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To: Highways and Transportation

SENATE BILL NO. 2734
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 65-1-85, MISSISSIPPI CODE OF 1972, TO
2 ALLOW THE MISSISSIPPI TRANSPORTATION COMMISSION TO UTILIZE THE
3 "DESIGN-BUILD" METHOD OF PROCUREMENT FOR CERTAIN PILOT PROJECTS;
4 AND FOR RELATED PURPOSES.

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

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

8 65-1-85. (1) All contracts by or on behalf of the * * *
9 commission for the purchase of materials, equipment and supplies
10 shall be made in compliance with Section 31-7-1 et seq. All
11 contracts by or on behalf of the * * * commission for
12 construction, reconstruction or other public work authorized to be
13 done under the provisions of this chapter, except maintenance,
14 shall be made by the executive director, subject to the approval
15 of the commission, only upon competitive bids after due
16 advertisement as follows, to wit:

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

24 (b) The advertisement shall be inserted twice, being
25 once a week for two (2) successive weeks in a newspaper published
26 at the seat of government in Jackson, Mississippi, having a
27 general circulation throughout the state, and no letting shall be
28 less than fourteen (14) days nor more than sixty (60) days after

29 the publication of the first notice of such letting, and notices
30 of such letting may be placed in a metropolitan paper or national
31 trade publication.

32 (c) Before advertising for such work, the executive
33 director shall cause to be prepared and filed in the * * *
34 department * * * detailed plans and specifications covering the
35 work proposed to be done and copies of the plans and
36 specifications shall be subject to inspection by any citizen
37 during all office hours and made available to all prospective
38 bidders upon such reasonable terms and conditions as may be
39 required by the * * * commission. A fee shall be charged equal to
40 the cost of producing a copy of any such plans and specifications.

41 (d) All such contracts shall be let to a responsible
42 bidder with the lowest and best bid, and a record of all bids
43 received for construction and reconstruction shall be preserved.

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

52 (f) Bonds shall be required of the successful bidder in
53 an amount equal to the contract price. The contract price shall
54 mean the entire cost of the particular contract let. In the event
55 change orders are made after the execution of a contract which
56 results in increasing the total contract price, additional bond in
57 the amount of the increased cost may be required. The surety or
58 sureties on such bonds shall be a surety company or surety
59 companies authorized to do business in the State of Mississippi,
60 all bonds to be payable to the State of Mississippi and to be
61 conditioned for the prompt, faithful and efficient performance of

62 the contract according to plans and specifications, and for the
63 prompt payment of all persons furnishing labor, material,
64 equipment and supplies therefor. Such bonds shall be subject to
65 the additional obligation that the principal and surety or
66 sureties executing the same shall be liable to the state in a
67 civil action instituted by the state at the instance of the * * *
68 commission or any officer of the state authorized in such cases,
69 for double any amount in money or property the state may lose or
70 be overcharged or otherwise defrauded of by reason of any wrongful
71 or criminal act, if any, of the contractor, his agent or
72 employees.

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

95 (3) The executive director, subject to the approval of
96 the * * * commission, shall have the right to reject any and all
97 bids, whether such right is reserved in the notice or not.

98 (4) The * * * commission may require the pre-qualification
99 of any and all bidders and the failure to comply with
100 pre-qualification requirements may be the basis for the rejection
101 of any bid by the commission. The * * * commission may require
102 the pre-qualification of any and all subcontractors before they
103 are approved to participate in any contract awarded under this
104 section.

105 (5) The * * * commission may adopt rules and regulations for
106 the termination of any previously awarded contract which is not
107 timely proceeding toward completion. The failure of a contractor
108 to comply with such rules and regulations shall be a lawful basis
109 for the * * * commission to terminate the contract with such
110 contractor. In the event of a termination under such rules and
111 regulations, the contractor shall not be entitled to any payment,
112 benefit or damages beyond the cost of the work actually completed.

113 (6) Any contract for construction or paving of any highway
114 may be entered into for any cost which does not exceed the amount
115 of funds that may be made available therefor through bond issues
116 or from other sources of revenue, and the letting of contracts for
117 such construction or paving shall not necessarily be delayed until
118 the funds are actually on hand, provided authorization for the
119 issuance of necessary bonds has been granted by law to supplement
120 other anticipated revenue, or when the * * * department * * *
121 certifies to the Department of Finance and Administration and the
122 Legislative Budget Office that projected receipts of funds by the
123 department will be sufficient to pay such contracts as they become
124 due and the Department of Finance and Administration determines
125 that the projections are reasonable and receipts will be
126 sufficient to pay the contracts as they become due. The
127 Department of Finance and Administration shall spread such

128 determination on its minutes prior to the letting of any contracts
129 based on projected receipts. Nothing in this subsection shall
130 prohibit the issuance of bonds, which have been authorized, at any
131 time in the discretion of the State Bond Commission, nor to
132 prevent investment of surplus funds in United States government
133 bonds or State of Mississippi bonds as presently authorized by
134 Section 12, Chapter 312, Laws of 1956.

