

By: Representative Turner

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 159

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE UNDER THE PUBLIC PURCHASING LAWS THAT AGENCIES AND
3 GOVERNING AUTHORITIES POST ADVERTISEMENTS FOR COMPETITIVE BIDS ON
4 THE PROCUREMENT PORTAL ESTABLISHED AND MAINTAINED BY THE
5 DEPARTMENT OF FINANCE AND ADMINISTRATION FOR TWO CONSECUTIVE
6 WEEKS; TO PROVIDE THAT THE AGENCIES AND GOVERNING AUTHORITIES MAY
7 ALSO ADVERTISE ONCE EACH WEEK FOR TWO CONSECUTIVE WEEKS IN A
8 REGULAR NEWSPAPER PUBLISHED OR HAVING GENERAL CIRCULATION IN THE
9 COUNTY OR MUNICIPALITY IN WHICH THE AGENCY OR GOVERNING AUTHORITY
10 IS LOCATED; TO AMEND SECTION 31-7-13.1, MISSISSIPPI CODE OF 1972,
11 TO CONFORM TO THE PRECEDING SECTION; TO BRING FORWARD SECTION
12 31-7-13.2, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THE
13 CONSTRUCTION MANAGER AT RISK METHOD OF PROJECT DELIVERY, FOR THE
14 PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** Section 31-7-13, Mississippi Code of 1972, is
17 amended as follows:

18 31-7-13. All agencies and governing authorities shall
19 purchase their commodities and printing; contract for garbage
20 collection or disposal; contract for solid waste collection or
21 disposal; contract for sewage collection or disposal; contract for
22 public construction; and contract for rentals as herein provided.

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

24 Purchases which do not involve an expenditure of more than Five



25 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
26 charges, may be made without advertising or otherwise requesting
27 competitive bids. However, nothing contained in this paragraph
28 (a) shall be construed to prohibit any agency or governing
29 authority from establishing procedures which require competitive
30 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

31 (b) **Bidding procedure for purchases over \$5,000.00 but**
32 **not over \$50,000.00.** Purchases which involve an expenditure of
33 more than Five Thousand Dollars (\$5,000.00) but not more than
34 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
35 shipping charges, may be made from the lowest and best bidder
36 without publishing or posting advertisement for bids, provided at
37 least two (2) competitive written bids have been obtained. Any
38 state agency or community/junior college purchasing commodities or
39 procuring construction pursuant to this paragraph (b) may
40 authorize its purchasing agent, or his designee, to accept the
41 lowest competitive written bid under Fifty Thousand Dollars
42 (\$50,000.00). Any governing authority purchasing commodities
43 pursuant to this paragraph (b) may authorize its purchasing agent,
44 or his designee, with regard to governing authorities other than
45 counties, or its purchase clerk, or his designee, with regard to
46 counties, to accept the lowest and best competitive written bid.
47 Such authorization shall be made in writing by the governing
48 authority and shall be maintained on file in the primary office of
49 the agency and recorded in the official minutes of the governing



50 authority, as appropriate. The purchasing agent or the purchase
51 clerk, or their designee, as the case may be, and not the
52 governing authority, shall be liable for any penalties and/or
53 damages as may be imposed by law for any act or omission of the
54 purchasing agent or purchase clerk, or their designee,
55 constituting a violation of law in accepting any bid without
56 approval by the governing authority. The term "competitive
57 written bid" shall mean a bid submitted on a bid form furnished by
58 the buying agency or governing authority and signed by authorized
59 personnel representing the vendor, or a bid submitted on a
60 vendor's letterhead or identifiable bid form and signed by
61 authorized personnel representing the vendor. "Competitive" shall
62 mean that the bids are developed based upon comparable
63 identification of the needs and are developed independently and
64 without knowledge of other bids or prospective bids. Any bid item
65 for construction in excess of Five Thousand Dollars (\$5,000.00)
66 shall be broken down by components to provide detail of component
67 description and pricing. These details shall be submitted with
68 the written bids and become part of the bid evaluation criteria.
69 Bids may be submitted by facsimile, electronic mail or other
70 generally accepted method of information distribution. Bids
71 submitted by electronic transmission shall not require the
72 signature of the vendor's representative unless required by
73 agencies or governing authorities.

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



(i) **Publication requirement.**

1. Purchases which involve an expenditure of more than Fifty Thousand Dollars (\$50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder after advertising for competitive bids * * * for two (2) consecutive weeks on the procurement portal established and maintained by the Department of Finance and Administration under Section 25-53-151. In addition to advertising on the portal, agencies and governing authorities may also advertise once each week for two (2) consecutive weeks in a regular newspaper published or having general circulation in the county or municipality in which such agency or governing authority is located. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid. All references to American Recovery and Reinvestment Act projects in this section shall not apply to programs identified in Division B of the American Recovery and Reinvestment Act.

2. Reverse auctions shall be the primary method for receiving bids during the bidding process. If a purchasing entity determines that a reverse auction is not in the best interest of the state, then that determination must be approved by the Public Procurement Review Board. The purchasing entity shall submit a detailed explanation of why a reverse auction would not be in the best interest of the state and present



an alternative process to be approved by the Public Procurement Review Board. If the Public Procurement Review Board authorizes the purchasing entity to solicit bids with a method other than reverse auction, then the purchasing entity may designate the other methods by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids received electronically in a secure system, or bids received by any other method that promotes open competition and has been approved by the Office of Purchasing and Travel. However, reverse auction shall not be used for any public contract for design or construction of public facilities, including buildings, roads and bridges. The Public Procurement Review Board must approve any contract entered into by alternative process. The provisions of this item 2 shall not apply to the individual state institutions of higher learning.

