



MEETING MINUTES
Wednesday, February 7, 2018

- Location:** E.T. Woolfolk State Office Building
501 North West Street, Room 145
Jackson, Mississippi
- Board Members Present:** J.K. "Hoopy" Stringer, Jr., Chair
Rita Wray, Vice-Chair
Jeffery Belk
Billy Morehead
Leila Malatesta
Laura Jackson, Department of Finance and Administration
- Staff:** Romaine Richards, Special Assistant Attorney General
Edward Wiggins, Special Assistant Attorney General
Aubrey Leigh Goodwin
Becky Thompson
Brian Pugh
Glenn Kornbrek
Chuck McIntosh
Ross Campbell
Torri Martin
Mike Cook
Symone Bounds
Calvin Sibley
Kent Adams
Alicia Coleman
Billy Beard
Brian Perkins
Chris Statham
David Pitcock
Erin Sandlin
James Brabston
Liz DeRouen
Noah Gibson
Ramona Jones
Regina Irvin
- Guests:** Chief Justice William L. Waller, Jr.
Dewey Hembree, Visitor

Anthony Reed, Alcorn State University
Jeremy Jones, Department of Archives and History
Joey Roberts, Department of Archives and History
Katie Blount, Department of Archives and History
Robert Benson, Department of Archives and History
Stephenie Morrissey, Department of Archives and History
Reagan Spears, Department of Child Protection Services
Tricia Shannon, Mississippi Development Authority
Madeleine Morris, Department of Education
Monique Corley, Department of Education
Paula Vanderford, Department of Education
Walt Drane, Department of Education
Vincent Segalini, Department of Education
Angela Johnson, Mississippi Emergency Management Agency
Edward Williams, Mississippi Emergency Management Agency
Cindy Bradshaw, DFA Office of Insurance
Richard Self, DFA Office of Insurance
Gwendolyn Ducksworth, Department of Health
Dgina Booker, Department of Health
Jennifer Dotson, Department of Health
Johnny Nelson, Department of Health
Elizabeth Rocquin, Department of Human Services
Lynn Ainsworth, Department of Information Technology Services
Toni Johnson, DMH-Central Office
Rebecca Henley, Department of Rehabilitation Services
LaVonda Hart, Department of Rehabilitation Services
Brian Ferguson, Department of Wildlife, Fisheries and Parks
Esther Young, Department of Wildlife, Fisheries and Parks
Marilyn Watkins, Department of Wildlife, Fisheries and Parks
Lindsey Brown, Division of Medicaid
Mary Katherine Ulmer, Division of Medicaid
Matt Nassar, Division of Medicaid

I. Call to Order

The meeting was called to order by Chair J.K. "Hoopy" Stringer, Jr.

II. Oath of Office

Ms. Malatesta was sworn in by Chief Justice of the Mississippi Supreme Court William L. Waller, Jr.

III. Approval of Minutes from the January 3, 2018 Public Procurement Review Board Meeting

Action: A motion was made by Mr. Belk to approve the Minutes from the January 3, 2018 PPRB meeting as presented. The motion was seconded by Mr. Morehead and unanimously approved by all members present.

IV. Approval of per diem and expenses for the February 7, 2018 meeting and for any additional expenses incurred prior to the March 7, 2018 meeting

Action: A motion was made by Mr. Morehead to approve per diem and expenses for the February 7, 2018 meeting and for any additional expenses incurred prior to the March 7, 2018 meeting. The motion was seconded by Ms. Malatesta and unanimously approved by all members present.

V. DFA Office of Purchasing, Travel and Fleet Management (OPTFM)

A. Petitions for Relief from Reverse Auction

1. Governing Authorities

On January 3, 2018, OPTFM requested that this Board grant an exemption to all governing authorities impacted by the requirement that reverse auctions be performed for all commodity and equipment purchases above \$50,000.00. OPTFM made this request in consideration of impending legislation designed to address the conflict between prior Attorney General Opinions and the business models of reverse auction service providers regarding who pays the fee for the auction. As previously mentioned to the Board, the DFA/ITS state contract award for reverse auction services is on hold at this time, in anticipation of the legislation which has been introduced but has not been passed yet. Since the last Board meeting, the Special Assistant Attorney General has advised the OPTFM that each entity requesting an exemption should submit a request in writing. Accordingly, OPTFM requests that this Board authorize the staff of OPTFM to apply an exemption, on a case by case basis, to procurements begun after February 7, 2018, where the purchasing entity determines a reverse auction is not in the best interest of the State and submits a written request for exemption. OPTFM requests that this approval authority specifically includes requests made on the grounds that there remains doubt as to the legality of the method of payment by suppliers when utilizing reverse auctions and that it is not in the best interest of the State to pay the fee. Upon granting of the authority, OPTFM will disseminate instructions through email to all governing authorities.

Staff Recommendation: Granting of authority to approve requested exemptions on a case-by-case basis.

Action: A motion was made by Mr. Morehead to approve the staff recommendation as presented. The motion was seconded by Ms. Wray and unanimously approved by all members present.

2. State Agencies

i. Requesting Agency: Mississippi State Department of Health (MSDH)

Supplier: Unknown-N/A

Contract #: 3180000251

Term: One (1) Year (02/07/2018 – 02/06/2019)

Total Value: \$250,000.00

Summary of Request: MSDH has requested an exemption from using the Reverse Auction process for the purchase of a Matrix Assisted Laser Description Ionization Time

Flight Mass Spectrometer Instrument. MSDH is requesting the exemption because there are only two (2) vendors known to distribute the mass spectrometer instrument and the reverse auction process is not in the best interest of the State. MSDH believes the competitive sealed bid process should be utilized to procure the mass spectrometer instrument.

Staff Recommendation: Based on the information provided, OPTFM recommends approval of the exemption and the use of competitive sealed bid for the procurement.

Action: A motion was made by Mr. Morehead to approve the staff recommendation as presented. The motion was seconded by Mr. Belk and unanimously approved by all members present.

ii. **Requesting Agency:** Mississippi State Department of Health (MSDH)

Supplier: Unknown-N/A

Contract #: 3180000252

Term: One (1) Year (02/07/2018 – 02/06/2019)

Total Value: \$100,000.00

Summary of Request: MSDH has requested an exemption from using the Reverse Auction process for an automated Enzyme Linked Immunosorbent Assay Processing System. MSDH is requesting the exemption because there are only two (2) to three (3) vendors that are known to distribute the processing system and the reverse auction process is not in the best interest of the State. MSDH believes the competitive sealed bid process should be utilized to procure the processing system.

Staff Recommendation: Based on the information provided, OPTFM recommends approval of the exemption and the use of competitive sealed bid for the procurement.

Action: A motion was made by Mr. Belk to approve the staff recommendation as presented. The motion was seconded by Ms. Malatesta and unanimously approved by all members present.

iii. **Requesting Agency:** Mississippi State Department of Health (MSDH)

Supplier: Unknown-N/A

Contract #: 3180000260

Term: One (1) Year (02/07/2018 – 02/06/2019)

Total Value: \$30,000,000.00-\$35,000,000.00

Summary of Request: MSDH has requested an exemption from using the Reverse Auction process to purchase food and nutritional items for the Women, Infants and Children Supplemental Food Program (WIC). Approximately 65 items are bid for a cycle and furnished through a statewide warehousing system, consisting of approximately 90 locations with weekly deliveries. This is a unique delivery system, that requires a vendor capable of servicing a statewide program. MSDH is requesting the exemption because only two vendors will participate due to the complexity of the program and the reverse auction process will not result in any additional savings or vendors. Since the competitive sealed bid process has been used in the past for obtaining and distributing these items, MSDH thinks the competitive sealed bid process should be utilized to procure and distribute these items.

Staff Recommendation: Based on the information provided, OPTFM recommends approval of the exemption and the use of competitive sealed bid for the procurement.

Action: A motion was made by Mr. Morehead to approve the staff recommendation as presented. The motion was seconded by Mr. Belk and unanimously approved by all members present.

B. Staff Approvals Reported to the Board

An updated report of all staff approvals reported to the Board as of January 31, 2018 is attached to these Minutes as **Attachment A**.

C. Consideration of Contracts for Board Action

1. Requesting Agency: University of Southern Mississippi (USM)

Supplier: ASV Global

Contract #: 8200037145

Term: 12/20/2017 – 12/19/2018

Total Value: \$919,000.00

Summary of Request: USM solicited a bid for the purchase of one (1) autonomous surface vessel to be used to conduct survey operations and various levels of autonomous and hydrographic survey operations. The USM Mapping Center has received funding from NOAA to procure a USV suitable for extended hydrographic survey operations, the integration of the survey suite onboard to conduct those surveys, the development of the Concept of Operations for the conduct of the surveys, the development of a training module covering the operations and maintenance of the vehicle, and the initial training of a team of NOAA operators. USM notified four (4) vendors via e-mail of bid solicitation and received one (1) response from ASV Global. USM is requesting to award ASV Global for the term and amount above.

Staff Recommendation: Based on the information submitted by the Agency, OPTFM recommends approval of the contract.

Action: A motion was made by to Mr. Morehead approve the staff recommendation as presented. The motion was seconded by Mr. Belk and unanimously approved by all members present.

2. Requesting Agency: Mississippi Department of Wildlife, Fisheries and Parks (MDWFP)

Supplier: Silver Ships

Contract #: 8200037324

Term: One (1) year 01/08/2018 - 01/07/2019

Total Value: \$776,012.00 (\$388,006.00 per boat)

Summary of Request: MDWFP solicited a bid for the purchase of two (2) 27' full cabin outboard powered aluminum foam stabilized watercrafts to be used as a response/patrol interdiction boat for use on the waters in and around Mississippi.

MDWFP received two (2) responses from the solicitation and requests to award to Silver Ships based on specifications and lowest bid.

Staff Recommendation: Based on the information submitted by the Agency, OPTFM recommends approval of the contract.

Action: A motion was made by Mr. Morehead to approve the staff recommendation as presented. The motion was seconded by Ms. Malatesta and unanimously approved by all members present.

VI. DFA Bureau of Building, Grounds, and Real Property Management (BOB/RPM)

A. BOB Staff Approvals Reported to the Board

An updated report of all staff approvals reported to the Board as of January 31, 2018 is attached to these Minutes as **Attachment B**.

B. RPM Leases with no Increase in Cost or Space

1. Requesting Agency: Mississippi State Department of Health

Lessor: Dick Marchbanks 01561

Lease #: 390-812-20A

Term: 03/01/2018 through 09/30/2020

Total Yearly Cost: \$14,568

Cost PSF: \$4.50 + Utilities and Janitorial

Federal Funds: 100%

Square Footage Proposed: 3,237 (450sf office & 2,698sf warehouse)

Previous Square Footage: 3,237

Address of Property: 220 Blackmur Dr. Water Valley, MS

Purpose of Lease: WIC warehouse and office

Note: Addendum-The Department of Health requests for extensions through September 30, 2020, which is the anticipated date that the WIC Warehouse System will terminate in the State of Mississippi. The Mississippi Department of Health is requesting to amend Section 20 of the standard Lease to include an Addendum addressing the ability to terminate the lease sooner, should the WIC funding be terminated prior to September 30, 2020. (All Health WIC requests herein are in accordance with recent leases submitted by Health.)

Staff Recommendation: RPM recommends the approval of this lease. Agency has complied with all RPM requirements.

Action: A motion was made by Ms. Wray to approve the staff recommendation as presented. The motion was seconded by Ms. Malatesta and unanimously approved by all members present.

2. **Requesting Agency:** Mississippi Department of Rehabilitation Services
Lease #: 725-242-33A
Lessor: John Fayard Moving & Warehouse 01832
Term: 04/01/2018 through 03/31/2033
Total Yearly Cost: \$180,000
Cost PSF: \$15.43+ Utilities and Janitorial
Federal Funds: 85%
Square Footage Proposed: 11,667 (9,167sf office & 1,500sf storage & warehouse)
Previous Square Footage: 11,667
Address of Property: 13486 Fastway Lane, Gulfport, MS
Purpose of Lease: Offices & Warehouse
Note: Although the cost per square foot seems to be high, this cost is in keeping with the average cost in this area.

Staff Recommendation: RPM recommends the approval of this lease. Agency has complied with all RPM requirements.

Action: A motion was made by Ms. Malatesta to approve the staff recommendation as presented. The motion was seconded by Mr. Belk and unanimously approved by all members present.

VII. DFA Office of Personal Service Contract Review (OPSCR)

A. Petitions for Relief from Competitive Sealed Bidding

1. **Requesting Agency:** Mississippi Department of Education
Procurement Request: Request for Proposals
Anticipated Term: 07/01/2018 – 06/30/2019
Anticipated Contract Amount: \$5,000,000.00 per year
Summary of Request: The agency has submitted a petition for relief from the use of an IFB as the procurement method as allowed by Miss. Code Ann. § 31-7-403(4) for the competitive procurement of a contractor to develop the Mississippi Academic Assessment Program, Science (MAAP-SCI) Grade 5 and Grade 8 and Mississippi Academic Assessment Program, End of Course (MAAP-EOC) Biology and U.S. History. The agency contends the use of an IFB is neither practicable nor advantageous as the nature of the work is highly technical and demands extraordinary attention to detail in the area of psychometrics, test design, delivery, scoring, and reporting. The quality of the assessments is non-negotiable, as these statewide assessments must valid, reliable, and consistent with relevant, nationally recognized professional and technical standards that objectively measure academic achievement, knowledge, and skills. The assessments must be legally defensible if the scores are ever challenged in a court proceeding. The technical factors will be weighted at forty-five (45) points, the management factors will be weighed at twenty (20) points, and the cost factors will be weighted at thirty-five (35) points.

Staff Recommendation: Granting of the agency's petition for relief from competitive bidding requirements as a procurement method as allowed by Miss. Code Ann. § 31-7-403(4) and approval of the agency's request to use a Request for Proposals as the

procurement method to select one contractor to develop the Mississippi Academic Assessment Program, Science (MAAP-SCI) Grade 5 and Grade 8 and Mississippi Academic Assessment Program, End of Course (MAAP-EOC) Biology and U.S. History.

Ms. Martin stated pursuant to Miss. Code Ann. § 31-7-413(2)(a), price shall be the highest-weighted evaluation factor in a Request for Proposals or Request for Qualifications. As such, Ms. Martin presented an amended staff recommendation.

Amended Staff Recommendation: Directing the agency to lower the weight for technical factors to less than forty-five (45) points, granting of the agency's petition for relief from competitive bidding requirements as a procurement method as allowed by Miss. Code Ann. § 31-7-403(4), and approval of the agency's request to use a Request for Proposals as the procurement method to select one contractor to develop the Mississippi Academic Assessment Program, Science (MAAP-SCI) Grade 5 and Grade 8 and Mississippi Academic Assessment Program, End of Course (MAAP-EOC) Biology and U.S. History.

Action: A motion was made by Mr. Morehead to approve the amended staff recommendation as presented. The motion was seconded by Mr. Belk and unanimously approved by all members present.

B. Consideration of Contracts for Board Action

Items VII.B.1 and VII.B.2 were presented together.

1. **Requesting Agency:** Mississippi Department of Rehabilitation Services

Supplier: Living Independence for Everyone, Inc.

Contract #: 8200037401

Term: 02/12/2018 – 09/30/2018

Total Value: \$111,500.00

New

\$111,500.00

Summary of Request: The contractor will provide pre-employment transition services to include work-based learning experience, job exploration counseling, and workplace readiness training. Additionally, the contractor may provide self-advocacy/mentoring instruction and counseling on enrollment in post-secondary education or other comprehensive transition training programs. The term of the contract is seven months and seventeen days with four optional one-year renewals. The contractor was selected through an RFP with three respondents, which resulted in the award of two contracts. This RFP was advertised prior to January 1, 2018; therefore, the use of an Invitation for Bids was not required. The Agency requests an exception to Section 3-202.06.3, Content of Advertisement, of the PSCRB Rules and Regulations for setting the date for receiving proposals for a Monday.

Staff Recommendation: Granting of the exception to Section 3-202.06.3 of the PSCRB Rules and Regulations and approval of the contract as requested.

2. Requesting Agency: Mississippi Department of Rehabilitation Services

Supplier: The University of Southern Mississippi

Contract #: 8200037400

Term: 02/12/2018 – 09/30/2018

Total Value: \$202,439.00

New

\$202,439.00

Summary of Request: The contractor will provide pre-employment transition services to include work-based learning experience, job exploration counseling, and workplace readiness training. Additionally, the contractor may provide self-advocacy/mentoring instruction and counseling on enrollment in post-secondary education or other comprehensive transition training programs. The term of the contract is seven months and seventeen days with four optional one-year renewals. The contractor was selected through an RFP with three respondents, which resulted in the award of two contracts. This RFP was advertised prior to January 1, 2018; therefore, the use of an Invitation for Bids was not required. The agency requests an exception to Section 3-202.06.3, Content of Advertisement, of the PSCRB Rules and Regulations for setting the date for receiving proposals for a Monday.

Staff Recommendation: Granting of the exception to Section 3-202.06.3 of the PSCRB Rules and Regulations and approval of the contract as requested.

Action: A motion was made by Mr. Belk to approve the staff recommendations as presented for Items VII.B.1 and VII.B.2. The motion was seconded by Ms. Wray and unanimously approved by all members present.

3. Requesting Agency: Mississippi Department of Archives and History

Supplier: The Godwin Advertising Agency, Inc. d/b/a GodwinGroup

Contract #: 8200036453

Term: 11/15/2017 – 06/30/2018

Total Value: \$2,813,844.00

Modification

\$215,000.00

Summary of Request: Addendum One has been submitted to increase the amount of the contract by \$215,000.00 due to an increase in marketing services for the Mississippi Civil Rights Museum and the Museum of Mississippi History. All other terms and conditions of the original contract remain the same, including the fixed fees and blended hourly rate. The contractor implements a cohesive and fully integrated marketing plan that targets best markets, platforms, and outlets to reach potential visitors to Mississippi and promote Mississippi attractions to outside markets. The contractor was originally selected through an RFP.

Staff Recommendation: Approval of the contract modification as requested.

Action: A motion was made by Mr. Belk to approve the staff recommendation as presented. The motion was seconded by Ms. Malatesta and unanimously approved by all members present.

Items VII.B.4 and VII.B.5 were presented together.

- 4. Requesting Agency:** Division of Medicaid
Supplier: Medical Transportation Management, Inc.
Contract #: 86846/8200007429
Term: 03/01/2014 – 06/30/2018
Total Value: \$4,942,360.00 **Renewal \$171,233.00**
- Summary of Request:** Amendment Two has been submitted to renew the contract for four months. This is the first of two optional renewals allowed by the original contract. All other terms and conditions of the original contract, including the price per beneficiary per month, remain the same. Based on an estimated participant population of 65, the price per beneficiary per month associated with Amendment Two will remain \$658.59. The contractor develops and operates a non-emergency transportation (hereinafter "NET") brokerage program for End-Stage Renal Disease patients as mandated by the Mississippi Legislature. This NET service includes, but is not limited to, authorization, coordination, scheduling, management, and reimbursement. This contract is subject to a protective order entered into by the Hinds County Chancery Court on December 27, 2013 to protect from release confidential commercial and financial information and/or trade secrets with regard to any contract and amendment resulting from RFP #20130802 and RFP #20130802-1. Items are redacted based on the advice of the Special Assistant Attorney General. Further, the PSCRB approved DOM's exception request for not adding the Trade Secrets, Commercial and Financial Information clause to the contract as was required in PSCRB Rules and Regulations Appendix C, due to the protective order.

Staff Recommendation: Approval of the contract renewal as requested.

- 5. Requesting Agency:** Division of Medicaid
Supplier: Medical Transportation Management, Inc.
Contract #: 86845/8200007428
Term: 03/01/2014 – 12/31/2018
Total Value: \$164,672,718.00 **Renewal \$31,950,400.00**
- Summary of Request:** Amendment Three has been submitted to renew the contract for ten months. This is the second of two optional renewals allowed by the original contract. Based on an estimated participant population of 121,549, the price per beneficiary per month associated with Amendment Three will increase to \$26.29 effective March 1, 2018. All other terms and conditions of the original contract remain the same. The contractor develops and operates a non-emergency transportation (hereinafter "NET") brokerage program. This NET service includes, but is not limited to, authorization, coordination, scheduling, management, and reimbursement. This contract is subject to a protective order entered into by the Hinds County Chancery Court on December 27, 2013 to protect from release confidential commercial and financial information and/or trade secrets with regard to any contract and amendment resulting from RFP #20130802 and RFP #20130802-1. Items are redacted based on the advice of the Special Assistant Attorney General. Further, the PSCRB approved DOM's exception request for not adding the Trade Secrets, Commercial and Financial Information clause to the contract as was required in PSCRB Rules and Regulations Appendix C, due to the protective order.

Staff Recommendation: Approval of the contract renewal as requested.

Action: A motion was made by Ms. Wray to approve the staff recommendations as presented for Items VII.B.4 and VII.B.5. The motion was seconded by Ms. Malatesta and unanimously approved by all members present and voting. Mr. Belk abstained from the vote.

6. Requesting Agency: Mississippi Department of Finance and Administration

Supplier: Cannon Cochran Management Services, Inc.

Contract #: 8200037110

Term: 07/01/2018 – 06/30/2022

Total Value: \$4,069,838.00

New

\$4,069,838.00

Summary of Request: The contractor will provide third party claims administration services to the Mississippi State Agencies Self-Insured Workers' Compensation Trust to manage all claims-related services, including but not limited to, claims investigations, compensability determinations, claim and expense payments, litigation management, medical case management, subrogation, excess insurance reimbursement coordination, internal and external reporting, and safety/risk control services to help minimize and control losses. The contractor was selected through an RFP with four respondents. Two post-award vendor debriefings were requested and held. This RFP was advertised prior to January 1, 2018; therefore, the use of an Invitation for Bids was not required. Proof of the vendor's required professional liability, blanket fidelity bond, and performance bond insurance certifications must be received from the Agency prior to processing the contract.

Staff Recommendation: Approval of the contract as requested contingent upon receipt of the vendor's required liability, fidelity bond, and performance bond insurance certifications.

Action: A motion was made by Ms. Malatesta to approve the staff recommendation as presented. The motion was seconded by Ms. Wray and unanimously approved by all members present.

