

By: Representative Creekmore IV

To: Public Health and Human
Services; State Affairs

HOUSE BILL NO. 1094

1 AN ACT TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972,
2 TO EXEMPT FROM PUBLIC PROCUREMENT REVIEW BOARD APPROVAL CONTRACTS
3 ENTERED INTO BY THE STATE DEPARTMENT OF HEALTH FOR SERVICE ON
4 SPECIALIZED EQUIPMENT AND/OR SOFTWARE REQUIRED FOR THE OPERATION
5 OF SUCH SPECIALIZED EQUIPMENT FOR THE USE BY THE PUBLIC HEALTH
6 LABORATORY; AND FOR RELATED PURPOSES.

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

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

10 27-104-7. (1) (a) There is created the Public Procurement
11 Review Board, which shall be reconstituted on January 1, 2018, and
12 shall be composed of the following members:

13 (i) Three (3) individuals appointed by the
14 Governor with the advice and consent of the Senate;

15 (ii) Two (2) individuals appointed by the
16 Lieutenant Governor with the advice and consent of the Senate; and

17 (iii) The Executive Director of the Department of
18 Finance and Administration, serving as an ex officio and nonvoting
19 member.



(b) The initial terms of each appointee shall be as follows:

(i) One (1) member appointed by the Governor to serve for a term ending on June 30, 2019;

(ii) One (1) member appointed by the Governor to serve for a term ending on June 30, 2020;

(iii) One (1) member appointed by the Governor to serve for a term ending on June 30, 2021;

(iv) One (1) member appointed by the Lieutenant Governor to serve for a term ending on June 30, 2019; and

(v) One (1) member appointed by the Lieutenant Governor to serve for a term ending on June 30, 2020.

After the expiration of the initial terms, all appointed members' terms shall be for a period of four (4) years from the expiration date of the previous term, and until such time as the member's successor is duly appointed and qualified.

(c) When appointing members to the Public Procurement Review Board, the Governor and Lieutenant Governor shall take into consideration persons who possess at least five (5) years of management experience in general business, health care or finance for an organization, corporation or other public or private entity. Any person, or any employee or owner of a company, who receives any grants, procurements or contracts that are subject to approval under this section shall not be appointed to the Public Procurement Review Board. Any person, or any employee or owner of



45 a company, who is a principal of the source providing a personal
46 or professional service shall not be appointed to the Public
47 Procurement Review Board if the principal owns or controls a
48 greater than five percent (5%) interest or has an ownership value
49 of One Million Dollars (\$1,000,000.00) in the source's business,
50 whichever is smaller. No member shall be an officer or employee
51 of the State of Mississippi while serving as a voting member on
52 the Public Procurement Review Board.

53 (d) Members of the Public Procurement Review Board
54 shall be entitled to per diem as authorized by Section 25-3-69 and
55 travel reimbursement as authorized by Section 25-3-41.

56 (e) The members of the Public Procurement Review Board
57 shall elect a chair from among the membership, and he or she shall
58 preside over the meetings of the board. The board shall annually
59 elect a vice chair, who shall serve in the absence of the chair.
60 No business shall be transacted, including adoption of rules of
61 procedure, without the presence of a quorum of the board. Three
62 (3) members shall be a quorum. No action shall be valid unless
63 approved by a majority of the members present and voting, entered
64 upon the minutes of the board and signed by the chair. Necessary
65 clerical and administrative support for the board shall be
66 provided by the Department of Finance and Administration. Minutes
67 shall be kept of the proceedings of each meeting, copies of which
68 shall be filed on a monthly basis with the chairs of the
69 Accountability, Efficiency and Transparency Committees of the



Senate and House of Representatives and the chairs of the Appropriations Committees of the Senate and House of Representatives.

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

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

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

The provisions of this paragraph (b) shall not apply to such contracts involving buildings and other facilities of state institutions of higher learning which are self-administered as provided under this paragraph (b) or Section 37-101-15(m);

(c) Adopt regulations governing any lease or rental agreement by any state agency or department, including any state agency financed entirely by federal funds, for space outside the buildings under the jurisdiction of the Department of Finance and Administration. These regulations shall require each agency requesting to lease such space to provide the following information that shall be published by the Department of Finance and Administration on its website: the agency to lease the space;



the terms of the lease; the approximate square feet to be leased; the use for the space; a description of a suitable space; the general location desired for the leased space; the contact information for a person from the agency; the deadline date for the agency to have received a lease proposal; any other specific terms or conditions of the agency; and any other information deemed appropriate by the Division of Real Property Management of the Department of Finance and Administration or the Public Procurement Review Board. The information shall be provided sufficiently in advance of the time the space is needed to allow the Division of Real Property Management of the Department of Finance and Administration to review and preapprove the lease before the time for advertisement begins;