3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Fifty Thousand Dollars (\$50,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published * * * as provided in item 1 of this subparagraph (i). However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any projects in excess of Twenty-five Thousand Dollars (\$25,000.00) under the American Recovery and Reinvestment Act, publication



shall be made one (1) time and the bid opening for construction projects shall not be less than ten (10) working days after the date of the published notice. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. * * * When the agency or governing authority * * * provides notification regarding a publication on the procurement portal, whether in writing or electronically, to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority, * * * the notification shall be provided sufficiently in advance of the need for publication to allow for timely posting on the procurement portal. Submissions received by the Mississippi Procurement Technical Assistance Program for projects funded by the American Recovery and Reinvestment Act shall be displayed on a separate and unique Internet web page accessible to the public and maintained by the Mississippi Development Authority for the Mississippi Procurement Technical Assistance Program. Those American Recovery and Reinvestment Act related submissions shall be publicly posted within twenty-four (24) hours of receipt by the Mississippi Development Authority and the bid opening shall not occur until the submission has been posted for ten (10) consecutive days. The Department of Finance and Administration



shall maintain information regarding contracts and other expenditures from the American Recovery and Reinvestment Act, on a unique Internet web page accessible to the public. The Department of Finance and Administration shall promulgate rules regarding format, content and deadlines, unless otherwise specified by law, of the posting of award notices, contract execution and subsequent amendments, links to the contract documents, expenditures against the awarded contracts and general expenditures of funds from the American Recovery and Reinvestment Act. Within one (1) working day of the contract award, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration, notice of the award, including the award recipient, the contract amount, and a brief summary of the contract in accordance with rules promulgated by the department. Within one (1) working day of the contract execution, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration a summary of the executed contract and make a copy of the appropriately redacted contract documents available for linking to the designated web page in accordance with the rules promulgated by the department. The information provided by the agency or governing authority shall be posted to the web page for the duration of the American Recovery and Reinvestment Act funding or until the project is completed, whichever is longer.



174 (ii) **Bidding process amendment procedure.** If all
175 plans and/or specifications are published in the notification,
176 then the plans and/or specifications may not be amended. If all
177 plans and/or specifications are not published in the notification,
178 then amendments to the plans/specifications, bid opening date, bid
179 opening time and place may be made, provided that the agency or
180 governing authority maintains a list of all prospective bidders
181 who are known to have received a copy of the bid documents and all
182 such prospective bidders are sent copies of all amendments. This
183 notification of amendments may be made via mail, facsimile,
184 electronic mail or other generally accepted method of information
185 distribution. No addendum to bid specifications may be issued
186 within two (2) working days of the time established for the
187 receipt of bids unless such addendum also amends the bid opening
188 to a date not less than five (5) working days after the date of
189 the addendum.

190 (iii) **Filing requirement.** In all cases involving
191 governing authorities, before the notice shall be published or
192 posted, the plans or specifications for the construction or
193 equipment being sought shall be filed with the clerk of the board
194 of the governing authority. In addition to these requirements, a
195 bid file shall be established which shall indicate those vendors
196 to whom such solicitations and specifications were issued, and
197 such file shall also contain such information as is pertinent to
198 the bid.



(iv) **Specification restrictions.**

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

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



224 (v) **Electronic bids.** Agencies and governing
225 authorities shall provide a secure electronic interactive system
226 for the submittal of bids requiring competitive bidding that shall
227 be an additional bidding option for those bidders who choose to
228 submit their bids electronically. The Department of Finance and
229 Administration shall provide, by regulation, the standards that
230 agencies must follow when receiving electronic bids. Agencies and
231 governing authorities shall make the appropriate provisions
232 necessary to accept electronic bids from those bidders who choose
233 to submit their bids electronically for all purchases requiring
234 competitive bidding under this section. Any special condition or
235 requirement for the electronic bid submission shall be specified
236 in the advertisement for bids required by this section. Agencies
237 or governing authorities that are currently without available high
238 speed Internet access shall be exempt from the requirement of this
239 subparagraph (v) until such time that high speed Internet access
240 becomes available. Any county having a population of less than
241 twenty thousand (20,000) shall be exempt from the provisions of
242 this subparagraph (v). Any municipality having a population of
243 less than ten thousand (10,000) shall be exempt from the
244 provisions of this subparagraph (v). The provisions of this
245 subparagraph (v) shall not require any bidder to submit bids
246 electronically. When construction bids are submitted
247 electronically, the requirement for including a certificate of
248 responsibility, or a statement that the bid enclosed does not



exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the bid envelope as indicated in Section 31-3-21(1) and (2) shall be deemed in compliance with by including same as an attachment with the electronic bid submittal.

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

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

(ii) **Decision procedure for Certified Purchasing Offices.** In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), Certified Purchasing Offices may also use the following procedure: Purchases may be made from the bidder offering the best value. In determining the



best value bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions, documented previous experience, training costs and other relevant provisions, including, but not limited to, a bidder having a local office and inventory located within the jurisdiction of the governing authority, may be included in the best value calculation. This provision shall authorize Certified Purchasing Offices to utilize a Request For Proposals (RFP) process when purchasing commodities. All best value procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. No agency or governing authority shall accept a bid based on items or criteria not included in the specifications.

