

By: Representative Robinson (84th)

To: Public Utilities;
Appropriations

HOUSE BILL NO. 942

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.**

277 1. Purchases which involve an expenditure of
278 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
279 freight and shipping charges, may be made from the lowest and best
280 bidder after advertising for competitive bids once each week for
281 two (2) consecutive weeks in a regular newspaper published in the
282 county or municipality in which such agency or governing authority
283 is located.

284 2. The purchasing entity may designate the
285 method by which the bids will be received, including, but not
286 limited to, bids sealed in an envelope, bids received
287 electronically in a secure system, bids received via a reverse
288 auction, or bids received by any other method that promotes open
289 competition and has been approved by the Office of Purchasing and
290 Travel. The provisions of this part 2 of subparagraph (i) shall
291 be repealed on July 1, 2008.

292 3. The date as published for the bid opening
293 shall not be less than seven (7) working days after the last
294 published notice; however, if the purchase involves a construction
295 project in which the estimated cost is in excess of Fifteen
296 Thousand Dollars (\$15,000.00), such bids shall not be opened in
297 less than fifteen (15) working days after the last notice is
298 published and the notice for the purchase of such construction
299 shall be published once each week for two (2) consecutive weeks.
300 The notice of intention to let contracts or purchase equipment
301 shall state the time and place at which bids shall be received,
302 list the contracts to be made or types of equipment or supplies to
303 be purchased, and, if all plans and/or specifications are not
304 published, refer to the plans and/or specifications on file. If
305 there is no newspaper published in the county or municipality,
306 then such notice shall be given by posting same at the courthouse,
307 or for municipalities at the city hall, and at two (2) other
308 public places in the county or municipality, and also by
309 publication once each week for two (2) consecutive weeks in some
310 newspaper having a general circulation in the county or
311 municipality in the above provided manner. On the same date that
312 the notice is submitted to the newspaper for publication, the
313 agency or governing authority involved shall mail written notice
314 to, or provide electronic notification to the main office of the
315 Mississippi Contract Procurement Center that contains the same
316 information as that in the published notice.

317 (ii) **Bidding process amendment procedure.** If all
318 plans and/or specifications are published in the notification,
319 then the plans and/or specifications may not be amended. If all
320 plans and/or specifications are not published in the notification,
321 then amendments to the plans/specifications, bid opening date, bid
322 opening time and place may be made, provided that the agency or
323 governing authority maintains a list of all prospective bidders
324 who are known to have received a copy of the bid documents and all

325 such prospective bidders are sent copies of all amendments. This
326 notification of amendments may be made via mail, facsimile,
327 electronic mail or other generally accepted method of information
328 distribution. No addendum to bid specifications may be issued
329 within two (2) working days of the time established for the
330 receipt of bids unless such addendum also amends the bid opening
331 to a date not less than five (5) working days after the date of
332 the addendum.

333 (iii) **Filing requirement.** In all cases involving
334 governing authorities, before the notice shall be published or
335 posted, the plans or specifications for the construction or
336 equipment being sought shall be filed with the clerk of the board
337 of the governing authority. In addition to these requirements, a
338 bid file shall be established which shall indicate those vendors
339 to whom such solicitations and specifications were issued, and
340 such file shall also contain such information as is pertinent to
341 the bid.

342 (iv) **Specification restrictions.**

343 1. Specifications pertinent to such bidding
344 shall be written so as not to exclude comparable equipment of
345 domestic manufacture. However, if valid justification is
346 presented, the Department of Finance and Administration or the
347 board of a governing authority may approve a request for specific
348 equipment necessary to perform a specific job. Further, such
349 justification, when placed on the minutes of the board of a
350 governing authority, may serve as authority for that governing
351 authority to write specifications to require a specific item of
352 equipment needed to perform a specific job. In addition to these
353 requirements, from and after July 1, 1990, vendors of relocatable
354 classrooms and the specifications for the purchase of such
355 relocatable classrooms published by local school boards shall meet
356 all pertinent regulations of the State Board of Education,

357 including prior approval of such bid by the State Department of
358 Education.

