

By: Representative Harness

To: Universities and
Colleges; Appropriations

HOUSE BILL NO. 351

1 AN ACT TO AUTHORIZE THE BOARD OF TRUSTEES OF STATE
2 INSTITUTIONS OF HIGHER LEARNING, IN COLLABORATION WITH THE
3 MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES, TO
4 ESTABLISH A PROGRAM TO PROVIDE DEVICES AND CONNECTIVITY TECHNOLOGY
5 TO STUDENTS LACKING SUCH TECHNOLOGY WHENEVER AN INSTITUTION OF
6 HIGHER LEARNING TRANSITIONS IN-PERSON CLASSES TO REMOTE LEARNING
7 DUE TO A PUBLIC HEALTH EMERGENCY OR OTHER STATE OF EMERGENCY; TO
8 AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A
9 PURCHASE UNDER THE PROGRAM TO FULFILL TECHNOLOGY NEEDS
10 EXPEDITIOUSLY IS DEEMED AN EMERGENCY PURCHASE FOR PURPOSES OF THE
11 PROCUREMENT AND COMPETITIVE BIDDING LAW; TO BRING FORWARD SECTION
12 25-53-191, MISSISSIPPI CODE OF 1972, WHICH AUTHORIZES THE
13 DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES TO ISSUE WIRELESS
14 COMMUNICATION DEVICES TO STATE EMPLOYEES, FOR PURPOSES OF POSSIBLE
15 AMENDMENT; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** (1) The Board of Trustees of State Institutions
18 of Higher Learning, in collaboration with the Mississippi
19 Department of Information Technology Services, may establish a
20 program to provide devices and other technology, including
21 technology related to connectivity and online access, necessary
22 for students to engage in remote learning whenever a state
23 institution of higher learning suspends on-campus activities due
24 to a declared public health crisis or an emergency in which the



25 Governor has declared a disaster or state of emergency under the
26 laws of this state or the President of the United States has
27 declared an emergency or major disaster to exist in this state.

28 (2) If a state institution of higher learning, in its
29 determination or pursuant to a mandatory order issued by a public
30 official or governing body, transitions all in-person classes on
31 the institution's campuses to remote instruction in response to a
32 public health crisis or state of emergency, the institution may
33 expend such funds as may be necessary to procure devices and
34 related technology to ensure that any student who personally does
35 not have access to the necessary technology is able to continue
36 the student's classes during the period that instruction is
37 delivered via distance learning methods.

38 (3) A student desiring technology devices or connectivity
39 and online access under this section must demonstrate to the
40 satisfaction of the state institution of higher learning in which
41 the student is enrolled that the student does not possess the
42 requisite technology and that without assistance, the student will
43 not be able to continue in courses that have transitioned to
44 distance learning.

45 (4) The following are eligible expenses that may be incurred
46 by a state institution of higher learning under this section:

47 (a) Costs for laptop computers, tablets, assisted
48 learning devices or other devices that can be used personally by a
49 student in the student's home;



50 (b) Costs for the purchase and installation of hardware
51 to provide for or enhance the Internet connectivity of a student,
52 including the cost of establishing personal or centrally located
53 hotspots; and

54 (c) Costs associated with providing technical
55 assistance related to the use of devices, connectivity and other
56 relevant components of distance learning to students.

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

59 31-7-13. All agencies and governing authorities shall
60 purchase their commodities and printing; contract for garbage
61 collection or disposal; contract for solid waste collection or
62 disposal; contract for sewage collection or disposal; contract for
63 public construction; and contract for rentals as herein provided.

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

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

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

72 (b) **Bidding procedure for purchases over \$5,000.00 but**
73 **not over \$75,000.00.** Purchases which involve an expenditure of
74 more than Five Thousand Dollars (\$5,000.00) but not more than



75 Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight
76 and shipping charges, may be made from the lowest and best bidder
77 without publishing or posting advertisement for bids, provided at
78 least two (2) competitive written bids have been obtained. Any
79 state agency or community/junior college purchasing commodities or
80 procuring construction pursuant to this paragraph (b) may
81 authorize its purchasing agent, or his designee, to accept the
82 lowest competitive written bid under Seventy-five Thousand Dollars
83 (\$75,000.00). Any governing authority purchasing commodities
84 pursuant to this paragraph (b) may authorize its purchasing agent,
85 or his designee, with regard to governing authorities other than
86 counties, or its purchase clerk, or his designee, with regard to
87 counties, to accept the lowest and best competitive written bid.
88 Such authorization shall be made in writing by the governing
89 authority and shall be maintained on file in the primary office of
90 the agency and recorded in the official minutes of the governing
91 authority, as appropriate. The purchasing agent or the purchase
92 clerk, or his designee, as the case may be, and not the governing
93 authority, shall be liable for any penalties and/or damages as may
94 be imposed by law for any act or omission of the purchasing agent
95 or purchase clerk, or his designee, constituting a violation of
96 law in accepting any bid without approval by the governing
97 authority. The term "competitive written bid" shall mean a bid
98 submitted on a bid form furnished by the buying agency or
99 governing authority and signed by authorized personnel



100 representing the vendor, or a bid submitted on a vendor's
101 letterhead or identifiable bid form and signed by authorized
102 personnel representing the vendor. "Competitive" shall mean that
103 the bids are developed based upon comparable identification of the
104 needs and are developed independently and without knowledge of
105 other bids or prospective bids. Any bid item for construction in
106 excess of Five Thousand Dollars (\$5,000.00) shall be broken down
107 by components to provide detail of component description and
108 pricing. These details shall be submitted with the written bids
109 and become part of the bid evaluation criteria. Bids may be
110 submitted by facsimile, electronic mail or other generally
111 accepted method of information distribution. Bids submitted by
112 electronic transmission shall not require the signature of the
113 vendor's representative unless required by agencies or governing
114 authorities.