C. Department of Child Protection Services Contracts and Department of Human Services Contracts Useful in Establishing and Operating DCPS for Fiscal Year 2018

Neither the Public Procurement Review Board nor OPSCR staff approves Department of Child Protection Services (DCPS) contracts or Department of Human Services (DHS) contracts useful in establishing and operating DCPS. These contracts are reported to the board for consideration of recommendations, but are not subject to OPSCR Rules and Regulations. The implementation of any board recommendations is at the discretion of DHS and/or DCPS. Pursuant to Miss. Code Ann. § 27-104-7(f), the board is not authorized to disapprove any proposed personal service contracts for DCPS or DHS contracts that are useful in establishing and operating DCPS.

An updated report of all Department of Child Protection Services Contracts and Department of Human Services Contracts useful in establishing and operating DCPS reported to the Board for Fiscal Year 2018 is attached to these Minutes as **Attachment C**.

D. Emergency Contracts Reported to the Board for Fiscal Year 2018

Emergency contracts are reviewed by OPSCR staff for technical compliance upon the written request of the submitting agency. The OPSCR staff will process the contract in MAGIC upon receipt of the contract, and then conduct the requested review and notify the agency of any problems found during the requested review; however, it is the responsibility of the agency to correct any errors. If no written request for review is made by the submitting agency, OPSCR staff will process the contract in MAGIC upon receipt of same, and then conduct a review of the contract for internal auditing purposes. Emergency contracts are presented to the PPRB at its regular meeting and are included in the minutes of said meeting, but no action is required by the PPRB as to these contracts. Any approval in MAGIC or any other state system does not constitute approval of the emergency procurement by the PPRB and is done solely for processing purposes. This provision is not intended to prevent the PPRB from making a report under the statutory authority to audit or to take other action as deemed appropriate.

An updated report of all emergency contracts reported to the Board for FY 2018 is attached to these Minutes as **Attachment D**.

E. Staff Approvals Reported to the Board

An updated report of all staff approvals reported to the Board as of January 31, 2018 is attached to these Minutes as **Attachment E**.

F. Director's Report

1. Rules and Regulations

i. Proposed Rules and Regulations

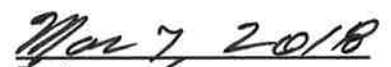
The proposed Rules and Regulations are attached to these Minutes as **Attachment F**.

VIII. Adjournment

Action: A motion was made by Mr. Morehead to approve the staff recommendation as presented. The motion was seconded by Ms. Wray and unanimously approved by all members present.

These Minutes of the Public Procurement Review Board were approved by the members on the 7th of March, 2018.


J. K. "Hoopy" Stringer, Jr., Chair


Date



STATE OF MISSISSIPPI
GOVERNOR PHIL BRYANT

DEPARTMENT OF FINANCE AND ADMINISTRATION

LAURA D. JACKSON
EXECUTIVE DIRECTOR

NOTICE

A Regular Meeting of the

PUBLIC PROCUREMENT REVIEW BOARD

will be held Wednesday, February 7, 2018, 9:00 a.m. in
Room 145 Conference Room
Woolfolk State Office Building



PUBLIC PROCUREMENT REVIEW BOARD

Regular Meeting

Wednesday, February 7, 2018
9:00 a.m.

ATTENDANCE SHEET

NAME AND TITLE

AGENCY/COMPANY

(Please Print)

Betsy Thompson	DFA
Monique Doherty	MOE
Walt Drane	"
Vincent Seligson	"
Melanie Morris	"
Jennifer Watson	MSDH
Wendolyn Dieckswarth	MSDH
Dyanne Booth	MSDH
Vincent Segolini	MITE
Elizabeth Tracquin	MDHS
Lee & Wilson	MDHS
Brian Pugh	DFA
Glen R. Korabek	DFA
Ross Campbell	DFA
Alicia Colema	DFA
CHUCK MCINTOSH	DFA
LYNN AINSWORTH	ITS
Walt Drane	MDE
John Nelson	MSDH
Chris [Signature]	DFA

RAMONIA JONES	DFA/OPTFM
Regina Irvin	DFA/OPTFM
Earl Sandlin	DFA/OPTFM
Don P. Cook	DFA/MRS
MIKE COOK	DFA/OPTFM
Calvin Siple	BoB
Madeline M.	MDE
Symon BUND	DFA
Danny Hembrow	MS
Art Rogers	DFA
Wilson Reed I	Alcum State Univ.
Jim [unclear]	DFA
Cindy [unclear]	✓
ESTHER D YOUNG	MDWFP
Angela Johnson	MEMA
Edward Williams	MEMA
Robert Benson	MDAH
Kate Blount	MDAH
Stephenie Morrissey	MDAH
Joey [unclear]	MDAH
Matt Nussor	DOM
Mary K. Winer	DOM
Toni Johnson	DMH
Rebecca Henley	MRS
Paula Vanderford	MDE
Kenneth Richards	AG/DFA
Laundal Hart	MRS
Reagan Spears	CRS
Sticia Shamm	MDA
Marilyn Watkins	MDWFP
Lindsay C. Brown	DOM
Jim Deacon	DFA



MEETING AGENDA
Wednesday, February 7, 2018
9:00 a.m.

- I. Call to Order**
- II. Oath of Office**
- III. Approval of Minutes from January 3, 2018 Public Procurement Review Board Meeting**
- IV. Approval of per diem and expenses for the February 7, 2018 meeting and for any additional expenses incurred prior to the March 7, 2018 meeting**
- V. DFA Office of Purchasing, Travel and Fleet Management (OPTFM)**

A. Petitions for Relief from Reverse Auction

1. Governing Authorities

On January 3, 2018, OPTFM requested that this Board grant an exemption to all governing authorities impacted by the requirement that reverse auctions be performed for all commodity and equipment purchases above \$50,000.00. OPTFM made this request in consideration of impending legislation designed to address the conflict between prior Attorney General Opinions and the business models of reverse auction service providers regarding who pays the fee for the auction. As previously mentioned to the Board, the DFA/ITS state contract award for reverse auction services is on hold at this time, in anticipation of the legislation which has been introduced but has not been passed yet. Since the last Board meeting, the Special Assistant Attorney General has advised the OPTFM that each entity requesting an exemption should submit a request in writing. Accordingly, OPTFM requests that this Board authorize the staff of OPTFM to apply an exemption, on a case by case basis, to procurements begun after February 7, 2018, where the purchasing entity determines a reverse auction is not in the best interest of the State and submits a written request for exemption. OPTFM requests that this approval authority specifically includes requests made on the grounds that there remains doubt as to the legality of the method of payment by suppliers when utilizing reverse auctions and that it is not in the best interest of the State to pay the fee. Upon granting of the authority, OPTFM will disseminate instructions through email to all governing authorities.

Staff Recommendation: Granting of authority to approve requested exemptions on a case by case basis.

2. State Agencies

i. **Requesting Agency:** Mississippi State Department of Health (MSDH)

Supplier: Unknown-N/A

Contract #: 3180000251

Term: One (1) Year (02/07/2018 – 02/06/2019)

Total Value: \$250,000.00

Summary of Request: MSDH has requested an exemption from using the Reverse Auction process for the purchase of a Matrix Assisted Laser Description Ionization Time Flight Mass Spectrometer Instrument. MSDH is requesting the exemption because there are only two (2) vendors known to distribute the mass spectrometer instrument and the reverse auction process is not in the best interest of the State. MSDH believes the competitive sealed bid process should be utilized to procure the mass spectrometer instrument.

Staff Recommendation: Based on the information provided, OPTFM recommends approval of the exemption and the use of competitive sealed bid for the procurement.

ii. **Requesting Agency:** Mississippi State Department of Health (MSDH)

Supplier: Unknown-N/A

Contract #: 3180000252

Term: One (1) Year (02/07/2018 – 02/06/2019)

Total Value: \$100,000.00

Summary of Request: MSDH has requested an exemption from using the Reverse Auction process for an automated Enzyme Linked Immunosorbent Assay Processing System. MSDH is requesting the exemption because there are only two (2) to three (3) vendors that are known to distribute the processing system and the reverse auction process is not in the best interest of the State. MSDH believes the competitive sealed bid process should be utilized to procure the processing system.

Staff Recommendation: Based on the information provided, OPTFM recommends approval of the exemption and the use of competitive sealed bid for the procurement.

iii. **Requesting Agency:** Mississippi State Department of Health (MSDH)

Supplier: Unknown-N/A

Contract #: 3180000260

Term: One (1) Year (02/07/2018 – 02/06/2019)

Total Value: \$30,000,000.00-\$35,000,000.00

Summary of Request: MSDH has requested an exemption from using the Reverse Auction process to purchase food and nutritional items for the Women, Infants and Children Supplemental Food Program, (WIC). Approximately 65 items are bid for a cycle and furnished through a statewide warehousing system, consisting of approximately 90 locations with weekly deliveries. This is a unique delivery system, that requires a vendor capable of servicing a statewide program. MSDH is

requesting the exemption because only two vendors will participate due to the complexity of the program and the reverse auction process will not result in any additional savings or vendors. Since the competitive sealed bid process has been used in the past for obtaining and distributing these items, MSDH thinks the competitive sealed bid process should be utilized to procure and distribute these items.

Staff Recommendation: Based on the information provided, OPTFM recommends approval of the exemption and the use of competitive sealed bid for the procurement.

B. Staff Approvals Reported to the Board

C. Consideration of Contracts for Board Action

1. Requesting Agency: University of Southern Mississippi (USM)

Supplier: ASV Global

Contract #: 8200037145

Term: 12/20/2017 – 12/19/2018

Total Value: \$919,000.00

Summary of Request: USM solicited a bid for the purchase of one (1) autonomous surface vessel to be used to conduct survey operations and various levels of autonomous and hydrographic survey operations. The USM Mapping Center has received funding from NOAA to procure a USV suitable for extended hydrographic survey operations, the integration of the survey suite onboard to conduct those surveys, the development of the Concept of Operations for the conduct of the surveys, the development of a training module covering the operations and maintenance of the vehicle, and the initial training of a team of NOAA operators. USM notified four (4) vendors via e-mail of bid solicitation and received one (1) response from ASV Global. USM is requesting to award ASV Global for the term and amount above.

Staff Recommendation: Based on the information submitted by the Agency, OPTFM recommends approval of the contract.

2. Requesting Agency: Mississippi Department of Wildlife, Fisheries and Parks (MDWFP)

Supplier: Silver Ships

Contract #: 8200037324

Term: One (1) year 01/08/2018 - 01/07/2019

Total Value: \$776,012.00 (\$388,006.00 per boat)

Summary of Request: MDWFP solicited a bid for the purchase of two (2) 27' full cabin outboard powered aluminum foam stabilized watercrafts to be used as a response/patrol interdiction boat for use on the waters in and around Mississippi. MDWFP received two (2) responses from the solicitation and requests to award to Silver Ships based on specifications and lowest bid.

Staff Recommendation: Based on the information submitted by the Agency, OPTFM recommends approval of the contract.

VI. DFA Bureau of Building, Grounds, and Real Property Management (BOB/RPM)

A. BOB Staff Approvals Reported to the Board

B. RPM Leases with no Increase in Cost or Space

1. **Requesting Agency:** Mississippi State Department of Health

Lessor: Dick Marchbanks 01561

Lease #: 390-812-20A

Term: 03/01/2018 through 09/30/2020

Total Yearly Cost: \$14,568

Cost PSF: \$4.50 + Utilities and Janitorial

Federal Funds: 100%

Square Footage Proposed: 3,237 (450sf office & 2,698sf warehouse)

Previous Square Footage: 3,237

Address of Property: 220 Blackmur Dr. Water Valley, MS

Purpose of Lease: WIC warehouse and office

Note: Addendum-The Department of Health requests for extensions through September 30, 2020, which is the anticipated date that the WIC Warehouse System will terminate in the State of Mississippi. The Mississippi Department of Health is requesting to amend Section 20 of the standard Lease to include an Addendum addressing the ability to terminate the lease sooner, should the WIC funding be terminated prior to September 30, 2020. (All Health WIC requests herein are in accordance with recent leases submitted by Health.)

Staff Recommendation: RPM recommends the approval of this lease. Agency has complied with all RPM requirements.

2. **Requesting Agency:** Mississippi Department of Rehabilitation Services

Lease #: 725-242-33A

Lessor: John Fayard Moving & Warehouse 01832

Term: 04/01/2018 through 03/31/2033

Total Yearly Cost: \$180,000

Cost PSF: \$15.43+ Utilities and Janitorial

Federal Funds: 85%

Square Footage Proposed: 11,667 (9,167sf office & 1,500sf storage & warehouse)

Previous Square Footage: 11,667

Address of Property: 13486 Fastway Lane, Gulfport, MS

Purpose of Lease: Offices & Warehouse

Note: Although the cost per square foot seems to be high, this cost is in keeping with the average cost in this area.

Staff Recommendation: RPM recommends the approval of this lease. Agency has complied with all RPM requirements.

VII. DFA Office of Personal Service Contract Review (OPSCR)

A. Petitions for Relief from Competitive Sealed Bidding

1. **Requesting Agency:** Mississippi Department of Education

Procurement Request: Request for Proposals

Anticipated Term: 07/01/2018 – 06/30/2019

Anticipated Contract Amount: \$5,000,000.00 per year

Summary of Request: The agency has submitted a petition for relief from the use of an IFB as the procurement method as allowed by Miss. Code Ann. § 31-7-403(4) for the competitive procurement of a contractor to develop the Mississippi Academic Assessment Program, Science (MAAP-SCI) Grade 5 and Grade 8 and Mississippi Academic Assessment Program, End of Course (MAAP-EOC) Biology and U.S. History. The agency contends the use of an IFB is neither practicable nor advantageous as the nature of the work is highly technical and demands extraordinary attention to detail in the area of psychometrics, test design, delivery, scoring, and reporting. The quality of the assessments is non-negotiable, as these statewide assessments must valid, reliable, and consistent with relevant, nationally recognized professional and technical standards that objectively measure academic achievement, knowledge, and skills. The assessments must be legally defensible if the scores are ever challenged in a court proceeding. The technical factors will be weighted at forty-five (45) points, the management factors will be weighed at twenty (20) points, and the cost factors will be weighted at thirty-five (35) points.

Staff Recommendation: Granting of the agency's petition for relief from competitive bidding requirements as a procurement method as allowed by Miss. Code Ann. § 31-7-403(4) and approval of the agency's request to use a Request for Proposals as the procurement method to select one contractor to develop the Mississippi Academic Assessment Program, Science (MAAP-SCI) Grade 5 and Grade 8 and Mississippi Academic Assessment Program, End of Course (MAAP-EOC) Biology and U.S. History.

B. Consideration of Contracts for Board Action

1. **Requesting Agency:** Mississippi Department of Rehabilitation Services

Supplier: Living Independence for Everyone, Inc.

Contract #: 8200037401

Term: 02/12/2018 – 09/30/2018

Total Value: \$111,500.00

New

\$111,500.00

Summary of Request: The contractor will provide pre-employment transition services to include work-based learning experience, job exploration counseling, and workplace readiness training. Additionally, the contractor may provide self-advocacy/mentoring instruction and counseling on enrollment in post-secondary education or other comprehensive transition training programs. The term of the contract is seven months and seventeen days with four optional one-year renewals. The contractor was selected through an RFP with three respondents, which resulted in the award of two contracts. This RFP was advertised prior to January 1, 2018; therefore, the use of an Invitation for Bids was not required. The Agency requests an exception to Section 3-202.06.3, Content of

Advertisement, of the PSCRB Rules and Regulations for setting the date for receiving proposals for a Monday.

Staff Recommendation: Granting of the exception to Section 3-202.06.3 of the PSCRB Rules and Regulations and approval of the contract as requested.

2. **Requesting Agency:** Mississippi Department of Rehabilitation Services

Supplier: The University of Southern Mississippi

Contract #: 8200037400

Term: 02/12/2018 – 09/30/2018

Total Value: \$202,439.00

**New
\$202,439.00**

Summary of Request: The contractor will provide pre-employment transition services to include work-based learning experience, job exploration counseling, and workplace readiness training. Additionally, the contractor may provide self-advocacy/mentoring instruction and counseling on enrollment in post-secondary education or other comprehensive transition training programs. The term of the contract is seven months and seventeen days with four optional one-year renewals. The contractor was selected through an RFP with three respondents, which resulted in the award of two contracts. This RFP was advertised prior to January 1, 2018; therefore, the use of an Invitation for Bids was not required. The agency requests an exception to Section 3-202.06.3, Content of Advertisement, of the PSCRB Rules and Regulations for setting the date for receiving proposals for a Monday.

Staff Recommendation: Granting of the exception to Section 3-202.06.3 of the PSCRB Rules and Regulations and approval of the contract as requested.

3. **Requesting Agency:** Mississippi Department of Archives and History

Supplier: The Godwin Advertising Agency, Inc. d/b/a GodwinGroup

Contract #: 8200036453

Term: 11/15/2017 – 06/30/2018

Total Value: \$2,813,844.00

**Modification
\$215,000.00**

Summary of Request: Addendum One has been submitted to increase the amount of the contract by \$215,000.00 due to an increase in marketing services for the Mississippi Civil Rights Museum and the Museum of Mississippi History. All other terms and conditions of the original contract remain the same, including the fixed fees and blended hourly rate. The contractor implements a cohesive and fully integrated marketing plan that targets best markets, platforms, and outlets to reach potential visitors to Mississippi and promote Mississippi attractions to outside markets. The contractor was originally selected through an RFP.

Staff Recommendation: Approval of the contract modification as requested.

4. **Requesting Agency:** Division of Medicaid

Supplier: Medical Transportation Management, Inc.

Contract #: 86846/8200007429

Term: 03/01/2014 – 06/30/2018

Total Value: \$4,942,360.00

**Renewal
\$171,233.00**

Summary of Request: Amendment Two has been submitted to renew the contract for four months. This is the first of two optional renewals allowed by the original contract. All other terms and conditions of the original contract, including the price per beneficiary per month, remain the same. Based on an estimated participant population of 65, the price per beneficiary per month associated with Amendment Two will remain \$658.59. The contractor develops and operates a non-emergency transportation (hereinafter "NET") brokerage program for End-Stage Renal Disease patients as mandated by the Mississippi Legislature. This NET service includes, but is not limited to, authorization, coordination, scheduling, management, and reimbursement. This contract is subject to a protective order entered into by the Hinds County Chancery Court on December 27, 2013 to protect from release confidential commercial and financial information and/or trade secrets with regard to any contract and amendment resulting from RFP #20130802 and RFP #20130802-1. Items are redacted based on the advice of the Special Assistant Attorney General. Further, the PSCRB approved DOM's exception request for not adding the Trade Secrets, Commercial and Financial Information clause to the contract as was required in PSCRB Rules and Regulations Appendix C, due to the protective order.

Staff Recommendation: Approval of the contract renewal as requested.

5. **Requesting Agency:** Division of Medicaid

Supplier: Medical Transportation Management, Inc.

Contract #: 86845/8200007428

Term: 03/01/2014 – 12/31/2018

Total Value: \$164,672,718.00

Renewal
\$31,950,400.00

Summary of Request: Amendment Three has been submitted to renew the contract for ten months. This is the second of two optional renewals allowed by the original contract. Based on an estimated participant population of 121,549, the price per beneficiary per month associated with Amendment Three will increase to \$26.29 effective March 1, 2018. All other terms and conditions of the original contract remain the same. The contractor develops and operates a non-emergency transportation (hereinafter "NET") brokerage program. This NET service includes, but is not limited to, authorization, coordination, scheduling, management, and reimbursement. This contract is subject to a protective order entered into by the Hinds County Chancery Court on December 27, 2013 to protect from release confidential commercial and financial information and/or trade secrets with regard to any contract and amendment resulting from RFP #20130802 and RFP #20130802-1. Items are redacted based on the advice of the Special Assistant Attorney General. Further, the PSCRB approved DOM's exception request for not adding the Trade Secrets, Commercial and Financial Information clause to the contract as was required in PSCRB Rules and Regulations Appendix C, due to the protective order.

Staff Recommendation: Approval of the contract renewal as requested.

6. **Requesting Agency:** Mississippi Department of Finance and Administration

Supplier: Cannon Cochran Management Services, Inc.

Contract #: 8200037110

Term: 07/01/2018 – 06/30/2022

Total Value: \$4,069,838.00

New
\$4,069,838.00

Summary of Request: The contractor will provide third party claims administration services to the Mississippi State Agencies Self-Insured Workers' Compensation Trust to manage all claims-related services, including but not limited to, claims investigations, compensability determinations, claim and expense payments, litigation management, medical case management, subrogation, excess insurance reimbursement coordination, internal and external reporting, and safety/risk control services to help minimize and control losses. The Agency requests exceptions to Section 3-203.13.2(d), Evaluation, for not using "a record of past performance of similar work" as an evaluation factor for all respondents and Section 3-203.13.2.1, Evaluation Scoring, of the PSCRB Rules and Regulations for not using a standard, 100-point scoring scale. The contractor was selected through an RFP with four respondents. Two post-award vendor debriefings were requested and held. This RFP was advertised prior to January 1, 2018; therefore, the use of an Invitation for Bids was not required. Proof of the vendor's required professional liability, blanket fidelity bond, and performance bond insurance certifications must be received from the Agency prior to processing the contract.

Staff Recommendation: Granting of exceptions to Sections 3-203.13.2(d) and 3-203.13.2.1 of the PSCRB Rules and Regulations and approval of the contract as requested contingent upon receipt of the vendor's required liability, fidelity bond, and performance bond insurance certifications.

C. Mississippi Department of Child Protection Services Contracts and Mississippi Department of Human Services Contracts Useful in Establishing and Operating DCPS for Fiscal Year 2018

Neither the Public Procurement Review Board nor OPSCR staff approves Mississippi Department of Child Protection Services (DCPS) contracts or Mississippi Department of Human Services (DHS) contracts useful in establishing and operating DCPS. These contracts are reported to the Board for consideration of recommendations, but are not subject to OPSCR Rules and Regulations. The implementation of any Board recommendations is at the discretion of DHS and/or DCPS. Pursuant to Miss. Code Ann. § 27-104-7(f), the Board is not authorized to disapprove any proposed personal service contracts for DCPS or DHS contracts that are useful in establishing and operating DCPS

D. Emergency Contracts Reported to the Board for Fiscal Year 2018

Emergency contracts are reviewed by OPSCR staff for technical compliance upon the written request of the submitting Agency. The OPSCR staff will process the contract in MAGIC upon receipt of the contract, and then conduct the requested review and notify the Agency of any problems found during the requested review; however, it is the responsibility of the Agency to correct any errors. If no written request for review is made by the submitting Agency, OPSCR staff will process the contract in MAGIC upon receipt of same, and then conduct a review of the contract for internal auditing purposes. Emergency contracts are presented to the PPRB at its regular meeting and are included in the minutes of said meeting, but no action is required by the PPRB as to these contracts. Any approval in MAGIC or any other state system does not constitute approval of the emergency procurement by the PPRB and is done solely for

processing purposes. This provision is not intended to prevent the PPRB from making a report under the statutory authority to audit or to take other action as deemed appropriate.