359 2. Specifications for construction projects
360 may include an allowance for commodities, equipment, furniture,
361 construction materials or systems in which prospective bidders are
362 instructed to include in their bids specified amounts for such
363 items so long as the allowance items are acquired by the vendor in
364 a commercially reasonable manner and approved by the
365 agency/governing authority. Such acquisitions shall not be made
366 to circumvent the public purchasing laws.

367 (v) Agencies and governing authorities may
368 establish secure procedures by which bids may be submitted via
369 electronic means.

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

371 (i) **Decision procedure.** Purchases may be made
372 from the lowest and best bidder. In determining the lowest and
373 best bid, freight and shipping charges shall be included.
374 Life-cycle costing, total cost bids, warranties, guaranteed
375 buy-back provisions and other relevant provisions may be included
376 in the best bid calculation. All best bid procedures for state
377 agencies must be in compliance with regulations established by the
378 Department of Finance and Administration. If any governing
379 authority accepts a bid other than the lowest bid actually
380 submitted, it shall place on its minutes detailed calculations and
381 narrative summary showing that the accepted bid was determined to
382 be the lowest and best bid, including the dollar amount of the
383 accepted bid and the dollar amount of the lowest bid. No agency
384 or governing authority shall accept a bid based on items not
385 included in the specifications.

386 (ii) **Decision procedure for Certified Purchasing**
387 **Offices.** In addition to the decision procedure set forth in
388 paragraph (d)(i), Certified Purchasing Offices may also use the
389 following procedure: Purchases may be made from the bidder

390 offering the best value. In determining the best value bid,
391 freight and shipping charges shall be included. Life-cycle
392 costing, total cost bids, warranties, guaranteed buy-back
393 provisions, documented previous experience, training costs and
394 other relevant provisions may be included in the best value
395 calculation. This provision shall authorize Certified Purchasing
396 Offices to utilize a Request For Proposals (RFP) process when
397 purchasing commodities. All best value procedures for state
398 agencies must be in compliance with regulations established by the
399 Department of Finance and Administration. No agency or governing
400 authority shall accept a bid based on items or criteria not
401 included in the specifications.

402 (iii) **Construction project negotiations authority.**

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

408 (iv) Cellular telephone service. Governing
409 authorities that choose a cellular telephone service shall choose
410 the service on the basis of the lowest and best bid.

411 (e) **Lease-purchase authorization.** For the purposes of
412 this section, the term "equipment" shall mean equipment, furniture
413 and, if applicable, associated software and other applicable
414 direct costs associated with the acquisition. Any lease-purchase
415 of equipment which an agency is not required to lease-purchase
416 under the master lease-purchase program pursuant to Section
417 31-7-10 and any lease-purchase of equipment which a governing
418 authority elects to lease-purchase may be acquired by a
419 lease-purchase agreement under this paragraph (e). Lease-purchase
420 financing may also be obtained from the vendor or from a
421 third-party source after having solicited and obtained at least
422 two (2) written competitive bids, as defined in paragraph (b) of

