

By: Representative Robinson (84th)

To: Appropriations

HOUSE BILL NO. 815

1 AN ACT TO AMEND SECTION 25-53-111, MISSISSIPPI CODE OF 1972,
 2 TO REQUIRE THE MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY
 3 SERVICES TO APPROVE CONTRACTS BY STATE AGENCIES FOR THE
 4 PROCUREMENT OF CELLULAR TELEPHONES; TO AMEND SECTION 25-53-121,
 5 MISSISSIPPI CODE OF 1972, TO REQUIRE THE MISSISSIPPI DEPARTMENT OF
 6 INFORMATION TECHNOLOGY SERVICES TO DEVELOP A LIST OF VENDORS TO
 7 PROVIDE CELLULAR TELEPHONE SERVICES TO STATE AGENCIES; TO AMEND
 8 SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT
 9 CONTRACTS BY GOVERNING AUTHORITIES FOR THE PROCUREMENT OF CELLULAR
 10 TELEPHONE SERVICE BE ACCEPTED ON THE BASIS OF THE LOWEST AND BEST
 11 BID; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 25-53-111, Mississippi Code of 1972, is
 14 amended as follows:

15 25-53-111. The Mississippi Department of Information
 16 Technology Services shall have the following additional duties:

17 (a) To establish and coordinate through either state
 18 ownership or commercial leasing, all telecommunications systems
 19 and services affecting the management and operations of the state.

20 (b) To act as the sole centralized customer for the
 21 acquisition, billing and record keeping of all telecommunications
 22 systems or services provided to state agencies whether obtained
 23 through lease or purchase.

24 (c) To charge respective user agencies for their
 25 proportionate cost of the installation, maintenance and operation
 26 of the telecommunications systems and services, including the
 27 operation of the bureau.

28 (d) To offer or provide transmission, switch and
 29 network services on a reimbursable basis to agencies financed
 30 entirely by federal funds, to governing authorities and to other
 31 governmental agencies.

32 (e) To approve or provide state telephone services on a
33 reimbursable basis to full-time students at state institutions of
34 higher learning and junior colleges, including where such services
35 are provided by the state or the institution.

36 (f) To develop coordinated telecommunications systems
37 or services within and among all state agencies and require, where
38 appropriate, cooperative utilization of telecommunications
39 equipment and services by aggregating users. Where such
40 cooperative utilization of telecommunications system or service
41 would affect an agency authorized to receive information from the
42 National Crime Information Center of the Federal Bureau of
43 Investigation, such plans for cooperative utilization shall first
44 be approved by the National Crime Information Center before
45 implementation of such telecommunications systems or service can
46 proceed.

47 (g) To review, coordinate, approve or disapprove all
48 requests by state agencies for the procurement, through purchase
49 or contract for lease of telecommunications systems, cellular
50 telephone services or services including telecommunication
51 proposals, studies and consultation contracts and intra-LATA and
52 inter-LATA transmission channels.

53 (h) To establish and define telecommunications systems
54 and services specifications and designs so as to assure
55 compatibility of telecommunications systems and services within
56 state government and governing authorities.

57 (i) To provide a continuous, comprehensive analysis and
58 inventory of telecommunications costs, facilities and systems
59 within state government.

60 (j) To promote, coordinate or assist in the design and
61 engineering of emergency telecommunications systems, including but
62 not limited to "911" service, emergency medical services and other
63 emergency telecommunications services.

64 (k) To advise and provide consultation to agencies and
65 governing authorities with respect to telecommunications
66 management planning and related matters and to provide training to
67 users within state government in telecommunications technology and
68 system use.

69 (l) To develop policies, procedures and long-range
70 plans, consistent with the protection of citizens' rights to
71 privacy and access to information, for the acquisition and use of
72 telecommunications systems, and to base such policies on current
73 information about state telecommunications activities in relation
74 to the full range of emerging technologies.

75 State agencies shall use a vendor chosen by the Department of
76 Information Technology Services for the procurement of cellular
77 telephone services. Any state agency requesting an increase in
78 expenditure of funds for new telecommunications equipment systems
79 or services shall submit to the Legislative Budget Office with its
80 budget request preceding the fiscal year for which funding is
81 requested detailed justification for such request. The
82 justification shall be provided on forms developed by the
83 Mississippi Department of Information Technology Services in
84 accordance with the Administrative Procedure Act. In addition,
85 all state agencies shall submit to the bureau, when requested, a
86 long-range plan for use of telecommunications equipment, systems
87 and services.

88 **SECTION 2.** Section 25-53-121, Mississippi Code of 1972, is
89 amended as follows:

90 25-53-121. (1) The types of contracts permitted in the
91 procurement of telecommunications equipment, systems and related
92 services are defined herein, and the provision in Sections
93 25-53-101 through 25-53-125 supplement the provisions of Chapter
94 7, Title 31, Mississippi Code of 1972.

95 (2) The Mississippi Department of Information Technology
96 Services may, on behalf of any state agency, enter into an

97 equipment support contract with a vendor of telecommunications
98 equipment or services for the purchase or lease of such equipment
99 or services in accordance with the following provisions:

100 (a) Specifications for equipment support contracts
101 shall be developed in advance and shall conform to the following
102 requirements:

103 (i) Specifications for equipment support contracts
104 shall cover a specific class or classes of equipment and service
105 and may include all features associated with that class or
106 classes.

