

By: Senator(s) Branning, Parker, McLendon

To: Highways and
Transportation

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2645

1 AN ACT TO AMEND SECTION 65-1-85, MISSISSIPPI CODE OF 1972, TO
2 UPDATE CERTAIN PUBLICATION AND BID AWARD REQUIREMENTS; TO REVISE
3 THE REQUIREMENTS FOR DESIGN-BUILD PROJECTS OF THE MISSISSIPPI
4 TRANSPORTATION COMMISSION; TO ALLOW THE MISSISSIPPI TRANSPORTATION
5 COMMISSION TO UTILIZE FEDERALLY APPROVED ALTERNATIVE CONTRACTING
6 METHODS; AND FOR RELATED PURPOSES.

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

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

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

19 (a) Advertisement for bids shall be in accordance with
20 such rules and regulations, in addition to those herein provided,



21 as may be adopted therefor by the commission, and the commission
22 is authorized and empowered to make and promulgate such rules and
23 regulations as it may deem proper, to provide and adopt standard
24 specifications for road and bridge construction, and to amend such
25 rules and regulations from time to time.

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

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

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



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

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



71 for double any amount in money or property the state may lose or
72 be overcharged or otherwise defrauded of by reason of any wrongful
73 or criminal act, if any, of the contractor, his or her agent or
74 employees.

75 (2) With respect to equipment used in the construction,
76 reconstruction or other public work authorized to be done under
77 the provisions of this chapter: * * *

78 (a) "Equipment," in addition to all equipment
79 incorporated into or fully consumed in connection with such
80 project, shall also include the reasonable value of the use of all
81 equipment of every kind and character and all accessories and
82 attachments thereto which are reasonably necessary to be used and
83 which are used in carrying out the performance of the contract,
84 and the reasonable value of the use thereof, during the period of
85 time the same are used in carrying out the performance of the
86 contract, shall be the amount as agreed upon by the persons
87 furnishing the equipment and those using the same to be paid
88 therefor, which amount, however, shall not be in excess of the
89 maximum current rates and charges allowable for leasing or renting
90 as specified in Section 65-7-95; * * *

91 (b) "Labor" shall include all work performed in
92 repairing equipment used in carrying out the performance of the
93 contract, which repair labor is reasonably necessary to the
94 efficient operation of said equipment; and * * *



95 (c) "Materials" and "supplies" shall include all repair
96 parts installed in or on equipment used in carrying out the
97 performance of the contract, which repair parts are reasonably
98 necessary to the efficient operation of said equipment.

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

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

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

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



120 such construction or paving shall not necessarily be delayed until
121 the funds are actually on hand, provided authorization for the
122 issuance of necessary bonds has been granted by law to supplement
123 other anticipated revenue, or when the department certifies to the
124 Department of Finance and Administration and the Legislative
125 Budget Office that projected receipts of funds by the department
126 will be sufficient to pay such contracts as they become due and
127 the Department of Finance and Administration determines that the
128 projections are reasonable and receipts will be sufficient to pay
129 the contracts as they become due. The Department of Finance and
130 Administration shall spread such determination on its minutes
131 prior to the letting of any contracts based on projected receipts.
132 Nothing in this subsection shall prohibit the issuance of bonds,
133 which have been authorized, at any time in the discretion of the
134 State Bond Commission, nor to prevent investment of surplus funds
135 in United States government bonds or State of Mississippi bonds as
136 presently authorized by Section 12, Chapter 312, Laws of 1956.

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

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



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

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

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

165 (11) (a) As an alternative to the method of awarding
166 contracts as otherwise provided in this section, the commission
167 may use * * *, in accordance with the applicable federal
168 regulations, guidelines and requirements, any Nonexperimental



169 Alternative Contracting Method approved by the United States

170 Department of Transportation, including:

171 (i) * * * Design-build;

172 (ii) * * * Progressive design-build;

173 (iii) * * * Construction manager/general

174 contractor;

175 (iv) Any hybrid, combination or derivative of the

176 Nonexperimental Alternative Contracting Methods as may be allowed

177 by the United States Department of Transportation; and

178 (v) Any additional Nonexperimental Alternative

179 Contracting Method as may become approved and operational by the

180 United States Department of Transportation.

181 (b) As used in this subsection, the term "design-build"

182 method of contracting means a contract that combines the design

183 and construction phases of a project into a single contract and

184 the contractor is required to satisfactorily perform, at a

185 minimum, both the design and construction of the project.

186 (c) * * * As used in this subsection, the term

187 "progressive design-build" method of contracting means a contract

188 that combines the design and construction phase of a project, in

189 which the contract allows the commission and contractor to

190 progress toward a final design, scope, schedule and contract price

191 for the project or portions thereof.

192 (d) * * * As used in this subsection, the term

193 "construction manager/general contractor" method of contracting



194 means that a construction manager is engaged during the design
195 phase to provide input on scheduling, pricing, phasing and other
196 information that assists or informs the commission on issues
197 related to constructability. If the commission and construction
198 manager are able to negotiate a reasonable guaranteed maximum
199 price for construction based on a defined scope and schedule, then
200 the construction manager becomes the general contractor for the
201 construction of the project or portions thereof.

202 (e) * * * The commission shall have all powers
203 necessary to implement and administer this subsection and shall
204 promulgate rules and regulations as necessary to implement and
205 administer the provisions of this subsection.

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

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

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

