

By: Representative Smith (39th)

To: Ways and Means

HOUSE BILL NO. 1257  
(As Passed the House)

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

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

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

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

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

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



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

50 (b) "Applicable percentage" means:

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

57 (ii) For any equity investment issued from and  
58 after July 1, 2008, eight percent (8%) for each of the first  
59 through third credit allowance dates for purposes of the taxes  
60 imposed by Section 27-7-5 or the taxes imposed by Sections  
61 27-15-103, 27-15-109 and 27-15-123.

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

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



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

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

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

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

82 (f) "Qualified equity investment" shall have the  
83 meaning ascribed to such term in Section 45D of the Internal  
84 Revenue Code of 1986, as amended. The investment does not have to  
85 be designated as a qualified equity investment by the Community  
86 Development Financial Institutions Fund of the United States  
87 Treasury to be considered a qualified equity investment under this  
88 section but otherwise must meet the definition under the Internal  
89 Revenue Code. In addition to meeting the definition in Section  
90 45D of the Internal Revenue Code such investment must also:

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

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

95 (g) "Qualified low-income community investment" shall  
96 have the meaning ascribed to such term in Section 45D of the  
97 Internal Revenue Code of 1986, as amended; provided, however, that  
98 the maximum amount of qualified low-income community investments



99 issued for a single qualified active low-income community  
100 business, on an aggregate basis with all of its affiliates, that  
101 may be included for purposes of allocating any credits under this  
102 section shall not exceed Ten Million Dollars (\$10,000,000.00), in  
103 the aggregate, whether issued by one (1) or several qualified  
104 community development entities.

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



132 Development Authority shall allocate credits within this limit as  
133 provided for in subsection (4) of this section.

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

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



165 low-income community investments, if the actual dollar amount of  
166 the investments is lower than the amount estimated, the  
167 Mississippi Development Authority shall adjust the tax credit  
168 allowed under this section. The Department of Revenue may  
169 recapture all of the credit allowed under this section if:

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

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

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

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

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

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



197           (6) The Mississippi Development Authority shall file an  
198 annual report on all qualified low-income community investments  
199 with the Governor, the Clerk of the House of Representatives, the  
200 Secretary of the Senate and the Secretary of State describing the  
201 North American Industry Classification System Code, the county,  
202 the dollars invested, the number of jobs assisted and the number  
203 of jobs assisted with wages over one hundred percent (100%) of the  
204 federal poverty level for a family of four (4) of each qualified  
205 low-income community investment. The annual report will be posted  
206 on the Mississippi Development Authority's Internet website.

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

210           (b) As used in this subsection:

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

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

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



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

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

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

259                   (e) With respect to a New Markets Tax Credit  
260 transaction, public entities and public benefit corporations are





261 authorized to enter into financing arrangements with any  
262 governmental, nonprofit or for-profit entity in order to leverage  
263 funds not otherwise available to public entities for the  
264 acquisition, construction and/or renovation of properties  
265 transferred to such public benefit corporations. The use of any  
266 funds loaned by or contributed by a public benefit corporation or  
267 borrowed by or otherwise made available to a public benefit  
268 corporation in such financing arrangement shall be dedicated  
269 solely to (i) the development of new properties or facilities  
270 and/or the renovation of existing properties or facilities or  
271 operation of properties or facilities, and/or (ii) the payment of  
272 costs and expenditures related to any such financing arrangements  
273 including, but not limited to, funding any reserves required in  
274 connection therewith, the repayment of any indebtedness incurred  
275 in connection therewith, and the payment of fees and expenses  
276 incurred in connection with the closing, administration,  
277 accounting and/or compliance with respect to the New Markets Tax  
278 Credit transaction.

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

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



293 and shall be regarded as supplemental and additional to powers  
294 conferred by other laws.

