**Title 36: Technology**

**Part 2: IT Procurement Rules**

## Part 2, Chapter 1: Introduction

### *Rule 1.1. State Procurement Oversight.*

Acquisition of information technology, including hardware, software, and related services, by state agencies and IHLs (Agencies/IHLs) is administered by the Mississippi Department of Information Technology Services (ITS), with approval from the ITS Board. While acquisition of non-information technology goods or services for Mississippi State Government is administered by the Department of Finance and Administration (DFA), with approval from the Public Procurement Review Board (PPRB). IT professional services performed by contract workers—as opposed to independent contractors—are not governed by ITS law or policy. These services fall under the PPRB rules rather than ITS procurement requirements. Agencies/IHLs that are uncertain which procurement rules apply to a particular procurement must contact DFA or ITS for guidance. Contact information is available on each agency's website:

**DFA:** www.dfa.ms.gov

**ITS:** www.its.ms.gov

### *Rule 1.2. ITS Roles and Responsibilities.*

The duties and responsibilities of the ITS Board, the ITS Executive Director, and ITS are established and further described in Mississippi Code Annotated Section 25-53-1, *et seq.* The following are a description of their general roles and responsibilities.

A. **The ITS Board.** The ITS Board is the five (5) member Board of the Mississippi Department of Information Technology (ITS Board), with the powers as described in Miss. Code Ann. 25-53-1 *et seq.* The ITS Board was created, in part, as the entity with the legal and regulatory authority and oversight over the acquisition of information technology by Agencies/IHLs.

B. **The ITS Executive Director.** The ITS Executive Director, as selected by the ITS Board, serves as the administrative officer of the ITS Board who is responsible for performing such duties as are required by law and such other duties as may be assigned by the ITS Board, including but not limited to serving as procurement/purchasing and contracting agent for Agencies/IHLs in the acquisition of information technology.

C. **ITS.** ITS is the state agency that was created by the Mississippi Legislature to maximize the use and benefit of information technology in state government by promoting full cooperation, coordination, cohesive planning, and maximum compatibility among Agencies/IHLs. ITS acts as staff to the ITS Executive Director and the ITS Board in fulfilling duties as may be assigned in addition to such other duties required by ITS law, including, but not limited to, performing and overseeing the procurement and contracting activities, on behalf of and in conjunction with Agencies/IHLs, for the purchase of information technology.

***Rule 1.3. Scope of These Rules.***

These rules apply to the procurement of all information technology hardware, software, and services acquired by Agencies/IHLs.

**Source:** *Miss. Code Ann. Sections 25-53-1, et seq. and 31-7-1 et seq.*

## Part 2, Chapter 2: Terms and Definitions

### *Rule 2.1 General Governmental Terms*

A. **"Agency" -** includes all the various state agencies, officers, departments, boards, commissions, offices and institutions of the state.

B. "**Bureau of Building, Grounds, and Real Property Management (BOB)**" **-** a division of DFA which acts as the building authority for the state including contracting with architects, engineers, contractors, and suppliers.

C. **"Department of Finance and Administration (DFA)" -** an agency of the state of Mississippi that administers the state government procurement of non-IT goods and services, with the approval of the Public Procurement Review Board.

D. **"Governmental Entities" -** This term includes Agencies, IHLs, and governing authorities.

E. **"Governing Authorities" -** boards of supervisors, governing boards of all school districts, all boards of directors of public water supply districts, boards of directors of master public water supply districts, municipal public utility commissions, governing authorities of all municipalities, port authorities, commissioners and boards of trustees of any public hospitals and any political subdivision of the state supported, wholly or in part, by public funds of the state or political subdivisions thereof.

F. **"Institutions of Higher Learning (IHL)" -** Institutions of Higher Learning are the eight (8) academic institutions overseen by the Board of Trustees of the Institutions of Higher Learning.

G. **"ITS" -** The Mississippi Department of Information Technology Services is the agency tasked with conducting and overseeing the acquisition of information technology by Agencies/IHLs within the state of Mississippi.

H. **"ITS Board" -** the five (5) member Board of the Mississippi Department of Information Technology, with the powers as described in Miss. Code Ann. 25-53-1 *et seq.*.

I. **"ITS Executive Director" -** The administrative officer of the Board and shall perform such duties as are required of him by law and such other duties as may be assigned him by the ITS Board. Pursuant to Miss. Code Ann. 25-53-21(f), the

Executive Director of ITS serves as the procurement/purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology. See Rule 3.9, *Contracting,* for additional information.

J. **"Office of Personal Services Contract Review (OPSCR)" –** A division of DFA that provides oversight for non-IT purchases of personal and professional services contracts.

K. **"Office of Purchasing, Travel and Fleet Management (OPTFM)" -** A division of DFA that provides oversight for non-IT purchases of commodities, travel services, fleet-related contracts, and access to compliant, cost-effective purchasing solutions.

L. **"Public Procurement Review Board (PPRB)" -** the board responsible for oversight of the state government procurement of non-IT goods and services.

M. **"Public Purchasing Law" -** Public Purchasing Law, as a term of art, typically refers to the laws that govern state government procurement of non-IT goods and services pursuant to Miss. Code Ann. 31-7-1, *et seq.*

***Rule. 2.2 Procurement Instruments Terms***

A. **"Express Product Option (EPO)" -** An ITS-approved individual or statewide purchasing method that is intended to speed up IT acquisitions by streamlining certain procurement steps in compliance with all applicable ITS procurement laws, rules, and policies.

B. **"Emergency Purchase" -** Any circumstances caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection or caused by any inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary by reason of unforeseen emergency, or when the immediate restoration of a condition of usefulness of any public building, equipment, road or bridge appears advisable, or in the case of a public utility when there is a failure of any machine or other thing used and useful in the generation, production or distribution of electricity, water or natural gas, or in the transportation or treatment of sewage; or when the delay incident to obtaining competitive bids could cause adverse impact upon the governing authorities or agency, its employees or its citizens; or in the case of a public airport, when the delay incident to publishing an advertisement for competitive bids would endanger public safety in a specific (not general) manner, result in or perpetuate a specific breach of airport security, or prevent the airport from providing specific air transportation services.

C. **"Invitation for Bids (IFB)" -** A competitive bidding method used to solicit sealed bids from qualified vendors for information technology solutions, where price is the primary factor. The purpose of an IFB is to outline the clear, complete, and detailed description of the State's minimum acceptable requirements (e.g., functional, technical, contractual, etc.), including associated contractor's qualifications, to determine the lowest-priced responsive and responsible bidder.

D. **"Master Agreement" -** Agreements entered into pursuant to under Miss. Code Ann. 25-53-5(q)(i) for information technology for shared use by Agencies/ IHLs and governing authorities. The term "Master Agreement" as used under this rule and for IT acquisition purposes is a term of art that is subject to the specific limitations and requirements contained in these rules to be considered a Master Agreement for IT acquisition purposes, and should not be confused with statewide or other types of agreements that also may be referred to as a "master agreement".

E. **"Re-Use" or "Cooperative Purchasing Agreements" -** acquisitions of information technology that have been acquired by other government entities, located within or outside the State of Mississippi. This procurement instrument must be determined to be: in the best interest of the State, promote the maximum use and benefit from technology and services now in operation or which will in the future be placed in operation, and identify opportunities, minimize duplication, reduce costs and improve the efficiency of providing common technology services.

F. **"Request for Proposals (RFP)" -** A competitive bidding method used to solicit sealed proposals from qualified vendors for information technology solutions. An RFP outlines functional requirements and invites diverse approaches to meet the Agency/IHL's needs. The purpose of an RFP is to secure the most effective and innovative solution at a competitive price, with the evaluation of proposals being based on predefined criteria beyond just cost.

G. **"Sole Source" -** A Sole Source (also commonly referred to as single source) is a non-competitive procurement method used to acquire information technology that can only be provided by one vendor.

***Rule 2.3 General ITS Procurement Terms***

A. **"Acquisition" -** means the purchase, lease, rental, or acquisition in any other manner of any such information technology.

B. **“Award of Contract” -** The official decision to enter into a contract with a selected Vendor(s) following the completion of the applicable procurement process. Under these rules, the official decision to "Award of Contract" means either: 1) The ITS Executive Director approval via published Notice of Intent to Award (pursuant to delegated Executive Director Approval limits) or 2) the ITS Board's approval of same during an open session of the Board (if ITS Board approval needed).

C. **“Bid” -** As defined in Miss. Code Ann. 25-53-3, a “bid” means any of the valid source selection techniques and competitive procurement methods appropriate to information technology procurement in the public sector, including, but not limited to, competitive sealed bidding, competitive sealed proposals, simplified small purchase procedures, sole source procurements, and emergency procurements. When used in these rules regarding the specific Invitation for Bids procurement method/type, a “bid” means the offer provided by a vendor in response to an Invitation for Bids.

D. **“Best and Final Offer (BAFO)” -** A vendor's final revised offer, submitted at the State’s request only after all other requirements of the State’s procurement, not addressed in the BAFO, have been completely evaluated, representing the vendor's most favorable terms with respect to price, etc.

E. **“Brand Specification or equal” -** A procurement specification that identifies a particular manufacturer's product by brand name as a reference standard for quality, performance, or compatibility, while permitting vendors to offer functionally equivalent products.

F. **“Consensus Scoring” -** An evaluation method in which members of an evaluation team discuss and reconcile their individual scores to reach a collective, agreed-upon single final score in the evaluation of vendor proposals, bids, or offers.

G. **“Contract”** or **“Agreement” -** A legally binding written instrument executed between the State and a vendor that defines the rights, responsibilities, terms, conditions, deliverables, and compensation governing the provision of information technology. The terms "Contract" and "Agreement" may be used interchangeably throughout these rules.

H. **“CP-1” -** The ITS CP-1 Acquisition Approval form is used to notify agencies and institutions that ITS has approved the agency or institution’s request for the acquisition of information technology. See Rule 3.9.C, ITS Procurement Approval Documentation, for additional information.

I. **“Customer” -** any Agency, IHL, or governing authority that is procuring information technology through ITS.

J. **“Customer Agency Head/IHL CIO or designee” -** the head of an Agency/IHL or his or her designee with the authority to legally bind the Agency/IHL.

K. **“Debriefing” -** A post-award meeting or written communication provided by ITS to a vendor upon request, offering feedback on the vendor's proposal relative to the evaluation criteria. Debriefings are intended to promote transparency and help vendors improve future submissions.

L. **“Estimated Lifecycle Cost” -** is the estimated cost for acquiring information technology over the reasonable period of time anticipated for use.

M. **“Evaluation Criteria” -** The factors, standards, and weights established in a procurement against which vendor proposals are assessed.

N. **“Evaluation Process” -** The structured procedure by which the vendor proposals are reviewed, scored, and ranked in accordance with the evaluation criteria set forth in the procurement.

O. **“Further Delegation” -** The formal process by which a Customer Agency/IHL requests additional delegation of procurement authority from ITS or the ITS Board to conduct certain procurements without the further involvement of ITS.

P. **“Information Technology” -** Information technology includes computers, software, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, related services (including cloud computing and help-desk services or other professional services which support any point of the life cycle of the equipment, software, or service).

Q. **“Multi-year Prepayment Approval” -** the approval authority granted to ITS under Miss. Code Ann. Section 7-7-27 by the Department of Finance and Administration to approve contracts for multi-year (more than one year at a time) prepayments of information technology. See Rule 3.7, Multi-year prepayment, for additional information.

R. **“Procurement” -** the selling, buying, purchasing, renting, leasing, or otherwise obtaining information technology, as well as, activities engaged in, resulting in or expected to result in selling, buying, purchasing, renting, leasing, or otherwise obtaining information technology. For the purposes of these rules, this term is used often in relation to the specific procurement instrument used, similar to using the term “solicitation.”

S. **“Procurement Project” -** A defined undertaking with a specific objective, scope, schedule, and budget, to acquire information technology that meets an identified business need of the Customer.

T. **“Proposal” -** A formal written response submitted by a Vendor in response to a Request for Proposal procurement method, setting forth the vendor's technical approach, qualifications, pricing, and/or any other information requested.

U. **“Purview” -** the range of legal and regulatory oversight authority for purposes of these rules.

V. **“Responsible” -** A determination that a vendor who submitted a response to a procurement meets the minimum qualifications which were included in the procurement. The Customer Agency/IHL shall have the sole discretion to establish minimum qualifications aimed at determining whether a vendor has the capability in all respects to fully perform the contract requirements, determining whether a vendor has the integrity and reliability which will assure good faith performance, and reducing the risk of a subsequent default or unsatisfactory performance by a vendor which would result in additional administrative costs to the Customer Agency/IHL.

W. **“Responsive” -** A determination that a vendor who submitted a response to a procurement which conforms in all material respects to the requirements of the procurement.

X. **“Silent Period” -** The designated period during an active procurement process during which all communication between vendors and State personnel regarding the active procurement is prohibited, except through the officially designated point of contact. The silent period is intended to protect the integrity of the procurement process.

Y. **“Special Delegation” -** ITS Board recognized delegation of procurement authority for certain types of information technology.

Z. **“Technology Plan” -** The required plan that must be submitted yearly to ITS. Each plan reflects the intentions and actions for purchasing/using information technology to fulfill the Agency’s mission and support business goals and objectives.

**AA. “Telecommunications” -** means the equipment and services as described in Chapter 5 of these rules, Telecommunications.

**BB. “Vendor” or “Contractor” -** An individual, firm, corporation, partnership, or any other legal entity that provides or proposes to provide information technology to an Agency/IHL within the State of Mississippi. The terms "Vendor" and "Contractor" may be used interchangeably throughout these rules.

**Note:** For purposes of this section, any terms defined and shown above in capitalized form may be used interchangeably throughout this rule regardless of capitalization. The meaning assigned in this section applies to both capitalized and non-capitalized instances of the defined terms, unless context clearly indicates otherwise. Further, there may be additional terms that have specific meanings, beyond those defined here, that are associated with a particular procurement instrument. Refer to the documentation (e.g. Instructions for Use, etc.) associated with a particular procurement instrument for more information.

***Source:*** *Miss. Code Ann. 25-53-1, et seq. and 31-7-1, et seq.*

## Part 2, Chapter 3: General

### *Rule 3.1 General*

This section of the rules applies to all information technology acquisitions, generally, under these rules, unless expressly stated otherwise in this section.

### *Rule 3.2 Compliance with IT Procurement Laws, Rules, and Procedures.*

Agencies/IHLs are legally required to follow the laws, rules, policies, and procedures governing all IT purchases. Failure to comply may affect whether ITS can approve an acquisition and may delay the procurement if a new, compliant procurement process must be initiated.

Under ITS law, ITS serves as the procuring and contracting agency on behalf of Agencies/IHLs unless, as provided in these rules, the Agency/IHL is delegated to procure information technology without ITS involvement. When an Agency/IHL procures IT—whether under delegated authority or not—it must follow ITS procurement laws, rules, and procedures. If not:

- **A.** ITS may decline to approve the purchase
- **B.** The Agency/IHL, working with ITS, may be required to restart the procurement
- **C.** Project timelines may be significantly delayed
- **D.** Costs may increase due to delays or re-bidding
- **E.** Audit/Compliance issues may arise

ITS (as the procuring and contracting agent) is responsible for decisions related to the procurement process and procedures, while all business decisions remain solely the responsibility of the Agency/IHL.

For delegated IT purchases, the Agency/IHL is solely responsible for all procurement decisions and actions. Any IT purchase made outside ITS laws, rules, and procedures is done at the sole responsibility and risk of the Agency/IHL.

### *Rule 3.3 Technology Plans.*

As a part of ITS' enterprise information technology planning obligations, agencies must submit and maintain current information technology plans in the format and on the schedule prescribed by ITS. This assists with ITS providing appropriate guidance on procurement of information technology by the State. ITS approval for acquisitions of information technology will not be provided unless the specific acquisition is appropriately captured in the Agency's current technology plan. Due to the importance the Board places on technology planning, agencies without an ITS approved technology plan are not eligible for delegated procurement or contracting authority for information technology under these rules.

***Rule 3.4 Enterprise Security Compliance.***

**A. Responsibility.** Pursuant to Miss. Code Ann. § 25-53-201, each state agency/IHL director or head is **solely** responsible for the security of all data and information technology resources under the Agency/IHL's purview, regardless of where those resources are located.

**B. Compliance with Enterprise Security Program.** Agencies/IHLs shall ensure compliance with the ITS Enterprise Security Program and all related policies when acquiring, implementing, or maintaining information technology. Additional information related to the Enterprise Security Program can be found on the ITS website.

**C. Security Requirements for Technology Acquisitions.** Any information technology acquired by an agency/IHL must support and maintain the state Agency/IHL's compliance with the Enterprise Security Program.

**D. Prerequisites for ITS Procurement Approval.** Agencies/IHLs must meet the following requirements before an Agency/IHL can obtain acquisition approval for any information technology procurement project:

1. The Agency/IHL must be in compliance with the Enterprise Security Policy; and

2. The Agency/IHL must have completed an IT Security Risk Assessment (2) years prior to the date of the procurement acquisition.

***Rule 3.5 Brand Specification Justification*.**

ITS encourages agencies to use open and competitive specifications whenever possible to maximize competition among manufacturers. However, when an Agency/IHL has a compelling business need and it is in the best interest of the State, the Agency/IHL may be permitted to use brand-specific specifications in its information technology procurement. Such justification for use must be thoroughly documented on the required ITS form, demonstrating the business justification, confirming that the specified brand is competitively available from multiple vendors, and that use of the brand specific requirement is in the best interest of the State. Brand specific justifications may include considerations regarding compatibility, cost-effectiveness, efficiency, interoperability, staff expertise, maintenance needs, product lifecycle pricing, alignment with peer entities, or other relevant factors. Brand specifications may only identify manufacturers, not specific resellers. Further, brand specifications shall not be used for single/sole-source items or for personal/professional services, unless ITS expressly approves. ITS may request additional information at any time related to a brand specification.

***Rule 3.6 Estimated Lifecycle Cost*.**

Except as may otherwise be provided under these rules, the estimated lifecycle cost is the estimated cost for acquiring information technology over the reasonable period of time anticipated for use. For purposes of new information technology acquisitions, Agency/IHLs are responsible for determining how long they reasonably expect to use the IT (e.g., estimate period time of use) and multiply that by the estimated costs. However, in **no way** shall the estimated lifecycle cost be calculated or unnecessarily split to circumvent the competitive procurement requirements of these rules or to bypass ITS Board approval requirements. Agencies/IHLs must consider **all** relevant cost components for purposes of determining the estimated lifecycle cost before procuring or acquiring IT in accordance with these rules. At minimum, the following must always be evaluated in determining the estimate lifecycle costs of IT:

**A.** Implementation - installation, configuration, deployment,

**B.** Required Support and Maintenance - vendor or internal support over time,

**C.** Enhancements or Upgrades – both current and reasonably foreseeable future needs,

**D.** Data Storage - on-premises or cloud,

**E.** Hosting requirements/Cloud usage - ongoing operational costs,

**F.** Training - initial and ongoing training for users or administrators,

**G.** Security - tools, monitoring, compliance, and related protections,

**H.** Licensing or subscription fees - recurring or usage-based, and

**I.** Infrastructure requirements - hardware, networking, or other foundational needs.

The Agency/IHL must document their justification and business need in writing of the estimated lifecycle cost and provide a copy of such documentation over to ITS for their files in determining how to procure the information technology. For renewals on previously acquired information technology, Agencies/IHLs must consider the total period of time for renewal, scope of the renewal request, the costs, including any permitted price adjustments, all in accordance with the terms and conditions and limitations of the original procurement and applicable ITS approvals. Any questions of what is “in accordance with the terms and conditions and limitations of the original procurement and applicable ITS approvals”, please contact the ITS Help Desk at isshelp@its.ms.gov or (601) 432-8166.