107 (ii) Specifications in the request for proposals
108 for equipment support contracts shall be developed by the
109 Mississippi Department of Information Technology Services.

110 (iii) Specifications shall be based on the
111 projected needs of user agencies.

112 (iv) Specifications for equipment support
113 contracts for purchase or lease of telecommunications equipment
114 may include specifications for the maintenance of the equipment
115 desired.

116 (b) The initial procurement of an equipment support
117 contract, and procurement of equipment and services to be utilized
118 by agencies under an equipment support contract, shall be as
119 follows:

120 (i) Equipment support contracts shall be awarded
121 by competitive sealed bidding.

122 (ii) A using agency may procure required
123 telecommunications equipment and service available under an
124 equipment support contract through release of a purchase order for
125 the required equipment and service to the vendor holding an
126 equipment support contract. However, such procurement by purchase
127 order shall be accomplished in accordance with the procedures and
128 regulations prescribed by the Mississippi Department of

129 Information Technology Services, and shall be subject to all other
130 statutory requirements including approval by the bureau.

131 (c) The final authority for entering into equipment
132 support contracts shall rest with the Mississippi Department of
133 Information Technology Services, and such contracts shall be
134 executed by the Mississippi Department of Information Technology
135 Services in accordance with the procedures and regulations defined
136 by said authority.

137 (d) Equipment support contracts shall include the
138 following terms and conditions:

139 (i) Equipment support contracts shall be valid for
140 not more than one (1) fiscal year with the Mississippi Department
141 of Information Technology Services having an option to renew for
142 two (2) additional fiscal years. The vendor may vary lease or
143 purchase prices for the optional renewal period(s) by an amount
144 equal to the lesser of the lease or purchase price permitted by
145 that vendor's contract with the General Services Administration of
146 the United States government for such equipment and services, or
147 any variance in that vendor's published list prices for such
148 equipment and services during that fiscal year, provided that any
149 increase may not exceed five percent (5%) and the variance must
150 have been authorized by the initial equipment and service order
151 contract.

152 (ii) The prices stated in such contract shall not
153 change for the period of the contract.

154 (iii) Individual items of telecommunications
155 equipment and service which may be included under an equipment
156 support contract may not have a purchase price greater than Fifty
157 Thousand Dollars (\$50,000.00) or a monthly lease price greater
158 than Three Thousand Dollars (\$3,000.00). Such price shall not
159 include costs of maintenance, taxes or transportation.

160 (iv) Equipment support contracts shall include the
161 following annual appropriation dependency clause:

162 "The continuation of this contract is contingent upon the
163 appropriation of funds to fulfill the requirements of the contract
164 by the Legislature. If the Legislature fails to appropriate
165 sufficient monies to provide for the continuance of the contract,
166 the contract shall terminate on the date of the beginning of the
167 first fiscal year for which funds are not appropriated."

168 (3) The Mississippi Department of Information Technology
169 Services may on behalf of any state agency enter into contracts
170 for the lease or purchase of telecommunications equipment systems
171 or services in accordance with the following provisions:

172 (a) The Mississippi Department of Information
173 Technology Services may directly contract for or approve contracts
174 for regulated or tariffed telecommunications services upon
175 determination by the bureau that the application of such service
176 is in the best interests of the State of Mississippi.

177 (b) All other contracts of this type shall be entered
178 into through request for proposals as defined in Sections
179 25-53-101 through 25-53-125.

180 (c) The justification of such contracts must be
181 presented to the bureau prior to issuance of a request for
182 proposals. Such justification shall identify and consider all
183 cost factors relevant to that contract.

184 (d) The term of a lease contract shall not exceed sixty
185 (60) months for a system lease valued less than One Million
186 Dollars (\$1,000,000.00) and shall not exceed one hundred twenty
187 (120) months for a system lease valued One Million Dollars
188 (\$1,000,000.00) or more.

189 (e) All lease contracts must contain the following
190 annual appropriation dependency clause:

191 "The continuation of this contract is contingent upon the
192 appropriation of funds to fulfill the requirements of the contract
193 by the Legislature. If the Legislature fails to appropriate
194 sufficient monies to provide for the continuation of a contract,

195 the contract shall terminate on the date of the beginning of the
196 first fiscal year for which funds are not appropriated."

197 (f) The Mississippi Department of Information
198 Technology Services shall maintain a list of all such contracts.
199 This list shall show as a minimum the name of the vendor, the
200 annual cost of each contract and the term of the contract or the
201 purchase cost.

202 (g) Upon the advance written approval of the bureau,
203 state agencies may extend contracts for the lease of
204 telecommunications equipment, systems and related services on a
205 month-to-month basis for a period not to extend more than one (1)
206 calendar year for the stated lease prices.

207 (h) With respect to the procurement of cellular
208 telephone services, the Department of Information Technology
209 Services shall develop a list of approved vendors for the delivery
210 of those services to state agencies. The department may exercise
211 the option of selecting one (1) vendor to provide the services, or
212 if it deems such to be most advantageous to the state, it may
213 select multiple vendors. If it chooses to utilize multiple
214 vendors, the department may select vendors on the basis of the
215 lowest and best bid proposals, or it may establish a state
216 contract per minute price and allow any vendor who agrees to
217 provide service at the contract price to be added to the list of
218 vendors.

219 No agency shall contract for cellular telephone services with
220 any vendor unless the vendor has been approved by the Department
221 of Information Technology Services.

