

By: Senator(s) Williams

To: Public Property

SENATE BILL NO. 2300

1 AN ACT TO BRING FORWARD SECTIONS 31-7-13.1 AND 31-7-13.2,
2 MISSISSIPPI CODE OF 1972, RELATING TO CONSTRUCTION CONTRACTS, FOR
3 PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 31-7-13.1, Mississippi Code of 1972, is
6 brought forward as follows:

7 31-7-13.1. (1) The method of contracting for construction
8 described in this section shall be known as the " design-build
9 method" of construction contracting. This method of construction
10 contracting may be used on residential buildings, residential
11 mixed-use developments, parking garages and other prescriptive
12 type facilities. The design-build method of construction
13 contracting may only be used when the Department of Finance and
14 Administration or a governing authority has determined that it
15 satisfies the public interest better than traditional design-bid
16 or when the Legislature has specifically required or authorized
17 the use of this method in the legislation authorizing a project.
18 At a minimum, the determination must include a detailed



19 explanation of why using the design-build method for a particular
20 project satisfies the public need better than the traditional
21 design-bid-build method based on the following criteria:

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

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

26 (2) For each proposed design-build project, either a fixed
27 firm price or guaranteed maximum price contract must be adopted.
28 Before solicitation of proposals, the agency or governing
29 authority shall develop a scope of work statement that provides
30 prospective offerors with sufficient information regarding the
31 requirements of the agency or governing authority. The scope of
32 work statement must include, but is not limited to, the following
33 information:

34 (a) Location and nature of proposed site(s) that
35 include preliminary geotechnical information from borings as well
36 as survey drawings that show topography, adjacent buildings and
37 utilities;

38 (b) Any mandatory requirements such as minimum number
39 and types of spaces, any minimum or maximum building area(s) or
40 height(s), applicable energy codes and/or efficiency targets,
41 applicable zoning regulations and any aesthetic or character
42 defining standards;



43 (c) Any mandatory material and/or system performance
44 requirements and/or specifications; and

45 (d) General budget parameters, schedule or delivery
46 requirements, relevant criteria for evaluation of proposals, and
47 any other information necessary to enable the design-builders to
48 submit proposals that meet the needs of the agency or governing
49 authority.

50 (3) The agency or governing authority shall cause to be
51 published once a week, for at least two (2) consecutive weeks in a
52 regular newspaper published in the county in which the project is
53 to be located, or a newspaper with statewide circulation, a notice
54 inviting proposals for the design-build construction project. On
55 the same date that the notice is submitted to the newspaper for
56 publication, the agency or governing authority involved shall post
57 the notice on the Mississippi Procurement Portal or mail written
58 notice to, or provide electronic notification to, the main office
59 of the Mississippi Procurement Technical Assistance Program under
60 the Mississippi Development Authority that contains the same
61 information as that in the published notice. The proposals shall
62 not be opened in less than fifteen (15) working days after the
63 last notice is published. The notice must inform potential
64 offerors of how to obtain the scope of work statement developed
65 for the project, and the notice must contain such other
66 information to describe adequately the general nature and scope of
67 the project so as to promote full, equal and open competition.



68 (4) The agency or governing authority shall accept initial
69 proposals only from entities able to provide an experienced and
70 qualified design-build team that includes, at a minimum, an
71 architectural or engineering firm licensed and registered in
72 Mississippi and a contractor properly licensed and domiciled in
73 Mississippi for the type of work required.

74 (5) Proposals that include criteria other than cost only
75 shall be evaluated by an evaluation committee established by the
76 procuring entity. The evaluation committee shall be composed of
77 not less than three (3) people, at least one (1) of which shall be
78 an architect or engineer licensed and registered in Mississippi.
79 Selection criteria of the evaluation committee shall be limited to
80 the following:

81 (a) The bidder's knowledge and experience in executing
82 projects of similar size and complexity;

83 (b) The experience and qualifications of the proposed
84 office and construction management personnel;

85 (c) The experience and qualifications of the
86 subcontractors proposed;

87 (d) The experience and qualifications of the architect
88 or engineer and consultants;

89 (e) Schedule control; and

90 (f) Cost factors.

91 Cost as an evaluation factor shall be given the highest
92 criteria weighting and at least thirty-five percent (35%) out of



the one hundred percent (100%) total weight of all the other evaluation factors.

(6) If the agency or governing authority accepts a proposal other than the proposal with the lowest costs that was 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) An agency or governing authority may not award a stipulated fee to an offeror for preparation costs to submit a response to the request for proposals.

(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 2. 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

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

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



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

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

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

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

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

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

(5) When procuring construction management services, the agency or governing authority shall follow the qualifications-based selection procedures as outlined in subsection (10) of this section or the competitive sealed proposal procedures as outlined in Section 31-17-13.

(6) The agency or governing authority may require the architect or engineer and the construction manager, by contract,



to cooperate in the design, planning and scheduling, and construction process. The contract shall not make the primary designer or construction manager a subcontractor or joint-venture partner to the other or limit the primary designer's or construction manager's independent obligations to the agency or governing authority.

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

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

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

(8) Agencies shall retain an independent architectural or engineering firm to provide guidance and administration of the professional engineering or professional architecture aspects of the project throughout the development of the scope, design, and construction of the project.

(9) The state shall, on an annual basis, compile and make public all proceedings, records, contracts and other public



191 records relating to procurement transactions authorized under this
192 section.

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

195 (a) Publicly announcing all requirements for
196 construction management at risk, architectural, engineering, and
197 land surveying services, to procure these services on the basis of
198 demonstrated competence and qualifications, and to negotiate
199 contracts at fair and reasonable prices after the most qualified
200 firm has been selected.