E. Staff Approvals Reported to the Board

F. Director's Report

1. Rules and Regulations

a. Proposed Rules and Regulations

VIII. Adjournment

Attachment A

OPTFM Staff Approvals

**PUBLIC PROCUREMENT REVIEW BOARD
OPTFM STAFF APPROVALS
(AS OF JANUARY 2018)**

CONTRACT #	AGENCY	VENDOR	REQUEST TYPE	COMMODITY	ACTION	AMOUNT
1	ELLISVILLE STATE SCHOOL	BORDEN DIARY CO. OF ALABAMA	OPEN PURCHASE ORDER (GPO)	DAIRY PRODUCTS	MODIFICATION	\$27,000.00
2	BOSWELL REGIONAL CENTER	BORDEN DIARY CO. OF ALABAMA	COMPETITIVE RFX	DAIRY PRODUCTS	NEW	\$85,036.64
3	UNIVERSITY OF SOUTHERN MS	COMPOSITE ALLIANCE CORPORATION	COMPETITIVE RFX	THERMOPLASTIC PRESS FORMING CELL	NEW	\$428,000.00
4	MS STATE DEPARTMENT OF HEALTH	CANON USA, INC.	COMPETITIVE PURCHASING AGREEMENT	COPIER RENTAL AND MAINTENANCE	MODIFICATION	\$10,000.00
5	ELLISVILLE STATE SCHOOL	CANON USA, INC.	COMPETITIVE PURCHASING AGREEMENT	COPIER RENTAL AND MAINTENANCE	MODIFICATION	\$19,314.24
6	UNIVERSITY OF MS MEDICAL CENTER	TUCKER-DAVIS TECHNOLOGIES	SOLE SOURCE	RECORDING SYSTEM FOR AUDITORY EVOKE POTENTIALS AND DISTORTION PRODUCT	MODIFICATION	\$27,265.00
7	MS DEPARTMENT OF MARINE RESOURCES	BALIUS DANN'S WELDING & IRONW	COMPETITIVE RFX	OTACOUSTIC EMISSIONS IN RODENTS AND RELATED ACCESSORIES	MODIFICATION	\$130,000.00
8	ELLISVILLE STATE SCHOOL	CANON USA, INC.	COMPETITIVE PURCHASING AGREEMENT	FURNISH AND CONSTRUCT OYSTER BAG DREDGES	MODIFICATION	\$19,314.24
9	UNIVERSITY OF MS MEDICAL CENTER	BIO-RAD LABORATORIES	SOLE SOURCE	COPIER RENTAL AND MAINTENANCE	NEW	\$84,480.00
10	MS DEPARTMENT OF WILDLIFE FISHERIES & PARKS	HOWELL SHOOTING SUPPLIES	COMPETITIVE RFX	CHEMIDOC MP IMAGING SYSTEMS	NEW	\$157,522.02

**PUBLIC PROCUREMENT REVIEW BOARD
OPTFM STAFF APPROVALS
(AS OF JANUARY 2018)**

CONTRACT #	AGENCY	VENDOR	REQUEST TYPE	COMMODITY	ACTION	AMOUNT
11 8200031217	MS DEPARTMENT OF MARINE RESOURCES	J & W MARINE ENTERPRISES, INC.	COMPETITIVE RFX	FURNISH AND DEPLOY OYSTER CLUTCH MATERIAL	MODIFICATION	\$799,992.75
12 8200037030	MS DEPARTMENT OF REHABILITATION	VENDING CENTER, INC.	COMPETITIVE PURCHASING AGREEMENT	SNACK/VENDING MACHINES	MODIFICATION	\$199,941.00
13 8200024225	MS STATE DEPARTMENT OF HEALTH	CANON USA, INC.	COMPETITIVE PURCHASING AGREEMENT	COPIER RENTAL AND MAINTENANCE	MODIFICATION	\$5,900.00
14 8200024379	MS STATE DEPARTMENT OF HEALTH	CANON USA, INC.	COMPETITIVE PURCHASING AGREEMENT	COPIER RENTAL AND MAINTENANCE	MODIFICATION	\$33,500.00
15 8200036315	ELLISVILLE STATE SCHOOL	CANON USA, INC.	COMPETITIVE PURCHASING AGREEMENT	COPIER RENTAL AND MAINTENANCE	NEW	\$14,107.88
16 8200036911	ELLISVILLE STATE SCHOOL	CANON USA, INC.	COMPETITIVE PURCHASING AGREEMENT	COPIER RENTAL AND MAINTENANCE	NEW	\$20,696.64
17 4600001310	ELLISVILLE STATE SCHOOL	FLOWERS BAKING COMPANY	OPEN PURCHASE ORDER	BAKERY PRODUCTS	NEW	\$10,100.00
18 4600001286	ELLISVILLE STATE SCHOOL	PERSONAL PHARMACY CARE, LLC	OPEN PURCHASE ORDER	PHARMACY PRODUCTS	NEW	\$5,400.00
19 4600001300	ELLISVILLE STATE SCHOOL	BORDEN DIARY COMPANY	OPEN PURCHASE ORDER	DAIRY, MILK PRODUCTS AND JUICE	NEW	\$27,000.00
20 4600001285	ELLISVILLE STATE SCHOOL	NESTLE USA, INC.	OPEN PURCHASE ORDER	FEEDING AND NUTRITIONAL SUPPLEMENTS	NEW	\$25,000.00
21 4600001312	HUDSPETH REGIONAL CENTER	NESTLE USA, INC.	OPEN PURCHASE ORDER	NUTRITIONAL SUPPLEMENTS	NEW	\$35,000.00

**PUBLIC PROCUREMENT REVIEW BOARD
OPTFM STAFF APPROVALS
(AS OF JANUARY 2018)**

CONTRACT #	AGENCY	VENDOR	REQUEST TYPE	COMMODITY	ACTION	AMOUNT
22 460001037	ELLISVILLE STATE SCHOOL	PERSONAL PHARMACY CARE, LLC	OPEN PURCHASE ORDER	PHARMACY PRODUCTS	MODIFICATION	\$10,000.00
23 8200024379	MS STATE DEPARTMENT OF HEALTH	CANON USA, INC.	COMPETITIVE PURCHASING AGREEMENT	COPIER RENTAL AND MAINTENANCE	MODIFICATION	\$43,500.00
24 8200037249	MS DEPARTMENT OF CHILD PROTECTION SERVICES	TOSHIBA BUSINESS SOLUTIONS	COMPETITIVE PURCHASING AGREEMENT	COPIER RENTAL AND MAINTENANCE	NEW	\$43,468.20
25 8800006157	MS STATE DEPARTMENT OF HEALTH	QIAGEN, INC.	SOLE SOURCE	TB REAGENTS TEST KITS	NEW	\$373,437.00
26 8800006158	MS STATE DEPARTMENT OF HEALTH	BECTON, DICKSON AND COMPANY	SOLE SOURCE	REAGENTS AND SUPPLIES FOR BD BACTEC MGIT SYSTEM	NEW	\$71,271.90
27 8200024338	MS DEVELOPMENT AUTHORITY	CANON U.S.A., INC.	COMPETITIVE PURCHASING AGREEMENTS	COPIER MONTHLY RENTAL	MODIFICATION	\$6,845.80
28 8200037334	MS EMERGENCY MANAGEMENT AGENCY	RICOH USA INC	COMPETITIVE PURCHASING AGREEMENTS	COPIER RENTAL	NEW	\$150,000.00
29 8800006140	MS STATE UNIVERSITY	INTERNATIONAL ASSOCIATION OF ASSESSING O	SOLE SOURCE	COURSE MATERIALS	NEW	\$99,750.00
30 8200024059	DEPARTMENT OF INSURANCE	RICOH USA INC	COMPETITIVE PURCHASING AGREEMENTS	MODEL MP3054SP - GULF COAST OFFICE	MODIFICATION	\$12,774.78
31 8200036871	MS DEPARTMENT OF TRANSPORTATION	CANON SOLUTIONS AMERICA INC	COMPETITIVE PURCHASING AGREEMENTS	COPIER MONTHLY RENTAL	MODIFICATION	\$27,320.00
32 8200037058	MS DEVELOPMENT AUTHORITY	CANON U.S.A., INC.	COMPETITIVE PURCHASING AGREEMENTS	COPIER MONTHLY RENTAL	NEW	\$160,000.00

**PUBLIC PROCUREMENT REVIEW BOARD
OPTFM STAFF APPROVALS
(AS OF JANUARY 2018)**

CONTRACT #	AGENCY	VENDOR	REQUEST TYPE	COMMODITY	ACTION	AMOUNT
33 8800006141	MS STATE UNIVERSITY	CRAIC TECHNOLOGIES, INC	SOLE SOURCE	SPECTROPHOTOMETER	NEW	\$76,355.00
34 8200037273	MS DEPARTMENT OF TRANSPORTATION	SHARP ELECTRONICS CORPORATION	COMPETITIVE PURCHASING AGREEMENTS	COPIER RENTAL AND USAGE	MODIFICATION	\$65,229.65
35 8200030367	MS DEPARTMENT OF TRANSPORTATION	JOHN DEERE FINANCIAL FSB	COMPETITIVE RFX	RENTAL OF TRACTORS FOR DISTRICT 6	MODIFICATION	\$476,496.00
36 8200024208	MS DEPARTMENT OF TRANSPORTATION	RICOH USA INC	COMPETITIVE PURCHASING AGREEMENTS	MONTHLY COPIER RENTAL	MODIFICATION	\$9,687.02
37 8200037577	MS STATE UNIVERSITY	SARTORIUS STEDIM NORTH AMERICA INC	COMPETITIVE RFX	VIRUS COUNTER	NEW	\$95,646.00
38 4600001113	HUDSPETH REGIONAL CENTER	NESTLE USA, INC.	OPEN PURCHASE ORDER	NUTRITIONAL SUPPLEMENTS	MODIFICATION	\$27,962.70

**Contracts and Modifications in accordance with thresholds for delegated approvals established by PPRB:*

Sole Source commodity contracts regardless of dollar amount

Type I Emergency Contracts

Competitively bid commodity contracts regardless of dollar amount

Open Purchase Orders in excess of \$5,000

Agency copier rental agreements with the same vendor and a cumulative total greater than \$50,000

Trade-in with Purchase of Equipment

Exemption from State Contract

Attachment B

BOB Staff Approvals

Attachment C

Department of Child Protection Services
Contracts and Department of Human
Services Contracts Useful in Establishing and
Operating DCPS Reported to the Board

**DCPS Contracts and DHS Contracts Useful in
Establishing and Operating DCPS as Reported in the PPRB Minutes
Fiscal Year 2018**

Contract Number	Agency	Contractor	Type	Contract Action Amount	Start Date	End Date	Reported to the PSCRB
1	Department of Child Protection Services	Apelah, Inc.	Modification	(\$550,000.00)	8/15/2017	2/28/2018	7/24/2017
2	Department of Child Protection Services	Southern Christian Services for Children and Youth, Inc.	Modification	(\$375,000.00)	8/15/2017	2/28/2018	7/27/2017
3	Department of Child Protection Services	Rehabilitation Centers, LLC d/b/a Millcreek of Magee	Modification	(\$900,000.00)	8/15/2017	2/28/2018	8/1/2017
4	Department of Child Protection Services	Hope Village for Children, Inc.	Modification	(\$1,000,000.00)	8/15/2017	2/28/2018	8/1/2017
5	Department of Child Protection Services	The University of Southern Mississippi	New	\$59,798.20	7/1/2017	6/30/2018	8/10/2017
6	Department of Child Protection Services	Rehabilitation Centers, LLC d/b/a Millcreek of Pontotoc	Modification	(\$475,000.00)	8/15/2016	2/28/2018	8/14/2017
7	Department of Child Protection Services	Jani-King of Jackson	Renewal (N)	\$40,308.00	9/15/2017	9/14/2018	9/15/2017
8	Department of Child Protection Services	Social Work P.R.N., Inc.	Renewal	\$2,273,340.00	9/14/2017	9/13/2018	9/15/2017
9	Department of Child Protection Services	Faith Haven, Inc.	Renewal	\$374,146.08	12/1/2017	6/30/2018	10/31/2017
10	Department of Child Protection Services	Christians in Action, Inc.	Renewal	\$374,146.08	12/1/2017	6/30/2018	10/31/2017
11	Department of Child Protection Services	Sally Kate Winters Family Services	Renewal	\$322,965.72	12/1/2017	6/30/2018	10/31/2017
12	Department of Child Protection Services	Hancock County Human Resources Agency	Renewal	\$311,788.40	12/1/2017	6/30/2018	10/31/2017

**DCPS Contracts and DHS Contracts Useful in
Establishing and Operating DCPS as Reported in the PPRB Minutes
Fiscal Year 2018**

13	8800006080	Department of Child Protection Services	SLI Global Solutions, LLC f/k/a Center for the Support of Families, Inc.	New	\$9,962,980.00	11/16/2017	11/15/2022	11/17/2017
14	8200034745	Department of Child Protection Services	The Family Resource Center of North Mississippi, Inc.	Renewal	\$73,500.00	1/1/2018	6/30/2018	12/6/2017
15	8200034744	Department of Child Protection Services	Mississippi Community Education Center	Renewal	\$74,000.00	1/1/2018	6/30/2018	12/6/2017
16	8800006082	Department of Child Protection Services	Public Catalyst Group Corporation	New	\$1,589,000.00	1/1/2018	12/31/2018	12/7/2017
17	8200022069	Department of Child Protection Services	Mississippi Children's Home Society	Renewal	\$735,419.52	12/1/2017	6/30/2018	12/7/2017
18	8200030726	Department of Child Protection Services	ComPsych Corporation	Renewal	\$50,000.00	1/1/2018	12/31/2018	12/8/2017
19	8200022068	Department of Child Protection Services	Hope Village for Children, Inc.	Renewal	\$374,146.08	12/1/2017	6/30/2018	12/27/2017
		Fiscal Year 2018 Total			\$13,315,538.08			

Neither the Public Procurement Review Board nor Office of Personal Service Contract Review (OPSCR) staff approves Department of Child Protection Services (DCPS) contracts or Department of Human Services (DHS) contracts useful in establishing and operating DCPS. These contracts are reported to the Board for consideration of recommendations, but are not subject to OPSCR Rules and Regulations. The implementation of any Board recommendations is at the discretion of DHS and/or DCPS. Pursuant to Miss. Code Ann. § 27-104-7(9), the Board is not authorized to disapprove any proposed personal service contracts for DCPS or DHS that are useful in establishing and operating DCPS.

Attachment D

Emergency Contracts Reported to the Board

**Emergency Contracts as Reported in the PPRB Minutes
Fiscal Year 2018 (as of the January 3, 2017 PPRB Meeting)**

Contract Number	Agency	Contractor	Type	Total Contract Amount	Start Date	End Date	Reported to the PSCRB
1	Department of Corrections	Superior Protection Services, Inc. d/b/a Advert Group, USA	New	\$3,000,000.00	4/6/2017	4/5/2018	7/18/2017
2	Department of Education	Ilean A. Richards	New	\$97,750.00	7/1/2017	12/31/2017	7/18/2017
3	Department of Education	Margie B. Pulley	New	\$99,750.00	7/1/2017	12/31/2017	7/18/2017
4	Department of Health	Maris, West & Baker	New	\$500,000.00	8/1/2017	12/31/2017	9/18/2017
5	Department of Education	Questar Assessment, Inc.	New	\$2,200,000.00	7/1/2017	6/30/2018	10/17/2017
6	Mississippi Soil and Water Conservation Commission	Metis Services, LLC	New	\$123,965.00	10/3/2017	10/2/2018	11/14/2017
7	Department of Finance and Administration	Cannon Cochran Management Services, Inc.	New	\$306,500.00	10/1/2017	9/30/2018	11/14/2017
8	Veterans Affairs Board	Healthcare Services Group, Inc.	New	\$4,400,000.00	12/6/2017	12/5/2018	12/19/2017
9	Department of Education	James Johnson-Walington	New	\$125,500.00	11/20/2017	6/30/2018	12/19/2017
10	Department of Education	Margie B. Pulley	Modification	\$99,750.00	1/1/2018	6/30/2018	12/19/2017
	Fiscal Year 2018 Total (as of 1/03/2017)			\$10,953,215.00			

Emergency contracts are reviewed by Office of Personal Service Contract Review (OPSCR) staff for technical compliance upon the written request of the submitting agency. The OPSCR staff will process the contract in MAGIC upon receipt of the contract, and then conduct the requested review and notify the agency of any problems found during the requested review; however, it is the responsibility of the agency to correct any errors. If no written request for review is made by the submitting agency, OPSCR staff will process the contract in MAGIC upon receipt of same, and then conduct a review of the contract for internal auditing purposes. Emergency contracts are presented to the PPRB at its regular meeting and are included in the minutes of said meeting, but no action is required by the PPRB as to these contracts. Any approval in MAGIC or any other state system does not constitute approval of the emergency procurement by the PPRB and is done solely for processing purposes. This provision is not intended to prevent the PPRB from making a report or to take other action as deemed appropriate.

Attachment E

OPSCR Staff Approvals

**Public Procurement Review Board
OPSCR Staff Approvals
(as of January 31, 2018)**

Contract Number	Agency	Vendor	Request Type*	Service Type	Contract Action	Contract Action Amount
1	DMH-Ellisville State School	Waste Services of Hattiesburg, LLC	Novation/Buyout	Waste Services	New	\$111,333.35
2	DMH-Ellisville State School	Enviro, Inc.	Novation/Buyout	Waste Services	Modification/ Termination	(\$111,333.35)

*Request Types were approved using the following staff authorities approved by the Board at the January 3, 2018 meeting:

PVL: Staff authority to approve contracts for vendors selected from and containing scopes of services consistent with the preapproved vendor list.

WIN: Staff authority to approve WIN (contract worker) contracts not exceeding \$75,000.00 in one fiscal year and/or calendar year.

CPU: Staff authority to approve modifications to previously approved contracts that involve cost-per-unit fees up to ten percent of the originally approved contract amount. Contracts approved using this authority shall not exceed \$500,000.00.

Multiple Contracts: Staff authority to approve multiple contracts with the same vendor, but with different scopes of services. Contracts approved using this authority shall not exceed \$75,000.00.

Technical Error: Staff authority to approve modifications to previously approved contracts involving accounting and scrivener's errors and other technical or technological problems that do not alter the contract terms and conditions.

Novation/Buyout: Staff authority to approve the transfer or assignment of a previously approved contract that does not alter any other contract terms and conditions. Contracts approved using this authority include novation, buyout, and all other vendor name changes.

Reduction: Staff authority to approve modifications to previously approved contracts that only reduce the dollar amount of the contracts or in which the amount and services are unchanged.

Attachment F

Proposed Office of Personal Service Contract
Review Rules and Regulations

3-205 SMALL PURCHASES

Any procurement for personal or professional services not exceeding \$75,000, except for sole-source purchases, is considered a small purchase and may be made in accordance with small purchase procedures provided herein. The Public Procurement Review Board considers these contracts to be below the threshold requiring PPRB oversight. However, procurement requirements, including the total funds to be extended, shall neither be artificially divided nor shall the extent of the service required be underestimated so as to constitute a small purchase under this section.

This section applies to procurements for personal or professional services which do not exceed \$75,000 or less.

3-205.01 Authority to Make Small Purchases

3-205.01.1 Amount

The Purchasing Agency may use this Regulation if the procurement for services is to be not exceed \$75,000 or less, with the exception of contract workers as defined in Section 3-101.04. If these methods are not used, the other methods of source selection provided in Section 3-201 (Methods of Source Selection) shall apply.

3-205.01.2 Available from One Source Only

If the service is available from only one source, the sole-source procurement method set forth in Section 3-205 (Sole-Source Procurement) of these regulations shall be used.

3-205.01.3 Division of Requirements

Procurement specifications shall not be artificially divided to avoid using the other source selection methods set forth in Section 3-201 (Methods of Source Selection). Generally, there should only be one contract within an agency per vendor for a particular service type.

3-205.02 Small Purchases of Services Greater than \$50,000, Not Exceeding \$75,000

3-205.02.1 Procedure

Insofar as it is practical for small purchases of services greater than \$50,000 and not exceeding \$75,000, no less than three (3) sources-quotes shall be solicited to submit written responses that are recorded and placed in the procurement file. Written responses must be either signed on letterhead or otherwise identifiable to be valid. Written responses shall, at a minimum, contain the following information:

- (a) A statement of price;
- (b) Terms of the agreement;
- (c) Description of services offered by the vendor to the agency; and,
- (d) Name, address and telephone number of the vendor.

If this method is used, award shall be made to the vendor offering the lowest ~~and bestresponsible bid, or proposal, or qualification~~. In the event three written responses are not obtained, the agency shall include a memo to the procurement file explaining why this was not accomplished.

3-205.02.2 Records

The names of the vendors submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record.

3-205.02.3 Award and Notification

Award shall be made to the vendor offering the lowest ~~and bestresponsible~~ response. All vendors submitting responses shall be promptly notified in writing of the contract award. In the event three written responses are not obtained, the agency shall include a memo to the procurement file explaining why this was not accomplished. A copy of each notification letter shall be kept in the procurement file. Notice of award shall be made available to the public upon request.

3-205.04 Small Purchases ~~which do not exceed of \$50,000 or Less~~

The Agency Head shall adopt standard operational procedures for making small purchases ~~of which do not exceed \$50,000 or less~~. Such operational procedures shall provide for obtaining adequate and reasonable competition and for making records to properly account for funds and to facilitate auditing of the Purchasing Agency. No approval by the ~~PSCRBP~~ is required for these purchases.

3-206 SOLE-SOURCE PROCUREMENT

Sole-source procurements are limited to procurements in which the Agency Head determines in writing that only one source is available that can provide the required personal or professional service and the agency complies with all requirements of this section including, but not limited to, publication under Section 3-206.04.

3-206.01 Application

The provisions herein apply to all sole-source procurements, regardless of the value of the procurement.

3-206.02 Conditions for Use of Sole-Source Procurement

Sole-source procurement is not permissible unless a service is available from only a single vendor. The determination as to whether a procurement shall be made as a sole-source shall be made and approved by the Agency Head. Such determination and the basis therefor shall be in writing, signed by the Agency Head, and maintained in the procurement file. The Agency Head may specify the application of such determination and the duration of its effectiveness.

