

By: Representative Turner

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 1504

1 AN ACT TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972,
 2 TO AUTHORIZE THE PUBLIC PROCUREMENT REVIEW BOARD TO ADOPT
 3 REGULATIONS GOVERNING THE APPROVAL OF CONTRACTS FOR ARCHITECTURAL
 4 AND ENGINEERING SERVICES; TO AMEND SECTION 31-11-3, MISSISSIPPI
 5 CODE OF 1972, TO CLARIFY THE DEPARTMENT OF FINANCE AND
 6 ADMINISTRATION'S AUTHORITY TO REVIEW AND PREAPPROVE ALL
 7 ARCHITECTURAL AND ENGINEERING SERVICE CONTRACTS ENTERED INTO BY
 8 STATE AGENCIES; TO BRING FORWARD SECTIONS 31-7-13.1 AND 37-101-41,
 9 MISSISSIPPI CODE OF 1972, FOR THE PURPOSES OF POSSIBLE AMENDMENT;
 10 AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 27-104-7, Mississippi Code of 1972, is
 13 amended as follows:

14 27-104-7. (1) There is created within the Department of
 15 Finance and Administration the Public Procurement Review Board,
 16 which shall be composed of the Executive Director of the
 17 Department of Finance and Administration, the head of the Office
 18 of Budget and Policy Development and an employee of the Office of
 19 General Services who is familiar with the purchasing laws of this
 20 state. The Executive Director of the Department of Finance and
 21 Administration shall be chairman and shall preside over the
 22 meetings of the board. The board shall annually elect a vice



23 chairman, who shall serve in the absence of the chairman. No
24 business shall be transacted, including adoption of rules of
25 procedure, without the presence of a quorum of the board. Two (2)
26 members shall be a quorum. No action shall be valid unless
27 approved by the chairman and one (1) other of those members
28 present and voting, entered upon the minutes of the board and
29 signed by the chairman. The board shall meet on a monthly basis
30 and at any other time when notified by the chairman. Necessary
31 clerical and administrative support for the board shall be
32 provided by the Department of Finance and Administration. Minutes
33 shall be kept of the proceedings of each meeting, copies of which
34 shall be filed on a monthly basis with the Legislative Budget
35 Office.

36 (2) The Public Procurement Review Board shall have the
37 following powers and responsibilities:

38 (a) Approve all purchasing regulations governing the
39 purchase or lease by any agency, as defined in Section 31-7-1, of
40 commodities and equipment, except computer equipment acquired
41 pursuant to Sections 25-53-1 through 25-53-29;

42 (b) Adopt regulations governing the approval of
43 contracts let for the construction and maintenance of state
44 buildings and other state facilities as well as related contracts
45 for architectural and engineering services;

46 (c) Adopt regulations governing any lease or rental
47 agreement by any state agency or department, including any state



48 agency financed entirely by federal funds, for space outside the
49 buildings under the jurisdiction of the Department of Finance and
50 Administration. These regulations shall require each agency
51 requesting to lease such space to provide the following
52 information that shall be published by the Department of Finance
53 and Administration on its website: the agency to lease the space;
54 the terms of the lease; the approximate square feet to be leased;
55 the use for the space; a description of a suitable space; the
56 general location desired for the leased space; the contact
57 information for a person from the agency; the deadline date for
58 the agency to have received a lease proposal; any other specific
59 terms or conditions of the agency; and any other information
60 deemed appropriate by the Division of Real Property Management of
61 the Department of Finance and Administration or the Public
62 Procurement Review Board * * *. The information shall be provided
63 sufficiently in advance of the time the space is needed to allow
64 the Division of Real Property Management of the Department of
65 Finance and Administration to review and preapprove the lease
66 before the time for advertisement begins;

67 (d) Adopt, in its discretion, regulations to set aside
68 at least five percent (5%) of anticipated annual expenditures for
69 the purchase of commodities from minority businesses; however, all
70 such set-aside purchases shall comply with all purchasing
71 regulations promulgated by the department and shall be subject to
72 all bid requirements. Set-aside purchases for which competitive