(iii) **Decision procedure for Mississippi**

Landmarks. In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), where purchase involves renovation, restoration, or both, of the State Capitol Building or any other historical building designated for at least five (5) years as a Mississippi Landmark by the Board of Trustees of the Department of Archives and History under the authority of Sections 39-7-7 and 39-7-11, the agency or governing authority may use the following procedure: Purchases may be made from the lowest and best prequalified bidder. Prequalification of bidders shall be determined not less than fifteen (15) working days before the first published notice of bid opening. Prequalification criteria



shall be limited to bidder's knowledge and experience in historical restoration, preservation and renovation. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid and prequalification procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

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

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

(e) **Lease-purchase authorization.** For the purposes of

this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable



324 direct costs associated with the acquisition. Any lease-purchase
325 of equipment which an agency is not required to lease-purchase
326 under the master lease-purchase program pursuant to Section
327 31-7-10 and any lease-purchase of equipment which a governing
328 authority elects to lease-purchase may be acquired by a
329 lease-purchase agreement under this paragraph (e). Lease-purchase
330 financing may also be obtained from the vendor or from a
331 third-party source after having solicited and obtained at least
332 two (2) written competitive bids, as defined in paragraph (b) of
333 this section, for such financing without advertising for such
334 bids. Solicitation for the bids for financing may occur before or
335 after acceptance of bids for the purchase of such equipment or,
336 where no such bids for purchase are required, at any time before
337 the purchase thereof. No such lease-purchase agreement shall be
338 for an annual rate of interest which is greater than the overall
339 maximum interest rate to maturity on general obligation
340 indebtedness permitted under Section 75-17-101, and the term of
341 such lease-purchase agreement shall not exceed the useful life of
342 equipment covered thereby as determined according to the upper
343 limit of the asset depreciation range (ADR) guidelines for the
344 Class Life Asset Depreciation Range System established by the
345 Internal Revenue Service pursuant to the United States Internal
346 Revenue Code and regulations thereunder as in effect on December
347 31, 1980, or comparable depreciation guidelines with respect to
348 any equipment not covered by ADR guidelines. Any lease-purchase



349 agreement entered into pursuant to this paragraph (e) may contain
350 any of the terms and conditions which a master lease-purchase
351 agreement may contain under the provisions of Section 31-7-10(5),
352 and shall contain an annual allocation dependency clause
353 substantially similar to that set forth in Section 31-7-10(8).
354 Each agency or governing authority entering into a lease-purchase
355 transaction pursuant to this paragraph (e) shall maintain with
356 respect to each such lease-purchase transaction the same
357 information as required to be maintained by the Department of
358 Finance and Administration pursuant to Section 31-7-10(13).
359 However, nothing contained in this section shall be construed to
360 permit agencies to acquire items of equipment with a total
361 acquisition cost in the aggregate of less than Ten Thousand
362 Dollars (\$10,000.00) by a single lease-purchase transaction. All
363 equipment, and the purchase thereof by any lessor, acquired by
364 lease-purchase under this paragraph and all lease-purchase
365 payments with respect thereto shall be exempt from all Mississippi
366 sales, use and ad valorem taxes. Interest paid on any
367 lease-purchase agreement under this section shall be exempt from
368 State of Mississippi income taxation.

369 (f) **Alternate bid authorization.** When necessary to
370 ensure ready availability of commodities for public works and the
371 timely completion of public projects, no more than two (2)
372 alternate bids may be accepted by a governing authority for
373 commodities. No purchases may be made through use of such



374 alternate bids procedure unless the lowest and best bidder cannot
375 deliver the commodities contained in his bid. In that event,
376 purchases of such commodities may be made from one (1) of the
377 bidders whose bid was accepted as an alternate.

378 (g) **Construction contract change authorization.** In the
379 event a determination is made by an agency or governing authority
380 after a construction contract is let that changes or modifications
381 to the original contract are necessary or would better serve the
382 purpose of the agency or the governing authority, such agency or
383 governing authority may, in its discretion, order such changes
384 pertaining to the construction that are necessary under the
385 circumstances without the necessity of further public bids;
386 provided that such change shall be made in a commercially
387 reasonable manner and shall not be made to circumvent the public
388 purchasing statutes. In addition to any other authorized person,
389 the architect or engineer hired by an agency or governing
390 authority with respect to any public construction contract shall
391 have the authority, when granted by an agency or governing
392 authority, to authorize changes or modifications to the original
393 contract without the necessity of prior approval of the agency or
394 governing authority when any such change or modification is less
395 than one percent (1%) of the total contract amount. The agency or
396 governing authority may limit the number, manner or frequency of
397 such emergency changes or modifications.



398 (h) **Petroleum purchase alternative.** In addition to
399 other methods of purchasing authorized in this chapter, when any
400 agency or governing authority shall have a need for gas, diesel
401 fuel, oils and/or other petroleum products in excess of the amount
402 set forth in paragraph (a) of this section, such agency or
403 governing authority may purchase the commodity after having
404 solicited and obtained at least two (2) competitive written bids,
405 as defined in paragraph (b) of this section. If two (2)
406 competitive written bids are not obtained, the entity shall comply
407 with the procedures set forth in paragraph (c) of this section.
408 In the event any agency or governing authority shall have
409 advertised for bids for the purchase of gas, diesel fuel, oils and
410 other petroleum products and coal and no acceptable bids can be
411 obtained, such agency or governing authority is authorized and
412 directed to enter into any negotiations necessary to secure the
413 lowest and best contract available for the purchase of such
414 commodities.

415 (i) **Road construction petroleum products price**
416 **adjustment clause authorization.** Any agency or governing
417 authority authorized to enter into contracts for the construction,
418 maintenance, surfacing or repair of highways, roads or streets,
419 may include in its bid proposal and contract documents a price
420 adjustment clause with relation to the cost to the contractor,
421 including taxes, based upon an industry-wide cost index, of
422 petroleum products including asphalt used in the performance or



423 execution of the contract or in the production or manufacture of
424 materials for use in such performance. Such industry-wide index
425 shall be established and published monthly by the Mississippi
426 Department of Transportation with a copy thereof to be mailed,
427 upon request, to the clerks of the governing authority of each
428 municipality and the clerks of each board of supervisors
429 throughout the state. The price adjustment clause shall be based
430 on the cost of such petroleum products only and shall not include
431 any additional profit or overhead as part of the adjustment. The
432 bid proposals or document contract shall contain the basis and
433 methods of adjusting unit prices for the change in the cost of
434 such petroleum products.

