LEASING PROCEDURE MANUAL

BUREAU OF BUILDING, GROUNDS AND REAL PROPERTY MANAGEMENT

STATE AGENCY LEASING IN NON-STATE OWNED SPACE

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SECTION 100: GENERAL

100.1
PURPOSE

The purpose of the Department of Finance and Administration (DFA), Bureau of Building, Grounds and Real Property Management Leasing Manual is to set forth all laws and regulations, along with any other pertinent information, that shall be in effect with the implementation of Title 29, Chapter 5, Section 2, Paragraph c, Mississippi Code of 1972, Annotated. The policies and procedures set forth herein apply to any lease or rental agreements by any state agency or department, including any state agency financed entirely by federal and special funds, for space outside the buildings under the jurisdiction of the Department of Finance and Administration and subject to the approval of the Public Procurement Review Board (PPRB). Also included are policies and procedures applicable to the leasing of agricultural and other lands under the control of the Department of Corrections (DOC) and the Department of Wildlife, Fisheries and Parks (DWFP) to private entities subject to the approval of the PPRB. This Manual is intended to be a thorough representation of procedures relative to leasing by all state agencies. Further, it shall serve as a source of information for vendors instructing them as to the proper procedures that must be followed in doing business with the State. For the purpose of this document, all definitions found in Section 31-7-1, Mississippi Code of 1972, Annotated, shall apply.

100.2
LEASING RELATED LAWS & REGULATIONS

Laws relative to the Department of Finance and Administration, Bureau of Building, Grounds and Real Property Management and the leasing process in general may be found in Title 29, Chapter 5, Section 2 of the Mississippi Code of 1972, Annotated. Additional laws applicable to leasing include, but are not limited to the following:

(1) Mississippi Code of 1972, Annotated, Section 7-7-27(1) addressing no pre-payment of leases unless waived by PPRB upon recommendation of DFA Financial Control.
(2) Mississippi Code of 1972, Annotated, Section 25-9-15(e) addressing leasing of space for records storage.
(3) Mississippi Code of 1972, Annotated, Section 27-104-7(c) addressing posting of need for space, review and preapproval of leases prior to advertisement.
(4) Mississippi Code of 1972, Annotated, Section 29-13-1(1) addressing insurance of buildings and personal property in floodplains.
(5) Mississippi Code of 1972, Annotated, Section 31-7-301 addressing timely payments.
(6) Mississippi Code of 1972, Annotated, Sections 47-5-64, 47-5-66 and 49-5-13 addressing leasing of agricultural and other lands of DOC and DWFP to private entities.
(7) Mississippi Code of 1972, Annotated, Section 71-11-3 addressing employee status verification.
(8) Code of Federal Regulations, 36 CFR part 61 addressing professional qualifications when alterations to Mississippi Landmark, or potentially eligible properties are involved.
(9) Code of Federal Regulations, 28 CFR parts 35 and 36 addressing Americans with Disabilities Act of 1990, Title II and Title III.

100.3
SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE

Unless displaced by the particular provisions of these regulations, the principles of law and equity, including the Uniform Commercial Code of this State, the law merchant, and law relative to the capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of these regulations.

100.4
REQUIREMENT OF GOOD FAITH

These regulations require all parties involved in the negotiation, performance or administration of Mississippi contracts to act in good faith.

100.5
APPLICATION

(1) **General Application:** These regulations only apply to contracts solicited or entered into after the effective date of this manual or portion thereof unless the parties agree to its application to a contract solicited or entered into prior to the effective date.
(2) **Conflicting Regulations:** Where grant, gift, or other Federal requirement is applicable such additional requirements shall apply. Where a conflict exists, the guidelines of a grant, gift or Federal law shall prevail, however; where specific provisions of this manual are more restrictive and are not explicitly contradicted by Federal law, the most restrictive provisions shall apply.

100.6
SEVERABILITY

If any provision of these regulations or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of these regulations which can be given effect without the invalid provision or application to this end the provisions of these regulations are declared to be severable.

100.7
DURATION

These regulations, when approved by the PPRB as authorized by Section 24-104-7, Mississippi Code of 1972, Annotated, shall be in effect as written until amended or repealed by the Board.

100.8
DEFINITIONS

The words defined in this section shall have the meanings set forth below whenever they appear in the regulations, unless:

(1) The context in which they are used clearly requires a different meaning; or
(2) A different definition is prescribed for a particular section or provision.
    a. **Agency** – as defined in Section 31-7-1, Mississippi Code of 1972, Annotated.

b. **Agency Procurement Officer** – any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.
c. **Board** – the Public Procurement Review Board (PPRB).
d. **Business** – any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
e. **BRICKS** – Bureau of Building, Grounds and Real Property Management's Building & Real Estate Information Collaborative Knowledge System.
f. **Contract** – all types of Mississippi agreements, regardless of what they may be called, for the procurement or disposal of commodities, equipment, services, or construction.
g. **Contract Modification** – any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
h. **Contractor** – any person having a contract with a governmental body.
i. **Data** – recorded information, regardless of form or characteristic.
j. **Day** – calendar day, unless otherwise specified.
k. **Designee** – a duly authorized representative of a person holding a superior position.
l. **Employee** – an individual drawing a salary from a governmental body, whether elected or not, and any non-compensated individual performing personal services for any governmental body.
m. **May** – denotes the permissive.
n. **MAGIC** – Mississippi's Accountability System for Government Information and Collaboration.
o. **Person** – any business, individual, union, committee, club, other organization, or group of individuals.
p. **Procurement** – buying, purchasing, renting, leasing, or otherwise acquiring any commodities, equipment, services, or construction. It also includes all functions that pertain to the obtaining of any commodities, equipment, services, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.
q. **Procurement Officer** – any agency personnel duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized agency representative acting within the limits of authority.
r. **Purchasing Agency** – any governmental body which is authorized by regulations to enter into contracts.
s. **Purchasing Agent** – any administrator, superintendent, purchase clerk or other chief officer so designated having general or special authority to negotiate for and make private contract for or purchase for any governing authority or agency, including issue purchase orders, invitations for bid, requests for proposals, and receive and accept bids.
t. **Regulation** – a governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedure, or practice requirements, which has been promulgated in accordance with Section 31-7-9, Mississippi Code of 1972, Annotated.
u. **Services** – the furnishing of labor, time, or effort by a vendor or supplier, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.
v. **Shall** – denotes the imperative.

100.9
PUBLIC ACCESS TO PROCUREMENT INFORMATION

Procurement information shall be public record to the extent provided in Section 25-61-1, Mississippi Code of 1972, Annotated, in accordance with each state entity's policies and procedures.

SECTION 200: PROCUREMENT ORGANIZATION

200.1
ORGANIZATION

Within the Department of Finance and Administration is the Public Procurement Review Board (PPRB) as provided for under Section 27-104-7, Mississippi Code of 1982, Annotated. The Board shall adopt regulations governing any lease or rental agreement by any state agency or department and shall act upon those leases and rental transactions as may be, from time to time, designated by the Board as requiring Board approval. The Board shall also act on other such transactions as would be required by the procedures set forth in the regulations presented herein.

200.2
REAL PROPERTY MANAGEMENT DIVISION

It shall be the responsibility of the Bureau of Building, Grounds and Real Property Management, Real Property Management (RPM) Division to supervise the lease and rental of space outside the buildings under the jurisdiction of the Department of Finance and Administration entered into by agencies and departments of the State.

Each agency and department of the State shall be responsible for the procurement of leases and rental agreements needed by that agency or department in compliance with Section 27-104-7, Mississippi Code of 1972, Annotated, and with the policies and procedures established herein.

200.3
LEASE PROCUREMENT REGULATIONS

(1) Regulations shall be promulgated by the RPM Division with approval of the PPRB.
(2) Regulations shall not change existing contract rights.

200.4
DEVIATION FROM THESE REGULATIONS

The rental markets throughout the State are, in many cases, unique to their particular area as to the availability and cost of the different types of rental property. Additionally, agencies and departments have property needs and requirements that are often unique to that particular agency or department. In recognition of these factors, the PPRB may approve deviations to these regulations on a case by case basis and may delegate the authority to approve such deviations to the RPM Division Director. Any such deviation shall be based on a determination by the Board or the RPM Division Director that it is in the best interest of the State.

200.5
ITEMS REQUIRING BOARD APPROVAL

The requesting agencies and departments are required to submit all Lease Requests to the RPM Division through BRICKS prior to entering of Lease Contracts in MAGIC. As outlined below, the RPM Division will be required to obtain PPRB approval prior to processing these requests.

Agencies and departments are advised that they shall not award any lease or rental agreement prior to approval by the PPRB if the lease or rental agreement requires PPRB approval. When approval requests are received, the RPM Division will evaluate the request and provide a recommendation to the Board. The PPRB has regularly scheduled monthly meetings. Requests should be submitted not later than the deadline posted on PPRB's website. Requests received after this time may be delayed until the next regular meeting of the Board. Requests for new or succeeding leases for agencies and departments in current leases should be submitted not less than three months but not more than twelve months prior to the expiration of current leases to allow for exercising of the unilateral 90 day extension clause contained in RPM Division standard lease should new or succeeding lease be rejected by the PPRB. The PPRB requires that the following items be brought before the Board for approval:

(1) Any lease of office, warehouse or other space in a building outside the jurisdiction of the Department of Finance and Administration;
(2) Any lease of vacant land;
(3) Any lease of parking or hangers;
(4) Any lease of residential space;
(5) Any lease of sixteenth section land;
(6) Any lease to private entity of agricultural or other lands under the control of DOC;
(7) Any lease to private entity of agricultural lands under the control of DWFP;
(8) Any amendments to any of the above lease types:
(9) Renewals of any of the above lease types;
(10) Requests for deviation from regulations; and,
(11) Policies and procedures which relate to the leasing or rental of space outside of buildings under the jurisdiction of the Department of Finance and Administration.

200.6
SUBMISSION REQUIREMENTS

Requests for PPRB approval submitted to the RPM Division through BRICKS shall include all pertinent documentation required to review and validate that Lease or proposed modifications thereto are in compliance with applicable provisions of these regulations and shall include, but not necessarily be limited to the following:

(1) RPM Division Statement of Facts Form;
(2) RPM Division Lease Proposal Forms & Required Attachments (All Proposals Received);
(3) RPM Division Space Evaluation Form;
(4) RPM Division Market Rent Survey Form (Succeeding Leases Only);
(5) Lease / Amendment Form executed by Lessor (Not Signed by Lessee);
(6) Proof of Advertisement (New Competitive Leases Only);
(7) RLP Package (Including Any / All Addenda);
(8) RPM Division Total Cost Evaluation Form (Including Documentation for Estimated Costs);
(9) Evaluation Report (New Competitive Leases Only); and
(10) Any / all applicable Justification Letters (Location Flexibility, Space Utilization, Minimum Overall Space Efficiency, Deviation from Regulations).

200.7
RESPONSIBILITY OF THE REAL PROPERTY MANAGEMENT DIVISION

The PPRB, acting through the RPM Division of the Bureau of Building, Grounds and Real Property Management, shall have approval authority over the types of transactions listed in this section and in accordance with the procedures set forth. The RPM Division has the responsibility to serve the State objectively, economically and efficiently; to provide effective service to the state agencies and departments; and to follow fair and ethical practices with all suppliers. However, this authority does not extend to governing authorities. Governing authorities are not required to obtain approval of PPRB for lease and rental agreements.

