

By: Representatives Robinson (84th),
Barnett, Horne

To: Appropriations

HOUSE BILL NO. 502

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; and contract for rentals as herein provided.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

367 (ii) **Decision procedure for Certified Purchasing**
368 **Offices.** In addition to the decision procedure set forth in
369 paragraph (d)(i), Certified Purchasing Offices may also use the
370 following procedure: Purchases may be made from the bidder
371 offering the best value. In determining the best value bid,
372 freight and shipping charges shall be included. Life-cycle
373 costing, total cost bids, warranties, guaranteed buy-back
374 provisions, documented previous experience, training costs and
375 other relevant provisions may be included in the best value
376 calculation. This provision shall authorize Certified Purchasing
377 Offices to utilize a Request For Proposals (RFP) process when
378 purchasing commodities. All best value procedures for state
379 agencies must be in compliance with regulations established by the
380 Department of Finance and Administration. No agency or governing
381 authority shall accept a bid based on items or criteria not
382 included in the specifications.

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

389 (iv) **Cellular telephone service.** Governing
390 authorities that choose a cellular telephone service shall choose
391 the service on the basis of the lowest and best bid.

392 (e) **Lease-purchase authorization.** For the purposes of
393 this section, the term "equipment" shall mean equipment, furniture
394 and, if applicable, associated software and other applicable
395 direct costs associated with the acquisition. Any lease-purchase
396 of equipment which an agency is not required to lease-purchase
397 under the master lease-purchase program pursuant to Section
398 31-7-10 and any lease-purchase of equipment which a governing
399 authority elects to lease-purchase may be acquired by a
400 lease-purchase agreement under this paragraph (e). Lease-purchase
401 financing may also be obtained from the vendor or from a
402 third-party source after having solicited and obtained at least
403 two (2) written competitive bids, as defined in paragraph (b) of
404 this section, for such financing without advertising for such
405 bids. Solicitation for the bids for financing may occur before or
406 after acceptance of bids for the purchase of such equipment or,
407 where no such bids for purchase are required, at any time before
408 the purchase thereof. No such lease-purchase agreement shall be
409 for an annual rate of interest which is greater than the overall
410 maximum interest rate to maturity on general obligation
411 indebtedness permitted under Section 75-17-101, and the term of
412 such lease-purchase agreement shall not exceed the useful life of
413 equipment covered thereby as determined according to the upper
414 limit of the asset depreciation range (ADR) guidelines for the
415 Class Life Asset Depreciation Range System established by the
416 Internal Revenue Service pursuant to the United States Internal
417 Revenue Code and regulations thereunder as in effect on December
418 31, 1980, or comparable depreciation guidelines with respect to
419 any equipment not covered by ADR guidelines. Any lease-purchase
420 agreement entered into pursuant to this paragraph (e) may contain
421 any of the terms and conditions which a master lease-purchase
422 agreement may contain under the provisions of Section 31-7-10(5),
423 and shall contain an annual allocation dependency clause
424 substantially similar to that set forth in Section 31-7-10(8).

425 Each agency or governing authority entering into a lease-purchase
426 transaction pursuant to this paragraph (e) shall maintain with
427 respect to each such lease-purchase transaction the same
428 information as required to be maintained by the Department of
429 Finance and Administration pursuant to Section 31-7-10(13).
430 However, nothing contained in this section shall be construed to
431 permit agencies to acquire items of equipment with a total
432 acquisition cost in the aggregate of less than Ten Thousand
433 Dollars (\$10,000.00) by a single lease-purchase transaction. All
434 equipment, and the purchase thereof by any lessor, acquired by
435 lease-purchase under this paragraph and all lease-purchase
436 payments with respect thereto shall be exempt from all Mississippi
437 sales, use and ad valorem taxes. Interest paid on any
438 lease-purchase agreement under this section shall be exempt from
439 State of Mississippi income taxation.

440 (f) **Alternate bid authorization.** When necessary to
441 ensure ready availability of commodities for public works and the
442 timely completion of public projects, no more than two (2)
443 alternate bids may be accepted by a governing authority for
444 commodities. No purchases may be made through use of such
445 alternate bids procedure unless the lowest and best bidder cannot
446 deliver the commodities contained in his bid. In that event,
447 purchases of such commodities may be made from one (1) of the
448 bidders whose bid was accepted as an alternate.