73 bids are required shall be made from the lowest and best minority
74 business bidder; however, if no minority bid is available or if
75 the minority bid is more than two percent (2%) higher than the
76 lowest bid, then bids shall be accepted and awarded to the lowest
77 and best bidder. However, the provisions in this paragraph shall
78 not be construed to prohibit the rejection of a bid when only one
79 (1) bid is received. Such rejection shall be placed in the
80 minutes. For the purposes of this paragraph, the term "minority
81 business" means a business which is owned by a person who is a
82 citizen or lawful permanent resident of the United States and who
83 is:

84 (i) Black: having origins in any of the black
85 racial groups of Africa;

86 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
87 Central or South American, or other Spanish or Portuguese culture
88 or origin regardless of race;

89 (iii) Asian-American: having origins in any of
90 the original peoples of the Far East, Southeast Asia, the Indian
91 subcontinent, or the Pacific Islands;

92 (iv) American Indian or Alaskan Native: having
93 origins in any of the original peoples of North America; or

94 (v) Female;

95 (e) In consultation with and approval by the Chairmen
96 of the Senate and House Public Property Committees, approve
97 leases, for a term not to exceed eighteen (18) months, entered



98 into by state agencies for the purpose of providing parking
99 arrangements for state employees who work in the Woolfolk
100 Building, the Carroll Gartin Justice Building or the Walter
101 Sillers Office Building.

102 (3) No member of the Public Procurement Review Board shall
103 use his official authority or influence to coerce, by threat of
104 discharge from employment, or otherwise, the purchase of
105 commodities or the contracting for public construction under this
106 chapter.

107 (4) Notwithstanding any other laws or rules to the contrary,
108 the provisions of subsection (2) of this section shall not be
109 applicable to the Mississippi State Port Authority at Gulfport.

110 **SECTION 2.** Section 31-11-3, Mississippi Code of 1972, is
111 amended as follows:

112 31-11-3. (1) The Department of Finance and Administration,
113 for the purposes of carrying out the provisions of this chapter,
114 in addition to all other rights and powers granted by law, shall
115 have full power and authority to employ and compensate architects
116 or other employees necessary for the purpose of making
117 inspections, preparing plans and specifications, supervising the
118 erection of any buildings, and making any repairs or additions as
119 may be determined by the Department of Finance and Administration
120 to be necessary, pursuant to the rules and regulations of the
121 State Personnel Board. The department shall have entire control
122 and supervision of, and determine what, if any, buildings,



123 additions, repairs, demolitions or improvements are to be made
124 under the provisions of this chapter, subject to the regulations
125 adopted by the Public Procurement Review Board.

126 (2) The department shall have full power to erect buildings,
127 make repairs, additions or improvements, demolitions, to grant or
128 acquire easements or rights-of-way, and to buy materials, supplies
129 and equipment for any of the institutions or departments of the
130 state subject to the regulations adopted by the Public Procurement
131 Review Board. In addition to other powers conferred, the
132 department shall have full power and authority as directed by the
133 Legislature, or when funds have been appropriated for its use for
134 these purposes, to:

135 (a) Build a state office building;

136 (b) Build suitable plants or buildings for the use and
137 housing of any state schools or institutions, including the
138 building of plants or buildings for new state schools or
139 institutions, as provided for by the Legislature;

140 (c) Provide state aid for the construction of school
141 buildings;

142 (d) Promote and develop the training of returned
143 veterans of the United States in all sorts of educational and
144 vocational learning to be supplied by the proper educational
145 institution of the State of Mississippi, and in so doing allocate
146 monies appropriated to it for these purposes to the Governor for
147 use by him in setting up, maintaining and operating an office and



148 employing a state director of on-the-job training for veterans and
149 the personnel necessary in carrying out Public Law No. 346 of the
150 United States;

151 (e) Build and equip a hospital and administration
152 building at the Mississippi State Penitentiary;

153 (f) Build and equip additional buildings and wards at
154 the Boswell Retardation Center;

155 (g) Construct a sewage disposal and treatment plant at
156 the Mississippi State Hospital, and in so doing acquire additional
157 land as may be necessary, and to exercise the right of eminent
158 domain in the acquisition of this land;