Please note that donations of information technology and other types of acquisitions based on non-traditional payment methods (e.g., fee-based models which are charged to public or other end users, but not the state) are within the scope of ITS procurement rules and must also consider the total estimated lifecycle costs.

***Rule 3.7 Multi-year Prepayment*.**

In accordance with the authority granted under Miss. Code Ann. Section 7-7-27, the Department of Finance and Administration (DFA), granted ITS the authorization to approve contracts for multi-year prepayment of information technology ***services and software licensing*** for state agencies. This authority is subject to the following conditions:

**A.** The procurement/contract is **<u>not</u>** delegated by ITS to the agency;

**B.** Prior to granting any approval for a multi-year prepayment, ITS must carefully review the licensing or services to be provided to ensure prepayment is both a standard business model for the licenses or services being purchased and is advantageous to the State;

**C.** If approved, contracts for these purchases must contain appropriate protective language to reduce the risk of multi-year prepayment;

**D.** The state agency must ensure, and affirmatively state in writing to ITS, that the prepayment conforms to any federal or other funding regulations or requirements; and

**E.** Once prepayment is approved, ITS will issue a project specific approval letter to the Customer agency, citing the authorization granted by DFA, and agencies are required to attach a copy of the ITS approval letter to the payment voucher.

Agencies/IHLs who wish to make multiyear prepayments for information technology acquisitions, even for Small Purchases, must submit a procurement project with ITS to conduct and approve the acquisition. Information technology procurements requested and conducted by ITS procurement staff, even if normally delegated by these rules (e.g., Small Purchases Procedures, EPOs, etc.), are not considered “delegated”.

***Rule 3.8 Cancellation of Procurement or Rejection of Individual Bids or Offers.***

A procurement may be canceled or any or all responses to the procurement may be rejected when it is determined to be in the State’s best interest to do so. A memorandum stating the reasons for the cancellation shall be made part of the procurement audit file.. Notice of rejection shall be documented in writing, stating the reasons for rejection, and sent to the applicable vendor being rejected.

***Rule 3.9 Contracting*.**

**A. Contracting Agent.** The Executive Director of ITS is, by state statute, the purchasing and contracting agent for information technology hardware, equipment, systems, software, and services made by Agencies/IHLs in the State of Mississippi. All contracts (other than those related to procurements delegated to Agencies/IHLs) MUST be signed or approved by the ITS Executive Director to be legally binding.

**B. Limitation of Liability.** Pursuant to Miss. Code Ann. § 25-53-21, in the negotiation or execution of contracts for information technology, the ITS Executive Director has express authority to negotiate a limitation on the liability to the state of prospective contractors provided such limitation affords the state reasonable protection and the limitation is approved by the state entity for whom the acquisition is made. For purposes of this section, reasonable protection does not include limitations on intentional torts, negligence, death, bodily injury, bad faith, breach of state data, infringement issues and damage to tangible state property.

The ITS Executive Director, in his or her sole discretion, may also negotiate and approve limitation of liabilities for delegated information technology acquisitions/contracts that are under ITS's procurement purview. However, this authority does not apply to acquisitions that have been exempted/excepted from ITS's procurement purview by law, such as acquisitions of computer equipment and services by IHLs or junior colleges wholly with federal funds.

Unless prohibited in the procurement, information technology contracts may only contain liability limitations if all the following requirements are met:

1. The contract is within ITS's procurement purview.
2. The state entity requests approval from the ITS Executive Director to limit liability.
3. The state entity provides sufficient written information to ITS regarding the proposed liability limitation(s) for consideration to determine whether the limitation provides the State reasonable protection.
4. The liability limitation(s) affords the state reasonable protection.
5. The state entity's authorized representative provides written approval of the negotiated liability limitation(s).
6. The ITS Executive Director approves the liability limitation(s) in writing only as evidenced by his or her signature on the contract. For delegated acquisitions, including approved Further Delegation requests, the ITS Executive Director's signature on the contract is approval of the negotiated limitation of liability **only** and does not signify approval of the procurement or any other terms, provisions, conditions, etc. of the delegated procurement/contract.

Any contract that contains limitation of liability terms that do not meet all the above requirements shall be construed as null and void. Further, any revision to any such limited limitation of liability provision cannot be revised at any time without the ITS Executive Director signatory approval otherwise such revision is considered void.

C. **ITS Procurement Approval Documentation.** For information technology acquisitions made through ITS, on behalf of Agencies/IHLs, a CP-1 Acquisition Approval Document is required, unless the acquisition is delegated to the Agency/IHL.

1. **Purpose.** The ITS CP-1 Acquisition Approval document is used to notify Agencies/IHLs that ITS has approved the Agency/IHL's request for the acquisition of information technology or has approved the Further Delegation of a procurement from ITS. This form specifically identifies the name of the vendor, a list of the products approved, associated costs, and any additional pertinent information for acquisitions made through ITS and specifies the nature of the purchase and the maximum expenditure amount for the acquisition in approved Further Delegation acquisitions.

2. **Designated Use.** The CP-1 Acquisitions Approval document is the Agency/IHL's authorization to issue a purchase order and/or to make ongoing payments to the specified vendor for the products or services identified on the form and at the prices provided that are in accordance with any applicable contract. The Agency/IHL is authorized to make payments to the vendor specified on the CP-1 up to the amount listed in the CP-1 **only**, that is in accordance with the contract. The CP-1 form should be kept with related financial records to provide an audit trail of ITS approval. The CP-1 number must be referenced on each related purchase order(s). If a CP-1 approves payment of recurring costs, the dates covered by the payment should be specified on the purchase order.

3. **Distinction for Type 1 Emergencies.** ITS does not approve Type 1 emergencies nor determines the validity of the Agency/IHL's emergency declaration. ITS will issue a CP-1 Acquisition Approval Document ONLY for the limited accounting purposes to facilitate payment processing upon receipt of the required documentation for Type 1 Emergencies.

4. **Revised ITS Approval Required.** It is necessary to request additional or revised ITS approval for IT purchases under ITS purview and obtain a replacement CP-1 in the following instances:

   a. **Expired CP-1.** In this instance, ITS will confer with the AGENCY/IHL and reference the terms of the original procurement and contract to assess whether it is appropriate to extend the current contract with the existing vendor or to initiate a new procurement.

b. **Vendor Change.** Agency/IHL will need to acquire revised ITS approval to change vendors.

c. **Price Increases.** It is necessary to seek revised ITS approval for price increases over the lifecycle amount authorized on the CP-1 or contract.

d. **Material Changes to the Acquisition**. It is necessary to acquire revised ITS approval for material changes in the acquisition (e.g., scope/pricing of the procurement changes from original purchase or material contract terms).

**5.** It is appropriate for ITS to revise or extend approval and to issue a replacement CP-1 only where the revision or extension is within the scope/pricing of the original procurement/purchase or material terms of such procurement/contract. There may be situations where you request a replacement CP-1 but the situation merits a new procurement. ITS will work with you to solicit the additional information needed if it is determined that your request should be processed as a new procurement. Upon renewal, extension, amendment, or other revision to a prior acquisition, the ITS Executive Director, or his or her designee, determines whether the acquisition is materially consistent with the terms or conditions of the applicable procurement or contract, including, but not limited to, changes in scope, pricing, or other material terms, and can approve any material changes within the delegated approval authority limits if it is in the best interest of the State and it would not change the original award (e.g. lowest and best determination under an RFP). The ITS Executive Director or his or her designee can require any Customer to provide information to make these determinations. Failure to provide information can affect the decision affecting the Customer.

**D. Agency/IHL Contracts.** There should be only one contract between a single Agency/IHL and a single vendor for a particular information technology unless a written justification as to why the Agency/IHL requires more than a single contract has been signed by the Agency Head/IHL CIO and the Agency/IHL's chief financial officer and uploaded to MAGIC or other state-required accounting/financial system. Agencies/IHL's should construe this regulation in favor of competition where there is any uncertainty.

**E. Delegated Procurements**. Any time these rules refer to delegation of procurement authority, this also includes the contracts, unless specifically stated otherwise in these rules, the procurement instrument, or applicable ITS approval/decision.

***Rule 3.10 Purchases made by Governing Authorities*.**

Acquisitions of information technology made by governing authorities are not under the procurement purview of ITS. However, governing authorities, pursuant to Miss. Code Ann. 31-7-13(m)(xi), **may** purchase information technology products under the provisions of purchase schedules or contracts executed or approved by ITS that are designated for use by governing authorities. If a governing authority utilizes such purchase vehicles to purchase information technology products, they are required to follow such purchasing vehicle requirements but are not required to get ITS approval or to have a CP-1 Acquisition Approval Document. Governing authorities are solely responsible for ensuring that they comply with all purchasing and other applicable law, rules, regulations, and procedures in making any information technology purchases.

***Rule 3.11 Electronic Government Services.***

Services and related technology initiatives overseen by the Electronic Government Oversight Committee established under Miss. Code Ann. 25-53-151. The duties of this Committee include but are not limited to the following:

- **A.** prioritize and make recommendations for all electronic government services, to cut across state and local governmental organizational structures;
- **B.** address policy issues such as privacy, security, transaction fees and accessibility;
- **C.** review ongoing fiscal and operational management and support of portal (i.e., ms.gov);
- **D.** provide a mechanism for gathering input from citizens, businesses and government entities;
- **E.** encourage self-service models for citizens through state websites and other electronic services; and
- **F.** promote economic development and efficient delivery of government services by encouraging governmental and private sector entities to conduct their business and transactions using electronic media.

All agencies of state government are required to cooperate with the Committee in providing requested information, work closely with and provide information to the Committee, and report to the Committee at its request. ITS provides administrative support for the Committee.

***Rule 3.12 Time Computation*.**

The countdown for any time period begins the day of the triggering event (e.g. an RFP is published for public notice purposes to a website). The last day of the period is included unless it falls on a Saturday, Sunday, Mississippi legal holiday, or a day when the ITS office is closed. If it does land on a Saturday, Sunday, Mississippi legal holiday, or a day when the ITS office is closed, the deadline moves to the next business day that is not a weekend, holiday, or closure day.

***Rule 3.13 Variance Authority*.**

The ITS Board may grant a variance in the application of any provision of these rules when such a variance is determined to be in the best interest of the State of Mississippi. A variance may be granted only when:

- **A.** The variance protects or supports the State's operational, financial, or security interests,
- **B.** The variance does not conflict with state law or exceed the authority granted to ITS or the ITS Board, and
- **C.** The circumstances demonstrate that strict application of the rule would hinder, rather than support, the State's ability to procure or manage information technology effectively.

Agencies/IHLs must provide sufficient written justification and support documentation when requesting a variance. Approval of a variance does not exempt the Agency/IHL from complying with all other applicable procurement-related or other laws, policies, funding requirements and procedures.

A variance granted under this section applies only to the specific procurement or circumstance for which it is issued and does not establish precedent or constitute a general modification of these rules.

***Rule 3.14 IT Acquisition Approval Limits.***

Unless otherwise provided under the specific procurement sections in these rules, the following are the general IT acquisition approval limits. ITS Board approval is required for any information technology acquisition that meets at least one of the following conditions:

1. Initial Estimated Lifecycle Cost Limit - The initial acquisition has a total estimated lifecycle cost exceeding $1,000,000.00.
2. Renewal/Amendment Cost Limit - Any renewal of an IT acquisition has a total cost exceeding $1,000,000.00.

3. Extended Term - When a renewal, extension, amendment, or other revision to a prior acquisition results in a total contract term exceeding ten (10) years, inclusive of all renewal or extension periods.
4. Material Changes - Upon renewal, extension, amendment, or other revision to a prior acquisition, the ITS Executive Director, or his or her designee, determines that the acquisition is not materially consistent with the terms or conditions of the applicable procurement or contract, including, but not limited to, changes in scope, pricing, or other material terms.
5. Discretionary Elevation - The ITS Executive Director or the ITS Board directs that the acquisition be submitted for ITS Board approval.

Except as provided above, the ITS Director is authorized to approve all other information technology acquisitions below the limits provided under this rule. Generally, the ITS Director is authorized to delegate any of his approval authority to an Agency/IHL.

***Rule 3.15 Questions*.**

Please contact the ITS Help Desk at isshelp@its.ms.gov or (601) 432-8166 with any questions regarding an IT procurement.

**Source:** *Miss. Code Ann. Sections 25-53-5*

## Part 2, Chapter 4: Method of Source Selection

***Rule 4.1 Procurement Instruments*.**

All acquisitions of information technology involving the expenditure of funds more than the dollar amount established in Section 31-7-13(c), or rentals or leases more than the dollar amount established in Section 31-7-13(c) for the term of the contract, shall be based upon bid. Miss. Code Ann. Sec. 25-53-5(n).

According to Miss. Code Ann. 25-53-3, "Bid" is defined as "any of the valid source selection techniques and competitive procurement methods appropriate to information technology procurement in the public sector, including, but not limited to, competitive sealed bidding, competitive sealed proposals, simplified small purchase procedures, sole source procurements, and emergency procurements."

The following procurement methods covered under these rules are authorized for use in the acquisition of information technology under ITS Board procurement purview only as provided in accordance with these rules.

**Source:** Miss. Code Ann. Sections 25-53-3 and 25-53-5.

*Rule 4.2 Small Purchases.*

A. **Description and Purpose.** A Small Purchase under these rules is a method of procurement for purchases under $75,000 in total.

B. **Designated Use.** Small Purchases are used when the Agency/IHL seeks to acquire information technology with a cost under $75,000. An Agency/IHL can make a Small Purchase under these procurement rules, without ITS procurement staff, only if the total lifecycle cost for the purchase is below the delegated limits as provided below or the Agency/IHL has received the appropriate approvals for a Further Delegation as provided in Chapter 6, Delegations, of these rules.

*Rule 4.2.1 Minimum Procedures.*

The following are the minimum procedures that must be followed for all acquisitions for information technology using a Small Purchase process under these rules:

A. **Purchases under $5,000.00.** Agencies/IHLs are delegated authority for information technology purchases with a estimated lifecycle cost of less than $5,000.00, including sole source purchases.

B. **Purchases between $5,000.00 and $75,000.00.** Information technology purchases over $5,000.00 but not over $75,000.00 have been delegated by ITS to the purchasing entity. Purchases in this price range do not require advertisement of bids but do require at least two competitive written bids. "Competitive written bid," often referred to as a "written quote," is defined as follows: a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor. Customers must select the lowest quote.

C. **Ratification of Prior Small Purchase Acquisitions.** A prior information technology acquisition conducted under these small-purchase procedures may be ratified or adopted by ITS for renewal purposes when the proposed action remains within the material terms, scope, and intent of the original procurement, as solely determined by ITS. Ratification is permissible only when the renewal request does not alter essential elements of the initial acquisition, including the nature of the goods or services, pricing structure, deliverables, or performance expectations.

D. **Multi-year Prepayment.** Agencies/IHLs who wish to make multiyear prepayments for information technology acquisitions, even for Small Purchases, must submit a procurement project with ITS to conduct and approve the acquisition. Information technology procurements requested and conducted by ITS procurement staff, even if normally delegated by these rules (e.g., Small Purchases Procedures, EPOs, etc.), are not considered “delegated”. See Section 3.7, Multi-Year Prepayment, of these rules for additional information.

E. **<u>Procurement Audit File.</u>** All final documents and written determinations related to a Small Purchase conducted under these rules, including, but not limited to, copies of quotes and estimated lifecycle cost documentation, shall be maintained in the Agency/IHL procurement audit file.

***Rule 4.2.2 Delegation of Authority and Required Approvals***

**A. Conducting the Procurement/Acquisition Process.**

1. **<u>Agencies/IHLs.</u>** Under this rule, Agencies/IHLs are authorized by the ITS Board to conduct, award, and contract for information technology acquisitions with an estimated total lifecycle cost under $75,000.00 without ITS procurement staff involvement and without ITS approval. For lifecycle costs exceeding $75,000.00 (i.e., $75,000.01), Agencies/IHLs must submit a procurement request in accordance with ITS procurement procedures, as provided on the ITS website. In such cases, ITS procurement staff will manage the procurement and contracting process in coordination with the Agency/IHL, following applicable ITS laws, rules, and policies.

2. **<u>Telecommunications.</u>** If an Agency/IHL’s IT acquisition includes or is for telecommunications equipment, software, or services, it must obtain prior ITS Telecommunications approval in accordance with Chapter 5 of these rules, Telecommunications, before proceeding with any procurement project in accordance with and required under these rules, including an IFB, regardless of lifecycle amount. Please note, Telecommunication's approval does **<u>not</u>** substitute the required procurement processes that must be followed in accordance with these rules and the ITS Executive Director and ITS Board approvals. Even with applicable Telecommunications approval, Agencies/IHLs cannot purchase telecommunications without following these rules. Any purchase made in violation of these rules may result in debarment of the applicable vendor for a period of up to twenty-four months.

**B. Approving the Procurement/Acquisition Process.**

There are no additional approvals required by ITS for purchases made under a Small Purchase procurement vehicle, except as provided below for any request for ratification or adoption by ITS.

1. **ITS Board.** ITS Board approval is required for any information technology acquisition under a request for ITS ratification or adoption of a small purchase that has a total lifecycle cost exceeding $1,000,000.00.

2. **ITS Executive Director.** The ITS Executive Director is authorized to approve any information technology acquisition under a request for ITS ratification or adoption of a small purchase that has a total lifecycle cost exceeding $75,000.00 up to $1,000,000.00.

**Source:** *Miss. Code Ann. Sections 25-53-3, 25-53-5, 25-53-21, and 25-53-25.*

***Rule 4.3 Invitation for Bids.***

**A. <u>Description and Purpose.</u>** An Invitation for Bids (IFB) under these rules is a competitive bidding method used to solicit sealed bids from qualified vendors for information technology solutions, where price is the primary factor. The purpose of an IFB is to outline the clear, complete, and detailed description of the State's **<u>minimum acceptable</u>** requirements (e.g., functional, technical, contractual, etc.), including associated contractor's qualifications, to determine the lowest-priced responsive and responsible bidder.