449 (g) **Construction contract change authorization.** In the
450 event a determination is made by an agency or governing authority
451 after a construction contract is let that changes or modifications
452 to the original contract are necessary or would better serve the
453 purpose of the agency or the governing authority, such agency or
454 governing authority may, in its discretion, order such changes
455 pertaining to the construction that are necessary under the
456 circumstances without the necessity of further public bids;
457 provided that such change shall be made in a commercially

458 reasonable manner and shall not be made to circumvent the public
459 purchasing statutes. In addition to any other authorized person,
460 the architect or engineer hired by an agency or governing
461 authority with respect to any public construction contract shall
462 have the authority, when granted by an agency or governing
463 authority, to authorize changes or modifications to the original
464 contract without the necessity of prior approval of the agency or
465 governing authority when any such change or modification is less
466 than one percent (1%) of the total contract amount. The agency or
467 governing authority may limit the number, manner or frequency of
468 such emergency changes or modifications.

469 (h) **Petroleum purchase alternative.** In addition to
470 other methods of purchasing authorized in this chapter, when any
471 agency or governing authority shall have a need for gas, diesel
472 fuel, oils and/or other petroleum products in excess of the amount
473 set forth in paragraph (a) of this section, such agency or
474 governing authority may purchase the commodity after having
475 solicited and obtained at least two (2) competitive written bids,
476 as defined in paragraph (b) of this section. If two (2)
477 competitive written bids are not obtained, the entity shall comply
478 with the procedures set forth in paragraph (c) of this section.
479 In the event any agency or governing authority shall have
480 advertised for bids for the purchase of gas, diesel fuel, oils and
481 other petroleum products and coal and no acceptable bids can be
482 obtained, such agency or governing authority is authorized and
483 directed to enter into any negotiations necessary to secure the
484 lowest and best contract available for the purchase of such
485 commodities.

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

491 adjustment clause with relation to the cost to the contractor,
492 including taxes, based upon an industry-wide cost index, of
493 petroleum products including asphalt used in the performance or
494 execution of the contract or in the production or manufacture of
495 materials for use in such performance. Such industry-wide index
496 shall be established and published monthly by the Mississippi
497 Department of Transportation with a copy thereof to be mailed,
498 upon request, to the clerks of the governing authority of each
499 municipality and the clerks of each board of supervisors
500 throughout the state. The price adjustment clause shall be based
501 on the cost of such petroleum products only and shall not include
502 any additional profit or overhead as part of the adjustment. The
503 bid proposals or document contract shall contain the basis and
504 methods of adjusting unit prices for the change in the cost of
505 such petroleum products.

506 (j) **State agency emergency purchase procedure.** If the
507 governing board or the executive head, or his designee, of any
508 agency of the state shall determine that an emergency exists in
509 regard to the purchase of any commodities or repair contracts, so
510 that the delay incident to giving opportunity for competitive
511 bidding would be detrimental to the interests of the state, then
512 the provisions herein for competitive bidding shall not apply and
513 the head of such agency shall be authorized to make the purchase
514 or repair. Total purchases so made shall only be for the purpose
515 of meeting needs created by the emergency situation. In the event
516 such executive head is responsible to an agency board, at the
517 meeting next following the emergency purchase, documentation of
518 the purchase, including a description of the commodity purchased,
519 the purchase price thereof and the nature of the emergency shall
520 be presented to the board and placed on the minutes of the board
521 of such agency. The head of such agency, or his designee, shall,
522 at the earliest possible date following such emergency purchase,
523 file with the Department of Finance and Administration (i) a

524 statement explaining the conditions and circumstances of the
525 emergency, which shall include a detailed description of the
526 events leading up to the situation and the negative impact to the
527 entity if the purchase is made following the statutory
528 requirements set forth in paragraph (a), (b) or (c) of this
529 section, and (ii) a certified copy of the appropriate minutes of
530 the board of such agency, if applicable. On or before September 1
531 of each year, the State Auditor shall prepare and deliver to the
532 Senate Fees, Salaries and Administration Committee, the House Fees
533 and Salaries of Public Officers Committee and the Joint
534 Legislative Budget Committee a report containing a list of all
535 state agency emergency purchases and supporting documentation for
536 each emergency purchase.