423 this section, for such financing without advertising for such
424 bids. Solicitation for the bids for financing may occur before or
425 after acceptance of bids for the purchase of such equipment or,
426 where no such bids for purchase are required, at any time before
427 the purchase thereof. No such lease-purchase agreement shall be
428 for an annual rate of interest which is greater than the overall
429 maximum interest rate to maturity on general obligation
430 indebtedness permitted under Section 75-17-101, and the term of
431 such lease-purchase agreement shall not exceed the useful life of
432 equipment covered thereby as determined according to the upper
433 limit of the asset depreciation range (ADR) guidelines for the
434 Class Life Asset Depreciation Range System established by the
435 Internal Revenue Service pursuant to the United States Internal
436 Revenue Code and regulations thereunder as in effect on December
437 31, 1980, or comparable depreciation guidelines with respect to
438 any equipment not covered by ADR guidelines. Any lease-purchase
439 agreement entered into pursuant to this paragraph (e) may contain
440 any of the terms and conditions which a master lease-purchase
441 agreement may contain under the provisions of Section 31-7-10(5),
442 and shall contain an annual allocation dependency clause
443 substantially similar to that set forth in Section 31-7-10(8).
444 Each agency or governing authority entering into a lease-purchase
445 transaction pursuant to this paragraph (e) shall maintain with
446 respect to each such lease-purchase transaction the same
447 information as required to be maintained by the Department of
448 Finance and Administration pursuant to Section 31-7-10(13).
449 However, nothing contained in this section shall be construed to
450 permit agencies to acquire items of equipment with a total
451 acquisition cost in the aggregate of less than Ten Thousand
452 Dollars (\$10,000.00) by a single lease-purchase transaction. All
453 equipment, and the purchase thereof by any lessor, acquired by
454 lease-purchase under this paragraph and all lease-purchase
455 payments with respect thereto shall be exempt from all Mississippi

456 sales, use and ad valorem taxes. Interest paid on any
457 lease-purchase agreement under this section shall be exempt from
458 State of Mississippi income taxation.

459 (f) **Alternate bid authorization.** When necessary to
460 ensure ready availability of commodities for public works and the
461 timely completion of public projects, no more than two (2)
462 alternate bids may be accepted by a governing authority for
463 commodities. No purchases may be made through use of such
464 alternate bids procedure unless the lowest and best bidder cannot
465 deliver the commodities contained in his bid. In that event,
466 purchases of such commodities may be made from one (1) of the
467 bidders whose bid was accepted as an alternate.

468 (g) **Construction contract change authorization.** In the
469 event a determination is made by an agency or governing authority
470 after a construction contract is let that changes or modifications
471 to the original contract are necessary or would better serve the
472 purpose of the agency or the governing authority, such agency or
473 governing authority may, in its discretion, order such changes
474 pertaining to the construction that are necessary under the
475 circumstances without the necessity of further public bids;
476 provided that such change shall be made in a commercially
477 reasonable manner and shall not be made to circumvent the public
478 purchasing statutes. In addition to any other authorized person,
479 the architect or engineer hired by an agency or governing
480 authority with respect to any public construction contract shall
481 have the authority, when granted by an agency or governing
482 authority, to authorize changes or modifications to the original
483 contract without the necessity of prior approval of the agency or
484 governing authority when any such change or modification is less
485 than one percent (1%) of the total contract amount. The agency or
486 governing authority may limit the number, manner or frequency of
487 such emergency changes or modifications.

488 (h) **Petroleum purchase alternative.** In addition to
489 other methods of purchasing authorized in this chapter, when any
490 agency or governing authority shall have a need for gas, diesel
491 fuel, oils and/or other petroleum products in excess of the amount
492 set forth in paragraph (a) of this section, such agency or
493 governing authority may purchase the commodity after having
494 solicited and obtained at least two (2) competitive written bids,
495 as defined in paragraph (b) of this section. If two (2)
496 competitive written bids are not obtained, the entity shall comply
497 with the procedures set forth in paragraph (c) of this section.
498 In the event any agency or governing authority shall have
499 advertised for bids for the purchase of gas, diesel fuel, oils and
500 other petroleum products and coal and no acceptable bids can be
501 obtained, such agency or governing authority is authorized and
502 directed to enter into any negotiations necessary to secure the
503 lowest and best contract available for the purchase of such
504 commodities.