**B. <u>Designated Use.</u>** An IFB should be used only when the Agency's/IHL's specifications are clear, complete, and objective, and when the contract can be awarded to the lowest-priced vendor who is both responsive and responsible. IFBs are appropriate for straightforward, well-defined IT procurements such as one-time, agency-specific purchases or term contracts for repetitive IT goods and services. Because IFBs do not allow for evaluating qualitative differences or weighing technical merit against price, it is not recommended to use IFBs for complex IT services, purchases that would require any future items not identified in the original IFB (e.g., enhancements, etc.), or any procurement requiring comparative assessment of service quality or vendor approach. ITS staff conducts the IFB process on behalf of and in conjunction with Agencies/IHLs. An Agency/IHL can perform an IFB under these procurement rules, without ITS procurement staff, only if the total lifecycle cost for the purchase is below the delegated limits as provided below or the Agency/IHL has received the appropriate approvals for a Further Delegation as provided in Chapter 6 of these rules, Delegations.

***Rule 4.3.1 Minimum Procedures*.**

The following are the minimum procedures that must be followed for all acquisitions for information technology using an IFB process under these rules:

**A. <u>Silent Period.</u>** Once an Agency/IHL begins the formal drafting of specific requirements to be included in the IFB, it shall stop vendor communications to prevent any appearance of favoritism, otherwise known as the Silent Period. The Silent Period is the time during procurement when state employees and contractors involved in the procurement process must avoid communication with prospective vendors about the competitive procurement. All vendor interactions during this period must go through the designated IFB contact or occur as authorized by that contact or the IFB.

**B. <u>Content.</u>** IFBs shall include the following minimum information:

1. The Agency/IHL name,

2. The specific information technology being sought including a clear, complete, and detailed description of the State's minimum acceptable requirements (e.g., functional, technical, contractual, etc.) to allow bidders to adequately calculate their bid price and meet the needs of the Agency/IHL throughout the life of the project/contract,
3. the IFB number and issue date,
4. the name and contact information of the Agency/IHL official responsible for the procurement,
5. the means of contacting the Agency official responsible for the procurement,
6. deadline for receipt of bids (i.e. place, time, date, format, and delivery address or instructions for electronic or alternative submission methods),
7. the location and method for accessing the IFB and all referenced documents (including those incorporated by reference),
8. bid submission requirements,
9. a bid form and any other forms the bidder is required to submit,
10. a description of the objective minimum qualifications required and any documentation needed to demonstrate the bidder objectively meets the minimum qualifications (i.e., responsibility),
11. the required contract terms and conditions,
12. a statement that the Agency/IHL may cancel the procurement or reject any bid submitted if the Agency/IHL determines it is in the Agency/IHL's best interest to do so,
13. a statement, that in submitting the bid, the bidder certifies that the price submitted was independently arrived at without collusion,
14. evaluation criteria and scoring methodology,
15. instructions on when and how pricing should be submitted,
16. date, time, location, and attendance requirements (mandatory or optional) for any pre-submittal conference,

17. deadlines and format for receipt of questions and answers, if applicable,

18. notice of the opportunity to protest which can be accomplished by reference to Chapter 9 of these rules, ITS Procurement Protest Policy, of these rules,

19. a requirement that the offeror shall also submit a copy of the bid, including any documents submitted in response to clarifications or BAFOs, with information the offeror deems confidential commercial and financial information and/or trade secrets in accordance with Mississippi Code Annotated §§ 25-61-9, 75-26-1 through 75-26-19, and/or 79-23-1 redacted in black,

20. notice to the bidder that it may be subject to exclusion under these rules if ITS determines that redactions made by the bidder were made in bad faith to prohibit public access to the portions of the bid which are not subject to Mississippi Code Annotated §§ 25-61-9, 75-26-1 through 75-26-19, and/or 79-23-1, and

21. notice to the bidder that the redacted version of the bid, including any documents submitted in response to clarifications or BAFOs, – or if a bid does not produce a redacted version, the full bid document – will be released at the ITS's sole discretion, without any additional notice to the offeror and will be produced as a public record exactly as submitted.

**C.** <u>**Notice.**</u> IFBs must be noticed, which means announced publicly to inform potential vendors that an IFB is available and open for competition. Bidders shall be given a reasonable amount of time to prepare bids. Notice must be, at a minimum, accomplished by posting the IFB, in full, on the ITS-designated procurement portal or website (this applies in any procurement performed by ITS on behalf of itself or Agency/IHLs). IFBs shall be noticed for a minimum period of 30 calendar days prior to the bid submission deadline, unless ITS determines, in writing, that a shorter time is deemed necessary for a particular procurement. Any such written determination shall be included in the procurement audit file. Under no circumstances shall there be less than 14 calendar days between the date of notice and the bid submission deadline unless permission for a shorter timeframe is explicitly granted by the ITS Board. Where the Agency/IHL has been delegated to perform an IFB in accordance with these rules, this notice requirement can be fulfilled by posting the IFB, in full, on the applicable Agency/IHL website.

Please note that some additional requirements for notices may be required by an Agency/IHL's funding source or applicable specific state and/or federal laws or regulations. <u>**In such cases, the Agency/IHL, etc. must notify ITS of any such**</u>

**additional requirements for compliance purposes.** For example, the following are some common additional notice requirements that may be applicable:

1. Advertised in a newspaper of general circulation in the county or municipality where the Agency/IHL is located and/or where the services will be performed, once a week for two consecutive weeks;
2. any manner that is specifically required by applicable federal or state laws or rules that the Agency/IHL must follow; or
3. any other manner that reasonably allows at least three prospective offerors to obtain access to the IFB, in full.

**D. Question and Answers.** The IFB shall allow potential respondents to submit written questions after its release. A register of all submitted questions and corresponding answers will be published in writing. The IFB may allow questions to be asked at a pre-submittal conference, or both. All questions and responses must be documented in writing and published as an amendment to the IFB.

**E. Pre-submittal Conference.** Pre-submittal conferences may be conducted to explain IFB requirements. The IFB may designate attendance as mandatory or optional. For mandatory conferences, only vendors with signed-in representatives will be eligible to submit bids as the primary contractor. Questions may be allowed during the conference, but all questions must be submitted by the vendor in writing as prescribed in the IFB. Responses to submitted written questions must be documented in writing and published as an amendment to the IFB. A pre-submittal conference may not occur earlier than 14 calendar days after date of notice described above. In determining when the pre-bid conference will be held, ITS shall consider the complexity of the procurement and any potential amendments to the IFB that may be made following the conference. The conference must be held long enough after the IFB has been issued to allow bidders to become familiar with the IFB's requirements but early enough, prior to bid opening, to allow bidders to consider the conference results in preparing their bids.

**F. Amendments.** Any amendments or modifications to the IFB shall be noticed in the same manner as the IFB, and acknowledged by vendors. Amendments must be issued within a reasonable time to allow bidders to consider them in preparing their bids. If not, the time and date set for receipt of bids shall be reasonably extended. Any such extension of the bid submission deadline shall be communicated to all prospective bidders via an amendment. If an amendment is issued fewer than 14 days before the bid submittal deadline, ITS must document in writing why the shortened timeframe is reasonable.

**G. Receipt of Bids.**

1. **Receipt of Bids.** All bids received by ITS must be time-stamped, dated, securely stored, and remain unopened until the submission deadline. A register of bids received timely shall be kept and maintained in the procurement audit file.

2. **Bid Opening.** At the time designated in the IFB, bids shall be opened in the presence of at least two agency officials (i.e. one agency personnel to open and one agency personnel to witness). ITS shall take every precaution in opening bids to avoid the disclosure of the contents of competing bids to offerors or members of the public prior to issuance of the Notice of Intent to Award.

3. **Withdrawals Before Submission Deadline.** Bids may be withdrawn prior to the submission deadline by written notice to the procurement official responsible for the procurement. The withdrawn bid shall not be considered as part of the procurement audit file and will be returned to the vendor.

4. **Modifications Before Submission Deadline.** Bids may be modified prior to the time and date set for submission by written notice to the ITS official primarily responsible for the procurement. An offeror intending to modify its bid shall withdraw the bid originally submitted and resubmit the modified bid, in its entirety, prior to the submission deadline. The withdrawn bid shall not be considered as part of the procurement audit file and will be returned to the vendor.

5. **Late Bids.** Bids received after the time and date set for submission shall not be considered for award unless ITS has determined, in writing, that considering such a bid is in the best interest of the State and does not prejudice the other offerors who submitted a bid. Any late bid will be returned to the vendor and will not be considered as a part of the procurement audit file unless the above exception applies.

6. **Withdrawal After Submission Deadline.** An offeror may withdraw its bid after the submission deadline by submitting a written request to the official responsible for the procurement. In ITS's sole discretion, any such bid may be returned to the offeror or maintained in the procurement audit file.

7. **Modifications After Submission Deadline**. No changes in a bid shall be made after the submission deadline, unless otherwise permitted under these rules and in accordance with the IFB's terms.

## H. <u>Evaluation.</u>

1. **General.** Competitive sealed bids are evaluated using the criteria and requirements published in the IFB to determine the lowest, responsible, and responsive bidder. If a bid is accepted it must be determined by the State to

be the lowest option, after determining the bid is responsive and vendor is responsible. All evaluation details must be included in the IFB and cannot be changed after bids are received - unless through an approved process as described in these rules (i.e., through an amendment or Best and Final Offer process).

2. **Price.** Price is the only required evaluation factor in an IFB. Price is evaluated after determining a bid is responsible and responsive. Price constitutes the monetary cost (i.e., the dollar amount bid) to the Agency to obtain the information technology needed. The time at which price is requested or evaluated depends on the particular IFB. Price must be evaluated in an objective manner, as detailed in the IFB, utilizing the bid's total lifecycle costs to determine the "lowest" bid.

3. **Clarifications.** ITS or the evaluation team, in its sole discretion, may request an offeror clarify information in their bid. In this case, a written request for clarification will be generated and sent to the vendor. The area or item under review may be suspended from being evaluated until the response is received from the vendor. When the written clarification response is received, the evaluation team commences evaluation in accordance with the IFB. Unsolicited clarifications will not be considered by the evaluation team. If ITS/the evaluation team chooses not to request confirmation or clarification or a clarification is not received, the bid shall be evaluated as submitted. Should the offeror be awarded a contract, any mistake in the bid shall be managed by the Agency/IHL as a contract compliance issue. All ITS solicited written clarifications, and responses, become part of the vendor's bid. ITS shall maintain any written determinations regarding clarifications in the procurement audit file.

4. **Best and Final Offers.** The State reserves the right to request a Best and Final Offer (BAFO) on any procurement. The decision of whether to request a BAFO is solely the decision of the State. If a BAFO is required from the vendors, a written request outlining the information to be provided and the deadline for submitting the BAFO by the vendor is created. This document is provided to all vendors who have submitted responsive bids and have been determined responsible, but only after all other requirements of the IFB, not addressed in the BAFO, have been completely evaluated. BAFOs are evaluated in the same manner as the original bids. Offerors shall be informed what will occur should they not submit a BAFO upon request by the State (e.g., their immediate previous offer will be considered their BAFO or that they will be rejected, etc.). Upon receipt of the BAFO response(s), the evaluation team shall recalculate the applicable scoring affected by the BAFO. ITS shall maintain any written determinations regarding BAFOs in the procurement audit file. A BAFO shall not amend requirements of the procurement.

5. **Minor Informalities.** ITS may waive minor informalities (small, correctable mistakes of form that do not impact price, quantity, quality, delivery, mandatory requirements, or required contract terms). Such informalities can be waived or corrected if it benefits the State and does not disadvantage other offerors and should be documented in writing.

6. **Rejection of bids.** At any time during the evaluation process, ITS reserves the right to reject any or all bids, in accordance with these rules and the terms of the IFB. All rejections of bids must be documented in the procurement audit file detailing the reasons for rejection. Unless the procurement states otherwise, bids or offers need not be unconditionally accepted without alteration or correction. ITS, in conjunction with the Agency/IHL, shall consider this flexibility in determining whether reasons exist for rejecting a bid. Reasons for rejecting individual bids include, but are not limited to, failure to comply with mandatory requirements of the procurement, etc. The following is not delegated to any Agency/IHL and is reserved solely for ITS: if all bids are rejected, ITS may negotiate a contract within the original specifications, provided the negotiated terms are equal to or better than the lowest bid and the total cost does not exceed that lowest bid.

7. **Notice of Cancellation.** When a procurement is canceled, Notice of Cancellation shall identify the procurement being canceled and provide any information ITS deems appropriate. The Notice of Cancellation shall: (1) be posted publicly on the ITS website; and (2) be distributed to all potential offerors known to have received a copy of the procurement. A memorandum containing the reasons for the cancellation shall be made part of the procurement audit file.

## I. Award.

Award of the IFB/contract must be made to the lowest, responsive and responsible bidder as determined by the State in accordance with the IFB's requirements and processes. This occurs by posting a Notice of Intent to Award on the ITS website, and upon receipt of applicable required approvals (e.g., ITS Board or ITS Executive Director). At the time of posting the Notice of Intent to Award a copy of the Final Evaluation Score Sheet, as it applies to each vendor, shall be provided to each vendor participating in the procurement.

Upon issuance of the Notice of Intent to Award by ITS, ITS and the designated customer representatives begin contract negotiations with the awarded vendor. Should negotiations not be successful within a reasonable amount of time, as determined in the sole discretion of the State, the State may discontinue negotiations with the awarded vendor and begin negotiations with the vendor that was responsive and responsible and provided the next lowest cost.

Depending on the project cost, either the ITS Executive Director or the ITS Board must approve the award, prior to execution of the contract and/or the vendor proceeding with work under the IFB. This approval is independent of any approvals required by the customer agency or other regulatory, funding, or oversight entities. See sections of this rule, entitled "Conducting the Procurement/Acquisition Process" and "Procurement/Acquisition Approval Limits" specifically related to IFBs to determine any ITS required approvals that may be applicable.

**J. Debriefings**

Debriefings are intended to exchange information with vendors regarding the procurement to assist with providing appropriate feedback and to assist in improving the procurement process. In the sole discretion of ITS, debriefings may be offered to offerors following issuance of the Notice of Intent to Award in accordance with the IFB's requirements on the same. If a debriefing is offered, ITS shall provide one to every offeror who requests one that is timely and made in accordance with the IFB's requirements. The means of conducting the debriefing and information discussed shall be at the sole discretion of ITS. However, a debriefing shall not provide a point-by-point comparison of the debriefed vendor's response with any other responses to the procurement or those items deemed to be outside the scope of the purpose of the debriefing (e.g., Public Records Act and/or related requests, etc.).The purpose of the debriefing is to discuss significant strengths and weaknesses of the particular vendor requesting the debriefing as may be notated from the evaluation process to provide feedback to the vendor.

Once all requested debriefings have been provided, ITS shall prepare a list of all offerors who requested a debriefing and the date each requested debriefing was completed shall be placed in the procurement audit file. Debriefings are not a condition precedent to any protest that may be filed by an actual or prospective vendor under these rules.

**K. Procurement Audit File.** All final documents and written determinations related to an IFB conducted under these rules shall be maintained in the procurement audit file.

**L. Publicly Posted Procurement File** Upon Award of Contract, the following shall be posted on the ITS website and considered as a part of the Posted Public Procurement File:

1. The full procurement document (IFB) as issued by ITS, including any amendments (including Q&A),
2. Pre-submittal conference materials/recordings- Record of attendees, recording of the conference (if one is made), and any documentation provided to conference attendees,

3. The Register of Bids indicating the proof of date and time all bids were received; and
4. Notice of Intent to Award or Notice of Cancellation, whichever applicable.

Where the Agency/IHL has been delegated to perform an IFB in accordance with these rules, this requirement can be fulfilled by posting the Publicly Posted Procurement File on the applicable Agency/IHL website Please note the items required in a Publicly Posted Procurement File are in addition to any other documents related to the IFB, which is considered a part of ITS's procurement audit file.

**M. <u>Protests.</u>** Protests may be filed by an actual or prospective vendor shall be made in accordance with Rule 9, ITS Procurement Protest Policy.

***Rule 4.3.*2 *Procedural Governance.***

The procurement process used for a specific IFB is intended to be customized to fit the particular procurement, with these rules governing the minimum requirements for fulfillment of ITS Board governed procurement laws, rules, and regulations for purposes of an IFB. All other requirements and processes must be contained in the IFB and will control for IFB procurement purposes, so long as the requirements of the IFB are transparent, competitive as practicable, and are consistently applied to all vendors that respond to the IFB.

ITS has internal procedures and additional information that can provide guidance to Agencies/IHLs who are delegated to perform procurement/acquisitions of IT in accordance with these rules. ITS' procurement procedures are approved procedures delegated to be performed by ITS procurement staff for purposes of implementing these procurement rules on behalf of the Executive Director of ITS and the ITS Board.

***Rule 4.3.*3 *Delegation of Authority and Required Approvals***

**A. Conducting the Procurement/Acquisition Process.**

**1. <u>Pre-Approved Delegation.</u>**

**a. <u>Agencies.</u>** Under this rule, Agencies are authorized by the ITS Board to conduct, award, and contract through an IFB process for information technology acquisitions with an estimated total lifecycle cost under $75,000.00 without ITS procurement staff involvement and without ITS approval. For lifecycle costs exceeding $75,000.00 (i.e., $75,000.01), Agencies must submit a procurement request in accordance with ITS procurement procedures, as provided on the

ITS website. In such cases, ITS procurement staff will manage the procurement and contracting process in coordination with the Agency, following applicable ITS laws, rules, and policies.

b. **Institutions of Higher Learning.** Under this rule, IHLs are authorized by the ITS Board to conduct, award, and contract through an IFB process for information technology acquisitions with a total lifecycle cost under $250,000.00 without ITS procurement staff involvement. For lifecycle costs exceeding $250,000.00 (i.e., $250,000.01), IHLs must submit a procurement request in accordance with ITS procurement procedures, as provided on the ITS website. In such cases, ITS procurement staff will manage the procurement and contracting process in coordination with the IHL, following applicable ITS laws, rules, and policies.

2. **Additional/Further Delegation.** Agencies/IHLs may request additional delegation to conduct, award, and contract through an IFB process without ITS procurement staff involvement for IT acquisitions above the limits listed above, in accordance with Chapter 6 of these rules, Delegations.

3. **Telecommunications.** If an Agency/IHL's IT acquisition includes or is for telecommunications equipment, software, or services, it must obtain prior ITS Telecommunications approval in accordance with Chapter 5 of these rules, Telecommunications, before proceeding with any procurement project in accordance with and required under these rules, including an IFB, regardless of lifecycle amount. Please note, Telecommunication's approval does **not** substitute the required procurement processes that must be followed in accordance with these rules and the ITS Executive Director and ITS Board approvals. **Even with applicable Telecommunications approval, Agencies/IHLs cannot purchase telecommunications without following these rules. Any purchase made in violation of these rules may result in debarment of the applicable vendor for a period of up to twenty-four months.**

**B. Approving the Procurement/Acquisition Process.**

ITS Board approval is required for any information technology acquisition under an IFB that meets at least one of the following conditions:

1. Initial Estimated Lifecycle Cost Limit - The initial acquisition has a total estimated lifecycle cost exceeding $1,000,000.00.