159 (h) Build and equip the Mississippi central market and
160 purchase or acquire by eminent domain, if necessary, any lands
161 needed for this purpose;

162 (i) Build and equip suitable facilities for a training
163 and employing center for the blind;

164 (j) Build and equip a gymnasium at Columbia Training
165 School;

166 (k) Approve or disapprove the expenditure of any money
167 appropriated by the Legislature when authorized by the bill making
168 the appropriation;

169 (l) Expend monies appropriated to it in paying the
170 state's part of the cost of any street paving;

171 (m) Sell and convey state lands when authorized by the
172 Legislature, cause said lands to be properly surveyed and platted,



173 execute all deeds or other legal instruments, and do any and all
174 other things required to effectively carry out the purpose and
175 intent of the Legislature. Any transaction which involves state
176 lands under the provisions of this paragraph shall be done in a
177 manner consistent with the provisions of Section 29-1-1;

178 (n) Collect and receive from educational institutions
179 of the State of Mississippi monies required to be paid by these
180 institutions to the state in carrying out any veterans'
181 educational programs;

182 (o) Purchase lands for building sites, or as additions
183 to building sites, for the erection of buildings and other
184 facilities which the department is authorized to erect, and
185 demolish and dispose of old buildings, when necessary for the
186 proper construction of new buildings. Any transaction which
187 involves state lands under the provisions of this paragraph shall
188 be done in a manner consistent with the provisions of Section
189 29-1-1;

190 (p) Obtain business property insurance with a
191 deductible of not less than One Hundred Thousand Dollars
192 (\$100,000.00) on state-owned buildings under the management and
193 control of the department; and

194 (q) In consultation with and approval by the Chairmen
195 of the Public Property Committees of the Senate and the House of
196 Representatives, enter into contracts for the purpose of providing
197 parking spaces for state employees who work in the Woolfolk



198 Building, the Carroll Gartin Justice Building or the Walter
199 Sillers Office Building.

200 (3) The department shall survey state-owned and
201 state-utilized buildings to establish an estimate of the costs of
202 architectural alterations, pursuant to the Americans With
203 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The
204 department shall establish priorities for making the identified
205 architectural alterations and shall make known to the Legislative
206 Budget Office and to the Legislature the required cost to
207 effectuate such alterations. To meet the requirements of this
208 section, the department shall use standards of accessibility that
209 are at least as stringent as any applicable federal requirements
210 and may consider:

211 (a) Federal minimum guidelines and requirements issued
212 by the United States Architectural and Transportation Barriers
213 Compliance Board and standards issued by other federal agencies;

214 (b) The criteria contained in the American Standard
215 Specifications for Making Buildings Accessible and Usable by the
216 Physically Handicapped and any amendments thereto as approved by
217 the American Standards Association, Incorporated (ANSI Standards);

218 (c) Design manuals;

219 (d) Applicable federal guidelines;

220 (e) Current literature in the field;

221 (f) Applicable safety standards; and

222 (g) Any applicable environmental impact statements.



223 (4) The department shall observe the provisions of Section
224 31-5-23, in letting contracts and shall use Mississippi products,
225 including paint, varnish and lacquer which contain as vehicles
226 tung oil and either ester gum or modified resin (with rosin as the
227 principal base of constituents), and turpentine shall be used as a
228 solvent or thinner, where these products are available at a cost
229 not to exceed the cost of products grown, produced, prepared, made
230 or manufactured outside of the State of Mississippi.

231 (5) The department shall have authority to accept grants,
232 loans or donations from the United States government or from any
233 other sources for the purpose of matching funds in carrying out
234 the provisions of this chapter.

235 (6) The department shall build a wheelchair ramp at the War
236 Memorial Building which complies with all applicable federal laws,
237 regulations and specifications regarding wheelchair ramps.

