt payment of all persons furnishing labor, material,  
1390 equipment and supplies therefor. Such bonds shall be subject to  
1391 the additional obligation that the principal and surety or  
1392 sureties executing the same shall be liable to the state in a  
1393 civil action instituted by the state at the instance of the  
1394 commission or any officer of the state authorized in such cases,  
1395 for double any amount in money or property the state may lose or  
1396 be overcharged or otherwise defrauded of by reason of any wrongful  
1397 or criminal act, if any, of the contractor, his agent or  
1398 employees.

1399 (2) With respect to equipment used in the construction,  
1400 reconstruction or other public work authorized to be done under  
1401 the provisions of this chapter: the word "equipment," in addition  
1402 to all equipment incorporated into or fully consumed in connection  
1403 with such project, shall include the reasonable value of the use  
1404 of all equipment of every kind and character and all accessories  
1405 and attachments thereto which are reasonably necessary to be used  
1406 and which are used in carrying out the performance of the  
1407 contract, and the reasonable value of the use thereof, during the  
1408 period of time the same are used in carrying out the performance  
1409 of the contract, shall be the amount as agreed upon by the persons  
1410 furnishing the equipment and those using the same to be paid  
1411 therefor, which amount, however, shall not be in excess of the  
1412 maximum current rates and charges allowable for leasing or renting  
1413 as specified in Section 65-7-95; the word "labor" shall include  
1414 all work performed in repairing equipment used in carrying out the  
1415 performance of the contract, which repair labor is reasonably  
1416 necessary to the efficient operation of said equipment; and the  
1417 words "materials" and "supplies" shall include all repair parts  
1418 installed in or on equipment used in carrying out the performance

1419 of the contract, which repair parts are reasonably necessary to  
1420 the efficient operation of said equipment.

1421 (3) The executive director, subject to the approval of the  
1422 commission, shall have the right to reject any and all bids,  
1423 whether such right is reserved in the notice or not.

1424 (4) The commission may require the pre-qualification of any  
1425 and all bidders and the failure to comply with pre-qualification  
1426 requirements may be the basis for the rejection of any bid by the  
1427 commission. The commission may require the pre-qualification of  
1428 any and all subcontractors before they are approved to participate  
1429 in any contract awarded under this section.

1430 (5) The commission may adopt rules and regulations for the  
1431 termination of any previously awarded contract which is not timely  
1432 proceeding toward completion. The failure of a contractor to  
1433 comply with such rules and regulations shall be a lawful basis for  
1434 the commission to terminate the contract with such contractor. In  
1435 the event of a termination under such rules and regulations, the  
1436 contractor shall not be entitled to any payment, benefit or  
1437 damages beyond the cost of the work actually completed.

1438 (6) Any contract for construction or paving of any highway  
1439 may be entered into for any cost which does not exceed the amount  
1440 of funds that may be made available therefor through bond issues  
1441 or from other sources of revenue, and the letting of contracts for  
1442 such construction or paving shall not necessarily be delayed until  
1443 the funds are actually on hand, provided authorization for the  
1444 issuance of necessary bonds has been granted by law to supplement  
1445 other anticipated revenue, or when the department certifies to the  
1446 Department of Finance and Administration and the Legislative  
1447 Budget Office that projected receipts of funds by the department  
1448 will be sufficient to pay such contracts as they become due and  
1449 the Department of Finance and Administration determines that the  
1450 projections are reasonable and receipts will be sufficient to pay  
1451 the contracts as they become due. The Department of Finance and

1452 Administration shall spread such determination on its minutes  
1453 prior to the letting of any contracts based on projected receipts.  
1454 Nothing in this subsection shall prohibit the issuance of bonds,  
1455 which have been authorized, at any time in the discretion of the  
1456 State Bond Commission, nor to prevent investment of surplus funds  
1457 in United States government bonds or State of Mississippi bonds as  
1458 presently authorized by Section 12, Chapter 312, Laws of 1956.

1459 (7) All other contracts for work to be done under the  
1460 provisions of this chapter and for the purchase of materials,  
1461 equipment and supplies to be used as provided for in this chapter  
1462 shall be made in compliance with Section 31-7-1 et seq.

1463 (8) The commission shall not empower or authorize the  
1464 executive director, or any one or more of its members, or any  
1465 engineer or other person to let or make contracts for the  
1466 construction or repair of public roads, or building bridges, or  
1467 for the purchase of material, equipment or supplies contrary to  
1468 the provisions of this chapter as set forth in this section,  
1469 except in cases of flood or other cases of emergency where the  
1470 public interest requires that the work be done or the materials,  
1471 equipment or supplies be purchased without the delay incident to  
1472 advertising for competitive bids. Such emergency contracts may be  
1473 made without advertisement under such rules and regulations as the  
1474 commission may prescribe.