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

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

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

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

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

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

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

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



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

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

356 (i) **Publication requirement.**

357 1. Purchases which involve an expenditure of  
358 more than Fifty Thousand Dollars (\$50,000.00), exclusive of



359 freight and shipping charges, may be made from the lowest and best  
360 bidder after advertising for competitive bids once each week for  
361 two (2) consecutive weeks in a regular newspaper published in the  
362 county or municipality in which such agency or governing authority  
363 is located. However, all American Recovery and Reinvestment Act  
364 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
365 shall be bid. All references to American Recovery and  
366 Reinvestment Act projects in this section shall not apply to  
367 programs identified in Division B of the American Recovery and  
368 Reinvestment Act.

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

378                   3. The date as published for the bid opening  
379 shall not be less than seven (7) working days after the last  
380 published notice; however, if the purchase involves a construction  
381 project in which the estimated cost is in excess of Fifty Thousand  
382 Dollars (\$50,000.00), such bids shall not be opened in less than  
383 fifteen (15) working days after the last notice is published and  
384 the notice for the purchase of such construction shall be  
385 published once each week for two (2) consecutive weeks. However,  
386 all American Recovery and Reinvestment Act projects in excess of  
387 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any  
388 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
389 under the American Recovery and Reinvestment Act, publication  
390 shall be made one (1) time and the bid opening for construction  
391 projects shall not be less than ten (10) working days after the



392 date of the published notice. The notice of intention to let  
393 contracts or purchase equipment shall state the time and place at  
394 which bids shall be received, list the contracts to be made or  
395 types of equipment or supplies to be purchased, and, if all plans  
396 and/or specifications are not published, refer to the plans and/or  
397 specifications on file. If there is no newspaper published in the  
398 county or municipality, then such notice shall be given by posting  
399 same at the courthouse, or for municipalities at the city hall,  
400 and at two (2) other public places in the county or municipality,  
401 and also by publication once each week for two (2) consecutive  
402 weeks in some newspaper having a general circulation in the county  
403 or municipality in the above-provided manner. On the same date  
404 that the notice is submitted to the newspaper for publication, the  
405 agency or governing authority involved shall mail written notice  
406 to, or provide electronic notification to the main office of the  
407 Mississippi Procurement Technical Assistance Program under the  
408 Mississippi Development Authority that contains the same  
409 information as that in the published notice. Submissions received  
410 by the Mississippi Procurement Technical Assistance Program for  
411 projects funded by the American Recovery and Reinvestment Act  
412 shall be displayed on a separate and unique Internet Web page  
413 accessible to the public and maintained by the Mississippi  
414 Development Authority for the Mississippi Procurement Technical  
415 Assistance Program. Those American Recovery and Reinvestment Act  
416 related submissions shall be publicly posted within twenty-four  
417 (24) hours of receipt by the Mississippi Development Authority and  
418 the bid opening shall not occur until the submission has been  
419 posted for ten (10) consecutive days. The Department of Finance  
420 and Administration shall maintain information regarding contracts  
421 and other expenditures from the American Recovery and Reinvestment  
422 Act, on a unique Internet Web page accessible to the public. The  
423 Department of Finance and Administration shall promulgate rules  
424 regarding format, content and deadlines, unless otherwise



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

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



458 to a date not less than five (5) working days after the date of  
459 the addendum.

460 (iii) **Filing requirement.** In all cases involving  
461 governing authorities, before the notice shall be published or  
462 posted, the plans or specifications for the construction or  
463 equipment being sought shall be filed with the clerk of the board  
464 of the governing authority. In addition to these requirements, a  
465 bid file shall be established which shall indicate those vendors  
466 to whom such solicitations and specifications were issued, and  
467 such file shall also contain such information as is pertinent to  
468 the bid.

469 (iv) **Specification restrictions.**

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

486 2. Specifications for construction projects  
487 may include an allowance for commodities, equipment, furniture,  
488 construction materials or systems in which prospective bidders are  
489 instructed to include in their bids specified amounts for such  
490 items so long as the allowance items are acquired by the vendor in



491 a commercially reasonable manner and approved by the  
492 agency/governing authority. Such acquisitions shall not be made  
493 to circumvent the public purchasing laws.