115 (c) **Bidding procedure for purchases over \$75,000.00.**

116 (i) **Publication requirement.**

117 1. Purchases which involve an expenditure of
118 more than Seventy-five Thousand Dollars (\$75,000.00), exclusive of
119 freight and shipping charges, may be made from the lowest and best
120 bidder after advertising for competitive bids once each week for
121 two (2) consecutive weeks in a regular newspaper published in the
122 county or municipality in which such agency or governing authority
123 is located. However, all American Recovery and Reinvestment Act
124 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)



125 shall be bid. All references to American Recovery and
126 Reinvestment Act projects in this section shall not apply to
127 programs identified in Division B of the American Recovery and
128 Reinvestment Act.

129 2. Reverse auctions shall be the primary
130 method for receiving bids during the bidding process. If a
131 purchasing entity determines that a reverse auction is not in the
132 best interest of the state, then that determination must be
133 approved by the Public Procurement Review Board. The purchasing
134 entity shall submit a detailed explanation of why a reverse
135 auction would not be in the best interest of the state and present
136 an alternative process to be approved by the Public Procurement
137 Review Board. If the Public Procurement Review Board authorizes
138 the purchasing entity to solicit bids with a method other than
139 reverse auction, then the purchasing entity may designate the
140 other methods by which the bids will be received, including, but
141 not limited to, bids sealed in an envelope, bids received
142 electronically in a secure system, or bids received by any other
143 method that promotes open competition and has been approved by the
144 Office of Purchasing and Travel. However, reverse auction shall
145 not be used for any public contract for design, construction,
146 improvement, repair or remodeling of any public facilities,
147 including the purchase of materials, supplies, equipment or goods
148 for same and including buildings, roads and bridges. The Public
149 Procurement Review Board must approve any contract entered into by



150 alternative process. The provisions of this item 2 shall not
151 apply to the individual state institutions of higher learning.
152 The provisions of this item 2 requiring reverse auction as the
153 primary method of receiving bids shall not apply to term contract
154 purchases as provided in paragraph (n) of this section; however, a
155 purchasing entity may, in its discretion, utilize reverse auction
156 for such purchases. The provisions of this item 2 shall not apply
157 to individual public schools, including public charter schools and
158 public school districts, only when purchasing copyrighted
159 educational supplemental materials and software as a service
160 product. For such purchases, a local school board may authorize a
161 purchasing entity in its jurisdiction to use a Request for
162 Qualifications which promotes open competition and meets the
163 requirements of the Office of Purchasing and Travel.

164 3. The date as published for the bid opening
165 shall not be less than seven (7) working days after the last
166 published notice; however, if the purchase involves a construction
167 project in which the estimated cost is in excess of Seventy-five
168 Thousand Dollars (\$75,000.00), such bids shall not be opened in
169 less than fifteen (15) working days after the last notice is
170 published and the notice for the purchase of such construction
171 shall be published once each week for two (2) consecutive weeks.
172 However, all American Recovery and Reinvestment Act projects in
173 excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid.
174 For any projects in excess of Twenty-five Thousand Dollars



175 (\$25,000.00) under the American Recovery and Reinvestment Act,
176 publication shall be made one (1) time and the bid opening for
177 construction projects shall not be less than ten (10) working days
178 after the date of the published notice. The notice of intention
179 to let contracts or purchase equipment shall state the time and
180 place at which bids shall be received, list the contracts to be
181 made or types of equipment or supplies to be purchased, and, if
182 all plans and/or specifications are not published, refer to the
183 plans and/or specifications on file. If there is no newspaper
184 published in the county or municipality, then such notice shall be
185 given by posting same at the courthouse, or for municipalities at
186 the city hall, and at two (2) other public places in the county or
187 municipality, and also by publication once each week for two (2)
188 consecutive weeks in some newspaper having a general circulation
189 in the county or municipality in the above-provided manner. On
190 the same date that the notice is submitted to the newspaper for
191 publication, the agency or governing authority involved shall mail
192 written notice to, or provide electronic notification to the main
193 office of the Mississippi Procurement Technical Assistance Program
194 under the Mississippi Development Authority that contains the same
195 information as that in the published notice. Submissions received
196 by the Mississippi Procurement Technical Assistance Program for
197 projects funded by the American Recovery and Reinvestment Act
198 shall be displayed on a separate and unique Internet web page
199 accessible to the public and maintained by the Mississippi



200 Development Authority for the Mississippi Procurement Technical
201 Assistance Program. Those American Recovery and Reinvestment Act
202 related submissions shall be publicly posted within twenty-four
203 (24) hours of receipt by the Mississippi Development Authority and
204 the bid opening shall not occur until the submission has been
205 posted for ten (10) consecutive days. The Department of Finance
206 and Administration shall maintain information regarding contracts
207 and other expenditures from the American Recovery and Reinvestment
208 Act, on a unique Internet web page accessible to the public. The
209 Department of Finance and Administration shall promulgate rules
210 regarding format, content and deadlines, unless otherwise
211 specified by law, of the posting of award notices, contract
212 execution and subsequent amendments, links to the contract
213 documents, expenditures against the awarded contracts and general
214 expenditures of funds from the American Recovery and Reinvestment
215 Act. Within one (1) working day of the contract award, the agency
216 or governing authority shall post to the designated web page
217 maintained by the Department of Finance and Administration, notice
218 of the award, including the award recipient, the contract amount,
219 and a brief summary of the contract in accordance with rules
220 promulgated by the department. Within one (1) working day of the
221 contract execution, the agency or governing authority shall post
222 to the designated web page maintained by the Department of Finance
223 and Administration a summary of the executed contract and make a
224 copy of the appropriately redacted contract documents available



225 for linking to the designated web page in accordance with the
226 rules promulgated by the department. The information provided by
227 the agency or governing authority shall be posted to the web page
228 for the duration of the American Recovery and Reinvestment Act
229 funding or until the project is completed, whichever is longer.