(d) Adopt, in its discretion, regulations to set aside at least five percent (5%) of anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the department and shall be subject to all bid requirements. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder; however, if no minority bid is available or if the minority bid is more than two percent (2%) higher than the lowest bid, then bids shall be accepted and awarded to the lowest and best bidder. However, the provisions in this paragraph shall not be construed to prohibit the rejection of a bid when only one



(1) bid is received. Such rejection shall be placed in the minutes. For the purposes of this paragraph, the term "minority business" means a business which is owned by a person who is a citizen or lawful permanent resident of the United States and who is:

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

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

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

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

(v) Female;

(e) In consultation with and approval by the Chairs of the Senate and House Public Property Committees, approve leases, for a term not to exceed eighteen (18) months, entered into by state agencies for the purpose of providing parking arrangements for state employees who work in the Woolfolk Building, the Carroll Gartin Justice Building or the Walter Sillers Office Building;

(f) (i) Except as otherwise provided in subparagraph (ii) of this paragraph, promulgate rules and regulations governing the solicitation and selection of contractual services personnel,



including personal and professional services contracts for any form of consulting, policy analysis, public relations, marketing, public affairs, legislative advocacy services or any other contract that the board deems appropriate for oversight, with the exception of:

1. Any personal service contracts entered into by any agency that employs only nonstate service employees as defined in Section 25-9-107(c);

2. Any personal service contracts entered into for computer or information technology-related services governed by the Mississippi Department of Information Technology Services;

3. Any personal service contracts entered into by the individual state institutions of higher learning;

4. Any personal service contracts entered into by the Mississippi Department of Transportation;

5. Any personal service contracts entered into by the Department of Human Services through June 30, 2019, which the Executive Director of the Department of Human Services determines would be useful in establishing and operating the Department of Child Protection Services;

6. Any personal service contracts entered into by the Department of Child Protection Services through June 30, 2019;



169 7. Any contracts for entertainers and/or
170 performers at the Mississippi State Fairgrounds entered into by
171 the Mississippi Fair Commission;

172 8. Any contracts entered into by the
173 Department of Finance and Administration when procuring aircraft
174 maintenance, parts, equipment and/or services;

175 9. Any contract entered into by the
176 Department of Public Safety for service on specialized equipment
177 and/or software required for the operation of such specialized
178 equipment for use by the Office of Forensics Laboratories;

179 10. Any personal or professional service
180 contract entered into by the Mississippi Department of Health or
181 the Department of Revenue solely in connection with their
182 respective responsibilities under the Mississippi Medical Cannabis
183 Act from February 2, 2022, through June 30, 2026;

184 11. Any contract for attorney, accountant,
185 actuary auditor, architect, engineer, anatomical pathologist, or
186 utility rate expert services;

187 12. Any personal service contracts approved
188 by the Executive Director of the Department of Finance and
189 Administration and entered into by the Coordinator of Mental
190 Health Accessibility through June 30, 2022;

191 13. Any personal or professional services
192 contract entered into by the State Department of Health in



carrying out its responsibilities under the ARPA Rural Water
Associations Infrastructure Grant Program through June 30, 2026;

14. And any personal or professional services
contract entered into by the Mississippi Department of
Environmental Quality in carrying out its responsibilities under
the Mississippi Municipality and County Water Infrastructure Grant
Program Act of 2022, through June 30, 2026;

15. Any personal or professional services
contract entered into by an agency for the design, operation or
maintenance of museum exhibits. An agency making a purchase under
this exemption shall publicly advertise a Request for
Qualifications but shall be otherwise exempt. Any contracts
arising from the use of this exemption must be approved by the
Public Procurement Review Board prior to execution by the
agency; * * *

16. Any personal or professional services
contract entered into by the Mississippi Department of
Environmental Quality in carrying out its responsibilities under
Section 49-2-13(1). This item * * * 16 shall stand repealed on
July 1, 2028 * * * ; and

17. Any contract entered into by the State
Department of Health for service on specialized equipment and/or
software required for the operation of such specialized equipment
for the use by the Public Health Laboratory.



Any such rules and regulations shall provide for maintaining continuous internal audit covering the activities of such agency affecting its revenue and expenditures as required under Section 7-7-3(6)(d). Any rules and regulation changes related to personal and professional services contracts that the Public Procurement Review Board may propose shall be submitted to the Chairs of the Accountability, Efficiency and Transparency Committees of the Senate and House of Representatives and the Chairs of the Appropriation Committees of the Senate and House of Representatives at least fifteen (15) days before the board votes on the proposed changes, and those rules and regulation changes, if adopted, shall be promulgated in accordance with the Mississippi Administrative Procedures Act.