537 (k) **Governing authority emergency purchase procedure.**
538 If the governing authority, or the governing authority acting
539 through its designee, shall determine that an emergency exists in
540 regard to the purchase of any commodities or repair contracts, so
541 that the delay incident to giving opportunity for competitive
542 bidding would be detrimental to the interest of the governing
543 authority, then the provisions herein for competitive bidding
544 shall not apply and any officer or agent of such governing
545 authority having general or special authority therefor in making
546 such purchase or repair shall approve the bill presented therefor,
547 and he shall certify in writing thereon from whom such purchase
548 was made, or with whom such a repair contract was made. At the
549 board meeting next following the emergency purchase or repair
550 contract, documentation of the purchase or repair contract,
551 including a description of the commodity purchased, the price
552 thereof and the nature of the emergency shall be presented to the
553 board and shall be placed on the minutes of the board of such
554 governing authority.

555 (1) **Hospital purchase, lease-purchase and lease**
556 **authorization.**

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

562 (ii) In addition to the authority granted in
563 subparagraph (i) of this paragraph (1), the commissioners or board
564 of trustees is authorized to enter into contracts for the lease of
565 equipment or services, or both, which it considers necessary for
566 the proper care of patients if, in its opinion, it is not
567 financially feasible to purchase the necessary equipment or
568 services. Any such contract for the lease of equipment or
569 services executed by the commissioners or board shall not exceed a
570 maximum of five (5) years' duration and shall include a
571 cancellation clause based on unavailability of funds. If such
572 cancellation clause is exercised, there shall be no further
573 liability on the part of the lessee. Any such contract for the
574 lease of equipment or services executed on behalf of the
575 commissioners or board that complies with the provisions of this
576 subparagraph (ii) shall be excepted from the bid requirements set
577 forth in this section.

578 (m) **Exceptions from bidding requirements.** Excepted
579 from bid requirements are:

580 (i) **Purchasing agreements approved by department.**
581 Purchasing agreements, contracts and maximum price regulations
582 executed or approved by the Department of Finance and
583 Administration.

584 (ii) **Outside equipment repairs.** Repairs to
585 equipment, when such repairs are made by repair facilities in the
586 private sector; however, engines, transmissions, rear axles and/or
587 other such components shall not be included in this exemption when
588 replaced as a complete unit instead of being repaired and the need
589 for such total component replacement is known before disassembly

590 of the component; however, invoices identifying the equipment,
591 specific repairs made, parts identified by number and name,
592 supplies used in such repairs, and the number of hours of labor
593 and costs therefor shall be required for the payment for such
594 repairs.

595 (iii) **In-house equipment repairs.** Purchases of
596 parts for repairs to equipment, when such repairs are made by
597 personnel of the agency or governing authority; however, entire
598 assemblies, such as engines or transmissions, shall not be
599 included in this exemption when the entire assembly is being
600 replaced instead of being repaired.

601 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
602 of gravel or fill dirt which are to be removed and transported by
603 the purchaser.

604 (v) **Governmental equipment auctions.** Motor
605 vehicles or other equipment purchased from a federal agency or
606 authority, another governing authority or state agency of the
607 State of Mississippi, or any governing authority or state agency
608 of another state at a public auction held for the purpose of
609 disposing of such vehicles or other equipment. Any purchase by a
610 governing authority under the exemption authorized by this
611 subparagraph (v) shall require advance authorization spread upon
612 the minutes of the governing authority to include the listing of
613 the item or items authorized to be purchased and the maximum bid
614 authorized to be paid for each item or items.

615 (vi) **Intergovernmental sales and transfers.**
616 Purchases, sales, transfers or trades by governing authorities or
617 state agencies when such purchases, sales, transfers or trades are
618 made by a private treaty agreement or through means of
619 negotiation, from any federal agency or authority, another
620 governing authority or state agency of the State of Mississippi,
621 or any state agency or governing authority of another state.
622 Nothing in this section shall permit such purchases through public

623 auction except as provided for in subparagraph (v) of this
624 section. It is the intent of this section to allow governmental
625 entities to dispose of and/or purchase commodities from other
626 governmental entities at a price that is agreed to by both
627 parties. This shall allow for purchases and/or sales at prices
628 which may be determined to be below the market value if the
629 selling entity determines that the sale at below market value is
630 in the best interest of the taxpayers of the state. Governing
631 authorities shall place the terms of the agreement and any
632 justification on the minutes, and state agencies shall obtain
633 approval from the Department of Finance and Administration, prior
634 to releasing or taking possession of the commodities.