2. Renewal/Amendment Cost Limit - Any renewal of an IT acquisition has a total cost exceeding $1,000,000.00.

3. Extended Term - When a renewal, extension, amendment, or other revision to a prior acquisition results in a total contract term exceeding ten (10) years, inclusive of all renewal or extension periods.

4. Material Changes - Upon renewal, extension, amendment, or other revision to a prior acquisition, the ITS Executive Director, or his or her designee, determines that the acquisition is not materially consistent with the terms or conditions of the applicable procurement or contract, including, but not limited to, changes in scope, pricing, or other material terms.

5. Discretionary Elevation - The ITS Executive Director or the ITS Board directs that the acquisition be submitted for ITS Board approval.

Except as provided above, the ITS Director is authorized to approve all other information technology acquisitions related to IFBs under this rule.

**Source:** *Miss. Code Ann. Sections 25-53-3, 25-53-5, 25-53-21, 25-53-25 and 25-53-117.*

*Rule 4.4 - Request for Proposals.*

**A.** **Description and Purpose.** A Request for Proposals (RFP) under these rules is a competitive bidding method used to solicit sealed proposals from qualified vendors for information technology solutions. An RFP outlines functional requirements and invites diverse approaches to meet the Agency/IHL's needs. The purpose of an RFP is to secure the most effective and innovative solution at a competitive price, with the evaluation of proposals being based on predefined criteria beyond just cost.

**B.** **Designated Use.** RFPs are used when the Agency/IHL seeks a solution, when requirements may be performance-based or complex, and when evaluation must consider factors beyond price, including technical approach, qualifications, and overall value. ITS staff conducts the RFP process on behalf of and in conjunction with Agencies/IHLs. An Agency/IHL can perform an RFP under these procurement rules, without ITS procurement staff, only if the total lifecycle cost for the purchase is below the delegated limits as provided below or the Agency/IHL has received the appropriate approvals for a Further Delegation as provided in Chapter 6 of these rules, Delegations.

*Rule 4.4.1 Minimum Procedures.*

The following are the minimum procedures that must be followed for all acquisitions for information technology using an RFP process under these rules:

**A.** **Silent Period.** Once an Agency/IHL begins the formal drafting of specific requirements to be included in the RFP, it shall stop vendor communications to prevent any appearance of favoritism, otherwise known as the Silent Period. The Silent Period is the time during procurement when state employees and contractors involved in the procurement process must avoid communication with prospective vendors about the competitive procurement. All vendor interactions during this period must go through the designated RFP contact or occur as authorized by that contact or the RFP.

**B.** **Content.** RFPs shall include the following minimum information:

1. The Agency/IHL name,
2. The purpose and scope of the procurement (e.g., What problem is needing to be solved?),
3. the RFP number and issue date,
4. the name and contact information of the Agency/IHL official responsible for the procurement,

5. the means of contacting the Agency/IHL official responsible for the procurement,

6. deadline for receipt of proposals (i.e. place, time, date, format, and delivery address or instructions for electronic or alternative submission methods),

7. date, time, location, and attendance requirements (mandatory or optional) for any pre-submittal conference,

8. deadlines and format for receipt of questions and answers,

9. evaluation criteria and scoring methodology,

10. required format and content of proposal submissions, including any required information/forms,

11. instructions on when and how pricing should be submitted,

12. a statement that the Agency/IHL may cancel the procurement or reject any bid submitted if the Agency/IHL determines it is in the Agency/IHL's best interest to do so,

13. a statement, that in submitting the proposal, the vendor certifies that the price submitted was independently arrived at without collusion,

14. the location and method for accessing the RFP and all referenced documents,

15. anticipated terms and conditions that will apply to the contract,

16. notice of the opportunity to protest which can be accomplished by reference to Rule 9 of these rules,

17. a requirement that the offeror shall also submit a copy of the proposal, including any documents submitted in response to clarifications or BAFOs, with information the vendor deems confidential commercial and financial information and/or trade secrets in accordance with Mississippi Code Annotated §§ 25-61-9, 75-26-1 through 75-26-19, and/or 79-23-1 redacted in black,

18. notice to the bidder that it may be subject to exclusion under these rules if ITS determines that redactions made by the vendor were made in bad faith to prohibit public access to the portions of the proposal which are not subject to Mississippi Code Annotated §§ 25-61-9, 75-26-1 through 75-26-19, and/or 79-23-1, and

19. notice to the vendor that the redacted version of the proposal, including any documents submitted in response to clarifications or BAFOs - or if a vendor does not produce a redacted version, the full proposal document - will be

released at the ITS's sole discretion, without any additional notice to the vendor and will be produced as a public record exactly as submitted.

**C.** **Notice.** RFPs must be noticed, which means announced publicly to inform potential vendors that an RFP is available and open for competition. Vendors shall be given a reasonable amount of time to prepare proposals. Notice must be, at a minimum, accomplished by posting the RFP, in full, on the ITS-designated procurement portal or website (this applies in any procurement performed by ITS on behalf of itself or Agency/IHLs). RFPs shall be noticed for a minimum period of 30 calendar days prior to the proposal submission deadline, unless ITS determines, in writing, that a shorter time is deemed necessary for a particular procurement. Any such written determination shall be included in the procurement audit file. Under no circumstances shall there be less than 14 calendar days between the date of notice and the proposal submission deadline unless permission for a shorter timeframe is explicitly granted by the ITS Board. Where the Agency/IHL has been delegated to perform an RFP in accordance with these rules, this notice requirement can be fulfilled by posting the RFP, in full, on the applicable Agency/IHL website.

Please note that some additional requirements for notices may be required by an Agency/IHL's funding source or applicable specific state and/or federal laws or regulations. **In such cases, the Agency/IHL, etc. must notify ITS of any such additional requirements for compliance purposes.** For example, the following are some common additional notice requirements that may be applicable:

1. Advertised in a newspaper of general circulation in the county or municipality where the Agency is located and/or where the services will be performed, once a week for two consecutive weeks;
2. any manner that is specifically required by applicable federal or state laws or rules that the Agency/IHL must follow; or
3. any other manner that reasonably allows at least three prospective offerors to obtain access to the RFP, in full.

**D.** **Question and Answers.** The RFP shall allow potential respondents to submit written questions after its release. A register of all submitted questions and corresponding answers will be published in writing. The RFP may allow questions to be asked at a pre-submittal conference, or both. All questions and responses must be documented in writing and published as an amendment to the RFP.

**E.** **Pre-submittal Conference.** Pre-submittal conferences may be conducted to explain RFP requirements. The RFP may designate attendance as mandatory or optional. For mandatory conferences, only vendors with signed-in representatives will be eligible to submit proposals as the primary contractor. Questions may be allowed during the conference, but all questions must be submitted by the vendor in writing as prescribed in the RFP. Responses to submitted written questions must be documented in writing and published as an amendment to the RFP. A pre-submittal conference may not occur earlier than 14 calendar days after date of notice described above. In determining when the pre-submittal conference will be held, ITS shall consider the complexity of the procurement and any potential amendments to the RFP that may be made following the conference. The conference must be held long enough after the RFP has been issued to allow bidders to become familiar with the RFP's requirements but early enough, prior to proposal submittal deadline, to allow bidders to consider the conference results in preparing their proposals.

**F. Amendments.** Any amendments or modifications to the RFP shall be noticed in the same manner as the RFP as provided above, and acknowledged by the vendor. Amendments must be issued within a reasonable time to allow vendors to consider them in preparing their proposals. If not, the time and date set for receipt of proposals shall be reasonably extended. Any such extension of the proposal submission deadline shall be communicated to all prospective bidders via an amendment. If an amendment is issued fewer than 14 days before the proposal submittal deadline, ITS must document in writing why the shortened timeframe is reasonable.

**G. Receipt of Proposals.**

1. **Receipt of Proposals.** All proposals (electronic or otherwise) received by ITS must be time-stamped, dated, securely stored, and remain unopened until the submission deadline. A register of proposals received timely shall be kept and maintained in the procurement audit file.

2. **Proposal Opening.** At the time designated in the RFP, proposals shall be opened in the presence of at least two agency officials (i.e. one agency personnel to open and one agency personnel to witness). ITS shall take every precaution in opening proposals to avoid the disclosure of the contents of competing proposals to offerors or members of the public prior to issuance of the Notice of Intent to Award.

3. **Withdrawals Before Submission Deadline.** Proposals may be withdrawn prior to the submission deadline by written notice to the procurement official responsible for the procurement. The withdrawn proposal shall not be considered as a part of the procurement audit file and will be returned to the vendor.

4. **Modifications Before Submission Deadline.** Proposals may be modified prior to the time and date set for submission by written notice to the ITS

official primarily responsible for the procurement. An offeror intending to modify its proposal shall withdraw the proposal originally submitted and resubmit the modified proposal, in its entirety, prior to the submission deadline. The withdrawn proposal shall not be considered as a part of the procurement audit file and will be returned to the vendor.

5. **Late Proposals.** Proposals received after the time and date set for submission shall not be considered for award unless ITS has determined, in writing, that considering such a proposal is in the best interest of the State and does not prejudice the other offerors who submitted a proposal. Any late proposal will be returned to the vendor and will not be considered as a part of the procurement audit file.

6. **Withdrawal After Submission Deadline.** An offeror may withdraw its proposal after the submission deadline by submitting a written request to the official responsible for the procurement. In ITS's sole discretion, any such procurement may be returned to the offeror or maintained in the procurement audit file.

7. **Modifications After Submission Deadline**. No changes in a proposal shall be made after the submission deadline, unless otherwise permitted under these rules and in accordance with the RFP's terms.

**H. Evaluation.**

1. **General.** Competitive sealed proposals are evaluated using the criteria and scoring methodology published in the RFP, where price is not the sole factor. For a proposal to be awarded, it must be determined by the State to be the lowest and best option. Some criteria may be subjective, but all evaluation details must be included in the RFP and cannot be changed after proposals are received—unless through an approved process as described in these rules (i.e., through an amendment or Best and Final Offer process). The following are general requirements for evaluation of proposals that must be followed:

   a. **Evaluation Criteria.** Evaluation criteria are the factors or standards used to evaluate proposals—they define what will be measured (e.g. technical approach, experience, costs, compliance). Proposals shall only be evaluated according to the evaluation criteria listed in the RFP. Agencies may use any factors to evaluate proposals the Agency feels will result in obtaining the best value for the Agency. Price is the only required evaluation factor. Evaluation factors are typically divided into the following categories:

      i. **Costs Factors.** Price constitutes the monetary cost (i.e., the dollar amount bid) to the Agency to obtain the information technology needed. The time at which price is requested or evaluated depends on the particular RFP. Price must be evaluated utilizing an objective cost formula, as must be detailed in the RFP, utilizing the proposal's total lifecycle costs to determine the "lowest" response. An example of an objective price formula includes the following:

Points awarded for cost = (1-((B-A)/A))*n
Where:
A = Total lifecycle cost of lowest valid proposal
B = Total lifecycle cost of proposal being scored
n = number of points allocated to cost for this procurement

In simpler terms, lowest price gets a perfect score. A proposal that is 20% more expensive than the lowest priced offering gets 20% fewer points.

When the above formula would result in a negative cost score (i.e. the lifecycle cost of the proposal being scored is more than twice that of the lowest valid proposal), the cost score is set to zero, rather than deducting points from the vendor's score. The cost points assigned for a particular procurement depend upon the nature of the products or services being acquired. This allocation is a business decision made by ITS and the customer agency or public university.

ii. **Non-Cost Factors.** RFP requirements that are unrelated to price, focusing instead on aspects like technical specifications, vendor qualifications, service quality, solution approach, and outcome-based considerations, are examples of non-cost-related factors. These factors also may include mandatory requirements, if any are included in an RFP. Scoring of the non-cost components in the evaluation criteria is generally more subjective than the quantitative scoring of proposal cost information. Each valid proposal is evaluated against the requirements of the RFP. Unless otherwise justified by the nature of the project, ITS uses a consensus scoring approach to assign points to non-cost criteria, whereby all evaluation team members must agree on the scoring.

- **Mandatory Requirements.** Mandatory requirements are essential conditions that must be met by all offerors in response to a procurement to be considered for award, if included. These requirements are non-negotiable and serve as the baseline for determining proposal responsiveness. At the sole discretion of ITS, mandatory requirements can be included in an RFP so long as they are clearly identified. Failure to meet any mandatory requirement **shall** result in the proposal being deemed non-responsive and rejected, being excluded from further evaluation, scoring, and consideration of award. Mandatory requirements should be considered ONLY when absolutely necessary.

b. **Scoring Methodology.** Scoring methodology is the process for assigning scores in accordance with the evaluation criteria listed in an RFP – it defines how the evaluation criteria will be measured and weighted (e.g., 0–100 point scale, weighted percentages, formulas). Evaluation of proposals must be conducted in accordance with the scoring methodology published in the RFP. The points assigned for a particular procurement depend upon the nature of the information technology being acquired. This allocation is a business decision made by ITS and the customer Agency/IHL. As a part of the evaluation process, ITS uses a consensus scoring approach unless otherwise detailed in the RFP or if consensus among the evaluation team cannot be achieved. Examples include: individual scoring, with all individual scores being averaged together to calculate a final score.

2. **Discussions with Offerors.** Discussions may be conducted, in ITS' sole discretion, to promote understanding of ITS's requirements and the offeror's proposal, or to facilitate arriving at a contract which will be most advantageous to the State. ITS shall ensure information gleaned from one proposal is not disclosed to other offerors and shall conduct the discussions in a manner which maintains the essential integrity of the procurement process. Each responsive offeror shall be treated fairly regarding the opportunity to engage in discussions. ITS shall prepare a memorandum with the date, place, purpose, attendees, and outcome of any discussions for the procurement audit file. Any discussion with an offeror shall be recorded, electronically or in writing, and considered as a part of the proposal.

3. **Clarifications.** ITS or the evaluation team, in its sole discretion, may request an offeror clarify information in their proposal. In this case, a written request for clarification will be generated and sent to the vendor. The area or item under review may be suspended from scoring until the response is received from the vendor or a temporary score may be assigned. The assignment of any temporary or draft score shall not be considered

as final nor is it permissible to be challenged in a vendor protest, due to the pending nature of the evaluation process and the evaluation team’s unique position to determine scoring in accordance with the requirements of the RFP. When the written clarification response is received, the evaluation team once again addresses the item and determines a final consensus score. Unsolicited clarifications will not be considered by the evaluation team. If ITS/the evaluation team chooses not to request confirmation or clarification or a clarification is not received, the proposal shall be evaluated as submitted. Should the offeror be awarded a contract, any mistake in the proposal shall be managed by the Agency/IHL as a contract compliance issue. All ITS solicited written clarifications, and responses, become part of the vendor's proposal. ITS shall maintain any written determinations regarding clarifications in the procurement audit file.

4. **Best and Final Offers.** The State reserves the right to request a Best and Final Offer (BAFO) on any procurement. The decision of whether to request a BAFO is solely the decision of the State. If a BAFO is required from the vendors, a written request outlining the information to be provided and the deadline for submitting the BAFO by the vendor is created. This document is provided to all vendors who have submitted responsive proposals, but only after all other requirements of the RFP, not addressed in the BAFO, have been completely evaluated. BAFOs are evaluated in the same manner as the original proposals. Offerors shall be informed what will occur should they not submit a BAFO upon request by the State (e.g., their immediate previous offer will be considered their BAFO or that they will be rejected, etc.). Upon receipt of the BAFO response(s), the evaluation team shall recalculate the applicable scoring affected by the BAFO. ITS shall maintain any written determinations regarding BAFOs in the procurement audit file. A BAFO shall not amend requirements of the procurement.

5. **Minor Informalities.** ITS may waive minor informalities (small, correctable mistakes of form that do not impact price, quantity, quality, delivery, mandatory requirements, or required contract terms). Such informalities can be waived or corrected if it benefits the State and does not disadvantage other offerors.

6. **Rejection of Proposals.** At any time during the evaluation process, ITS reserves the right to reject any or all proposals, in accordance with these rules and the terms of the RFP. All rejections of proposals must be documented in the procurement audit file detailing the reasons for rejection. Unless the procurement states otherwise, proposals or offers need not be unconditionally accepted without alteration or correction. ITS, in conjunction with the Agency/IHL, shall consider this flexibility in determining whether reasons exist for rejecting a proposal. Reasons for rejecting individual proposals include, but are not limited to, failure to comply with mandatory

requirements of the procurement, etc. The following is not delegated to any Agency/IHL, and is reserved only for ITS: if all proposals are rejected, ITS may negotiate a contract within the original specifications, provided the negotiated terms are equal to or better than the lowest proposal and the total cost does not exceed that lowest proposal.

7. **Notice of Cancellation.** When a procurement is canceled, Notice of Cancellation shall identify the procurement being canceled and provide any information ITS deems appropriate. The Notice of Cancellation shall: (1) be posted publicly on the ITS website and (2) be distributed to all potential offerors known to have received a copy of the procurement. A memorandum containing the reasons for the cancellation shall be made part of the procurement audit file.

## I. Award.

Award of the RFP/contract must be made to the lowest and best proposal, as determined by the State in accordance with the RFP's requirements and processes. This occurs by posting a Notice of Intent to Award on the ITS website, and upon receipt of applicable required approvals (e.g., ITS Board or ITS Executive Director). At the time of posting the Notice of Intent to Award a copy of the Final Evaluation Score Sheet, as it applies to each vendor, shall be provided to each vendor participating in the procurement.

Upon issuance of the notice of intent to award by ITS, ITS and the designated customer representatives, begin contract negotiations with the awarded vendor. Should negotiations not be successful within a reasonable amount of time, as determined in the sole discretion of the State, the State may discontinue negotiations with the awarded vendor and begin negotiations with the vendor that provided the next most competitive proposal.

Depending on the project cost, either the ITS Executive Director or the ITS Board must approve the award, prior to execution of the contract and/or the vendor proceeding with work under the RFP. This approval is independent of any approvals required by the customer Agency/IHL or other regulatory, funding, or oversight entities. See Rule 4.4.3, entitled "Conducting the Procurement/ Acquisition Process" and "Procurement/Acquisition Approval Limits" specifically related to RFPs to determine any ITS required approvals that may be applicable.