505 (i) **Road construction petroleum products price**
506 **adjustment clause authorization.** Any agency or governing
507 authority authorized to enter into contracts for the construction,
508 maintenance, surfacing or repair of highways, roads or streets,
509 may include in its bid proposal and contract documents a price
510 adjustment clause with relation to the cost to the contractor,
511 including taxes, based upon an industry-wide cost index, of
512 petroleum products including asphalt used in the performance or
513 execution of the contract or in the production or manufacture of
514 materials for use in such performance. Such industry-wide index
515 shall be established and published monthly by the Mississippi
516 Department of Transportation with a copy thereof to be mailed,
517 upon request, to the clerks of the governing authority of each
518 municipality and the clerks of each board of supervisors
519 throughout the state. The price adjustment clause shall be based
520 on the cost of such petroleum products only and shall not include

521 any additional profit or overhead as part of the adjustment. The
522 bid proposals or document contract shall contain the basis and
523 methods of adjusting unit prices for the change in the cost of
524 such petroleum products.

525 (j) **State agency emergency purchase procedure.** If the
526 governing board or the executive head, or his designee, of any
527 agency of the state shall determine that an emergency exists in
528 regard to the purchase of any commodities or repair contracts, so
529 that the delay incident to giving opportunity for competitive
530 bidding would be detrimental to the interests of the state, then
531 the provisions herein for competitive bidding shall not apply and
532 the head of such agency shall be authorized to make the purchase
533 or repair. Total purchases so made shall only be for the purpose
534 of meeting needs created by the emergency situation. In the event
535 such executive head is responsible to an agency board, at the
536 meeting next following the emergency purchase, documentation of
537 the purchase, including a description of the commodity purchased,
538 the purchase price thereof and the nature of the emergency shall
539 be presented to the board and placed on the minutes of the board
540 of such agency. The head of such agency, or his designee, shall,
541 at the earliest possible date following such emergency purchase,
542 file with the Department of Finance and Administration (i) a
543 statement explaining the conditions and circumstances of the
544 emergency, which shall include a detailed description of the
545 events leading up to the situation and the negative impact to the
546 entity if the purchase is made following the statutory
547 requirements set forth in paragraph (a), (b) or (c) of this
548 section, and (ii) a certified copy of the appropriate minutes of
549 the board of such agency, if applicable. On or before September 1
550 of each year, the State Auditor shall prepare and deliver to the
551 Senate Fees, Salaries and Administration Committee, the House Fees
552 and Salaries of Public Officers Committee and the Joint
553 Legislative Budget Committee a report containing a list of all

554 state agency emergency purchases and supporting documentation for
555 each emergency purchase.

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

557 If the governing authority, or the governing authority acting
558 through its designee, shall determine that an emergency exists in
559 regard to the purchase of any commodities or repair contracts, so
560 that the delay incident to giving opportunity for competitive
561 bidding would be detrimental to the interest of the governing
562 authority, then the provisions herein for competitive bidding
563 shall not apply and any officer or agent of such governing
564 authority having general or special authority therefor in making
565 such purchase or repair shall approve the bill presented therefor,
566 and he shall certify in writing thereon from whom such purchase
567 was made, or with whom such a repair contract was made. At the
568 board meeting next following the emergency purchase or repair
569 contract, documentation of the purchase or repair contract,
570 including a description of the commodity purchased, the price
571 thereof and the nature of the emergency shall be presented to the
572 board and shall be placed on the minutes of the board of such
573 governing authority.

574 (l) **Hospital purchase, lease-purchase and lease**
575 **authorization.**

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

581 (ii) In addition to the authority granted in
582 subparagraph (i) of this paragraph (l), the commissioners or board
583 of trustees is authorized to enter into contracts for the lease of
584 equipment or services, or both, which it considers necessary for
585 the proper care of patients if, in its opinion, it is not
586 financially feasible to purchase the necessary equipment or

587 services. Any such contract for the lease of equipment or
588 services executed by the commissioners or board shall not exceed a
589 maximum of five (5) years' duration and shall include a
590 cancellation clause based on unavailability of funds. If such
591 cancellation clause is exercised, there shall be no further
592 liability on the part of the lessee. Any such contract for the
593 lease of equipment or services executed on behalf of the
594 commissioners or board that complies with the provisions of this
595 subparagraph (ii) shall be excepted from the bid requirements set
596 forth in this section.