1475 (9) The executive director, subject to the approval of the  
1476 commission, is authorized to negotiate and make agreements with  
1477 communities and/or civic organizations for landscaping,  
1478 beautification and maintenance of highway rights-of-way; however,  
1479 nothing in this subsection shall be construed as authorization for  
1480 the executive director or commission to participate in such a  
1481 project to an extent greater than the average cost for maintenance  
1482 of shoulders, backslopes and median areas with respect thereto.

1483 (10) The executive director may negotiate and enter into  
1484 contracts with private parties for the mowing of grass and

1485 trimming of vegetation on the rights-of-way of state highways  
1486 whenever such practice is possible and cost effective.

1487 (11) (a) As an alternative to the method of awarding  
1488 contracts as otherwise provided in this section, the commission  
1489 may use the design-build method of contracting for the following:

1490 (i) Projects for the Mississippi Development  
1491 Authority pursuant to agreements between both governmental  
1492 entities;

1493 (ii) Any project with an estimated cost of *not*  
1494 more than Ten Million Dollars (\$10,000,000.00), not to exceed two  
1495 (2) projects per fiscal year; and

1496 (iii) Any project which has an estimated cost of  
1497 more than Fifty Million Dollars (\$50,000,000.00), not to exceed  
1498 one (1) project per fiscal year.

1499 (b) As used in this subsection, the term "design-build"  
1500 method of contracting means a contract that combines the design  
1501 and construction phases of a project into a single contract and  
1502 the contractor is required to satisfactorily perform, at a  
1503 minimum, both the design and construction of the project.

1504 (c) The commission shall establish detailed criteria  
1505 for the selection of the successful design-build contractor in  
1506 each request for design-build proposals. The evaluation of the  
1507 selection committee is a public record and shall be maintained for  
1508 a minimum of ten (10) years after project completion.

1509 (d) The commission shall maintain detailed records on  
1510 projects separate and apart from its regular record keeping. The  
1511 commission shall file a report to the Legislature evaluating the  
1512 design-build method of contracting by comparing it to the low-bid  
1513 method of contracting. At a minimum, the report must include:

1514 (i) The management goals and objectives for the  
1515 design-build system of management;

1516 (ii) A complete description of the components of  
1517 the design-build management system, including a description of the

1518 system the department put into place on all projects managed under  
1519 the system to insure that it has the complete information on  
1520 highway segment costs and to insure proper analysis of any  
1521 proposal the commission receives from a highway contractor;

1522 (iii) The accountability systems the  
1523 Transportation Department established to monitor any design-build  
1524 project's compliance with specific goals and objectives for the  
1525 project;

1526 (iv) The outcome of any project or any interim  
1527 report on an ongoing project let under a design-build management  
1528 system showing compliance with the goals, objectives, policies and  
1529 procedures the department set for the project; and

1530 (v) The method used by the department to select  
1531 projects to be let under the design-build system of management and  
1532 all other systems, policies and procedures that the department  
1533 considered as necessary components to a design-build management  
1534 system.

1535 (e) All contracts let under the provisions of this  
1536 subsection shall be subject to oversight and review by the State  
1537 Auditor. The State Auditor shall file a report with the  
1538 Legislature on or before January 1 of each year detailing his  
1539 findings with regard to any contract let or project performed in  
1540 violation of the provisions of this subsection. The actual and  
1541 necessary expenses incurred by the State Auditor in complying with  
1542 this paragraph (e) shall be paid for and reimbursed by the  
1543 Mississippi Department of Transportation out of funds made  
1544 available for the contract or contracts let and project or  
1545 projects performed.

1546 (f) As an alternative to the authority granted to the  
1547 commission in this subsection, the commission may elect to use the  
1548 method of contracting for construction projects set out in Section  
1549 31-7-13.1 and 31-7-13.2; however, the dual-phase design-build  
1550 method of construction contracting authorized under Section

1551 31-7-13.1 may be used only when the Legislature has specifically  
1552 required or authorized the use of this method in the legislation  
1553 authorizing a project.

1554 **SECTION 9.** There is created an advisory committee to the  
1555 Board of Trustees of State Institutions of Higher Learning for the  
1556 lease of the property described in Sections 3, 4 and 5 of this  
1557 act, which shall be composed of the following members:

1558 (a) The respective Chairmen of the Public Property  
1559 Committees of the House of Representatives and the Senate;

1560 (b) The respective Chairmen of the Universities and  
1561 Colleges Committees of the House of Representatives and the  
1562 Senate;

1563 (c) One (1) member of the House of Representatives, to  
1564 be appointed by the Speaker of the House; and

1565 (d) One (1) member of the Senate, to be appointed by  
1566 the Lieutenant Governor.

1567 Before selecting the private developer to which to lease the  
1568 property described in Sections 3, 4 and 5, and while negotiating  
1569 the terms of the lease with the private developer that has been  
1570 selected, the Board of Trustees of State Institutions of Higher  
1571 Learning shall consult with the advisory committee and consider  
1572 any suggestions and recommendations made by the advisory committee  
1573 regarding the lease of the property.

1574 **SECTION 10.** This act shall take effect and be in force from  
1575 and after July 1, 2007.