(ii) From and after July 1, 2024, the Public Procurement Review Board shall promulgate rules and regulations that require the Department of Finance and Administration to conduct personal and professional services solicitations as provided in subparagraph (i) of this paragraph for those services in excess of Seventy-five Thousand Dollars (\$75,000.00) for the Department of Marine Resources, the Department of Wildlife, Fisheries and Parks, the Mississippi Emergency Management Agency and the Mississippi Development Authority, with assistance to be provided from these entities. Any powers that have been conferred upon agencies in order to comply with the provisions of this section for personal and professional services solicitations shall



be conferred upon the Department of Finance and Administration to conduct personal and professional services solicitations for the Department of Marine Resources, the Department of Wildlife, Fisheries and Parks, the Mississippi Emergency Management Agency and the Mississippi Development Authority for those services in excess of Seventy-five Thousand Dollars (\$75,000.00). The Department of Finance and Administration shall make any submissions that are required to be made by other agencies to the Public Procurement Review Board for the Department of Marine Resources, the Department of Wildlife, Fisheries and Parks, the Mississippi Emergency Management Agency and the Mississippi Development Authority.

The provisions of this subparagraph (ii) shall stand repealed on June 30, 2027;

(g) Approve all personal and professional services contracts involving the expenditures of funds in excess of Seventy-five Thousand Dollars (\$75,000.00), except as provided in paragraph (f) of this subsection (2) and in subsection (8);

(h) Develop mandatory standards with respect to contractual services personnel that require invitations for public bid, requests for proposals, record keeping and financial responsibility of contractors. The Public Procurement Review Board shall, unless exempted under this paragraph (h) or under paragraph (i) or (o) of this subsection (2), require the agency involved to submit the procurement to a competitive procurement



process, and may reserve the right to reject any or all resulting procurements;

(i) Prescribe certain circumstances by which agency heads may enter into contracts for personal and professional services without receiving prior approval from the Public Procurement Review Board. The Public Procurement Review Board may 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 board;

(i) Agency requirements may be fulfilled by procuring services performed incident to the state's own programs. The agency head shall determine in writing whether the price represents a fair market value for the services. When the procurements are made from other governmental entities, the private sector need not be solicited; however, these contracts shall still be submitted for approval to the Public Procurement Review Board.

(ii) Contracts between two (2) state agencies, both under Public Procurement Review Board purview, shall not require Public Procurement Review Board approval. However, the contracts shall still be entered into the enterprise resource planning system;

(j) Provide standards for the issuance of requests for proposals, the evaluation of proposals received, consideration of costs and quality of services proposed, contract negotiations, the



administrative monitoring of contract performance by the agency
and successful steps in terminating a contract;

(k) Present recommendations for governmental
privatization and to evaluate privatization proposals submitted by
any state agency;

(l) Authorize personal and professional service
contracts to be effective for more than one (1) year provided a
funding condition is included in any such multiple year contract,
except the State Board of Education, which shall have the
authority to enter into contractual agreements for student
assessment for a period up to ten (10) years. The State Board of
Education shall procure these services in accordance with the
Public Procurement Review Board procurement regulations;

(m) Request the State Auditor to conduct a performance
audit on any personal or professional service contract;

(n) Prepare an annual report to the Legislature
concerning the issuance of personal and professional services
contracts during the previous year, collecting any necessary
information from state agencies in making such report;

(o) Develop and implement the following standards and
procedures for the approval of any sole source contract for
personal and professional services regardless of the value of the
procurement:



(i) For the purposes of this paragraph (o), the term "sole source" means only one (1) source is available that can provide the required personal or professional service.

(ii) An agency that has been issued a binding, valid court order mandating that a particular source or provider must be used for the required service must include a copy of the applicable court order in all future sole source contract reviews for the particular personal or professional service referenced in the court order.

(iii) Any agency alleging to have a sole source for any personal or professional service, other than those exempted under paragraph (f) of this subsection (2) and subsection (8), shall publish on the procurement portal website established by Sections 25-53-151 and 27-104-165, for at least fourteen (14) days, the terms of the proposed contract for those services. In addition, the publication shall include, but is not limited to, the following information:

1. The personal or professional service offered in the contract;

2. An explanation of why the personal or professional service is the only one that can meet the needs of the agency;

3. An explanation of why the source is the only person or entity that can provide the required personal or professional service;



340 4. An explanation of why the amount to be
341 expended for the personal or professional service is reasonable;
342 and

343 5. The efforts that the agency went through
344 to obtain the best possible price for the personal or professional
345 service.

346 (iv) If any person or entity objects and proposes
347 that the personal or professional service published under
348 subparagraph (iii) of this paragraph (o) is not a sole source
349 service and can be provided by another person or entity, then the
350 objecting person or entity shall notify the Public Procurement
351 Review Board and the agency that published the proposed sole
352 source contract with a detailed explanation of why the personal or
353 professional service is not a sole source service.