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

224 31-7-13. All agencies and governing authorities shall
225 purchase their commodities and printing; contract for garbage
226 collection or disposal; contract for solid waste collection or
227 disposal; contract for sewage collection or disposal; contract for

228 public construction; contract for cellular telephone services and
229 contract for rentals as herein provided.

230 (a) **Bidding procedure for purchases not over \$3,500.00.**
231 Purchases, except contracts for cellular telephone services, which
232 do not involve an expenditure of more than Three Thousand Five
233 Hundred Dollars (\$3,500.00), exclusive of freight or shipping
234 charges, may be made without advertising or otherwise requesting
235 competitive bids. However, nothing contained in this paragraph
236 (a) shall be construed to prohibit any agency or governing
237 authority from establishing procedures which require competitive
238 bids on purchases of Three Thousand Five Hundred Dollars
239 (\$3,500.00) or less.

240 (b) **Bidding procedure for purchases over \$3,500.00 but**
241 **not over \$15,000.00.** Purchases, except contracts for cellular
242 telephone services, which involve an expenditure of more than
243 Three Thousand Five Hundred Dollars (\$3,500.00) but not more than
244 Fifteen Thousand Dollars (\$15,000.00), exclusive of freight and
245 shipping charges may be made from the lowest and best bidder
246 without publishing or posting advertisement for bids, provided at
247 least two (2) competitive written bids have been obtained. Any
248 governing authority purchasing commodities pursuant to this
249 paragraph (b) may authorize its purchasing agent, or his designee,
250 with regard to governing authorities other than counties, or its
251 purchase clerk, or his designee, with regard to counties, to
252 accept the lowest and best competitive written bid. Such
253 authorization shall be made in writing by the governing authority
254 and shall be maintained on file in the primary office of the
255 agency and recorded in the official minutes of the governing
256 authority, as appropriate. The purchasing agent or the purchase
257 clerk, or their designee, as the case may be, and not the
258 governing authority, shall be liable for any penalties and/or
259 damages as may be imposed by law for any act or omission of the
260 purchasing agent or purchase clerk, or their designee,

261 constituting a violation of law in accepting any bid without
262 approval by the governing authority. The term "competitive
263 written bid" shall mean a bid submitted on a bid form furnished by
264 the buying agency or governing authority and signed by authorized
265 personnel representing the vendor, or a bid submitted on a
266 vendor's letterhead or identifiable bid form and signed by
267 authorized personnel representing the vendor. "Competitive" shall
268 mean that the bids are developed based upon comparable
269 identification of the needs and are developed independently and
270 without knowledge of other bids or prospective bids. Bids may be
271 submitted by facsimile, electronic mail or other generally
272 accepted method of information distribution. Bids submitted by
273 electronic transmission shall not require the signature of the
274 vendor's representative unless required by agencies or governing
275 authorities.

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

277 (i) **Publication requirement.** Purchases which
278 involve an expenditure of more than Fifteen Thousand Dollars
279 (\$15,000.00), exclusive of freight and shipping charges, may be
280 made from the lowest and best bidder after advertising for
281 competitive sealed bids once each week for two (2) consecutive
282 weeks in a regular newspaper published in the county or
283 municipality in which such agency or governing authority is
284 located. The date as published for the bid opening shall not be
285 less than seven (7) working days after the last published notice;
286 however, if the purchase involves a construction project in which
287 the estimated cost is in excess of Fifteen Thousand Dollars
288 (\$15,000.00), such bids shall not be opened in less than fifteen
289 (15) working days after the last notice is published and the
290 notice for the purchase of such construction shall be published
291 once each week for two (2) consecutive weeks. The notice of
292 intention to let contracts or purchase equipment shall state the
293 time and place at which bids shall be received, list the contracts

294 to be made or types of equipment or supplies to be purchased, and,
295 if all plans and/or specifications are not published, refer to the
296 plans and/or specifications on file. If there is no newspaper
297 published in the county or municipality, then such notice shall be
298 given by posting same at the courthouse, or for municipalities at
299 the city hall, and at two (2) other public places in the county or
300 municipality, and also by publication once each week for two (2)
301 consecutive weeks in some newspaper having a general circulation
302 in the county or municipality in the above provided manner. On
303 the same date that the notice is submitted to the newspaper for
304 publication, the agency or governing authority involved shall mail
305 written notice to, or provide electronic notification to the main
306 office of the Mississippi Contract Procurement Center that
307 contains the same information as that in the published notice.

308 (ii) **Bidding process amendment procedure.** If all
309 plans and/or specifications are published in the notification,
310 then the plans and/or specifications may not be amended. If all
311 plans and/or specifications are not published in the notification,
312 then amendments to the plans/specifications, bid opening date, bid
313 opening time and place may be made, provided that the agency or
314 governing authority maintains a list of all prospective bidders
315 who are known to have received a copy of the bid documents and all
316 such prospective bidders are sent copies of all amendments. This
317 notification of amendments may be made via mail, facsimile,
318 electronic mail or other generally accepted method of information
319 distribution. No addendum to bid specifications may be issued
320 within two (2) working days of the time established for the
321 receipt of bids unless such addendum also amends the bid opening
322 to a date not less than five (5) working days after the date of
323 the addendum.