230 (ii) **Bidding process amendment procedure.** If all
231 plans and/or specifications are published in the notification,
232 then the plans and/or specifications may not be amended. If all
233 plans and/or specifications are not published in the notification,
234 then amendments to the plans/specifications, bid opening date, bid
235 opening time and place may be made, provided that the agency or
236 governing authority maintains a list of all prospective bidders
237 who are known to have received a copy of the bid documents and all
238 such prospective bidders are sent copies of all amendments. This
239 notification of amendments may be made via mail, facsimile,
240 electronic mail or other generally accepted method of information
241 distribution. No addendum to bid specifications may be issued
242 within two (2) working days of the time established for the
243 receipt of bids unless such addendum also amends the bid opening
244 to a date not less than five (5) working days after the date of
245 the addendum.

246 (iii) **Filing requirement.** In all cases involving
247 governing authorities, before the notice shall be published or
248 posted, the plans or specifications for the construction or
249 equipment being sought shall be filed with the clerk of the board



250 of the governing authority. In addition to these requirements, a
251 bid file shall be established which shall indicate those vendors
252 to whom such solicitations and specifications were issued, and
253 such file shall also contain such information as is pertinent to
254 the bid.

255 (iv) **Specification restrictions.**

256 1. Specifications pertinent to such bidding
257 shall be written so as not to exclude comparable equipment of
258 domestic manufacture. However, if valid justification is
259 presented, the Department of Finance and Administration or the
260 board of a governing authority may approve a request for specific
261 equipment necessary to perform a specific job. Further, such
262 justification, when placed on the minutes of the board of a
263 governing authority, may serve as authority for that governing
264 authority to write specifications to require a specific item of
265 equipment needed to perform a specific job. In addition to these
266 requirements, from and after July 1, 1990, vendors of relocatable
267 classrooms and the specifications for the purchase of such
268 relocatable classrooms published by local school boards shall meet
269 all pertinent regulations of the State Board of Education,
270 including prior approval of such bid by the State Department of
271 Education.

272 2. Specifications for construction projects
273 may include an allowance for commodities, equipment, furniture,
274 construction materials or systems in which prospective bidders are



275 instructed to include in their bids specified amounts for such
276 items so long as the allowance items are acquired by the vendor in
277 a commercially reasonable manner and approved by the
278 agency/governing authority. Such acquisitions shall not be made
279 to circumvent the public purchasing laws.

280 (v) **Electronic bids.** Agencies and governing
281 authorities shall provide a secure electronic interactive system
282 for the submittal of bids requiring competitive bidding that shall
283 be an additional bidding option for those bidders who choose to
284 submit their bids electronically. The Department of Finance and
285 Administration shall provide, by regulation, the standards that
286 agencies must follow when receiving electronic bids. Agencies and
287 governing authorities shall make the appropriate provisions
288 necessary to accept electronic bids from those bidders who choose
289 to submit their bids electronically for all purchases requiring
290 competitive bidding under this section. Any special condition or
291 requirement for the electronic bid submission shall be specified
292 in the advertisement for bids required by this section. Agencies
293 or governing authorities that are currently without available high
294 speed Internet access shall be exempt from the requirement of this
295 subparagraph (v) until such time that high speed Internet access
296 becomes available. Any county having a population of less than
297 twenty thousand (20,000) shall be exempt from the provisions of
298 this subparagraph (v). Any municipality having a population of
299 less than ten thousand (10,000) shall be exempt from the



300 provisions of this subparagraph (v). The provisions of this
301 subparagraph (v) shall not require any bidder to submit bids
302 electronically. When construction bids are submitted
303 electronically, the requirement for including a certificate of
304 responsibility, or a statement that the bid enclosed does not
305 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
306 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
307 deemed in compliance with by including same as an attachment with
308 the electronic bid submittal.

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

310 (i) **Decision procedure.** Purchases may be made
311 from the lowest and best bidder. In determining the lowest and
312 best bid, freight and shipping charges shall be included.
313 Life-cycle costing, total cost bids, warranties, guaranteed
314 buy-back provisions and other relevant provisions may be included
315 in the best bid calculation. All best bid procedures for state
316 agencies must be in compliance with regulations established by the
317 Department of Finance and Administration. If any governing
318 authority accepts a bid other than the lowest bid actually
319 submitted, it shall place on its minutes detailed calculations and
320 narrative summary showing that the accepted bid was determined to
321 be the lowest and best bid, including the dollar amount of the
322 accepted bid and the dollar amount of the lowest bid. No agency
323 or governing authority shall accept a bid based on items not
324 included in the specifications.



325 (ii) **Decision procedure for Certified Purchasing**
326 **Offices.** In addition to the decision procedure set forth in
327 subparagraph (i) of this paragraph (d), Certified Purchasing
328 Offices may also use the following procedure: Purchases may be
329 made from the bidder offering the best value. In determining the
330 best value bid, freight and shipping charges shall be included.
331 Life-cycle costing, total cost bids, warranties, guaranteed
332 buy-back provisions, documented previous experience, training
333 costs and other relevant provisions, including, but not limited
334 to, a bidder having a local office and inventory located within
335 the jurisdiction of the governing authority, may be included in
336 the best value calculation. This provision shall authorize
337 Certified Purchasing Offices to utilize a Request For Proposals
338 (RFP) process when purchasing commodities. All best value
339 procedures for state agencies must be in compliance with
340 regulations established by the Department of Finance and
341 Administration. No agency or governing authority shall accept a
342 bid based on items or criteria not included in the specifications.