If a binding, valid court order has been issued mandating that a particular source or provider must be used for the required service:

- (a) A copy of the applicable court order must be attached to the Agency Head written determination and included in all future sole-source contract submissions for the particular personal or professional service referenced in the court order; and
- (b) The agency is exempt from the requirements of Sections 3-206.04, 3-206.05, and 3-206.06 (MS AG Op. Wright, October 23, 2015).

3-206.03 Negotiation in Sole-Source Procurement

The Agency Head shall conduct negotiations, as appropriate, as to price, delivery, and terms. If the contract amount is greater than \$75,000, the contracts must be forwarded to the PSCRBPPRB for approval prior to any services being rendered.

3-206.04 Publication

Any agency alleging to have a sole-source for any personal or professional service shall have the terms of the proposed contract for the service published on the Mississippi Contract/Procurement Opportunity Search Portal website for at least fourteen (14) consecutive days, unless the agency is exempt pursuant to Section 3-206.02.

3-206.04.1 Content of Publication

Publication of a sole-source award shall include, but is not limited to, the following information:

- (a) The personal or professional service offered in the contract;
- (b) An explanation of why the personal or professional service is the only one that can meet the needs of the agency;
- (c) An explanation of why the source is the only person or entity that can provide the required personal or professional service;

- (d) An explanation of why the amount to be expended for the personal or professional service is reasonable;
- (e) The efforts that the agency made to obtain the best possible price for the personal or professional service; and
- (f) Instructions for filing objections pursuant to **Section 3-206.05** (Objection to Sole-Source Determination) with current contact information for the agency that published the proposed sole-source contract and the **PSCRBPPRB**.

3-206.05 Objection to Sole-Source Determination

If any person or entity objects and proposes that the personal or professional service published in accordance with **Section 3-206.04** (Publication) is not a sole-source service and that the service can be provided by another person or entity, the objecting person or entity shall notify the agency that published the proposed sole-source contract and the **PSCRBPPRB** in writing with a detailed explanation of why the personal or professional service is not a sole-source service. The objection must be submitted to the agency within seven (7) calendar days of the date of the last publication under **Section 3-206.04**.

3-206.05.1 Review of Objection to Sole-Source Determination

- (a) If the agency determines after review that the personal or professional service in the proposed sole-source contract can be provided by another person or entity, then the agency must withdraw the sole-source contract publication from the procurement portal website and submit the procurement of the personal or professional service to an advertised competitive bid or selection process complying with the requirements of **Section 3-201** (Method of Source Selection).
- (b) If the agency determines after review that there is only one source for the required personal or professional service, then the agency may appeal to the ~~Personal Service Contract Review Board~~**Public Procurement Review Board**. The appeal shall be submitted to **PSCRBPPRB** thirty (30) days before the next regularly scheduled **PSCRBPPRB** meeting. The agency has the burden of proving that the personal or professional service is only provided by one source.
- (c) If the **PSCRBPPRB** has any reasonable doubt as to whether the personal or professional service can only be provided by one source, then the agency must submit the procurement of the personal or professional service to an advertised competitive bid or selection process following the requirements of **Section 3-201** (Method of Source Selection).
- (d) No action taken by the **PSCRBPPRB** in this appeal process shall be valid unless approved by the chairman and two (2) other members of the **PSCRBPPRB** present and voting.

3-206.06 Sole-Source Procurement Written Determination

All sole-source contracts for personal and professional services awarded by state agencies, whether approved by an Agency Head or the **PSCRBP**, shall contain in the procurement file a written determination for the approval, using ~~a the Sole-Source Determination Form~~**request form** furnished by the **PSCRBP**. The written determination shall document the basis for the determination, including any market analysis conducted in order to ensure that the service required was practicably available from only one source. A memorandum shall accompany the ~~request form~~**Form** and address the following four points:

- (a) Explanation of why this service is the only service that can meet the needs of the purchasing agency;
- (b) Explanation of why this vendor is the only practicably available source from which to obtain this service;
- (c) Explanation of why the price is considered reasonable; and
- (d) Description of the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the taxpayers.

3-206.07 Sole-Source Reporting Requirement

The **PSCRBP** shall prepare and submit a quarterly report to the House of Representatives and Senate Committees on Accountability, Efficiency, and Transparency that details the sole-source contracts presented to the **PSCRBP** and the reasons that the **PSCRBP** approved or rejected each contract. Such quarterly reports shall also include the documentation and memoranda required in **Section 3-206.06** (Sole-Source Procurement Written Determination). Agencies submitting sole-source contracts shall cooperate with **PSCRBP** staff in providing the information necessary for this report. Any agency that submitted a sole-source contract shall be prepared to explain the sole-source contract to each committee by December 15 of each year upon request by the committee.

3-207 EMERGENCY PROCUREMENT

The **PSCRBP** does not approve emergency contracts. If the Agency Head of any agency determines that an emergency exists in regard to the procurement of personal or professional services so that the delay incident to undertaking a competitive procurement would threaten the health or safety of any person, or the preservation or protection of property, then the Agency Head or his designee may make an emergency procurement. Emergency procurements shall be made with such competition as is practicable under the circumstances.

The PPRB will prepare and submit a quarterly report to the House of Representatives and Senate Committees on Accountability, Efficiency, and Transparency that details the eEmergency contracts presented to the PPRB and the reasons the agency determined an emergency existed. Agencies submitting eEmergency contracts shall cooperate with PPRB staff in providing the information necessary for this report.

3-207.01 Determination to Make Emergency Procurement

The Agency Head shall make a written determination of the conditions and circumstances of the emergency, including a detailed description of the events leading up to the situation, the negative impact to the agency if the procurement of services is required to be competitively bid, and the basis for the selection of the particular contractor. The written determination shall be signed by the Agency Head and maintained in the procurement file. The term of an emergency contract shall not exceed one year.

3-207.02 Scope of Emergency Procurement

Emergency procurement shall be limited to those personal or professional services necessary to meet the emergency. The term of an emergency contract shall be limited to the time necessary to meet the emergency, but in no circumstances shall the term exceed one year. If the agency will continue to need the personal or professional services beyond the term of the emergency contract, the agency must take the necessary steps to competitively procure the services before the emergency contract expires.

3-207.03 Emergency Contracts Greater than \$75,000

The **PSCRBPPRB** does not approve Emergency Contracts. However, any contract resulting from an emergency procurement shall be forwarded to the **PSCRBPPRB** within 10 days of execution for SPAHRS or MAGIC processing, if the contract amount is greater than \$75,000.

3-208 PREAPPROVED VENDOR LISTS

Mississippi Code Annotated § ~~25-9-120~~ ~~27-10-1-7~~ (2)(i) authorizes the **PSCRBPPRB** to, “establish a preapproved list of providers of various personal and professional services for set prices with which state agencies may contract without bidding or prior approval from the [B]oard.” The **PSCRBPPRB** at its discretion may exercise its authority and establish preapproved vendor lists for use by entities under **PSCRBPPRB** purview. The preapproved vendor lists shall be posted on the **PSCRBPPRB** tab of the **MSPB-DFA** webpage at: <http://www.mspsbdfa.ms.gov>. Use of the preapproved vendor lists is optional.

3-208.01 Procedure

The agency should locate the preapproved vendor list for the selected service in the region where the service is to be provided. The agency is encouraged, but not required, to contact the lowest bidder first. Once a vendor is selected, the agency and the vendor should finalize the negotiable terms and prepare a contract. The agency may use a form contract for the selected service drafted by the **PSCRBPPRB** and posted on the website. Use of the **PSCRBPPRB** form contract is strictly optional. The agency may use a contract it prepares as long as the contract adheres to the required terms and conditions as stated in the **PSCRBPPRB** form contract. Any additional terms or change in non-negotiable terms, such as the scope of services, may not be used.

3-208.02 Approval of Contracts Procured Using a Preapproved Vendors List

PSCRBP staff has the authority to approve agency contracts with vendors from any PSCRBP established List of Preapproved Providers of Services. This authority is limited to contracts with scopes of service consistent with the IFB used to establish the list.

3-301 CANCELLATION OF SOLICITATIONS

A Solicitation may be canceled, or any or all responses to the solicitation may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of the State. The reasons shall be made part of the contract file.

3-301.01 Scope of this Regulation

The provisions herein shall govern the cancellation of any solicitations whether issued by the State under competitive sealed bidding, competitive sealed proposals, competitive sealed qualifications, or any other source selection method, and the rejection of bids, proposals, or ~~statements of qualifications~~Qualifications in whole or in part.

3-301.02 Policy

Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only. Preparing and distributing a solicitation requires the expenditure of time and funds. Businesses and other entities likewise incur expense in examining and responding to solicitations. Accordingly, although issuance of a solicitation does not compel award of a contract, a solicitation is to be canceled only when there are compelling reasons to believe that the cancellation of the solicitation is in the State's best interest.

3-301.03 Cancellation of Solicitation -- Notice

Each solicitation issued by the State shall declare that the solicitation may be canceled as provided herein. Notice of Cancellation shall be distributed in the same manner in which the solicitation was distributed.

3-301.04 Cancellation of Solicitation; Rejection of All Bids, Proposals, or ~~Statements of Qualifications~~Qualifications

3-301.04.1 Prior to Opening

- (a) As used in this section, "opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, receipt of proposals in competitive sealed proposals, or receipt of qualificationSOQs in competitive sealed qualifications.

(b) Prior to opening, a solicitation may be canceled in whole or in part when the Agency Head determines in writing that such action is in the State's best interest for reasons including, but not limited to:

- (1) the agency no longer requires the services;
- (2) the agency no longer can reasonably expect to fund the procurement; or,
- (3) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

(c) When a solicitation is canceled prior to opening, notice of cancellation shall be sent to all prospective businesses solicited.

(d) The notice of cancellation shall:

- (1) identify the solicitation;
- (2) briefly explain the reason for cancellation; and,
- (3) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar services.

3-301.04.2 After Opening-Prior to Award

(a) After opening but prior to award, all bids, proposals, or qualificationSOQs may be rejected in whole or in part when the Agency Head determines in writing that such action is in the State's best interest for reasons including, but not limited to:

- (1) the services being procured are no longer required;
- (2) ambiguous or otherwise inadequate specifications were part of the solicitation;
- (3) the solicitation did not provide for consideration of all factors of significance to the buying entity;

(4) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

(4)(5) the designated person in Section 3-203(e) revealed the name of an offeror who submitted a proposal or qualification to any person on the evaluation committee for that proposal or qualification before the Technical and Cost factors have been evaluated.

(5)(6) all otherwise acceptable bids, proposals, or qualificationSOQs received are at clearly unreasonable prices; or,

~~(6)~~(7) there is reason to believe that the bids, proposals, or qualificationSOQs may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

(b) A notice of rejection should be sent to all businesses that submitted bids, proposals, or qualificationSOQs, and shall conform to Section 3-301.04.1(d).

3-301.04.3 After Opening – After Award

After opening and after award, **but prior to signing a contract**, an award may be canceled when the Agency Head determines in writing that such action is in the State's best interest for reasons including, but not limited to:

(a) available funding for the contractual service has been discontinued;

~~(b)~~ federal regulation prohibits the award;

~~(a)~~(c) the solicitation expired pursuant to Section 3-102.01.1 (Expiration of Solicitation);

(d) credible evidence has been presented that the procurement was tainted;

~~(b)~~(e) the agency discovers an issue of competition, fairness or transparency; or,

~~(e)~~(f) the solicitation document allows the agency's stated reason for cancellation.

3-301.04.4 Documentation

The reasons for cancellation or rejection shall be made a part of the agency's procurement file and shall be available for public inspection.

3-301.05 Rejection of Individual Bids, Proposals, or ~~Statements of Qualifications~~ Qualifications

3-301.05.1 General

This section applies to rejections of individual bids, proposals, or qualificationSOQs in whole or in part.

3-301.05.2 Notice in Solicitation

Each solicitation issued by the State shall provide that any bids, proposals, or qualificationSOQs may be rejected in whole or in part when in the best interest of the State.

3-301.05.3 Reasons for Rejection

(a) **Bids.** As used in this section, “bid” means any offer providing pricing submitted in competitive sealed bidding or in the second phase of multi-step sealed bidding, and includes submissions under Section 3-205 (Small Purchases), if no changes in offers are allowed after submission. Reasons for rejecting a bid include but are not limited to:

- (1) the business that submitted the bid is non-responsible as determined under Section 3-401.06 (Written Determination of Non-responsibility Required) of this chapter;
- (2) the bid is non-responsive; that is, it does not conform in all material respects to the Invitation for Bid, *see* Section 3-202.13.2 (Service/End Product Acceptability) of this chapter;
- (3) the supply or service item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the Invitation for Bid. *See* Section 3-202.13.2 (Service/End Product Acceptability);
- (4) lack of competitiveness by reason of collusion or knowledge that reasonably available competition was not received;
- (5) error in specifications or indication that revisions would be to the State’s advantage;
- (6) cancellation or changes in the intended project or other determination that the proposed requirement is no longer needed; or
- (7) limitation or lack of available funds.

(b) **Proposals.** As used in this section, “proposal” means any offer submitted in response to any solicitation for a proposal, including an offer under Section 3-205 (Small Purchases), except a bid as defined in Section 3-301.05.3(a). Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, and the stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:

- (1) the offeror that submitted the proposal is non-responsible as determined under Section 3-401 (Responsibility of Bidders and Offerors);
- (2) the proposal ultimately (that is, after any opportunity has passed for altering or clarifying the proposal) fails to meet the announced requirements of the State in some material respect; or,
- (3) the proposed price is clearly unreasonable.

3-301.05.4 Notice of Rejection

Vendors that have submitted bids, proposals, or qualificationSOQs which are rejected shall be promptly notified in writing of the rejection and the reasons therefor.

3-301.06 "All or None" Bids or Proposals

Only when provided by the solicitation may a bid or proposal limit acceptance to the entire bid or proposal offering; otherwise, such bids or proposals shall be deemed to be non-responsive. If the bid or proposal is properly so limited, the agency shall not reject part of such bid or proposal and award on the remainder. "All or none" bids shall not be requested unless it is determined that a multiple number of bidders can provide pricing on all items requested. If the "all or none" requirement limits the bidding to the point that only a single responsive bid is received, the PSCRBPPRB will not approve the request unless ample justification is presented.

3-301.07 Disposition of Bids, Proposals, or ~~Statements of Qualifications~~Qualifications

When bids, proposals, or qualificationSOQs are rejected, or a solicitation canceled after bids, proposals, or qualificationSOQs are received, the bids, proposals, or qualificationSOQs which have been opened shall be retained in the agency's procurement file.

3-401 RESPONSIBILITY OF BIDDERS, OFFERORS, AND RESPONDENTS

Commented [CM4]: This Section moved to 3-102.09 through 3-102.11

3-401.01 General Provisions

~~(a) Determination of Non-responsibility:—A written determination of non-responsibility of a bidder, offeror, or respondent shall be made and maintained in the agency's procurement file. The unreasonable failure of a bidder, offeror, or respondent to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder, offeror, or respondent.~~

~~(b) Right of Nondisclosure:—Disclosure of information furnished by a bidder, offeror, or respondent pursuant to this section outside of the office of the purchasing agency is subject to the provisions of Mississippi Code Annotated §§ 25-61-1 et seq. and 79-23-1.~~

3-401.02 Application

~~A written determination of responsibility or non-responsibility shall be made as provided herein and maintained in the agency's procurement file.~~

3-401.03 Standards of Responsibility

3-401.03.1 Standards

~~Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has:~~

- ~~(a) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;~~
- ~~(b) a satisfactory record of performance;~~
- ~~(c) a satisfactory record of integrity;~~
- ~~(d) qualified legally to contract with the State; and,~~
- ~~(e) supplied all necessary information in connection with the inquiry concerning responsibility.~~

~~3-401.03.2 Information Pertaining to Responsibility~~

~~The prospective contractor shall supply information requested by the Procurement Officer concerning the responsibility of such contractor. If the contractor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsible if such failure is unreasonable.~~

~~3-401.04 Ability to Meet Standards~~

~~The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:~~

- ~~(a) evidence that such contractor possess such necessary items;~~
- ~~(b) acceptable plans to subcontract for such necessary items; or,~~
- ~~(c) a documented commitment from or explicit arrangement with, a satisfactory source to provide the necessary items.~~

~~3-401.05 Duty Concerning Responsibility~~

~~Before awarding a contract, the Procurement Officer must be satisfied that the prospective contractor is responsible.~~

~~3-401.06 Written Determination of Non-responsibility Required~~

~~If a bidder, offeror, or respondent is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Agency Head. A copy of the determination shall be sent promptly to the non-responsible bidder, offeror, or respondent. The final determination shall be made part of the agency's procurement file.~~

~~3-402 PREQUALIFICATION OF PROSPECTIVE CONTRACTORS~~

~~Prospective contractors may be prequalified for particular types of services. Solicitation mailing lists of potential contractors shall include but shall not be limited to such prequalified contractors.~~

3-402.01 Prequalification

3-402.01.1 General Provision

~~Prospective contractors may be prequalified for bidder lists, but distribution of the solicitation shall not be limited to prequalified contractors, nor may a prospective contractor be denied award of a contract simply because such contractor was not prequalified. The fact that a prospective contractor has been prequalified does not necessarily represent a finding of responsibility.~~

3-403 COST OR PRICING DATA

3-403.01 General Provision

- (a) **Contractor Certification:** A contractor shall when requested by the buying entity, except as provided in Subsection 3 of this section, submit cost or pricing data and shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of a mutually determined specified date.
- (b) **Price Adjustment:** Any contract, change order, or contract modification under which a contractor certificate is required shall contain a provision that the price to the State, including profit or fee, shall be adjusted to exclude any significant sums by which the State finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the parties.
- (c) **Cost or Pricing Data Not Required:** The requirements of this section need not be applied to contracts:
 - (1) where the contract price is based on adequate price competition;
 - (2) where the contract price is based on established market prices;
 - (3) where contract prices are set by law or regulations; or,
 - (4) where it is determined by the Agency Head in writing that the requirements of this section may be waived and the reasons for such waiver are stated in writing.
- (d) When it is determined that an bidder or offeror should provide cost or pricing data to justify a bid or proposal, this regulation may be used as a guideline for such negotiation.

3-403.02 Requirement for Cost or Pricing Data

The pricing policies which are applicable to contracts of any type and any price adjustments there-under when cost or pricing data are required to be submitted are set forth herein. The provisions herein requiring submission of cost or pricing data do not apply to a contract let by competitive sealed bidding (including multi-step bidding) except as may be provided herein below. Cost or pricing data may be required in support of a proposal when:

- (a) any contract expected to exceed \$75,000 is to be awarded by competitive sealed proposals or by sole-source procurement;
- (b) an emergency procurement is made in excess of \$75,000, but such data may be submitted after contract award; or,
- (c) the Chief Procurement Officer makes a written determination which shall be maintained in the agency's procurement file that the circumstances warrant required submission of cost or pricing data; provided, however, that cost or pricing data shall not be required where the contract award is made pursuant to competitive sealed bidding.

3-403.03 Meaning of Terms "Adequate Price Competition," "Established Market Prices," and "Prices Set by Law or Regulation"

The terms "adequate price competition," "established market prices," and "prices set by law or regulation" shall be construed in accordance with the following definitions:

- (a) **Adequate Price Competition:** Price competition exists if competitive sealed proposals are solicited and at least two responsible offerors independently compete for the contract to be awarded to the responsible offeror submitting the lowest evaluated price and meeting the requirements of the solicitation. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the Chief Procurement Officer determines in writing that such competition is not adequate.
- (b) **Established Market Prices:** "Established Market Price" is a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources which are independent of the contractor and may be an indication of the reasonableness of price. If, despite the existence of an established market price, and after consultation with the prospective contractors, the Chief Procurement Officer considers that such price is not reasonable, cost or pricing data may be requested.
- (c) **Prices Set by Law or Regulation:** The price of a service is set by law or regulation if a governmental body established the price that the offeror or contractor may charge the State and other customers.

3-403.04 Submission of Cost or Pricing Data and Certification

3-403.04.1 Time and Manner

When cost or pricing data are required, they shall be submitted to the **Chief** Procurement Officer prior to beginning price negotiations at the time and in the manner prescribed by the **Chief** Procurement Officer. When the **Chief** Procurement Officer requires the offeror or contractor to submit cost or pricing data in support of any proposal, such data shall either be actually submitted or specifically identified in writing.

3-403.04.2 Obligation to Keep Data Current

The offeror or contractor is required to keep such submission current until the negotiations are concluded or, if applicable, until the contract is expired.

3-403.04.3 Time for Certification

The offeror or contractor shall certify as soon as practicable after agreement is reached on price that the cost or pricing data submitted is accurate, complete, and current as of a mutually determined date prior to reaching agreement. Certification shall be made using the certificate set forth in **Section 3-403.05** below.

3-403.04.4 Refusal to Submit Data

A refusal by the offeror to supply the required data shall be referred to the Agency Head, whose duty shall be to determine in writing whether to disqualify the noncomplying offeror, to defer award pending further investigation, or to enter into the contract. A refusal by a contractor to submit the required data to support a price adjustment shall be referred to the Agency Head who shall determine in writing whether to further investigate the price adjustment, to disallow any price adjustment, or to set the amount of the price adjustment.

3-403.05 Certificate of Current Cost or Pricing Data

3-403.05.1 Form of Certificate

When cost or pricing data must be certified, a certificate substantially as set forth below shall be included in the agency's contract file along with any award documentation required under these regulations. The offeror or contractor shall be required to submit the certificate as soon as practicable after agreement is reached on the contract price or adjustment.

CERTIFICATE OF CURRENT COST OR PRICING DATA

*This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in **Section 3-101.01** of the Mississippi ~~Personal Service Contract Review Board~~ **Public Procurement Review Board** Rules and Regulations submitted, either actually or by specific identification in writing (see **Section 3-403.04**) to the **Chief** Procurement Officer in support of*, is accurate, complete, and current as of (date) (month) (year)***

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the State of Mississippi which are part of the proposal.

*Firm
Name
Title
Date of Execution****

--- (End of Certificate) ---

* Describe the proposal, quotation, request for price adjustment or other submission involved, giving appropriate identifying number (e.g., RFP No. _____).

