

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2009-CC-01720**

**PRECISION COMMUNICATIONS, INC.**

**APPELLANT**

**V.**

**HINDS COUNTY, MISSISSIPPI**

**APPELLEE**

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**ON APPEAL FROM HINDS COUNTY CIRCUIT COURT  
CASE NO. 251-08-940CIV**

*Precision Communications, Inc. v. Hinds County, Mississippi*

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**BRIEF OF APPELLANT PRECISION COMMUNICATIONS, INC.**

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**ORAL ARGUMENT REQUESTED**

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COMMUNICATIONS, INC.**

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**CERTIFICATE OF INTERESTED PERSONS**

Pursuant to Miss. R. App. P. 28(a)(1), the undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Supreme Court Justices may evaluate possible disqualification or recusal.

1. Precision Communications, Inc., Appellant;
2. Robert L. Gibbs, Esq., Katie L. Wallace, Esq., Attorneys for Appellant;
3. Hinds County, Mississippi, Appellee;
4. Crystal Wise Martin, Esq., Attorney for Appellee;
5. Eddie Jean Carr, Hinds County Chancery Clerk;
6. Hinds County Board of Supervisors; and
7. Honorable Tomie T. Green, Hinds County Circuit Judge.

Dated, this the 25<sup>th</sup> day of May, 2010.



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ROBERT L. GIBBS

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### **STATEMENT OF THE ISSUES**

1. Whether the Circuit Court erred in interpreting its role as an Appellate Court under Miss. Code Ann. § 11-51-75.
2. Whether the Circuit Court erred in declaring Precision Communication's Circuit Court Appeal moot after allowing the Hinds County Board of Supervisors to remedy its error of illegally considering ineligible bids.

## **STATEMENT OF THE CASE**

### **A. Procedural History**

On or about July 31, 2008, Hinds County, Mississippi, by and through its Board of Supervisors (sometimes referred to herein as “the County”) issued a Publication for an Early Warning System for Hinds County- Notice of Bids by Electronic Process. Precision Communications, Inc. (“Precision”) and other vendors hand delivered sealed specifications without pricing to the Clerk’s office on or before August 12, 2008, and on September 2, 2008, all bidding vendors participated in an online electronic bidding event. On Monday, November 17, 2008, the Hinds County Board of Supervisors met for a Special Meeting and voted to award the contract to Emergency Dispatch Notification Systems (“EDNS”). (R. E. 3, 4, 5). Thereafter, EDNS and the County negotiated a contract memorializing their agreement to provide early warning system sirens for the County. (R. E. 6, 7).

On November 26, 2008, Precision timely filed its Notice of Appeal in the Circuit Court of Hinds County (the “Circuit Court”) pursuant to Mississippi Code Annotated Section 11-51-75, appealing the actions of the Board of Supervisors. (R. 3). On December 3, 2008, Precision filed an Emergency Motion to Stay, requesting that the Circuit Court stay the implementation of the County’s award of contract to EDNS pending the Court’s ruling on its Appeal. (R. 12). The Circuit Court denied Precision’s Motion to Stay on December 22, 2008. (R. 49).

On July 31, 2009, Precision filed its Bill of Exceptions and the County’s Corrected Bill of Exceptions as signed by George Smith, President of the Hinds County Board of Supervisors. Precision’s Bill of Exceptions (Exhibit to the Record on Appeal but unnumbered). Pursuant to the Agreed Order Establishing Scheduling Order and Briefing Schedule (R. 66), Precision filed its Appellant Brief on July 31, 2009.

On July 28, 2009, the County filed a Motion to Dismiss Appeal. (R. E. 9). Precision filed a Response in Opposition to the Motion on July 31, 2009. (R. E. 10). On September 2, 2009, the Circuit Court entered an Order Denying Motion to Dismiss and Imposing Stay, wherein the Circuit Court remanded the matter to the Hinds County Board of Supervisors for reconsideration of bids for the early warning siren project as of August 29, 2008. (R. E. 12). The Court also stayed Precision's appeal in the interim. *Id.* By letter dated September 18, 2009, the County informed the Court that as a result of its reconsideration of bids, it voted to reject all of the bids and rebid the early warning siren project. (R. 128). As a result of the County's actions, the Circuit Court entered an Order Lifting Stay and Dismissing Appeal, finding that the County's decision to rebid the siren project rendered Precision's appeal moot. (R. E. 2).