343 (iii) **Decision procedure for Mississippi**
344 **Landmarks.** In addition to the decision procedure set forth in
345 subparagraph (i) of this paragraph (d), where purchase involves
346 renovation, restoration, or both, of the State Capitol Building or
347 any other historical building designated for at least five (5)
348 years as a Mississippi Landmark by the Board of Trustees of the
349 Department of Archives and History under the authority of Sections



350 39-7-7 and 39-7-11, the agency or governing authority may use the
351 following procedure: Purchases may be made from the lowest and
352 best prequalified bidder. Prequalification of bidders shall be
353 determined not less than fifteen (15) working days before the
354 first published notice of bid opening. Prequalification criteria
355 shall be limited to bidder's knowledge and experience in
356 historical restoration, preservation and renovation. In
357 determining the lowest and best bid, freight and shipping charges
358 shall be included. Life-cycle costing, total cost bids,
359 warranties, guaranteed buy-back provisions and other relevant
360 provisions may be included in the best bid calculation. All best
361 bid and prequalification procedures for state agencies must be in
362 compliance with regulations established by the Department of
363 Finance and Administration. If any governing authority accepts a
364 bid other than the lowest bid actually submitted, it shall place
365 on its minutes detailed calculations and narrative summary showing
366 that the accepted bid was determined to be the lowest and best
367 bid, including the dollar amount of the accepted bid and the
368 dollar amount of the lowest bid. No agency or governing authority
369 shall accept a bid based on items not included in the
370 specifications.

371 (iv) **Construction project negotiations authority.**
372 If the lowest and best bid is not more than ten percent (10%)
373 above the amount of funds allocated for a public construction or
374 renovation project, then the agency or governing authority shall



375 be permitted to negotiate with the lowest bidder in order to enter
376 into a contract for an amount not to exceed the funds allocated.

377 (e) **Lease-purchase authorization.** For the purposes of
378 this section, the term "equipment" shall mean equipment, furniture
379 and, if applicable, associated software and other applicable
380 direct costs associated with the acquisition. Any lease-purchase
381 of equipment which an agency is not required to lease-purchase
382 under the master lease-purchase program pursuant to Section
383 31-7-10 and any lease-purchase of equipment which a governing
384 authority elects to lease-purchase may be acquired by a
385 lease-purchase agreement under this paragraph (e). Lease-purchase
386 financing may also be obtained from the vendor or from a
387 third-party source after having solicited and obtained at least
388 two (2) written competitive bids, as defined in paragraph (b) of
389 this section, for such financing without advertising for such
390 bids. Solicitation for the bids for financing may occur before or
391 after acceptance of bids for the purchase of such equipment or,
392 where no such bids for purchase are required, at any time before
393 the purchase thereof. No such lease-purchase agreement shall be
394 for an annual rate of interest which is greater than the overall
395 maximum interest rate to maturity on general obligation
396 indebtedness permitted under Section 75-17-101, and the term of
397 such lease-purchase agreement shall not exceed the useful life of
398 equipment covered thereby as determined according to the upper
399 limit of the asset depreciation range (ADR) guidelines for the



400 Class Life Asset Depreciation Range System established by the
401 Internal Revenue Service pursuant to the United States Internal
402 Revenue Code and regulations thereunder as in effect on December
403 31, 1980, or comparable depreciation guidelines with respect to
404 any equipment not covered by ADR guidelines. Any lease-purchase
405 agreement entered into pursuant to this paragraph (e) may contain
406 any of the terms and conditions which a master lease-purchase
407 agreement may contain under the provisions of Section 31-7-10(5),
408 and shall contain an annual allocation dependency clause
409 substantially similar to that set forth in Section 31-7-10(8).
410 Each agency or governing authority entering into a lease-purchase
411 transaction pursuant to this paragraph (e) shall maintain with
412 respect to each such lease-purchase transaction the same
413 information as required to be maintained by the Department of
414 Finance and Administration pursuant to Section 31-7-10(13).
415 However, nothing contained in this section shall be construed to
416 permit agencies to acquire items of equipment with a total
417 acquisition cost in the aggregate of less than Ten Thousand
418 Dollars (\$10,000.00) by a single lease-purchase transaction. All
419 equipment, and the purchase thereof by any lessor, acquired by
420 lease-purchase under this paragraph and all lease-purchase
421 payments with respect thereto shall be exempt from all Mississippi
422 sales, use and ad valorem taxes. Interest paid on any
423 lease-purchase agreement under this section shall be exempt from
424 State of Mississippi income taxation.



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

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



450 governing authority when any such change or modification is less
451 than one percent (1%) of the total contract amount. The agency or
452 governing authority may limit the number, manner or frequency of
453 such emergency changes or modifications.

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

471 (i) **Road construction petroleum products price**
472 **adjustment clause authorization.** Any agency or governing
473 authority authorized to enter into contracts for the construction,
474 maintenance, surfacing or repair of highways, roads or streets,



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

491 (j) **State agency emergency purchase procedure.** If the
492 governing board or the executive head, or his designees, of any
493 agency of the state shall determine that an emergency exists in
494 regard to the purchase of any commodities or repair contracts, so
495 that the delay incident to giving opportunity for competitive
496 bidding would be detrimental to the interests of the state, then
497 the head of such agency, or his designees, shall file with the
498 Department of Finance and Administration (i) a statement
499 explaining the conditions and circumstances of the emergency,



500 which shall include a detailed description of the events leading
501 up to the situation and the negative impact to the entity if the
502 purchase is made following the statutory requirements set forth in
503 paragraph (a), (b) or (c) of this section, and (ii) a certified
504 copy of the appropriate minutes of the board of such agency
505 requesting the emergency purchase, if applicable. Upon receipt of
506 the statement and applicable board certification, the State Fiscal
507 Officer, or his designees, may, in writing, authorize the purchase
508 or repair without having to comply with competitive bidding
509 requirements.

510 If the governing board or the executive head, or his
511 designees, of any agency determines that an emergency exists in
512 regard to the purchase of any commodities or repair contracts, so
513 that the delay incident to giving opportunity for competitive
514 bidding would threaten the health or safety of any person, or the
515 preservation or protection of property, then the provisions in
516 this section for competitive bidding shall not apply, and any
517 officer or agent of the agency having general or specific
518 authority for making the purchase or repair contract shall approve
519 the bill presented for payment, and he shall certify in writing
520 from whom the purchase was made, or with whom the repair contract
521 was made.