597 (m) **Exceptions from bidding requirements.** Excepted
598 from bid requirements are:

599 (i) **Purchasing agreements approved by department.**
600 Purchasing agreements, contracts and maximum price regulations
601 executed or approved by the Department of Finance and
602 Administration.

603 (ii) **Outside equipment repairs.** Repairs to
604 equipment, when such repairs are made by repair facilities in the
605 private sector; however, engines, transmissions, rear axles and/or
606 other such components shall not be included in this exemption when
607 replaced as a complete unit instead of being repaired and the need
608 for such total component replacement is known before disassembly
609 of the component; however, invoices identifying the equipment,
610 specific repairs made, parts identified by number and name,
611 supplies used in such repairs, and the number of hours of labor
612 and costs therefor shall be required for the payment for such
613 repairs.

614 (iii) **In-house equipment repairs.** Purchases of
615 parts for repairs to equipment, when such repairs are made by
616 personnel of the agency or governing authority; however, entire
617 assemblies, such as engines or transmissions, shall not be
618 included in this exemption when the entire assembly is being
619 replaced instead of being repaired.

620 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
621 of gravel or fill dirt which are to be removed and transported by
622 the purchaser.

623 (v) **Governmental equipment auctions.** Motor
624 vehicles or other equipment purchased from a federal agency or
625 authority, another governing authority or state agency of the
626 State of Mississippi, or any governing authority or state agency
627 of another state at a public auction held for the purpose of
628 disposing of such vehicles or other equipment. Any purchase by a
629 governing authority under the exemption authorized by this
630 subparagraph (v) shall require advance authorization spread upon
631 the minutes of the governing authority to include the listing of
632 the item or items authorized to be purchased and the maximum bid
633 authorized to be paid for each item or items.

634 (vi) **Intergovernmental sales and transfers.**
635 Purchases, sales, transfers or trades by governing authorities or
636 state agencies when such purchases, sales, transfers or trades are
637 made by a private treaty agreement or through means of
638 negotiation, from any federal agency or authority, another
639 governing authority or state agency of the State of Mississippi,
640 or any state agency or governing authority of another state.
641 Nothing in this section shall permit such purchases through public
642 auction except as provided for in subparagraph (v) of this
643 section. It is the intent of this section to allow governmental
644 entities to dispose of and/or purchase commodities from other
645 governmental entities at a price that is agreed to by both
646 parties. This shall allow for purchases and/or sales at prices
647 which may be determined to be below the market value if the
648 selling entity determines that the sale at below market value is
649 in the best interest of the taxpayers of the state. Governing
650 authorities shall place the terms of the agreement and any
651 justification on the minutes, and state agencies shall obtain

652 approval from the Department of Finance and Administration, prior
653 to releasing or taking possession of the commodities.

654 (vii) **Perishable supplies or food.** Perishable
655 supplies or food purchased for use in connection with hospitals,
656 the school lunch programs, homemaking programs and for the feeding
657 of county or municipal prisoners.

658 (viii) **Single source items.** Noncompetitive items
659 available from one (1) source only. In connection with the
660 purchase of noncompetitive items only available from one (1)
661 source, a certification of the conditions and circumstances
662 requiring the purchase shall be filed by the agency with the
663 Department of Finance and Administration and by the governing
664 authority with the board of the governing authority. Upon receipt
665 of that certification the Department of Finance and Administration
666 or the board of the governing authority, as the case may be, may,
667 in writing, authorize the purchase, which authority shall be noted
668 on the minutes of the body at the next regular meeting thereafter.
669 In those situations, a governing authority is not required to
670 obtain the approval of the Department of Finance and
671 Administration.