## J. Debriefings

Debriefings are intended to exchange information with vendors regarding the procurement to assist with providing appropriate feedback and to assist in improving the procurement process. In the sole discretion of ITS, debriefings may be offered to offerors following issuance of the Notice of Intent to Award in accordance with the RFP's requirements on the same. If a debriefing is offered, the ITS shall provide one to every offeror who requests one that is timely and made in accordance with the RFP's requirements. The means of conducting the debriefing and information discussed shall be at the sole discretion of ITS. However, a debriefing shall not provide a point-by-point comparison of the debriefed vendor's response with any other responses to the procurement or those items deemed to be outside the scope of the purpose of the debriefing (e.g., Public Records Act and/or related requests, etc.).

Once all requested debriefings have been provided, ITS shall prepare a list of all offerors who requested a debriefing and the date each requested debriefing was completed shall be placed in the procurement audit file . Debriefings are not a condition precedent to any protest that may be filed by an actual or prospective vendor under these rules. The purpose of the debriefing is to discuss significant strengths and weaknesses of the particular vendor requesting the debriefing as may be notated from the evaluation process to provide feedback to the vendor.

**K.** **Procurement Audit File.** All final documents and written determinations related to an RFP conducted under these rules shall be maintained in the procurement audit file.

**L.** **Publicly Posted Procurement File** Upon Award of Contract, the following shall be posted on the ITS website and considered as a part of the Posted Public Procurement File:

1. The full procurement document (RFP) as issued by ITS, including any amendments (including Q&A),
2. Pre-submittal conference materials/recordings- Record of attendees, recording of the conference (if one is made), and any documentation provided to conference attendees,
3. The Register of Proposals indicating the proof of date and time all proposals were received; and
4. Notice of Intent to Award or Notice of Cancellation, whichever applicable.

Where the Agency/IHL has been delegated to perform an RFP in accordance with these rules, this requirement can be fulfilled by posting the Publicly Posted Procurement File on the applicable Agency/IHL website. Please note the items required in a Publicly Posted Procurement File are in addition to any other documents related to the RFP, which is considered a part of ITS's procurement audit file.

**M.** **Protests.** Protests may be filed by an actual or prospective vendor shall be made in accordance with Chapter 9 of these rules, ITS Procurement Protest Policy.

***Rule 4.4.2 – Procedural Governance.***

The procurement process used for a specific RFP is intended to be customized to fit the particular procurement, with these rules governing the minimum requirements for fulfillment of ITS Board governed procurement laws, rules, and regulations for purposes of an RFP. All other requirements and processes must be contained in the RFP and will control for RFP procurement purposes, so long as the requirements of the RFP are transparent, competitive as practicable, and are consistently applied to all vendors that respond to the RFP.

ITS has internal procedures and additional information that can provide guidance to agencies/IHLs who are delegated to perform procurement/acquisitions of IT in accordance with these rules. ITS' procurement procedures are approved procedures delegated to be performed by ITS procurement staff for purposes of implementing these procurement rules on behalf of the Executive Director of ITS and the ITS Board. ITS procurement staff can request additional information needed from its customers in fulfilling their responsibilities.

***Rule 4.4.3 – Delegation of Authority and Required Approvals***

**A. Conducting the Procurement/Acquisition Process.**

1. **Pre-approved Delegation.**
    a. **Agencies.** Under this rule, Agencies are authorized by the ITS Board to conduct, award, and contract through an RFP process for information technology acquisitions with an estimated total lifecycle cost under $75,000.00 without ITS procurement staff involvement and without ITS approval. For lifecycle costs exceeding $75,000.00 (i.e., $75,000.01), Agencies must submit a procurement request in accordance with ITS procurement procedures, as provided on the ITS website. In such cases, ITS procurement staff will manage the procurement and contracting process in coordination with the Agency, following applicable ITS laws, rules, and policies.

    b. **Institutions of Higher Learning.** Under this rule, IHLs are authorized by the ITS Board to conduct, award, and contract through an RFP process for information technology acquisitions with a total lifecycle cost under $250,000.00 without ITS procurement staff involvement. For lifecycle costs exceeding $250,000.00 (i.e., $250,000.01), IHLs must submit a procurement request in accordance with ITS procurement procedures, as provided on the ITS website. In such cases, ITS procurement staff will manage the procurement and contracting process in coordination with the IHL, following applicable ITS laws, rules, and policies.

2. **<u>Additional/Further Delegation.</u>** Agencies/IHLs may request additional delegation to conduct, award, and contract through an RFP process without ITS procurement staff involvement for IT acquisitions above the limits listed in above, in accordance with Chapter 6 these rules, Delegations.

3. **<u>Telecommunications.</u>** If an Agency/IHL's IT acquisition includes or is for telecommunications equipment, software, or services, it must obtain prior ITS Telecommunications approval in accordance with Chapter 5 of these rules, Telecommunications, before proceeding with any procurement project in accordance with and required under these rules, including an RFP, regardless of lifecycle amount. Please note, Telecommunication's approval does **<u>not</u>** substitute the required procurement processes that must be followed in accordance with these rules and the ITS Executive Director and ITS Board approvals. Even with applicable Telecommunications approval, Agencies/IHLs cannot purchase telecommunications without following these rules. Any purchase made in violation of these rules may result in debarment of the applicable vendor for a period of up to twenty-four months.

## B. Approving the Procurement/Acquisition Process.

ITS Board approval is required for any information technology acquisition under an RFP that meets at least one of the following conditions:

1. Initial Estimated Lifecycle Cost Limit - The initial acquisition has a total estimated lifecycle cost exceeding $1,000,000.00.

2. Renewal/Amendment Cost Limit - Any renewal of an IT acquisition has a total lifecycle cost exceeding $1,000,000.00.

3. Extended Term - When a renewal, extension, amendment, or other revision to a prior acquisition results in a total contract term exceeding ten (10) years, inclusive of all renewal or extension periods.

4. Material Changes - Upon renewal, extension, amendment, or other revision to a prior acquisition, the ITS Executive Director, or his or her designee, determines that the acquisition is not materially consistent with the terms or conditions of the applicable procurement or contract, including, but not limited to, changes in scope, pricing, or other material terms.

5. Discretionary Elevation - The ITS Executive Director or the ITS Board directs that the acquisition be submitted for ITS Board approval.

Except as provided above, the ITS Director is authorized to approve all other information technology acquisitions related to RFPs under this rule.

**Source:** *Miss. Code Ann. Sections 25-53-3, 25-53-5, 25-53-21, and 25-53-25.*

***Rule 4.5 Re-Use and Cooperative Purchasing Agreements.***

**A.** **Description and Purpose.** The ITS Board is authorized to enter into contracts for the acquisition of information technology that have been acquired by other government entities, located within or outside the State of Mississippi, including Cooperative Purchasing Agreement. This authority may be exercised, so long as the acquisition is determined to: be in the best interest of the State, promote the maximum use and benefit from technology and services now in operation or which will in the future be placed in operation, and identify opportunities, minimize duplication, reduce costs and improve the efficiency of providing common technology services.

**B.** **Designated Use.** Information technology purchases may be made through Re-Use or Cooperative Purchasing Agreements, either for an individual Agency/IHL purchase or as part of a statewide contract (such as an EPO). The decision to review and approve a Re-Use or Cooperative Purchasing Agreement, as an Agency/IHL purchase or as a statewide purchasing vehicle, is solely determined by ITS.

***Rule 4.5.1 Minimum Procedures.***

The following are minimum procedures or conditions that must be followed for all acquisitions of information technology using a Re-Use or Cooperative Purchasing Agreement under these rules:

**A.** The underlying procurement/award permits the use of the award;

**B.** Cost was considered and evaluated as part of the basis for award;

**C.** A copy of the entire official procurement issued by the governmental entity that issued the procurement is obtained;

**D.** A copy of the entire official response submitted by the vendor to the governmental entity is obtained;

**E.** A copy of the final executed contract between the governmental entity and the awarded vendor is obtained, if applicable;

**F.** Awarded vendor must be willing to honor pricing from the award within the terms of the procurement and award;

**G.** Awarded vendor must be willing to sign a contract with ITS, including Mississippi terms and conditions; and

**H.** Use of the acquisition is deemed to be in the best interest of the State. The determination of whether a Re-Use or Cooperative Purchasing Agreement is in the best interest of the State is at the sole discretion of ITS.

***Rule 4.5.2 Delegation of Authority and Required Approvals.***

**A.** **Conducting the Procurement/Acquisition Process.**

Under this rule, state entities are not authorized or otherwise delegated to conduct, award, and contract for information technology through a Re-Use or a Cooperative Purchasing Agreement. Any Re-Use or Cooperative Purchasing Agreement must be reviewed and approved by ITS prior to use as an available procurement method as provided in this rule. An Agency/IHL, including Certified Purchasing Offices, can acquire information technology through an ITS approved Re-Use or a Cooperative Purchase Agreement in accordance with ITS published instructions/procedures. For any Re-Use or Cooperative Purchasing Agreement that has not been approved by ITS for information technology purchases, the Re-Use or Cooperative Purchasing Agreement must be submitted to ITS for prior review and approval.

**B.** **Approving the Procurement/Acquisition Process.**

**1. Individual Agency/IHL Purchases.**

ITS Board approval is required for any information technology acquisition under a Re-Use and Cooperative Purchasing Agreements **for individual Agency/IHL IT acquisitions** that meets at least one of the following conditions:

**a.** Initial Estimated Lifecycle Cost Limit - The initial acquisition has a total lifecycle cost exceeding $1,000,000.00.

**b.** Renewal/Amendment Cost Limit - Any renewal of an IT acquisition has a total lifecycle cost exceeding $1,000,000.00.

**c.** Extended Term - When a renewal, extension, amendment, or other revision to a prior acquisition results in a total contract term exceeding ten (10) years, inclusive of all renewal or extension periods.

**d.** Material Non-Conformance - Upon renewal, extension, amendment, or other revision to a prior acquisition, the ITS Executive Director, or his or her designee, determines that the acquisition is not materially consistent with the terms or conditions of the applicable procurement or contract, including, but not limited to, changes in scope, pricing, or other material terms.

e. Discretionary Elevation - The ITS Executive Director or the ITS Board directs that the acquisition be submitted for Board approval.

Except as provided above, the ITS Director is authorized to approve all other information technology acquisitions related to Re-Use and Cooperative Purchasing Agreements under this rule.

2. **Statewide Agency/IHL Purchases.** The establishment of a statewide Re-Use or Cooperative (EPO) does not require ITS Board approval. But purchases made through an established EPO, including any required approvals, are as required under ITS-published procedures/instructions for the applicable Re-Use and Cooperative Purchasing Agreements and any limitations provided in the Board's minutes of the particular Re-Use and Cooperative Purchasing Agreement.

**Source**: *Miss. Code Ann. Sections 25-53-3, 25-53-5, and 25-53-21.*

***Rule 4.6 Express Procurement Options.***

A. **Description and Purpose.** An Express Procurement Option (EPO) is an ITS-approved individual or statewide purchasing method that is intended to speed up IT acquisitions by streamlining certain procurement steps in compliance with all applicable ITS procurement laws, rules, and policies. Although EPOs are intended to streamline certain IT purchases, it is important to understand that the time in which it takes to make an IT purchase under an EPO is dependent on the facts and circumstances applicable to the particular IT acquisition.

B. **Designated Use.** ITS is solely authorized to establish EPOs for use by state entities, upon applicable ITS Board approval. State entities may, but are not required to, use EPOs to make information technology purchases. Any state entity that wishes to utilize an approved EPO must follow the applicable ITS published procedures/instructions available at the ITS website. EPO customers and vendors must comply with all EPO requirements and ITS instructions, including, but not limited to, any underlying procurement requirements and any contracts terms that are executed by ITS on the State's behalf. Each state entity is solely responsible for ensuring that an EPO meets any applicable legal, regulatory, technical, funding, or other requirements prior to making any ITS acquisition from an EPO.

C. **Administration.** EPOs are managed by ITS staff. Any concerns, questions, or suggestions regarding EPOs should be directed to the ITS Procurement Help Desk at 601-432-8166 or isshelp@its.ms.gov.

D. **EPO Types.** The following are the generally recognized types of EPOs that ITS is authorized to establish on behalf of the ITS Board for use by state entities, and applicable procedures.

   1. **Express Product Lists.** Express Products Lists (EPLs) are compilations of proposals competitively solicited by ITS, evaluated, and awarded, usually to multiple vendors, for the purchase of IT common commodity products and services. EPL categories are added, changed and dropped based upon purchasing demand.

   2. **Other EPOs established utilizing other procurement instruments.** ITS may establish an EPO utilizing any other generally recognized procurement method or instrument under these rules and in government procurement practices. Examples of generally recognized procurement methods include but are not limited to RFPs (General, Special, etc.), Cooperative Purchasing Agreements, Sole Sources, etc. ITS can conduct the underlying procurements or utilize procurement instruments conducted by other governmental entities, subject to these rules and corresponding applicable ITS procurement instrument procedures, for purposes of establishing an EPO.

3. **Master Agreements.** The ITS Board is authorized to enter into Master Agreements under Miss. Code Ann. 25-53-5(q)(i) for information technology for shared use by Agencies/ IHLs and governing authorities. The decision to enter into a Master Agreement is at the sole discretion of ITS, as approved by the ITS Board. Efficiency, cost-effectiveness, administration, the maximum use and benefit of the agreement by two or more entities, and whether such agreement is in the best interest of the State at a minimum will be considered in determining whether to enter into a master agreement. The term "Master Agreement" as used under this rule and for IT acquisition purposes is a term of art that is subject to the specific limitations and requirements contained in these rules to be considered a Master Agreement for IT acquisition purposes, and should not be confused with statewide or other types of agreements that also may be referred to as a "master agreements".

***Rule 4.6.1 Delegation of Authority and Required Approvals.***

A. **Conducting the Procurement/Acquisition Process.** Under this rule, state entities are not authorized or otherwise delegated to use or establish an EPO for information technology acquisitions. Only ITS may do so subject to approval requirements set by the ITS Executive Director and ITS Board. ITS is authorized to waive certain provisions of Rule 4.4.1 in establishing an EPO. Once an EPO has been established by ITS, Agency/IHLs can conduct, award, and contract under an EPO in accordance with ITS-published procedures/instructions.

B. **Approving the Procurement/Acquisition Process.** The establishment of an EPO does not require ITS Board approval. But purchases made through an established EPO, including any required approvals, are as required under ITS-published procedures/instructions for the applicable EPO and any limitations provided in the Board's minutes regarding approval and use of the EPO.

**Source:** *Miss. Code Ann. Sections 25-53-3, 25-53-5, 25-53-21, and 25-53-25.*

*Rule 4.7 Sole Source.*

**A.** **Description and Purpose.** A Sole Source (also commonly referred to as single source) is a non-competitive procurement method used to acquire information technology that can only be provided by one vendor.

**B.** **Designated Use.** Laws governing information technology acquisitions by agencies and institutions of higher learning require information technology to be procured in a manner that, to the fullest extent practicable, maximizes competition among all manufacturers and suppliers. Accordingly, agencies and institutions of higher learning are required to procure information technology with open specifications and to promote full and open competition. However, a Sole Source procurement method is permitted in certain circumstances as provided under these rules. ITS staff conducts the Sole Source process on behalf of Agencies/IHLs. An Agency/IHL can perform a Sole Source under these procurement rules, without ITS procurement staff, only if the total lifecycle cost for the purchase is below the delegated limits as provided below or the Agency/IHL has received the appropriate approvals for a Further Delegation as provided in Section Chapter 6 of these rules, Delegations.

*Rule 4.7.1 Minimum Procedures.*

The following are the minimum procedures that must be followed for all acquisitions for information technology using a Sole Source process under these rules:

**A.** **Content.** Sole Source shall include the following minimum information:

**1.** The Agency/IHL name,

**2.** Agency Head/IHL CIO's, or designee, written and signed certification that provides the following minimum information:

**A.** A detailed description of the information technology to be acquired,

**B.** An explanation of the Agency's need for the particular information technology,

**C.** An explanation detailing why the particular information technology is the only one which will meet the Agency's need,

**D.** A certification that the Agency has determined there is only a single provider of the information technology in the marketplace,

E. An explanation of the market research conducted (i.e., how was it determined that there was no one else that could provide this information technology?),

F. An explanation as to why the amount to be expended by the Agency on the product and/or service is reasonable, including the efforts made to obtain the best price possible, and

G. There are no resellers or there is only one reseller authorized to sell the information technology under the circumstances as evidenced by a letter of certification by the manufacturer.

3. the Sole Source number and issue date,

4. the name and contact information of the ITS official responsible for the procurement,

5. the means of contacting the ITS official responsible for the procurement,

6. instructions for filing an objection to the sole source determination,

7. deadline for receipt of objections (i.e. place, time, date, format, and delivery address or instructions for electronic or alternative submission methods), and

8. the location and method for accessing the Sole Source and all referenced documents.

B. **Notice.** Sole Source procurements must be noticed, which means announced publicly to inform potential vendors that a Sole Source acquisition is available and open for valid objection(s). Notice must be, at a minimum, accomplished by posting the Sole Source, in full, on the ITS-designated procurement portal or website (this applies in any procurement performed by ITS on behalf of itself or Agency/IHLs). Under no circumstances shall there be less than 14 calendar days between the date of notice and the objection deadline unless permission for a shorter timeframe is explicitly granted by the ITS Board. Where the Agency/IHL has been delegated to perform a Sole Source in accordance with these rules, this notice requirement can be fulfilled by posting the Sole Source, in full, on the applicable Agency/IHL website.

Please note that some additional requirements for notices may be required by an Agency/IHL's funding source or applicable specific state and/or federal laws or regulations. **In such cases, the Agency/IHL, etc. must notify ITS of any such additional requirements for compliance purposes.** For example, the following are some common additional notice requirements that may be applicable:

1. Advertised in a newspaper of general circulation in the county or municipality where the Agency is located and/or where the services will be performed, once a week for two consecutive weeks;

2. any manner <u>that is specifically required</u> by applicable federal or state laws or rules that the Agency/IHL must follow; or

3. any other manner that reasonably allows at least three prospective offerors to obtain access to the Sole Source, in full.

## C. Receipt of Objections.

1. **Receipt of Objection(s).** All objections (electronic or otherwise) received by ITS must be time-stamped, dated, and securely stored. All timely received objections shall be listed on a register of objections, posted on the ITS website.

2. **Timing of Objection(s).** Any objection shall be received by the state official primarily responsible for the procurement in accordance with the published sole source prior to deadline provided in the sole source procurement. The objecting party shall bear all risk of delivery.

3. **Review of Objection(s).** All timely submitted objection(s) must be reviewed by ITS and the Agency/IHL to determine whether there is a valid objection to the Sole Source based on the particular facts and circumstances, and if the Sole Source procurement can proceed.

    a. If, after reviewing the objection, ITS, after coordination with the Agency/IHL, determines that the vendor is still a sole source, the Sole Source procurement/acquisition can proceed subject to the requirements and applicable approvals listed in this rule.

    b. If, after reviewing the objection, ITS, after coordination with the Agency/IHL, determines that the vendor is not a sole source, then the Sole Source is not a viable procurement option and use of another valid procurement method to procure the required information technology must be utilized.