522 Total purchases made under this paragraph (j) shall only be
523 for the purpose of meeting needs created by the emergency
524 situation. Following the emergency purchase, documentation of the



525 purchase, including a description of the commodity purchased, the
526 purchase price thereof and the nature of the emergency shall be
527 filed with the Department of Finance and Administration. Any
528 contract awarded pursuant to this paragraph (j) shall not exceed a
529 term of one (1) year.

530 Purchases under the grant program established under Section
531 37-68-7 in response to COVID-19 and the directive that school
532 districts create a distance learning plan and fulfill technology
533 needs expeditiously and purchases under Section 1 of House Bill
534 No. _____, 2023 Regular Session, by a state institution of higher
535 learning in response to COVID-19 in order to provide devices and
536 other technology necessary to assist students in engaging in
537 distance learning shall be deemed an emergency purchase for
538 purposes of this paragraph (j).

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

540 If the governing authority, or the governing authority acting
541 through its designee, shall determine that an emergency exists in
542 regard to the purchase of any commodities or repair contracts, so
543 that the delay incident to giving opportunity for competitive
544 bidding would be detrimental to the interest of the governing
545 authority, then the provisions herein for competitive bidding
546 shall not apply and any officer or agent of such governing
547 authority having general or special authority therefor in making
548 such purchase or repair shall approve the bill presented therefor,
549 and he shall certify in writing thereon from whom such purchase



550 was made, or with whom such a repair contract was made. At the
551 board meeting next following the emergency purchase or repair
552 contract, documentation of the purchase or repair contract,
553 including a description of the commodity purchased, the price
554 thereof and the nature of the emergency shall be presented to the
555 board and shall be placed on the minutes of the board of such
556 governing authority. Purchases under the grant program
557 established under Section 37-68-7 in response to COVID-19 and the
558 directive that school districts create a distance learning plan
559 and fulfill technology needs expeditiously and purchases under
560 Section 1 of House Bill No. _____, 2023 Regular Session, by a state
561 institution of higher learning in response to COVID-19 in order to
562 provide devices and other technology necessary to assist students
563 in engaging in distance learning shall be deemed an emergency
564 purchase for purposes of this paragraph (k).

565 (1) **Hospital purchase, lease-purchase and lease**
566 **authorization.**

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

572 (ii) In addition to the authority granted in
573 subparagraph (i) of this paragraph (1), the commissioners or board
574 of trustees is authorized to enter into contracts for the lease of



575 equipment or services, or both, which it considers necessary for
576 the proper care of patients if, in its opinion, it is not
577 financially feasible to purchase the necessary equipment or
578 services. Any such contract for the lease of equipment or
579 services executed by the commissioners or board shall not exceed a
580 maximum of five (5) years' duration and shall include a
581 cancellation clause based on unavailability of funds. If such
582 cancellation clause is exercised, there shall be no further
583 liability on the part of the lessee. Any such contract for the
584 lease of equipment or services executed on behalf of the
585 commissioners or board that complies with the provisions of this
586 subparagraph (ii) shall be excepted from the bid requirements set
587 forth in this section.

588 (m) **Exceptions from bidding requirements.** Excepted
589 from bid requirements are:

590 (i) **Purchasing agreements approved by department.**
591 Purchasing agreements, contracts and maximum price regulations
592 executed or approved by the Department of Finance and
593 Administration.

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



600 of the component; however, invoices identifying the equipment,
601 specific repairs made, parts identified by number and name,
602 supplies used in such repairs, and the number of hours of labor
603 and costs therefor shall be required for the payment for such
604 repairs.

605 (iii) **In-house equipment repairs.** Purchases of
606 parts for repairs to equipment, when such repairs are made by
607 personnel of the agency or governing authority; however, entire
608 assemblies, such as engines or transmissions, shall not be
609 included in this exemption when the entire assembly is being
610 replaced instead of being repaired.

611 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
612 of gravel or fill dirt which are to be removed and transported by
613 the purchaser.

614 (v) **Governmental equipment auctions.** Motor
615 vehicles or other equipment purchased from a federal agency or
616 authority, another governing authority or state agency of the
617 State of Mississippi, or any governing authority or state agency
618 of another state at a public auction held for the purpose of
619 disposing of such vehicles or other equipment. Any purchase by a
620 governing authority under the exemption authorized by this
621 subparagraph (v) shall require advance authorization spread upon
622 the minutes of the governing authority to include the listing of
623 the item or items authorized to be purchased and the maximum bid
624 authorized to be paid for each item or items.



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

645 (vii) **Perishable supplies or food.** Perishable
646 supplies or food purchased for use in connection with hospitals,
647 the school lunch programs, homemaking programs and for the feeding
648 of county or municipal prisoners.



649 (viii) **Single-source items.** Noncompetitive items
650 available from one (1) source only. In connection with the
651 purchase of noncompetitive items only available from one (1)
652 source, a certification of the conditions and circumstances
653 requiring the purchase shall be filed by the agency with the
654 Department of Finance and Administration and by the governing
655 authority with the board of the governing authority. Upon receipt
656 of that certification the Department of Finance and Administration
657 or the board of the governing authority, as the case may be, may,
658 in writing, authorize the purchase, which authority shall be noted
659 on the minutes of the body at the next regular meeting thereafter.
660 In those situations, a governing authority is not required to
661 obtain the approval of the Department of Finance and
662 Administration. Following the purchase, the executive head of the
663 state agency, or his designees, shall file with the Department of
664 Finance and Administration, documentation of the purchase,
665 including a description of the commodity purchased, the purchase
666 price thereof and the source from whom it was purchased.