SECTION 300: SOURCE SELECTION & CONTRACT FORMATION

300.1
DEFINITION OF TERMS USED IN THIS SECTION

(1) **Award** – acceptance by an agency or department of a proposal submitted by a Lessor with the intention of entering into a Lease Contract.
(2) **BOMA** – Building Owners and Managers Association
(3) **Building Amenity Area** – conference rooms, break rooms and similar spaces that are available for use by all tenants of a multi-tenant building at no additional cost or with SF rental cost pro-rated among all tenant spaces.
(4) **Building Service Area** – building lobby, public corridors, and public restrooms in multi-tenant buildings as well as janitors' closets, mechanical, electrical and communications rooms and closets, loading docks, shipping and receiving areas, building management and maintenance areas in all buildings.
(5) **Demising Wall** – a partition or wall separating one tenant's leased space from that of another tenant.
(6) **Graduated Rental Rate** – rental payments that begin at a low fixed rate per square foot and increase at set intervals over the Lease term.
(7) **Lease** – a contract by which one party conveys real property to another for a specified period of time and under specific conditions.
(8) **Lessee** – the individual or entity to whom property is rented or leased; tenant
(9) **Lessor** - the individual or entity who rents or leases property to another; landlord
(10) **Market Rate Survey** – up to date information collected and analyzed by a Mississippi Licensed Realtor on available or leased real property in a given area for the purpose of establishing fair market value.
(11) **Major Vertical Penetration** – elevators, stairwells, mechanical chases and similar spaces.
(12) **Occupant Area** – the actual square footage of a building that is useable exclusively by the tenant, and excludes Building Service Areas and Major Vertical Penetrations.
(13) **Rentable Area** – in a single-tenant building, is equal to the Occupant Area. For multi-tenant buildings, is equal to the Occupant Area plus the pro-rated portion of Building Amenity Areas attributable to the Occupant Area. In no case are Building Service Areas to be included in Rentable Area.
(14) **Request for Lease Proposals (RLP)** – all documents, whether attached or incorporated by reference, utilized for soliciting proposals.
(15) **Responsible Offeror** – a person or entity who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.
(16) **Responsive Offeror** – a person or entity who has submitted a bid or proposal which conforms in all material respects to the RLP.
(17) **Succeeding Lease** – a non-competitive lease acquisition secured to provide for continued occupancy of the current premises at the end of a lease and all contractually permitted renewals.
(18) **Tenant Improvements** – fixed improvements or modifications to a building prior to start of tenancy.
(19) **Tenancy** – the occupation or holding of land or other real property.
(20) **Usable Area** – the Occupant Area plus the Building Amenity Area.

300.2
EXEMPTIONS NOT REQUIRING APPROVAL

Unless otherwise ordered by regulation of the PPRB, the following items are exempt from the competitive procurement process and do not require approval by the RPM Division or PPRB:

(1) Leases of space in buildings under the jurisdiction of the Department of Finance and Administration.
(2) Leases or space rental agreements required for participation at trade shows, conventions, conferences and similar events not hosted by the agency or department where agency or department provides written justification that it is in the best interest of the State to be represented at such event.
(3) Leases or space rental agreements required for hosting by agency or department of seminars, conferences, training and similar events where agency or department provides written narrative of efforts made to consider multiple alternatives and to obtain best value for the State. Where such agreements also include provisions related to accommodations and/or meals, additional regulations and/or approvals may be required by the Office of Purchasing, Travel and Fleet Management.

300.3
EXEMPTIONS REQUIRING APPROVAL

Unless otherwise ordered by regulation of the PPRB, the following items are exempt from advertisement and competitive procurement but do require approval by the PPRB:

(1) Leases of space in buildings under the jurisdiction of other state agencies and departments, state universities and community colleges, or other subdivisions of government where no rent is assessed or where charges are documented to be limited to direct costs to operate and maintain the building in accordance with 300.9.1
(2) Succeeding Leases in accordance with 300.9.2
(3) Emergency Leases in accordance with 300.9.3
(4) Vacant Land Leases in accordance with 300.9.4
(5) Parking, Hanger & Boat Slip Leases in accordance with 300.9.5
(6) Mini-Storage Leases in accordance with 300.9.6
(7) Month-to-Month Leases in accordance with 300.9.7
(8) Sixteenth Section Land Leases in accordance with 300.9.8

300.4
REAL PROPERTY DIVISION PRE-APPROVAL

For all leases not otherwise exempt from competitive procurement per 300.2 *Exemptions Not Requiring Approval* or 300.3 *Exemptions Requiring Approval*, each agency seeking to lease space shall provide the following information that shall be published by the RPM Division on its website on or before the time for advertisement of the RLP in accordance with Mississippi Code of 1972, Annotated, Section 27-104-7(c). Information shall be provided no less than thirty days prior to date proposed for first advertisement. Failure to obtain pre-approval prior to advertisement will necessitate re-advertisement by the agency or department.

(1) **Proposed RLP Package:** The use of applicable RPM Division template RLP forms and template Lease Contracts without deviation is required unless it is determined that such documents are either not practicable or not advantageous to the State for the specific lease request in the opinion of the RPM Division Director. Any proposed deviations and/or supplementary conditions to template forms and/or template Lease Contract shall be clearly identified in the applicable sections of the template documents. Where deviations from template documents are proposed, a written justification by the Agency Head indicating why the template documents are either not practicable or not advantageous to the State shall also be included.

(2) **Space Evaluation Form:** The RPM Division form shall be completely filled out to document that space to be requested is either in compliance with Space Utilization Guidelines or that deviation is requested in which case written justification by the agency shall also be included.

(3) **Advertisement Form:** Advertisement shall identify the agency or department seeking space, approximate amount of usable square feet requested, type of space requested, desired location of space requested, length of initial term requested, agency contact information and deadline for receipt of proposals.

(4) **Location Flexibility:** Desired location shall be defined as broadly as possible to encourage competition. Space leased for statewide or regional offices should identify multiple counties or municipalities. Where an RLP identifies a single county or municipality, such RLP shall be accompanied by a written justification by the Agency Head indicating why location flexibility is not possible.

300.5
GENERAL PROVISIONS

(1) **Extension of Time for Acceptance of Lease Proposal:** After opening proposals, the Agency Procurement Officer may request offerors to extend the time during which the State entity may accept their proposals. The reasons for requesting such extension shall be documented.

(2) **Only One Proposal Received:** If only one responsive proposal is received in response to an RLP, an award may be made to the single offeror if the Agency Procurement Officer finds that the price is fair and reasonable, and that either the other prospective offerors had reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise, the proposal shall be rejected pursuant to the provisions of Section 300.8 *Competitive Sealed Lease Proposals* and the solicitation re-advertised or canceled. If the Agency Procurement Officer determines in writing that the need for space continues, but that the price of the one proposal is not fair and reasonable, and where extension of any current lease by unilateral (where permitted by contract) or mutual consent is not possible, and there is not time for re-solicitation or re-solicitation would likely be futile, the procurement may then be conducted under Section 300.9(3) *Emergency Leases* if an emergency is justified and declared by the agency.

(3) **No Proposal Received:** If no proposal is received in response to a RLP, the solicitation may be re-advertised or canceled. If the Agency Procurement Officer determines in writing that the need for space continues, extension of any current lease by unilateral (where permitted by contract) or mutual consent is not possible, and that there is not time for re-solicitation or re-solicitation would likely be futile, the procurement may then be conducted under Section 300.9(3) *Emergency Leases* if an emergency is justified and declared by the agency.

(4) **Alternates:** If pricing for one or more alternates is included in an RLP, the solicitation shall indicate if providing alternate pricing is mandatory or optional and state the conditions under which such alternates may accepted.

(5) **Conditional Proposals:** Any proposal which is conditioned upon receiving award of both the particular lease being solicited and another lease, contract or action of the agency shall be deemed nonresponsive and not acceptable.

(6) **Unsolicited Proposals:** Any proposal which is submitted other than in response to an advertised solicitation shall not be acceptable where lease is not exempt from competitive procurement but may be considered where lease is exempt, provided proposal complies with all applicable provisions of 300.9 *Non-Competitive Proposals*.

300.6
ASSIGNMENT & NOVATION

(1) **Assignment:** No lease contract subject to PPRB approval is transferable or otherwise assignable without prior approval of the PPRB, however; a Lessor may assign monies receivable under a contract after due notice to the State and the contracting entity, and with the approval of the RPM Division Director.

(2) **Change of Name:** When a Lessor requests to change the name in which it holds a contract with the State, or where such change is necessitated by the death of a property owner, the agency shall, upon receipt of a document indicating such change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting Lessor to effect the change. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are changed.

(3) **Novation:** When, in the best interest of the State, a successor in interest may be recognized in a novation agreement, the transferor and the transferee must agree that:

a. The transferee assumes all of the transferor's obligations;
b. The transferor waives all rights under the contract as against the State; and,
c. Unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

300.7
METHOD OF SOURCE SELECTION

Unless otherwise authorized by law, all Mississippi contracts for lease and space rental agreements shall be procured by competitively pursuant to 300.8 *Competitive Sealed Lease Proposals*, except as provided in:

(1) Section 300.9(1) *Leases with Other State Agencies, Institutions and Divisions of Government*;
(2) Section 300.9(2) *Succeeding Leases*;
(3) Section 300.9(3) *Emergency Leases*;
(4) Section 300.9(4) *Vacant Land Leases;*
(5) Section 300.9(5) *Parking, Hanger & Boat Slip Leases;*
(6) Section 300.9(6) *Mini-Storage Leases;*
(7) Section 300.9(7) *Month-to-Month Agreements;*
(8) Section 300.9(8) *Residential Leases;* and,
(9) Section 300.9(9) *Sixteenth Section Land Leases.*

300.8
COMPETITIVE SEALED LEASE PROPOSALS

(1) **Conditions for Use:** Lease contracts shall be awarded by competitive sealed proposals except as otherwise provided in 300.7 *Method of Source Selection*.

(2) **Request for Lease Proposals:** Proposals shall be solicited through a Request for Lease Proposals.

(3) **Required Content:** Each Request for Lease Proposals shall include the following:

a. Instructions and information to offerors concerning the request for lease proposals submission requirements, the address of the office to which proposals are to be delivered, the maximum time for proposal acceptance by the State, the manner in which proposals are to be submitted, including any forms for that purpose and any other special information;

b. Timeline for pre-proposal conference (if applicable), questions and posting of answers, submission of proposals, notice of intent to award, post-award debriefing (if applicable) as well as the deadline for protests. Such timeline should be carefully considered to ensure that result of RLP will be ready to submit in BRICKS not less than three months prior to the need for space and/or the expiration of any current lease to allow for exercising of the unilateral 90 day extension clause contained in RPM Division standard lease should new lease be rejected by the PPRB necessitating re-procurement;

c. Description of usable space desired, location desired, length of initial term and any renewal terms desired, evaluation factors, performance schedule and any inspection and acceptance requirements that are not included in the description of space;

d. Form of lease contract to be utilized including general and any supplementary contract terms and conditions, including warranty and bonding or other security requirements, as applicable; and

e. A statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions.

(4) **Public Notice:**

a. **Publication:** Every lease not otherwise exempt from competition per 300.2 *Exemptions Not Requiring Approval* or 300.3 *Exemptions Requiring Approval*, shall be publicized as follows:

i. In a newspaper published in the county or municipality in which the space to be leased is sought or a newspaper of statewide general circulation; and

ii. On the RPM Division website.

b. **Content of Advertisement:** Content shall be in accordance with 300.4(3) *Advertisement Form* and shall be posted in the legal notice section of the newspaper.

c. **Advertisement Time:** Advertisements shall be published once each week for two consecutive weeks with the second notice being published on or after the 7th calendar day after the first notice was published. The date set for receipt of proposals must not be less than fourteen (14) working days after the last notice appears in the newspaper. Therefore, the date established for receipt of proposals must not be sooner than the 15th working day. Working days are defined as days that your entity is officially open for business.

d. **Public Availability:** The Request for Lease Proposal package must be made available for any interested party at the location specified in the published notice.

(5) **Pre-Proposal Conferences:** If provided for in the Request for Lease Proposals a Pre-Proposal Conference may be conducted to explain the procurement requirements.

a. **Scheduling:** The date, time and location of the conference shall be identified in the Request for Lease Proposals. In no case shall a Pre-Proposal Conference be held less than seven (7) working days prior to the date established for receipt of proposals. If a determination is made to hold a Pre-Proposal Conference after the Request for Lease Proposals has been issued, notice of such conference shall be issued as an Addendum to all known offerors and posted on the RPM Division website.

b. **Attendance:** Attendance by offerors shall not be made a requirement for submittal of a lease proposal unless the agency procurement officer makes a determination that attendance is critical to understanding the solicitation, however; all offerors attending shall be required to sign an attendance sheet provided by the soliciting agency and such attendance sheet shall be made available to all offerors.

c. **Content:** The intent of the Pre-Proposal Conference shall to be to provide clarification and explanation of the Request for Lease Proposal requirements. Any questions shall be submitted in writing to the soliciting agency. Soliciting agency shall not be responsible for any oral instruction or interpretation. Any need for amendment to the Request for Lease Proposals generated by the Pre-Proposal Conference shall be issued as an Addendum to all known offerors and posted on the RPM Division website.

