

HOUSE BILL NO. 261

AN ACT TO AMEND SECTION 65-1-85, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN RESTRICTIONS ON DESIGN-BUILD PROJECTS OF THE MISSISSIPPI TRANSPORTATION COMMISSION; AND FOR RELATED PURPOSES.

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

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

65-1-85. (1) All contracts by or on behalf of the 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 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 such rules and regulations, in addition to those herein provided, as may be adopted therefor by the 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 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 of such letting, and notices of such letting may be placed in a metropolitan paper or national trade publication.

(c) Before advertising for such work, the executive director shall cause to be prepared and filed in the department detailed plans and specifications covering the work proposed to be done and 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 commission. A fee shall be charged equal to the cost of producing a copy of any such plans and specifications.

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

(e) Each bid for such a construction and reconstruction contract 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.

(f) 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 same shall be liable to the state in a civil action instituted by the state at the instance of the 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 commission, shall have the right to reject any and all bids, whether such right is reserved in the notice or not.

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

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

(6) 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 department 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 in this subsection 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.

(7) 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.

(8) The 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 set forth in this section,

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 commission may prescribe.

(9) The executive director, subject to the approval of the commission, is authorized to negotiate and make agreements with communities and/or civic organizations for landscaping, beautification and maintenance of highway rights-of-way; however, nothing in this subsection 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.

(10) 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.

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

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

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

(iii) Any project which has an estimated cost of more than * * * Ten Million Dollars (\$10,000,000.00), not to exceed one (1) project per fiscal year.

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

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

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

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

(ii) A complete description of the components of the design-build management system, including a description of the

system the department put into place on all projects managed under the system to insure that it has the complete information on highway segment costs and to insure proper analysis of any proposal the commission receives from a highway contractor;

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

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

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

(e) All contracts let under the provisions of this subsection shall be subject to oversight and review by the State Auditor. The State Auditor shall file a report with the Legislature on or before January 1 of each year detailing his findings with regard to any contract let or project performed in violation of the provisions of this subsection. The actual and necessary expenses incurred by the State Auditor in complying with this paragraph (e) shall be paid for and reimbursed by the

Mississippi Department of Transportation out of funds made available for the contract or contracts let and project or projects performed.

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

SECTION 2. This act shall take effect and be in force from and after its passage.

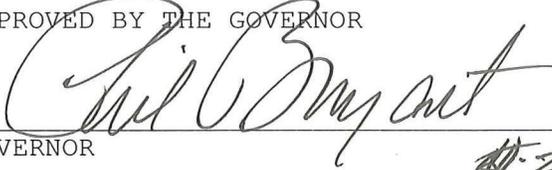
PASSED BY THE HOUSE OF REPRESENTATIVES
February 13, 2013


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 12, 2013


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

4:25 pm
3/21/13