667 (ix) **Waste disposal facility construction**
668 **contracts.** Construction of incinerators and other facilities for
669 disposal of solid wastes in which products either generated
670 therein, such as steam, or recovered therefrom, such as materials
671 for recycling, are to be sold or otherwise disposed of; however,
672 in constructing such facilities, a governing authority or agency
673 shall publicly issue requests for proposals, advertised for in the



674 same manner as provided herein for seeking bids for public
675 construction projects, concerning the design, construction,
676 ownership, operation and/or maintenance of such facilities,
677 wherein such requests for proposals when issued shall contain
678 terms and conditions relating to price, financial responsibility,
679 technology, environmental compatibility, legal responsibilities
680 and such other matters as are determined by the governing
681 authority or agency to be appropriate for inclusion; and after
682 responses to the request for proposals have been duly received,
683 the governing authority or agency may select the most qualified
684 proposal or proposals on the basis of price, technology and other
685 relevant factors and from such proposals, but not limited to the
686 terms thereof, negotiate and enter contracts with one or more of
687 the persons or firms submitting proposals.

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

691 (xi) **Information technology products.** Purchases
692 of information technology products made by governing authorities
693 under the provisions of purchase schedules, or contracts executed
694 or approved by the Mississippi Department of Information
695 Technology Services and designated for use by governing
696 authorities.

697 (xii) **Energy efficiency services and equipment.**
698 Energy efficiency services and equipment acquired by school



699 districts, community and junior colleges, institutions of higher
700 learning and state agencies or other applicable governmental
701 entities on a shared-savings, lease or lease-purchase basis
702 pursuant to Section 31-7-14.

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

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

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

708 Purchases by libraries or for libraries of books and periodicals;
709 processed film, videocassette tapes, filmstrips and slides;
710 recorded audiotapes, cassettes and diskettes; and any such items
711 as would be used for teaching, research or other information
712 distribution; however, equipment such as projectors, recorders,
713 audio or video equipment, and monitor televisions are not exempt
714 under this subparagraph.

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

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

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

722 From and after July 1, 1990, contracts by Mississippi Authority
723 for Educational Television with any private educational



724 institution or private nonprofit organization whose purposes are
725 educational in regard to the construction, purchase, lease or
726 lease-purchase of facilities and equipment and the employment of
727 personnel for providing multichannel interactive video systems
728 (ITSF) in the school districts of this state.

729 (xviii) **Purchases of prison industry products by**
730 **the Department of Corrections, regional correctional facilities or**
731 **privately owned prisons.** Purchases made by the Mississippi
732 Department of Corrections, regional correctional facilities or
733 privately owned prisons involving any item that is manufactured,
734 processed, grown or produced from the state's prison industries.

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

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

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



749 (xxii) **Garbage, solid waste and sewage contracts.**
750 Contracts for garbage collection or disposal, contracts for solid
751 waste collection or disposal and contracts for sewage collection
752 or disposal.

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

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

763 (xxv) **Purchases of state-adopted textbooks.**
764 Purchases of state-adopted textbooks by public school districts.

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

768 (xxvii) **Used heavy or specialized machinery or**
769 **equipment for installation of soil and water conservation**
770 **practices purchased at auction.** Used heavy or specialized
771 machinery or equipment used for the installation and
772 implementation of soil and water conservation practices or
773 measures purchased subject to the restrictions provided in



774 Sections 69-27-331 through 69-27-341. Any purchase by the State
775 Soil and Water Conservation Commission under the exemption
776 authorized by this subparagraph shall require advance
777 authorization spread upon the minutes of the commission to include
778 the listing of the item or items authorized to be purchased and
779 the maximum bid authorized to be paid for each item or items.

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

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

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

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

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

796 yearbooks by state agencies or governing authorities; provided,
797 however, that state agencies and governing authorities shall use
798 for these purchases the RFP process as set forth in the



799 Mississippi Procurement Manual adopted by the Office of Purchasing
800 and Travel.

801 (xxxii) **Design-build method of contracting and**
802 **certain other contracts.** Contracts entered into under the
803 provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

804 (xxxiii) **Toll roads and bridge construction**
805 **projects.** Contracts entered into under the provisions of Section
806 65-43-1 or 65-43-3.

807 (xxxiiii) **Certain purchases under Section 57-1-221.**
808 Contracts entered into pursuant to the provisions of Section
809 57-1-221.

810 (xxxiv) **Certain transfers made pursuant to the**
811 **provisions of Section 57-105-1(7).** Transfers of public property
812 or facilities under Section 57-105-1(7) and construction related
813 to such public property or facilities.

814 (xxxv) **Certain purchases or transfers entered into**
815 **with local electrical power associations.** Contracts or agreements
816 entered into under the provisions of Section 55-3-33.

817 (xxxvi) **Certain purchases by an academic medical**
818 **center or health sciences school.** Purchases by an academic
819 medical center or health sciences school, as defined in Section
820 37-115-50, of commodities that are used for clinical purposes and
821 1. intended for use in the diagnosis of disease or other
822 conditions or in the cure, mitigation, treatment or prevention of
823 disease, and 2. medical devices, biological, drugs and



824 radiation-emitting devices as defined by the United States Food
825 and Drug Administration.

826 (xxxvii) **Certain purchases made under the Alyce G.**
827 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi
828 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
829 Lottery Law.

830 (xxxviii) **Certain purchases made by the Department**
831 **of Health and the Department of Revenue.** Purchases made by the
832 Department of Health and/or the Department of Revenue solely for
833 the purpose of fulfilling their respective responsibilities under
834 the Mississippi Medical Cannabis Act. This subparagraph shall
835 stand repealed on June 30, 2023.