(6) **Amendments:** Amendments to Requests for Lease Proposals shall be identified as such and distributed to all known potential offerors and posted on the RPM Division website within a reasonable time prior to the date established for receipt of Lease Proposals to allow prospective offerors to consider them in preparing their offers. If the time and date set for receipt of Lease Proposals will not permit such preparation, such time shall be extended in the amendment.

(7) **Pre-Opening Modification or Withdrawal:** Lease Proposals may be modified or withdrawn by written notice received in the office designated in the Request for Lease Proposals prior to the time and date set for receipt of Lease Proposals. Any withdrawn or modified offer shall remain unopened in the procurement file.

(8) **Late Bids, Modifications or Withdrawals:** Any Lease Proposal received after the time and date set for the receipt of Lease Proposals shall be deemed late, shall not be considered and shall be returned to the offeror unopened. Requests to modify Lease Proposals after the time and date set for the receipt of Lease Proposals will not be considered. An offeror may be permitted to withdraw a Lease Proposal after the time and date set for the receipt of Lease Proposals only if a mistake is clearly evident on the proposal documents or where the offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made within twenty-four (24) hours of the time and date set for the receipt of Lease Proposals. An offeror may freely correct any mistake by modifying their Lease Proposal in conjunction with their best and final offer; however, as agency or department may choose to award based upon initial submission, offerors are cautioned not to rely on this opportunity.

(9) **Irregularities:** The omission of any information requested in the RLP may be considered as an informality, or irregularity, by the awarding public body when in their opinion the omitted information does not alter the amounts contained in the submitted Lease Proposal, or place other offerors at a disadvantage.

(10) **Receipt:** Lease Proposals shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Request for Lease Proposals. The name and proposed location each offer shall be read aloud and recorded on a Register of Proposals.

(11) **Confidential Data:** The Agency Procurement Officer shall examine all offers to identify any written requests for nondisclosure of trade secrets and other proprietary data. Any disclosure of this information is subject to the provisions of Mississippi Code of 1972, Annotated, Sections 25-61-9 and 79-23-1.

(12) **Evaluation Factors:** Where award is to be made based upon criteria other than total cost alone, the Request for Lease Proposals shall clearly identify points to be awarded for price and other evaluation factors.

a. For leases of 20,000 square feet or less, evaluation shall be based upon compliance with mandatory minimum requirements and total cost to the State only, except where the procurement officer of the soliciting agency determines, subject to the concurrence of the RPM Division Director this to be not practicable and/or advantageous to the State.

b. Evaluation based upon compliance with mandatory minimum criteria and total cost to the State is preferred, however; use of other evaluation factors may be included for leases over 20,000 square feet. Examples of evaluation factors other than cost include, but are not necessarily limited to the following:

i. Proposed Space Layout – Consideration may be given to efficiency and operational effectiveness of layout of proposed space.

ii. Location – Consideration may be given to proximity of other governmental services, convenience to public access, or centrality to a given service area; however, this factor shall not be used to arbitrarily favor rural / suburban areas over urban areas.

iii. Parking – Consideration may be given to proximity of tenant and/or visitor parking; however, this factor shall not be used to favor covered parking or surface parking over garage parking.

iv. References – Consideration may be given to past performance of Lessor based upon written references provided by Offeror and/or obtained from previous tenants of Offeror.

c. In no case shall valuation of cost factors be less than 35% of the total points available.

(13) **Evaluation Committee:** Where evaluation factors other than cost are included, an evaluation committee having the relevant experience necessary to evaluate the proposals shall be established. Such committee shall have a minimum of three (3) members from agency or department. Committee may also include members from other agencies deemed to be subject matter experts.

(14) **Evaluation of Proposals:**

a. In order to appropriately compare all Lease Proposals on an equal basis, costs shall be evaluated utilizing the RPM Division standard form to calculate total of recurring and one-time costs to the agency or department over the Lease Term including:

i. Total Rent over the Lease Term which, in the case of a Flat Rental Rate is the rate times the rentable area times the Lease Term including all renewal periods, and in the case of a Graduated Rental Rate is the rate times the rentable area times each applicable sub-portion of the Lease Term and all renewal periods.

ii. Total Cost for Utilities over the Lease Term where not included in Base Rent. In calculation of estimated utility costs, differences in energy efficiency of HVAC and lighting among various proposals may be taken into consideration.
iii. Total Cost for Janitorial where not included in Base Rent.
iv. Total Cost for Security where not included in Base Rent.
v. Total Cost for Parking if not included in Base Rent. Proposals where parking is not included and no parking is available meeting the RLP requirements, such proposals may be deemed non-responsive.
vi. Total Cost for any other items to be incurred by agency or department over the Lease Term as a consequence of tenancy.
vii. One-Time Cost of moving and relocation excluding costs or loss of efficiency by staff of agency or department.
viii. One-Time Cost of information technology installation where not included in Base Rent.

b. Each proposed space / layout shall be evaluated on RPM Space Evaluation Form for compliance with space utilization requirements as well as overall space efficiency. Variations of +/-10% for individual spaces may be deemed to be in compliance so long as cumulative impact of such variations does not cause overall space efficiency to exceed 250 SF / Occupant. Where proposals exceed this space efficiency value but offer a lower overall cost to the State, the agency or department may consider such proposals and seek approval for deviation by PPRB; however, where no such cost advantage exists, such proposals shall be rejected as non-responsive.

c. Where evaluation factors other than cost are included, the evaluation committee shall evaluate proposals only in accordance with the methodology and weighting criteria described in the Request for Lease Proposals. Costs shall be evaluated utilizing the RPM Division Total Cost Evaluation Form. Proposals shall be initially classified as: "acceptable"; "potentially acceptable", which means reasonably susceptible of being made acceptable; or "unacceptable". Offerors whose proposals are deemed "unacceptable" shall be so notified promptly.

d. Discussions with Responsible Offerors and Revisions to Lease Proposals: If provided for in the Request for Lease Proposals and as set forth in these regulations, discussions may be conducted with responsible offerors who submit lease proposals determined to be reasonably susceptible to being selected for award. The discussions shall be for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. In conducting discussions, agencies shall be cautious to not disclose information derived from competing offers. Offerors should be accorded fair and equal treatment with respect to any opportunity for discussion. Revision of lease proposals may only be permitted after submissions and prior to award for the purpose of obtaining best and final offers.

(15) **Best and Final Offers:** The agency shall establish a common date and time for the submission of any best and final offers. Best and final offers shall ordinarily be submitted only once; however the agency procurement officer may make a written determination that it is in the State's best interest to conduct additional discussions or change the State's requirements and require another submission of best and final offers. Otherwise, no discussion of or changes in the best and final offers shall be allowed before the award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer may be construed as their best and final offer.

(16) **Award:** After proposals have been evaluated, the Agency Procurement Officer shall prepare an Evaluation Report recommending the award of a Lease Contract to the offeror whose proposal is determined to be the most advantageous to the State. The report shall list the names of all potential offerors who submitted a proposal and shall summarize the proposals of each offeror. The report shall rank offerors in order of evaluation and shall recommend the selection of an offer among others considered, as well as any irregularities. The report shall be submitted along with unexecuted Lease Contract in BRICKS in order for RPM Division to obtain PPRB approval.

(17) **Notice of Intent to Award:** A Notice of Intent to Award, indicating that award is subject to approval of PPRB, shall be made to the winning offeror in writing and shall be posted on the RPM Division website in accordance with the timeline identified in the RLP or as extended in accordance with Section 300.5(1) *Extension of Time for Acceptance of Lease Proposal.*

300.9
NON-COMPETITIVE PROPOSALS

The following types of lease or space agreements are exempt from competitive procurement; however; such leases are subject to PPRB approval and the following requirements. Use of RPM Division template contract documents is required unless it is determined that such documents are either not practicable or not advantageous to the State for the specific lease in the opinion of the RPM Division Director. Any requested modifications and/or supplementary conditions to template forms and/or template contract shall be clearly identified in the applicable sections of the template documents.

(1) **Leases with Other State Agencies, Institutions and Divisions of Government:** Agencies and departments may enter into Leases with other state agencies, state institutions of higher learning, community and junior colleges, and other subdivisions of government without competition subject to the space being in compliance with space utilization requirements as documented on RPM Space Evaluation Form and the following conditions:

a. The cost of the Lease is nominal or limited to no more than the actual documented costs to operate and maintain the premises by the Lessor; or,

b. The cost of the Lease is no greater than prevailing market rate as documented on RPM Division Market Rate Survey Form and the Agency Head determines in writing that location in such space is in the State's best interest for the reasons including, but not limited to:

   i. Co-location with such entity is necessary or advantageous to carry out a joint mission or project;

   ii. Co-location with such entity allows for shared services or resources; or,

   iii. Co-location with such entity allows access to multiple governmental services to the citizens of Mississippi at a single location.

(2) **Succeeding Leases:** Agencies and departments may enter into new Leases with a term not to exceed five (5) years, with no renewals, to provide for continued occupancy of the current premises at the end of a lease and all contractually permitted renewals without competition subject to the space being in compliance with space utilization requirements as documented on RPM Space Evaluation Form and the following conditions:

a. The proposed lease Rental Rate for the proposed term is no greater than the prevailing market rate, as documented on RPM Division Market Rate Survey Form;
b. The cost to relocate, as documented on RPM Division Total Cost Evaluation Form, is substantially greater than any likely savings to be derived from a competitive procurement; and,
c. The initial lease plus all previous renewals and/or succeeding leases does not yet exceed thirty-five (35) years.

(3) **Emergency Leases:** If the Agency Head shall determine that an emergency exists in regard to the provision of space, so that the delay incident to giving opportunity for competitive procurement would be detrimental to the interests of the state, then such Agency Head shall file with the RPM Division a statement explaining the conditions and circumstances of the emergency, which shall include a detailed explanation of the events leading up to the situation and the negative impact to the entity if the procurement is made following the requirements of 300.8 *Competitive Sealed Lease Proposals*, and a certified copy of the appropriate minutes of the board of such agency requesting the emergency purchase, if applicable. Upon receipt of the statement and applicable certification, the State Fiscal Officer, or his designees, may, in writing authorize the leasing of space without having to comply with competitive bidding requirements. The RPM Division shall submit the Emergency Lease to the next regularly scheduled meeting of the PPRB for ratification. Emergency Leases shall be entered into for the minimum amount of time necessary and shall not exceed a term of one (1) year with no permitted renewals.

(4) **Vacant Land Leases:** Agencies and departments may enter into Leases for vacant land without competition but shall submit written justification of need, steps taken to identify the most advantageous property available, and how proposed Rental Rate was determined to be fair and reasonable.

(5) **Parking, Hangar & Boat Slip Leases:** Agencies and departments may enter into Leases for parking, hangars or boat slips without competition but shall submit written justification of need, steps taken to identify the most advantageous location available, and how the proposed cost per car/plane/boat was determined to be fair and reasonable. Such leases are also subject to the following conditions:
a. Parking Leases shall be no more than eighteen (18) months with no more than one (1) renewal of not more than eighteen (18) months each.
b. Hangar & Boat Slip Leases shall be no more than twelve (12) months with no more than (2) renewals of not more than twelve (12) months each.

(6) **Mini-Storage Leases:** Agencies and departments may enter into Leases for mini-storage leases without competition but shall submit written justification of need, summary of items to be stored, steps taken and/or planned to reduce or eliminate the need for off-site storage, and how the proposed cost was determined to be fair and reasonable. Such leases shall not exceed a term of one (1) year with no permitted renewals.

(7) **Month-to-Month Agreements:** Agencies and departments may enter into agreements on a month-to-month basis, not to exceed twelve (12) months, with no permitted renewals, without competition but shall submit written justification of need, including justification as to why the delay incident to giving opportunity for competitive procurement would be detrimental to the interests of the state, and how the proposed cost was determined to be fair and reasonable. Such leases shall be made for the minimum amount of time necessary, shall not be entered into to subvert the competitive procurement process and shall include

an option to terminate upon receipt of written notice by Lessee not less than ten (10) days prior to the start of the subsequent month.