635 (vii) **Perishable supplies or food.** Perishable
636 supplies or foods purchased for use in connection with hospitals,
637 the school lunch programs, homemaking programs and for the feeding
638 of county or municipal prisoners.

639 (viii) **Single source items.** Noncompetitive items
640 available from one (1) source only. In connection with the
641 purchase of noncompetitive items only available from one (1)
642 source, a certification of the conditions and circumstances
643 requiring the purchase shall be filed by the agency with the
644 Department of Finance and Administration and by the governing
645 authority with the board of the governing authority. Upon receipt
646 of that certification the Department of Finance and Administration
647 or the board of the governing authority, as the case may be, may,
648 in writing, authorize the purchase, which authority shall be noted
649 on the minutes of the body at the next regular meeting thereafter.
650 In those situations, a governing authority is not required to
651 obtain the approval of the Department of Finance and
652 Administration.

653 (ix) **Waste disposal facility construction**
654 **contracts.** Construction of incinerators and other facilities for
655 disposal of solid wastes in which products either generated

656 therein, such as steam, or recovered therefrom, such as materials
657 for recycling, are to be sold or otherwise disposed of; however,
658 in constructing such facilities, a governing authority or agency
659 shall publicly issue requests for proposals, advertised for in the
660 same manner as provided herein for seeking bids for public
661 construction projects, concerning the design, construction,
662 ownership, operation and/or maintenance of such facilities,
663 wherein such requests for proposals when issued shall contain
664 terms and conditions relating to price, financial responsibility,
665 technology, environmental compatibility, legal responsibilities
666 and such other matters as are determined by the governing
667 authority or agency to be appropriate for inclusion; and after
668 responses to the request for proposals have been duly received,
669 the governing authority or agency may select the most qualified
670 proposal or proposals on the basis of price, technology and other
671 relevant factors and from such proposals, but not limited to the
672 terms thereof, negotiate and enter contracts with one or more of
673 the persons or firms submitting proposals.

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

677 (xi) **Information technology products.** Purchases
678 of information technology products made by governing authorities
679 under the provisions of purchase schedules, or contracts executed
680 or approved by the Mississippi Department of Information
681 Technology Services and designated for use by governing
682 authorities.

683 (xii) **Energy efficiency services and equipment.**
684 Energy efficiency services and equipment acquired by school
685 districts, community and junior colleges, institutions of higher
686 learning and state agencies or other applicable governmental
687 entities on a shared-savings, lease or lease-purchase basis
688 pursuant to Section 31-7-14.

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

693 (xiv) **Library books and other reference materials.**
694 Purchases by libraries or for libraries of books and periodicals;
695 processed film, video cassette tapes, filmstrips and slides;
696 recorded audio tapes, cassettes and diskettes; and any such items
697 as would be used for teaching, research or other information
698 distribution; however, equipment such as projectors, recorders,
699 audio or video equipment, and monitor televisions are not exempt
700 under this subparagraph.

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

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

707 (xvii) **Multichannel interactive video systems.**
708 From and after July 1, 1990, contracts by Mississippi Authority
709 for Educational Television with any private educational
710 institution or private nonprofit organization whose purposes are
711 educational in regard to the construction, purchase, lease or
712 lease-purchase of facilities and equipment and the employment of
713 personnel for providing multichannel interactive video systems
714 (ITSF) in the school districts of this state.

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

719 (xix) **Undercover operations equipment.** Purchases
720 of surveillance equipment or any other high-tech equipment to be
721 used by law enforcement agents in undercover operations, provided

722 that any such purchase shall be in compliance with regulations
723 established by the Department of Finance and Administration.

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

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

733 (xxii) **Garbage, solid waste and sewage contracts.**
734 Contracts for garbage collection or disposal, contracts for solid
735 waste collection or disposal and contracts for sewage collection
736 or disposal.

737 (xxiii) **Municipal water tank maintenance**
738 **contracts.** Professional maintenance program contracts for the
739 repair or maintenance of municipal water tanks, which provide
740 professional services needed to maintain municipal water storage
741 tanks for a fixed annual fee for a duration of two (2) or more
742 years.