435 (j) **State agency emergency purchase procedure.** If the
436 governing board or the executive head, or his designees, of any
437 agency of the state shall determine that an emergency exists in
438 regard to the purchase of any commodities or repair contracts, so
439 that the delay incident to giving opportunity for competitive
440 bidding would be detrimental to the interests of the state, then
441 the head of such agency, or his designees, shall file with the
442 Department of Finance and Administration (i) a statement
443 explaining the conditions and circumstances of the emergency,
444 which shall include a detailed description of the events leading
445 up to the situation and the negative impact to the entity if the
446 purchase is made following the statutory requirements set forth in
447 paragraph (a), (b) or (c) of this section, and (ii) a certified



448 copy of the appropriate minutes of the board of such agency
449 requesting the emergency purchase, if applicable. Upon receipt of
450 the statement and applicable board certification, the State Fiscal
451 Officer, or his designees, may, in writing, authorize the purchase
452 or repair without having to comply with competitive bidding
453 requirements.

454 If the governing board or the executive head, or his
455 designees, of any agency determines that an emergency exists in
456 regard to the purchase of any commodities or repair contracts, so
457 that the delay incident to giving opportunity for competitive
458 bidding would threaten the health or safety of any person, or the
459 preservation or protection of property, then the provisions in
460 this section for competitive bidding shall not apply, and any
461 officer or agent of the agency having general or specific
462 authority for making the purchase or repair contract shall approve
463 the bill presented for payment, and he shall certify in writing
464 from whom the purchase was made, or with whom the repair contract
465 was made.

466 Total purchases made under this paragraph (j) shall only be
467 for the purpose of meeting needs created by the emergency
468 situation. Following the emergency purchase, documentation of the
469 purchase, including a description of the commodity purchased, the
470 purchase price thereof and the nature of the emergency shall be
471 filed with the Department of Finance and Administration. Any



contract awarded pursuant to this paragraph (j) shall not exceed a term of one (1) year.

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

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

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

(i) The commissioners or board of trustees of any public hospital may contract with such lowest and best bidder for the purchase or lease-purchase of any commodity under a contract



497 of purchase or lease-purchase agreement whose obligatory payment
498 terms do not exceed five (5) years.

499 (ii) In addition to the authority granted in
500 subparagraph (i) of this paragraph (1), the commissioners or board
501 of trustees is authorized to enter into contracts for the lease of
502 equipment or services, or both, which it considers necessary for
503 the proper care of patients if, in its opinion, it is not
504 financially feasible to purchase the necessary equipment or
505 services. Any such contract for the lease of equipment or
506 services executed by the commissioners or board shall not exceed a
507 maximum of five (5) years' duration and shall include a
508 cancellation clause based on unavailability of funds. If such
509 cancellation clause is exercised, there shall be no further
510 liability on the part of the lessee. Any such contract for the
511 lease of equipment or services executed on behalf of the
512 commissioners or board that complies with the provisions of this
513 subparagraph (ii) shall be excepted from the bid requirements set
514 forth in this section.

515 (m) **Exceptions from bidding requirements.** Excepted
516 from bid requirements are:

517 (i) **Purchasing agreements approved by department.**
518 Purchasing agreements, contracts and maximum price regulations
519 executed or approved by the Department of Finance and
520 Administration.



521 (ii) **Outside equipment repairs.** Repairs to
522 equipment, when such repairs are made by repair facilities in the
523 private sector; however, engines, transmissions, rear axles and/or
524 other such components shall not be included in this exemption when
525 replaced as a complete unit instead of being repaired and the need
526 for such total component replacement is known before disassembly
527 of the component; however, invoices identifying the equipment,
528 specific repairs made, parts identified by number and name,
529 supplies used in such repairs, and the number of hours of labor
530 and costs therefor shall be required for the payment for such
531 repairs.

532 (iii) **In-house equipment repairs.** Purchases of
533 parts for repairs to equipment, when such repairs are made by
534 personnel of the agency or governing authority; however, entire
535 assemblies, such as engines or transmissions, shall not be
536 included in this exemption when the entire assembly is being
537 replaced instead of being repaired.

538 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
539 of gravel or fill dirt which are to be removed and transported by
540 the purchaser.

541 (v) **Governmental equipment auctions.** Motor
542 vehicles or other equipment purchased from a federal agency or
543 authority, another governing authority or state agency of the
544 State of Mississippi, or any governing authority or state agency
545 of another state at a public auction held for the purpose of



546 disposing of such vehicles or other equipment. Any purchase by a
547 governing authority under the exemption authorized by this
548 subparagraph (v) shall require advance authorization spread upon
549 the minutes of the governing authority to include the listing of
550 the item or items authorized to be purchased and the maximum bid
551 authorized to be paid for each item or items.

552 (vi) **Intergovernmental sales and transfers.**

553 Purchases, sales, transfers or trades by governing authorities or
554 state agencies when such purchases, sales, transfers or trades are
555 made by a private treaty agreement or through means of
556 negotiation, from any federal agency or authority, another
557 governing authority or state agency of the State of Mississippi,
558 or any state agency or governing authority of another state.
559 Nothing in this section shall permit such purchases through public
560 auction except as provided for in subparagraph (v) of this
561 paragraph (m). It is the intent of this section to allow
562 governmental entities to dispose of and/or purchase commodities
563 from other governmental entities at a price that is agreed to by
564 both parties. This shall allow for purchases and/or sales at
565 prices which may be determined to be below the market value if the
566 selling entity determines that the sale at below market value is
567 in the best interest of the taxpayers of the state. Governing
568 authorities shall place the terms of the agreement and any
569 justification on the minutes, and state agencies shall obtain