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

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

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

513 (ii) **Decision procedure for Certified Purchasing**  
514 **Offices.** In addition to the decision procedure set forth in  
515 paragraph (d)(i), Certified Purchasing Offices may also use the  
516 following procedure: Purchases may be made from the bidder  
517 offering the best value. In determining the best value bid,  
518 freight and shipping charges shall be included. Life-cycle  
519 costing, total cost bids, warranties, guaranteed buy-back  
520 provisions, documented previous experience, training costs and  
521 other relevant provisions may be included in the best value  
522 calculation. This provision shall authorize Certified Purchasing  
523 Offices to utilize a Request For Proposals (RFP) process when





524 purchasing commodities. All best value procedures for state  
525 agencies must be in compliance with regulations established by the  
526 Department of Finance and Administration. No agency or governing  
527 authority shall accept a bid based on items or criteria not  
528 included in the specifications.

529 (iii) **Decision procedure for Mississippi**

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



556 (iv) **Construction project negotiations authority.**

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

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



589 any equipment not covered by ADR guidelines. Any lease-purchase  
590 agreement entered into pursuant to this paragraph (e) may contain  
591 any of the terms and conditions which a master lease-purchase  
592 agreement may contain under the provisions of Section 31-7-10(5),  
593 and shall contain an annual allocation dependency clause  
594 substantially similar to that set forth in Section 31-7-10(8).  
595 Each agency or governing authority entering into a lease-purchase  
596 transaction pursuant to this paragraph (e) shall maintain with  
597 respect to each such lease-purchase transaction the same  
598 information as required to be maintained by the Department of  
599 Finance and Administration pursuant to Section 31-7-10(13).  
600 However, nothing contained in this section shall be construed to  
601 permit agencies to acquire items of equipment with a total  
602 acquisition cost in the aggregate of less than Ten Thousand  
603 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
604 equipment, and the purchase thereof by any lessor, acquired by  
605 lease-purchase under this paragraph and all lease-purchase  
606 payments with respect thereto shall be exempt from all Mississippi  
607 sales, use and ad valorem taxes. Interest paid on any  
608 lease-purchase agreement under this section shall be exempt from  
609 State of Mississippi income taxation.

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

619 (g) **Construction contract change authorization.** In the  
620 event a determination is made by an agency or governing authority  
621 after a construction contract is let that changes or modifications



622 to the original contract are necessary or would better serve the  
623 purpose of the agency or the governing authority, such agency or  
624 governing authority may, in its discretion, order such changes  
625 pertaining to the construction that are necessary under the  
626 circumstances without the necessity of further public bids;  
627 provided that such change shall be made in a commercially  
628 reasonable manner and shall not be made to circumvent the public  
629 purchasing statutes. In addition to any other authorized person,  
630 the architect or engineer hired by an agency or governing  
631 authority with respect to any public construction contract shall  
632 have the authority, when granted by an agency or governing  
633 authority, to authorize changes or modifications to the original  
634 contract without the necessity of prior approval of the agency or  
635 governing authority when any such change or modification is less  
636 than one percent (1%) of the total contract amount. The agency or  
637 governing authority may limit the number, manner or frequency of  
638 such emergency changes or modifications.

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



654 lowest and best contract available for the purchase of such  
655 commodities.

656           (i) **Road construction petroleum products price**  
657 **adjustment clause authorization.** Any agency or governing  
658 authority authorized to enter into contracts for the construction,  
659 maintenance, surfacing or repair of highways, roads or streets,  
660 may include in its bid proposal and contract documents a price  
661 adjustment clause with relation to the cost to the contractor,  
662 including taxes, based upon an industry-wide cost index, of  
663 petroleum products including asphalt used in the performance or  
664 execution of the contract or in the production or manufacture of  
665 materials for use in such performance. Such industry-wide index  
666 shall be established and published monthly by the Mississippi  
667 Department of Transportation with a copy thereof to be mailed,  
668 upon request, to the clerks of the governing authority of each  
669 municipality and the clerks of each board of supervisors  
670 throughout the state. The price adjustment clause shall be based  
671 on the cost of such petroleum products only and shall not include  
672 any additional profit or overhead as part of the adjustment. The  
673 bid proposals or document contract shall contain the basis and  
674 methods of adjusting unit prices for the change in the cost of  
675 such petroleum products.