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

139 (8) The * * * commission shall not empower or authorize the
140 executive director, or any one or more of its members, or any
141 engineer or other person to let or make contracts for the
142 construction or repair of public roads, or building bridges, or
143 for the purchase of material, equipment or supplies contrary to
144 the provisions of this chapter as set forth in this section,
145 except in cases of flood or other cases of emergency where the
146 public interest requires that the work be done or the materials,
147 equipment or supplies be purchased without the delay incident to
148 advertising for competitive bids. Such emergency contracts may be
149 made without advertisement under such rules and regulations as
150 the * * * commission may prescribe.

151 (9) The executive director, subject to the approval of
152 the * * * commission, is authorized to negotiate and make
153 agreements with communities and/or civic organizations for
154 landscaping, beautification and maintenance of highway
155 rights-of-way; however, nothing in this subsection shall be
156 construed as authorization for the executive director or
157 commission to participate in such a project to an extent greater
158 than the average cost for maintenance of shoulders, backslopes and
159 median areas with respect thereto.

160 (10) The executive director may negotiate and enter into
161 contracts with private parties for the mowing of grass and
162 trimming of vegetation on the rights-of-way of state highways
163 whenever such practice is possible and cost effective.

164 (11) (a) As an alternative to the method of awarding
165 contracts as otherwise provided in this section, the commission
166 may use the design-build method of contracting for the following:

167 (i) Projects for the Mississippi Development
168 Authority pursuant to agreements between both governmental
169 entities;

170 (ii) Any project with an estimated cost of not
171 more than Ten Million Dollars (\$10,000,000.00), not to exceed two
172 (2) projects per fiscal year; and

173 (iii) Any project which has an estimated cost of
174 more than Fifty Million Dollars (\$50,000,000.00), not to exceed
175 one (1) project per fiscal year.

176 (b) As used in this subsection, the term "design-build"
177 method of contracting means a contract that combines the design
178 and construction phases of a project into a single contract and
179 the contractor is required to satisfactorily perform, at a
180 minimum, both the design and construction of the project.

181 (c) The commission shall establish detailed criteria
182 for the selection of the successful design-build contractor in
183 each request for design-build proposals. The evaluation of the
184 selection committee is a public record and shall be maintained for
185 a minimum of ten (10) years after project completion.

186 (d) The commission shall maintain detailed records on
187 projects separate and apart from its regular record keeping. The
188 commission shall file a report to the Legislature evaluating the
189 design-build method of contracting by comparing it to the low-bid
190 method of contracting. At a minimum, the report must include:

191 (i) The management goals and objectives for the
192 design-build system of management;

193 (ii) A complete description of the components of
194 the design-build management system, including a description of the
195 system the department put into place on all projects managed under
196 the system to insure that it has the complete information on
197 highway segment costs and to insure proper analysis of any
198 proposal the commission receives from a highway contractor;

199 (iii) The accountability systems the
200 Transportation Department established to monitor any design-build
201 project's compliance with specific goals and objectives for the
202 project;

203 (iv) The outcome of any project or any interim
204 report on an ongoing project let under a design-build management
205 system showing compliance with the goals, objectives, policies and
206 procedures the department set for the project; and

207 (v) The method used by the department to select
208 projects to be let under the design-build system of management and
209 all other systems, policies and procedures that the department
210 considered as necessary components to a design-build management
211 system.

212 (e) All contracts let under the provisions of this
213 subsection shall be subject to oversight and review by the State
214 Auditor. The State Auditor shall file a report with the
215 Legislature on or before January 1 of each year detailing his
216 findings with regard to any contract let or project performed in
217 violation of the provisions of this subsection. The actual and
218 necessary expenses incurred by the State Auditor in complying with
219 this paragraph (e) shall be paid for and reimbursed by the
220 Mississippi Department of Transportation out of funds made
221 available for the contract or contracts let and project or
222 projects performed.

223 **SECTION 2.** This act shall take effect and be in force from
224 and after July 1, 2004.