(8) **Residential Leases:** Agencies and departments may enter into Leases for residential purposes without competition but shall submit written justification of need, steps taken to identify the most advantageous property available, and how proposed Rental Rate was determined to be fair and reasonable. For residential leases, rentable area shall be the heated and cooled area within the house or rental unit.

(9) **Sixteenth Section Land Leases:** Agencies and departments may enter into Leases for Sixteenth Section Land for terms up to forty (40) years without competition but subject to approvals by the Board of Education, County Supervisors and Secretary of State in accordance with Section 29-3-82 of the 1972 Mississippi Code, Annotated. Signatures of Board of Education and County Supervisors and Letter of Compliance from the Office of the Secretary of State shall be obtained and submitted to RPM Division for PPRB Approval. Following approval by PPRB, Lease may be signed by Lessee and forwarded by Lessee to the applicable Chancery Clerk.

300.10
CANCELLATION OF SOLICITATIONS

A Request for Lease Proposals may be canceled, or any or all proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of the State. The reasons, therefore, shall be made part of the contract file.

(1) **Scope of this Regulation:** Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only. Preparing and distributing a solicitation requires the expenditure of time and funds. Businesses and other entities likewise incur expense in examining and responding to solicitations. Accordingly, although issuance of a solicitation does not compel award of a contract, a solicitation is to be canceled only when there are compelling reasons to believe that the cancellation of the solicitation is in the best interest of the State.

(2) **Cancellation of Solicitation Notice:** Each solicitation issued by the State shall declare that the solicitation may be canceled as provided herein. Written notice, including reason for cancellation and whether solicitation will be re-solicited, if known, shall be promptly provided to all known offerors and posted on the RPM Division website.

(3) **Prior to Opening:** Prior to the time and date established for the receipt of Lease Proposals, a solicitation may be canceled when the Agency Head determines in writing that such action is in the State's best interest for the reasons including, but not limited to:
   a. The agency or department no longer requires the requested space;
   b. The agency or department no longer can reasonably expect to fund the Lease; or
   c. Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

(4) **After Opening:** After opening of Lease Proposals, but prior to award, a solicitation may be canceled when the Agency Head determines in writing that such action is in the State's best interest for the reasons including, but not limited to:
   a. The agency or department no longer requires the requested space;
   b. Ambiguous or otherwise inadequate specifications were part of the solicitation;

c. The solicitation did not provide for consideration of all factors of significance to the agency or department;
d. The costs exceed available funds;
e. A single proposal is received and the agency procurement official determines the price to be excessive due to inadequate price competition;
f. All otherwise acceptable proposals are at clearly unreasonable prices;
g. There is reason to believe that the proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or,
h. There has been credible evidence presented that the procurement was illegal, contrary to statutory requirements or otherwise tainted.

300.11
REJECTION OF INDIVIDUAL PROPOSALS

An individual proposal may be rejected as may be specified in the solicitation, when it is in the best interest of the State. The reasons, therefore, shall be made part of the contract file.

(1) **Rejection Notice:** Each solicitation issued by the State shall declare that individual proposals may be rejected as provided herein. Written notice shall be promptly provided to all known offerors and posted on the RPM Division website.
(2) **Responsiveness:** Proposals which do not conform in all material respects to the RLP or proposals within which the space offered is unacceptable by reason of its failure to meet the requirements of the specifications or other acceptability criteria set forth in the RLP may be rejected as non-responsive.
(3) **Responsibility:** Proposals where offeror does not have capability in all respects to comply with the contract requirements and the integrity and reliability which will assure good faith performance may be rejected as not responsible. Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective offeror has:
    a. Available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
    b. A satisfactory record of performance;
    c. A satisfactory record of integrity;
    d. Qualified legally to contract with the State; and,
    e. Has supplied all necessary information in connection with the RLP concerning responsibility.
(4) **Ability to Meet Standards:** The offeror may demonstrate the availability of necessary financing, equipment, facilities, and personnel by submitting either as a requirement of the RLP or upon request:
    a. Evidence that such offeror possess such necessary items;
    b. Acceptable plans to subcontract for such necessary items; or,
    c. Documented commitment from or explicit arrangement with, a satisfactory source to provide the necessary items.
(5) **Unreasonable Price:** Proposals where cost identified is clearly unreasonable or so in excess of available agency budget for procurement that allowing consideration of a best and final offer from such offeror would be futile may be rejected as "unacceptable".

(6) **Collusive Proposals:** Proposals where there is reason to believe that the proposal may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

300.12
LEASE CONTRACTS

The use of applicable RPM Division template Lease Contract documents is required unless it is determined that such documents are either not practicable or not advantageous to the State for the specific lease request in the opinion of the RPM Division Director. Any deviations and/or supplementary conditions to template forms and/or template contract shall be clearly identified in the applicable sections of the template documents. Lease Contracts shall generally be on the basis of Rental Rate times Space at a specified Location over a specified Term.

(1) **Rental Rate** – Rate may be flat and fixed throughout the lease term or may be graduated. Utilities, custodial, security and tenant improvements may be included, but if so, must be incorporated into the rate over the lease term.
(2) **Space** – The methodology for measurement of space in buildings, the Rentable Area, shall be measured in accordance with the BOMA standard, latest edition. The Occupant Area component of the Rentable Area shall be computed by measuring to the inside finish of permanent exterior building walls to the interior face of public corridors and/or other permanent non-tenant partitions, and to the center of demising walls. Excluded from such calculation shall be any / all Building Service Areas and any / all Major Vertical Penetrations. In multi-tenant buildings only, the pro-rated portion of Building Amenity Areas may be included in the Rentable Area.
(3) **Location** – The city, county or municipality at which the real property is to be leased shall be clearly identified by street address or other definitive description.
(4) **Term** – Real estate markets can be highly volatile and dramatic shifts in prevailing rates can occur over relatively short periods of time. Longer leases can provide predictability, and can hedge against future increases when market conditions rise, but can also expose agencies and departments to higher than prevailing rates when market conditions fall. Shorter leases can provide flexibility, but can also be higher due to uncertainty to potential Lessors. The desired initial and renewal terms, if any, should be carefully analyzed and considered to optimize these factors. Maximum terms shall be as follows:
    a. **Initial Term** – Initial term of leases may be entered into for a period of time not to exceed twenty (20) years, unless otherwise indicated in 300.9 *Non-Competitive Proposals*.
    b. **Renewal Terms** – Not required, but if included, shall not exceed two (2) renewal terms of not more than five (5) years each, unless otherwise indicated in 300.9 *Non-Competitive Proposals*. Where Rental Rate for renewal terms was not identified in the initial RLP, renewal Rental Rate shall be assumed to be the rate effective at the end of the initial term.
(5) **Normal Working Days** – Unless otherwise noted in a specific Lease, shall mean Mondays thru Fridays exclusive of State and Federal Holidays.
(6) **Normal Working Hours** – Unless otherwise noted in a specific Lease, shall mean 8:00 a.m. to 6:00 p.m. each Working Day.

300.13
SPACE UTILIZATION GUIDELINES

Space needs shall be carefully analyzed and considered to ensure the least amount of space is consumed to house state government consistent with maintaining the mission of the agency or department. To that purpose, the following office space standards shall be utilized unless deviation is specifically approved by PPRB:

(1) **Office Spaces:**
   a. Offices or Primary Workstations:
      i. Executive, Deputy or Division Directors – 225 SF per person (hard-walled office)
      ii. Top Management (Office/Bureau Directors or Equivalent) – 175 SF per person (hard-walled office)
      iii. Middle Management (Assistant Directors, Supervisors or Equivalent) – 125 SF per person (hard-walled office)
      iv. Executive Administrative Support – 125 SF per person (hard-walled office)
      v. Professional and/or Technical – 100 SF per person (hard-walled office or cubicle)
      vi. Clerical and/or Administrative I – 80 SF per person (cubicle)
      vii. Clerical and/or Administrative II – 64 SF per person (cubicle)
      viii. Shared Offices/Workstations – Where persons housed in leased spaces are primarily assigned to off-site work locations (twenty-four (24) or more hours per week), consideration should be given to scheduling of shared offices or group office areas featuring dedicated work areas. Where an office identified above is shared on a scheduled basis, space shall be allocated as above for first person with an additional 5 SF per person that may be added thereafter to allow for secure storage for persons sharing such space. Where multiple, dedicated workstations are provided for transient users, space shall be allocated on the basis of 48 SF per person.

(2) **Total Office Area:** Equal to total of above multiplied by 120% to account for circulation and toilet rooms useable exclusively by the tenant.

(3) **Support Spaces:**
   a. Waiting Areas – 10 SF per person (based upon average occupancy for a typical one-hour period, receptionist should be accounted for in 300.13(1)(a)(v), (vi) or (vii) category above)
   b. Conference, Meeting and Training Spaces – 25 SF per person (based upon average occupancy)
   c. Work Room(s) – 125 SF ea (1 per floor or major subdivision)
   d. Break Room(s) – 125 SF ea (1 per floor or major subdivision)
   e. IT Server Room – 200 SF ea
   f. File Room(s) – 200 SF ea
   g. Storage Area(s) – 200 SF ea
   h. Other Area(s) – For any space other than those listed above, the purpose and square footage needed along an explanation of how this square footage was determined.

(4) **Total Occupant Area:** Equal to Total Office Area plus Support Spaces multiplied by 115%.

(5) **Overall Space Efficiency:** Equal to the Total Occupant Area divided by the total number of regular occupants. Persons occupying space for sixteen (16) hours or less per week shall be counted as ½ occupant for the purposes of calculation. Full-time salaried employees, contract workers, and vendors provided space by agency or department may be included in regular occupant total; however, visitors and similar transient occupants shall not be included in regular occupant total.

(6) **Minimum Overall Space Efficiency:** An efficiency value of 225 SF / Occupant or better is recommended and shall in no case exceed 250 SF / Occupant without approval by PPRB.

SECTION 400: SPECIFICATIONS

400.1
DEFINITION OF TERMS USED IN THIS SECTION

(1) **ADA** – Americans with Disabilities Act
(2) **Escalation** – the right of a Lessor to assess Lessee for all or a portion of increases in Lessor's costs over the term of the Lease, such as increased utility, property tax or insurance costs.
(3) **Estoppel Certificate** – a written certificate in which a tenant sets forth the condition of the lease agreement at the time of certification, any modifications made to the Lease, and whether any promises made by Lessor have yet to be fulfilled. Required by potential buyers or mortgages of property, as assurance that the Leases held by Lessor are valid and without offsets or claims pending.
(4) **Expense Stop** – the right of a Lessor to pay operating costs up to a certain stipulated amount or amount per square foot, with Lessee paying any amount in excess of this amount.
(5) **HVAC** – Heating, ventilation and air-conditioning system.
(6) **Substitution of Premises** – the right of a Lessor to relocate the tenant to comparable space in a multi-tenant building during the Lease term.
(7) **Tenantable** – habitable, in a condition suitable for a tenant.

400.2
TENANTABLE CONDITION

All leased space shall be required to be furnished in tenantable condition prior to occupancy by agency or department and it shall be the responsibility of the Lessor to maintain such space in tenantable condition throughout the entire Lease term at no additional cost and with minimal disruption to the Lessee. Lessor shall be responsible for moving and/or protecting tenant furniture and equipment as required to maintain space in tenantable condition. All office leases shall include provisions that define tenantable condition requirements for the following components and systems:

(1) **Flooring:**
   a. Carpet – Carpeted areas shall be in good condition, free from stains, pulls, fraying and shall be less than 10 years old at start of lease or shall be replaced prior to start of lease term. Throughout the initial term and any/all subsequent renewals, all carpet shall be replaced on a stipulated schedule defined in the Lease.
   b. Resilient – Vinyl Composition Tile, Luxury Vinyl Tile or similar resilient tile / plank floors shall be in good condition, free from scratches, chips, blemishes and shall be less than 15 years old at start of lease or shall be replaced prior to start of lease term. Throughout the initial term and any/all subsequent renewals, all resilient flooring shall be replaced on a stipulated schedule defined in the Lease.
   c. Other – Wood, Stone, Terrazzo, Ceramic, Porcelain and other similarly durable flooring shall be in good condition, sound, free from scratches, chips and other damage with any re-finishing, re-sealing, or re-grouting completed prior to start of lease or shall be replaced prior to start of term. Throughout the initial term and any/all subsequent renewals, all such flooring shall be re-finished, re-sealed, or re-grouted on a schedule consistent with respective industry best practice.