672 (ix) **Waste disposal facility construction**
673 **contracts.** Construction of incinerators and other facilities for
674 disposal of solid wastes in which products either generated
675 therein, such as steam, or recovered therefrom, such as materials
676 for recycling, are to be sold or otherwise disposed of; however,
677 in constructing such facilities, a governing authority or agency
678 shall publicly issue requests for proposals, advertised for in the
679 same manner as provided herein for seeking bids for public
680 construction projects, concerning the design, construction,
681 ownership, operation and/or maintenance of such facilities,
682 wherein such requests for proposals when issued shall contain
683 terms and conditions relating to price, financial responsibility,
684 technology, environmental compatibility, legal responsibilities

685 and such other matters as are determined by the governing
686 authority or agency to be appropriate for inclusion; and after
687 responses to the request for proposals have been duly received,
688 the governing authority or agency may select the most qualified
689 proposal or proposals on the basis of price, technology and other
690 relevant factors and from such proposals, but not limited to the
691 terms thereof, negotiate and enter contracts with one or more of
692 the persons or firms submitting proposals.

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

696 (xi) **Information technology products.** Purchases
697 of information technology products made by governing authorities
698 under the provisions of purchase schedules, or contracts executed
699 or approved by the Mississippi Department of Information
700 Technology Services and designated for use by governing
701 authorities.

702 (xii) **Energy efficiency services and equipment.**
703 Energy efficiency services and equipment acquired by school
704 districts, community and junior colleges, institutions of higher
705 learning and state agencies or other applicable governmental
706 entities on a shared-savings, lease or lease-purchase basis
707 pursuant to Section 31-7-14.

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

712 (xiv) **Library books and other reference materials.**
713 Purchases by libraries or for libraries of books and periodicals;
714 processed film, video cassette tapes, filmstrips and slides;
715 recorded audio tapes, cassettes and diskettes; and any such items
716 as would be used for teaching, research or other information
717 distribution; however, equipment such as projectors, recorders,

718 audio or video equipment, and monitor televisions are not exempt
719 under this subparagraph.

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

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

726 (xvii) **Multichannel interactive video systems.**
727 From and after July 1, 1990, contracts by Mississippi Authority
728 for Educational Television with any private educational
729 institution or private nonprofit organization whose purposes are
730 educational in regard to the construction, purchase, lease or
731 lease-purchase of facilities and equipment and the employment of
732 personnel for providing multichannel interactive video systems
733 (ITSF) in the school districts of this state.

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

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

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

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

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

752 (xxii) **Garbage, solid waste and sewage contracts.**
753 Contracts for garbage collection or disposal, contracts for solid
754 waste collection or disposal and contracts for sewage collection
755 or disposal.

756 (xxiii) **Municipal water tank maintenance**
757 **contracts.** Professional maintenance program contracts for the
758 repair or maintenance of municipal water tanks, which provide
759 professional services needed to maintain municipal water storage
760 tanks for a fixed annual fee for a duration of two (2) or more
761 years.

762 (xxiv) **Purchases of Mississippi Industries for the**
763 **Blind products.** Purchases made by state agencies or governing
764 authorities involving any item that is manufactured, processed or
765 produced by the Mississippi Industries for the Blind.

766 (xxv) **Purchases of state-adopted textbooks.**
767 Purchases of state-adopted textbooks by public school districts.

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

771 (xxvii) **Used heavy or specialized machinery or**
772 **equipment for installation of soil and water conservation**
773 **practices purchased at auction.** Used heavy or specialized
774 machinery or equipment used for the installation and
775 implementation of soil and water conservation practices or
776 measures purchased subject to the restrictions provided in
777 Sections 69-27-331 through 69-27-341. Any purchase by the State
778 Soil and Water Conservation Commission under the exemption
779 authorized by this subparagraph shall require advance
780 authorization spread upon the minutes of the commission to include
781 the listing of the item or items authorized to be purchased and
782 the maximum bid authorized to be paid for each item or items.