324 (iii) **Filing requirement.** In all cases involving
325 governing authorities, before the notice shall be published or
326 posted, the plans or specifications for the construction or

327 equipment being sought shall be filed with the clerk of the board
328 of the governing authority. In addition to these requirements, a
329 bid file shall be established which shall indicate those vendors
330 to whom such solicitations and specifications were issued, and
331 such file shall also contain such information as is pertinent to
332 the bid.

333 (iv) **Specification restrictions.** Specifications
334 pertinent to such bidding shall be written so as not to exclude
335 comparable equipment of domestic manufacture. However, if valid
336 justification is presented, the Department of Finance and
337 Administration or the board of a governing authority may approve a
338 request for specific equipment necessary to perform a specific
339 job. Further, such justification, when placed on the minutes of
340 the board of a governing authority, may serve as authority for
341 that governing authority to write specifications to require a
342 specific item of equipment needed to perform a specific job. In
343 addition to these requirements, from and after July 1, 1990,
344 vendors of relocatable classrooms and the specifications for the
345 purchase of such relocatable classrooms published by local school
346 boards shall meet all pertinent regulations of the State Board of
347 Education, including prior approval of such bid by the State
348 Department of Education.

349 (v) Agencies and governing authorities may
350 establish secure procedures by which bids may be submitted via
351 electronic means.

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

353 (i) **Decision procedure.** Purchases may be made
354 from the lowest and best bidder. In determining the lowest and
355 best bid, freight and shipping charges shall be included.
356 Life-cycle costing, total cost bids, warranties, guaranteed
357 buy-back provisions and other relevant provisions may be included
358 in the best bid calculation. All best bid procedures for state
359 agencies must be in compliance with regulations established by the

360 Department of Finance and Administration. If any governing
361 authority accepts a bid other than the lowest bid actually
362 submitted, it shall place on its minutes detailed calculations and
363 narrative summary showing that the accepted bid was determined to
364 be the lowest and best bid, including the dollar amount of the
365 accepted bid and the dollar amount of the lowest bid. No agency
366 or governing authority shall accept a bid based on items not
367 included in the specifications.

368 (ii) **Construction project negotiations authority.**
369 If the lowest and best bid is not more than ten percent (10%)
370 above the amount of funds allocated for a public construction or
371 renovation project, then the agency or governing authority shall
372 be permitted to negotiate with the lowest bidder in order to enter
373 into a contract for an amount not to exceed the funds allocated.

374 (iii) **Cellular telephone service.** Governing
375 authorities that choose a cellular telephone service shall choose
376 the service on the basis of the lowest and best bid.

377 (e) **Lease-purchase authorization.** For the purposes of
378 this section, the term "equipment" shall mean equipment, furniture
379 and, if applicable, associated software and other applicable
380 direct costs associated with the acquisition. Any lease-purchase
381 of equipment which an agency is not required to lease-purchase
382 under the master lease-purchase program pursuant to Section
383 31-7-10 and any lease-purchase of equipment which a governing
384 authority elects to lease-purchase may be acquired by a
385 lease-purchase agreement under this paragraph (e). Lease-purchase
386 financing may also be obtained from the vendor or from a
387 third-party source after having solicited and obtained at least
388 two (2) written competitive bids, as defined in paragraph (b) of
389 this section, for such financing without advertising for such
390 bids. Solicitation for the bids for financing may occur before or
391 after acceptance of bids for the purchase of such equipment or,
392 where no such bids for purchase are required, at any time before

393 the purchase thereof. No such lease-purchase agreement shall be
394 for an annual rate of interest which is greater than the overall
395 maximum interest rate to maturity on general obligation
396 indebtedness permitted under Section 75-17-101, and the term of
397 such lease-purchase agreement shall not exceed the useful life of
398 equipment covered thereby as determined according to the upper
399 limit of the asset depreciation range (ADR) guidelines for the
400 Class Life Asset Depreciation Range System established by the
401 Internal Revenue Service pursuant to the United States Internal
402 Revenue Code and regulations thereunder as in effect on December
403 31, 1980, or comparable depreciation guidelines with respect to
404 any equipment not covered by ADR guidelines. Any lease-purchase
405 agreement entered into pursuant to this paragraph (e) may contain
406 any of the terms and conditions which a master lease-purchase
407 agreement may contain under the provisions of Section 31-7-10(5),
408 and shall contain an annual allocation dependency clause
409 substantially similar to that set forth in Section 31-7-10(8).
410 Each agency or governing authority entering into a lease-purchase
411 transaction pursuant to this paragraph (e) shall maintain with
412 respect to each such lease-purchase transaction the same
413 information as required to be maintained by the Department of
414 Finance and Administration pursuant to Section 31-7-10(13).
415 However, nothing contained in this section shall be construed to
416 permit agencies to acquire items of equipment with a total
417 acquisition cost in the aggregate of less than Ten Thousand
418 Dollars (\$10,000.00) by a single lease-purchase transaction. All
419 equipment, and the purchase thereof by any lessor, acquired by
420 lease-purchase under this paragraph and all lease-purchase
421 payments with respect thereto shall be exempt from all Mississippi
422 sales, use and ad valorem taxes. Interest paid on any
423 lease-purchase agreement under this section shall be exempt from
424 State of Mississippi income taxation.

425 (f) **Alternate bid authorization.** When necessary to
426 ensure ready availability of commodities for public works and the
427 timely completion of public projects, no more than two (2)
428 alternate bids may be accepted by a governing authority for
429 commodities. No purchases may be made through use of such
430 alternate bids procedure unless the lowest and best bidder cannot
431 deliver the commodities contained in his bid. In that event,
432 purchases of such commodities may be made from one (1) of the
433 bidders whose bid was accepted as an alternate.