676           (j) **State agency emergency purchase procedure.** If the  
677 governing board or the executive head, or his designee, of any  
678 agency of the state shall determine that an emergency exists in  
679 regard to the purchase of any commodities or repair contracts, so  
680 that the delay incident to giving opportunity for competitive  
681 bidding would be detrimental to the interests of the state, then  
682 the provisions herein for competitive bidding shall not apply and  
683 the head of such agency shall be authorized to make the purchase  
684 or repair. Total purchases so made shall only be for the purpose  
685 of meeting needs created by the emergency situation. In the event  
686 such executive head is responsible to an agency board, at the



687 meeting next following the emergency purchase, documentation of  
688 the purchase, including a description of the commodity purchased,  
689 the purchase price thereof and the nature of the emergency shall  
690 be presented to the board and placed on the minutes of the board  
691 of such agency. The head of such agency, or his designee, shall,  
692 at the earliest possible date following such emergency purchase,  
693 file with the Department of Finance and Administration (i) a  
694 statement explaining the conditions and circumstances of the  
695 emergency, which shall include a detailed description of the  
696 events leading up to the situation and the negative impact to the  
697 entity if the purchase is made following the statutory  
698 requirements set forth in paragraph (a), (b) or (c) of this  
699 section, and (ii) a certified copy of the appropriate minutes of  
700 the board of such agency, if applicable.

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

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



719                   (1) **Hospital purchase, lease-purchase and lease**  
720 **authorization.**

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

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

742                   (m) **Exceptions from bidding requirements.** Excepted  
743 from bid requirements are:

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

748                   (ii) **Outside equipment repairs.** Repairs to  
749 equipment, when such repairs are made by repair facilities in the  
750 private sector; however, engines, transmissions, rear axles and/or  
751 other such components shall not be included in this exemption when



752 replaced as a complete unit instead of being repaired and the need  
753 for such total component replacement is known before disassembly  
754 of the component; however, invoices identifying the equipment,  
755 specific repairs made, parts identified by number and name,  
756 supplies used in such repairs, and the number of hours of labor  
757 and costs therefor shall be required for the payment for such  
758 repairs.

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

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

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

779                   (vi) **Intergovernmental sales and transfers.**  
780 Purchases, sales, transfers or trades by governing authorities or  
781 state agencies when such purchases, sales, transfers or trades are  
782 made by a private treaty agreement or through means of  
783 negotiation, from any federal agency or authority, another  
784 governing authority or state agency of the State of Mississippi,





785 or any state agency or governing authority of another state.  
786 Nothing in this section shall permit such purchases through public  
787 auction except as provided for in subparagraph (v) of this  
788 section. It is the intent of this section to allow governmental  
789 entities to dispose of and/or purchase commodities from other  
790 governmental entities at a price that is agreed to by both  
791 parties. This shall allow for purchases and/or sales at prices  
792 which may be determined to be below the market value if the  
793 selling entity determines that the sale at below market value is  
794 in the best interest of the taxpayers of the state. Governing  
795 authorities shall place the terms of the agreement and any  
796 justification on the minutes, and state agencies shall obtain  
797 approval from the Department of Finance and Administration, prior  
798 to releasing or taking possession of the commodities.