(2) **Walls:**

a. Painted – Painted drywall or plaster walls and partitions shall be in good condition, free from stains, fading, dents, holes and shall have been painted within the previous 5 years or shall be repainted prior to start of lease term. Throughout the initial term and any/all subsequent renewals, all painted drywall / plaster walls shall be re-painted on a stipulated schedule defined in the Lease. Painting of walls shall include any / all applicable base, door frames / trim, window frames / trim, casing, crown, wainscot and other such trim components.

b. Wall Covering – Wall coverings shall be in good condition, free from stains, scratches, peeling, holes and shall have been installed within the previous 5 years or shall be replace or removed with walls painted prior to start of lease term. Throughout the initial term and any/all subsequent renewals, all wall coverings shall be replaced (or removed with walls painted) on a stipulated schedule defined in the Lease.

(3) **Ceilings:**

a. Lay-In Acoustical Ceilings – LAT ceilings shall be in good condition, free from warped, yellowed, stained, or otherwise damaged ceiling tiles in properly suspended and supported grid. Ceiling tiles which are in poor condition shall be replaced with tiles matching existing prior to start of lease term. Throughout the initial term and any/all subsequent renewals, all tiles which become damaged over the lease term shall be replaced on at least an annual basis.

b. Painted – Painted drywall or plaster ceilings shall be in good condition, free from stains, fading, dents, holes and shall have been painted within the previous 5 years or shall be repainted prior to start of lease term. Throughout the initial term and any/all subsequent renewals, all painted drywall / plaster walls shall be re-painted on a stipulated schedule defined in the Lease.

(4) **Building Envelope:**

a. Roof – Roof(s) shall be in good condition, free from leaks, and properly sloped to drains and maintained in such condition throughout the lease term including any/all subsequent renewals. Flat roofs, if any, shall be under manufacturer's warranty and 20 years or less at start of lease or shall be replaced prior to the start of lease term. Throughout the initial term and any/all subsequent renewals, all flat roofs shall be maintained, repaired, replaced and/or restored such that roof covering tenant space is under a manufacturer's warranty continuously throughout the lease term.

b. Exterior Walls – Surfaces shall be in good condition, free from cracks, mold, and mildew, water-tight and maintained in such condition throughout the lease term including any/all subsequent renewals. Painted surfaces, if any, shall have been painted within the previous 5 years or shall be repainted prior to start of lease term. Throughout the initial term and any/all subsequent renewals, all painted surfaces shall be re-painted on a stipulated schedule defined in the Lease. Painting of exterior walls shall include any/all applicable exterior doors, door frames / trim, window frames / trim, soffits, and other such trim components and appurtenances.

c. Joints – All sealant and caulk joints shall be in good condition, free from voids and gaps, water-tight and maintained in such condition throughout the lease term including any/all subsequent renewals.

d. Windows & Doors – All exterior openings shall be in good condition, free from cracked or damaged glass, water-tight and maintained in such condition throughout the lease term including any/all subsequent renewals. Integrity of sealed insulated and/or

coated glazing units shall be maintained throughout the lease term with units that fail during the course of the lease promptly removed and replace with units matching existing. Window & door hardware, weather-stripping, and related components shall be sound, secure and properly maintained to provide for proper operation of same and to ensure both water-tightness and security of building.

(5) **Plumbing:**

a. General – All existing and/or proposed plumbing work shall be in accordance with applicable provisions of the Plumbing Code and Energy Code.

b. Fixture Quantity – Toilets, lavatories and drinking fountains shall be included in quantities complying with applicable provisions of the Plumbing Code.

c. Fixture Condition – Toilets, lavatories / vanities and drinking fountains shall be in good working condition, free from cracks, leaks or other damage and maintained in such condition throughout the lease term including any/all subsequent renewals.

d. Hot Water Boiler(s) – Equipment shall be in good operational condition, comply with all applicable codes and shall be less than median service life in accordance with ASHRAE Equipment Life Expectancy Chart or replaced prior to start of lease term. Equipment shall be maintained in such condition throughout the lease term including any/all subsequent renewals. Any/all equipment which reaches median service life during the lease term shall be carefully reviewed to determine remaining reliable life and shall be replaced by Lessor when equipment becomes un-reliable or highly inefficient at no additional cost to the Lessee.

(6) **HVAC:**

a. General – All existing and/or proposed HVAC work shall be in accordance with applicable provisions of the Mechanical Code and Energy Code. HVAC system shall be capable of maintaining temperature within a range of 68 to 78 degrees and humidity within a range 30% to 60%. Indoor Air Quality shall be maintained at all times and in accordance with ASHRAE 62.1 *Ventilation for Acceptable Indoor Air Quality*.

b. HVAC Equipment – Major equipment and components including air conditioners, heat pumps, chillers, cooling towers, boilers, VAV boxes, fans, coils, pumps, motors, starters and controls shall be in good operational condition, comply with all applicable codes and shall be no less than median service life in accordance with ASHRAE Equipment Life Expectancy Chart or replaced prior to start of lease term. Equipment shall be maintained in such condition, including filter replacement, lubrication, provision of chemicals and other required servicing on a regularly scheduled basis, throughout the lease term including any/all subsequent renewals. Any/all equipment which reaches median service life during the lease term shall be carefully reviewed to determine remaining reliable life and shall be replaced by Lessor when equipment becomes un-reliable or highly inefficient at no additional cost to the Lessee.

(7) **Electrical:**

a. General – All existing and/or proposed electrical work shall be in accordance with applicable provisions of the Electrical Code and Energy Code.

b. Lighting – Fixtures shall be in good operational condition, comply with all applicable codes and shall be maintained in such condition, including ballast, starter, and bulb replacement and other required servicing on a regularly scheduled basis, throughout the lease term including any/all subsequent renewals.

(8) **Elevator, Fire Alarm, Fire Suppression, Security, Access Control:**

a. General – All existing and/or proposed work shall be in accordance with applicable provisions of the Electrical Code and Energy Code.

b. Equipment – Any/all such equipment and systems shall be in good operational condition, comply with all applicable codes and shall be maintained in such condition, including any required servicing on a regularly scheduled basis, throughout the lease term including any/all subsequent renewals. Lessor shall comply with any/all applicable inspection requirements by authorities having jurisdiction and furnish copies of any/all inspection reports promptly to Lessee.

400.3
UTILITIES

(1) **Utilities Included in Base Rent** – Where provided by Lessor and included in Base Rent, Lessor shall have complete responsibility for providing all utilities and paying any/all applicable utility providers on a regular and prompt basis so as to prevent any disruption in provision of utilities to Lessee.

(2) **Utilities Excluded from Base Rent** – Any utility excluded from Base Rent shall be the responsibility of the Lessee, however; the ability to meter the usage of any such utility solely within the leased Occupant Area must be provided by Lessor. Utilities that are excluded from Base Rent shall not be permitted to be billed to the Lessee by the Lessor as additional or pass-thru charges by means of pro-rated values or calculations derived from bills from utility providers in the name of the Lessor. In no instance shall Lessee be responsible for additional charges for utility usage of Building Amenity Areas or Building Service Areas.

400.4
JANITORIAL

Janitorial services are not mandatory for inclusion in every State Lease, however; where such are provided, the following services shall be included:

(1) The following general services are to be provided in areas such as offices, corridors, conference rooms, work rooms, stairwells, elevators, etc:

a. **Daily** – The following shall be performed on a daily basis each working day:

i. Dust and/or spot clean furniture and furnishings;

ii. Empty wastebaskets, trash cans and recycling bins and install new liners as needed;

iii. Vacuum and spot clean all carpeting;

iv. Clean entrance doors, push/kick plates and glass at all other doors and sidelights;

v. Spot clean walls and light switch covers;

vi. Dust mop and wet mop non-carpeted floors;

vii. Clean and disinfect water fountains; and,

viii. Wipe chairs and tables and straighten magazines.

b. **Weekly** – The following shall be performed on a weekly basis:

i. Polish all surfaces, such as desktops, credenzas, tables, bookcases, filing cabinets, etc;

ii. Vacuum upholstered furniture and spot clean;

iii. Dust wall décor;
iv. Damp wipe stairwell railings;
v. Wet mop stairwells, stair treads and landings; and,
vi. Clean elevator doors, handrails and switch panels.

(2) The following general services are to be provided in all toilet rooms:

a. **Daily** – The following shall be performed on a daily basis each working day:
i. Clean and disinfect toilets, urinals and lavatories;
ii. Empty waste receptacles and install new liners as needed;
iii. Clean and polish all mirrors;
iv. Spot clean walls, partitions, doors and push/kick plates;
v. Sweep and wet mop floors with disinfectant;
vi. Replenish paper supplies as needed;
vii. Refill all dispensers as needed; and
viii. Clean and polish bright metal finished items.

(3) The following general services are to be provided in all break rooms and kitchens:

a. **Daily** – The following shall be performed on a daily basis each working day:
i. Empty wastebaskets, trash cans, and recycling bins and install new liners as needed;
ii. Clean all chairs and tables;
iii. Sweep and wet mop floors;
iv. Spot clean walls, doors and push/kick plates;
v. Clean and disinfect water fountains;
vi. Clean tops of trash receptacles;
vii. Replenish napkin holders; and,
viii. Clean appliances and fixtures.

(4) The following tasks shall be provided in all areas:

a. **Monthly** – The following shall be performed on a monthly basis:
i. Clean the interior of all windows;
ii. Dust and vacuum vents and grilles;
iii. Remove spider webs;
iv. Spot clean exterior entrance walls; and,
v. Buff and polish all non-carpeted floors.

b. **Annually** – The following shall be performed each year:
i. Deep clean (strip, wax, seal, buff, steam clean as appropriate to floor type) all non-carpeted flooring; and,
ii. Deep extraction cleaning of all carpeted areas.

400.5
SECURITY

Stipulated security services are not mandatory for inclusion in every State Lease; however, Lessor shall be responsible for the provision of the following in all Leases:

(1) Lockable and secure doors to building and tenant spaces;
(2) Appropriately lighted lobbies and common areas;
(3) Exterior and parking areas (when provided) free from dimly lit areas of potential concealment; and,

(4) Taking of all reasonable steps to prevent loitering, vagrancy or other criminal activity on the premises including, but not limited to promptly reporting all such activity to local law enforcement.

400.6
PARKING

Provision of parking is not mandatory for inclusion in every State Lease, however, where provided parking shall meet the following conditions:

(1) Painted lines shall clearly delineate spaces, aisles and no parking lanes and shall be maintained in good condition throughout the lease term and any/all subsequent renewals;
(2) Signage shall be provided reserving use of spaces allocated to tenant and/or visitors as applicable and shall be maintained in good condition throughout the lease term and any/all subsequent renewals; and,
(3) Parking areas and all associated sidewalks shall be kept clear from all litter, waste and debris.

400.7
GROUNDS

Ground, pavement and other surfaces directly adjacent to building shall slope away from building to prevent water intrusion. Grade level and sub-grade storm water management features and infrastructure shall be adequate and properly maintained to prevent water intrusion. Lawns, trees, shrubs, landscaped beds, pavements and sidewalks where applicable shall be maintained in good condition throughout the lease term and any/all subsequent renewals and shall meet the following conditions:

(1) Lawns shall be full, free from weeds, bare spots, ruts and shall be properly cut on a regularly scheduled basis;
(2) Trees and shrubs shall be properly pruned;
(3) Landscaped beds shall be properly watered and free from weeds;
(4) Joints in pavements and sidewalks shall be properly sealed and free from weeds; and
(5) All areas shall be kept clear from all litter, waste and debris.

400.8
LAYOUT

Each lease of office, warehouse or other space in a building outside the jurisdiction of the Department of Finance and Administration shall include floor plan(s) or diagram(s) depicting the layout of the space to be leased by the agency or department. Scale and detail shall be sufficient to evaluate compliance with space utilization guidelines and overall space efficiency. Where offeror is proposing construction or modification of an existing building a part of a Lease Proposal, and such work will equal or exceed one hundred thousand dollars ($100,000.00), such drawings shall be prepared by a Mississippi licensed architect and/or engineer and shall be provided to Lessee prior to issuance of notice to proceed of such work for review and confirmation of compliance with Lease Contract.