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

786 (xxix) **Purchases made pursuant to qualified**
787 **cooperative purchasing agreements.** Purchases made by certified
788 purchasing offices of state agencies or governing authorities
789 under cooperative purchasing agreements previously approved by the
790 Office of Purchasing and Travel and established by or for any
791 municipality, county, parish or state government or the federal
792 government, provided that the notification to potential
793 contractors includes a clause that sets forth the availability of
794 the cooperative purchasing agreement to other governmental
795 entities. Such purchases shall only be made if the use of the
796 cooperative purchasing agreements is determined to be in the best
797 interest of the governmental entity.

798 (xxx) **School yearbooks.** Purchases of school
799 yearbooks by state agencies or governing authorities; provided,
800 however, that state agencies and governing authorities shall use
801 for these purchases the RFP process as set forth in the
802 Mississippi Procurement Manual adopted by the Office of Purchasing
803 and Travel.

804 (xxxi) **Design-build method or the design-build**
805 **bridging method of contracting.** Contracts entered into under the
806 provisions of Section 31-11-3(9).

807 (n) **Term contract authorization.** All contracts for the
808 purchase of:

809 (i) All contracts for the purchase of commodities,
810 equipment and public construction (including, but not limited to,
811 repair and maintenance), may be let for periods of not more than
812 sixty (60) months in advance, subject to applicable statutory
813 provisions prohibiting the letting of contracts during specified
814 periods near the end of terms of office. Term contracts for a
815 period exceeding twenty-four (24) months shall also be subject to

816 ratification or cancellation by governing authority boards taking
817 office subsequent to the governing authority board entering the
818 contract.

819 (ii) Bid proposals and contracts may include price
820 adjustment clauses with relation to the cost to the contractor
821 based upon a nationally published industry-wide or nationally
822 published and recognized cost index. The cost index used in a
823 price adjustment clause shall be determined by the Department of
824 Finance and Administration for the state agencies and by the
825 governing board for governing authorities. The bid proposal and
826 contract documents utilizing a price adjustment clause shall
827 contain the basis and method of adjusting unit prices for the
828 change in the cost of such commodities, equipment and public
829 construction.

830 (o) **Purchase law violation prohibition and vendor**
831 **penalty.** No contract or purchase as herein authorized shall be
832 made for the purpose of circumventing the provisions of this
833 section requiring competitive bids, nor shall it be lawful for any
834 person or concern to submit individual invoices for amounts within
835 those authorized for a contract or purchase where the actual value
836 of the contract or commodity purchased exceeds the authorized
837 amount and the invoices therefor are split so as to appear to be
838 authorized as purchases for which competitive bids are not
839 required. Submission of such invoices shall constitute a
840 misdemeanor punishable by a fine of not less than Five Hundred
841 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
842 or by imprisonment for thirty (30) days in the county jail, or
843 both such fine and imprisonment. In addition, the claim or claims
844 submitted shall be forfeited.

845 (p) **Electrical utility petroleum-based equipment**
846 **purchase procedure.** When in response to a proper advertisement
847 therefor, no bid firm as to price is submitted to an electric
848 utility for power transformers, distribution transformers, power

849 breakers, reclosers or other articles containing a petroleum
850 product, the electric utility may accept the lowest and best bid
851 therefor although the price is not firm.

852 (q) **Fuel management system bidding procedure.** Any
853 governing authority or agency of the state shall, before
854 contracting for the services and products of a fuel management or
855 fuel access system, enter into negotiations with not fewer than
856 two (2) sellers of fuel management or fuel access systems for
857 competitive written bids to provide the services and products for
858 the systems. In the event that the governing authority or agency
859 cannot locate two (2) sellers of such systems or cannot obtain
860 bids from two (2) sellers of such systems, it shall show proof
861 that it made a diligent, good-faith effort to locate and negotiate
862 with two (2) sellers of such systems. Such proof shall include,
863 but not be limited to, publications of a request for proposals and
864 letters soliciting negotiations and bids. For purposes of this
865 paragraph (q), a fuel management or fuel access system is an
866 automated system of acquiring fuel for vehicles as well as
867 management reports detailing fuel use by vehicles and drivers, and
868 the term "competitive written bid" shall have the meaning as
869 defined in paragraph (b) of this section. Governing authorities
870 and agencies shall be exempt from this process when contracting
871 for the services and products of a fuel management or fuel access
872 systems under the terms of a state contract established by the
873 Office of Purchasing and Travel.