434 (g) **Construction contract change authorization.** In the
435 event a determination is made by an agency or governing authority
436 after a construction contract is let that changes or modifications
437 to the original contract are necessary or would better serve the
438 purpose of the agency or the governing authority, such agency or
439 governing authority may, in its discretion, order such changes
440 pertaining to the construction that are necessary under the
441 circumstances without the necessity of further public bids;
442 provided that such change shall be made in a commercially
443 reasonable manner and shall not be made to circumvent the public
444 purchasing statutes. In addition to any other authorized person,
445 the architect or engineer hired by an agency or governing
446 authority with respect to any public construction contract shall
447 have the authority, when granted by an agency or governing
448 authority, to authorize changes or modifications to the original
449 contract without the necessity of prior approval of the agency or
450 governing authority when any such change or modification is less
451 than one percent (1%) of the total contract amount. The agency or
452 governing authority may limit the number, manner or frequency of
453 such emergency changes or modifications.

454 (h) **Petroleum purchase alternative.** In addition to
455 other methods of purchasing authorized in this chapter, when any
456 agency or governing authority shall have a need for gas, diesel
457 fuel, oils and/or other petroleum products in excess of the amount

458 set forth in paragraph (a) of this section, such agency or
459 governing authority may purchase the commodity after having
460 solicited and obtained at least two (2) competitive written bids,
461 as defined in paragraph (b) of this section. If two (2)
462 competitive written bids are not obtained, the entity shall comply
463 with the procedures set forth in paragraph (c) of this section.
464 In the event any agency or governing authority shall have
465 advertised for bids for the purchase of gas, diesel fuel, oils and
466 other petroleum products and coal and no acceptable bids can be
467 obtained, such agency or governing authority is authorized and
468 directed to enter into any negotiations necessary to secure the
469 lowest and best contract available for the purchase of such
470 commodities.

471 (i) **Road construction petroleum products price**
472 **adjustment clause authorization.** Any agency or governing
473 authority authorized to enter into contracts for the construction,
474 maintenance, surfacing or repair of highways, roads or streets,
475 may include in its bid proposal and contract documents a price
476 adjustment clause with relation to the cost to the contractor,
477 including taxes, based upon an industry-wide cost index, of
478 petroleum products including asphalt used in the performance or
479 execution of the contract or in the production or manufacture of
480 materials for use in such performance. Such industry-wide index
481 shall be established and published monthly by the Mississippi
482 Department of Transportation with a copy thereof to be mailed,
483 upon request, to the clerks of the governing authority of each
484 municipality and the clerks of each board of supervisors
485 throughout the state. The price adjustment clause shall be based
486 on the cost of such petroleum products only and shall not include
487 any additional profit or overhead as part of the adjustment. The
488 bid proposals or document contract shall contain the basis and
489 methods of adjusting unit prices for the change in the cost of
490 such petroleum products.

491 (j) **State agency emergency purchase procedure.** If the
492 governing board or the executive head, or his designee, of any
493 agency of the state shall determine that an emergency exists in
494 regard to the purchase of any commodities or repair contracts, so
495 that the delay incident to giving opportunity for competitive
496 bidding would be detrimental to the interests of the state, then
497 the provisions herein for competitive bidding shall not apply and
498 the head of such agency shall be authorized to make the purchase
499 or repair. Total purchases so made shall only be for the purpose
500 of meeting needs created by the emergency situation. In the event
501 such executive head is responsible to an agency board, at the
502 meeting next following the emergency purchase, documentation of
503 the purchase, including a description of the commodity purchased,
504 the purchase price thereof and the nature of the emergency shall
505 be presented to the board and placed on the minutes of the board
506 of such agency. The head of such agency, or his designee, shall,
507 at the earliest possible date following such emergency purchase,
508 file with the Department of Finance and Administration (i) a
509 statement explaining the conditions and circumstances of the
510 emergency, which shall include a detailed description of the
511 events leading up to the situation and the negative impact to the
512 entity if the purchase is made following the statutory
513 requirements set forth in paragraph (a), (b) or (c) of this
514 section, and (ii) a certified copy of the appropriate minutes of
515 the board of such agency, if applicable. On or before September 1
516 of each year, the State Auditor shall prepare and deliver to the
517 Senate Fees, Salaries and Administration Committee, the House Fees
518 and Salaries of Public Officers Committee and the Joint
519 Legislative Budget Committee a report containing a list of all
520 state agency emergency purchases and supporting documentation for
521 each emergency purchases.

522 (k) **Governing authority emergency purchase procedure.**
523 If the governing authority, or the governing authority acting

524 through its designee, shall determine that an emergency exists in
525 regard to the purchase of any commodities or repair contracts, so
526 that the delay incident to giving opportunity for competitive
527 bidding would be detrimental to the interest of the governing
528 authority, then the provisions herein for competitive bidding
529 shall not apply and any officer or agent of such governing
530 authority having general or special authority therefor in making
531 such purchase or repair shall approve the bill presented therefor,
532 and he shall certify in writing thereon from whom such purchase
533 was made, or with whom such a repair contract was made. At the
534 board meeting next following the emergency purchase or repair
535 contract, documentation of the purchase or repair contract,
536 including a description of the commodity purchased, the price
537 thereof and the nature of the emergency shall be presented to the
538 board and shall be placed on the minutes of the board of such
539 governing authority.