400.9
COMPLIANCE

It shall be the sole responsibility of the Lessor to provide space that is fully compliant with any/all codes, regulations and other Federal, State and Local requirements. Submission of a Lease Proposal shall constitute representation by offeror that any proposed building including any/all proposed modifications does or will comply with all such items prior to occupancy by Lessee. Applicable requirements include, but are not necessarily limited to the following:

(1) **Building Code;**
(2) **Fire Code;**
(3) **Plumbing Code** (including provisions relating to minimum number of fixtures);
(4) **Mechanical Code;**
(5) **Electrical Code;**
(6) **Mississippi Conveyance Safety Act;**
(7) **Energy Code;**
(8) **Zoning Regulations;**
(9) **Environmental Regulations;**
(10) **ADA** (as applicable to both occupants and visitors); and,
(11) **Antiquities Law** – If proposed space involves any alteration to a National Landmark, Mississippi Landmark or potentially eligible property, obtaining of any required approvals as well as any mitigation must be included at no additional cost to the Lessee. The Lessor, at its sole cost and expense, shall retain the services of a preservation architect who meets or exceeds the Secretary of the Interior's Professional Qualifications Standards for Historic Architecture as amended and annotated and previously published in the Code of Federal Regulations, 36 CFR part 61 if proposal includes modifications to any such property.

400.10
INSURANCE

(1) All buildings and improvements shall be insured against loss or damage by fire and all standard extended coverage perils for the full, fair insurable value thereof in a solvent and responsible company or companies licensed to do business in the State of Mississippi. The Lessor shall agree to hold Lessee harmless and indemnified against any liability for injury or death to any person or damage to property in or upon the lased premises not caused directly by an act or omission of the Lessee or employee, agent, or patron of the Lessee. Lessor shall provide proof of insurance policy prior to execution of Lease and shall provide any amendments or changes to such policy throughout the Lease term and any/all subsequent renewals.
(2) The Department of Finance and Administration is charged by law with purchasing flood insurance for State-owned buildings and contents in leased properties. All Lease proposals shall clearly identify flood zone designation and elevation for property proposed for Lease. Lessor shall provide elevation certificate and proof of flood insurance policy for properties in zones A, AE, A1-A30, AH, AO, AR, A99, V, VE and V1-V30 prior to execution of Lease and shall provide any amendments or changes to such policy throughout the Lease term and any/all subsequent renewals.

400.11
TAXES

The Lessor shall pay, during the Lease term, and any/all subsequent renewals, all state, county and city ad valorem taxes and special assessments assessed against any leased property excluding any such taxes as may be assessed against Lessee's fixtures and equipment used in such leased property.

400.12
QUIET ENJOYMENT

The agency or department shall have reasonable expectation of quiet enjoyment of premises. While periodic minimal disruptions in order for Lessor to perform maintenance required to keep premises in tenantable condition are anticipated and generally acceptable to Lessee; however, excessive, repetitive or prolonged disruptions are unacceptable. Lessor shall be entitled to reduce rental payments under such conditions as follows:

(1) **Minor Disruptions:** Where use of an area constituting less than 25% of the leased area is disrupted due to un-tenantable conditions or maintenance activities for more than 50% of a normal working day, rental payments may be reduced by the Rental Rate times the portion of the Rentable Area so disturbed times the number of days such disruption continues.
(2) **Major Disruptions:** Where 25% or more of the entire leased area is disrupted due to un-tenantable conditions or maintenance activities for more than 50% of a normal working day, or any disruption necessitating closing of offices by agency or department, rental payments may be reduced by the Rental Rate times the entire Rentable Area times the number of days such disruption continues.
(3) **Prolonged Disruptions:** Disruptions continuing beyond three normal working days, or multiple disruptions in a one month period, shall constitute cause for termination for default of Lease Contract.

400.13
SUPPLEMENTARY PROVISIONS

Requirements that are generally considered above and beyond those included in the RLP Division Template Lease Contract shall be considered as Supplementary Provisions to the Template Lease Contract rather than deviations. Inclusion of Supplementary Provisions addressing the following items shall be permitted without approval by PPRB as deviations:

(1) **Additional and/or Alternate Hours of Operation:** Permitted where agency or department provides justification that occupancy in addition to normal working days or normal working hours, or alternative days or hours of operation is required;
(2) **Additional Security:** Permitted where agency or department provides justification that due to risk assessment of location of premises or type of occupancy proposed that additional security measures, such as cameras, security systems, and/or security personnel stationed or patrolling premises or related parking areas, is required;
(3) **Server Room Cooling/UPS Systems:** Permitted where agency or department provides justification that dedicated cooling and/or UPS supporting critical IT systems is required;

(4) **Generators:** Permitted where agency or department provides justification that continuity of operations of all or a portion of occupancy is required;

(5) **Vending:** Permitted where agency or department provides justification that vending will improve workplace efficiency and/or lack of nearby restaurants or alternatives are available. Where such space is included within Occupant Area, vending needs shall be coordinated with the Department of Rehabilitation Services in accordance with Section 43-3-93, Mississippi Code of 1972, Annotated;

(6) **Signage:** Permitted where agency or department provides justification that signage located on exterior of building, site monument and/or site directional signage is critical to ensure visibility to visitors; or,

(7) **Other:** Other additional requirements may be considered as Supplementary Provisions where agency or department provides justification and inclusion does not otherwise conflict with policies or provisions herein.

400.14
PROHIBITED PROVISIONS

Inclusion of provisions pertaining to the following shall be prohibited unless it is determined that exclusion of such provisions is either not practicable or not advantageous to the State for the specific lease request in the opinion of the RPM Division Director and such deviation is approved by PPRB:

(1) **Escalations:** Escalation clauses decrease exposure to Lessor of future increases in operational costs which are beyond their control; however, the inclusion of such clauses increases exposure to Lessee of such costs and create budget uncertainty for agencies and departments. Offerors may propose graduated rates over the Lease term in anticipation of future increases in operational costs, but shall not include escalation clauses in proposals. RLP's shall not request escalation provisions and proposals which include, or are contingent upon inclusion of escalation provisions shall be deemed non-responsive.

(2) **Expense Stops:** Expense stops limit exposure to Lessor of future increases in operational costs which are beyond their control; however, the inclusion of such stops lead to unlimited exposure to Lessee of such costs and create budget uncertainty for agencies and departments. Offerors may propose graduated rates over the Lease term in anticipation of future increases in operational costs, but shall not include expense stops in proposals. RLP's shall not request expense stops and proposals which include, or are contingent upon inclusion of expense stops shall be deemed non-responsive.

(3) **Tenant Improvement Allowances:** Allowances limit exposure to Lessor to a fixed amount to make renovations to proposed space to suit the needs of the Lessee; however, such amounts are often insufficient to address all requirements identified by agency or department in the RLP. Offerors shall be required to include any costs to bring their space into compliance with all requirements identified by agency or department in the RLP in their Base Rent proposal.

SECTION 500: MODIFICATION & TERMINATION

500.1
INCREASES OR DECREASES IN SPACE

(1) **Mutually Agreed Increases:** Where Lessor and Lessee mutually agree to the addition of space at the same location, such increase, subject to approval of PPRB, may be considered provided:
   a. The present lease has six (6) months or more remaining prior to end of Lease term;
   b. RPM Space Evaluation Form documents compliance with space utilization guidelines and overall space efficiency is not negatively impacted by the addition of space;
   c. The Rental Rate, terms and conditions for the additional space is identical to the present Lease; and,
   d. The use for the additional space must be totally dependent on the existing space. Agency or department must show that the added space cannot function efficiently at another location.

(2) **Decreases Due to Reduction in Space Needs:** Where Lessor and Lessee mutually agree to the reduction of space, such decrease, subject to approval of PPRB, may be considered provided:
   a. The present lease has six (6) months or more remaining prior to end of Lease term;
   b. The reduction in rent is equal to the space reduced times the current Rental Rate; and,
   c. No other terms and conditions are effected by proposed reduction.

(3) **Decreases Due to Reduction in Funds:** Lessee's assumption of occupancy and the payment of rent is conditional on the receipt of Federal and/or State funds. In the event of a discontinuance or decrease in Federal and/or State funds, and in the event of a discontinuance or decrease in Federal and/or State funds for any cause necessitating a reduction in the Lessee's staff or need for space, the Lessee may unilaterally, and without approval of PPRB, reduce space and corresponding rent in proportion to the reduction in funds without penalty or interest or the Lease may be terminated subject to the following:
   a. The Lessee shall notify the Lessor in writing by certified mail at least thirty (30) days in advance of any reduction in space or termination of the Lease;
   b. Where return of a portion of space corresponding to reduction in funds is not feasible for Lessor, Lessor may offer a smaller or larger reduction for consideration, or may require termination rather than reduction;
   c. The reduction in rent is equal to the space reduced times the current Rental Rate;
   d. No other terms and conditions are effected by proposed reduction; and,
   e. The Lessee shall promptly notify the RPM Division of any such reduction or termination.

500.2
EXTENSION OR REDUCTION OF TERM

(1) **Unilateral Extension:** Provided Lessee provides at least thirty (30) day written notice by certified mail, Lessee shall have the option to unilaterally extend Lease term by up to three (3) months commencing at the expiration of the current Lease term. Approval of PPRB is not required; however, Lessee shall promptly notify the RPM Division of such extension.

(2) **Mutually Agreed Extension:** Where Lease term, all renewals and unilateral extension are exhausted and Lessor and Lessee mutually agree to an extension of time at the same location, such extension, subject to approval of PPRB, may be considered provided:

a. The present lease has not yet expired;
b. The Rental Rate, terms and conditions for the extension period is identical to the present Lease;
c. The extension is on a month-to-month basis for no more than one (1) year, with no permitted renewals; and,
d. The agency or department shall submit written justification of need to extend the current Lease. Such leases shall be made for the minimum amount of time necessary, shall not be entered into to subvert the competitive procurement process and shall include an option to terminate upon receipt of written notice by Lessee not less than ten (10) days prior to the start of the subsequent month.

(2) **Emergency Extension:** Where Lease term, all renewals and unilateral extension are exhausted and Lessor does not agree to an extension under same Rental Rate, terms and conditions, and the Agency Head determines that an emergency exists in regard to the continued provision of space, then such Agency Head shall file with the RPM Division a statement explaining the conditions and circumstances of the emergency, which shall include a detailed explanation of the events leading up to the situation and a certified copy of the appropriate minutes of the board of such agency requesting the emergency extension, if applicable. Upon receipt of the statement and applicable certification, the State Fiscal Officer, or his designees, may, in writing authorize the extension of the lease of space without having to comply with competitive bidding requirements. The RPM Division shall submit the Emergency Lease Extension to the next regularly scheduled meeting of the PPRB for ratification. Emergency Lease Extensions shall be entered into for the minimum amount of time necessary, shall be on a month-to-month basis for not more than one (1) year, with no permitted renewals and shall include an option to terminate upon receipt of written notice by Lessee not less than ten (10) days prior to the start of the subsequent month.

(3) **Mutually Agreed Reduction:** Where Lessor and Lessee mutually agree to the reduction of Lease term, such reduction, subject to approval of PPRB, may be considered provided:

a. The present lease has six (6) months or more remaining prior to end of Lease term;
b. The reduction in rent is equal to the term reduced times the applicable Rental Rate; and,
c. No other terms and conditions are effected by proposed reduction.

(4) **Reductions Due to Reduction in Funds:** Lessee's assumption of occupancy and the payment of rent is conditional on the receipt of Federal and/or State funds. In the event of a discontinuance or decrease in Federal and/or State funds, and in the event of a discontinuance or decrease in Federal and/or State funds for any cause necessitating a reduction in the Lessee's staff or need for space, the Lessee may unilaterally, and without approval of PPRB, reduce the Lease term and corresponding rent in proportion to the reduction in funds without penalty or interest or the Lease may be terminated subject to the following:

a. The Lessee shall notify the Lessor in writing by certified mail at least thirty (30) days in advance of any reduction in Lease term or termination of the Lease;
b. The reduction in rent is equal to the term reduced times the applicable Rental Rate;
c. No other terms and conditions are effected by proposed reduction; and,
d. The Lessee shall promptly notify the RPM Division of any such reduction or termination.