** The effective date shall be a mutually determined date prior to, but as close to the date when price negotiations were concluded and the contract price was agreed to, as possible. The responsibility of the offeror or contractor is not limited by the personal knowledge of the offeror's or contractor's negotiator if the offeror or contractor had information reasonably available at the time of agreement, showing that the negotiated price is not based on accurate, complete, and current data.

***This date should be as soon after the date when the price negotiations were concluded and the contract price was agreed to as practical.

3-403.05.2 Representation as to Accuracy of Cost or Pricing Data

Although the certificate pertains to cost or pricing data, it is not to be construed as a representation as to the accuracy of the offeror's or contractor's judgment on the estimated portion of future costs or projections. It does constitute a representation as to the accuracy of the data upon which the offeror's or contractor's judgment is based. A Certificate of Current Cost or Pricing Data shall not substitute for examination and analysis of the offeror's or contractor's proposal.

3-403.05.3 Inclusion of Notice and Contract Clause

Whenever it is anticipated that a Certificate of Current Cost or Pricing Data may be required, notice of this requirement shall be included in the solicitation. If such a certificate is required, the contract shall include a clause giving the State a contract right to a reduction in the price as provided in [Section 3-403.06](#) (Defective Cost or Pricing Data).

3-403.05.4 Exercise of Option

The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data was used does not require recertification or further submission of data.

3-403.06 Defective Cost or Pricing Data

3-403.06.1 Overstated Cost or Pricing Data

If certified cost or pricing data is subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the State is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data.

Judgmental errors made in good faith concerning the estimated portions of future costs or projections do not constitute defective data. It is presumed that overstated costs or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fees; therefore, unless there is a clear indication that the defective data was not used or relied upon, the price should be reduced in such amount. In establishing that the defective data caused an increase in the contract price, the Chief Procurement Officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

3-403.06.2 Offsetting Understated Cost or Pricing Data

In determining the amount of a downward adjustment, the contractor shall be entitled to an offsetting adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the State's claim for overstated cost or pricing data arising out of the same pricing action.

3-403.06.3 Dispute

If the contractor and the Chief Procurement Officer cannot agree as to the existence of defective cost or pricing data or amount of adjustment due to defective cost or pricing data, the Chief Procurement Officer shall set an amount in accordance with Subsections 3-403.06.1 and 3-403.06.2.

3-403.07 Price Analysis Techniques

Price analysis is used to determine if a price is reasonable and acceptable. It involves an evaluation of the prices for the same or similar items or services. Examples of price analysis criteria include but are not limited to:

- (a) price submission of prospective bidders or offers in the current procurement;
- (b) prior price quotations and contract prices charged by the bidder, offeror, or contractor;
- (c) prices published in catalogs or price lists;

- (d) prices available on the open market; and,
- (e) in-house estimates of cost.

In making such analysis, consideration must be given to any differing terms and conditions.

3-403.08 Cost Analysis Techniques

Cost analysis includes the appropriate verification of cost or pricing data, and the use of this data to evaluate:

- (a) specific elements of costs;
- (b) the necessity for certain costs;
- (c) the reasonableness of amounts estimated for the necessary costs;
- (d) the reasonableness of allowances for contingencies;
- (e) the basis used for allocation of indirect costs;
- (f) the appropriateness of allocations of particular indirect costs to the proposed contract; and,
- (g) the reasonableness of the total cost or price.

3-403.09 Evaluations of Cost or Pricing Data

Evaluations of cost or pricing data should include comparisons of costs and prices of an offeror's cost estimates with those of other offerors and any independent Mississippi price and cost estimates. They shall also include consideration of whether such costs are reasonable and allowable.

3-501 TYPES OF CONTRACTS

3-501.01 Scope of Regulation

This regulation section contains descriptions of types of contracts and limitations as to when they should be utilized by the State in its procurements.

Subject to the limitations of this section, any type of contract which will promote the best interests of the State may be used. A cost reimbursement contract may be used only when a determination is made in writing that such contract is to be less costly to the State than any other type of contract or that it is impracticable to obtain the services required except under such a contract. The written determination shall be maintained in the procurement file.

3-501.02 Cost-Plus-a-Percentage-of-Cost Contracting

A cost-plus-a-percentage-of-cost contract is one in which, prior to beginning the work, the parties agree that the fee will be a predetermined percentage of the total cost of the work. Thereby, the more the contractor spends, the greater its fee and the contractor's incentive may, therefore, be to incur cost at the expense of the State and not to economize. Agencies are urged to avoid the use of cost-plus-a-percentage-of-cost contracts.

3-501.03 Policy Regarding Selection of Contract Types

3-501.03.1 General

The selection of an appropriate contract type depends on factors such as the nature of the services to be procured, the uncertainties which may be involved in contract performance, and the extent to which the State or the contractor is to assume the risk of the cost of performance of the contract. Contract types differ in degree of responsibility assumed by the contractor.

The objective when selecting a contract type is to obtain the best value in needed services in the time required and at the lowest cost or price to the State. In order to achieve this objective, the Chief Procurement Officer, before choosing a contract type, should review those elements of the procurement which directly affect the cost, time, risk, and profit incentive bearing on the performance.

Among the factors to be considered in selecting any type of contract are:

- (a) the type and complexity of services being procured;
- (b) the difficulty of estimating performance costs such as the inability of the State to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;
- (c) the administrative costs to both parties;
- (d) the degree to which the State must provide technical coordination during the performance of the contract;
- (e) the effect of the choice of the type of contract on the amount of competition to be expected;
- (f) the stability of material or commodity market prices or wage levels;
- (g) the urgency of the requirement; and,
- (h) the length of contract performance.

Note: It is self-defeating for the State to select a type of contract that would place an unreasonable economic risk on the contractor, since such action may tend to jeopardize satisfactory performance of the contract.

3-501.03.2 Use of Contract Types Not Herein Described

The provisions of **Section 3-501** describe and define the principal contract types. Any other type of contract may be used provided the Agency Head and the **PSCRBP** determine that such use is in the State's best interest.

3-501.04 Types of Fixed-Price Contracts

3-501.04.1 General

A fixed-price contract places responsibility on the contractor for the performance of the service in accordance with the contract terms at a price that may be firm or may be subject to contractually specified adjustments. The fixed-price contract is appropriate for use when the extent and type of work necessary to meet requirements can be reasonably specified and the cost can be reasonably estimated. A fixed-price type of contract is the only type of contract that can be used in competitive sealed bidding.

Note: Fixed-price contracts are preferred for use in procurements and should be used whenever possible; however, when risks are unknown or not readily measurable in terms of costs, the use of such contracts can result in inflated prices and inadequate competition, poor performance, disputes, claims when performance proves difficult, or excessive profits when anticipated contingencies do not occur.

3-501.04.2 Firm Fixed-Price Contract

A firm fixed-price contract provides a price that is not subject to adjustment because of variations in the contractor's cost of performing the work specified in the contract. It should be used whenever prices which are fair and reasonable to the State can be established at the outset. Bases upon which firm fixed prices may be established include:

- (a) adequate price competition for the contract;
- (b) comparison of prices in similar prior procurements in which prices were fair and reasonable;
- (c) establishment of realistic costs of performance by utilizing available cost or pricing data and identifying uncertainties in contract performance; or,
- (d) use of other adequate means to establish a firm price.

3-501.04.3 Fixed-Price Contract with Price Adjustment

- (a) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract. An adjustment would be implied in the authority for change orders as would be applicable to construction contracts.
- (b) If the contract permits unilateral action by the contractor to bring about the condition under which a price increase may occur, the contract shall reserve to the State the right to reject the price increase and terminate without cost the future performance of the contract. The contract shall also require that notice of any such price increase shall be given within such time prior to its effective date as is specified in the contract.

3-501.05 Definite Quantity and Indefinite Quantity Contracts

3-501.05.1 Definite Quantity

A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of services either at specified times or when ordered.

3-501.05.2 Indefinite Quantity

An indefinite quantity contract is a contract for an indefinite amount of services to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type. Generally an approximate quantity or the best information available as to quantity is stated in the solicitation. The contract may provide a minimum quantity the State is obligated to procure and may also provide for a maximum quantity provision that limits the State's obligation to procure.

3-501.05.3 Requirements Contracts

A requirements contract is an indefinite quantity contract for services that obligates the State to order all the actual requirements of designated agencies during a specified period of time. The obligation to order the State's actual requirements is limited only by provisions of Mississippi Code Annotated § 31-7-12(1). For the protection of the State and the contractor, requirements contracts shall include the following:

- (a) A provision which requires the State and any other users named in the solicitation to order their actual requirements of the services covered; however, the State may reserve in the solicitation and in the resulting contract the right to take bids separately if a particular quantity requirement arises which exceeds the State's normal requirements or an amount specified in the contract.
- (b) Two exemptions from ordering under the contract occur when:
 - (1) the Agency Head approves a finding that the supply or service available under the contract will not meet a nonrecurring, special need of the buying entity; and,

- (2) services are performed incidental to the State's own programs, such as industries of correctional institutions that can satisfy the need.

3-502 MULTI-TERM CONTRACTS

(a) Specified Period

Unless otherwise provided by law, a contract for services may be entered into for a period of time **not to exceed four (4) years with an option to renew for one year**, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

(b) Determination Prior to Use

Prior to the utilization of a multi-term contract, it shall be determined in writing by the agency and maintained in the procurement file:

- (1) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and,
- (2) that such a contract will serve the best interests of the State of Mississippi by encouraging effective competition or otherwise promoting economies in state procurement.

3-502.01 Multi-Term Contracts – General

A multi-term contract is appropriate when it is in the best interest of the State to obtain uninterrupted services extending over more than one fiscal period, where the performance of such services involves high start-up costs, or where a changeover of service contractors involves high phase-in/phase-out costs during a transition period.

Special production refers to production for contract performance which requires alteration of the contractor's facilities or operations involving high start-up costs. The contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds therefor. The contract shall provide that in the event that funds are not available for any succeeding fiscal period, the remainder of such contract shall be canceled.

3-502.02 Conditions for Use of Multi-Term Contracts

A multi-term contract may be used when it is determined in writing by the Chief Procurement Officer and maintained in the procurement file that:

- (a) the furnishing of long-term services are required to meet needs of the State; and,

(b) a multi-term contract will serve the best interests of the State by encouraging effective competition or otherwise promoting economies in state procurement. The following factors are among those relevant to such a determination:

- (1) firms which are not willing or able to compete because of high start-up costs or capital are assured of recouping such costs during the period of contract performance;
- (2) lower production costs because of larger quantity or service requirements and substantial continuity of production or performance over a longer period of time can be expected to result in lower unit prices;
- (3) stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality; or,
- (4) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

3-502.03 Multi-Term Contract Procedure

3-502.03.1 Solicitation

The solicitation shall state:

- (a) the amount of services required for the proposed contract period;
- (b) that a unit price shall be given for each service, and that such unit prices shall be the same throughout the contract;
- (c) that the multi-term contract will be canceled if funds are not appropriated or otherwise made available to support the continuation of performance in any fiscal period succeeding the first; however, this does not affect either the State's right or the contractor's rights under any termination clause in the contract;
- (d) that the Chief Procurement Officer must notify the contractor on a timely basis that the funds are or are not available for the continuation of the contract for each succeeding fiscal period; and,
- (e) that a multi-term contract may be awarded and how award will be determined.

3-502.03.2 Award

Award shall be made as stated in the solicitation and permitted under the source selection method utilized.

3-502.03.3 Cancellation

- (a) "Cancellation," as used in multi-term contracting, means the cancellation of the total requirements for the remaining portion of the contract because funds were not appropriated or otherwise made available. The contract for the fiscal period shall not be canceled. Cancellation results when the Chief Procurement Officer:
- (1) notifies the contractor of non-availability of funds for contract performance for any fiscal period subsequent to the first; or,
 - (2) exercises a cancellation provision of the original contract.
- (b) These provisions on cancellation of multi-term contracts do not limit the rights of the State or the contractor under any termination clause of the contract if the contract is terminated pursuant to that clause rather than canceled as provided in this subsection. If a contract is canceled for lack of funding, all obligations due the contractor for the period during which funding was available shall be paid. Cancellation for reasons of non-availability of funding relieves the purchaser of all contractual obligations for any contract period subsequent to the date of cancellation. No contract shall be canceled for lack of funds during a fiscal year period when funds were allocated for such contract.

3-502.03.4 Contract Clause

The following clause, or one substantially similar, shall be used by the Purchasing Agency in multi-term contractual agreements:

Availability of Funds

It is expressly understood and agreed that the obligation of the [agency] to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the State, the [agency] shall have the right upon ten (10) working days written notice to the contractor, to terminate this agreement without damage, penalty, cost or expenses to the State of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

Note: *Multi-term contracts, as set forth in this section, should be interpreted to mean a contract having effective dates spanning appropriation periods two or more fiscal years and would obligate the agency to purchase a specified quantity of services over that period.*

3-503 MULTIPLE SOURCE CONTRACTING

3-503.01 Incremental Award

3-503.01.1 General

An incremental award is an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required. An incremental award may be used only when awards to more than one bidder ~~or; offeror; or respondent~~ for different amounts of the same item are necessary to obtain the total quantity or the required delivery.

3-503.01.2 Intent to Use

If an incremental award is anticipated prior to issuing a solicitation, the State shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

3-503.01.3 Determination Required

The Chief Procurement Officer shall make a written determination setting forth the reasons for the incremental award, which shall be made a part of the agency's procurement file.

3-503.02 Multiple Award

3-503.02.1 General

A multiple award is an award of an indefinite quantity contract for services to more than one bidder ~~or; offeror; or respondent~~ when the State is obligated to order all of its actual requirements for the specified services from those contractors. The obligation to order the State's actual requirements is limited by Mississippi Code Annotated [§ 75-2-306](#).

3-503.02.2 Limitations on Use

A multiple award may be made when an award to two or more bidders ~~or; offerors; or respondents~~ for similar services is necessary for adequate delivery. Any multiple awards shall be made in accordance with the provisions of Section 3-202 (Competitive Sealed Bids), 3-203 (Competitive Sealed Proposals and Qualifications), ~~Section 3-204 (Competitive Sealed Qualifications)~~, Section 3-205 (Small Purchases), and Section 3-207 (Emergency Procurement), as applicable. Multiple awards shall not be made when a single award will meet the State's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of contractors necessary to meet the valid requirements of using agencies.

3-503.02.3 Contract and Solicitation Provisions

All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided, that:

- (a) the State shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract;
- (b) the State shall reserve the right to take bids separately if the Agency Head approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the agency; and,
- (c) the contract may allow the State to procure services performed, incidental to the State's own programs, such as industries of correctional institutions, when such services satisfy the need.

3-503.02.4 Intent of Use

If a multiple award is anticipated prior to issuing a solicitation, the State shall reserve the right to make such an award, and the criteria for award shall be stated in the solicitation.

3-503.02.5 Determination Required

The **Chief** Procurement Officer shall make a written determination setting forth the reasons for a multiple award, which shall be made a part of the agency's procurement file.

Note: Within these regulations, contract arrangements which establish more than one source of service are either multiple or progressive award contracts. Competitive Sealed Bidding (Invitation for Bid) is the preferred ~~Competitive sealed bidding is the conventional procurement~~ method for establishing such contracts, although competitive sealed proposals, competitive sealed qualifications, small purchase procedures, and emergency procurements may be used if allowed in accordance with Section 3-201.01 (Petition for Relief from Competitive Bidding).

3-601 RIGHT TO INSPECT FACILITY

The State may, at reasonable times, inspect the place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the State.

3-601.01 Inspection of Facility or Site

Circumstances under which the State may perform inspections include, but are not limited to, inspections of contractor's site in order to determine:

- (a) whether the standards set forth in Section 3-401.03 (Standards of Responsibility) have been met or are capable of being met; and,

(b) if the contract is being performed in accordance with its terms.

3-601.02 Access to Place of Business

The State may enter a contractor's or subcontractor's place of business to:

- (a) inspect services for acceptance by the State pursuant to the terms of a contract;
- (b) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to [Section 3-602](#) (Right to Audit Records) of these Regulations; and,
- (c) investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to [Section 5-101](#) (Debarment or Suspension).

3-601.03 Inspection and Testing of Services

3-601.03.1 Solicitation and Contractual Provisions

Mississippi contracts may provide that the State may inspect services at the contractor's or subcontractor's facility and perform the tests to determine whether they conform to solicitation requirements or, after award, to contract requirements and are, therefore, acceptable. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract.

3-601.04 Conduct of Inspections

3-601.04.1 Inspectors

Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.

3-601.04.2 Location

When an inspection is made in the place of business of a contractor or subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

3-601.04.3 Time

Inspection or testing of services performed at the place of business of any contractor or subcontractor shall be performed at reasonable times.

3-602 RIGHT TO AUDIT RECORDS

(a) Audit of Competitive Procedures

The **PSCRBPPRB** may, at reasonable times and places, audit the procurement records of any agency to ensure it has used competitive procedures to contract for the personal or professional service.

(b) Audit of Cost or Pricing Data

The State may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to **Section 3-403** (Cost or Pricing Data) to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(c) Contract Audit

The State shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract to the extent that such books and records related to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

3-602.01 Statutory Authority to Audit

Pursuant to Mississippi Code Annotated § ~~25-9-120~~ **37-104-7(2)(m)**, the **PSCRBPPRB** may request the State Auditor to conduct performance audit on any personal or professional service contract.

3-602.02 Auditors; Audit Reports

Audits requested under this subpart shall be performed by the State Auditor's Office. Such audit reports shall be made available to the party audited upon request.

3-602.03 Cost or Pricing Data Audit

3-602.03.1 General

The **PSCRBPPRB** may require an audit of cost or pricing data that has been submitted under **Section 3-403** (Cost or Pricing Data).

3-602.03.2 Conditions for an Audit

An audit should be required, in respect to the contractor, prospective contractor, subcontractor, or prospective subcontractor, when there is:

- (a) a question as to the adequacy of accounting policies or cost systems;
- (b) a substantial change in the methods or levels of operation;
- (c) previous unfavorable experience indicating doubtful reliability of estimating, accounting, or purchasing methods;
- (d) a lack of cost experience due to the procurement of a new supply or service; or,
- (e) other evidence that an audit is in the State's best interests as determined by the **PSCRBPPRB**.

Note: Subject to final determination by the State Auditor, the report should contain the following in respect to the contractor, prospective contractor, subcontractor, or prospective subcontractor:

- (a) a description of the original proposal and all submissions of cost or pricing data;*
- (b) an explanation of the basis and the method used in preparing the proposal;*
- (c) a statement identifying any cost or pricing data not submitted but examined by the auditor which has a significant effect on the proposed cost or price;*
- (d) a description of any deficiency in the cost or pricing data submitted and an explanation of its effect on the proposal;*
- (e) a statement summarizing those major points where there is a disagreement as to the cost or pricing data submitted; and*
- (f) a statement identifying any information obtained from other sources.*

3-602.04 Contract Audit

3-602.04.1 Contract Audited

Under the authority of Mississippi Code Annotated § ~~25-9-120~~**27-101.7(2)(m)**, any contract for personal or professional services may be audited when auditing would be appropriate to assure satisfactory performance.

3-602.04.2 Conditions for an Audit

The requirement of a contract audit may be warranted when a question arises in connection with:

- (a) the financial condition, integrity, and reliability of the contractor or subcontractor;
- (b) any prior audit experience;
- (c) the adequacy of the contractor's or subcontractor's accounting system;
- (d) the number or nature of invoices or reimbursement vouchers submitted by the contractor or subcontractor for payment;
- (e) the use of federal assistance funds;
- (f) the fluctuation of market prices affecting the contract;
- (g) contract performance or measurement of deliverables; or,
- (h) any other situation in which the **PSCRBPPRB** finds that such an audit is necessary for the protection of the State's interest, including random audits to ensure compliance with these regulations.

The scope of the audit may be limited by the **PSCRBPPRB**.

Note: The scope of the report will depend on the scope of the audit ordered; however, the report should contain specific reference to the terms of the contract to which the audited data related and a statement of the degree to which the auditor believes the audited data evidences compliance with those terms.

3-602.05 Retention of Books and Records

3-602.05.1 Relating to Cost and Pricing Data

Any contractor who receives a contract, change order, or contract modification for which cost or pricing data is required under **Section 3-403** (Cost or Pricing Data) shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract.

3-602.05.2 Relating to State Contracts

Books and records that relate to a state contract, including subcontracts, other than a firm fixed-price contract, shall be maintained:

- (a) by a contractor, for three years from the date of final payment under the prime contract; and,

(b) by a subcontractor, for three years from the date of final payment under the subcontract.

3-701 FINALITY OF DETERMINATIONS

The determinations required by the following sections are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law:

- (a) Section 3-202.01(f) (Competitive Sealed Bidding – Correction or Withdrawal of Bids; Cancellation of Awards);
- (b) Section 3-203.01(a) (Competitive Sealed Proposals – Conditions for Use);
- (c) Section 3-203.01(g) (Competitive Sealed Proposals and Qualifications – Award);
- ~~(d) Section 3-204 (Competitive Sealed Qualifications);~~
- ~~(e)~~(d) Section 3-206 (Sole-Source Procurement);
- ~~(f)~~(c) Section 3-207 (Emergency Procurement);
- ~~(g)~~(f) Section 3-401(a) (Responsibility of Bidders or, Offerors, and Respondents, — Determination of Non-responsibility);
- ~~(h)~~(g) Section 3-403.01(c) (Cost or Pricing Data – Cost or Pricing Data Not Required);
- ~~(i)~~(h) Section 3-501 (Types of Contracts); and
- ~~(j)~~(i) Section 3-502 (Multi-Source Contracting).

3-702 REPORTING OF ANTI-COMPETITIVE PRACTICES

When, for any reason collusion or other anti-competitive practices are suspected among any bidders or, offerors, or respondents, a notice of the relevant facts shall be transmitted to the Attorney General.

3-702.01 Anti-Competitive Practices

For the purposes of this section, an anti-competitive practice is a practice among bidders or, offerors, or respondents which reduces or eliminates competition or restrains trade. An anti-competitive practice can result from an agreement or understanding among competitors to restrain trade such as submitting collusive bids, proposals, or ~~statements of qualifications~~ qualifications or result from illicit business actions which have the effect of restraining trade, such as controlling the resale price of products or an improper collective refusal to bid. Indications of suspected anti-competitive practices include, but are not limited to, identical bids, proposals, or ~~statements of qualifications~~ qualifications, rotated low bids or proposals, sharing of the business, “tie-in” sales, resale price maintenance, and group boycotts.