540 (1) **Hospital purchase, lease-purchase and lease**
541 **authorization.**

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

547 (ii) In addition to the authority granted in
548 subparagraph (i) of this paragraph (1), the commissioners or board
549 of trustees is authorized to enter into contracts for the lease of
550 equipment or services, or both, which it considers necessary for
551 the proper care of patients if, in its opinion, it is not
552 financially feasible to purchase the necessary equipment or
553 services. Any such contract for the lease of equipment or
554 services executed by the commissioners or board shall not exceed a
555 maximum of five (5) years' duration and shall include a
556 cancellation clause based on unavailability of funds. If such

557 cancellation clause is exercised, there shall be no further
558 liability on the part of the lessee. Any such contract for the
559 lease of equipment or services executed on behalf of the
560 commissioners or board that complies with the provisions of this
561 subparagraph (ii) shall be excepted from the bid requirements set
562 forth in this section.

563 (m) **Exceptions from bidding requirements.** Excepted
564 from bid requirements are:

565 (i) **Purchasing agreements approved by department.**
566 Purchasing agreements, contracts and maximum price regulations
567 executed or approved by the Department of Finance and
568 Administration.

569 (ii) **Outside equipment repairs.** Repairs to
570 equipment, when such repairs are made by repair facilities in the
571 private sector; however, engines, transmissions, rear axles and/or
572 other such components shall not be included in this exemption when
573 replaced as a complete unit instead of being repaired and the need
574 for such total component replacement is known before disassembly
575 of the component; however, invoices identifying the equipment,
576 specific repairs made, parts identified by number and name,
577 supplies used in such repairs, and the number of hours of labor
578 and costs therefor shall be required for the payment for such
579 repairs.

580 (iii) **In-house equipment repairs.** Purchases of
581 parts for repairs to equipment, when such repairs are made by
582 personnel of the agency or governing authority; however, entire
583 assemblies, such as engines or transmissions, shall not be
584 included in this exemption when the entire assembly is being
585 replaced instead of being repaired.

586 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
587 of gravel or fill dirt which are to be removed and transported by
588 the purchaser.

589 (v) **Governmental equipment auctions.** Motor
590 vehicles or other equipment purchased from a federal agency or
591 authority, another governing authority or state agency of the
592 State of Mississippi, or any governing authority or state agency
593 of another state at a public auction held for the purpose of
594 disposing of such vehicles or other equipment. Any purchase by a
595 governing authority under the exemption authorized by this
596 subparagraph (v) shall require advance authorization spread upon
597 the minutes of the governing authority to include the listing of
598 the item or items authorized to be purchased and the maximum bid
599 authorized to be paid for each item or items.

600 (vi) **Intergovernmental sales and transfers.**
601 Purchases, sales, transfers or trades by governing authorities or
602 state agencies when such purchases, sales, transfers or trades are
603 made by a private treaty agreement or through means of
604 negotiation, from any federal agency or authority, another
605 governing authority or state agency of the State of Mississippi,
606 or any state agency or governing authority of another state.
607 Nothing in this section shall permit such purchases through public
608 auction except as provided for in subparagraph (v) of this
609 section. It is the intent of this section to allow governmental
610 entities to dispose of and/or purchase commodities from other
611 governmental entities at a price that is agreed to by both
612 parties. This shall allow for purchases and/or sales at prices
613 which may be determined to be below the market value if the
614 selling entity determines that the sale at below market value is
615 in the best interest of the taxpayers of the state. Governing
616 authorities shall place the terms of the agreement and any
617 justification on the minutes, and state agencies shall obtain
618 approval from the Department of Finance and Administration, prior
619 to releasing or taking possession of the commodities.

620 (vii) **Perishable supplies or food.** Perishable
621 supplies or foods purchased for use in connection with hospitals,

622 the school lunch programs, homemaking programs and for the feeding
623 of county or municipal prisoners.

624 (viii) **Single source items.** Noncompetitive items
625 available from one (1) source only. In connection with the
626 purchase of noncompetitive items only available from one (1)
627 source, a certification of the conditions and circumstances
628 requiring the purchase shall be filed by the agency with the
629 Department of Finance and Administration and by the governing
630 authority with the board of the governing authority. Upon receipt
631 of that certification the Department of Finance and Administration
632 or the board of the governing authority, as the case may be, may,
633 in writing, authorize the purchase, which authority shall be noted
634 on the minutes of the body at the next regular meeting thereafter.
635 In those situations, a governing authority is not required to
636 obtain the approval of the Department of Finance and
637 Administration.

638 (ix) **Waste disposal facility construction**
639 **contracts.** Construction of incinerators and other facilities for
640 disposal of solid wastes in which products either generated
641 therein, such as steam, or recovered therefrom, such as materials
642 for recycling, are to be sold or otherwise disposed of; however,
643 in constructing such facilities, a governing authority or agency
644 shall publicly issue requests for proposals, advertised for in the
645 same manner as provided herein for seeking bids for public
646 construction projects, concerning the design, construction,
647 ownership, operation and/or maintenance of such facilities,
648 wherein such requests for proposals when issued shall contain
649 terms and conditions relating to price, financial responsibility,
650 technology, environmental compatibility, legal responsibilities
651 and such other matters as are determined by the governing
652 authority or agency to be appropriate for inclusion; and after
653 responses to the request for proposals have been duly received,
654 the governing authority or agency may select the most qualified

655 proposal or proposals on the basis of price, technology and other
656 relevant factors and from such proposals, but not limited to the
657 terms thereof, negotiate and enter contracts with one or more of
658 the persons or firms submitting proposals.