743 (xxiv) **Purchases of Mississippi Industries for the**
744 **Blind products.** Purchases made by state agencies or governing
745 authorities involving any item that is manufactured, processed or
746 produced by the Mississippi Industries for the Blind.

747 (xxv) **Purchases of state-adopted textbooks.**
748 Purchases of state-adopted textbooks by public school districts.

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

752 (xxvii) **Used heavy or specialized machinery or**
753 **equipment for installation of soil and water conservation**
754 **practices purchased at auction.** Used heavy or specialized

755 machinery or equipment used for the installation and
756 implementation of soil and water conservation practices or
757 measures purchased subject to the restrictions provided in
758 Sections 69-27-331 through 69-27-341. Any purchase by the State
759 Soil and Water Conservation Commission under the exemption
760 authorized by this subparagraph shall require advance
761 authorization spread upon the minutes of the commission to include
762 the listing of the item or items authorized to be purchased and
763 the maximum bid authorized to be paid for each item or items.

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

767 (xxix) **Purchases made pursuant to qualified**
768 **cooperative purchasing agreements.** Purchases made by certified
769 purchasing offices of state agencies or governing authorities
770 under cooperative purchasing agreements previously approved by the
771 Office of Purchasing and Travel and established by or for any
772 municipality, county, parish or state government or the federal
773 government, provided that the notification to potential
774 contractors includes a clause that sets forth the availability of
775 the cooperative purchasing agreement to other governmental
776 entities. Such purchases shall only be made if the use of the
777 cooperative purchasing agreements is determined to be in the best
778 interest of the government entity.

779 (xxx) **School yearbooks.** Purchases of school
780 yearbooks by state agencies or governing authorities; provided,
781 however, that state agencies and governing authorities shall use
782 for these purchases the RFP process as set forth in the
783 Mississippi Procurement Manual adopted by the Office of Purchasing
784 and Travel.

785 (xxxi) **Design-build method or the design-build**
786 **bridging method of contracting.** Contracts entered into the
787 provisions of Section 31-11-3(9).

788 (n) **Term contract authorization.** All contracts for the
789 purchase of:

790 (i) All contracts for the purchase of commodities,
791 equipment and public construction (including, but not limited to,
792 repair and maintenance), may be let for periods of not more than
793 sixty (60) months in advance, subject to applicable statutory
794 provisions prohibiting the letting of contracts during specified
795 periods near the end of terms of office. Term contracts for a
796 period exceeding twenty-four (24) months shall also be subject to
797 ratification or cancellation by governing authority boards taking
798 office subsequent to the governing authority board entering the
799 contract.

800 (ii) Bid proposals and contracts may include price
801 adjustment clauses with relation to the cost to the contractor
802 based upon a nationally published industry-wide or nationally
803 published and recognized cost index. The cost index used in a
804 price adjustment clause shall be determined by the Department of
805 Finance and Administration for the state agencies and by the
806 governing board for governing authorities. The bid proposal and
807 contract documents utilizing a price adjustment clause shall
808 contain the basis and method of adjusting unit prices for the
809 change in the cost of such commodities, equipment and public
810 construction.

811 (o) **Purchase law violation prohibition and vendor**
812 **penalty.** No contract or purchase as herein authorized shall be
813 made for the purpose of circumventing the provisions of this
814 section requiring competitive bids, nor shall it be lawful for any
815 person or concern to submit individual invoices for amounts within
816 those authorized for a contract or purchase where the actual value
817 of the contract or commodity purchased exceeds the authorized
818 amount and the invoices therefor are split so as to appear to be
819 authorized as purchases for which competitive bids are not
820 required. Submission of such invoices shall constitute a

821 misdemeanor punishable by a fine of not less than Five Hundred
822 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
823 or by imprisonment for thirty (30) days in the county jail, or
824 both such fine and imprisonment. In addition, the claim or claims
825 submitted shall be forfeited.

826 (p) **Electrical utility petroleum-based equipment**
827 **purchase procedure.** When in response to a proper advertisement
828 therefor, no bid firm as to price is submitted to an electric
829 utility for power transformers, distribution transformers, power
830 breakers, reclosers or other articles containing a petroleum
831 product, the electric utility may accept the lowest and best bid
832 therefor although the price is not firm.