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

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

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



594 (ix) **Waste disposal facility construction**
595 **contracts.** Construction of incinerators and other facilities for
596 disposal of solid wastes in which products either generated
597 therein, such as steam, or recovered therefrom, such as materials
598 for recycling, are to be sold or otherwise disposed of; however,
599 in constructing such facilities, a governing authority or agency
600 shall publicly issue requests for proposals, advertised for in the
601 same manner as provided herein for seeking bids for public
602 construction projects, concerning the design, construction,
603 ownership, operation and/or maintenance of such facilities,
604 wherein such requests for proposals when issued shall contain
605 terms and conditions relating to price, financial responsibility,
606 technology, environmental compatibility, legal responsibilities
607 and such other matters as are determined by the governing
608 authority or agency to be appropriate for inclusion; and after
609 responses to the request for proposals have been duly received,
610 the governing authority or agency may select the most qualified
611 proposal or proposals on the basis of price, technology and other
612 relevant factors and from such proposals, but not limited to the
613 terms thereof, negotiate and enter contracts with one or more of
614 the persons or firms submitting proposals.

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



618 (xi) **Information technology products.** Purchases
619 of information technology products made by governing authorities
620 under the provisions of purchase schedules, or contracts executed
621 or approved by the Mississippi Department of Information
622 Technology Services and designated for use by governing
623 authorities.

624 (xii) **Energy efficiency services and equipment.**
625 Energy efficiency services and equipment acquired by school
626 districts, community and junior colleges, institutions of higher
627 learning and state agencies or other applicable governmental
628 entities on a shared-savings, lease or lease-purchase basis
629 pursuant to Section 31-7-14.

630 (xiii) **Municipal electrical utility system fuel.**
631 Purchases of coal and/or natural gas by municipally owned electric
632 power generating systems that have the capacity to use both coal
633 and natural gas for the generation of electric power.

634 (xiv) **Library books and other reference materials.**
635 Purchases by libraries or for libraries of books and periodicals;
636 processed film, videocassette tapes, filmstrips and slides;
637 recorded audiotapes, cassettes and diskettes; and any such items
638 as would be used for teaching, research or other information
639 distribution; however, equipment such as projectors, recorders,
640 audio or video equipment, and monitor televisions are not exempt
641 under this subparagraph.



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

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

648 (xvii) **Multichannel interactive video systems.**
649 From and after July 1, 1990, contracts by Mississippi Authority
650 for Educational Television with any private educational
651 institution or private nonprofit organization whose purposes are
652 educational in regard to the construction, purchase, lease or
653 lease-purchase of facilities and equipment and the employment of
654 personnel for providing multichannel interactive video systems
655 (ITSF) in the school districts of this state.

656 (xviii) **Purchases of prison industry products by**
657 **the Department of Corrections, regional correctional facilities or**
658 **privately owned prisons.** Purchases made by the Mississippi
659 Department of Corrections, regional correctional facilities or
660 privately owned prisons involving any item that is manufactured,
661 processed, grown or produced from the state's prison industries.

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



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

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

676 (xxii) **Garbage, solid waste and sewage contracts.**
677 Contracts for garbage collection or disposal, contracts for solid
678 waste collection or disposal and contracts for sewage collection
679 or disposal.

680 (xxiii) **Municipal water tank maintenance**
681 **contracts.** Professional maintenance program contracts for the
682 repair or maintenance of municipal water tanks, which provide
683 professional services needed to maintain municipal water storage
684 tanks for a fixed annual fee for a duration of two (2) or more
685 years.

686 (xxiv) **Purchases of Mississippi Industries for the**
687 **Blind products.** Purchases made by state agencies or governing
688 authorities involving any item that is manufactured, processed or
689 produced by the Mississippi Industries for the Blind.

690 (xxv) **Purchases of state-adopted textbooks.**
691 Purchases of state-adopted textbooks by public school districts.



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

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

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

(xxix) **Purchases made pursuant to qualified cooperative purchasing agreements.** Purchases made by certified purchasing offices of state agencies or governing authorities under cooperative purchasing agreements previously approved by the Office of Purchasing and Travel and established by or for any municipality, county, parish or state government or the federal government, provided that the notification to potential



contractors includes a clause that sets forth the availability of the cooperative purchasing agreement to other governmental entities. Such purchases shall only be made if the use of the cooperative purchasing agreements is determined to be in the best interest of the governmental entity.

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

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

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

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

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



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

(xxxvi) **Certain purchases by an academic medical center or health sciences school.** Purchases by an academic medical center or health sciences school, as defined in Section 1 of House Bill No. 926, 2017 Regular Session, of commodities that are used for clinical purposes and 1. intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease, and 2. medical devices, biological, drugs and radiation-emitting devices as defined by the United States Food and Drug Administration.

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

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



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

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



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

791 (p) **Electrical utility petroleum-based equipment**
792 **purchase procedure.** When in response to a proper advertisement
793 therefor, no bid firm as to price is submitted to an electric
794 utility for power transformers, distribution transformers, power
795 breakers, reclosers or other articles containing a petroleum
796 product, the electric utility may accept the lowest and best bid
797 therefor although the price is not firm.