On October 12, 2009, Precision timely filed its Notice of Appeal to this Court, from the Circuit Court's Order Lifting Stay and Dismissing Appeal. (R. E. 13).

#### **B. Statement of Facts**

Precision is a Mississippi corporation with its principal place of business in Amory, Mississippi. Precision has held a certificate of responsibility in the State of Mississippi in the field of Communications Systems in accordance with Mississippi Code Annotated Sections 31-3-15 and 31-3-21 since July 8, 2008. (Precision Certificate of Responsibility, Exhibit 1 to Bill of Exceptions).

When the County published a notice that it was accepting bids for the replacement of early warning system sirens in Hinds County, Precision submitted a proposal in accordance with the deadlines set forth in the bid specifications. Also pursuant to the provisions of Miss. Code Ann. §§ 31-3-15 and 31-3-21 and Paragraphs 8 and 11 of the project bid specifications, Precision duly provided its certificate of responsibility number on the outside of the envelope of its



proposal. Precision met all requirements of the Notice of Bids and Bids Specs and all Addendums. (Precision Proposal, Exhibit 4 to Bill of Exceptions).

Other vendors also submitted proposals and sealed specifications in response to the Notice of Bids, including EDNS, Massey Construction, LLC, McCord Communications, Early Warning Systems, Inc., ATI Systems, and American Signal Corporations. Although EDNS submitted a proposal and later electronically bid on the Bid Bridge system as the entity known as EDNS, Bill Plant, a representative of EDNS, who is also the manufacturer's representative for Federal Signal Corporation, later claimed that Federal Signal Corporation directly bid on the project. (R. E. 5 at ln. 217-219). In any event, John Sullivan, Executive Secretary of the Mississippi Board of Contractors has affirmed that neither EDNS nor Federal Signal Corporation possessed a certificate of responsibility at the time of its submission which is in direct violation of Miss. Code Ann. §§ 31-3-15 and 31-3-21. (R. E. 8). Of the seven bidding vendors, only three submitted certificates of responsibility on the outside cover of their proposal: Precision, McCord Communications and Massey Construction. Exhibit A to Brief of Appellant filed in Hinds County Circuit Court (Exhibit to Record on Appeal but unnumbered). However, McCord Communications' certificate of responsibility was in the field of Electrical and Massey Construction's certificate of responsibility was in the field of Building Construction. None of the other vendors besides Precision possessed a certificate of responsibility in the appropriate field of Communications. *Id.*

Despite the fact that many of the proposals did not have a certificate of responsibility on the outside cover of their proposal, the County considered the proposals of all vendors, and allowed all the vendors to participate in an online electronic bidding process. Frank Jackson acted as the administrator for the Bid Bridge bidding system. As a condition to each bidder's participation in the bidding event, the bidders were required to execute an Electronic Bid Event

Submission Form, acknowledging, among other conditions, that Jackson received 3% of the proceeds of the awarded contract. (Electronic Bid Event Submission form, Exhibit 7 to Bill of Exceptions; Bid Date Report from the Early Warning System Bid, Exhibit 8 to Bill of Exceptions). Jackson modified the Precision proposal, and submitted only one of Precision's three proposals to the County.

On Monday, November 17, 2008, the Hinds County Board of Supervisors met for a Special Meeting ("November 17 Board Meeting"). (R. E. 3, 4, 5). At the November 17 Board Meeting, Bill Plant, representative for EDNS, admitted that neither EDNS nor Federal Signal Corporation had a certificate of responsibility in the State of Mississippi. (R. E. 5 at ln. 230-236). Nevertheless, at the conclusion of the meeting, by a unanimous vote, the County voted to award the contract to EDNS. *Id.* Thereafter, EDNS entered into a contract with the County and installed ten (10) early warning sirens in the County, with the option to install up to forty-one (41) more throughout the life the contract. (R. 81).