238 (7) The department shall review and preapprove all
239 architectural or engineering service contracts entered into by any
240 state agency, institution, commission, board or authority
241 regardless of the source of funding used to defray the costs of
242 the construction or renovation project for which services are to
243 be obtained to ensure compliance with purchasing regulations and
244 to confirm that the contracts are procured by a competitive
245 qualification-based selection process except where such
246 appointment is for an emergency project or for a continuation of a
247 previous appointment for a directly related project. The



248 provisions of this subsection (7) shall not apply to any
249 architectural or engineering contract fully paid for by
250 self-generated funds of any of the state institutions of higher
251 learning, nor shall they apply to community college projects that
252 are fully funded from local funds or other nonstate sources which
253 are outside the Department of Finance and Administration's
254 appropriations or as directed by the Legislature. The provisions
255 of this subsection (7) shall not apply to any construction or
256 design projects of the State Military Department that are fully or
257 partially funded from federal funds or other nonstate sources, nor
258 shall they apply to any highway, bridge or ferry project of the
259 State Department of Transportation.

260 (8) The department shall have the authority to obtain
261 annually from the state institutions of higher learning
262 information on all building, construction and renovation projects
263 including duties, responsibilities and costs of any architect or
264 engineer hired by any such institutions.

265 (9) As an alternative to other methods of awarding contracts
266 as prescribed by law, the department may elect to use the method
267 of contracting for construction projects set out in Sections
268 31-7-13.1 and 31-7-13.2; however, the dual-phase design-build
269 method of construction contracting authorized under Section
270 31-7-13.1 may be used only when the Legislature has specifically
271 required or authorized the use of this method in the legislation
272 authorizing a project.



273 (10) The department shall have the authority, for the
274 purposes of carrying out the provisions of this chapter, and in
275 addition to all other rights and powers granted by law, to create
276 and maintain a list of suspended and debarred contractors and
277 subcontractors. Consistent with this authority, the department
278 may adopt regulations governing the suspension or debarment of
279 contractors and subcontractors, which regulations shall be subject
280 to the approval of the Public Procurement Review Board. A
281 suspended or debarred contractor or subcontractor shall be
282 disqualified from consideration for contracts with the department
283 during the suspension or debarment period in accordance with the
284 department's regulations.

285 (11) This section shall not apply to the Mississippi State
286 Port Authority.

287 **SECTION 3.** Section 31-7-13.1, Mississippi Code of 1972, is
288 brought forward as follows:

289 31-7-13.1. (1) The method of contracting for construction
290 described in this section shall be known as the "dual-phase
291 design-build method" of construction contracting. This method of
292 construction contracting may be used only when the Legislature has
293 specifically required or authorized the use of this method in the
294 legislation authorizing a project. At a minimum, the
295 determination must include a detailed explanation of why using the
296 dual-phase design-build method for a particular project satisfies



297 the public need better than the traditional design-bid-build
298 method based on the following criteria:

299 (a) The project provides a savings in time or cost over
300 traditional methods; and

301 (b) The size and type of the project is suitable for
302 design-build.

303 (2) For each proposed dual-phase design-build project, a
304 two-phase procedure for awarding a contract must be adopted.
305 During Phase One, and before solicitation of initial proposals,
306 the agency or governing authority shall develop, with the
307 assistance of an architectural or engineering firm, a scope of
308 work statement that provides prospective offerors with sufficient
309 information regarding the requirements of the agency or governing
310 authority. The scope of work statement must include, but is not
311 limited to, the following information:

312 (a) Drawings must show overall building dimensions and
313 major lines of dimensions, and site plans that show topography,
314 adjacent buildings and utilities;

315 (b) Drawings must include information to adequately
316 explain HVAC, electrical and structural requirements;

317 (c) The scope of work statement also must include
318 building elevations, sections and design details; and

319 (d) The scope of work statement must include general
320 budget parameters, schedule or delivery requirements, relevant
321 criteria for evaluation of proposals, and any other information



322 necessary to enable the design-builders to submit proposals that
323 meet the needs of the agency or governing authority.

324 (3) The agency or governing authority shall cause to be
325 published once a week, for at least two (2) consecutive weeks in a
326 regular newspaper published in the county in which the project is
327 to be located, or a newspaper with statewide circulation, a notice
328 inviting proposals for the dual-phase design-build construction
329 project. The proposals shall not be opened in less than fifteen
330 (15) working days after the last notice is published. The notice
331 must inform potential offerors of how to obtain the scope of work
332 statement developed for the project, and the notice must contain
333 such other information to describe adequately the general nature
334 and scope of the project so as to promote full, equal and open
335 competition.

