MISSISSIPPI LEGISLATURE
REGULAR SESSION 2003

By: Senator(s) Gordon
To: Highways and Transportation

SENATE BILL NO. 2546

AN ACT TO REQUIRE CONTRACTORS WHO ARE AWARDED CONTRACTS BY THE MISSISSIPPI TRANSPORTATION COMMISSION FOR CONSTRUCTION, MAINTENANCE AND CERTAIN OTHER PUBLIC WORKS, TO PROVIDE SUFFICIENT EQUIPMENT, MATERIALS AND LABOR TO COMPLETE THE CONTRACT IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS WITHIN THE CONTRACT TIME; TO REQUIRE A CONTRACTOR TO TAKE IMMEDIATE STEPS TO RESTORE SATISFACTORY PROGRESS IF THE COMPLETED WORK IS BEHIND THE APPROVED PROGRESS SCHEDULE; TO PROVIDE THAT IF THE COMPLETED WORK IS BEHIND SCHEDULE THE CONTRACTOR SHALL NOT TRANSFER EQUIPMENT OR FORCES FROM UNCOMPLETED WORK WITHOUT THE APPROVAL OF THE CHIEF ENGINEER OF THE DEPARTMENT OF TRANSPORTATION; TO PROVIDE THAT IF WORK IS DISCONTINUED FOR AN EXTENDED PERIOD OF TIME THE CHIEF ENGINEER SHALL BE GIVEN NOTICE BEFORE OPERATIONS ARE RESUMED; TO PROVIDE THAT IF A PROJECT FALLS A CERTAIN AMOUNT BEHIND SCHEDULE, THE CONTRACTOR SHALL BE DISQUALIFIED FROM BIDDING ON CONTRACTS AND SHALL NOT BE A SUBCONTRACTOR UNDER OTHER CONTRACTS UNTIL SUCH TIME AS THE PROJECT IS BACK ON SCHEDULE OR COMPLETED; TO PROVIDE THAT IN THE EVENT THAT THE CONTRACTOR IS DISQUALIFIED HE MAY APPEAL THE DISQUALIFICATION TO THE DEPARTMENT OF TRANSPORTATION DISQUALIFICATION REVIEW BOARD ESTABLISHED BY THIS ACT; TO AMEND SECTION 65-1-85, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) A contractor who is awarded a contract for construction, maintenance or other public work pursuant to Section 65-1-85 shall provide sufficient materials, equipment and labor to complete the project in accordance with the plans and specifications within the contract time. If the completed work is behind the approved progress schedule, the contractor shall take immediate steps to restore satisfactory progress and shall not transfer equipment or forces from uncompleted work without prior notice to, and approval of, the chief engineer. Each item of work shall be prosecuted to completion without delay. If the prosecution of the work is discontinued for an extended period of time, the contractor shall give the chief engineer written notice at least twenty-four (24) hours before resuming operations.
(2) (a) The contractor's progress on a project shall be determined monthly by the department. If the contractor's progress is more than twenty percent (20%) behind the elapsed contract time, the contractor shall be notified by the department that he may be disqualified from bidding on contracts or from being a subcontractor on contracts if progress becomes delinquent by more than the percentages provided for in this section. Additional notifications shall be made by the department as considered necessary concerning the progress of the contractor.

(b) Prior to the elapsing of fifty-five percent (55%) of the contract time, the contractor shall be disqualified if progress is more than forty percent (40%) behind the elapsed contract time. Disqualification shall be applied between fifty-five percent (55%) and seventy percent (70%) of contract time elapsed on a pro rata basis.

(c) During the period of disqualification, the contractor shall not be permitted to bid on contracts and shall not be a subcontractor on contracts. Any bid submitted by the contractor during the period of disqualification shall not be considered and shall be returned to the contractor. The period of disqualification shall continue until the completed work on the contract is within the percentages provided for in this section or until all work on the contract has been satisfactorily completed.

(3) (a) There is created the Department of Transportation Disqualification Review Board which shall consist of the chief engineer and five (5) members appointed by the executive director. The chief engineer and two (2) other members shall constitute a quorum.

(b) After disqualification the contractor may submit a written appeal to the chief engineer for review by the Department of Transportation Disqualification Review Board. The written appeal shall be submitted within seven (7) days, excluding weekends and holidays, after issuance of written notice of
disqualification and may request a meeting with the board or may request the board to consider a written appeal only. A meeting of the board shall be scheduled within five (5) days, excluding weekends and holidays after receipt of the appeal.

(c) After all pertinent information has been considered, the contractor shall be notified of the decision of the board within five (5) days after the scheduled meetings, weekends and holidays excluded.

SECTION 2. Section 65-1-85, Mississippi Code of 1972, is amended as follows:

65-1-85. (1) All contracts by or on behalf of the Mississippi Transportation Commission for the purchase of materials, equipment and supplies shall be made in compliance with Section 31-7-1 et seq. All contracts by or on behalf of the Mississippi Transportation Commission for construction, reconstruction or other public work authorized to be done under the provisions of this chapter, except maintenance, shall be made by the executive director, subject to the approval of the commission, only upon competitive bids after due advertisement as follows, to wit:

(a) *** Advertisement for bids shall be in accordance with *** rules and regulations, in addition to those herein provided, as may be adopted therefor by the Mississippi Transportation Commission, and the commission is *** authorized and empowered to make and promulgate such rules and regulations as it may deem proper, to provide and adopt standard specifications for road and bridge construction, and to amend the such rules and regulations from time to time.