354 (v) 1. If the agency determines after review that
355 the personal or professional service in the proposed sole source
356 contract can be provided by another person or entity, then the
357 agency must withdraw the sole source contract publication from the
358 procurement portal website and submit the procurement of the
359 personal or professional service to an advertised competitive bid
360 or selection process.

361 2. If the agency determines after review that
362 there is only one (1) source for the required personal or
363 professional service, then the agency may appeal to the Public
364 Procurement Review Board. The agency has the burden of proving



that the personal or professional service is only provided by one
(1) source.

3. If the Public Procurement Review Board has
any reasonable doubt as to whether the personal or professional
service can only be provided by one (1) source, then the agency
must submit the procurement of the personal or professional
service to an advertised competitive bid or selection process. No
action taken by the Public Procurement Review Board in this appeal
process shall be valid unless approved by a majority of the
members of the Public Procurement Review Board present and voting.

(vi) The Public Procurement Review Board shall
prepare and submit a quarterly report to the House of
Representatives and Senate Accountability, Efficiency and
Transparency Committees that details the sole source contracts
presented to the Public Procurement Review Board and the reasons
that the Public Procurement Review Board approved or rejected each
contract. These quarterly reports shall also include the
documentation and memoranda required in subsection (4) of this
section. An 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;

(p) Assess any fines and administrative penalties
provided for in Sections 31-7-401 through 31-7-423.

(3) All submissions shall be made sufficiently in advance of
each monthly meeting of the Public Procurement Review Board as



390 prescribed by the Public Procurement Review Board. If the Public
391 Procurement Review Board rejects any contract submitted for review
392 or approval, the Public Procurement Review Board shall clearly set
393 out the reasons for its action, including, but not limited to, the
394 policy that the agency has violated in its submitted contract and
395 any corrective actions that the agency may take to amend the
396 contract to comply with the rules and regulations of the Public
397 Procurement Review Board.

398 (4) All sole source contracts for personal and professional
399 services awarded by state agencies, other than those exempted
400 under Section 27-104-7(2)(f) and (8), whether approved by an
401 agency head or the Public Procurement Review Board, shall contain
402 in the procurement file a written determination for the approval,
403 using a request form furnished by the Public Procurement Review
404 Board. The written determination shall document the basis for the
405 determination, including any market analysis conducted in order to
406 ensure that the service required was practicably available from
407 only one (1) source. A memorandum shall accompany the request
408 form and address the following four (4) points:

409 (a) Explanation of why this service is the only service
410 that can meet the needs of the purchasing agency;

411 (b) Explanation of why this vendor is the only
412 practicably available source from which to obtain this service;

413 (c) Explanation of why the price is considered
414 reasonable; and



415 (d) Description of the efforts that were made to
416 conduct a noncompetitive negotiation to get the best possible
417 price for the taxpayers.

418 (5) In conjunction with the State Personnel Board, the
419 Public Procurement Review Board shall develop and promulgate rules
420 and regulations to define the allowable legal relationship between
421 contract employees and the contracting departments, agencies and
422 institutions of state government under the jurisdiction of the
423 State Personnel Board, in compliance with the applicable rules and
424 regulations of the federal Internal Revenue Service (IRS) for
425 federal employment tax purposes. Under these regulations, the
426 usual common law rules are applicable to determine and require
427 that such worker is an independent contractor and not an employee,
428 requiring evidence of lawful behavioral control, lawful financial
429 control and lawful relationship of the parties. Any state
430 department, agency or institution shall only be authorized to
431 contract for personnel services in compliance with those
432 regulations.

433 (6) No member of the Public Procurement Review Board shall
434 use his or her official authority or influence to coerce, by
435 threat of discharge from employment, or otherwise, the purchase of
436 commodities, the contracting for personal or professional
437 services, or the contracting for public construction under this
438 chapter.



439 (7) Notwithstanding any other laws or rules to the contrary,
440 the provisions of subsection (2) of this section shall not be
441 applicable to the Mississippi State Port Authority at Gulfport.

442 (8) Nothing in this section shall impair or limit the
443 authority of the Board of Trustees of the Public Employees'
444 Retirement System to enter into any personal or professional
445 services contracts directly related to their constitutional
446 obligation to manage the trust funds, including, but not limited
447 to, actuarial, custodial banks, cash management, investment
448 consultant and investment management contracts. Nothing in this
449 section shall impair or limit the authority of the State Treasurer
450 to enter into any personal or professional services contracts
451 involving the management of trust funds, including, but not
452 limited to, actuarial, custodial banks, cash management,
453 investment consultant and investment management contracts.

454 (9) Through December 31, 2026, the provisions of this
455 section related to rental agreements or leasing of real property
456 for the purpose of conducting agency business shall not apply to
457 the Office of Workforce Development created in Section 37-153-7.

458 **SECTION 2.** This act shall take effect and be in force from
459 and after July 1, 2025.