Note: Bidders ~~or~~, offerors, ~~or respondents~~ are prohibited by federal and Mississippi law from collectively responding to a solicitation in a manner that controls directly or indirectly the price of a supply, service, or construction item sought. Mississippi Code Annotated § 75-21-15. This prohibition may extend to such actions establishing any of the following: minimum or maximum prices; uniform list prices; uniform credit terms; uniform discounts; uniform costs and mark-ups; uniform trade-in allowances; specified price differentials between varying grades of the same product, price ranges, price scales or price calculation formulas; and, minimum fee schedules.

3-702.02 Independent Price Determination

Every solicitation shall provide that by submitting a bid, offer, or qualification SOQs, the bidder ~~or offeror bidder, offeror, or respondent~~ certifies that the price submitted was independently arrived at without collusion. The agency may require the signing of a separate form which certifies that the price in the bid or offer was arrived at independently.

3-702.03 Detection of Anti-Competitive Practices

In order to assist in ascertaining whether or not an anti-competitive practice may have occurred or may be occurring, the Chief Procurement Officer should be alert and sensitive to conditions of the market place and will often find it necessary to study past procurements including, as appropriate, the following:

- (a) a study of the bidding history of a commodity or service over a period of time sufficient to determine any significant bidding patterns or changes;
- (b) a review of similar Mississippi contract awards over a period of time; and,
- (c) consultation with outside sources of information, such as ~~bidders or offerors bidders, offerors, or respondents~~ who have competed for similar Mississippi businesses in the past but who are no longer competing for such business.

3-702.04 Identical Bidding and Price Fixing

The term “identical bidding” means the submission by ~~bidders or offerors bidders, offerors, or respondents~~ of the same total price or the same price on a particular line item. The submission of identical bids may or may not signify the existence of collusion.

In seeking to determine whether collusion has taken place, the Chief Procurement Officer should view the identical bids against present and past pricing policies of the ~~bidders or offerors bidders, offerors, or respondents~~, the structure of the industry involved including comparisons of price, and the nature of the service.

3-702.05 Other Anti-Competitive Practices

3-702.05.1 General

The practices which are described in Subsection 3-702.05.2 through Section 3-702.05.5 and which the Chief Procurement Officer suspects might be anti-competitive shall be reported to the PSCRBPPRB.

3-702.05.2 Rotated Low Bids or Proposals

Rotated low bids or proposals result where all bidders or offerors bidders, offerors, or respondents participating in the collusive scheme submit bids and by agreement alternate being the lowest bidders or offerors bidder, offeror, or respondent. To aid in determining whether rotation may be occurring, the Chief Procurement Officer must review past similar procurements in which the same bidders or offerors bidders, offerors, or respondents have participated.

3-702.05.3 Sharing of the Business

Sharing of the business occurs where potential bidders or offerors bidders, offerors, or respondents allocate business among themselves based on the customers or territory involved. Thus, a Chief Procurement Officer might discover that a potential bidders or offerors bidder, offeror, or respondent is not participating in a Mississippi procurement because a particular Mississippi agency or a particular territory has not been allocated to such bidders or offerors bidder, offeror, or respondent.

3-702.05.4 "Tie-in" sales

"Tie-in" sales are those in which a bidder or offeror bidder, offeror, or respondent attempts to sell one supply or service only upon the condition that the Chief Procurement Officer purchase another particular supply or service.

3-702.05.5 Group Boycott

A group boycott results from an agreement between competitors not to deal with another competitor or not to participate in, for instance, a Mississippi procurement until the boycotting competitors' conditions are met by the boycotted competitor or the State. The boycott of a competitor by other competitors may have an effect on the market structure or price of a service needed by the State.

Note: *Protecting the principles of competition in public procurement is a difficult and often complex task. A program of communication and cooperation between procurement and legal offices, institutionalized to the extent feasible, is essential in combating anti-competitive practices.*

3-703 RETENTION OF PROCUREMENT RECORDS

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules by the Department of Archives and History.

CHAPTER 4 – CONTRACT ADMINISTRATION

4-101 MODIFICATION AND TERMINATION OF CONTRACTS FOR SERVICES

The following contract clauses should be used as required by the ~~Personal Service Contract Review Board~~Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations and at the discretion of the Agency Head. In addition to these clauses, see Appendices C (Required Clauses in Contract for Services), D (Required Clauses in IFBs, RFPs, and RFQs), E (Clauses Available for Use in Service Contracts), and F (Clauses Available for Use in Solicitations for Bids, Proposals, or ~~Statements of Qualifications~~Qualifications) for other clauses.

4-101.01 Stop Work Order Clause: Use of clause

The clause set forth in **Subsection 4-101.01.2** of this section is authorized for use in any fixed-price contract under which work stoppage may be required for reasons such as advancements in the state of the art, production modifications, engineering changes, or realignment of programs.

4-101.01.1 Use of Orders

- (a) Because stop work orders may result in increased costs by reason of standby costs, such orders shall be issued only with prior approval of the Agency Head. Generally, use of a stop work order will be limited to situations in which it is advisable to suspend work pending a decision to proceed by the State, and a supplemental agreement providing for such suspension is not feasible. A stop work order may not be used in lieu of the issuance of a termination notice after a decision to terminate has been made.
- (b) Stop work orders shall not exceed 90 consecutive days and shall include, as appropriate:
 - (1) a clear description of the work to be suspended;
 - (2) instructions as to the issuance of further orders by the contractor for material or services;
 - (3) guidance as to action to be taken on subcontracts; and,
 - (4) other instructions and suggestions to the contractor for minimizing costs.

Promptly after issuance, stop work orders shall be discussed with the contractor and should be modified, if necessary, in the light of such discussions.

- (c) As soon as feasible after a stop work order is issued:
 - (1) the contract will be terminated; or,

- (2) the stop work order will be canceled or extended in writing beyond the period specified in the order.

In any event, action must be taken before the specified stop work period expires. If an extension of the stop work order is necessary, it must be evidenced by a supplemental agreement. Any cancellation of a stop work order shall be subject to the same Agency Head approval as was required for the issuance of the order.

4-101.01.2 Stop Work Order Clause (Required)

STOP WORK ORDER

- (1) **Order to Stop Work.** *The Chief Procurement Officer of the [State], may, by written order to the contractor at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either:*
- a. *cancel the stop work order; or,*
 - b. *terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.*
- (2) **Cancellation or Expiration of the Order.** *If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contractor price, or both, and the contract shall be modified in writing accordingly, if:*
- a. *the stop work order results in an increase in the time required for the performance of any part of this contract; or,*
 - b. *the stop work order results in an increase in the contractor's cost properly allocable to the performance of any part of this contract; and,*
 - c. *the contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.*

(3) **Termination of Stopped Work.** *If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.*

(4) **Adjustments of Price.** *Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.*

4-101.02 Variations in Estimated Quantities Clause (form) (Optional)

4-101.02.1 Definite Quantity Contracts

The following clause is authorized for use in definite quantity service contracts:

VARIATION IN QUANTITY

Upon the agreement of the parties, the quantity of services specified in this contract may be increased by a maximum of ten percent provided:

- (1) the unit prices will remain the same (except for any price adjustments otherwise applicable); and,*
- (2) the **Chief Procurement Officer** makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.*

4-101.02.2 Indefinite Quantity Contracts

Indefinite quantity contracts require flexibility as to the State's obligation to order and the contractor's obligation to deliver. The agreement should be designed to meet the agency's needs while making the contract as attractive as possible to potential contractors, thereby attempting to obtain maximum practicable competition in order to assure the best economy for the State of Mississippi. Because of the need for flexibility, no clause is provided herein; however, in each case, the contract should state:

- (a) the minimum quantity, if any, the State is obligated to order and the contractor to provide;
- (b) whether there is a quantity the State expects to order and how this quantity relates to any minimum and maximum quantities that may be ordered under this contract;
- (c) any maximum quantity the State may order and the contractor must provide; and,
- (d) whether the State is obligated to order its actual requirements under the contract, or in the case of a multiple award as defined in **Section 3-503** (Multiple Sourcing Contracting), that the State will order its actual requirements from the contractors under the multiple award subject to any minimum or maximum quantity stated.

4-101.03 Price Adjustment Clause (Optional)

PRICE ADJUSTMENT

(1) **Price Adjustment Methods.** Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:

- (a) by agreement on a fixed price adjustment before commencement of the additional performance;
- (b) by unit prices specified in the contract;
- (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or,
- (d) by a price escalation clause.

(2) **Submission of Cost or Pricing Data.** The contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the Mississippi ~~Personal Service Contract Review Board~~ Public Procurement Review Board Rules and Regulations.

4-101.04 Claims Based on a Chief Procurement Officer's Actions or Omissions Clause (Optional)

CLAIMS BASED ON CHIEF PROCUREMENT OFFICER'S ACTIONS OR OMISSIONS

(1) **Notice of Claim.** If any action or omission on the part of a Chief Procurement Officer or designee of such officer requiring performance changes within the scope of the contract constitutes the basis of a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion, provided:

- (a) the contractor shall have given written notice to the Chief Procurement Officer or designee of such officer:
 - (i.) prior to the commencement of the work involved, if at that time the contractor knows of the occurrence of such action or omission;
 - (ii.) within 30 days after the contractor knows of the occurrence of such action or omission, if the contractor did not have such knowledge prior to the commencement of the work; or,
 - (iii.) within such further time as may be allowed by the Chief Procurement Officer in writing.

(This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The **Chief** Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the **Chief** Procurement Officer or designee of such officer.)

(b) the notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why the contractor believes that additional compensation, damages, or an extension of time may be remedies to which the contractor is entitled; and,

(c) the contractor maintains and, upon request, makes available to the **Chief** Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

(2) **Limitation of Clause.** Nothing herein contained shall excuse the contractor from compliance with any rules or law precluding any state officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

(3) **Adjustment of Price.** Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

4-101.05 Termination for Default Clause (Required)

TERMINATION FOR DEFAULT

(1) **Default.** If the contractor refuses or fails to perform any provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the **Chief** Procurement Officer of the [State] may notify the contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the **Chief** Procurement Officer, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the **Chief** Procurement Officer may procure similar services in a manner and upon terms deemed appropriate by the **Chief** Procurement Officer. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

(2) **Contractor's Duties.** Notwithstanding termination of the contract and subject to any directions from the **Chief** Procurement Officer, the contractor shall take timely, reasonable,

and necessary action to protect and preserve property in the possession of the contractor in which the State has an interest.

(3) **Compensation.** Payment for completed services delivered and accepted by the [State] shall be at the contract price. The [State] may withhold from amounts due the contractor such sums as the Chief Procurement Officer deems to be necessary to protect the [State] against loss because of outstanding liens or claims of former lien holders and to reimburse the [State] for the excess costs incurred in procuring similar goods and services.

(4) **Excuse for Nonperformance or Delayed Performance.** Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the contractor has notified the Chief Procurement Officer within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the contractor to meet the contract requirements.

Upon request of the contractor, the Chief Procurement Officer of the [State] shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the [State] under the clause entitled (in fixed-price contracts, "Termination for Convenience," or in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

(5) **Erroneous Termination for Default.** If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the [State], be the same as if the notice of termination has been issued pursuant to such clause.

(6) **Additional Rights and Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

4-101.06 Liquidated Damages Clause (Optional)

4-101.06.1 With Termination for Default Clause

The following clause is authorized for use in service contracts when it is difficult to determine with reasonable accuracy the amount of damage to the State due to delays caused by late contractor performance or nonperformance and the contract contains the Termination for Default Clause set forth in **Section 4-101.05**.

LIQUIDATED DAMAGES

(1) When the contractor is given notice of delay or nonperformance as specified in Paragraph [(1) (Default)] of the Termination for Default clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of \$ _____ per calendar day from date set for cure until either the [State] reasonably obtains similar services if the contractor is terminated for default, or until the contractor provides the services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of the Termination for Default clause of this contract, liquidated damages shall not be due the State. The contractor remains liable for damages caused other than by delay.

4-101.06.2 In Other Situations

If the contract will not have a Termination for Default clause or the liquidated damages are to be assessed for reasons other than delay, the Agency Head may approve the use of any appropriate liquidated damages clause.

4-101.07 Termination for Convenience Clause (Required)

TERMINATION FOR CONVENIENCE

*(1) **Termination.** The Chief Procurement Officer of the [State] may, when the interests of the [State] so require, terminate this contract in whole or in part, for the convenience of the [State]. The ~~Procurement Officer~~ Chief Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.*

*(2) **Contractor's Obligations.** The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Chief Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under the terminated orders or subcontracts to the State.*

The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

4-102 MONITORING CONTRACT PERFORMANCE

The Agency Head shall ensure that contracts are monitored at least monthly to confirm acceptable performance, timely fulfillment of deliverables and compliance with terms of the agreement.

4-102.01 Duties of the ~~Procurement Officer~~ Chief Procurement Officer shall include, but are not limited to the following:

- (a) reviews and approves contract deliverables;
- (b) ensures compliance with contractual terms;
- (c) coordinates the flow of information between the parties;
- (d) responds to requests of the contractor;
- (e) monitors disbursements against the contract budget;
- (f) monitors actual progress against work schedules;
- (g) coordinates the furnishing of necessary materials;
- (h) authorizes no cost modifications; and,
- (i) makes recommendations on modifications involving increased cost.

CHAPTER 5 – LEGAL AND CONTRACTUAL REMEDIES

5-101 DEBARMENT OR SUSPENSION

- (a) **Authority.** With reasonable notice to the person involved and reasonable opportunity for that person to be heard, the PSCRBPPRB, after consultation with the using agency and the Special Assistant Attorney General assigned to MSPBDA, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of two (2) years. The PSCRBPPRB, after consultation with the using agency (the agency that has used the services supplied by the contractor) and the Special Assistant Attorney General, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months.
- (b) **Agency Requests for Debarment or Suspension.** Using agencies must submit a Vendor Quality Report to the PSCRBPPRB to request the debarment or suspension of a contractor or potential contractor.
- (c) **Causes for Debarment or Suspension.** The causes for debarment or suspension include the following:
- (1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Mississippi contractor;
 - (3) conviction under state or federal antitrust statutes arising out of the submission of bids, proposals, or ~~statements of qualifications~~Qualifications;
 - (4) violation of contract provisions, as set forth below, of a character which is regarded by the PSCRBPPRB to be so serious as to justify debarment action; including,
 - i. deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract or,
 - ii. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
 - (5) any other cause the PSCRBPPRB determines to be so serious and compelling as to affect responsibility as a Mississippi contractor, including debarment by another governmental entity for any cause listed herein; and,

(6) for violation of the ethical standards set forth in Chapter 6 (Ethics in Contracting for Personal and Professional Services).

(d) **Decision.** The **PSCRBPPRB** shall issue a written decision to debar or suspend. The decision shall:

(1) state the reason(s) for the action(s) taken; and,

(2) inform the debarred or suspended person involved of their right to administrative review as provided in this chapter.

(e) **Notice of Decision.** A copy of the decision under subsection (c) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

(f) **Finality of Decision.** A decision shall be final and conclusive, unless fraudulent, or the debarred or suspended person commences an action in court.

5-101.01 Application

This regulatory provision applies to all debarments or suspensions of persons from consideration for award of contracts imposed by the **PSCRBPPRB**.

5-101.02 Suspension

5-101.02.1 Initiation

After consultation with the affected using agency, the Special Assistant Attorney General, and, where practicable, the contractor or prospective contractor who is to be suspended, the **PSCRBPPRB** shall make a written determination as to whether probable cause exists for debarment as set forth in **Section 5-101** (Debarment or Suspension). If probable cause is found, a contractor or prospective contractor shall be suspended. A notice of suspension, including a copy of such determination, shall be sent to the suspended contractor or prospective contractor. Such notice shall state that:

(a) the suspension is for the period it takes to complete an investigation into possible debarment including any appeals of a debarment decision, but not for a period in excess of three (3) months;

(b) bids or proposals will not be solicited from the suspended person, and if they are received they will not be considered during the period of suspension; and,

(c) if a hearing has not been held, the suspended person may request a hearing in accordance with **Section 5-101.04** (Request for Hearing).

5-101.02.2 Effect of Decision

A contractor or prospective contractor is suspended upon issuance of the notice of suspension. The suspension shall remain in effect during any appeals. The suspension may be ended by the PSCRBPPRB but otherwise shall only be ended when the suspension has been in effect for three (3) months or a debarment decision takes effect.

5-101.03 Initiation of Debarment Action

Written notice of the proposed debarment action shall be sent by certified mail, return receipt requested, to the contractor or prospective contractor. This notice shall:

- (a) state that debarment is being considered;
- (b) set forth the reasons for the action;
- (c) state that if the contractor or prospective contractor so requests, a hearing will be held, provided such request is received by the PSCRBPPRB within ten (10) days after the contractor or prospective contractor receives notice of the proposed action; and,
- (d) state that the contractor or prospective contractor may be represented by counsel. Such notice shall also be sent to the MSPB-DFA Special Assistant Attorney General and the affected using agency.

5-101.04 Request for Hearing

A contractor or prospective contractor that has been notified of a proposed debarment or suspension action may request in writing that a hearing be held. Such request must be received by the PSCRBPPRB within ten (10) days of receipt of notice of the proposed action under Section 5-101.03 (Initiation of Debarment Action). If no request is received within the ten-day period, a final determination may be made as set forth in Section 5-101.08 (Determination of Hearing Officer – Final Decision) after consulting with the MSPB-DFA Special Assistant Attorney General and the using agency.

5-101.05 Notice of Hearing

If a hearing is requested, the PSCRBPPRB may appoint a hearing officer to conduct the hearing and recommend a final decision. The hearing officer shall send a written notice of the time and place of the hearing. Such notice shall be sent by certified mail, return receipt requested, and shall state the nature and purpose of the proceedings. Copies shall be sent to the MSPB-DFA Special Assistant Attorney General, the using agency, and the contractor or prospective contractor.

5-101.06 Authority of Hearing Officer

The hearing officer, in the conduct of the hearing, may:

- (a) hold informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by consent of the parties or upon such officer's own motion;
- (b) require parties to state their positions with respect to the various issues in the proceeding;
- (c) require parties to produce for examination those relevant witnesses and documents under their control;
- (d) rule on motions, and other procedural items on matters pending before such officer;
- (e) regulate the course of the hearing and conduct of participants therein;
- (f) receive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;
- (g) fix time limits for submission of written documents in matters before such officer;
- (h) impose appropriate sanctions against any party or person failing to obey an order under those procedures, which sanctions may include:
 - (1) refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
 - (2) excluding all testimony of an unresponsive or evasive witness; and,
 - (3) expelling any party or person from further participation in the hearing;
- (i) take official notice of any material fact not appearing in evidence in the record, if such fact is among the traditional matters of judicial notice; and,
- (j) take such other action which is in the best interest of the State, consistent with due process and in the interest of justice.

5-101.07 Hearing Procedures

- (a) Hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements. The weight to be attached to evidence presented in any particular form will be within the discretion of the hearing officer. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The hearing officer may require evidence in addition to that offered by the parties.

- (b) A hearing may be recorded but need not be transcribed except at the request and expense of the contractor or prospective contractor. A record of those present, identification of any written evidence presented, and copies of all written statements and a summary of the hearing shall be sufficient record.
- (c) Opening statements may be made unless a party waives this right.
- (d) All witnesses may be cross-examined.

5-101.08 Determination of Hearing Officer – Final Decision

The hearing officer shall prepare a written determination recommending a course of action. Such determination shall be given to the **PSCRBP** and the head of a purchasing agency. Copies shall also be sent to the contractor or prospective contractor, the **MSPB-DFA** Special Assistant Attorney General, and the affected using agency. The contractor or prospective contractor shall have ten (10) days to file comments upon the hearing officer's determination. The **PSCRBP** may request oral argument. After consultation with the using agency and the **MSPB-DFA** Special Assistant Attorney General, the **PSCRBP** shall issue a final decision. Both the hearing officer's determination and the final decision shall recite the evidence relied upon. When debarment is recommended or ordered, the length of the debarment, the reasons for such action, and to what extent affiliates are affected shall be set forth. In addition, the final determination shall inform the debarred person of his rights to judicial review under this chapter of these regulations.

5-101.09 Effect of Debarment Decision

A debarment decision will take effect upon issuance and receipt by the contractor or prospective contractor. After the debarment decision takes effect, the contractor shall remain debarred until the debarment period specified in the decision expires.

5-101.10 Maintenance of List of Debarred and Suspended Persons

The **PSCRBP** shall maintain and update a list of debarred and suspended persons. All agencies of the State shall be supplied with this list. The **PSCRBP** shall send updates of this list to all agencies of the State as necessary. Such list shall be available to the public upon request.

5-201 APPEAL AND REVIEW OF ~~PERSONAL SERVICE CONTRACT REVIEW BOARD~~PUBLIC PROCUREMENT REVIEW BOARD DECISIONS

- (a) **Appeal.** Any person receiving an adverse decision, the State, or both may appeal from a decision by the **PSCRBP** to the designated court or courts of the State.
- (b) **Authorization of Appeal by the State.** No such appeal shall be made by the State unless recommended by the **PSCRBP** or the head of the agency involved.

5-202 DISCONTINUANCE OF CONTRACTOR'S APPEAL

After notice of an appeal to the PSCRBP has been filed with the PSCRBP, a contractor may not discontinue such appeal without prejudice, except as authorized by the PSCRBP.

5-203 VIOLATION OF LAW

The provisions of this section specifically apply where it is determined administratively, or upon administrative or judicial review, that a solicitation or award of a contract is in violation of federal or state law(s).

5-203.01 Determination that Solicitation or Award Violates Law

A solicitation or award may be in violation of the law due to actions of state employees, bidders or offerors, bidders, offerors, respondents, contractors, or other persons. After consultation with the MSPB-DFA Special Assistant Attorney General, the PSCRBP or an Agency Head may determine that a solicitation or contract award is in violation of the provisions of the Mississippi Personal Service Contract Review Board Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations. After consultation with the MSPB-DFA Special Assistant Attorney General, the Ethics Commission may determine that a solicitation or award violates the Ethics in Public Contracting provisions of the Mississippi Personal Service Contract Review Board Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations. Any such determination shall be made in writing after an opportunity to be heard is given, and such determination is subject to appropriate appeal.

5-203.02 Finding of Bad Faith or Fraud

Bad faith or fraud shall not be assumed. Specific findings showing reckless disregard of clearly applicable laws or regulations must support a finding of bad faith. A finding of fraud must be supported by specific findings showing knowing, willful acts in disregard of such laws or regulations. Mississippi Code Annotated § 31-7-57 holds state employees personally liable if they authorize or make a solicitation or award of a contract in violation of the law.