836 (n) **Term contract authorization.** All contracts for the
837 purchase of:

838 (i) All contracts for the purchase of commodities,
839 equipment and public construction (including, but not limited to,
840 repair and maintenance), may be let for periods of not more than
841 sixty (60) months in advance, subject to applicable statutory
842 provisions prohibiting the letting of contracts during specified
843 periods near the end of terms of office. Term contracts for a
844 period exceeding twenty-four (24) months shall also be subject to
845 ratification or cancellation by governing authority boards taking
846 office subsequent to the governing authority board entering the
847 contract.



848 (ii) Bid proposals and contracts may include price
849 adjustment clauses with relation to the cost to the contractor
850 based upon a nationally published industry-wide or nationally
851 published and recognized cost index. The cost index used in a
852 price adjustment clause shall be determined by the Department of
853 Finance and Administration for the state agencies and by the
854 governing board for governing authorities. The bid proposal and
855 contract documents utilizing a price adjustment clause shall
856 contain the basis and method of adjusting unit prices for the
857 change in the cost of such commodities, equipment and public
858 construction.

859 (o) **Purchase law violation prohibition and vendor**
860 **penalty.** No contract or purchase as herein authorized shall be
861 made for the purpose of circumventing the provisions of this
862 section requiring competitive bids, nor shall it be lawful for any
863 person or concern to submit individual invoices for amounts within
864 those authorized for a contract or purchase where the actual value
865 of the contract or commodity purchased exceeds the authorized
866 amount and the invoices therefor are split so as to appear to be
867 authorized as purchases for which competitive bids are not
868 required. Submission of such invoices shall constitute a
869 misdemeanor punishable by a fine of not less than Five Hundred
870 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
871 or by imprisonment for thirty (30) days in the county jail, or



872 both such fine and imprisonment. In addition, the claim or claims
873 submitted shall be forfeited.

874 (p) **Electrical utility petroleum-based equipment**
875 **purchase procedure.** When in response to a proper advertisement
876 therefor, no bid firm as to price is submitted to an electric
877 utility for power transformers, distribution transformers, power
878 breakers, reclosers or other articles containing a petroleum
879 product, the electric utility may accept the lowest and best bid
880 therefor although the price is not firm.

881 (q) **Fuel management system bidding procedure.** Any
882 governing authority or agency of the state shall, before
883 contracting for the services and products of a fuel management or
884 fuel access system, enter into negotiations with not fewer than
885 two (2) sellers of fuel management or fuel access systems for
886 competitive written bids to provide the services and products for
887 the systems. In the event that the governing authority or agency
888 cannot locate two (2) sellers of such systems or cannot obtain
889 bids from two (2) sellers of such systems, it shall show proof
890 that it made a diligent, good-faith effort to locate and negotiate
891 with two (2) sellers of such systems. Such proof shall include,
892 but not be limited to, publications of a request for proposals and
893 letters soliciting negotiations and bids. For purposes of this
894 paragraph (q), a fuel management or fuel access system is an
895 automated system of acquiring fuel for vehicles as well as
896 management reports detailing fuel use by vehicles and drivers, and



897 the term "competitive written bid" shall have the meaning as
898 defined in paragraph (b) of this section. Governing authorities
899 and agencies shall be exempt from this process when contracting
900 for the services and products of fuel management or fuel access
901 systems under the terms of a state contract established by the
902 Office of Purchasing and Travel.

903 (r) **Solid waste contract proposal procedure.** Before
904 entering into any contract for garbage collection or disposal,
905 contract for solid waste collection or disposal or contract for
906 sewage collection or disposal, which involves an expenditure of
907 more than Seventy-five Thousand Dollars (\$75,000.00), a governing
908 authority or agency shall issue publicly a request for proposals
909 concerning the specifications for such services which shall be
910 advertised for in the same manner as provided in this section for
911 seeking bids for purchases which involve an expenditure of more
912 than the amount provided in paragraph (c) of this section. Any
913 request for proposals when issued shall contain terms and
914 conditions relating to price, financial responsibility,
915 technology, legal responsibilities and other relevant factors as
916 are determined by the governing authority or agency to be
917 appropriate for inclusion; all factors determined relevant by the
918 governing authority or agency or required by this paragraph (r)
919 shall be duly included in the advertisement to elicit proposals.
920 After responses to the request for proposals have been duly
921 received, the governing authority or agency shall select the most



922 qualified proposal or proposals on the basis of price, technology
923 and other relevant factors and from such proposals, but not
924 limited to the terms thereof, negotiate and enter into contracts
925 with one or more of the persons or firms submitting proposals. If
926 the governing authority or agency deems none of the proposals to
927 be qualified or otherwise acceptable, the request for proposals
928 process may be reinitiated. Notwithstanding any other provisions
929 of this paragraph, where a county with at least thirty-five
930 thousand (35,000) nor more than forty thousand (40,000)
931 population, according to the 1990 federal decennial census, owns
932 or operates a solid waste landfill, the governing authorities of
933 any other county or municipality may contract with the governing
934 authorities of the county owning or operating the landfill,
935 pursuant to a resolution duly adopted and spread upon the minutes
936 of each governing authority involved, for garbage or solid waste
937 collection or disposal services through contract negotiations.

938 (s) **Minority set-aside authorization.** Notwithstanding
939 any provision of this section to the contrary, any agency or
940 governing authority, by order placed on its minutes, may, in its
941 discretion, set aside not more than twenty percent (20%) of its
942 anticipated annual expenditures for the purchase of commodities
943 from minority businesses; however, all such set-aside purchases
944 shall comply with all purchasing regulations promulgated by the
945 Department of Finance and Administration and shall be subject to
946 bid requirements under this section. Set-aside purchases for



947 which competitive bids are required shall be made from the lowest
948 and best minority business bidder. For the purposes of this
949 paragraph, the term "minority business" means a business which is
950 owned by a majority of persons who are United States citizens or
951 permanent resident aliens (as defined by the Immigration and
952 Naturalization Service) of the United States, and who are Asian,
953 Black, Hispanic or Native American, according to the following
954 definitions:

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

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

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

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

966 (t) **Construction punch list restriction.** The
967 architect, engineer or other representative designated by the
968 agency or governing authority that is contracting for public
969 construction or renovation may prepare and submit to the
970 contractor only one (1) preliminary punch list of items that do
971 not meet the contract requirements at the time of substantial



972 completion and one (1) final list immediately before final
973 completion and final payment.

