



*Lynn Fitch*  
ATTORNEY GENERAL

OPINIONS DIVISION

January 31, 2020

Mike Espy, Esquire  
Attorney, Board of Supervisors of Madison County  
Post Office Box 608  
Canton, Mississippi 39046

Re: Emergency Purchase by Board of Supervisors

Dear Mr. Espy:

Attorney General Lynn Fitch has received the opinion request of your predecessor, the Hon. Katie Bryant Snell, which was assigned to me for research and reply. By email dated January 28, 2020, you provided our office with formal notice to proceed with the issuance of our opinion in response to that previous request.

### Questions Presented

By request dated December 16, 2019, the Hon. Katie Bryant Snell, in her capacity as counsel for the Madison County Board of Supervisors, inquired regarding the process by which the Madison County Board of Supervisors may purchase a replacement E-911 system. Citing to inoperable equipment, the unavailability of parts and replacement equipment and previous unsuccessful attempt(s) to complete a standard procurement of a replacement E-911 system, all of which could impair the county's ability to respond to emergency calls from its citizens and visitors, the request indicated a declaration of emergency was warranted, stating "we believe that this situation constitutes an emergency." Accordingly, our opinion is predicated upon an existing declaration of emergency by the Board of Supervisors pursuant to Section 31-7-1(f) of the Miss. Code Ann.

Specifically, your request poses the following questions:

1. If we declare an emergency, what steps do we have to follow in our purchase of this equipment?

2. If we declare an emergency, may we purchase the equipment with the 7-year life? The purchase law provides that life-cycle costs may be included in the determination of lowest and best bid. Miss. Code Ann. Section 31-7-13(d)(l).
3. If we declare an emergency, would we have to request new quotes since the original quotes are now more than one year old?

### **Response**

Pursuant to the authority granted to this office in Section 7-5-25 of the Mississippi Code, official opinions of the Attorney General are limited to questions of law for future guidance. Furthermore, opinions of this office may not be issued which require our office to make factual determinations. Therefore, to the extent that your inquiries require this office to make determinations which exceed the limitations established in Section 7-5-25, we decline to respond to your inquiry by way of official opinion and provide the following for your future guidance.

1. Pursuant to Section 31-7-13(k) of the Miss. Code Ann.,

If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority.

2. Yes, provided the Board makes the requisite finding and abides by the emergency procedures set forth in Section 31-7-13(k), the County may purchase equipment with a seven (7) year life. However, based on your submissions to this office it appears that the County is not simply purchasing equipment with an expected life of seven (7) years, but also wishes to enter into a long-term agreement for the maintenance and service of an E-911 system that would bind successor boards without specific statutory authority. As a result, any such agreement would be voidable by successor boards.



3. No, new quotes would not be required by law as requirements for competitive bidding do not apply to emergency purchases under Miss. Code Ann. Section 31-7-13 (k).

### **Applicable Law and Discussion**

“Emergency” is defined in Section 31-7-1 as:

(f) “Emergency” means any circumstances caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection or caused by any inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary by reason of unforeseen emergency, or when the immediate restoration of a condition of usefulness of any public building, equipment, road or bridge appears advisable, or in the case of a public utility when there is a failure of any machine or other thing used and useful in the generation, production or distribution of electricity, water or natural gas, or in the transportation or treatment of sewage; or when the delay incident to obtaining competitive bids could cause adverse impact upon the governing authorities or agency, its employees or its citizens; or in the case of a public airport, when the delay incident to publishing an advertisement for competitive bids would endanger public safety in a specific (not general) manner, result in or perpetuate a specific breach of airport security, or prevent the airport from providing specific air transportation services.

From your request, we assume for the purpose of providing this opinion that the Board has made, or will soon make, a finding, consistent with fact and spread across its minutes, that the situation constitutes an “emergency” as defined by Miss. Code Ann. Section 31-7-1(f). This office cannot make the factual determinations that would either justify or call into question the county’s determination that the situation described constitutes an “emergency” as defined by Section 31-7-1(f). Such a determination must be made by the Board subject to the review by the Office of the State Auditor and ultimately, a court of competent jurisdiction. See MS AG Op., *Chiles* (August 31, 2018).

As for your first question regarding the steps required to make an emergency purchase of a replacement E-911 system, provided the Board has made or will soon make the required finding that an “emergency” exists as defined in Section 31-7-1(f), the Board must follow the procedures for emergency purchases as set forth in Section 31-7-13(k)<sup>1</sup>. As for your second question, provided the Board has made or will soon make the required finding that an “emergency” exists as defined in Section 31-7-1(f) and abides

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<sup>1</sup>This office contacted the Mississippi Wireless Communications Commission and confirmed that E911 equipment and services do not fall under its purview.

Mike Espy, Esquire  
January 31, 2020  
Page 4

by the emergency procedures set forth in Section 31-7-13(k), the County may purchase equipment with a seven (7) year life. However, based on your submissions to this office it appears that the County is not simply purchasing equipment with an expected life of seven (7) years, but also wishes to enter into a long-term agreement for the maintenance and service of an E-911 system that would bind successor boards without specific statutory authority.<sup>2</sup> As a result, any such agreement would be voidable by a successor board. See MS AG Op., *Carnathan*, (November 29, 2005) ("We note that the general prohibition against binding successor boards without specific statutory authority may render voidable any contract entered into for a period of time extending beyond the current term of office.")

Regarding your third question, new quotes would not be required by law as requirements for competitive bidding do not apply to emergency purchases under Section 31-7-13 (k).

If we may be of further service, please let us know.

Very truly yours,

LYNN FITCH, ATTORNEY GENERAL

OFFICIAL  OPINION  
By: Tommy D. Goodwin  
Special Assistant Attorney General

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<sup>2</sup>It should be noted that Section 31-7-13(j), which applies to emergency purchases by state agencies, prohibits emergency contracts from exceeding a term of one (1) year, but Section 31-7-13(k), which applies to governing authorities, contains no such limitation.