5-204 REMEDIES PRIOR TO AN AWARD

If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

- (a) canceled; or,
- (b) revised to comply with the law.

5-204.01 Canceling or Revising Solicitation or Proposed Award to Comply with Law

A finding by the PSCRBP, after consultation with the MSPB-DFA Special Assistant Attorney General, that the solicitation or proposed award is in violation of law will constitute a

compelling reason to cancel or revise a solicitation or proposed award. Such cancellation shall be made in accordance with [Section 3-301](#) (Cancellation of Solicitations).

5-205 REMEDIES AFTER AN AWARD

If after an award, it is determined that the solicitation or award is in violation of the law then the contract will be canceled in accordance with [Section 3-301](#) (Cancellation of Solicitations).

5-205.01 Termination

Contracts based on awards or solicitations that were in violation of law shall be terminated at no cost to the State, except as may be approved or ratified by the [PSCRBPPRB](#) in compliance with state law.

5-205.02 Effects of Declaring a Contract Null and Void

In all cases where a contract is voided, no further payments shall be made under the contract and the State is entitled to recover the greater of:

- (a) the difference between payments made under the contract and the contractor's actual costs up until the contract was voided; or,
- (b) the difference between payments under the contract and the value to the State of the services, if obtained under the contract.

The State may, in addition, claim damages under any applicable legal theory.

5-205.03 Effect of Ratification

The State shall be entitled to any damages it can prove under any theory including, but not limited to, contract and tort regardless of its ratification and affirmation of the contract.

CHAPTER 6 – ETHICS IN CONTRACTING FOR PERSONAL AND PROFESSIONAL SERVICES

This chapter is intended to be applied in conjunction with and shall not be considered as superseding any laws or regulations administered and enforced by the State Ethics Commission. Please refer to Mississippi Code Annotated §§ 25-4-101 through 25-4-119 for applicable statutes.

6-101 DEFINITIONS OF TERMS USED IN THIS CHAPTER

- (a) **Confidential Information** means any information which is available to an employee only because of the employee's status as an employee of the State of Mississippi and is not a matter of public knowledge or available to the public on request.
- (b) **Conspicuously** means written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.
- (c) **Direct or Indirect Participation** means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
- (d) **Financial Interest** means:
 - (1) ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, monetary compensation or material gratuity;
 - (2) ownership of such interest in any property or any business or income received from any property or business as may be specified by the Ethics Commission; or,
 - (3) holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (e) **Gratuity** means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- (f) **Immediate Family or Relative** means a spouse, children, parents, brothers and sisters, and such other relatives as may be designated by the Ethics Commission.
- (g) **Official Responsibility** means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct Mississippi action.
- (h) **Purchase Request** means that document whereby a using agency requests that a contract be entered into for a specified need, and may include, but is not limited to, the description of the

requested service, expected length of service, criteria for evaluation, and information supplied for the making of any written determination required by this Code.

(i) **Bona Fide Employee** means a person employed by a prospective contractor and subject to the prospective contractor's supervision and control as to the time, place, and manner of performance, which neither exerts nor proposes to exert improper influence to solicit or obtain Mississippi contracts. In determining whether a bona fide employment relationship exists, the following factors should be considered:

- (1) whether the employment is continuous;
- (2) whether the person is subject to the supervision and control of the prospective contractor;
- (3) whether the size of any contingent fee is reasonable in relation to the service performed;
- (4) whether the method of payment of the contingent fee is customary in the trade; and,
- (5) whether the person is employed solely by the prospective contractor.

(j) **Bona Fide Established Commercial Selling Agency** means a business that neither exerts nor proposes to exert improper influence to solicit or obtain public contracts. In determining whether a business is a bona fide established commercial selling business, the following factors should be considered:

- (1) whether the business is one which has either been active for a considerable period of time or is presently a going concern and is likely to continue as such;
- (2) whether the business uses its own name and is characterized by the customary indicia of the conduct of a regular business;
- (3) the degree to which the business' activities are directed toward the solicitation of contracts of the State;
- (4) whether the size of any contingent fee is reasonable in relation to the services performed; and,
- (5) whether the method of payment of the contingent fee is customary in the trade.

(k) **Business Employee** means a person, whether compensated or not, who performs personal services for a business.

(l) **Employee**, as defined in Section 1-201 (Definitions) is hereinafter referred to as "Mississippi Employee." As used throughout this section, the term "Mississippi Employee" shall include:

- (1) a person elected to a Mississippi office;

- (2) a non-elected person, whether appointed or selected through a personnel selection procedure, receiving a salary, wages, or other compensation from the State; and,
- (3) a non-compensated or minimally compensated person who is performing personal services for the State.

The term “Mississippi Employee” does not include a person who, as an independent contractor, or contract worker as defined in Mississippi Code Annotated § 25-9-120(2)(c) performs professional, scientific, technical, or advisory service for a state agency and who receives a fee, honorarium, or similar consideration for the services performed.

6-201 STATEMENT OF POLICY

Public employment is a public trust. It is the policy of the State of Mississippi to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the State. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service. Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the state procurement organization. Additionally, Mississippi Code Annotated § 25-4-101 states:

The Legislature declares that elective and public office and employment is a public trust and any effort to realize personal gain through official conduct, other than as provided by law, or as a natural consequence of the employment or position, is a violation of that trust. Therefore, public servants shall endeavor to pursue a course of conduct which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of this trust and which will not reflect unfavorably upon the state and local governments.

To achieve the purpose of this chapter, it is essential that those doing business with the State of Mississippi also observe the ethical standards prescribed herein.

6-202 GENERAL STANDARDS OF ETHICAL CONDUCT

(a) General Ethical Standards for Employees.

Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee’s duties is a breach of a public trust. In order to fulfill this general prescribed standard, employees must also meet the specific standards set forth in the remaining sections of this chapter.

(b) General Ethical Standards for Non-Employees.

Any effort to influence any public employee, or contractor with the State, to breach the standards of ethical conduct set forth in this section and the remaining sections of this chapter is also a breach of ethical standards.

Note: The head of each governmental body or such official's designee is encouraged to explain and to discuss at least annually with such official's employees the provisions of these regulations.

6-203 EMPLOYEE CONFLICT OF INTEREST

(a) Conflict of Interest.

It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

- (1) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
- (2) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or,
- (3) any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(b) Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver.

Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee shall, at the same time, apply to the Ethics Commission for an official advisory opinion as to what further participation, if any, the employee may have in the transaction.

(c) Notice.

Notice of this prohibition shall be provided in accordance with official opinions promulgated by the Ethics Commission.

Note: Section 6-203 (Employee Conflict of Interest) covers instances in which a state employee involved in procurement is actively negotiating for employment with a contractor or prospective contractor. Such an employee must disqualify himself or herself from participation in a procurement involving such a contractor or prospective contractor and apply to the Ethics Commission for an official opinion of the statutory conflict of interest prohibition relating to that procurement. Offers of employment under certain circumstances may also be gratuities which are prohibited by Section 6-204.

6-204 GRATUITIES

It shall be a breach of this regulation for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request. It shall further be a breach for any person to influence the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or proposal therefor through the offering or giving of a gratuity. The prohibition against gratuities prescribed in this section shall be conspicuously set forth in every contract and solicitation therefor.

6-204.01 Gratuities Prohibition

6-204.01.1 Relationship of Gratuity

In addition, the gratuity or offer of employment must be made in relation to any proceeding or application, request for a ruling, determination, claim or controversy, or other particular matter, and in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, action to influence the content of any specification or procurement standard, rendering of advice, investigation, auditing, or other advisory capacity to constitute a breach.

6-204.01.2 Family

This prohibition extends to the giving of gratuities to anyone on the state employee's or former state employee's behalf such as a member of that employee's immediate family.

6-204.02 When Prohibition Against Gratuities Not Applicable

Section 6-204 (Gratuities) does not prohibit:

- (a) the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the motivation for the transaction is unrelated to any procurement or program requirement with the State and is based upon a personal or family relationship;
- (b) the participation in the activities of, or the acceptance of an award for, a meritorious public contribution or achievement from a charitable, religious, professional, social or fraternal organization, or from a nonprofit educational, recreational, public service, or civic organization;
- (c) acceptance only on current customary terms of finance of a loan from a bank or other financial institution for proper and usual activities of state employees, such as home mortgage loans; or,

- (d) acceptance of unsolicited advertising products or promotional material, such as pens, pencils, note pads, calendars, and other such items.

6-204.03 Contract Clause

The following clause shall be conspicuously set forth in every contract and solicitation therefore requiring ~~Personal Service Contract Review Board~~ Public Procurement Review Board approval:

REPRESENTATION REGARDING GRATUITIES (Required)

The ~~bidder or offeror~~ ~~bidder, offeror, respondent,~~ or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi ~~Personal Service Contract Review Board~~ Public Procurement Review Board Rules and Regulations.

6-205 PROHIBITION AGAINST CONTINGENT FEES

- (a) **Contingent Fees.** It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, unless such an arrangement is fully disclosed in writing.
- (b) **Representation of Contractor.** Every person, before being awarded a state contract, shall represent, in writing, that such person has not retained anyone in violation of subsection (a) of this section. Failure to do so constitutes a breach of ethical standards.
- (c) **Contract Clause.** The representation prescribed in subsection (b) of this section shall be conspicuously set forth in every contract and solicitation therefor.

6-205.01 Influence Peddling

The prohibition in Section 6-205 (Prohibition Against Contingent Fees) covers influence peddling and particularly that which might occur when a former state official is hired on a contingent basis by a business seeking state contracts.

6-205.02 Relationship of Commercial Selling Business to Prospective Contractor

The relationship between a bona fide established commercial selling business and the prospective contractor should be characterized by the following:

- (a) the fees charged by the business are commensurate with the nature and extent of the business's services actually rendered to the prospective contractor;
- (b) the business has adequate knowledge of the service of the prospective contractor which it represents to judge whether the item may be able to meet the State's requirements; and,

- (c) the relationship between the business and the prospective contractor is or is contemplated to be continuing.

6-205.03 Improper Influence

A business employee or a commercial selling business should be conclusively presumed not to be bona fide if the Ethics Commission determines that improper influence has been or is being used to secure a state contract.

6-205.04 Solicitation Clause

Every solicitation for a service shall conspicuously set forth the following provision to be completed and submitted with every prospective contractor's bid, proposal, or ~~statement of~~ qualifications for those contracts which require ~~PSCRBP~~ approval:

PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES (Required)

The prospective contractor represents as a part of such contractor's bid, proposal, or ~~statement of~~ qualifications that such contract has/has not (use applicable word or words) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

6-205.05 Information on Contingent Fees

Any prospective contractor who has completed the clause set forth in **Section 6-205.04** (Solicitation Clause) in the affirmative and is the apparently successful ~~bidder or offeror bidder, offeror, or respondent~~ shall submit the following information:

- (a) the full name and business address of the business or person retained, and the type of business organization;
- (b) the relationship of the business or person to the prospective contractor;
- (c) the terms of the retention agreement or a copy of such agreement;
- (d) if such person is a business employee:
 - (1) the duration of employment;
 - (2) whether that employee is on the contractor's payroll for purposes of social security and federal income tax withholding; and,
 - (3) whether that employee represents other businesses and, if so, the names and addresses of such businesses;
- (e) whether the business or person represents the prospective contractor on:

- (1) both government and commercial business;
- (2) only government business; or,
- (3) only the present contract;
- (f) The extent of the duties of the business or person; and,
- (g) The length of time the business or person has been engaged in a particular type of work and has performed this type of work for the contractor.

6-205.06 Contract Clause

The following clause shall be conspicuously set forth in every contract and solicitation therefor requiring **PSCRBPPRB** approval:

REPRESENTATION REGARDING CONTINGENT FEES (Required)

The contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the contractor's bid, proposal, or ~~statement of~~ qualifications.

6-206 RESTRICTION ON EMPLOYMENT OF PRESENT EMPLOYEES

Except as may be permitted by regulations or rulings of the Ethics Commission, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed. Additionally, Mississippi Code Annotated **§ 25-4-105(3)(a)** states that "no public servant shall be a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent, other than in his contract of employment; or have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent" except as may be permitted by Mississippi Code Annotated **§ 25-4-105(4)(d)**.

6-207 RESTRICTION ON FORMER EMPLOYEES IN MATTERS CONNECTED WITH THEIR FORMER DUTIES

- (a) It shall be a breach of ethical standards for any former employee knowingly to act as a principal, or as an agent for anyone other than the State in connection with any:
 - (1) judicial or other proceeding, application, request for a ruling, or other determinations;
 - (2) contract;

(3) claim; or,

(4) charge or controversy;

in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the State is a party or has a direct and substantial interest.

(b) It shall be a breach of ethical standards for any former employee, within one year after cessation of the former employee's official responsibility, knowingly to act as a principal, or an agent for anyone other than the State, in connection with any:

(1) judicial or other proceeding, application, request for a ruling, or other determination;

(2) contract;

(3) claim; or,

(4) charge or controversy;

in matters which were within the former employee's official responsibility, where the State is a party or has a direct or substantial interest. Additionally, Mississippi Code Annotated § 25-4-105(3)(e) states that "no public servant shall perform any service for any compensation for any person or business after termination of his office or employment in relation to any case, decision, proceeding or application with respect to which he was directly concerned or in which he personally participated during the period of his service or employment."

6-208 DISQUALIFICATION OF BUSINESS WHEN AN EMPLOYEE HAS A FINANCIAL INTEREST

It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the State, in connection with any:

(a) judicial or other proceeding, application, request for a ruling, or other determination;

(b) contract;

(c) claim; or,

(d) charge or controversy;

in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the State is a party or has a direct and substantial interest.

6-209 RESTRICTION ON EMPLOYEES PURCHASING UNDER TERMS OF A STATE CONTRACT

Mississippi Code Annotated § 25-4-105(i) states, “No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated.”

In layman’s terms, this means that anyone purchasing services is free to negotiate the best price possible with the seller but any attempt to tie the sale to a state contract based upon employment with a governmental entity could be considered to be a violation of the ethics law.

6-210 USE OF CONFIDENTIAL INFORMATION

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person. Additionally, Mississippi Code Annotated § 25-4-105(d) states that “no person may intentionally use or disclose information gained in the course of or by reason of his official position or employment as a public servant in any way that could result in pecuniary benefit for himself, any relative, or any other person, if the information has not been communicated to the public or is not public information.”

6-211 BOARD MEMBER ETHICS

Board members of the **PSCRBPPRB** hold positions of public trust and are charged with ensuring a fair, transparent process for the solicitation and selection of personal and professional services contracts. Each board member is individually responsible for upholding the public trust by conducting himself or herself in as fair, equitable, impartial, and non-partisan a manner as possible. Board members are responsible for ensuring individual compliance with all applicable laws, regulations, and rules governing their conduct.

6-211.01 General Standards of Ethical Conduct

- (a) Board members shall conduct themselves in a manner that fortifies the public confidence in the Mississippi procurement process for personal and professional services by avoiding even the appearance of impropriety;
- (b) Board members shall strive to foster an open, transparent, and competitive process in order to best serve the interests of the State;
- (c) Board members shall encourage, and provide an example for, ethical conduct to all participants in the process under the **PSCRBPPRB**’s purview;
- (d) Board members shall avoid all conflicts of interests and comply with the provisions herein when an unavoidable conflict arises;
- (e) Board members shall be open, fair, impartial, and non-discriminatory in conducting all **PSCRBPPRB** business; and

- (f) Board members shall act as responsible stewards of public funds in order to uphold the public interest with which they have been entrusted.

6-211.02 Communication

(a) Communication Among Board Members

In order to promote transparency and ensure compliance with the requirements set forth in the Mississippi Open Meetings Act, board members shall actively avoid communications regarding official **PSCRBPPRB** business, outside the setting of a board meeting, when a quorum is present, either in person or through electronic means.

(b) Communication with Vendors and Other Interested Parties

- (1) In order to promote transparency and support both the practice and appearance of impartiality on the part of the **PSCRBPPRB** in the conduct of its business, board members will avoid engaging in communications through verbal or written means with a vendor, or any other vendor representative, which relates directly or indirectly to the solicitation and/or selection of a personal or professional services contract which may be presented to the **PSCRBPPRB** for consideration for approval.
- (2) If such communication is unavoidable, board members shall disclose to the **PSCRBPPRB** any discussions had, including the name of the vendor or vendor representative and the procurement or contract which was the focus of the communication, at the next board meeting and prior to voting on the matter.

6-211.03 Conflicts of Interest

Board members shall conduct the business of the **PSCRBPPRB** in an honest and ethical manner, which includes the ethical handling of any actual or apparent conflicts of interest related to personal and/or professional relationships. Under Mississippi law, “No [board member] shall use his [or her] official position to obtain, or attempt to obtain, pecuniary benefit for himself other than that compensation provided for by law, or to obtain, or attempt to obtain, pecuniary benefit for any relative or any business with which he [or she] is associated” See Miss. Code Ann. §§ 25-4-103 and -105.

(a) Definitions

- (1) **Pecuniary Benefit** is defined as any benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.
- (2) **Relative** is defined as the board member’s spouse, child, parent, sibling, and the spouse of their child, parent, or sibling.
- (3) “**Business with which he [or she] is associated**” is defined as any business of which the board member or his or her relative is:
 - a. an officer, director, owner, partner, or employee, or

- b. is a holder of more than 10% of the fair market value, or
- c. derive more than \$2,500.00 in annual income, or
- d. over which the board member or his or her relative exercises control.

(4) **Use of office** includes:

- a. voting on a matter;
- b. taking part in discussions on a matter;
- c. being present during discussions on a matter; and
- d. using the office to attempt to influence the actions of others.

(b) **Breach of Ethical Standards.**

It shall be a breach of ethical standards for any board member to participate in the discussion of, or PSCRBPPRB action related to, a procurement when he or she knows that:

- (1) the board member or any relative has a financial interest pertaining to the procurement;
- (2) a business or organization in which the board member, or any relative of the board member, has a financial interest pertaining to the procurement; or
- (3) any other person, business, or organization with whom the board member, or any relative of the board member, is negotiating or has an arrangement concerning prospective employment, is involved in the procurement.

(c) **Disclosure and Recusal**

- (1) Board members shall make public any conflict of interest that exists related to an item which comes before the PSCRBPPRB for consideration to ensure the integrity of the PSCRBPPRB and its decisions are maintained.
- (2) If a conflict of interest exists, a board member shall recuse himself or herself by leaving the meeting until the item(s) in question has been considered and action has been taken. Such recusal shall be properly reflected in the Minutes of the meeting. Abstaining from a vote or discussion will not suffice to satisfy the requirements of this section. Board members who serve as the head of an agency shall recuse themselves from any discussion in his or her capacity as a board member and for any vote for any contract brought for consideration for approval by the PSCRBPPRB by the agency which they head.
- (3) No board member shall participate in any discussion or deliberation related to an item when a conflict of interest exists, including discussions outside of the context of the official actions of the PSCRBPPRB.

(d) **Interest in a Contract**

It is prohibited, through both Mississippi Constitution Article 4, Section 109, and state statutes, for a board member to be directly or indirectly interested in any contract with the

state, or any subdivision thereof, authorized by any law passed or order made by any board of which he or she may be or may have been a member, during the term for which he or she is appointed and for a period of one year after the expiration of such term.

6-211.04 Gratuities

Board members shall comply with the provisions of **Section 6-204** regarding gratuities.

CHAPTER 7 – POLICIES AND PROCEDURES FOR CONTRACT APPROVAL

7-101 GENERAL PROVISIONS

This chapter provides the administrative procedures for submitting required documentation to implement state agency contract requests for personal and professional services. For the purposes of these procedures, a service contract is defined as an agreement for the provision of services between an agency under the purview of MSPB (unless exempt from the PSCRBP) and a provider of the services.

7-102 PROCEDURES FOR PROCUREMENT

Pursuant to the provisions of the previous chapters of these regulations, the total amount of the contract shall be used to determine the appropriate procedures for procurement of services as follows:

- (a) Service contracts ~~for which do not exceed \$75,000 or less~~ may be procured as provided in Section 3-205 (Small Purchases);
- (b) Service contracts over \$75,000 shall be procured as provided in Section 3-201 (Method of Source Selection), and are subject to approval by the PSCRBP;
- (c) If the cumulative total of multiple service contracts between an agency and one vendor for the same service exceeds \$75,000 then SPAHRS or MAGIC will automatically route the contract to the PSCRBP for approval;
- (d) Procedures and regulations regarding sole-source procurement are addressed in Section 3-206;
- (e) Procedures and regulations regarding emergency procurement are addressed in Section 3-207; and
- (f) Procedures and regulations regarding contract workers are addressed in Section 3-101.04.

Competitive Sealed Bidding (Invitation for Bid) is the preferred method of procurement; however, if it is not practicable and advantageous, a Request for Proposals, Request for Qualifications, Competitive bidding includes Invitations for Bids, Requests for Proposals, Requests for Qualifications, and any other alternative, generally accepted procurement method approved by the PSCRBP may be used. See MS-AG-Op., Mosley (October 23, 2015).

7-102.01 Multiple Contracts With Same Vendor But Different Scopes of Services

PSCRBP staff has the authority to approve contracts with the same vendor which route to the PSCRBP based on a system technicality but which contain different scopes of services. Staff approval is given only after review of the scopes of services to justify the need for a second contract with the same vendor. Any contracts approved using this authority cannot exceed \$75,000.

7-103 COMPETITIVE PROCUREMENT EXCEPTION

Prior to entering into a contract, any agency that seeks to procure personal or professional service contracts that are required to be approved by the PSCRBPPRB may request an exception from ~~the~~ requirement that the agency use competitive sealed bidding as a procurement method by submitting a petition for relief as provided in Section 3-201.01. The petition for relief must:

- (a) Be in writing, signed by the Agency Head, and include any supporting documentation or information;
- (b) Be submitted ~~no more than~~ at least thirty (30) calendar days prior to the scheduled PSCRBPPRB meeting date and in accordance with the deadlines prescribed by the ~~Personal Service Contract Review Board~~ Public Procurement Review Board, which are published on the ~~Mississippi State Personnel Board~~ Department of Finance and Administration website;
- (c) Include the agency's plan for an alternative competitive procurement procedure for selecting the personal or professional service contract that ensures open, transparent procedures as provided in Section 3-201.01-.03; and
- (d) Be submitted using the method prescribed by the PSCRBPPRB.