336 (4) The agency or governing authority shall accept initial
337 proposals only from entities able to provide an experienced and
338 qualified design-build team that includes, at a minimum, an
339 architectural or engineering firm registered in Mississippi and a
340 contractor properly licensed and domiciled in Mississippi for the
341 type of work required. From evaluation of initial proposals under
342 Phase One, the agency or governing authority shall select a
343 minimum of two (2) and a maximum of five (5) design-builders as
344 "short-listed firms" to submit proposals for Phase Two.

345 (5) During Phase Two, the short-listed firms will be invited
346 to submit detailed designs, specific technical concepts or



347 solutions, pricing, scheduling and other information deemed
348 appropriate by the agency or governing authority as necessary to
349 evaluate and rank acceptability of the Phase Two proposals. After
350 evaluation of these Phase Two proposals, the agency or governing
351 authority shall award a contract to the design-builder determined
352 to offer the best value to the public in accordance with
353 evaluation criteria set forth in the request for proposals, of
354 which price must be one, but not necessarily the only, criterion.

355 (6) If the agency or governing authority accepts a proposal
356 other than the lowest dollar proposal actually submitted, the
357 agency or governing authority shall enter on its minutes detailed
358 calculations and a narrative summary showing why the accepted
359 proposal was determined to provide the best value, and the agency
360 or governing authority shall state specifically on its minutes the
361 justification for its award.

362 (7) All facilities that are governed by this section shall
363 be designed and constructed to comply with standards equal to or
364 exceeding the minimum building code standards employed by the
365 state as required under Section 31-11-33 in force at the time of
366 contracting. All private contractors or private entities
367 contracting or performing under this section must comply at all
368 times with all applicable laws, codes and other legal requirements
369 pertaining to the project.

370 (8) At its discretion, the agency or governing authority may
371 award a stipulated fee equal to a percentage, as prescribed in the



372 request for proposals, of the project's final design and
373 construction budget, as prescribed in the request for proposals,
374 but not less than two-tenths of one percent (2/10 of 1%) of the
375 project's final design and construction budget, to each short-list
376 offeror who provides a responsive, but unsuccessful, proposal. If
377 the agency or governing authority does not award a contract, all
378 responsive final list offerors shall receive the stipulated fee
379 based on the owner's estimate of the project final design and
380 construction budget as included in the request for proposals. The
381 agency or governing authority shall pay the stipulated fee to each
382 offeror within ninety (90) days after the award of the initial
383 contract or the decision not to award a contract. In
384 consideration for paying the stipulated fee, the agency or
385 governing authority may use any ideas or information contained in
386 the proposals in connection with any contract awarded for the
387 project, or in connection with a subsequent procurement, without
388 any obligation to pay any additional compensation to the
389 unsuccessful offerors. Notwithstanding the other provisions of
390 this subsection, an unsuccessful short-list offeror may elect to
391 waive the stipulated fee. If an unsuccessful short-list offeror
392 elects to waive the stipulated fee, the agency or governing
393 authority may not use ideas and information contained in the
394 offeror's proposal, except that this restriction does not prevent
395 the agency or governing authority from using any idea or



396 information if the idea or information is also included in a
397 proposal of an offeror that accepts the stipulated fee.

398 (9) This section shall not authorize the awarding of
399 construction contracts according to any contracting method that
400 does not require the contractor to satisfactorily perform, at a
401 minimum, both any balance of design, using an independent
402 professional licensed in Mississippi, and construction of the
403 project for which the contract is awarded.

404 (10) The provisions of this section shall not affect any
405 procurement by the Mississippi Transportation Commission.

406 (11) The provisions of this section shall not apply to
407 procurement authorized in Section 59-5-37(3).