500.3
MODIFICATION OF TERMS AND CONDITIONS

Terms and conditions of Lease Contracts shall remain in full force and effect throughout the Lease term and any/all subsequent renewals with the following exceptions:

(1) **State or Federal Law:** Passage of new, or modification to existing, State or Federal law impacting a provision of the Lease Contract or legal decision by which provision is held invalid. The invalidity of one provision shall not affect any other provision or application of these regulations which can be given effect without the invalid provision or application to this end as the provisions of these regulations are severable. To the extent that any new State or Federal law goes into effect during the Lease term impacting the terms and conditions of the Lease Contract, such law shall be binding on each party of the Lease Contract as applicable;

(2) **Mutually Agreed Modifications:** Where addition, deletion or modification of a term or condition other than amount of space or duration of term is identified following execution of the Lease Contract and Lessor and Lessee mutually agree to the change, such modification, subject to approval of PPRB, may be considered provided:
   a. The modification was not anticipated prior to the execution of the Lease Contract.
   b. The modification is either neutral or beneficial to the interest of the State; and,
   c. Where the modification involves an increase in cost to the agency or department, documentation justifying amount of such increase shall be provided.

500.4
TERMINATION FOR DEFAULT

Failure on the part of either the Lessor or Lessee to promptly and faithfully keep and perform each and every covenant agreed and stipulated in the Lease Contract, or on the part of the Lessee to pay any installment of rent when the same comes due and payable, shall constitute grounds for termination for default subject to the following:

(1) The party claiming default shall make such claim in writing and serve notice on the other party by certified mail, copying RPM Division;
(2) The notice shall be provided not less than thirty (30) days prior to effective termination date of the Lease Contract; and,
(3) The notice shall give the party claimed to be in default not less than fifteen (15) days from receipt of notice to respond in writing by certified mail, copying RPM Division, with proposed cure to default, which shall not be unreasonably rejected by either party.

500.5
TERMINATION FOR CONVENIENCE

The Lessee and Lessor may terminate all or part of this Lease Contract upon mutual agreement at any time. The Lessee and Lessor shall agree in writing as to the said termination, specifying the part of the Lease terminated and when the termination becomes effective, with notification to the RPM Division.

500.6
TERMINATION FOR STATE-OWNED SPACE

In the event that space becomes available to the Lessee in any State-owned building, this Lease may be unilaterally terminated by Lessee within thirty (30) days of written notice of termination to Lessor by certified mail. Where Lessee is able to provide greater notice, such additional notice should be provided.

SECTION 600: LEGAL & CONTRACTUAL REMEDIES

600.1
DEFINITION OF TERMS USED IN THIS SECTION

(1) **Attorney General** – shall mean the individual assigned by the Attorney General to the Department of Finance and Administration.
(2) **Interested Party** – means an actual or prospective offeror that may be aggrieved by the solicitation or award of a Lease Contract, or by the protest.
(3) **Protestor** – means any actual or prospective offeror who is aggrieved in connection with the solicitation or the award of a Lease Contract and who files a protest.

600.2
PROTESTS

(1) **Initial Complaint:** Complainants who are aggrieved in connection with the solicitation or award of a Lease Contract should first seek resolution of their complaints with the procurement officer or the agency or department that issued the solicitation. Such informal complaints may be made verbally or in writing.
(2) **Authority to Resolve Protests:** The RPM Division Director, the head of the purchasing agency, or a designee of either officer shall have the authority to settle and resolve a protest of an aggrieved offeror, actual or prospective, concerning the solicitation or award of a Lease Contract.
(3) **Filing of Formal Protest:** Any actual or prospective offeror who is aggrieved in connection with the solicitation or award of a Lease Contract may protest to the head of the purchasing agency and copy the RPM Division Director. The protest shall be submitted in writing within seven (7) days after such aggrieved person knows or should have known of the facts giving rise thereto. A protest is considered filed when received by the RPM Division Director or the head of the purchasing agency. Protests filed after this period shall not be considered.
(4) **Subject of Protest:** Protestors may file a protest on any phase of solicitation or award including, but not limited to, specification preparation, RLP solicitation, award, or disclosure of information marked confidential in the offer.
(5) **Form:** To expedite the handling of protests, the envelope should be labeled "Protest". The written protest shall include as a minimum the following:
    a. The name, address and contact information of the protestor;
    b. Appropriate reference of the procurement which is subject of protest and status of award;
    c. A statement explaining reasons for the protest; and,
    d. Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.
(6) **Notification of the Attorney General:** The RPM Division Director shall submit a copy of the protest to the Attorney General within three days of receipt of the written protest.
(7) **Additional Information:** Any additional information requested by any of the parties should be submitted within the time period established by the requesting source in order to expedite consideration of the protest. Failure of any party to comply expeditiously with a request for information by the RPM Division Director or the head of the purchasing agency may result in resolution of the protest without consideration of any information which is untimely filed pursuant to such request.
(8) **Stay of Procurement During Protests:** When a protest has been filed within seven (7) days and before an award has been made, the RPM Division Director or head of the purchasing agency shall

proceed with no award of the Lease Contract until the protest has been settled unless the RPM Division Director, after consultation with the head of the purchasing agency, makes a written determination that the award of the Lease Contract without delay is necessary to protect substantial interests of the State.

(9) **Making Information on Protests Available:** The RPM Division Director or the head of the purchasing agency shall upon written request make available to any interested party information submitted that bears on the substance of the protest except where information is proprietary, confidential, or otherwise permitted or required to be withheld by law or regulation. Persons who wish to keep such information submitted by them confidential should so request by specifically identifying such information within documents submitted, and indicating on the front page of each document that it contains such information. The availability of such information shall be in compliance with 100.9 *Public Access to Procurement Information.*

(10) **Decision:** If the protest is not resolved by mutual agreement, the RPM Division Director, the head of the purchasing agency, or a designee of either officer shall promptly issue a decision in writing after receiving all relevant, requested information. The decision shall:

a. State the reasons for the action taken; and,
b. Inform the protestant of its right to administrative review as provided in this section.

(11) **Notice of Decision:** A copy of the decision shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

(12) **Request for Reconsideration:** Reconsideration of a decision of the RPM Division Director or the head of the purchasing agency may be requested by the protestor, any interested party who submitted comments during consideration of the protest, or any agency involved in the protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered. Request for reconsideration of a decision of the RPM Director or the head of the purchasing agency shall be filed not later than seven (7) days after receipt of such decision. Such request shall be acted upon as expeditiously as possible. The Chief Procurement Officer or the head of a purchasing agency may uphold the previous decision or reopen the case as such officer deems appropriate.

(13) **Finality of Decision:** A decision under section shall be final and conclusive, unless fraudulent, or any person adversely affected by the decision appeals administratively to the PPRB in accordance with Section 600.3 *Administrative Proceedings.*

(14) **Effect of Judicial or Administrative Proceedings:** The RPM Division Director or the head of the purchasing agency will refuse to decide any protest when a matter involved is the subject of a proceeding before the Public Procurement Review Board or has been decided on the merits by the Board. If an action concerning the protest has commenced in court, the RPM Division Director or the head of the purchasing agency shall not act on the protest but refer the protest to the Attorney General. This section shall not apply where the Board or a court requests, expects, or otherwise expresses interest in the decision of the RPM Division Director or the head of the purchasing agency.

600.3
ADMINISTRATIVE PROCEEDINGS

(1) **Application:** This section applies to:

a. A protest of a solicitation or award of a Lease Contract addressed to the Public Procurement Review Board by an aggrieved actual or prospective offeror;
b. An appeal addressed to the Board of a decision under Section 600.2 *Protests*; and,

c. An appeal addressed to the Board of a decision under Section 600.4 *Authority to Suspend or Debar*.

(2) **Time Limitations:** The following time limitations apply to the filing of a protest or an appeal to PPRB:

a. For protests addressed to PPRB, the aggrieved person shall file a protest with the Board within seven (7) days after the aggrieved person knew or should have known the facts and circumstances upon which the protest is based.

b. For appeals addressed to PPRB of a decision under Section 600.2 *Protests*, the aggrieved person shall file an appeal within seven (7) days of receipt of such decision.

c. For appeals addressed to PPRB of a decision under Section 600.4 *Authority to Suspend or Debar*, the aggrieved person shall file an appeal within seven (7) days of receipt of such decision.

(3) **Decision:** The following shall apply to decisions made by PPRB:

a. For protests and appeals concerning the solicitation or award of Lease Contracts, the Board shall promptly decide whether the solicitation or award was in accordance with the Constitution, statutes, regulations, and the terms and conditions of the solicitation. The proceeding shall be *de novo*. Any prior determinations by administrative officials shall not be final or conclusive.

b. For appeals concerning suspension or debarment, the Board shall promptly decide whether, or the extent to which, the suspension or debarment was in accordance with the Constitution, statutes, regulations and the best interests of the State, and was fair. The proceeding shall be *de novo*. Any prior determinations by administrative officials shall not be final or conclusive.

(4) **Standard of Review for Factual Issues:** A determination of fact by the Board shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

(5) **Appeal of PPRB Decision:** Any person receiving an adverse decision concerning the solicitation or award of a Lease Contract or a suspension or debarment action, the State, or both may appeal from a decision by the Public Procurement Review Board to the designated court or courts of the State. No such appeal shall be made by the State unless recommended by the RPM Division Director or the head of the purchasing agency involved and approved by the Attorney General.

600.4
AUTHORITY TO SUSPEND OR DEBAR

(1) **Application:** This regulation applies to all suspensions or debarments of persons from consideration for award of Lease Contracts imposed by the RPM Division Director.

(2) **Authority:** After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the RPM Division Director, after consultation with the purchasing agency and the Attorney General, shall have authority to debar a person for cause from consideration for award of Lease Contracts. The debarment shall be for a period of two years. The same officer, after consultation with the using agency and the Attorney General, shall have authority to suspend a person from consideration for award of Lease Contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.

(3) **Causes for Suspension or Debarment:** The causes for suspension or debarment include the following:

a. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private Lease Contract or subcontract, or in the performance of such Lease Contract or subcontract;
b. Conviction under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Mississippi contractor;
c. Conviction under State or Federal antitrust statutes arising out of the submission of Lease proposals;
d. Violation of Lease Contract provisions, as set forth below, of a character which is regarded by the RPM Division Director to be so serious as to justify debarment action:
    i. Deliberate failure without good cause to perform in accordance with the specifications or within the time limits provided in the contract; or,
    ii. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Lease Contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
e. Any other cause the RPM Division Director determines to be so serious and compelling as to affect responsibility as a Mississippi contractor, including debarment by another governmental entity for any cause listed herein; and,
f. For violation of the ethical standards set forth in Section 7 *Ethics* of these regulations.

(4) **Decision:** The RPM Division Director shall issue a written decision to suspend or debar. The decision shall:
    a. State the reasons for the action taken; and,
    b. Inform the suspended or debarred person involved of its rights to administrative review as provided in the section.

(5) **Notice of Decision:** A copy of the decision shall be mailed or otherwise furnished immediately to the suspended or debarred person and any other party intervening.

(6) **Finality of Decision:** A decision shall be final and conclusive, unless fraudulent, or:
    a. The suspended or debarred person commences an action in court; or,
    b. The suspended or debarred person appeals administratively to the PPRB in accordance with Section 600.3 *Protests and Appeals to PPRB*.

(7) **Suspension and Debarment List:** The RPM Division Director shall maintain and update a list of suspended and debarred persons. All agencies of the State shall be supplied with this list. The RPM Division Director shall send updates of this list to all agencies of the State as necessary. Such list shall be available to the public upon request.

600.5
SUSPENSION

(1) **Initiation of Suspension Action:** After consultation with the affected agency, the Attorney General, and, where practicable, the contractor or prospective contractor who is to be suspended, and upon written determination by the RPM Division Director that probable cause exists for debarment as set forth in Section 600.4 *Authority to Suspend or Debar*, a contractor or prospective contractor shall be suspended. A notice of suspension, including a copy of such determination, shall be sent to the suspended contractor or prospective contractor. Such notice shall state that:
    a. The suspension is for the period it takes to complete an investigation into possible debarment including any appeals of a debarment decision but not for a period in excess of three months;

b. Lease Proposals will not be solicited from the suspended person, and, if they are received, they will not be considered during the period of suspension; and
c. If a hearing has not been held, the suspended person may request a hearing in accordance with Section 600.6 *Request for Hearing*.