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

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



817                   (ix) **Waste disposal facility construction**  
818 **contracts.** Construction of incinerators and other facilities for  
819 disposal of solid wastes in which products either generated  
820 therein, such as steam, or recovered therefrom, such as materials  
821 for recycling, are to be sold or otherwise disposed of; however,  
822 in constructing such facilities, a governing authority or agency  
823 shall publicly issue requests for proposals, advertised for in the  
824 same manner as provided herein for seeking bids for public  
825 construction projects, concerning the design, construction,  
826 ownership, operation and/or maintenance of such facilities,  
827 wherein such requests for proposals when issued shall contain  
828 terms and conditions relating to price, financial responsibility,  
829 technology, environmental compatibility, legal responsibilities  
830 and such other matters as are determined by the governing  
831 authority or agency to be appropriate for inclusion; and after  
832 responses to the request for proposals have been duly received,  
833 the governing authority or agency may select the most qualified  
834 proposal or proposals on the basis of price, technology and other  
835 relevant factors and from such proposals, but not limited to the  
836 terms thereof, negotiate and enter contracts with one or more of  
837 the persons or firms submitting proposals.

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

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

847                   (xii) **Energy efficiency services and equipment.**  
848 Energy efficiency services and equipment acquired by school  
849 districts, community and junior colleges, institutions of higher



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

853 (xiii) **Municipal electrical utility system fuel.**

854 Purchases of coal and/or natural gas by municipally owned electric  
855 power generating systems that have the capacity to use both coal  
856 and natural gas for the generation of electric power.

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

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

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

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

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

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

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

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



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

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

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

897                   (xxii)   **Garbage, solid waste and sewage contracts.**  
898 Contracts for garbage collection or disposal, contracts for solid  
899 waste collection or disposal and contracts for sewage collection  
900 or disposal.

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

907                   (xxiv)   **Purchases of Mississippi Industries for the**  
908 **Blind products.** Purchases made by state agencies or governing  
909 authorities involving any item that is manufactured, processed or  
910 produced by the Mississippi Industries for the Blind.

911                   (xxv)    **Purchases of state-adopted textbooks.**  
912 Purchases of state-adopted textbooks by public school districts.

913                   (xxvi)   **Certain purchases under the Mississippi**  
914 **Major Economic Impact Act.** Contracts entered into pursuant to the  
915 provisions of Section 57-75-9(2), (3) and (4).



916                    (xxvii) **Used heavy or specialized machinery or**  
917 **equipment for installation of soil and water conservation**  
918 **practices purchased at auction.** Used heavy or specialized  
919 machinery or equipment used for the installation and  
920 implementation of soil and water conservation practices or  
921 measures purchased subject to the restrictions provided in  
922 Sections 69-27-331 through 69-27-341. Any purchase by the State  
923 Soil and Water Conservation Commission under the exemption  
924 authorized by this subparagraph shall require advance  
925 authorization spread upon the minutes of the commission to include  
926 the listing of the item or items authorized to be purchased and  
927 the maximum bid authorized to be paid for each item or items.

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

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

943                    (xxx) **School yearbooks.** Purchases of school  
944 yearbooks by state agencies or governing authorities; provided,  
945 however, that state agencies and governing authorities shall use  
946 for these purchases the RFP process as set forth in the  
947 Mississippi Procurement Manual adopted by the Office of Purchasing  
948 and Travel.



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

952 (xxxiii) **Toll roads and bridge construction**  
953 **projects.** Contracts entered into under the provisions of Section  
954 65-43-1 or 65-43-3.

955 (xxxiiii) **Certain purchases under Section**  
956 **57-1-221.** Contracts entered into pursuant to the provisions of  
957 Section 57-1-221.

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

962 (n) **Term contract authorization.** All contracts for the  
963 purchase of:

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

974 (ii) Bid proposals and contracts may include price  
975 adjustment clauses with relation to the cost to the contractor  
976 based upon a nationally published industry-wide or nationally  
977 published and recognized cost index. The cost index used in a  
978 price adjustment clause shall be determined by the Department of  
979 Finance and Administration for the state agencies and by the  
980 governing board for governing authorities. The bid proposal and  
981 contract documents utilizing a price adjustment clause shall



982 contain the basis and method of adjusting unit prices for the  
983 change in the cost of such commodities, equipment and public  
984 construction.