408 **SECTION 4.** Section 37-101-41, Mississippi Code of 1972, is
409 brought forward as follows:

410 37-101-41. (1) (a) Except as otherwise provided in
411 paragraph (b) of this section, and subject to the provisions of
412 Section 37-101-42, the Board of Trustees of State Institutions of
413 Higher Learning (the "board") is authorized and empowered to lease
414 to private individuals or corporations for a term not exceeding
415 thirty-five (35) years any land or land with existing auxiliary
416 facilities at any of the following state-supported institutions:
417 Mississippi State University of Agriculture and Applied Science,
418 Jackson State University, Mississippi Valley State University,
419 University of Mississippi, Alcorn State University, University of
420 Southern Mississippi, Mississippi University for Women and Delta



421 State University, for the purpose of erecting or renovating,
422 furnishing, maintaining and equipping auxiliary facilities thereon
423 for active faculty, staff and/or students. The auxiliary
424 facilities shall be constructed or renovated, and may be
425 furnished, maintained and equipped thereon by private financing,
426 and may be leased back to the board for use by the concerned
427 state-supported institution of higher learning. The lease shall
428 contain a provision permitting the board to purchase the building
429 located thereon, including any furnishings and equipment therein,
430 for the sum of One Dollar (\$1.00) after payment by the board of
431 all sums of money due under said lease.

432 (b) The Board of Trustees of State Institutions of
433 Higher Learning may grant authority to universities to lease to
434 private individuals or corporations for a period not exceeding
435 thirty-five (35) years, any land or land with existing auxiliary
436 facilities at the university, for the purpose of erecting or
437 renovating, furnishing, maintaining and equipping auxiliary
438 facilities thereon for active faculty, staff and/or students. The
439 auxiliary facilities shall be constructed or renovated, and may be
440 furnished, maintained and equipped thereon by private financing,
441 and may be leased back to the board for use by the university.
442 The lease shall contain a provision permitting the board to
443 purchase the auxiliary facilities located thereon, including any
444 furnishings and equipment therein, for the sum of One Dollar



445 (\$1.00) after payment by the board of all sums of money due under
446 the lease.

447 (2) Upon there being an agreement reached between the Board
448 of Trustees of State Institutions of Higher Learning and a
449 university upon whose land the auxiliary facility will be
450 constructed or renovated and a private individual(s) or
451 corporation(s) to enter into such lease agreement as described in
452 subsection (1), it shall be stipulated in the agreement that all
453 newly constructed or renovated auxiliary facilities shall be in
454 compliance with the minimum building code standards employed by
455 the state as required under Section 31-11-33.

456 (3) The board, in conjunction with the university, shall
457 have sole discretion to decide the placement of new auxiliary
458 facilities upon the university's campus. However, the scope of
459 any such construction or renovation by private entities shall be
460 limited to two (2) leases entered into pursuant to this Section
461 37-101-41 per year for each university, and shall not exceed in
462 the aggregate twenty-five percent (25%) of the university's total
463 main campus or satellite campus property under the original lease
464 period. In addition, the scope of any such renovation by private
465 entities shall be limited to one (1) project per fiscal year for
466 each university.

467 (4) No contractual lease agreement for the construction or
468 renovation, furnishing, maintaining and equipping of privately
469 financed auxiliary facilities shall be entered into by a



470 university without prior approval of the Board of Trustees of
471 State Institutions of Higher Learning. An auxiliary facility is a
472 facility that is described by the current Postsecondary Education
473 Facilities Inventory and Classification Manual (FICM) as within
474 categories 500/600/700/800/900.

475 Before entering into contractual lease agreements for the
476 construction or renovation, furnishing, maintaining and equipping
477 of privately financed auxiliary facilities, the Board of Trustees
478 of State Institutions of Higher Learning shall establish rules and
479 procedures to ensure adequate public advertisement of any
480 requirement for the construction or renovation, furnishing,
481 maintaining and equipping of privately financed auxiliary
482 facilities at a university in order to promote full and open
483 competition and which set forth the requirements for evaluation of
484 offers and award of the contract lease agreement to the private
485 entity.

486 (5) In addition to the above stated authority, the
487 university, with the permission of the board, is authorized to
488 enter into such marketing, support, management, operating,
489 cooperating or other similar agreements as the university and
490 board may deem advisable or prudent in connection with the ongoing
491 operations of such auxiliary facilities for a period not to exceed
492 the term of the lease relating to such auxiliary facilities.

493 **SECTION 5.** This act shall take effect and be in force from
494 and after July 1, 2016.

