

By: Senator(s) Williams

To: Public Property

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2300

1 AN ACT TO AMEND SECTION 31-7-13.1, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE PUBLIC AGENCIES OR GOVERNING AUTHORITIES TO SOLICIT
3 PROPOSALS FROM QUALIFIED DESIGN-BUILDERS; TO REQUIRE A CONTRACT TO
4 INCLUDE PAYMENT FOR BOTH THE DESIGN AND CONSTRUCTION PHASES OF THE
5 PROJECT; TO ELIMINATE THE REQUIREMENT THAT AT LEAST ONE OF THE
6 PEOPLE ON THE EVALUATION COMMITTEE BE AN ARCHITECT OR ENGINEER
7 LICENSED AND REGISTERED IN MISSISSIPPI; TO BRING FORWARD SECTION
8 31-7-13.2, MISSISSIPPI CODE OF 1972, RELATING TO CONSTRUCTION
9 CONTRACTS, FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED
10 PURPOSES.

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

12 **SECTION 1.** Section 31-7-13.1, Mississippi Code of 1972, is
13 amended as follows:

14 31-7-13.1. (1) The method of contracting for construction
15 described in this section shall be known as the " design-build
16 method" of construction contracting. * * * The design-build
17 method of construction contracting may only be used when the
18 Department of Finance and Administration or a governing authority
19 has determined that it satisfies the public interest better than
20 traditional design-bid-build or when the Legislature has
21 specifically required or authorized the use of this method in the
22 legislation authorizing a project. At a minimum, the



determination must include a detailed explanation of why using the design-build method for a particular project satisfies the public need better than the traditional design-bid-build method * * *.

(2) For each proposed design-build project, the public agency or governing authority shall solicit proposals from qualified design-builders, with the final contract between the public entity and the design-builder being either a fixed firm price or guaranteed maximum price contract * * * that includes payment for both the design and construction phases of the project. Before solicitation of proposals, the agency or governing authority shall develop 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) Location and nature of proposed site(s) that include preliminary geotechnical information from borings as well as survey drawings that show topography, adjacent buildings and utilities;

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



47 (c) Any mandatory material and/or system performance
48 requirements and/or specifications; and

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

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



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

78 (5) Proposals that include criteria other than cost only
79 shall be evaluated by an evaluation committee established by the
80 procuring entity. The evaluation committee shall be composed of
81 not less than three (3) people * * *. Selection criteria of the
82 evaluation committee shall be limited to the following:

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

85 (b) The experience and qualifications of the proposed
86 office and construction management personnel;

87 (c) The experience and qualifications of the
88 subcontractors proposed;

89 (d) The experience and qualifications of the architect
90 or engineer and consultants;

91 (e) Schedule control; and

92 (f) Cost factors.

93 Cost as an evaluation factor shall be given the highest
94 criteria weighting and at least thirty-five percent (35%) out of
95 the one hundred percent (100%) total weight of all the other
96 evaluation factors.



97 (6) If the agency or governing authority accepts a proposal
98 other than the proposal with the lowest costs that was actually
99 submitted, the agency or governing authority shall enter on its
100 minutes detailed calculations and a narrative summary showing why
101 the accepted proposal was determined to provide the best value,
102 and the agency or governing authority shall state specifically on
103 its minutes the justification for its award.

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

112 (8) An agency or governing authority may not award a
113 stipulated fee to an offeror for preparation costs to submit a
114 response to the request for proposals.

115 (9) This section shall not authorize the awarding of
116 construction contracts according to any contracting method that
117 does not require the contractor to satisfactorily perform, at a
118 minimum, both any balance of design, using * * * a professional
119 licensed in Mississippi, and construction of the project for which
120 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 records relating to procurement transactions authorized under this section.



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

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

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

209 (c) Whenever a project requiring construction
210 management at risk, architectural, engineering, or land surveying
211 services is proposed for an agency or governing authority, the
212 agency or governing authority shall provide advance notice
213 published in a professional services bulletin or advertised within
214 the official state newspaper setting forth the projects and
215 services to be procured for not less than fourteen (14) days. The
216 professional services bulletin shall be mailed to each firm that
217 has requested the information or is prequalified under Section
218 31-7-13. The professional services bulletin shall include a
219 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 selection committee may include at least one (1) public member nominated by a statewide association of the profession affected.



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

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

267 (g) The agency or governing authority shall prepare a
268 written description of the scope of the proposed services to be
269 used as a basis for negotiations and shall negotiate a contract



270 with the highest qualified firm at compensation that the agency or
271 governing authority determines in writing to be fair and
272 reasonable. In making this decision, the agency or governing
273 authority shall take into account the estimated value, scope,
274 complexity, and professional nature of the services to be
275 rendered. In no case may the agency or governing authority
276 establish a maximum overhead rate or other payment formula
277 designed to eliminate firms from contention or restrict
278 competition or negotiation of fees. If the agency or governing
279 authority is unable to negotiate a satisfactory contract with the
280 firm that is most preferred, negotiations with that firm shall be
281 terminated. The agency or governing authority shall then begin
282 negotiations with the firm that is next preferred. If the agency
283 or governing authority is unable to negotiate a satisfactory
284 contract with that firm, negotiations with that firm shall be
285 terminated. The agency or governing authority shall then begin
286 negotiations with the firm that is next preferred. If the agency
287 or governing authority is unable to negotiate a satisfactory
288 contract with any of the selected firms, the agency or governing
289 authority shall reevaluate the construction management at risk,
290 architectural, engineering, or land surveying services requested,
291 including the estimated value, scope, complexity, and fee
292 requirements. The agency or governing authority shall then
293 compile a second list of not less than three (3) qualified firms
294 and proceed in accordance with the provisions of this section. A



295 firm negotiating a contract with an agency or governing authority
296 shall negotiate subcontracts for architectural, engineering, and
297 land surveying services at compensation that the firm determines
298 in writing to be fair and reasonable based upon a written
299 description of the scope of the proposed services.

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

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

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

317 (iii) Current workload and backlog of committed
318 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.