985           (o) **Purchase law violation prohibition and vendor**  
986 **penalty.** No contract or purchase as herein authorized shall be  
987 made for the purpose of circumventing the provisions of this  
988 section requiring competitive bids, nor shall it be lawful for any  
989 person or concern to submit individual invoices for amounts within  
990 those authorized for a contract or purchase where the actual value  
991 of the contract or commodity purchased exceeds the authorized  
992 amount and the invoices therefor are split so as to appear to be  
993 authorized as purchases for which competitive bids are not  
994 required. Submission of such invoices shall constitute a  
995 misdemeanor punishable by a fine of not less than Five Hundred  
996 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
997 or by imprisonment for thirty (30) days in the county jail, or  
998 both such fine and imprisonment. In addition, the claim or claims  
999 submitted shall be forfeited.

1000           (p) **Electrical utility petroleum-based equipment**  
1001 **purchase procedure.** When in response to a proper advertisement  
1002 therefor, no bid firm as to price is submitted to an electric  
1003 utility for power transformers, distribution transformers, power  
1004 breakers, reclosers or other articles containing a petroleum  
1005 product, the electric utility may accept the lowest and best bid  
1006 therefor although the price is not firm.

1007           (q) **Fuel management system bidding procedure.** Any  
1008 governing authority or agency of the state shall, before  
1009 contracting for the services and products of a fuel management or  
1010 fuel access system, enter into negotiations with not fewer than  
1011 two (2) sellers of fuel management or fuel access systems for  
1012 competitive written bids to provide the services and products for  
1013 the systems. In the event that the governing authority or agency  
1014 cannot locate two (2) sellers of such systems or cannot obtain



1015 bids from two (2) sellers of such systems, it shall show proof  
1016 that it made a diligent, good-faith effort to locate and negotiate  
1017 with two (2) sellers of such systems. Such proof shall include,  
1018 but not be limited to, publications of a request for proposals and  
1019 letters soliciting negotiations and bids. For purposes of this  
1020 paragraph (q), a fuel management or fuel access system is an  
1021 automated system of acquiring fuel for vehicles as well as  
1022 management reports detailing fuel use by vehicles and drivers, and  
1023 the term "competitive written bid" shall have the meaning as  
1024 defined in paragraph (b) of this section. Governing authorities  
1025 and agencies shall be exempt from this process when contracting  
1026 for the services and products of fuel management or fuel access  
1027 systems under the terms of a state contract established by the  
1028 Office of Purchasing and Travel.

1029           (r) **Solid waste contract proposal procedure.** Before  
1030 entering into any contract for garbage collection or disposal,  
1031 contract for solid waste collection or disposal or contract for  
1032 sewage collection or disposal, which involves an expenditure of  
1033 more than Fifty Thousand Dollars (\$50,000.00), a governing  
1034 authority or agency shall issue publicly a request for proposals  
1035 concerning the specifications for such services which shall be  
1036 advertised for in the same manner as provided in this section for  
1037 seeking bids for purchases which involve an expenditure of more  
1038 than the amount provided in paragraph (c) of this section. Any  
1039 request for proposals when issued shall contain terms and  
1040 conditions relating to price, financial responsibility,  
1041 technology, legal responsibilities and other relevant factors as  
1042 are determined by the governing authority or agency to be  
1043 appropriate for inclusion; all factors determined relevant by the  
1044 governing authority or agency or required by this paragraph (r)  
1045 shall be duly included in the advertisement to elicit proposals.  
1046 After responses to the request for proposals have been duly  
1047 received, the governing authority or agency shall select the most