Following Precision's filing of its Notice of Appeal in the Circuit Court (sometimes referred to herein as the "Circuit Court Appeal" or "Precision's Appeal") pursuant to Miss. Code Ann. § 11-51-75, the parties litigated over whether the action should be stayed pending the outcome of the Circuit Court Appeal, as well as issues regarding the receipt of documents requested by Precision from the County for preparation of its Bill of Exceptions, which serves as the record in circuit court appeals. In June of 2009, the parties resolved most of the issues and entered into an Agreed Order which provided for a briefing schedule for the appeal. Almost simultaneously with Precision's filing of its Circuit Court Appellant Brief, the County filed a Motion to Dismiss Precision's Appeal, stating that pursuant to the bid specifications, it "exercised its option to re-advertise its bids," and argued that this decision effectively rendered Precision's Appeal moot. Despite Precision's arguments to the Circuit Court that the County

was not permitted under Mississippi law to reject all bids and rebid the project in order to avoid liability under Miss. Code Ann. § 11-51-75, the Circuit Court entered an Order staying Precision's Appeal. The Court's Order also provided the County an opportunity to remedy their wrong by mandating that the Hinds County Board of Supervisors reconsider the original proposals of the vendors who submitted bids for the early warning siren project as of August 29, 2008. (R. E. 12). The County accordingly "reconsidered" the bids, and reached the same result it had made prior to the Circuit Court's Order—to reject all of the bids and rebid the early warning siren project. (R. 128). The County alleges that it reached this reasoning by determining that no vendor possessed a certificate of responsibility as required by Mississippi law except for Precision. (R. 133). However, the County alleged that Precision assisted with the procurement of the grant awarded to Hinds County to replace its sirens, and therefore was ineligible to be awarded the contract. *Id.* As a result of the County's actions, the Circuit Court entered an Order Lifting Stay and Dismissing Appeal, finding that the County's decision to rebid the siren project rendered Precision's Appeal moot. (R. E. 2). In its Order, the Circuit Court also explicitly rejected Precision's argument that Miss. Code Ann. § 11-51-75 mandates that the Circuit Court hear Precision's appeal and reverse the County's award to EDNS. (R. E. 2). From that Order, Precision now appeals.

### **SUMMARY OF THE ARGUMENT**

When the Hinds County Board of Supervisors advertised for bids for the installment of early warning sirens for the County, Precision and several other vendors submitted bids for the project. It is undisputed that Precision was the only bidder who possessed and displayed a certificate of responsibility in the field of Communications on its bid in compliance with Mississippi law, as well as the County's own bid specifications. Nevertheless, the County did not reject all unlicensed bidders as it was obligated to do under Miss. Code Ann. §§ 31-3-15 and

31-3-21, and instead awarded the contract to EDNS—a bidder who did not possess a Mississippi certificate of responsibility.

Precision appealed the County's award of contract to EDNS to Hinds County Circuit Court in accordance with Miss. Code Ann. § 11-51-75, which provides the procedure for circuit court appeals of decisions of county boards, and directs the Circuit Court to "affirm or reverse the judgment...[and] [i]f the judgment be reversed, the circuit court shall render such judgment as the board or municipal authorities ought to have rendered." Based on this statute, this Court has repeatedly held that a Circuit Court can make one of three findings: 1) that a contract was properly awarded to the winning bidder; 2) that the contract was not properly awarded to the winning bidder and determine which contractor should have been awarded the contract; or 3) determine that all bids should have been rejected and that the project should have been readvertised. Despite the clear statutory directive of Miss. Code Ann. § 11-51-75 and interpreting authorities, the Circuit Court instead remanded the question of consideration of bids back to the Hinds County Board of Supervisors to reconsider the bids as of the original date of submission.

By allowing the Board of Supervisors to reconsider the bids as of the original submission date, the County was given an unprecedented opportunity to remedy the error it made eight months before in considering and accepting the bid of an unlicensed bidder. Consequently, the County was able to make a retroactive determination to reject all bids and decide to rebid the siren project, thus escaping liability and compromising the integrity of the bidding process.

The Circuit Court further erred by then declaring that because it had allowed the County to go back and remedy its error and the project was being rebid, Precision's Appeal was moot and should be dismissed. Mississippi law is clear that an action is moot because the controversy has expired at the time of review; however, the Circuit Court took the very actions that rendered

the appeal moot—an action that could be taken by any court at any time to terminate a controversy. In any event, the mootness doctrine will not be invoked when the issue at hand affects public interest. It is well recognized that Mississippi bidding laws are matters affecting the public interest that would preclude dismissal on mootness grounds, even if the Circuit Court were justified in declaring an action moot.