833 (q) **Fuel management system bidding procedure.** Any
834 governing authority or agency of the state shall, before
835 contracting for the services and products of a fuel management or
836 fuel access system, enter into negotiations with not fewer than
837 two (2) sellers of fuel management or fuel access systems for
838 competitive written bids to provide the services and products for
839 the systems. In the event that the governing authority or agency
840 cannot locate two (2) sellers of such systems or cannot obtain
841 bids from two (2) sellers of such systems, it shall show proof
842 that it made a diligent, good-faith effort to locate and negotiate
843 with two (2) sellers of such systems. Such proof shall include,
844 but not be limited to, publications of a request for proposals and
845 letters soliciting negotiations and bids. For purposes of this
846 paragraph (q), a fuel management or fuel access system is an
847 automated system of acquiring fuel for vehicles as well as
848 management reports detailing fuel use by vehicles and drivers, and
849 the term "competitive written bid" shall have the meaning as
850 defined in paragraph (b) of this section. Governing authorities
851 and agencies shall be exempt from this process when contracting
852 for the services and products of a fuel management or fuel access

853 systems under the terms of a state contract established by the
854 Office of Purchasing and Travel.

855 (r) **Solid waste contract proposal procedure.** Before
856 entering into any contract for garbage collection or disposal,
857 contract for solid waste collection or disposal or contract for
858 sewage collection or disposal, which involves an expenditure of
859 more than Fifty Thousand Dollars (\$50,000.00), a governing
860 authority or agency shall issue publicly a request for proposals
861 concerning the specifications for such services which shall be
862 advertised for in the same manner as provided in this section for
863 seeking bids for purchases which involve an expenditure of more
864 than the amount provided in paragraph (c) of this section. Any
865 request for proposals when issued shall contain terms and
866 conditions relating to price, financial responsibility,
867 technology, legal responsibilities and other relevant factors as
868 are determined by the governing authority or agency to be
869 appropriate for inclusion; all factors determined relevant by the
870 governing authority or agency or required by this paragraph (r)
871 shall be duly included in the advertisement to elicit proposals.
872 After responses to the request for proposals have been duly
873 received, the governing authority or agency shall select the most
874 qualified proposal or proposals on the basis of price, technology
875 and other relevant factors and from such proposals, but not
876 limited to the terms thereof, negotiate and enter contracts with
877 one or more of the persons or firms submitting proposals. If the
878 governing authority or agency deems none of the proposals to be
879 qualified or otherwise acceptable, the request for proposals
880 process may be reinitiated. Notwithstanding any other provisions
881 of this paragraph, where a county with at least thirty-five
882 thousand (35,000) nor more than forty thousand (40,000)
883 population, according to the 1990 federal decennial census, owns
884 or operates a solid waste landfill, the governing authorities of
885 any other county or municipality may contract with the governing

886 authorities of the county owning or operating the landfill,
887 pursuant to a resolution duly adopted and spread upon the minutes
888 of each governing authority involved, for garbage or solid waste
889 collection or disposal services through contract negotiations.

890 (s) **Minority set aside authorization.** Notwithstanding
891 any provision of this section to the contrary, any agency or
892 governing authority, by order placed on its minutes, may, in its
893 discretion, set aside not more than twenty percent (20%) of its
894 anticipated annual expenditures for the purchase of commodities
895 from minority businesses; however, all such set-aside purchases
896 shall comply with all purchasing regulations promulgated by the
897 Department of Finance and Administration and shall be subject to
898 bid requirements under this section. Set-aside purchases for
899 which competitive bids are required shall be made from the lowest
900 and best minority business bidder. For the purposes of this
901 paragraph, the term "minority business" means a business which is
902 owned by a majority of persons who are United States citizens or
903 permanent resident aliens (as defined by the Immigration and
904 Naturalization Service) of the United States, and who are Asian,
905 Black, Hispanic or Native American, according to the following
906 definitions:

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

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

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

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

918 (t) **Construction punch list restriction.** The
919 architect, engineer or other representative designated by the
920 agency or governing authority that is contracting for public
921 construction or renovation may prepare and submit to the
922 contractor only one (1) preliminary punch list of items that do
923 not meet the contract requirements at the time of substantial
924 completion and one (1) final list immediately before final
925 completion and final payment.

926 (u) **Purchase authorization clarification.** Nothing in
927 this section shall be construed as authorizing any purchase not
928 authorized by law.

929 **SECTION 4.** This act shall take effect and be in force from
930 and after July 1, 2005.