798 (q) **Fuel management system bidding procedure.** Any
799 governing authority or agency of the state shall, before
800 contracting for the services and products of a fuel management or
801 fuel access system, enter into negotiations with not fewer than
802 two (2) sellers of fuel management or fuel access systems for
803 competitive written bids to provide the services and products for
804 the systems. In the event that the governing authority or agency
805 cannot locate two (2) sellers of such systems or cannot obtain
806 bids from two (2) sellers of such systems, it shall show proof
807 that it made a diligent, good-faith effort to locate and negotiate
808 with two (2) sellers of such systems. Such proof shall include,
809 but not be limited to, publications of a request for proposals and
810 letters soliciting negotiations and bids. For purposes of this
811 paragraph (q), a fuel management or fuel access system is an
812 automated system of acquiring fuel for vehicles as well as
813 management reports detailing fuel use by vehicles and drivers, and



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

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



839 qualified proposal or proposals on the basis of price, technology
840 and other relevant factors and from such proposals, but not
841 limited to the terms thereof, negotiate and enter into contracts
842 with one or more of the persons or firms submitting proposals. If
843 the governing authority or agency deems none of the proposals to
844 be qualified or otherwise acceptable, the request for proposals
845 process may be reinitiated. Notwithstanding any other provisions
846 of this paragraph, where a county with at least thirty-five
847 thousand (35,000) nor more than forty thousand (40,000)
848 population, according to the 1990 federal decennial census, owns
849 or operates a solid waste landfill, the governing authorities of
850 any other county or municipality may contract with the governing
851 authorities of the county owning or operating the landfill,
852 pursuant to a resolution duly adopted and spread upon the minutes
853 of each governing authority involved, for garbage or solid waste
854 collection or disposal services through contract negotiations.

855 (s) **Minority set-aside authorization.** Notwithstanding
856 any provision of this section to the contrary, any agency or
857 governing authority, by order placed on its minutes, may, in its
858 discretion, set aside not more than twenty percent (20%) of its
859 anticipated annual expenditures for the purchase of commodities
860 from minority businesses; however, all such set-aside purchases
861 shall comply with all purchasing regulations promulgated by the
862 Department of Finance and Administration and shall be subject to
863 bid requirements under this section. Set-aside purchases for



864 which competitive bids are required shall be made from the lowest
865 and best minority business bidder. For the purposes of this
866 paragraph, the term "minority business" means a business which is
867 owned by a majority of persons who are United States citizens or
868 permanent resident aliens (as defined by the Immigration and
869 Naturalization Service) of the United States, and who are Asian,
870 Black, Hispanic or Native American, according to the following
871 definitions:

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

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

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

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

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



889 completion and one (1) final list immediately before final
890 completion and final payment.

891 (u) **Procurement of construction services by state**
892 **institutions of higher learning.** Contracts for privately financed
893 construction of auxiliary facilities on the campus of a state
894 institution of higher learning may be awarded by the Board of
895 Trustees of State Institutions of Higher Learning to the lowest
896 and best bidder, where sealed bids are solicited, or to the
897 offeror whose proposal is determined to represent the best value
898 to the citizens of the State of Mississippi, where requests for
899 proposals are solicited.

900 (v) **Insurability of bidders for public construction or**
901 **other public contracts.** In any solicitation for bids to perform
902 public construction or other public contracts to which this
903 section applies including, but not limited to, contracts for
904 repair and maintenance, for which the contract will require
905 insurance coverage in an amount of not less than One Million
906 Dollars (\$1,000,000.00), bidders shall be permitted to either
907 submit proof of current insurance coverage in the specified amount
908 or demonstrate ability to obtain the required coverage amount of
909 insurance if the contract is awarded to the bidder. Proof of
910 insurance coverage shall be submitted within five (5) business
911 days from bid acceptance.



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

SECTION 2. Section 31-7-13.1, Mississippi Code of 1972, is amended as follows:

31-7-13.1. (1) The method of contracting for construction described in this section shall be known as the "dual-phase design-build method" of construction contracting. This method of construction contracting may be used only when the Legislature has specifically required or authorized the use of this method in the legislation authorizing a project. At a minimum, the determination must include a detailed explanation of why using the dual-phase design-build method for a particular project satisfies the public need better than the traditional design-bid-build method based on the following criteria:

(a) The project provides a savings in time or cost over traditional methods; and

(b) The size and type of the project is suitable for design-build.

(2) For each proposed dual-phase design-build project, a two-phase procedure for awarding a contract must be adopted. During Phase One, and before solicitation of initial proposals, the agency or governing authority shall develop, with the assistance of an architectural or engineering firm, a scope of work statement that provides prospective offerors with sufficient



information regarding the requirements of the agency or governing authority. The scope of work statement must include, but is not limited to, the following information:

(a) Drawings must show overall building dimensions and major lines of dimensions, and site plans that show topography, adjacent buildings and utilities;

(b) Drawings must include information to adequately explain HVAC, electrical and structural requirements;

(c) The scope of work statement also must include building elevations, sections and design details; and

(d) The scope of work statement must include general budget parameters, schedule or delivery requirements, relevant criteria for evaluation of proposals, and any other information necessary to enable the design-builders to submit proposals that meet the needs of the agency or governing authority.

(3) The agency or governing authority shall * * * publish a notice inviting proposals for the dual-phase design-build construction project for at least two (2) consecutive weeks on the procurement portal established and maintained by the Department of Finance and Administration under Section 25-53-151. In addition to advertising on the portal, agencies and governing authorities may also advertise once each week for two (2) consecutive weeks in a regular newspaper published in the county in which the project is to be located, or a newspaper with statewide circulation * * *. When the agency or governing authority provides notification



962 regarding a publication on the procurement portal, whether in
963 writing or electronically, to the main office of the Mississippi
964 Procurement Technical Assistance Program under the Mississippi
965 Development Authority, the notification shall be provided
966 sufficiently in advance of the need for publication to allow for
967 timely posting on the procurement portal. The proposals shall not
968 be opened in less than fifteen (15) working days after the last
969 notice is published as provided in this subsection. The notice
970 must inform potential offerors of how to obtain the scope of work
971 statement developed for the project, and the notice must contain
972 such other information to describe adequately the general nature
973 and scope of the project so as to promote full, equal and open
974 competition.