(2) **Effect of Suspension Decision:** A contractor or prospective contractor is suspended upon issuance of the notice of suspension. The suspension shall remain in effect during any appeals. The suspension may be ended by the RPM Division Director, but otherwise shall only be ended when the suspension has been in effect for three months or a debarment decision takes effect.

600.6
DEBARMENT

(1) **Initiation of Debarment Action:** Written notice of the proposed debarment shall be sent by certified mail to the contractor or prospective contractor. Such notice shall also be sent to the Attorney General and the affected agency or agencies that have current Leases with the contractor. If more than one affected agency is involved, the RPM Division Director may designate one or more representative to be consulted in respect to this action. The written notice shall:
   a. State that debarment is being considered;
   b. Set forth the reasons for the action;
   c. State that if the contractor or prospective contractor so requests, a hearing will be held, provided such request is received by the RPM Division Director within seven (7) days after the contractor or prospective contractor receives notice of the proposed action.

(2) **Request for Hearing:** A contractor or prospective contractor that has been notified of a proposed debarment action may request in writing that a hearing be held. Such request must be received by the RPM Division Director within seven (7) days of receipt of notice of the proposed action. If no request is received within this period, a final determination may be made in accordance with Section 600.6.5 *Determination of Hearing Officer; Final Decision*, after consulting with the Attorney General and the affected agency or agencies.

(3) **Notice of Hearing:** If a hearing is requested, the RPM Division Director may appoint a hearing officer to conduct the hearing and recommend a final decision. Otherwise, the RPM Division Director shall act as the hearing officer. The hearing officer shall send a written notice of the time and place of the hearing. Such notice shall be sent by certified mail, and shall state the nature and purpose of the proceedings. Copies shall be sent to the Attorney General and the affected agency or agencies.

(4) **Authority of Hearing Officer:** The hearing officer, in the conduct of the hearing, has the power, among others, to:
   a. Hold informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by consent of the parties or upon such officer's own motion;
   b. Require parties to state their positions with respect to the various issues in the proceeding;
   c. Require parties to produce for examination those relevant witnesses and documents under their control;
   d. Rule on motions, and other procedural items on matters pending before such officer;
   e. Regulate the course of the hearing and conduct of participants therein;
   f. Receive, rule on, exclude, or limit evidence, and limit lines of questioning or

testimony which are irrelevant, immaterial, or unduly repetitious;

g. Fix time limits for submission of written documents in matters before such officer;
h. Impose appropriate sanctions against any party or person failing to obey an order under these procedures, which sanctions may include:
    i. Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
    ii. Excluding all testimony of an unresponsive or evasive witness; and,
    iii. Expelling any party or person from further participation in the hearing;
i. Take official notice of any material fact not appearing in evidence in the record, if such fact is among the traditional matters of judicial notice.

(5) **Hearing Procedures:**

a. Hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements. The weight to be attached to evidence presented in any particular form will be within the discretion of the hearing officer. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness was present. The hearing officer may require evidence in addition to that offered by the parties.
b. A hearing may be recorded but need not be transcribed except at the request and expense of the contractor or prospective contractor. A record of those present, identification of any written evidence presented, and copies of all written statements and a summary of the hearing shall be sufficient record.
c. Opening statements may be made unless a party waives this right.
d. Witness shall testify under oath or affirmation. All witnesses may be cross-examined.

Determination of Hearing Officer; Final Decision: The hearing officer shall prepare a written determination recommending a course of action. Such determination shall be given to the RPM Division Director. Copies shall also be sent to the contractor or prospective contractor, the Attorney General, and the affected agency or agencies. The contractor or prospective contractor shall have seven (7) days to file comments upon the hearing officer's determination. The RPM Division Director may request oral argument. After consultation with the affected using agency or agencies and the Attorney General, the RPM Division Director shall issue a final decision. Both the hearing officer's determination and the final decision shall recite the evidence relied upon. When debarment is recommended or ordered, the reasons for such action, and to what extent affiliates are affected, shall be set forth. In addition, the final determination shall inform the debarred person of its rights to administrative review.

(6) **Effect of Debarment Decision:** A debarment decision will take effect upon issuance and receipt by the contractor or prospective contractor. After the debarment decision takes effect, the contractor shall remain debarred until the debarment period specified in the decision expires. All active Leases with a contractor so debarred shall remain in full force and effect; however, Lease Proposals will not be solicited from the debarred person, and, if they are received, they will not be considered during the period of debarment.

600.9
DEBRIEFINGS

Debriefings that furnish the basis of the source selection decision and contract award may be provided by the agency procurement officer only when the RLP includes evaluation factors other than total cost alone and in accordance with the following:

(1) At the written request of any offeror who has submitted a proposal, debriefings may be given orally, in writing, or by any other method acceptable to the agency procurement officer. Such debriefings may be given at any time on or after the eighth (8^{th}) day after the agency has issued Notice of Intent to Award the Lease Contract. In no case may an offeror request a debriefing more than thirty (30) days after the agency has awarded the Lease Contract.
(2) An offeror's written request for a debriefing should include a list of any questions an offeror may have in order to assist the agency procurement officer or agency staff in preparing the debriefing.
(3) A debriefing may include:
    a. The agency's evaluation of significant weaknesses or deficiencies in the proposal, if applicable;
    b. The overall evaluated cost and other factor scores, if applicable, of the successful offeror and the debriefed offeror;
    c. The overall ranking of all proposals;
    d. A summary of the rationale for award; and,
    e. Reasonable responses to relevant questions about whether source selection procedures contained in the RLP and applicable law were followed.
(4) Debriefings should not include point-by-point comparisons of the debriefed proposal with those of other offerors.
(5) Any debriefing should not reveal any information prohibited from disclosure by law, or exempt from release under the Mississippi Public Records Act of 1983, including trade secrets, or privileged or confidential commercial or manufacturing information. Agencies should consult their public information officer or agency legal representative for guidance in complying with the Act prior to conducting debriefings.
(6) Debriefings are non-adversarial business meetings. Accordingly, offerors may bring legal representation to any oral debriefing, although it is not necessary. If, however, any offeror intends to have legal representation present during an oral debriefing, offeror must so advise agency at time of request for debriefing, and the agency must also have its legal representative in attendance. Questioning of agency staff by offeror's legal representative(s) is not permitted.
(7) A summary of any debriefing should be included in the Lease Contract file.

SECTION 700: ETHICS

700.1
DEFINITION OF TERMS USED IN THIS SECTION

(1) **Bona Fide Employee** – a person employed by a prospective contractor and subject to the prospective contractor's supervision and control as to the time, place, and manner of performance, who neither exerts no proposes to exert improper influence to solicit or obtain Mississippi Lease Contracts. In determining whether a bona fide employment relationship exists, the following factors should be considered:
   a. Whether the employment is continuous;
   b. Whether the person is subject to the supervision and control of the prospective contractor;
   c. Whether the size of any contingent fee is reasonable in relation to the service performed;
   d. Whether the method of payment of the contingent fee is customary in the trade; and,
   e. Whether the person is employed solely by the prospective contractor.

(2) **Bona Fide Established Commercial Selling Agency** – a business that neither exerts nor proposes to exert improper influence to solicit or obtain public Leasing Contracts. In determining whether a business is a bona fide established selling business, the following factors should be considered:
   a. Whether the business is one which has either been active for a considerable period of time or is presently an on-going concern and is likely to continue as such;
   b. Whether the business uses its own name and is characterized by the customary indicia of the conduct of a regular business;
   c. The degree to which the business' activities are directed toward the solicitation of contracts of the State;
   d. Whether the size of any contingent fee is reasonable in relation to the services performed; and,
   e. Whether the method of payment of the contingent fee is customary in the trade.

(3) **Business Employee** – a person, whether compensated or not, who performs personal services for a business.

(4) **Confidential Information** – any information which is available to an employee only because of the employee's status as an employee of Mississippi and is not a matter of public knowledge or available to the public on request.

(5) **Conspicuously** – written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.

(6) **Direct or Indirect Participation** – involvement through decision, approval, disapproval, recommendation, preparation of any part of a Lease request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(7) **Employee** – an individual drawing a salary from a governmental body, whether elected or not, and any non-compensated individual performing personal service for any governmental body. As used throughout this section, the term "Mississippi Employee" does not include a person who, as an independent contractor, performs professional, scientific, technical, or advisory service for a state agency and who receives a fee, honorarium, or similar consideration for the services performed; however, it shall include:

a. A person elected to a Mississippi office;
b. A non-elected person, whether appointed or selected to a personnel selection procedure, receiving a salary, wages, or other compensation from the State; and,
c. A non-compensated or minimally compensated person who is performing services for the State.

(8) **Financial Interest** – shall include any of the following:
a. Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, monetary compensation or material gratuity;
b. Ownership of such interest in any property or any business as may be specified by the Ethics Commission; or,
c. Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

(9) **Gratuity** – a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

(10) **Immediate Family** – a spouse, children, parents, brothers and sisters, and such other relatives as may be designated by the Ethics Commission.

(11) **Official Responsibility** – direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve disapprove, or otherwise direct Mississippi action.

(12) **Lease Request** – that document whereby an agency requests that a Lease Contract be entered into for a specific need, and may include, but is not limited to, the technical description of the needed space, term, criteria for evaluation and information supplied for the making of any written determination required by these regulations.

700.2
STATEMENT OF POLICY

Public employment is a public trust. It is the policy of the State of Mississippi to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the State. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the State procurement organization.

To achieve the purpose of this section, it is essential that those doing business with the State of Mississippi also observe the ethical standards prescribed herein.

700.3
GENERAL STANDARD OF ETHICAL CONDUCT

(1) **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 in: Section 700.4 *Employee Conflict of Interest*; Section 700.5 *Gratuities*; Section 700.6 *Prohibition Against Contingent Fees*; and Section 700.7 *Restrictions on Employment of Present Employees*.

(2) **Non-Employees:** Any effort to influence any public employee to breach the standards of ethical conduct set forth in this section and Section 700.4 *Employee Conflict of Interest*; Section 700.5 *Gratuities*; Section 700.6 *Prohibition Against Contingent Fees*; and Section 700.7 *Restrictions on Employment of Present Employees* is also a breach of ethical standards.

700.4
EMPLOYEE CONFLICT OF INTEREST

(1) It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:
   a. The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
   b. 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,
   c. Any 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.

(2) Upon discovery of an actual or potential 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.

(3) Notice of this prohibition shall be provided in accordance with regulations promulgated by the Ethics Commission.

700.5
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 Lease 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.

(1) **Relationship of Gratuity:** In addition, the gratuity or offer of employment must be made in relation to any proceeding or application, request for a ruling, determination, claim or controversy, or other particular matter, to constitute a breach, and in connection with any:
   a. Decision;
   b. Approval;
   c. Disapproval;
   d. Recommendation;

e. Preparation of any part of a RLP;
f. Action to influence the content of any specification or procurement standard;
g. Rendering of advice;
h. Investigation;
i. Auditing; or,
j. Other advisory capacity.

(2) **Family:** The prohibition extends to the giving of gratuities to anyone on the state employee's or former state employee's behalf such as a member of that employee's immediate family.

(3) **When Prohibition Against Gratuities Not Applicable:** This section does not prohibit the following:
   a. The solicitation 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 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 certain 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. Acceptance of unsolicited advertising products or promotional material, such as pens, pencils, note pads, calendars, and other such items.

700.6
PROHIBITION AGAINST CONTINGENT FEES

It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(1) **Influence Peddling:** The prohibition of this section covers influence peddling and particularly that which might occur when a former state official is hired on a contingent basis by a business seeking state contracts.

(2) **Improper Influence:** A business employee or a commercial selling business should be conclusively presumed not to be bona fide if the Ethics Commission determines that improper influence has been or is being used to secure a state contract.

700.7
RESTRICTIONS ON EMPLOYMENT OF PRESENT EMPLOYEES

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.