(b) The advertisement shall be inserted twice, being once a week for two (2) successive weeks in a newspaper published at the seat of government in Jackson, Mississippi, having a general circulation throughout the state, and no letting shall be less than fourteen (14) days nor more than sixty (60) days after...
the publication of the first notice thereof, and notices of the
letting may be placed in a metropolitan paper or national trade
publication. Before advertising for such work, the executive
director shall cause to be prepared and filed in the Mississippi
Department of Transportation detailed plans and specifications
covering the work proposed to be done, copies of the plans and
specifications shall be subject to inspection by any citizen
during all office hours and made available to all prospective
bidders upon such reasonable terms and conditions as may be
required by the Mississippi Transportation Commission. A
fee equal to the cost of producing a copy of any such plans and
specifications shall be charged for copies of such plans and
specifications.

(c) All such contracts shall be let to the lowest
responsible bidder, and a record of all bids received for
construction and reconstruction shall be preserved.

(d) Each bid for construction and reconstruction
must be accompanied by a cashier's check, a certified check or
bidders bond executed by a surety company authorized to do
business in the State of Mississippi, in the principal amount of
not less than five percent (5%) of the bid, guaranteeing that the
bidder will give bond and enter into a contract for the faithful
performance of the contract according to plans and specifications
on file.

(d) Bonds shall be required of the successful bidder in
an amount equal to the contract price. The contract price shall
mean the entire cost of the particular contract let. In the event
change orders are made after the execution of a contract which
results in increasing the total contract price, additional bond in
the amount of the increased cost may be required. The surety or
sureties on such bonds shall be a surety company or surety
companies authorized to do business in the State of Mississippi,
all bonds to be payable to the State of Mississippi and to be
conditioned for the prompt, faithful and efficient performance of the contract according to plans and specifications, and for the prompt payment of all persons furnishing labor, material, equipment and supplies therefor. Such bonds shall be subject to the additional obligation that the principal and surety or sureties executing the bond shall be liable to the state in a civil action instituted by the state at the instance of the Mississippi Transportation Commission or any officer of the state authorized in such cases, for double any amount in money or property the state may lose or be overcharged or otherwise defrauded of by reason of any wrongful or criminal act, if any, of the contractor, his agent or employees.

(2) With respect to equipment used in the construction, reconstruction or other public work authorized to be done under the provisions of this chapter: the word "equipment," in addition to all equipment incorporated into or fully consumed in connection with such project, shall include the reasonable value of the use of all equipment of every kind and character and all accessories and attachments thereto which are reasonably necessary to be used and which are used in carrying out the performance of the contract, and the reasonable value of the use thereof, during the period of time the same are used in carrying out the performance of the contract, shall be the amount as agreed upon by the persons furnishing the equipment and those using the same to be paid therefor, which amount, however, shall not be in excess of the maximum current rates and charges allowable for leasing or renting as specified in Section 65-7-95; the word "labor" shall include all work performed in repairing equipment used in carrying out the performance of the contract, which repair labor is reasonably necessary to the efficient operation of said equipment; and the words "materials" and "supplies" shall include all repair parts installed in or on equipment used in carrying out the performance
of the contract, which repair parts are reasonably necessary to
the efficient operation of said equipment.

(3) The executive director, subject to the approval of the
Mississippi Transportation Commission, shall have the right to
reject any and all bids, whether such right is reserved in the
notice or not. Any contract for construction or paving of any
highway may be entered into for any cost which does not exceed the
amount of funds that may be made available therefor through bond
issues or from other sources of revenue, and the letting of
contracts for such construction or paving shall not necessarily be
delayed until the funds are actually on hand, provided
authorization for the issuance of necessary bonds has been granted
by law to supplement other anticipated revenue or when the
Mississippi Department of Transportation certifies to the
Department of Finance and Administration and the Legislative
Budget Office that projected receipts of funds by the department
will be sufficient to pay such contracts as they become due and
the Department of Finance and Administration determines that the
projections are reasonable and receipts will be sufficient to pay
the contracts as they become due. The Department of Finance and
Administration shall spread such determination on its minutes
prior to the letting of any contracts based on projected receipts.
Nothing herein shall prohibit the issuance of bonds, which have
been authorized, at any time in the discretion of the State Bond
Commission, nor to prevent investment of surplus funds in United
States government bonds or State of Mississippi bonds as presently
authorized by Section 12, Chapter 312, Laws of 1956.

(4) All other contracts for work to be done under the
provisions of this chapter and for the purchase of materials,
equipment and supplies to be used as provided for in this chapter
shall be made in compliance with Section 31-7-1 et seq.

(5) The Mississippi Transportation Commission shall not
empower or authorize the executive director, or any one or more of
its members, or any engineer or other person to let or make contracts for the construction or repair of public roads, or building bridges, or for the purchase of material, equipment or supplies contrary to the provisions of this chapter as above set forth, except in cases of flood or other cases of emergency where the public interest requires that the work be done or the materials, equipment or supplies be purchased without the delay incident to advertising for competitive bids. Such emergency contracts may be made without advertisement under such rules and regulations as the Mississippi Transportation Commission may prescribe.

(6) The executive director, subject to the approval of the Mississippi Transportation Commission, is authorized to negotiate and make agreements with communities and/or civic organizations for landscaping, beautification and maintenance of highway rights-of-way; provided, however, that nothing herein shall be construed as authorization for the executive director or commission to participate in such a project to an extent greater than the average cost for maintenance of shoulders, backslopes and median areas with respect thereto. The executive director may negotiate and enter into contracts with private parties for the mowing of grass and trimming of vegetation on the rights-of-way of state highways whenever such practice is possible and cost effective.

(7) In addition to any other reason, a contractor may be disqualified from bidding under this section pursuant to the provisions of Section 1 of Senate Bill No. 2546, 2003 Regular Session.

SECTION 3. The provisions of Section 1 of this act shall be codified in Chapter 1, Title 65, Mississippi Code of 1972.

SECTION 4. This act shall take effect and be in force from and after July 1, 2003.