975 (4) The agency or governing authority shall accept initial
976 proposals only from entities able to provide an experienced and
977 qualified design-build team that includes, at a minimum, an
978 architectural or engineering firm registered in Mississippi and a
979 contractor properly licensed and domiciled in Mississippi for the
980 type of work required. From evaluation of initial proposals under
981 Phase One, the agency or governing authority shall select a
982 minimum of two (2) and a maximum of five (5) design-builders as
983 "short-listed firms" to submit proposals for Phase Two.

984 (5) During Phase Two, the short-listed firms will be invited
985 to submit detailed designs, specific technical concepts or
986 solutions, pricing, scheduling and other information deemed



appropriate by the agency or governing authority as necessary to evaluate and rank acceptability of the Phase Two proposals. After evaluation of these Phase Two proposals, the agency or governing authority shall award a contract to the design-builder determined to offer the best value to the public in accordance with evaluation criteria set forth in the request for proposals, of which price must be one, but not necessarily the only, criterion.

(6) If the agency or governing authority accepts a proposal other than the lowest dollar proposal actually submitted, the agency or governing authority shall enter on its minutes detailed calculations and a narrative summary showing why the accepted proposal was determined to provide the best value, and the agency or governing authority shall state specifically on its minutes the justification for its award.

(7) All facilities that are governed by this section shall be designed and constructed to comply with standards equal to or exceeding the minimum building code standards employed by the state as required under Section 31-11-33 in force at the time of contracting. All private contractors or private entities contracting or performing under this section must comply at all times with all applicable laws, codes and other legal requirements pertaining to the project.

(8) At its discretion, the agency or governing authority may award a stipulated fee equal to a percentage, as prescribed in the request for proposals, of the project's final design and



1012 construction budget, as prescribed in the request for proposals,
1013 but not less than two-tenths of one percent (2/10 of 1%) of the
1014 project's final design and construction budget, to each short-list
1015 offeror who provides a responsive, but unsuccessful, proposal. If
1016 the agency or governing authority does not award a contract, all
1017 responsive final list offerors shall receive the stipulated fee
1018 based on the owner's estimate of the project final design and
1019 construction budget as included in the request for proposals. The
1020 agency or governing authority shall pay the stipulated fee to each
1021 offeror within ninety (90) days after the award of the initial
1022 contract or the decision not to award a contract. In
1023 consideration for paying the stipulated fee, the agency or
1024 governing authority may use any ideas or information contained in
1025 the proposals in connection with any contract awarded for the
1026 project, or in connection with a subsequent procurement, without
1027 any obligation to pay any additional compensation to the
1028 unsuccessful offerors. Notwithstanding the other provisions of
1029 this subsection, an unsuccessful short-list offeror may elect to
1030 waive the stipulated fee. If an unsuccessful short-list offeror
1031 elects to waive the stipulated fee, the agency or governing
1032 authority may not use ideas and information contained in the
1033 offeror's proposal, except that this restriction does not prevent
1034 the agency or governing authority from using any idea or
1035 information if the idea or information is also included in a
1036 proposal of an offeror that accepts the stipulated fee.



(9) This section shall not authorize the awarding of construction contracts according to any contracting method that does not require the contractor to satisfactorily perform, at a minimum, both any balance of design, using an independent professional licensed in Mississippi, and construction of the project for which the contract is awarded.

(10) The provisions of this section shall not affect any procurement by the Mississippi Transportation Commission.

(11) The provisions of this section shall not apply to procurement authorized in Section 59-5-37(3).

SECTION 3. Section 31-7-13.2, Mississippi Code of 1972, is brought forward as follows:

31-7-13.2 (1) When used in this section, "construction manager at risk" means a method of project delivery in which a construction manager guarantees a maximum price for the construction of a project and in which the governing authority or board, before using this method of project delivery, shall include a detailed explanation of why using the construction manager at risk method of project delivery for a particular project satisfies the public need better than that traditional design-bid-build method based on the following criteria:

(a) The use of construction manager at risk for the project provides a savings in time or cost over traditional methods; and



1061 (b) The size and type of the project is suitable for
1062 use of the construction management at risk method of project
1063 delivery.

1064 (2) When the construction manager at risk method of project
1065 delivery is used:

1066 (a) There may be a separate contract for design
1067 services and a separate contract for construction services;

1068 (b) The contract for construction services may be
1069 entered into at the same time as a contract for the design
1070 services or later;

1071 (c) Design and construction of the project may be in
1072 sequential or concurrent phases; and

1073 (d) Finance, maintenance, operation, reconstruction or
1074 other related services may be included for a guaranteed maximum
1075 price.

1076 (3) When procuring design professional services under a
1077 construction manager at risk project delivery method, the agency
1078 or governing authority shall procure the services of a design
1079 professional pursuant to qualifications-based selection
1080 procedures.

1081 (4) Before the substantial completion of the design
1082 documents, the agency or governing authority may elect to hire a
1083 construction manager.

1084 (5) When procuring construction management services, the
1085 agency or governing authority shall follow the



1086 qualifications-based selection procedures as outlined in
1087 subsection (10) of this section or the competitive sealed proposal
1088 procedures as outlined in Section 31-17-13.

1089 (6) The agency or governing authority may require the
1090 architect or engineer and the construction manager, by contract,
1091 to cooperate in the design, planning and scheduling, and
1092 construction process. The contract shall not make the primary
1093 designer or construction manager a subcontractor or joint-venture
1094 partner to the other or limit the primary designer's or
1095 construction manager's independent obligations to the agency or
1096 governing authority.

1097 (7) Notwithstanding anything to the contrary in this
1098 chapter:

1099 (a) Each project for construction under a construction
1100 manager at risk contract shall be a specific, single project with
1101 a minimum construction cost of Twenty-five Million Dollars
1102 (\$25,000,000.00).

1103 (b) Each project under a construction manager at risk
1104 contract shall be a specific, single project. For the purposes of
1105 this paragraph, "specific, single project" means a project that is
1106 constructed at a single location, at a common location or for a
1107 common purpose.