1048 qualified proposal or proposals on the basis of price, technology  
1049 and other relevant factors and from such proposals, but not  
1050 limited to the terms thereof, negotiate and enter into contracts  
1051 with one or more of the persons or firms submitting proposals. If  
1052 the governing authority or agency deems none of the proposals to  
1053 be qualified or otherwise acceptable, the request for proposals  
1054 process may be reinitiated. Notwithstanding any other provisions  
1055 of this paragraph, where a county with at least thirty-five  
1056 thousand (35,000) nor more than forty thousand (40,000)  
1057 population, according to the 1990 federal decennial census, owns  
1058 or operates a solid waste landfill, the governing authorities of  
1059 any other county or municipality may contract with the governing  
1060 authorities of the county owning or operating the landfill,  
1061 pursuant to a resolution duly adopted and spread upon the minutes  
1062 of each governing authority involved, for garbage or solid waste  
1063 collection or disposal services through contract negotiations.

1064 (s) **Minority set-aside authorization.** Notwithstanding  
1065 any provision of this section to the contrary, any agency or  
1066 governing authority, by order placed on its minutes, may, in its  
1067 discretion, set aside not more than twenty percent (20%) of its  
1068 anticipated annual expenditures for the purchase of commodities  
1069 from minority businesses; however, all such set-aside purchases  
1070 shall comply with all purchasing regulations promulgated by the  
1071 Department of Finance and Administration and shall be subject to  
1072 bid requirements under this section. Set-aside purchases for  
1073 which competitive bids are required shall be made from the lowest  
1074 and best minority business bidder. For the purposes of this  
1075 paragraph, the term "minority business" means a business which is  
1076 owned by a majority of persons who are United States citizens or  
1077 permanent resident aliens (as defined by the Immigration and  
1078 Naturalization Service) of the United States, and who are Asian,  
1079 Black, Hispanic or Native American, according to the following  
1080 definitions:



1081 (i) "Asian" means persons having origins in any of  
1082 the original people of the Far East, Southeast Asia, the Indian  
1083 subcontinent, or the Pacific Islands.

1084 (ii) "Black" means persons having origins in any  
1085 black racial group of Africa.

1086 (iii) "Hispanic" means persons of Spanish or  
1087 Portuguese culture with origins in Mexico, South or Central  
1088 America, or the Caribbean Islands, regardless of race.

1089 (iv) "Native American" means persons having  
1090 origins in any of the original people of North America, including  
1091 American Indians, Eskimos and Aleuts.

1092 (t) **Construction punch list restriction.** The  
1093 architect, engineer or other representative designated by the  
1094 agency or governing authority that is contracting for public  
1095 construction or renovation may prepare and submit to the  
1096 contractor only one (1) preliminary punch list of items that do  
1097 not meet the contract requirements at the time of substantial  
1098 completion and one (1) final list immediately before final  
1099 completion and final payment.

1100 (u) **Procurement of construction services by state**  
1101 **institutions of higher learning.** Contracts for privately financed  
1102 construction of auxiliary facilities on the campus of a state  
1103 institution of higher learning may be awarded by the Board of  
1104 Trustees of State Institutions of Higher Learning to the lowest  
1105 and best bidder, where sealed bids are solicited, or to the  
1106 offeror whose proposal is determined to represent the best value  
1107 to the citizens of the State of Mississippi, where requests for  
1108 proposals are solicited.

1109 (v) **Insurability of bidders for public construction or**  
1110 **other public contracts.** In any solicitation for bids to perform  
1111 public construction or other public contracts to which this  
1112 section applies including, but not limited to, contracts for  
1113 repair and maintenance, for which the contract will require



1114 insurance coverage in an amount of not less than One Million  
1115 Dollars (\$1,000,000.00), bidders shall be permitted to either  
1116 submit proof of current insurance coverage in the specified amount  
1117 or demonstrate ability to obtain the required coverage amount of  
1118 insurance if the contract is awarded to the bidder. Proof of  
1119 insurance coverage shall be submitted within five (5) business  
1120 days from bid acceptance.

1121           (w) **Purchase authorization clarification.** Nothing in  
1122 this section shall be construed as authorizing any purchase not  
1123 authorized by law.

1124           **SECTION 3.** This act shall take effect and be in force from  
1125 and after July 1, 2012.