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

662 (xi) **Information technology products.** Purchases
663 of information technology products made by governing authorities
664 under the provisions of purchase schedules, or contracts executed
665 or approved by the Mississippi Department of Information
666 Technology Services and designated for use by governing
667 authorities.

668 (xii) **Energy efficiency services and equipment.**
669 Energy efficiency services and equipment acquired by school
670 districts, community and junior colleges, institutions of higher
671 learning and state agencies or other applicable governmental
672 entities on a shared-savings, lease or lease-purchase basis
673 pursuant to Section 31-7-14.

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

678 (xiv) **Library books and other reference materials.**
679 Purchases by libraries or for libraries of books and periodicals;
680 processed film, video cassette tapes, filmstrips and slides;
681 recorded audio tapes, cassettes and diskettes; and any such items
682 as would be used for teaching, research or other information
683 distribution; however, equipment such as projectors, recorders,
684 audio or video equipment, and monitor televisions are not exempt
685 under this subparagraph.

686 (xv) **Unmarked vehicles.** Purchases of unmarked
687 vehicles when such purchases are made in accordance with

688 purchasing regulations adopted by the Department of Finance and
689 Administration pursuant to Section 31-7-9(2).

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

692 (xvii) **Multichannel interactive video systems.**
693 From and after July 1, 1990, contracts by Mississippi Authority
694 for Educational Television with any private educational
695 institution or private nonprofit organization whose purposes are
696 educational in regard to the construction, purchase, lease or
697 lease-purchase of facilities and equipment and the employment of
698 personnel for providing multichannel interactive video systems
699 (ITSF) in the school districts of this state.

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

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

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

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

718 (xxii) **Garbage, solid waste and sewage contracts.**
719 Contracts for garbage collection or disposal, contracts for solid

720 waste collection or disposal and contracts for sewage collection
721 or disposal.

722 (xxiii) **Municipal water tank maintenance**
723 **contracts.** Professional maintenance program contracts for the
724 repair or maintenance of municipal water tanks, which provide
725 professional services needed to maintain municipal water storage
726 tanks for a fixed annual fee for a duration of two (2) or more
727 years.

728 (xxiv) **Purchases of Mississippi Industries for the**
729 **Blind products.** Purchases made by state agencies or governing
730 authorities involving any item that is manufactured, processed or
731 produced by the Mississippi Industries for the Blind.

732 (xxv) **Purchases of state-adopted textbooks.**
733 Purchases of state-adopted textbooks by public school districts.

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

737 (xxvii) **Used heavy or specialized machinery or**
738 **equipment for installation of soil and water conservation**
739 **practices purchased at auction.** Used heavy or specialized
740 machinery or equipment used for the installation and
741 implementation of soil and water conservation practices or
742 measures purchased subject to the restrictions provided in
743 Sections 69-27-331 through 69-27-341. Any purchase by the State
744 Soil and Water Conservation Commission under the exemption
745 authorized by this subparagraph shall require advance
746 authorization spread upon the minutes of the commission to include
747 the listing of the item or items authorized to be purchased and
748 the maximum bid authorized to be paid for each item or items.

749 (xxviii) **Hospital lease of equipment or services.**
750 Leases by hospitals of equipment or services if the leases are in
751 compliance with subparagraph (1)(ii).

752 (xxix) **Purchases made pursuant to qualified**
753 **cooperative purchasing agreements.** Purchases made by certified
754 purchasing offices of state agencies or governing authorities
755 under cooperative purchasing agreements previously approved by the
756 Office of Purchasing and Travel and established by or for any
757 municipality, county, parish or state government or the federal
758 government, provided that the notification to potential
759 contractors includes a clause that sets forth the availability of
760 the cooperative purchasing agreement to other governmental
761 entities. Such purchases shall only be made if the use of the
762 cooperative purchasing agreements is determined to be in the best
763 interest of the government entity.

764 (n) **Term contract authorization.** All contracts for the
765 purchase of:

766 (i) All contracts for the purchase of commodities,
767 equipment and public construction (including, but not limited to,
768 repair and maintenance), may be let for periods of not more than
769 sixty (60) months in advance, subject to applicable statutory
770 provisions prohibiting the letting of contracts during specified
771 periods near the end of terms of office. Term contracts for a
772 period exceeding twenty-four (24) months shall also be subject to
773 ratification or cancellation by governing authority boards taking
774 office subsequent to the governing authority board entering the
775 contract.

776 (ii) Bid proposals and contracts may include price
777 adjustment clauses with relation to the cost to the contractor
778 based upon a nationally published industry-wide or nationally
779 published and recognized cost index. The cost index used in a
780 price adjustment clause shall be determined by the Department of
781 Finance and Administration for the state agencies and by the
782 governing board for governing authorities. The bid proposal and
783 contract documents utilizing a price adjustment clause shall
784 contain the basis and method of adjusting unit prices for the

785 change in the cost of such commodities, equipment and public
786 construction.