1108 (8) Agencies shall retain an independent architectural or
1109 engineering firm to provide guidance and administration of the
1110 professional engineering or professional architecture aspects of



1111 the project throughout the development of the scope, design, and
1112 construction of the project.

1113 (9) The state shall, on an annual basis, compile and make
1114 public all proceedings, records, contracts and other public
1115 records relating to procurement transactions authorized under this
1116 section.

1117 (10) For purposes of this section, the "qualifications-based
1118 selection procedure" shall include:

1119 (a) Publicly announcing all requirements for
1120 architectural, engineering, and land surveying services, to
1121 procure these services on the basis of demonstrated competence and
1122 qualifications, and to negotiate contracts at fair and reasonable
1123 prices after the most qualified firm has been selected.

1124 (b) Agencies or governing authorities shall establish
1125 procedures to prequalify firms seeking to provide architectural,
1126 engineering, and land surveying services or may use
1127 prequalification lists from other state agencies or governing
1128 authorities to meet the requirements of this section.

1129 (c) Whenever a project requiring architectural,
1130 engineering, or land surveying services is proposed for an agency
1131 or governing authority, the agency or governing authority shall
1132 provide advance notice published in a professional services
1133 bulletin or advertised within the official state newspaper setting
1134 forth the projects and services to be procured for not less than
1135 fourteen (14) days. The professional services bulletin shall be



1136 mailed to each firm that has requested the information or is
1137 prequalified under Section 31-7-13. The professional services
1138 bulletin shall include a description of each project and shall
1139 state the time and place for interested firms to submit a letter
1140 of interest and, if required by the public notice, a statement of
1141 qualifications.

1142 (d) The agency or governing authority shall evaluate
1143 the firms submitting letters of interest and other prequalified
1144 firms, taking into account qualifications. The agency or
1145 governing authority may consider, but shall not be limited to,
1146 considering:

1147 (i) Ability of professional personnel;
1148 (ii) Past record and experience;
1149 (iii) Performance data on file;
1150 (iv) Willingness to meet time requirements;
1151 (v) Location;
1152 (vi) Workload of the firm; and
1153 (vii) Any other qualifications-based factors as
1154 the agency or governing authority may determine in writing are
1155 applicable.

1156 The agency or governing authority may conduct discussions
1157 with and require public presentations by firms deemed to be the
1158 most qualified regarding their qualifications, approach to the
1159 project and ability to furnish the required services.



1160 (e) The agency or governing authority shall establish a
1161 committee to select firms to provide architectural, engineering,
1162 and land surveying services. A selection committee may include at
1163 least one (1) public member nominated by a statewide association
1164 of the profession affected. The public member may not be employed
1165 or associated with any firm holding a contract with the agency or
1166 governing authority nor may the public member's firm be considered
1167 for a contract with that agency or governing authority while
1168 serving as a public member of the committee. In no case shall the
1169 agency or governing authority, before selecting a firm for
1170 negotiation under paragraph (f) of this section, seek formal or
1171 informal submission of verbal or written estimates of costs or
1172 proposals in terms of dollars, hours required, percentage of
1173 construction cost, or any other measure of compensation.

1174 (f) On the basis of evaluations, discussions, and any
1175 presentations, the agency or governing authority shall select no
1176 less than three (3) firms that it determines to be qualified to
1177 provide services for the project and rank them in order of
1178 qualifications to provide services regarding the specific project.
1179 The agency or governing authority shall then contact the firm
1180 ranked most preferred to negotiate a contract at a fair and
1181 reasonable compensation. If fewer than three (3) firms submit
1182 letters of interest and the agency or governing authority
1183 determines that one (1) or both of those firms are so qualified,



1184 the agency or governing authority may proceed to negotiate a
1185 contract under paragraph (g) of this section.

1186 (g) The agency or governing authority shall prepare a
1187 written description of the scope of the proposed services to be
1188 used as a basis for negotiations and shall negotiate a contract
1189 with the highest qualified firm at compensation that the agency or
1190 governing authority determines in writing to be fair and
1191 reasonable. In making this decision, the agency or governing
1192 authority shall take into account the estimated value, scope,
1193 complexity, and professional nature of the services to be
1194 rendered. In no case may the agency or governing authority
1195 establish a maximum overhead rate or other payment formula
1196 designed to eliminate firms from contention or restrict
1197 competition or negotiation of fees. If the agency or governing
1198 authority is unable to negotiate a satisfactory contract with the
1199 firm that is most preferred, negotiations with that firm shall be
1200 terminated. The agency or governing authority shall then begin
1201 negotiations with the firm that is next preferred. If the agency
1202 or governing authority is unable to negotiate a satisfactory
1203 contract with that firm, negotiations with that firm shall be
1204 terminated. The agency or governing authority shall then begin
1205 negotiations with the firm that is next preferred. If the agency
1206 or governing authority is unable to negotiate a satisfactory
1207 contract with any of the selected firms, the agency or governing
1208 authority shall reevaluate the architectural, engineering, or land



1209 surveying services requested, including the estimated value,
1210 scope, complexity, and fee requirements. The agency or governing
1211 authority shall then compile a second list of not less than three
1212 (3) qualified firms and proceed in accordance with the provisions
1213 of this section. A firm negotiating a contract with an agency or
1214 governing authority shall negotiate subcontracts for
1215 architectural, engineering, and land surveying services at
1216 compensation that the firm determines in writing to be fair and
1217 reasonable based upon a written description of the scope of the
1218 proposed services.

1219 (11) The provisions of this section shall not affect any
1220 procurement by the Mississippi Transportation Commission.

1221 **SECTION 4.** This act shall take effect and be in force from
1222 and after July 1, 2018.