    Should ITS Executive Director, the Procurement Services Director, or the ITS Board have any reasonable doubt about a sole source, the Agency/IHL will be required to use another valid procurement method to procure the required information technology.

## D. Award.

ITS and the designated Agency/IHL representative(s), may begin contract negotiations with the awarded vendor upon issuance of the notice of intent to award or notice of award (depending on applicable approval requirements) by ITS. However, applicable ITS approval requirements under this rule must be provided prior to execution of the contract and/or the vendor proceeding with work under the Sole Source. ITS approval is independent of any approvals required by the customer Agency/IHL or other regulatory or oversight entities. See Rule 4.7.2, entitled "Conducting the Procurement/Acquisition Process" and "Procurement/ Acquisition Approval Limits" specifically related to Sole Sources to determine any ITS required approvals that may be applicable. Except for Sole Sources conducted by ITS, delegated Sole Source IT acquisitions/contracts conducted by Agency/IHLs cannot exceed a total period of three years.

E. **Procurement Audit File.** All final documents and written determinations related to a Sole Source conducted under these rules shall be maintained in the procurement audit file.

F. **Protests.** Protests may not be filed under this type of procurement, only objections may be received in accordance with these rules.

***Rule 4.7.2 Delegation of Authority and Required Approvals.***

**A. Conducting the Procurement/Acquisition Process.**

1. **IHL Pre-approved Delegations.** Under this rule, IHLs are authorized by the ITS Board to conduct, award, and contract through a Sole Source process for information technology acquisitions with a total lifecycle cost under $250,000.00 without ITS procurement staff involvement. For lifecycle costs exceeding $250,000.00 (i.e., $250,000.01), IHLs must submit a procurement request in accordance with ITS procurement procedures, as provided on the ITS website. In such cases, ITS procurement staff will manage the procurement and contracting process in coordination with the IHL, following applicable ITS laws, rules, and policies.

2. **Agency Pre-approved Delegations.** Under this rule, Agencies are authorized by the ITS Board to conduct, award, and contract through a Sole Source process for information technology acquisitions with a total lifecycle cost under $75,000.00 without ITS procurement staff involvement. For lifecycle costs exceeding $75,000.00 (i.e., $75,000.01), Agencies must submit a procurement request in accordance with ITS procurement procedures, as provided on the ITS website. In such cases, ITS procurement staff will manage the procurement and contracting process in coordination with the Agency, following applicable ITS laws, rules, and policies. Except for Sole Sources conducted by ITS, delegated Sole Source

IT acquisitions/contracts conducted by Agency/IHLs cannot exceed a total period of three years.

3. **Additional/Further Delegation.** Agencies/IHLs may request additional delegation to conduct, award, and contract through a Sole Source process without ITS procurement staff involvement for IT acquisitions above the limits listed above, in accordance with Chapter 6 of these rules, Delegations.

4. **Telecommunications.** If an Agency/IHL's IT acquisition includes or is for telecommunications equipment, software, or services, it must obtain prior ITS Telecommunications approval in accordance with Chapter 5 of these rules, ITS Telecommunications, before proceeding with any procurement project in accordance with and required under these rules regardless of lifecycle amount. Please note, ITS Telecommunications approval does not substitute the required procurement processes that must be followed in accordance with these rules and the ITS Executive Director and ITS Board approvals. Even with applicable ITS Telecommunications approval, Agencies/IHLs cannot purchase telecommunications without following these rules. Any purchase made in violation of these rules may result in debarment of the applicable vendor for a period of up to twenty-four months.

**B. Approving the Procurement/Acquisition Process.**

ITS Board approval is required for any information technology acquisition through a Sole Source that meets at least one of the following conditions:

1. Initial Estimated Lifecycle Cost Limit - The initial acquisition has a total estimated lifecycle cost exceeding $1,000,000.00.

2. Renewal/Amendment Cost Limit - Any renewal of an IT acquisition has a total lifecycle cost exceeding $1,000,000.00.

3. Extended Term - When a renewal, extension, amendment, or other revision to a prior acquisition results in a total contract term exceeding ten (10) years, inclusive of all renewal or extension periods.

4. Material Changes - Upon renewal, extension, amendment, or other revision to a prior acquisition, the ITS Executive Director, or his or her designee, determines that the acquisition is not materially consistent with the terms or conditions of the applicable procurement or contract, including, but not limited to, changes in scope, pricing, or other material terms.

5. Discretionary Elevation - The ITS Executive Director or the ITS Board directs that the acquisition be submitted for Board approval.

Except as provided above, the ITS Director is authorized to approve all other information technology acquisitions through a Sole Source under this rule.

**Source:** *Miss. Code Ann. Sections 25-53-3, 25-53-5, 25-53-21, and 25-53-25.*

*Rule 4.8 Emergencies.*

A. **<u>Description and Purpose.</u>** An Emergency Purchase under these rules constitutes a separate, limited procurement vehicle. ITS recognizes two (2) types of Emergency Procurements, Type 1 and Type 2, as defined below.

B. **<u>Designated Use.</u>** Emergency Purchases are permitted for use under these rules when the Agency/IHL experiences an emergency as defined in these rules as provided below.

***Rule 4.8.1 Agency Head Determination.***

The need to purchase technology products or services under the emergency purchase procedures and the determination as to whether an emergency exists is a decision made by the governing board or the executive head/president, or his designees, of any agency or IHL.

The governing board or the executive head/president, or his designees, of any Agency/IHL must first determine if an emergency exists in regard to the purchase of technology products or services so that the delay incident to giving opportunity for competitive bidding would either (1) threaten the health or safety of any person or the preservation or protection of property or (2) be detrimental to the interests of the State.

If the governing board or the executive head/president, or his designees, of any Agency/IHL determines that an emergency exists, the agency/public university shall follow the procedures that correspond with each specific emergency type declaration as identified below and shall file the appropriate documentation with ITS as required by statute, the ITS procedures, and as requested by ITS.

***Rule 4.8.2 Types of Emergencies.***

A. **Type 1 Emergency Purchase (Emergencies Threatening Health or Safety of Any Person or Preservation or Protection of Property (Does Not Require ITS Approval)**

   Whether an emergency exists which threatens the health or safety of any person or the preservation or protection of property is an Agency/IHL decision. ITS does not approve emergency purchases of this type nor determine the validity of the Agency/IHL emergency declaration. However, the corresponding submission through the ITS online procurement system and post-purchase documentation are required to be filed with ITS as soon as practicable AFTER the emergency purchase.

   If the governing board or the executive head/president, or his designees, of an agency or IHL determines that an emergency exists so that the delay incident to giving opportunity for competitive bidding would threaten the health or safety of any person or the preservation or protection of property, the provisions of competitive bidding shall not apply. The required post-purchase documentation required by these rules must be submitted as soon as practicable AFTER the emergency purchase.

**B. Type 2 Emergency Purchase (Emergencies Where Delay Would Be Detrimental to the Interests of the State (Requires ITS Board Approval))**

All other situations meeting the definition of "emergency" set forth in Section 31-7-1(f) are an Agency/IHL decision and require approval from the ITS Board BEFORE the emergency purchase. If the governing board or the executive head/president, or his designees, of an agency or public university determines that an emergency exists so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the Agency/IHL must seek prior approval from the ITS Board to make the purchase without having to comply with the competitive bid requirements.

The Agency/IHL must submit a Type 2 Emergency procurement project on the ITS website, to ITS. The Agency/IHL must include a certified copy of the minutes of the board of such Agency/IHL documenting the emergency purchase request, if applicable, PRIOR to the emergency purchase for ITS review and approval.

If the request is approved by ITS Board, the Agency/IHL must also submit post-purchase documentation as required by these rules after the emergency purchase.

***Rule 4.8.3*** **Emergency Purchase Limitations.**

Any Emergency Purchase shall only be for the purpose of meeting the needs created by the emergency. An emergency may include multiple purchases. The Agency/IHL must submit documentation for each declared emergency purchase separately and pay careful attention to the requirements.

***Rule 4.8.4 Post-Purchase Documentation.***

Agencies/IHL shall provide sufficient detail on the appropriate emergency so that a person not familiar with the situation could be expected to understand the need to forego the normal purchasing procedure including the type/nature of the emergency, the specific emergency component that applies to the current emergency situation, and from whom the purchase was made. This emergency justification, documentation, and related detail shall be signed by the agency executive head or public university president unless a request for a designee signature is approved by ITS.

Submission of the emergency justification, along with the necessary documentation, is required to ensure compliance. And, when applicable, gives ITS the necessary information to review the emergency purchase request.

Failure to provide required and sufficient information may result in delay in issuing the CP-1 and/or approval of the emergency request, if required.

Following the emergency purchase, the agency or public university shall provide documentation of the purchase, including a description of the product/service purchased, the purchase price thereof, and the nature of the emergency which shall be filed with ITS.

***Rule 4.8.5 Procurement Audit File.***

All final documents and written determinations related to an Emergency Purchase conducted under these rules shall be maintained in the procurement audit file.

***Rule 4.8.6 Delegation of Authority and Required Approvals.***

**A. Conducting the Procurement/Acquisition Process.**

1. **<u>Agencies & Institutions of Higher Learning.</u>** The Executive Head (or equivalent) of the Agency or IHL must first make a determination that an emergency exists. If the Executive Head determines that a Type 1 Emergency exists, then the Agency or IHL enters into a contract without the involvement of ITS. If the Executive Head determines that a Type 2 Emergency exists, then the Agency or IHL shall submit a procurement request to ITS in order to seek ITS Board approval.

2. **<u>Additional/Further Delegation.</u>** N/A

3. **<u>Telecommunications.</u>** If an Agency/IHL's IT acquisition includes or is for telecommunications equipment, software, or services, it must obtain prior ITS Telecommunications approval in accordance with Chapter 5 of these rules, Telecommunications, before proceeding with any procurement project in accordance with and required under these rules, including an Emergency, regardless of lifecycle amount. Please note, Telecommunication's approval does **<u>not</u>** substitute the required procurement processes that must be followed in accordance with these rules and the ITS Executive Director and ITS Board approvals. Even with applicable Telecommunications approval, Agencies/IHLs cannot purchase telecommunications without following these rules. Any purchase made in violation of these rules may result in debarment of the applicable vendor for a period of up to twenty-four months.

**Source:** *Miss. Code Ann. Sections 25-53-3, 25-53-5, 25-53-21, and 25-53-25, 31-7-1, 31-7-13*.

***Rule 4.9 Use of Other Authorized Procurement Methods.***

**A.** **<u>Description and Purpose:</u>** ITS may utilize any additional procurement vehicle, method, or approach that is not contained in these rules if it is generally recognized as an available procurement practice, provided that such method is consistent with applicable Mississippi laws, regulations, and ethical standards.

**B.** **<u>Designated Use.</u>** This rule only applies to procurements performed by ITS on behalf of Agency/IHLs and are not delegated to Agency/IHLs. Approval under this section must confirm that:

1. The selected procurement method is reasonably expected to achieve lowest and best value.
2. The method does not circumvent competitive requirements without documented justification.
3. Any risks associated with the alternative method have been assessed and appropriately mitigated.
4. The resulting procurement audit file includes sufficient documentation to demonstrate compliance with this provision and all other relevant procurement laws, rules, and policies.

**C.** **Approving the Alternative Procurement/Acquisition Process.**

ITS Board approval is required for any information technology acquisition through an alternative procurement method other than a procurement instrument specified under these rules that meets at least one of the following conditions:

1. Initial Estimated Lifecycle Cost Limit - The initial acquisition has a total estimated lifecycle cost exceeding $1,000,000.00.

2. Renewal/Amendment Cost Limit - Any renewal of an IT acquisition has a total lifecycle cost exceeding $1,000,000.00.

3. Extended Term - When a renewal, extension, amendment, or other revision to a prior acquisition results in a total contract term exceeding ten (10) years, inclusive of all renewal or extension periods.

4. Material Changes - Upon renewal, extension, amendment, or other revision to a prior acquisition, the ITS Executive Director, or his or her designee, determines that the acquisition is not materially consistent with the terms or conditions of the applicable procurement or contract, including, but not limited to, changes in scope, pricing, or other material terms.

5. Discretionary Elevation - The ITS Executive Director or the ITS Board directs that the acquisition be submitted for Board approval.

Except as provided above, the ITS Director is authorized to approve all other information technology acquisitions made under this rule.

**Source:** *Miss. Code Ann. Sections 25-53-3 and 25-53-5.*

## Part 2, Chapter 5: Telecommunications

### *Rule 5.1 Telecommunications Acquisitions by State Agencies and Institutions of Higher Learning.*

The Department of Information Technology Services (ITS) is the central authority for telecommunications procurement and governance across the state. Telecommunications are handled differently than other types of procurements of Information Technology. These rules apply to all purchases of telecommunications equipment and services (e.g., voice/data networks, carrier services, mobile devices) by Agencies/IHLs. If there is any uncertainty about how a device or service is classified, contact the ITS Telecommunications Division for guidance.

A. **Institutions of Higher Learning**. IHLs are authorized to acquire Telecommunications Equipment and Services by following standard procurement procedures.

B. **Agencies.** State Agencies must follow the requirements listed below.

### *Rule 5.2 Telecommunications Equipment and Services.*

A. **Description.** The following is a non-exhaustive list of Telecommunications Equipment and Services.

1. **Telephone Services.** Telephone services are voice communication services delivered via traditional, cellular, or IP-based networks, excluding radio-based circuits. **Examples include but are not limited to:** Business voice services (e.g., dial tone or IP-based equivalent), Trunking services (e.g., DID, SIP trunking, or functional equivalents to legacy services such as ISDN-PRI or Centrex), Hosted or cloud-based voice services (e.g., UCaaS), and Voicemail, unified messaging, and call management features. Usage-based or subscription-based charges for voice communications beyond local calling areas, regardless of delivery method. **Examples include but are not limited to:** Intra-LATA and Inter-LATA calls, or functional equivalents, Interstate and international calls, Toll-free services (e.g., 800 or equivalent), IP-based domestic and international voice services

2. **Telephone Equipment, Systems, and Maintenance. Examples include but not limited to:** Telephone sets (analog, digital, SIP, VoIP), Key Systems, PBXs, Hybrid Systems, Phone system maintenance

3. **Data Communication Services.** Services that enable the transmission of data between devices, systems, or locations over wired, wireless, or cloud-

based networks. **Examples include but are not limited to:** Inter-LATA circuits, Intra-LATA circuits, MPLS circuits, State backbone, SD-WAN, Point-to-point circuits, Cloud Connectivity Services, Direct Internet Access (DIA), Broadband (fiber, cable, etc), Wireless internet.

4. **Data Communication Equipment. Examples include but not limited to:** Routing Equipment, Switching Equipment, Wireless Networking Equipment, Security Appliances
5. **Audio and Web Conferencing.**
6. **Mobile Telephones, Other Mobile Devices, Mobile Telephone and Data Services.**
7. **Miscellaneous Telecommunications Equipment and Services.** Examples include: Two-way radios, Pager Equipment and Services, E-911 Equipment and Services.

C. **<u>Designated Acquisition Method.</u>** When purchasing Telecommunication Equipment and Services, State Agencies are required to following the specific instructions for use available on the ITS website.

***Rule 5.3 Telecommunications Variance.***

Any requested variance to the above rules shall be directed to the ITS Telecommunications Division and decided on a case-by-case basis. Please note, any Telecommunications variance does **<u>not</u>** substitute the required procurement processes that must be followed in accordance with these rules and ITS Executive Director and ITS Board approvals.

***Rule 5.4 Approving the Procurement/Acquisition Process.***

Under this rule, Agencies are required to follow the ITS published procedures/instructions for use in order to acquire Telecommunications Equipment and Services available on the ITS Website.

**Source:** *Miss. Code Ann. Sections 25-53-3, 25-53-5, 25-53-21, and 25-53-107, 25-53-111, and 25-53-191.*

## Part 2, Chapter 6: Delegations (formerly called “Exemptions” under previous IT procurement rules)

### *Rule 6.1 Delegation of Procurement and Contracting Authority.*

Pursuant to Miss. Code Ann. Section 25-53-25, the ITS Board may establish procedures for the purpose of delegating their acquisition (procurement and contracting) authorities and responsibilities of information technology by Agency/IHLs under the ITS Board's procurement purview to Agencies/IHLs. This rule identifies the specific circumstances under which the ITS Board has determined that procurement and contracting delegation is either automatically granted by these rules based on the type of procurement method (“Pre-Approved Delegation”), may be requested by an Agency/IHL in conformance with these rules (“Additional or Further Delegation Request”), or is authorized based on the special or particular type of information technology that is being acquired (“Special Delegation”). The Agency/IHL is solely responsible for following all ITS laws and regulations, including these rules, in the acquisition of information technology when a delegation of authority applies or has been granted.

Please note that in the absence of an applicable Pre-Approved Delegation or Special Delegation, as provided under and in accordance with these rules, then ITS procurement staff involvement and applicable ITS approvals are required for any information technology purchase by an Agency/IHL, unless the Agency/IHL receives the applicable approval for Further Delegation.

**A. Pre-Approved Delegation.**

The ITS Board has established Pre-Approved Delegation limits that allow Agency/IHLs to perform information technology acquisition responsibilities on their own, without ITS procurement staff involvement or ITS approval, subject to the conditions of these rules. The Pre-approved Delegation limits already authorized by the ITS Board are specific to the type of procurement method/instruments listed in these rules and can be found in the applicable procurement method section.

For example, under Rule 4.2, entitled “Small Purchases”, Agencies/IHLs have been delegated information technology acquisition responsibilities for acquisitions with an estimated lifecycle cost under $75,000.00. The corresponding limitations of this and other pre-approved delegations are listed in the applicable Sections of these rules and are required to be followed by the Agency/IHL.

Additionally, certain procurement vehicles established only by ITS may have their own pre-approved procurement authority delegation limits, which are established through the applicable published ITS procurement procedures related to the applicable procurement vehicle (e.g., Instructions for Use for an ITS EPO). Please refer to the relevant instructions for use or other applicable published procedures for those ITS-established procurement vehicles for further guidance.

**B. Special Delegation.**

1. **Description and Purpose.** The ITS Board recognizes and authorizes Agency/IHLs to conduct, award, and contract, without ITS procurement staff involvement or additional ITS approvals, for certain types of information technology, which is a "Special Delegation".