7-104 PRE-REVIEW OF INVITATIONS FOR BIDS, REQUESTS FOR PROPOSALS, AND REQUESTS FOR QUALIFICATIONS

An IFB, RFP, or RFQ for a contract under the purview of the PSCRBPPRB may be electronically submitted to the PSCRBPPRB staff for consultant review prior to advertisement or issuance. The IFB, RFP, or RFQ should be submitted in final form (as if being produced to inquiring vendors) and include (1) the advertisement, (2) the IFB, RFP, or RFQ, and (3) the proposed contract. The PSCRBPPRB staff may review, as time and workload permit, the IFB, RFP, or RFQ specifically to evaluate compliance with the PSCRBPPRB regulations. Upon review, the PSCRBPPRB staff may then notify the agency of necessary and/or suggested changes. Responsibility for all IFB, RFP, or RFQ content rests with the agency. Review of the IFB, RFP, or RFQ by PSCRBPPRB staff does not guarantee approval of the procurement and/or the contract by the PSCRBPPRB. Agencies are encouraged to allow as much time in advance of advertisement as possible for this review. The PSCRBPPRB staff will require a minimum of five working days for review of an IFB, RFP, or RFQ packet which totals 50 pages or less (including attachments) and seven working days for review of a packet of more than 50 pages. During the months of May, June, and July, the PSCRBPPRB staff will require a minimum of twenty working days for review of an IFB, RFP, or RFQ packet which totals 50 pages or less (including attachments) and twenty-five working days for review of a packet of more than 50 pages.

7-105 CONTRACT SUBMISSION DATES

The PSCRBPPRB will hold one regularly scheduled meeting the ~~Tuesday before the third Thursday~~ first Wednesday of every month at the MSPB Offices in Jackson, Mississippi unless ~~the~~

~~first Wednesday falls on a holiday or~~ a special meeting is called by the PSCRBPPRB Chairman. Notice of meetings may be found posted on the MSPB—DFA website (<http://www.mspbDFA.ms.gov>) and the Mississippi Public Meeting Notices Website (<https://www.ms.gov/dfa/pmnl>), or by calling the PSCRBPPRB office (601-359-6517). All contract packets must be submitted for approval in SPAHRS and by electronic submission through the PSCRBPPRB's E-Application system, in their entirety. All contract packets, including any applicable PSCRBPPRB forms, must be submitted for approval in SPAHRS and by electronic submission through the PSCRBPPRB's E-Application system, in their entirety. Submission to PSCRBPPRB must be ~~no more than~~ at least thirty (30) calendar days prior to the scheduled PSCRBPPRB meeting date and in accordance with the deadlines prescribed by the Personal Service Contract Review Board/Public Procurement Review Board, which are published on the Mississippi State Personnel Board/Department of Finance and Administration website, in order to be considered for placement on the agenda for board action. Since no Board action is required, staff approved contracts may be submitted ~~up to fifteen (15) days prior to the scheduled PSCRB meeting date~~ at any time.

7-106 CONTRACT APPROVAL AND REJECTION

~~Any contract submitted to the PSCRBPPRB for review and approval shall be presumed to be approved if the PSCRBPPRB does not object to the contract within thirty (30) days of the agency's submission of the contract. If the PSCRBPPRB rejects a contract that has been submitted for review or approval, it shall clearly state the basis of its action, including, but not limited to, the policy violated and any corrective actions necessary to bring the contract in compliance with the PSCRBPPRB Rules and Regulations.~~

7-107 DEADLINE EXCEPTION REQUESTS

A request for exception to the submission deadline ~~contained in Section 7-105~~ must be submitted in writing directly to the Chairman of the PSCRBPPRB or the (MSPB-DFA) Executive Director and must contain a detailed account of the circumstances, which must be compelling, that justifies the exception. The written request must be signed by the Agency Head. All such exception requests must be approved by the Chairman, in his or her discretion, in order for the proposed contract to be placed on the agenda for the next PSCRBPPRB meeting. Submission of a request for deadline exception does not guarantee placement on the agenda.

7-108 REGULATORY BOARD APPROVAL

For contracts under the purview of the PSCRBPPRB, the contract and the supporting procurement information should first be submitted to and approved by the appropriate regulatory board (if required by the appropriate regulatory board's rules and regulations) prior to submission to the PSCRBPPRB. If the agency's regulatory board authorizes the agency to proceed with the procurement, then the agency should submit the minutes from the regulatory board approving the contract and all other ~~the contract and~~ supporting procurement information to the PSCRBPPRB for approval.

7-109 NEW REQUEST

A new request shall be defined as the initial submission of a contract for the performance of specified contractual services.

7-110 RENEWALS

A request to renew an existing **PSCRBP**-approved contract must be submitted and approved by **PSCRBP** before the contract expires. If approval by an appropriate regulatory board is required, such approval must be obtained in sufficient time for the submission deadline contained in Section 7-105 to be met. Spending authority for the current term of the contract should be requested. Authority for any optional renewal years should be requested when the contract is renewed. Renewal terms included in a contract are optional and are exercised at the agency's discretion. When a contract is originally approved, the **PSCRBP** is only approving the option to renew, not the actual renewal. The agency must submit the renewal document and supporting documentation for approval by the **PSCRBP** prior to the contract expiring and in sufficient time to meet the submission deadline. Retroactive approval of a renewal cannot be granted. Once a contract has expired or terminated, the contract cannot be retroactively approved or renewed. MS AG Op., Stringer (June 25, 1999).

7-111 MODIFICATIONS

A request to modify an existing **PSCRBP**-approved contract is to be submitted to the **PSCRBP** thirty (30) calendar days prior to a **PSCRBP** meeting date which precedes the modification effective date. Any request for exception to this deadline must follow the same procedure as outlined in Section 7-1076 (Deadline Exception Requests). Modifications shall not grant extra compensation, fee, or allowance to any contractor after service is rendered or contract is made, unless contemplated within the contract itself or unless the scope of services is increased. The extension of a contract is considered a modification wherein the specified contractual services have not been completed by the end date stipulated in the original terms of the contract. Modifications cannot be made to expired contracts.

7-111.01 Modifications to Correct Technical Problems

PSCRBP staff has the authority to approve modifications to previously approved contracts that involve accounting and scrivener's errors and other technical or technological problems which do not change the originally approved terms and conditions.

7-111.02 Modifications that Only Reduce Dollar Amount or in which Amount and Services are Unchanged

PSCRBP staff has the authority to approve modifications that only reduce the dollar amount of the contracts or modifications in which the amount and services are unchanged. These modifications cannot change the service agreement.

7-111.03 Modifications Involving Cost Per Unit Fees

PSCRBP staff has the authority to approve modifications to previously approved contracts that involve cost per unit fees up to ten (10) percent of the original approved contract amount not to exceed a total contract amount of \$500,000.00.

7-112 EMERGENCY CONTRACTS

Emergency contracts will be reviewed by PSCRBP staff for technical compliance upon the written request of the submitting agency. The PSCRBP staff will process the contract in MAGIC upon receipt of the contract, and then conduct the requested review and notify the agency of any problems found during the requested review; however, it is the responsibility of the agency to correct any errors. If no written request for review is made by the submitting agency, PSCRBP staff will process the contract in MAGIC upon receipt of same, and then conduct a review of the contract for internal auditing purposes. Emergency contracts will be presented to the PSCRBP at its regular meeting and will be included in the minutes of said meeting, but no action is required by the PSCRBP as to these contracts. Any approval in MAGIC or any other state system does not constitute approval of the emergency procurement by the PSCRBP and is done solely for processing purposes. The PPRB will submit a quarterly report of all emergency contracts to the Chairs of the Accountability, Efficiency and Transparency (AET) Committees of the Senate and House of Representatives.

This provision is not intended to prevent the PSCRBP from making a report as provided in Section 3-602.01 (Statutory Authority to Audit) or to take other action as deemed appropriate.

7-113 PROTEST OF SOLICITATIONS OR AWARDS DOCUMENTS

Protests shall be made in writing to the Chief Procurement Officer, and shall be filed within seven (7) days after the protestor knows or should have known of the facts giving rise thereto. A protest is considered filed when received by the Chief Procurement Officer. Protests filed after the seven (7) day period shall not be considered.

The Chief Procurement Officer shall submit a copy of the protest to the Office of Personal Service Contract Review and the Attorney General within three days of receipt of a written protest.

Agencies shall submit, with their contract approval request, documentation signed by their Executive Director, Agency Head, or his or her designee certifying that adequate time (at least seven days after issuing the award) to protest has been given to all prospective contractors and that no protest or potential protests are known to the agency or any agency employees. If a protest is known, the agency shall resolve the protest prior to submitting the contract for approval the scheduled PPRB Board meeting. In the contract submission packet, the agency shall include a Protest Memo which discloses the subject matter of the protest, states whether the protest has been resolved, and explains the agency's internal procedure for reviewing protests and describes how the agency plans to or made the final determination concerning the protest.

-To file a protest directly to the PPRB, the aggrieved party shall file a protest with the Office of Personal Service Contract Review within seven (7) days after the aggrieved party knew or should have known of the facts and circumstances upon which the protest is based. On any direct protest under this section, the Board shall promptly decide whether the solicitation or award was in accordance with the Constitution, statutes, regulations, and the terms and conditions of the solicitation. The proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive. A determination of an issue of fact by the Board shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

7-114 POST-AWARD VENDOR DEBRIEFING

Agencies are encouraged to exchange information with vendors in an effort to build and strengthen business relationships and improve the procurement process between vendors and the State. To further this effort, agencies shall establish vendor debriefing procedure(s) and inform vendors at the time of procurement of the right to request a debriefing and the deadline to file a request. At a minimum, debriefing should occur before expiration of the protest period, within five-three (35) business days after the vendor request and prior to submission of the contract packet to the PSCRBPPRB. Agencies shall submit with the contract approval request, documentation signed by their agency head or his or her designee, reporting the number of vendor debriefings requested and conducted. This information may be included as part of the protest correspondence required in Section 7-113 (Protest Documents of Solicitations or Awards).

7-114.01 Debriefing Request

A vendor, successful or unsuccessful, may request a post-award vendor debriefing, in writing, by U.S. mail or electronic submission, to be received by the agency within three (3) business days of notification of the contract award. A vendor debriefing is a meeting and not a hearing; therefore, legal representation is not required. If a vendor prefers to have legal representation present, the vendor must notify the agency and identify its attorney. The agency shall be allowed to schedule and/or suspend and reschedule the meeting at a time when a representative of the Office of the Mississippi Attorney General can be present.

7-114.02 When Debriefing Should Be Conducted

Unless good cause exists for delay, the debriefing should occur within five-three (35) business days after receipt of the vendor request and may be conducted during a face-to-face meeting, by telephonic or video conference, or by any other method acceptable to the agency. The Procurement Officer~~Chief Procurement Officer~~ or designee should chair the meeting, and where practicable, include other staff with direct knowledge of the procurement.

7-114.03 Information To Be Provided

At a minimum, the debriefing information shall include the following:

- (1) The agency's evaluation of significant weaknesses or deficiencies in the vendor's bid, proposal, or ~~statement of~~ qualifications, if applicable;

- (2) The overall evaluated cost or price, and technical rating, if applicable, of the successful vendor(s) and the debriefed vendor;
- (3) The overall ranking of all vendors, when any ranking was developed by the agency during the selection process;
- (4) A summary of the rationale for award; and,
- (5) Reasonable responses to relevant questions about selection procedures contained in the solicitation, applicable regulations, and other applicable authorities that were followed.

7-114.04 Information Not To Be Provided

The debriefing shall not include point-by-point comparisons of the debriefed vendor's bid, proposal, or qualificationSOQ with those of other offering vendors. Any written request by a vendor for nondisclosure of trade secrets and other proprietary data is subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1.

7-114.05 Statement in the Solicitation

The agency shall include in each solicitation a statement that vendor debriefing is available and the information described in Section 7-112.03 may be disclosed during post-award debriefing.

7-114.06 Summary

An official summary of the debriefing shall be included in the contract file.

7-114.07 Pre-Award Vendor Debriefing

Nothing in these regulations requires or prohibits pre-award vendor debriefing.

7-115 UTILIZATION OF STATE PROPERTY BY CONTRACTOR

If a contractor will be utilizing State property (office space, equipment, etc.) for the provision of services, the procuring agency shall submit a written notification to the Bond Commission explaining the property to be used. A copy of this letter must be submitted to the PSCRBP as part of the procurement packet.

7-116 TRANSFER OF SPENDING AUTHORITY

SPAHRs no longer requires the transfer of spending authority from one fiscal year to the next for independent contractors.

7-117 EXECUTED CONTRACTS

After the approval of a contract by the PSCRBPPRB, the contract may be executed by the agency and the vendor. The contract, including any accompanying exhibits, attachments, and appendices, is subject to the Mississippi Public Records Act of 1983 and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. See Mississippi Code Annotated §§ 27-104-151 *et seq.* The personal or professional services to be provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret, or confidential commercial or financial information. The executed contract must be identical to the proposed contract approved by the PSCRBPPRB or the contract will be deemed null and void. If a change is to be made to the contract after approval by the PSCRBPPRB but before execution, the change must be brought before the PSCRBPPRB for approval.

7-118 SPAHRS PROCEDURES FOR PSCRBPPRB CONTRACTS

7-118.01 Entering Contract Information in SPAHRS

An agency should enter complete contract information into the SPAHRS system and transmit it electronically to the PSCRBPPRB for review. The ~~Request for Contract Personnel Services Approval form must be completed in full; agency shall~~ following all applicable requirements by the Internal Revenue Code to determine contract type, all DFA requirements for vendor codes, social security numbers and commodity codes, and all PSCRBPPRB requirements detailed in the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations. Only one contract service type may be entered for each request. Agencies must submit necessary vendor codes with vendor number/social security number in SPAHRS.

7-118.02 Requests to Modify

Requests to modify the terms of previously PSCRBPPRB-approved contracts are to be resubmitted to the appropriate regulatory board (if applicable) and approved by that board prior to submission to the PSCRBPPRB. Along with the amendment modifying the original contract terms, the approved SPAHRS entry must also be modified.

7-118.03 Terminations

Agencies must notify the PSCRBPPRB upon termination of previously approved contracts for personal and professional services or the completion of the performance of services prior to the original terms of the contract (expiration date). The approved spending authority should be modified to reflect the total dollar amount expended. This modification must be transmitted to the PSRCB for approval. After approval of the modified amount, a termination date should be entered into SPAHRS. The original approved end date remains the end date approved by the PSCRBPPRB. A termination date is entered in the "Termination Date" field in SPAHRS.

7-118.04 Options to Renew

Options to renew which are not exercised by the agency will be treated as a termination by the **PSCRBPPRB**.

7-119 DHS OR DCPS PERSONAL SERVICE CONTRACTS

From July 1, 2016 through June 30, 2019, the Department of Human Services (DHS) must give **PSCRBPPRB** notice before entering into any proposed personal service contract which is determined by the DHS Agency Head to be useful in establishing and operating the Department of Child Protection Services (DCPS). The Agency Head of DHS must advise the Board of his determination that the proposed contract would be useful in establishing and operating DCPS.

From July 1, 2016 to June 30, 2019, the Agency Head of DCPS must give **PSCRBPPRB** notice before entering into any proposed personal service contract.

Written notice to the **PSCRBPPRB** must be signed by the Agency Head and identify the contractor(s), contract term, annual cost, total contract cost, method of procurement, purpose of the contract, a statement of usefulness for establishing and operating DCPS where applicable, and a copy of the proposed contractual agreement including any exhibits or attachments referenced therein.

Upon receipt of the written notice, notice will be posted at <http://www.mspbDFA.ms.gov/personal-service-contract-review-board.aspx> and on the Mississippi Contract/Procurement Opportunity Search Portal website established by Sections 25-53-151 and 27-104-165.

If **PSCRBPPRB** responds to DHS or DCPS within seven calendar days after receiving the notice, then **PSCRBPPRB** has an additional seven calendar days from the date of the initial response to provide any recommendations. **PSCRBPPRB** will notify the agency of any recommendations; however, any implemented recommendation is made at the discretion of DHS or DCPS. At the end of the second seven-day period, the agency may execute and enter into the proposed personal service contract.

DHS and DCPS contracts will be reported to the **PSCRBPPRB** at its regular meeting and will be included in the minutes of said meeting, but no action is required by the Board as to these contracts. Any approval in MAGIC or any other state system does not constitute approval of the DHS or DCPS procurement or contract by the **PSCRBPPRB** and is done solely for processing purposes.

See Senate Bill 2179 (2016 Regular Session).

CHAPTER 8 – RULEMAKING AND DECLARATORY OPINIONS

8-101 RULEMAKING ORAL PROCEEDINGS

This section applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations or written input on proposed new rules, amendments to rules, and proposed repeal of existing rules before the ~~Personal Service Contract Review Board~~Public Procurement Review Board pursuant to the Administrative Procedures Act. Mississippi Code Annotated § 25-43-3.104.

When a political subdivision, an agency, or ten (10) persons request an oral proceeding in regards to a proposed rule adoption, the requestor must submit a printed, typewritten, or legibly handwritten request.

- A. Each request must be submitted on 8-1/2" x 11" white paper.
- B. The request may be in the form of a letter addressed to the ~~Chairman~~Chair of the ~~Personal Service Contract Review Board~~Public Procurement Review Board or in the form of a pleading as if filed with a court.
- C. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).
- D. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.

Notice of the date, time, and place of all oral proceedings shall be filed with the Secretary of State's Office for publication in the Administrative Bulletin. The agency providing the notice shall provide notice of oral proceedings to all persons requesting notification of proposed rule adoptions. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of the notice with the Secretary of State. The ~~Chairman~~Chair of the ~~Personal Service Contract Review Board~~Public Procurement Review Board or designee who is familiar with the substance of the proposed rule shall preside at the oral proceeding on a proposed rule.

Public participation shall be permitted at oral proceedings, as follows:

- A. At an oral proceeding on a proposed rule, persons may make statements and present documentary and physical submissions concerning the proposed rule.
- B. Persons wishing to make oral presentations at such a proceeding shall notify the ~~Chairman~~Chair of the ~~Personal Service Contract Review Board~~Public Procurement Review Board at least three business days prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not contacted the ~~Personal Service Contract Review Board~~Public Procurement Review Board prior to the proceeding.

- C. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
- D. The presiding officer may place time limitations on individual presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
- E. Persons making presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may be submitted at the oral proceeding.
- F. Where time permits and to facilitate the exchange of information, the presiding officer may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding. No participant shall be required to answer any question.

Physical and documentary submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the ~~Personal Service Contract Review Board~~Public Procurement Review Board, part of the rulemaking record, and are subject to the ~~Personal Service Contract Review Board~~Public Procurement Review Board's public records request procedure. The ~~Personal Service Contract Review Board~~Public Procurement Review Board may record oral proceedings by stenographic or electronic means.

8-201 DECLARATORY OPINIONS

This section sets forth the ~~Personal Service Contract Review Board~~Public Procurement Review Board's rules governing the form, content, and filing of requests for declaratory opinions, the procedural rights of persons in relation to the written requests, and the ~~Personal Service Contract Review Board~~Public Procurement Review Board's procedures regarding the disposition of requests as required by Mississippi Code Annotated § 25-43-2.103.

The ~~Personal Service Contract Review Board~~Public Procurement Review Board will issue declaratory opinions regarding the applicability to specified facts of:

- A. A statute administered or enforceable by the ~~Personal Service Contract Review Board~~Public Procurement Review Board;
- B. A rule or regulation promulgated by the ~~Personal Service Contract Review Board~~Public Procurement Review Board; or,
- C. An order issued by the ~~Personal Service Contract Review Board~~Public Procurement Review Board.

A request must be limited to a single transaction or occurrence.

When a person with substantial interest, as required by Mississippi Code Annotated § 25-43-2, 103, requests a declaratory opinion, the requestor must submit a printed, typewritten, or legibly handwritten request.

- A. Each request must be submitted on 8-1/2" x 11" white paper.
- B. The request may be in the form of a letter addressed to the ~~Chairman~~Chair of the ~~Personal Service Contract Review Board~~Public Procurement Review Board or in the form of a pleading as if filed with a court.
- C. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).
- D. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.
- E. Each request must clearly state that it is a request for a declaratory opinion.

Any party who signs the request shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative, or judicial tribunal.

Each request must contain the following:

- A. A clear identification of the statute, rule, regulation, or order at issue;
- B. The question for the declaratory opinion;
- C. A clear and concise statement of all facts relevant to the question presented;
- D. The identity of all other known persons involved in or impacted by the facts giving rise to the request including their relationship to the facts, and their name, mailing address, and telephone number; and,
- E. A statement sufficient to show that the requestor has a substantial interest in the subject matter of the request.

The ~~Personal Service Contract Review Board~~Public Procurement Review Board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to the following:

- A. The matter is outside the primary jurisdiction of the ~~Personal Service Contract Review Board~~Public Procurement Review Board;
- B. There is a lack of clarity concerning the question presented;

- C. There is pending or anticipated litigation, administrative action or anticipated administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
- D. The statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- E. The facts presented in the request are not sufficient to answer the question presented;
- F. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
- G. The request seeks to resolve issues which have become moot or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute, or order on which a declaratory opinion is sought;
- H. No controversy exists or is certain to arise which raises a question concerning the application of the statute, rule, or order;
- I. The question presented by the request concerns the legal validity of a statute, rule, or order;
- J. The request is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to establish the effect of that conduct;
- K. No clear answer is determinable;
- L. The question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime;
- M. The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- N. The question is currently the subject of an Attorney General's opinion request;
- O. The question has been answered by an Attorney General's opinion;
- P. One or more requestors have standing to seek an Attorney General's opinion on the proffered question;
- Q. A similar request is pending before this agency, or any other agency, or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law; or,
- R. The question involves eligibility for a license, permit, certificate, or other approval by the ~~Personal Service Contract Review Board~~ Public Procurement Review Board or some other

agency and there is a statutory or regulatory application process by which eligibility for said license, permit, or certificate or other approval may be determined.

Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the ~~Personal Service Contract Review Board~~Public Procurement Review Board shall, in writing:

- A. Issue an opinion declaring the applicability of the statute, rule, or order to the specified circumstances;
- B. Agree to issue a declaratory opinion by a specified time but no later than ninety (90) days after receipt of the written request; or,
- C. Decline to issue a declaratory opinion, stating the reasons for its action.

The forty-five (45) day period shall begin on the first business day after which the request is received by the ~~Personal Service Contract Review Board~~Public Procurement Review Board.

Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinion and requests shall be indexed by name, subject, and date of issue. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.