874 (r) **Solid waste contract proposal procedure.** Before
875 entering into any contract for garbage collection or disposal,
876 contract for solid waste collection or disposal or contract for
877 sewage collection or disposal, which involves an expenditure of
878 more than Fifty Thousand Dollars (\$50,000.00), a governing
879 authority or agency shall issue publicly a request for proposals
880 concerning the specifications for such services which shall be
881 advertised for in the same manner as provided in this section for

882 seeking bids for purchases which involve an expenditure of more
883 than the amount provided in paragraph (c) of this section. Any
884 request for proposals when issued shall contain terms and
885 conditions relating to price, financial responsibility,
886 technology, legal responsibilities and other relevant factors as
887 are determined by the governing authority or agency to be
888 appropriate for inclusion; all factors determined relevant by the
889 governing authority or agency or required by this paragraph (r)
890 shall be duly included in the advertisement to elicit proposals.
891 After responses to the request for proposals have been duly
892 received, the governing authority or agency shall select the most
893 qualified proposal or proposals on the basis of price, technology
894 and other relevant factors and from such proposals, but not
895 limited to the terms thereof, negotiate and enter contracts with
896 one or more of the persons or firms submitting proposals. If the
897 governing authority or agency deems none of the proposals to be
898 qualified or otherwise acceptable, the request for proposals
899 process may be reinitiated. Notwithstanding any other provisions
900 of this paragraph, where a county with at least thirty-five
901 thousand (35,000) nor more than forty thousand (40,000)
902 population, according to the 1990 federal decennial census, owns
903 or operates a solid waste landfill, the governing authorities of
904 any other county or municipality may contract with the governing
905 authorities of the county owning or operating the landfill,
906 pursuant to a resolution duly adopted and spread upon the minutes
907 of each governing authority involved, for garbage or solid waste
908 collection or disposal services through contract negotiations.

909 (s) **Minority set-aside authorization.** Notwithstanding
910 any provision of this section to the contrary, any agency or
911 governing authority, by order placed on its minutes, may, in its
912 discretion, set aside not more than twenty percent (20%) of its
913 anticipated annual expenditures for the purchase of commodities
914 from minority businesses; however, all such set-aside purchases

915 shall comply with all purchasing regulations promulgated by the
916 Department of Finance and Administration and shall be subject to
917 bid requirements under this section. Set-aside purchases for
918 which competitive bids are required shall be made from the lowest
919 and best minority business bidder. For the purposes of this
920 paragraph, the term "minority business" means a business which is
921 owned by a majority of persons who are United States citizens or
922 permanent resident aliens (as defined by the Immigration and
923 Naturalization Service) of the United States, and who are Asian,
924 Black, Hispanic or Native American, according to the following
925 definitions:

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

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

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

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

937 (t) **Construction punch list restriction.** The
938 architect, engineer or other representative designated by the
939 agency or governing authority that is contracting for public
940 construction or renovation may prepare and submit to the
941 contractor only one (1) preliminary punch list of items that do
942 not meet the contract requirements at the time of substantial
943 completion and one (1) final list immediately before final
944 completion and final payment.

945 (u) **Purchase authorization clarification.** Nothing in
946 this section shall be construed as authorizing any purchase not
947 authorized by law.

948 **SECTION 4.** This act shall take effect and be in force from
949 and after July 1, 2007.