974 (u) **Procurement of construction services by state**
975 **institutions of higher learning.** Contracts for privately financed
976 construction of auxiliary facilities on the campus of a state
977 institution of higher learning may be awarded by the Board of
978 Trustees of State Institutions of Higher Learning to the lowest
979 and best bidder, where sealed bids are solicited, or to the
980 offeror whose proposal is determined to represent the best value
981 to the citizens of the State of Mississippi, where requests for
982 proposals are solicited.

983 (v) **Insurability of bidders for public construction or**
984 **other public contracts.** In any solicitation for bids to perform
985 public construction or other public contracts to which this
986 section applies, including, but not limited to, contracts for
987 repair and maintenance, for which the contract will require
988 insurance coverage in an amount of not less than One Million
989 Dollars (\$1,000,000.00), bidders shall be permitted to either
990 submit proof of current insurance coverage in the specified amount
991 or demonstrate ability to obtain the required coverage amount of
992 insurance if the contract is awarded to the bidder. Proof of
993 insurance coverage shall be submitted within five (5) business
994 days from bid acceptance.



995 (w) **Purchase authorization clarification.** Nothing in
996 this section shall be construed as authorizing any purchase not
997 authorized by law.

998 **SECTION 3.** Section 25-53-191, Mississippi Code of 1972, is
999 brought forward as follows:

1000 25-53-191. (1) For the purposes of this section, the
1001 following terms shall have the meanings ascribed to them in this
1002 section unless the context otherwise clearly requires:

1003 (a) "Department" means the Mississippi Department of
1004 Information Technology.

1005 (b) "State agency" means any agency, department,
1006 commission, board, bureau, institution or other instrumentality of
1007 the state.

1008 (c) "Wireless communication device" means a cellular
1009 telephone, pager or a personal digital assistant device having
1010 wireless communication capability.

1011 (2) Before a wireless communication device may be assigned,
1012 issued or made available to an agency officer or employee, the
1013 agency head, or his designee, shall sign a statement certifying
1014 the need or reason for issuing the device. No officer or employee
1015 of any state agency, except for an officer or employee of the
1016 Mississippi Emergency Management Agency, shall be assigned or
1017 issued more than one (1) such wireless communication device. No
1018 officer or employee of any state agency to whom has been assigned,
1019 issued or made available the use of a wireless communication



1020 device, the cost of which is paid through the use of public funds,
1021 shall use such device for personal use.

1022 (3) A state agency shall not reimburse any officer or
1023 employee for use of his or her personal wireless communication
1024 device.

1025 (4) Every state agency that, at the expense of the state
1026 agency, assigns, issues or makes available to any of its officers
1027 or employees a wireless communication device shall obtain and
1028 maintain detailed billing for every wireless communication device
1029 account. A list of approved vendors for the procurement of
1030 wireless communication devices and the delivery of wireless
1031 communication device services shall be developed for all state
1032 agencies by the Mississippi Department of Information Technology
1033 Services in conjunction with the Wireless Communication Commission
1034 created in Section 25-53-171. The department, in conjunction with
1035 the Wireless Communication Commission, shall exercise the option
1036 of selecting one (1) vendor from which to procure wireless
1037 communication devices and to provide wireless communication device
1038 services, or if it deems such to be most advantageous to the state
1039 agencies, it may select multiple vendors. The department, in
1040 conjunction with the Wireless Communication Commission, shall
1041 select a vendor or vendors on the basis of lowest and best bid
1042 proposals. A state agency may not procure a wireless
1043 communication device from any vendor or contract for wireless
1044 communication device services with any vendor unless the vendor



1045 appears on the list approved by the department, in conjunction
1046 with the Wireless Communication Commission. A contract entered
1047 into in violation of this section shall be void and unenforceable.

1048 (5) The department shall promulgate a model acceptable use
1049 policy defining the appropriate use of all wireless communication
1050 devices. The acceptable use policy should specify that these
1051 resources, including both devices and services, are provided at
1052 the state agency's expense as tools for accomplishing the business
1053 missions of the state agency; that all those resources are for
1054 business use; and that more than incidental personal use of those
1055 resources is prohibited. The acceptable use policy should require
1056 that each official and employee issued one (1) of the above
1057 devices or authorized to access one (1) of the above services sign
1058 the policy and that the signed copy be placed in the personnel
1059 file of the official or employee. The acceptable use policy
1060 should also require that the use of these resources be tracked,
1061 verified and signed by the official or employee and the supervisor
1062 of the official or employee at each billing cycle or other
1063 appropriate interval. All state agencies shall adopt the model
1064 policy or adopt a policy that is, at minimum, as stringent as the
1065 model policy and shall provide a copy of the policy to the
1066 department.

1067 (6) All state agencies shall purchase or acquire only the
1068 lowest cost cellular telephone, pager or personal digital
1069 assistance device which will carry out its intended use.



1070 (7) The University of Mississippi Medical Center and its
1071 employees, the Mississippi State University Extension Service and
1072 its agents and faculty members, the Mississippi State University
1073 Agricultural and Forestry Experiment Station and its faculty
1074 members, the Mississippi State University Forestry and Wildlife
1075 Research Center and its faculty members, and the Mississippi State
1076 University College of Veterinary Medicine and its faculty members
1077 shall be exempt from the application of this section.

1078 (8) The State Auditor shall conduct necessary audits to
1079 ensure compliance with the provisions of this section.

1080 **SECTION 4.** This act shall take effect and be in force from
1081 and after July 1, 2023.

