

By: Representatives Massengill, Remak

To: Transportation

HOUSE BILL NO. 940

1 AN ACT TO AMEND SECTION 65-1-85, MISSISSIPPI CODE OF 1972, TO
 2 UPDATE CERTAIN PUBLICATION AND BID AWARD REQUIREMENTS TO REQUIRE
 3 THE ADVERTISEMENT TO BE POSTED ON A WEBSITE DESIGNATED BY THE
 4 COMMISSION FOR TWO SUCCESSIVE WEEKS INSTEAD OF A PUBLICATION
 5 WITHIN THE SEAT OF STATE GOVERNMENT IN JACKSON, MISSISSIPPI; TO
 6 REVISE THE REQUIREMENTS FOR DESIGN-BUILD PROJECTS OF THE
 7 MISSISSIPPI TRANSPORTATION COMMISSION; TO ALLOW THE MISSISSIPPI
 8 TRANSPORTATION COMMISSION TO UTILIZE FEDERALLY APPROVED
 9 ALTERNATIVE CONTRACTING METHODS; AND FOR RELATED PURPOSES.

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

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

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



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

29 (b) The advertisement shall be * * * posted for two (2)
30 successive weeks * * * on a website designated by the commission,
31 and no letting shall be less than fourteen (14) days nor more than
32 sixty (60) days after * * * notice of such letting * * * is first
33 posted. Notices of such letting may be placed in a metropolitan
34 paper * * *, national trade publication or any other location that
35 may increase competitive bidding.

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

45 (d) All such contracts shall be let to a responsible
46 bidder with the lowest * * * responsive bid, and a record of all



47 bids received for construction and reconstruction shall be
48 preserved.

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

57 (f) Bonds shall be required of the successful bidder in
58 an amount equal to the contract price. The contract price shall
59 mean the entire cost of the particular contract let. In the event
60 change orders are made after the execution of a contract which
61 results in increasing the total contract price, additional bond in
62 the amount of the increased cost may be required. The surety or
63 sureties on such bonds shall be a surety company or surety
64 companies authorized to do business in the State of Mississippi,
65 all bonds to be payable to the State of Mississippi and to be
66 conditioned for the prompt, faithful and efficient performance of
67 the contract according to plans and specifications, and for the
68 prompt payment of all persons furnishing labor, material,
69 equipment and supplies therefor. Such bonds shall be subject to
70 the additional obligation that the principal and surety or
71 sureties executing the same shall be liable to the state in a



72 civil action instituted by the state at the instance of the
73 commission or any officer of the state authorized in such cases,
74 for double any amount in money or property the state may lose or
75 be overcharged or otherwise defrauded of by reason of any wrongful
76 or criminal act, if any, of the contractor, his agent or
77 employees.

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



97 installed in or on equipment used in carrying out the performance
98 of the contract, which repair parts are reasonably necessary to
99 the efficient operation of said equipment.

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

103 (4) The commission may require the prequalification of any
104 and all bidders and the failure to comply with prequalification
105 requirements may be the basis for the rejection of any bid by the
106 commission. The commission may require the prequalification of
107 any and all subcontractors before they are approved to participate
108 in any contract awarded under this section.

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

117 (6) Any contract for construction or paving of any highway
118 may be entered into for any cost which does not exceed the amount
119 of funds that may be made available therefor through bond issues
120 or from other sources of revenue, and the letting of contracts for
121 such construction or paving shall not necessarily be delayed until



122 the funds are actually on hand, provided authorization for the
123 issuance of necessary bonds has been granted by law to supplement
124 other anticipated revenue, or when the department certifies to the
125 Department of Finance and Administration and the Legislative
126 Budget Office that projected receipts of funds by the department
127 will be sufficient to pay such contracts as they become due and
128 the Department of Finance and Administration determines that the
129 projections are reasonable and receipts will be sufficient to pay
130 the contracts as they become due. The Department of Finance and
131 Administration shall spread such determination on its minutes
132 prior to the letting of any contracts based on projected receipts.
133 Nothing in this subsection shall prohibit the issuance of bonds,
134 which have been authorized, at any time in the discretion of the
135 State Bond Commission, nor to prevent investment of surplus funds
136 in United States government bonds or State of Mississippi bonds as
137 presently authorized by Section 12, Chapter 312, Laws of 1956.

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

142 (8) The commission shall not empower or authorize the
143 executive director, or any one or more of its members, or any
144 engineer or other person to let or make contracts for the
145 construction or repair of public roads, or building bridges, or
146 for the purchase of material, equipment or supplies contrary to



147 the provisions of this chapter as set forth in this section,
148 except in cases of flood or other cases of emergency where the
149 public interest requires that the work be done or the materials,
150 equipment or supplies be purchased without the delay incident to
151 advertising for competitive bids. Such emergency contracts may be
152 made without advertisement under such rules and regulations as the
153 commission may prescribe.

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

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

166 (11) (a) As an alternative to the method of awarding
167 contracts as otherwise provided in this section, the commission
168 may * * *, in accordance with the applicable federal regulations,
169 guidelines and requirement, any Non-experimental Alternative
170 Contracting Method approved by the United States Department of
171 Transportation, including:



- 172 (i) * * * Design-Build;
- 173 (ii) * * * Progressive Design-Build;
- 174 (iii) * * * Construction Manager/General
175 Contractor;
- 176 (iv) Any hybrid, combination or derivative of the
177 Non-experimental Alternative Contracting Methods as may be allowed
178 by the United States Department of Transportation; and
- 179 (v) Any additional Non-experimental Alternative
180 Contracting Methods as may become approved by the United States
181 Department of Transportation.

182 (b) As used in this subsection, the term "Design-Build"
183 method of contracting means a contract that combines the design
184 and construction phases of a project into a single contract and
185 the contractor is required to satisfactorily perform, at a
186 minimum, both the design and construction of the project.

187 (c) * * * As used in this subsection, the term
188 "Progressive Design-Build" method of contracting means a contract
189 that combines the design and construction phases of a project, in
190 which the contract allows the commission and contractor to
191 progress toward a final design, scope, schedule and contract price
192 for project or portions thereof.

193 (d) * * * As used in this subsection, the term
194 "Construction Manager/General Contractor" method of contracting
195 means that a construction manager engaged during the design phase
196 to provide input on scheduling, pricing, phasing and other



197 information that assists or informs the commission on issues
198 related to constructability. If the commission and construction
199 manager are able to negotiate a reasonable guaranteed maximum
200 price for construction based on a defined scope and schedule, then
201 the construction manager becomes the general contractor for the
202 construction on the project or portions thereof.

203 (e) * * * The commission shall have all powers
204 necessary to implement and administer this subsection and shall
205 promulgate rules and regulations as necessary for such
206 implementation and administration.

207 (12) The provisions of this section shall not be construed
208 to prohibit the commission from awarding or entering into
209 contracts for the design, construction and financing of toll
210 roads, highways and bridge projects as provided under Sections
211 65-43-1 and 65-43-3.

212 (13) The provisions of this section shall not be construed
213 to prohibit the commission from applying for any special
214 experimental project as may be authorized by the United States
215 Department of Transportation, when the commission determines that
216 it is in the best interest of the public, and is otherwise in
217 accordance with state law.

218 **SECTION 2.** This act shall take effect and be in force from
219 and after July 1, 2024.