2. **Designated Use.** The following limited types of information technology related acquisitions are hereby delegated to Agency/IHLs, regardless of cost, without ITS procurement staff involvement or any further approvals by ITS. **This delegation of authority is granted subject to the Agency/IHL following all ITS laws and regulations, including these rules.**

   a. **Library books and other reference materials.** Purchases by Agency/IHLs of books and periodicals; processed film, videocassette tapes, filmstrips and slides; recorded audiotapes, cassettes and diskettes; and any such items as would be used for teaching, research, or other information distribution are delegated to the Agency/IHL to procure without ITS procurement staff involvement or further approval.

   b. **Purchases made by state agencies related to museum exhibits.** Purchases made by an agency related to the fabrication, construction, installation or refurbishing of museum exhibits. An agency making a purchase under this exemption in excess of the bid limits set forth in paragraph (c) of this section shall publicly advertise a Request for Qualifications or Request for Proposals in which price as an evaluation factor is at least twenty percent (20%) out of the one hundred percent (100%) total weight, but shall be otherwise exempt. Any contract arising from a purchase using this exemption must be approved by the Public Procurement Review Board prior to execution by the agency. The agency shall submit a written report on December 1 of each year to the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Accountability, Efficiency and Transparency Committees and the Chair of the Public Procurement Review Board, identifying all purchases made by the agency using this exemption in which the cost of the option selected by the agency was more than twenty-five percent (25%) higher than the lowest cost option available.

3. **Conducting the Acquisition/Procurement Process.**

   a. **Agencies.** The Special Delegation provided under this rule, requires a competitive procurement method to be performed by the Agency if the total estimated lifecycle cost would exceed $75,000.00. If below this amount, the Small Purchasing Procedures would apply.

   b. **IHLs.** The Special Delegation provided under this rule, requires a competitive procurement method (IFB or RFP) to be performed by the Agency if the total estimated lifecycle cost would exceed $250,000.00. If below this amount, the Small Purchasing Procedures would apply.

**C. Additional/Further Delegation Request.**

1. **Description and Purpose.** A request for Further Delegation seeks to allow Agencies/IHLs to handle specific information technology procurement acquisitions that, by law, require competitive procurement of bids or proposals, without the involvement of ITS. This request is designed for projects involving traditional information technology equipment, software, or services which the Agency/IHL has the in-house resources and expertise to procure without ITS involvement. A request for Further Delegation must be submitted to ITS through the ITS website.

2. **Designated Use.** All requests for Further Delegation must be submitted by the Executive Director of the agency or the CIO of the IHL, or that person's designee as a procurement project to ITS in accordance with the procurement procedures listed on the ITS website. If a Further Delegation is approved by ITS for the Agency/IHL in accordance with this rule, the Agency/IHL is responsible for the acquisition (procurement and contracting) of the particular information technology in accordance with these rules, including, but not limited to, procurement development, evaluation, awarding, contracting, etc. Any protests related to a procurement conducted under the provisions of this rule would still be required to follow Chapter 9 of these rules, ITS Procurement Protest Policy.

3. **ITS Approval for Further Delegation Requests.** ITS Board approval is required when a Further Delegation request meets one of the following conditions:

**a.** Initial Estimated Lifecycle Cost Limit - The initial information technology acquisition has a total lifecycle cost exceeding $1,000,000.00.

**b.** Renewal/Amendment Cost Limit - Any renewal of an information technology acquisition has a total renewal cost exceeding the Further Delegation limit previously approved by ITS.

**c.** Extended Term - When a renewal, extension, amendment, or other revision to a prior acquisition results in a total contract term exceeding ten (10) years, inclusive of all renewal or extension periods.

**d.** Material Changes - Upon renewal, extension, amendment, or other revision to a prior acquisition, the ITS Executive Director, or his or her designee, determines that the acquisition is not materially consistent with the terms or conditions of the applicable procurement or contract, including, but not limited to, changes in scope, pricing, or other material terms.

**e.** Discretionary Elevation - The ITS Executive Director or the ITS Board directs that the acquisition be submitted for Board approval.

Except as provided above, the ITS Director is authorized to approve all other information technology acquisitions through a Further Delegation below the amounts listed under subsection c.1 and c.2 of this rule above.

**4. <u>Conducting the Acquisition/Procurement Process.</u>**

If the request for Further Delegation is approved by ITS, then the Agency/IHL is authorized to conduct the procurement <u>in accordance with the ITS laws and these rules, which include, but are not limited to the following:</u>

**a. Agencies.** The Further Delegation provided under this rule requires a competitive procurement method (IFB or RFP) to be performed by the Agency if the total estimated lifecycle cost would exceed $75,000.00.

**b. IHLs.** The Further Delegation provided under this rule requires a competitive procurement method (IFB or RFP) to be performed by the IHL if the total estimated lifecycle cost would exceed $250,000.00.

**Part 2, Chapter 7: Procurement Ethics**

***Rule 7.1 General Policy.***

Mississippi Code Section 25-4-101 states, “The legislature declares that elective and public office and employment is a public trust and any effort to realize personal gain through official conduct, other than as provided by law, or as a natural consequence of the employment or position, is a violation of that trust. Therefore, public servants shall endeavor to pursue a course of conduct which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of this trust and which will not reflect unfavorably upon the state and local governments.”

ITS expects and promotes full compliance with the statutory directives in Mississippi Code Sections 25-4-101 through 25-4-119, by all ITS staff members, ITS customers, and members of the vendor community who do business with ITS. This policy is intended to be applied in conjunction with and shall not be considered as superseding any laws or regulations administered and enforced by the Mississippi Ethics Commission.

***Rule 7.2 General Standards of Ethical Conduct.***

**A.** General Ethical Standards for Employees.

Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust. In order to fulfill this general prescribed standard, employees must also meet the specific standards set forth below.

**B.** General Ethical Standards for Non-employees

Any effort to influence any public employee to breach the standards of ethical conduct set forth in this section is also a breach of ethical standards.

***Rule 7.3 Gifts and Gratuities.***

It shall be a breach of this regulation for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or proposal thereof.

Those involved with procurement shall not solicit anything from vendors for any reason. Examples include, but are not limited to:

**A.** Purchases by vendors from side businesses in which the staff member is involved

**B.** Donations by vendors for charitable and/or civic events or organizations in which the ITS employee and/or his/her immediate family is involved

**C.** Purchases by vendors from fund raisers in which ITS employees and/or their families are involved

***Rule 7.4 Restrictions on Future Employment.***

Except as may be permitted by advisory opinions regulations or rulings of the Ethics Commission, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed. Notice of this provision shall be provided in accordance with opinions promulgated by the Ethics Commission.

***Rule 7.5 Certain Gratuities Allowed.***

There are certain circumstances where the prohibition against certain gratuities does not apply.

**A.** The procurement or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the motivation for the transaction is unrelated to any procurement or program requirement with the State and is based upon a personal or family relationship;

**B.** The participation in the activities of, or the acceptance of an award for, a meritorious public contribution or achievement from a charitable, religious, professional, social, or fraternal organization, or from a non-profit educational, recreational, public service, or civic organization;

**C.** Acceptance only on current customary terms of finance of a loan from a bank or other financial institution for proper and usual activities of state employees, such as home mortgage loans; or

**D.** Those involved with a procurement may accept items of nominal value offered by suppliers to a substantial number of their customers for public relations purposes when there could be no perception of monetary value, inappropriate influence, or other ethical breach. Examples might include a t-shirt, pen, notepad, or other inexpensive trinket.

**E.** Those involved with procurement may sometimes be required to conduct business during meals or to participate in modest hospitality as a courtesy in a business relationship. Staff members will avoid frequent meals with the same vendor and avoid any situation in which he/she might be perceived to have been influenced as a result of accepting or participating in a particular vendor's hospitality.

**F.** Those involved with procurement may participate in lunch-and-learn and similar meetings sponsored by vendors.

***Rule 7.6 Confidential Information.***

**A.** The assigned ITS project manager is responsible for ensuring that all ITS and customer employees involved in the procurement process execute the appropriate confidentiality agreements in a timely manner and that these agreements are maintained in the project file.

**B.** Any external requests for project information that are directed to and processed by the ITS Public Records Officer will be fulfilled in accordance with the Mississippi Public Records Act and ITS' Public Records Policy.

***Rule 7.7 Conflict of Interest.***

**A.** ITS procurement staff will identify any procurement situation which creates a potential conflict of interest or appearance of such conflict for the staff member. Conflict of interest is defined as any personal interest, directly or indirectly, through business, family, friend, or other associations, that may influence a person's judgment and impartiality, in any matter relevant to that person's duties.

**B.** It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

1. The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;

2. A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or

3. Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an

arrangement concerning prospective employment is involved in the procurement.

4. An ITS procurement staff member with an actual conflict of interest in a certain procurement effort will make a formal declaration of disqualification and promptly withdraw from further participation in the procurement.

5. Employees involved with procurement avoid outside employment or other activities that might create demands incompatible with their procurement assignments, cast doubt on their ability to perform these assignments objectively, or otherwise create a conflict of interest.

6. Upon discovery of an actual conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Ethics Commission for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

**C.** Conflicts of interest for members of the procurement staff include but are not limited to:

1. The ITS procurement staff member or any member of that person's immediate family has a financial interest pertaining to the procurement and/or an association with any potential vendors

2. A business or organization with which the ITS procurement staff member or any member of that person's immediate family is associated has a financial interest pertaining to the procurement and/or is a potential vendor

3. Any other person, business, or organization with whom the ITS procurement staff member or any member of that person's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement

**Source:** *Miss. Code Ann. Sections 25-4-101 through 25-4-119. 25-53-5(i).*

## Part 2, Chapter 8: Protests

### *Rule 8.1 ITS Procurement Protest Policy.*

A. **Description and Purpose.** This policy provides the governing procedures for protests submitted by actual or prospective vendors (that is, bidders, offerors, or contractors) in the specified procurement processes provided under these procurement rules who are aggrieved by the applicable procurement or Award of a Contract.

B. **Designated Use.** Any actual or prospective vendor who is aggrieved in connection with the procurement or Award of a Contract may file a protest only in accordance with these rules.

C. **Definitions Specific to this Policy.**

1. "Actual or Prospective Vendor" means a vendor who 1) has submitted a bid or proposal (actual vendor), or 2) is capable of submitting a bid or proposal in response to the procurement (prospective vendor), and 3) whose directly affected by the procurement in a manner that would affect the award of contract (Procurement Requirements Milestone) or whose direct economic interest is affected by the award or failure to award the contract (Contract Award Milestone).

2. "Award of Contract" means either: 1) The ITS Executive Director approval via published notification of intent to award (pursuant to delegated Executive Director Approval limits) or 2) the ITS Board's approval of same during an open session of the Board (if ITS Board approval needed).

3. "Customer means the procuring state agency, institution, or governmental entity.

4. "Hearing Officer" means the ITS Board's designee, generally a representative from the Attorney General's Office or another attorney, who is responsible for conducting the Protest Review process and providing a recommendation to the ITS Board for their consideration and final decision on the Protest.

5. "Interested Party" means the awarded vendor in a protest under the Award of Contract Milestone.

6. "Publicly Posted Procurement File" means the official file that contains all required documents published on the ITS website (or Agency/IHL website, if delegated) which are required from these rules for the respective Procurement to be a part of the procurement process/audit file.

7. "Procurement" means the procurement method that was competitively performed by ITS, or an Agency/IHL in a delegated procurement, that can be protested under these rules (e.g., IFB and RFP).

8. “Protest Record” means the written materials and any recording or transcriptions from the Protest Review process.

9. “Protest Review” means the review process conducted by the Hearing Officer on behalf of the ITS Board to make a final ITS Board decision on the protest matter.

10. “Protestor" means any actual or prospective vendor in the procurement process who is aggrieved in connection with the technology procurement and who files a protest.

11. "State" means ITS and/or the Customer.

***Rule 8.2 Roles and Responsibilities During Protest.***

A. **Customer.** The Customer is responsible for the following:

   1. Working with ITS to research and organize any project information required for the Protest, as applicable,

   2. Working with ITS to respond to the protest in accordance with these rules when ITS is the procuring agent,

   3. Responding promptly to any requests for information made by ITS or the Hearing Officer related to the protest,

   4. adhering to the schedules and rules identified in this policy,

   5. Providing independent legal counsel at the Customer's expense if the Customer deems such independent counsel necessary and advisable,

   6. All costs incurred by the State during the protest other than the ITS internal costs, and

   7. All business decisions associated with the protest and with the underlying procurement.

B. **Hearing Officer.** The Hearing Officer, as the ITS Board’s designee, is responsible for:

   1. adhering to the schedules and rules identified in this policy,

2. coordinating with all the respective parties to the protest for purposes of the Protest Review,

3. work with ITS, to ensure that all parties, not the Interested Party, to the protest receive copies of any protest correspondence,

4. work with all parties to schedule any protest conferences or meetings, including distributing official notification of all such conferences or meetings,

5. fairly and promptly conducting the Protest Review process on behalf of the ITS Board, and

6. provide a recommendation to the ITS Board for their consideration and final decision on the Protest.

C. **ITS Board.** The ITS Board is responsible for making a final decision on the Protest in accordance with ITS governing law.

D. **ITS.** ITS is responsible for the following:

1. Working with Hearing Officer, to ensure that all parties to the protest receive copies of any protest correspondence,

2. Working with Customer to research and organize any project information required for the Protest, as applicable,

3. Working with Customer to respond to the protest in accordance with these rules when ITS is the procuring agent,

4. ITS will maintain the official protest file, including copies of all documents related to the protest as directed by the Hearing Officer.

5. Responding promptly to any requests for information made by the Hearing Officer related to the protest,

6. adhering to the schedules and rules identified in this policy,

7. Providing independent legal counsel if ITS deems such independent counsel necessary and advisable,

8. All procurement process decisions associated with the protest and with the underlying procurement, when ITS is acting as the procurement agent,

9. ITS will hire independent legal counsel at ITS' expense if ITS deems such independent counsel necessary and advisable, and

10. providing the official record of any conference related to the protest. This record may be either an audio tape, with or without transcription, or a court reporter's record, at the discretion of ITS. ITS will pay any expense incurred to produce this official record in the format selected by ITS.

**E. Protestor.** The Protestor is responsible for the following:

1. responding promptly to any requests for information made by the Hearing Officer to the protest,

2. filing all applicable bonds,

3. working with ITS to schedule any conferences and/or meetings related to the protest in a timely manner,

4. adhering to the schedules and rules identified in this policy,

5. If the Protestor needs or requires any record of a protest-related conference other than the official record produced at ITS' expense, the Protestor is responsible for producing that record at the Protestor's expense.

**F. Interested Party.** The Interested Party is responsible for responding promptly to any requests for information made by the Hearing Officer related to the protest and adhering to the schedules and rules identified in this policy. Interest Parties are not entitled to any documents related to the protest. Interested Parties are only entitled to reasonable updates with the Protest through the pendency of the Protest.

***Rule 8.3 Right to Protest.***

Any actual or prospective vendor in the procurement process who is aggrieved in connection with the Procurement or Award of a Contract for the acquisition of information technology, a Protestor, may file a protest on the designated procurements under these procurement rules. Any such protest must be made in accordance with this rule.

***Rule 8.4 Filing of Protest.***

The following requirements must be met to have a valid protest for consideration of review. <u>Any protest that is submitted untimely or without all the required information in conformance with this section will result in waiver of any claim a protestor may have as to the Procurement or Award of Contract under these rules and be summarily denied.</u>

**A. Time for Filing.** A protest must be delivered in a sealed envelope marked “Protest” and addressed to the ITS Executive Director by personal delivery or by certified United States Mail, postage prepaid, return receipt requested, or by overnight courier with signed receipt. Protests must be filed according to the milestone schedule listed below.

1. **Procurement Requirements Milestone.** A protest for purposes of this milestone must be delivered by no later than 5 business days before the submittal deadline specified in the Procurement.

2. **Award of Contract Milestone.** A protest for purposes of this milestone must be delivered by no later than 14 business days after the Award of Contract.

**B. Contents of Protest.** The following information must be included in the protest by the deadline required for filing the protest according to the applicable Milestone.

1. **Procurement Requirements Milestone:** A protest for purposes of the Procurement Requirements Milestone must include the following information:

    **a.** Protestor’s name,

    **b.** a single contact person for the Protestor, and all contact information for such contact person,

    **c.** the number of the Procurement (e.g., RFP No. XXXX),

    **d.** the date the procurement was issued (i.e., published on the ITS Website or Agency Website, if delegated),

    **e.** identify and provide specific references or citations to the applicable sections or requirements of the Procurement that the Protestor believes is unduly restrictive or failed to promote fair and open competition to the extent that such would affect the outcome of the procurement (award of contract),

    **f.** exhibits and all other supporting evidence from the Publicly Posted Procurement File supporting the specific claims by the protestor,

    **g.** explain the factual basis for the alleged violation(s), specify how the alleged violation(s) would affect the outcome of the procurement (award of contract), and

**h.** Protest Bond as provided in this Rule.

2. **Award of Contract Milestone:** A protest for purposes of the Award of Contract Milestone must include the following information:

   **a.** Protestor's name,

   **b.** a single contact person for the Protestor, and all contact information for such contact person,

   **c.** the number of the Procurement (e.g., RFP No. XXXX),

   **d.** the date the procurement was issued (i.e., published on the ITS Website or Agency Website, if delegated),

   **e.** the date of the Award of Contract,

   **f.** identify and provide specific references or citations to the applicable ITS procurement law, rules and regulations, and/or the terms of the Procurement the Protestor believes were violated by the State in the procurement process,

   **g.** explain the factual basis for the alleged violation(s), specify how the alleged violation(s) affected the outcome of the procurement,

   **h.** exhibits and all other supporting evidence from the Publicly Posted Procurement File, the Protestor's own bid, and the portion of the Final Evaluation Score Sheet specifically related to the Protestor, supporting the specific claims by the protestor,

   **i.** If the requesting offeror believes the Publicly Posted Procurement File posted on the website is incomplete (i.e., does not contain a document or documents required by these rules and regulations), the requesting offeror must state such in the protest and shall specify what it believes to be missing. Should the requesting offeror believe the trade secrets and/or confidential commercial or financial information which were redacted from the Publicly Posted Procurement File posted on the website contain issues related to its request, the requesting offeror shall state those concerns in the request – even if speculative – in a manner which is specific enough for the Agency to provide a response, and

**j.** Protest Bond as provided in this Rule.

3. **Limitations of Protest Content.**

   **a.** The Protestor has the burden of proving that the protest merits the relief requested.

   **b.** The protest shall not be based on anything other than the Publicly Posted Procurement File, the Protestor's own bid, the portion of the Final Evaluation Score Sheet specifically related to the Protestor, these rules and regulations, and the terms of the Procurement.

   **c.** The protest shall not be supplemented, except as permitted by the Hearing Officer in accordance with this rule's Procurement Review Process.

   **d.** Reference to documents outside of or facts not supported by the Publicly Posted Procurement File, the Protestor's own bid, the portion of the Final Evaluation Score Sheet specifically related to the Protestor, ITS governing law, or the RFP or the IFB shall not be considered.

   **e.** Any claims for the protest not contained in the protest by the protest submittal deadline will be considered a waiver of any such claim a protestor may have as to the Procurement or Award of Contract under these rules and be summarily denied.