201 (b) Agencies or governing authorities shall establish
202 procedures to prequalify firms seeking to provide construction
203 management at risk, architectural, engineering, and land surveying
204 services or may use prequalification lists from other state
205 agencies or governing authorities to meet the requirements of this
206 section.

207 (c) Whenever a project requiring construction
208 management at risk, architectural, engineering, or land surveying
209 services is proposed for an agency or governing authority, the
210 agency or governing authority shall provide advance notice
211 published in a professional services bulletin or advertised within
212 the official state newspaper setting forth the projects and
213 services to be procured for not less than fourteen (14) days. The
214 professional services bulletin shall be mailed to each firm that
215 has requested the information or is prequalified under Section



31-7-13. The professional services bulletin shall include a description of each project and shall state the time and place for interested firms to submit a letter of interest and, if required by the public notice, a statement of qualifications.

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

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

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

(e) The agency or governing authority shall establish a committee to select firms to provide construction management at risk, architectural, engineering, and land surveying services. A



241 selection committee may include at least one (1) public member
242 nominated by a statewide association of the profession affected.
243 The public member may not be employed or associated with any firm
244 holding a contract with the agency or governing authority nor may
245 the public member's firm be considered for a contract with that
246 agency or governing authority while serving as a public member of
247 the committee. In no case shall the agency or governing
248 authority, before selecting a firm for negotiation under paragraph
249 (f) of this subsection (10), seek formal or informal submission of
250 verbal or written estimates of costs or proposals in terms of
251 dollars, hours required, percentage of construction cost, or any
252 other measure of compensation.

253 (f) On the basis of evaluations, discussions, and any
254 presentations, the agency or governing authority shall select no
255 less than three (3) firms that it determines to be qualified to
256 provide services for the project and rank them in order of
257 qualifications to provide services regarding the specific project.
258 The agency or governing authority shall then contact the firm
259 ranked most preferred to negotiate a contract at a fair and
260 reasonable compensation. If fewer than three (3) firms submit
261 letters of interest and the agency or governing authority
262 determines that one (1) or both of those firms are so qualified,
263 the agency or governing authority may proceed to negotiate a
264 contract under paragraph (g) of this subsection (10).



265 (g) The agency or governing authority shall prepare a
266 written description of the scope of the proposed services to be
267 used as a basis for negotiations and shall negotiate a contract
268 with the highest qualified firm at compensation that the agency or
269 governing authority determines in writing to be fair and
270 reasonable. In making this decision, the agency or governing
271 authority shall take into account the estimated value, scope,
272 complexity, and professional nature of the services to be
273 rendered. In no case may the agency or governing authority
274 establish a maximum overhead rate or other payment formula
275 designed to eliminate firms from contention or restrict
276 competition or negotiation of fees. If the agency or governing
277 authority is unable to negotiate a satisfactory contract with the
278 firm that is most preferred, negotiations with that firm shall be
279 terminated. The agency or governing authority shall then begin
280 negotiations with the firm that is next preferred. If the agency
281 or governing authority is unable to negotiate a satisfactory
282 contract with that firm, negotiations with that firm shall be
283 terminated. The agency or governing authority shall then begin
284 negotiations with the firm that is next preferred. If the agency
285 or governing authority is unable to negotiate a satisfactory
286 contract with any of the selected firms, the agency or governing
287 authority shall reevaluate the construction management at risk,
288 architectural, engineering, or land surveying services requested,
289 including the estimated value, scope, complexity, and fee



requirements. The agency or governing authority shall then compile a second list of not less than three (3) qualified firms and proceed in accordance with the provisions of this section. A firm negotiating a contract with an agency or governing authority shall negotiate subcontracts for architectural, engineering, and land surveying services at compensation that the firm determines in writing to be fair and reasonable based upon a written description of the scope of the proposed services.

(11) (a) The construction manager selected by the agency or governing authority to provide construction management at risk services shall solicit bids for construction on the project pursuant to Section 31-7-13. The construction manager shall be entitled to enter into contracts for construction with the lowest and best bidders, as determined in consultation with the agency or governing authority. Before soliciting bids or entering into any such contract, the construction manager, in consultation with the agency or governing authority, may prequalify any contractors or vendors seeking to submit a bid on the project, taking into account defined qualifications which may include, but not be limited to, the following:

(i) Past experience and performance record on projects of similar size and scope;

(ii) Current financial status and ability to provide acceptable payment and performance bonds and meet defined insurance requirements;



(iii) Current workload and backlog of committed work for the period scheduled for the project under consideration;

(iv) Safety record to include prior citations and fines if applicable;

(v) History of legal disputes or performance defaults;

(vi) Identification and experience of project personnel and required manpower;

(vii) Plan for and ability to meet the applicable project schedule; and

(viii) Any other qualification-based factors as the agency, governing authority or construction manager may determine are applicable.

(b) The construction manager, in consultation with the agency or governing authority, shall publish the defined qualifications that shall be considered in the prequalification process at least two (2) weeks in advance of any prequalification of contractors or vendors seeking to submit a bid on the project. Publication shall be in a regular newspaper published in the county or municipality in which the agency or governing authority is located. The agency or governing authority shall also post the defined prequalification requirements on its website.

(c) The failure of a bidder to provide information in a timely and complete manner in response to any prequalification process may result in the disqualification of such bidder in the



discretion of the agency, governing authority, and construction manager.

(d) Except as otherwise provided in Section 25-61-9, confidential and proprietary information furnished by a bidder pursuant to this section shall not be disclosed outside of the agency, governing authority, or construction manager without the prior written consent of the bidder. The bidder shall identify and label any information considered to be confidential and proprietary at the time of submission of the same to the agency, governing authority, or construction manager.

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

SECTION 3. This act shall take effect and be in force from and after July 1, 2025.