787 (o) **Purchase law violation prohibition and vendor**
788 **penalty.** No contract or purchase as herein authorized shall be
789 made for the purpose of circumventing the provisions of this
790 section requiring competitive bids, nor shall it be lawful for any
791 person or concern to submit individual invoices for amounts within
792 those authorized for a contract or purchase where the actual value
793 of the contract or commodity purchased exceeds the authorized
794 amount and the invoices therefor are split so as to appear to be
795 authorized as purchases for which competitive bids are not
796 required. Submission of such invoices shall constitute a
797 misdemeanor punishable by a fine of not less than Five Hundred
798 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
799 or by imprisonment for thirty (30) days in the county jail, or
800 both such fine and imprisonment. In addition, the claim or claims
801 submitted shall be forfeited.

802 (p) **Electrical utility petroleum-based equipment**
803 **purchase procedure.** When in response to a proper advertisement
804 therefor, no bid firm as to price is submitted to an electric
805 utility for power transformers, distribution transformers, power
806 breakers, reclosers or other articles containing a petroleum
807 product, the electric utility may accept the lowest and best bid
808 therefor although the price is not firm.

809 (q) **Fuel management system bidding procedure.** Any
810 governing authority or agency of the state shall, before
811 contracting for the services and products of a fuel management or
812 fuel access system, enter into negotiations with not fewer than
813 two (2) sellers of fuel management or fuel access systems for
814 competitive written bids to provide the services and products for
815 the systems. In the event that the governing authority or agency
816 cannot locate two (2) sellers of such systems or cannot obtain
817 bids from two (2) sellers of such systems, it shall show proof

818 that it made a diligent, good-faith effort to locate and negotiate
819 with two (2) sellers of such systems. Such proof shall include,
820 but not be limited to, publications of a request for proposals and
821 letters soliciting negotiations and bids. For purposes of this
822 paragraph (q), a fuel management or fuel access system is an
823 automated system of acquiring fuel for vehicles as well as
824 management reports detailing fuel use by vehicles and drivers, and
825 the term "competitive written bid" shall have the meaning as
826 defined in paragraph (b) of this section. Governing authorities
827 and agencies shall be exempt from this process when contracting
828 for the services and products of a fuel management or fuel access
829 systems under the terms of a state contract established by the
830 Office of Purchasing and Travel.

831 (r) **Solid waste contract proposal procedure.** Before
832 entering into any contract for garbage collection or disposal,
833 contract for solid waste collection or disposal or contract for
834 sewage collection or disposal, which involves an expenditure of
835 more than Fifty Thousand Dollars (\$50,000.00), a governing
836 authority or agency shall issue publicly a request for proposals
837 concerning the specifications for such services which shall be
838 advertised for in the same manner as provided in this section for
839 seeking bids for purchases which involve an expenditure of more
840 than the amount provided in paragraph (c) of this section. Any
841 request for proposals when issued shall contain terms and
842 conditions relating to price, financial responsibility,
843 technology, legal responsibilities and other relevant factors as
844 are determined by the governing authority or agency to be
845 appropriate for inclusion; all factors determined relevant by the
846 governing authority or agency or required by this paragraph (r)
847 shall be duly included in the advertisement to elicit proposals.
848 After responses to the request for proposals have been duly
849 received, the governing authority or agency shall select the most
850 qualified proposal or proposals on the basis of price, technology

851 and other relevant factors and from such proposals, but not
852 limited to the terms thereof, negotiate and enter contracts with
853 one or more of the persons or firms submitting proposals. If the
854 governing authority or agency deems none of the proposals to be
855 qualified or otherwise acceptable, the request for proposals
856 process may be reinitiated. Notwithstanding any other provisions
857 of this paragraph, where a county with at least thirty-five
858 thousand (35,000) nor more than forty thousand (40,000)
859 population, according to the 1990 federal decennial census, owns
860 or operates a solid waste landfill, the governing authorities of
861 any other county or municipality may contract with the governing
862 authorities of the county owning or operating the landfill,
863 pursuant to a resolution duly adopted and spread upon the minutes
864 of each governing authority involved, for garbage or solid waste
865 collection or disposal services through contract negotiations.

866 (s) **Minority set aside authorization.** Notwithstanding
867 any provision of this section to the contrary, any agency or
868 governing authority, by order placed on its minutes, may, in its
869 discretion, set aside not more than twenty percent (20%) of its
870 anticipated annual expenditures for the purchase of commodities
871 from minority businesses; however, all such set-aside purchases
872 shall comply with all purchasing regulations promulgated by the
873 Department of Finance and Administration and shall be subject to
874 bid requirements under this section. Set-aside purchases for
875 which competitive bids are required shall be made from the lowest
876 and best minority business bidder. For the purposes of this
877 paragraph, the term "minority business" means a business which is
878 owned by a majority of persons who are United States citizens or
879 permanent resident aliens (as defined by the Immigration and
880 Naturalization Service) of the United States, and who are Asian,
881 Black, Hispanic or Native American, according to the following
882 definitions:

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

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

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

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

894 (t) **Construction punch list restriction.** The
895 architect, engineer or other representative designated by the
896 agency or governing authority that is contracting for public
897 construction or renovation may prepare and submit to the
898 contractor only one (1) preliminary punch list of items that do
899 not meet the contract requirements at the time of substantial
900 completion and one (1) final list immediately before final
901 completion and final payment.

902 (u) **Purchase authorization clarification.** Nothing in
903 this section shall be construed as authorizing any purchase not
904 authorized by law.

905 **SECTION 4.** This act shall take effect and be in force from
906 and after July 1, 2004.