   **f.** Any evidence and supporting documentation not provided in the protest by the protest submittal deadline shall not be considered, except as may be provided for the limited purpose of providing the specific supplemental written materials as requested by the Hearing Officer.

4. **Protest Bond Requirements**. The Protestor must provide with its written protest, and maintain in effect at all times during the course of the protest or judicial review, a Protest Bond in accordance with following:

5. **Amount of Bond.** A Protest Bond must be in the amount specified in the underlying Procurement or in the default amount specified by the ITS Board when no such amount is specified in the Procurement. The default bond amount established by the ITS Board is a reasonable estimate of the total project cost. "A reasonable estimate of the total project cost" means either the total project cost provided under the Award of Contract or the

reasonable estimate of the total project cost by the State in the Procurement Requirements. In no event may the amount of the protest bond required exceed a reasonable estimate of the total project cost.

6. **Bond Certification.** The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the Protest Bond and shall identify a contact person to be notified in the event the state is required to take action against the bond.

7. **Release of Bond.** The Protest Bond shall not be released to the Protestor until the protest is finally resolved and the time for appealing said protest has expired or until the protest is finally resolved.

8. **Bond Costs.** The Protest Bond shall be procured at the Protestor's expense and be payable to the State of Mississippi. The premiums on such bond shall be paid by the Protestor.

9. **Additional Requirements.** The bond shall bind the surety to all the terms and conditions of this protest policy and must allow the State to make a claim against the Protest Bond in accordance with Miss. Code Ann. Sec. 25-53-5(m) in addition to all other rights and remedies the State may have at law or in equity.

***Rule 8.5 Initial Review of Protest.***

The ITS Executive Director's designee will review the filed protest to determine validity. A submitted protest is determined valid if it is submitted timely and contains all requisite information as provided for under these rules. This is an objective review (i.e., did the filed protest meet the requirements of Rule 8.4, "Filing of Protest"?). Any protest that is submitted untimely or without all the required information will result in waiver of any claim a protestor may have as to the Procurement or Award of Contract under these rules and be summarily denied.  The ITS Executive Director's designee shall be responsible for sharing all protest materials to all Parties to the protest, and the Hearing Officer.

***Rule 8.6 Procurement Stay.***

Upon receipt of a valid protest, the Procurement is automatically stayed until the protest is withdrawn, a final decision is made by the ITS Board, any appeal right of the final agency decision on the Procurement has expired in a court of competent jurisdiction (i.e., 30 calendar days from the date of the ITS Board's decision on the protest is made), or until resolution of the protest has been made in a court of competent jurisdiction. Procurement Stay means the following regarding the protest milestones:

A. **Procurement Requirements Milestone**. The Procurement process must halt at the time of a valid protest is received and no further actions can be taken on the procurement until resolution of the protest as provided in this Section.

B. **Award of Contact Milestone**. The contract awarded under the Procurement cannot be executed nor can the work awarded under that specific Procurement (ex. RFP No. XXXX) begin.

***Rule 8.7 Preclusion in Other Procurements.***

The ITS Board, in its discretion, may prohibit any prospective bidder, offeror, or contractor who is a party to any protest or litigation involving any such contract with the state, the authority or any agency of the state to participate in any other such bid, offer or contract, or to be awarded any such contract, during the pendency of the protest or litigation.

***Rule 8.8 Protest Review Proceedings.***

After it has been determined that a filed protest is valid, the Hearing Officer shall perform an objective review of the protest. The review will be based upon the written materials submitted by the parties below to the Protest and the information gathered at the Protest Review Conference. The Protestor has the burden of proving that the protest merits the relief requested in its Protest at all stages of the Protest Review process.

A. **Written Materials and Deadlines.**

1. **Protest.** The Protestor must follow the timelines listed in Section 8.5 of these rules to file a protest according to the applicable milestone.

2. **State's Response to the Protest.** The State has 14 business days from the date of notice by the designated ITS staff of receipt of a valid protest to submit a response to the Protest submitted by the Protestor.

3. **Supplemental Written Materials.** The Hearing Officer may require additional supplemental written materials to be provided by all parties after the Protest Review Conference in accordance with a schedule established and provided by the Hearing Officer. This additional time for briefing shall not exceed a total of 30 business days for all parties to provide additional materials, unless a longer period is permitted by the Hearing Officer and such longer period is agreed to by all parties to the Protest (the State and the Protestor).

B. **Protest Review Conference.** Upon receipt of all the timely written materials submitted according to these rules, the Hearing Officer will hold a conference for all parties to the Protest to present their positions on the issues relevant to the

Protest, which shall be limited to the written materials provided under these rules. The Protest Review Conference is not meant to be a formal evidentiary hearing, but a less formal forum for all parties to present their relevant issues, as presented in their submitted written materials, to the Hearing Officer. The Hearing Officer shall have the authority to maintain the decorum of the conference and shall take reasonable steps to do so when necessary, including clearing the conference room of any person who is disruptive. The Hearing Officer will not allow the review conference to evolve into an adversarial proceeding. At the conclusion of the Protest Review Conference, the Hearing Officer may require additional supplemental written materials to be provided by all parties after the Protest Review Conference in accordance with a schedule established and provided by the Hearing Officer.

**C. Hearing Officer Written Recommendation for ITS Board Final Decision.**
At the conclusion of the deadline for receipt of all written materials and the Protest Review Conference(s), the Hearing Officer shall review the Protest Record and provide a proposed written decision regarding the Protest. This proposed written decision shall be limited to and based on the Protest Record to be provided to the ITS Board for the purpose of the ITS Board making a final decision. The proposed written decision must do one of the following:

1. Find the protest lacking in merit and uphold the State's action; or

2. Find only technical or harmless errors in the State's acquisition process, the State to be in substantial compliance, and reject the protest; or

3. Find merit in the protest and provide options which may include for the applicable protest milestones:

    a. Procurement Requirements Milestone.

        i. Correct errors in the Procurement and extend any timeframe for offeror responses on the corrected Procurement,

        ii. Cancel the Procurement and recommend a new procurement be conducted, or

        iii. Make other findings and determine other courses of action as appropriate.

    b. Award of Contract Milestone.

i. Correct errors and re-evaluate all valid responses received under the Procurement

ii. Cancel the Procurement and recommend a new procurement be conducted, or

iii. Make other findings and determine other courses of action as appropriate.

**4.** Find that it is in the best interest of the State to reissue the Procurement with no determination of fault or error.

**D. ITS Board Final Written Decision.**

The ITS Board may do one of the following for purposes of making a final decision at an ITS Board meeting regarding the Protest:

**A.** adopt the proposed decision as drafted or

**B.** reject the proposed decision with instructions to the Hearing Officer to resubmit the proposed decision with corrections as specified by the ITS Board.

Should the ITS Board adopt the proposed decision by a majority vote of the present ITS Board members, the proposed decision will become the ITS Board’s final written decision and action regarding the Protest as recorded in its minutes. All parties will be notified in writing of the ITS Board’s decision and furnished a copy of the ITS Board’s decision through electronic means or certified mail. All ITS Board actions are final and conclusive unless appealed to a court of competent jurisdiction’s rules/procedures after entry of ITS Board's final written decision as recorded in its minutes. A determination of an issue or fact by a quorum of the ITS Board in the adoption of a proposed decision shall be final and conclusive unless arbitrary, capricious, fraudulent or clearly erroneous.

***Rule 8.9 Exhaustion of Administrative Remedies.***

Except as may be authorized under federal law, no Protestor may file an appeal or petition for judicial review with a court of competent jurisdiction, until a final written decision has been made by the ITS Board in accordance with these rules (i.e., exhaustion of administrative remedies). The ITS Board will refuse to decide a protest if an action concerning the protest has been filed in court without exhaustion of administrative remedies as required in this rule.

However, after entry of ITS Board's final written decision as recorded in its minutes, the Protestor may file an appeal or petition for judicial review in accordance with a court of competent jurisdiction's rules/procedures. Protestor must notify ITS, within thirty (30) calendar days of entry of ITS Board's final written decision as recorded in its minutes, concerning Protestor's intent to file a petition for judicial review. "Entry of ITS Board's final written decision as recorded in its minutes" means the date of the ITS Board meeting at which the ITS Board adopted the written decision.

ITS will compile the administrative record for purposes of any appeal or petition for judicial review of the ITS Board's final written decision. The Administrative record for purposes of any appeal of an ITS Board decision on a Protest includes the following: the Protest Record and the final written decision of the ITS Board as recorded in its minutes.

***Rule 8.10 State's Remedies under a Protest.***

**A. Return of Protest Bond.** ITS will return the Protest Bond if the protest is upheld and one of the following applies:

   **1.** receipt of written notification from the Protestor stating that the Protestor will not file a petition for judicial review, and the period for filing an appeal or petition for judicial review has expired,

   **2.** expiration of the period of filing an appeal or petition for judicial review, or

   **3.** receipt of a final order issued by a court of competent jurisdiction indicating the protest had merit.

**B. Claim Against Protest Bond.** ITS will issue a payment demand against the Protest Bond to cover the expenses or losses incurred by the State because of the protest in any of the following circumstances:

   **1.** The procuring agency's action is upheld by the ITS Board, no appeal for judicial review occurs, and the period of filing an appeal or petition for judicial review has expired,

   **2.** receipt of a final order issued by a court of competent jurisdiction upholding the procuring agency's action, or

The above circumstances indicate that the filed protest, although may be submitted in good faith, were without merit or without substantial basis or reasonable expectation to believe that the protest would result in a meritorious decision. "Without merit" under these rules means that the protest submitted lacks sufficient legal or factual basis to support the relief requested.

C. **No limitation on Damages to the State.** Nothing in these rules shall be construed to limit the State's remedies at law or in equity, regardless of any claims made by the State against the protest bond.

**Source:** *Miss. Code Ann. Section 25-53-5.*

**Part 2, Chapter 9 ITS Procurement Purview Exceptions**

***Rule 9.1 Exceptions/Exemptions to ITS Procurement Purview.***

Certain purchases of information technology are recognized as not being under ITS procurement purview, whether specified by ITS enabling law (also commonly referred to in this rule as “statutory exception/exemption”) or as provided in these rules (also commonly referred to in this rule as “regulatory exception/exemption”).

A statutory exception to ITS procurement purview means that an information technology purchase does NOT have to follow these ITS rules regarding procurement, including applicable competitive bidding and advertising requirements. <u>However, any such statutory exception is valid only within the specific limits and conditions established by the statutory language.</u>

A regulatory exception means the ITS Board has formally allowed an exception from ITS rules regarding procurement, including applicable competitive bidding and advertising requirements. <u>However, any such exception is valid only within the specific limits and conditions established by this rule.</u>

Acquisitions of information technology made by Agencies/IHLs while exempt from the purchasing requirements of ITS enabling code or as specified in these rules shall remain exempted/excepted until a new acquisition is required, as determined by the ITS Procurement Services Director (e.g., scope/pricing of the procurement changes from original purchase or material contract terms).

Miss. Code Ann. Section 25-53-25 provides that ITS does <u>**not**</u> have the authority to exempt/except acquisitions of agencies or institutions of higher learning from public purchasing laws (e.g., Miss. Code Ann. 31-7-1 *et seq.*, etc.). So, if one of the exceptions from this rule apply, Agencies/IHLS should consult with their legal counsel for satisfaction of any other procurement laws or regulations that may apply.

If an Agency/IHL has a question regarding ITS procurement purview, they should contact the ITS Procurement Services Director.

**Rule 9.1.1 - Statutory Exceptions/Exemptions to ITS Procurement Purview.**

The following are statutory exemptions recognized under ITS enabling code (Miss. Code Ann. Sec. 25-53-1 *et seq.*). Statutory exceptions to ITS procurement purview are valid only within the specific limits and conditions established by the statutory language.

**A.** Acquisitions of information technology acquired by the Mississippi Department of Health for the purposes of implementing, administering and enforcing the provisions of the Mississippi Medical Cannabis Act, before June 30, 2024.

**B.** Acquisitions of information technology acquired by the Mississippi Department of Revenue for the purposes of implementing, administering and enforcing the provisions of the Mississippi Medical Cannabis Act, before June 30, 2024.

**C.** Acquisitions of information technology by institutions of higher learning or junior colleges wholly (100%) with federal funds and not with *any* state general funds.

**Rule 9.1.2 Regulatory Exceptions/Exemptions.**

The following types of acquisitions are recognized as regulatory exceptions to ITS procurement purview. The basis for these regulatory exceptions are recognized by the ITS Board as potentially applicable in the purchasing of information technology and are available as recognized by the ITS Board pursuant to Miss. Code Ann. 25-53-5(o) and Public Purchasing Law, specifically Miss. Code Ann. 31-7-13(m). <u>Regulatory exceptions under this rule are valid only within the specific limits and conditions established by this rule as related to IT procurement.</u>

**A.** **Bureau of Building Projects.** Information technology that is acquired as part of a project administered by the Department of Finance and Administration Bureau of Building (BOB) shall be exempt from the procurement requirements under these rules so long as:

1. the BOB procurement complied with all applicable statutory and regulatory requirements for its procurement (public purchasing laws, Miss. Code Ann. 31-7-1 et seq., etc.),

2. the pricing for information technology is clearly identified in the BOB procurement award,

3. and all other applicable ITS rules are followed, including, but not limited to, telecommunications and security standards and policies.

ITS may adopt any BOB acquisition made pursuant to this Section for the applicable ITS governed Agency/IHL without conducting a new procurement or validating the BOB procurement upon completion of the BOB project. Please note this exception includes information technology acquisitions that are a part of the design-build method of contracting and certain other contracts by BOB entered into under the provisions of Miss. Code Ann. Sections 31-7-13.1, 37-101-44 or 65-1-85. The above exception does not apply to cabling projects for buildings that are listed as a part of the Capitol Complex as listed on the ITS website. Any questions related to what is covered under a “cabling project” please contact the ITS Telecommunications Division.

**B.** **Governmental equipment auctions. I**nformation technology related equipment that is acquired from a federal agency or authority, another governing authority or state agency of the State of Mississippi, or any governing authority or state agency of another state at a public auction held for the purpose of disposing of such information technology equipment. Exception to purview regulatory. THIS REGULATORY EXCEPTION DOES NOT APPLY TO INFORMATION TECHNOLOGY SERVICES. Software that is a part of the equipment *required to run the equipment* is in scope of this regulatory exception, **but all other software, including Software as a Service, and related information technology professional services is not within the scope of this exception.**

C. **Intergovernmental sales and transfers.** Purchases, sales, transfers or trades of information technology by state agencies when such purchases, sales, transfers, or trades are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi, or any state agency or governing authority of another state. Nothing in this section shall permit such purchases through public auction except as allowed under this rule entitled "Governmental equipment auctions". It is the intent of this section to allow governmental entities to dispose of and/or purchase commodities from other governmental entities at a price that is agreed to by both parties. This shall allow for purchases and/or sales at prices which may be determined to be below the market value if the selling entity determines that the sale at below market value is in the best interest of the taxpayers of the state. State agencies shall provide notice to ITS, prior to releasing or taking possession of the information technology.

D. **Waste disposal facility construction contracts.** Information technology that is a part of the construction of incinerators and other facilities for disposal of solid wastes in which products either generated therein, such as steam, or recovered therefrom, such as materials for recycling, are to be sold or otherwise disposed of, do not have be procured under ITS procurement rules, except as provided herein and in accordance with Miss. Code Ann. 31-7-13(m), which provides that in constructing such facilities, an agency shall publicly issue requests for proposals, advertised for in the same manner as provided herein for seeking bids for public construction projects, concerning the design, construction, ownership, operation and/or maintenance of such facilities, wherein such requests for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, environmental compatibility, legal responsibilities and such other matters as are determined by agency to be appropriate for inclusion; and after responses to the request for proposals have been duly received, the agency may select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals.

**E. Hospital group purchase contracts.** Information technology equipment purchased by hospitals through group purchase programs pursuant to Section 31-7-38. THIS REGULATORY EXCEPTION DOES NOT APPLY TO INFORMATION TECHNOLOGY SERVICES. Software that is a part of the equipment *required to run the equipment* is in scope of this regulatory exception, **but all other software, including Software as a Service, and related information technology professional services is not within the scope of this exception.**

**F. Library books and other reference materials.** Purchases **by libraries or for libraries** of books and periodicals, processed film, videocassette tapes, filmstrips and slides, recorded audiotapes, cassettes and diskettes, and any such items as would be used for teaching, research or other information distribution. However, equipment such as projectors, recorders, audio or video equipment, and monitor televisions are not exempt under this subparagraph.

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

**H. Purchases of Mississippi Industries for the Blind products or services.** Purchases made by state agencies involving any item that is manufactured, processed or produced by, or any services provided by, the Mississippi Industries for the Blind.

**I. Certain purchases under the Mississippi Major Economic Impact Act.** This exception applies to information technology that is acquired as part of a project/contract entered into pursuant to the provisions of Miss. Code Ann. Section 57-75-9(2), (3) and (4), so long as:

1. All other applicable statutory and regulatory requirements for its procurement are followed,

2. the pricing for information technology is clearly identified in the procurement award, and

3. all other applicable ITS rules are followed, including, but not limited to, telecommunications and security standards and policies.

ITS may adopt any information technology acquisition made pursuant to this Section for the applicable ITS governed agency and institution of higher learning without conducting a new procurement or validating the procurement upon completion of the project, as necessary, and so long as the above criteria are met.

**J. Toll roads and bridge construction projects**. This exception applies to information technology purchases made under contracts entered into under the provisions of Section 65-43-1 or 65-43-3 so long as:

   **1.** All other applicable statutory and regulatory requirements for its procurement are followed,

   **2.** the pricing for information technology is clearly identified in the procurement award,

   **3.** and all other applicable ITS rules are followed, including, but not limited to, telecommunications and security standards and policies.

   ITS may adopt any information technology acquisition made pursuant to this Section for the applicable ITS governed agency and institution of higher learning without conducting a new procurement or validating the procurement upon completion of the project, as necessary, and so long as the above criteria are met.

**K. Certain purchases by an academic medical center or health sciences school.** Purchases by an academic medical center or health sciences school, as defined in Miss. Code Ann. Section 37-115-50, of information technology that are **directly** used for

   **1.** clinical purposes,

   **2.** intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease, **and**

   **3.** medical devices, biological, drugs and radiation-emitting devices as defined by the United States Food and Drug Administration.

   This exception **does not** apply for acquisitions of information technology that are indirectly applicable to all of the above criteria.

**Source:** *Miss. Code Ann. Sections 25-53-1, 25-53-5, and 31-7-13.*

**Part 2, Chapter 10 Severability**

***Rule 10 Severability.***

If any provision of this rule, or the application of any provision to any person or circumstance, is held invalid by a court of competent jurisdiction, the invalidity does not affect the remaining provisions or applications of the Rule that can be given effect without the invalid provision or application. All remaining provisions shall continue in full force and effect, and it is the intent of the ITS Board that the provisions of this Rule be severable to the maximum extent permitted by law.