Because the Circuit Court erred in interpreting its role as an appellate court pursuant to Miss. Code Ann. § 11-51-75 and in declaring Precision's Appeal moot, the Court should reverse the Circuit Court's dismissal of Precision's Appeal. In addition, the Court should either remand Precision's Appeal to the Circuit Court for a proper hearing consistent with Miss. Code Ann. § 11-51-75, or alternatively find that evidence presented by Precision is sufficient to find that the County acted illegally, and that Precision was the only qualified recipient of the early warning siren contract.

## ARGUMENT

### **I. Standard of Review.**

This Court has held that it will “not set aside the action of the governing body of a municipality unless such action is ‘clearly shown to be arbitrary, capricious, or discriminatory or is illegal or without substantial evidentiary basis.’” *Nelson v. City of Horn Lake*, 968 So. 2d 938, 942 (Miss. 2007) (quoting *Sunland Publ'g Co.*, 710 So. 2d at 882)). An act is arbitrary or capricious if it “is not based on substantial evidence,” *Hinds County Board of Supervisors v. Leggette*, 833 So. 2d 586, 590 (Miss. Ct. App. 2002), or it is “done at pleasure, without reasoned judgment or with disregard for the surrounding facts and circumstances.” *Nelson*, 968 So. 2d at 942. An act by a board of supervisors is illegal if it is done in violation of state law. *See, e.g., Richardson v. Canton Farm Equipment, Inc.*, 608 So.2d 1240 (Miss. 1992). In an appeal of a decision of a county board of supervisors where the court must consider questions of law,

however, “the Board’s decision will be considered de novo.” *A & F Properties, LLC v. Madison County Board of Supervisors*, 933 So. 2d 296, 300 (Miss. 2006). *See also Leggette*, 844 So. 2d at 590.

In this case, however, the Circuit Court did not consider whether the County acted arbitrarily, capriciously or illegally. Instead, the Circuit Court remanded the question of award of contract back to the Board of Supervisors for reconsideration. Then the Circuit Court considered the County’s Motion to Dismiss Appeal on the ground of mootness and ultimately granted the County’s Motion to Dismiss Appeal. Therefore, this Court must employ a standard of review for the Circuit Court’s dismissal of the appeal. When considering issues of law, the Supreme Court must employ a *de novo* review. *Whitaker v. Limeco Corp.*, 2010 WL 1379991, 3 (Miss. 2010). Likewise, “[w]hen reviewing a trial court’s grant or denial of a motion to dismiss or a motion for summary judgment, this Court likewise applies a *de novo* standard of review.” *Id.* (quoting *Burleson v. Lathem*, 968 So.2d 930, 932 (Miss. 2007)).

**II. The Hinds County Board of Supervisors Acted Illegally in Awarding the Siren Contract to a Party Who Did Not Possess a Certificate of Responsibility, Rendering the Award of Contract Null and Void.**

Under Mississippi law, bidders for public contracts must comply with certain certification requirements in order to be considered and/or awarded contract. These certification requirements are set forth in Miss. Code Ann. §§ 31-3-13 through 31-3-21. Specifically, Section 31-3-15 provides:

No contract for public or private projects shall be issued or awarded to any contractor who did not have a current certificate of responsibility issued by said board at the time of the submission of the bid, or a similar certificate issued by a similar board of another state which recognizes certificates issued by said board. Any contract issued or awarded in violation of this section shall be null and void.

In addition, Section 31-3-21 requires that “[a]ny bid which is submitted without a certificate of responsibility number issued under this chapter and without that number appearing

on the exterior of the bid envelope, as and if herein required, at the time designated for the opening of such bid, shall not be considered further, and the person or public agency soliciting bids shall not enter into a contract with a contractor submitting a bid in violation of this section.” Thus, under the clear language of Section 31-3-21, the County was not authorized to award a contract to any contractor who did not have a current certificate of responsibility at the time of bidding, or even to any contractor who failed to submit a bid without its certificate on the bid envelope exterior. Precision set forth this argument and supporting law in numerous pleadings filed before the Circuit Court. *See, e.g.*, R. 14, 72, 73 and Exhibit to Record (Appellant Brief filed in Hinds County Circuit Court). In addition, Precision also submitted the Affidavit of John Sullivan, Executive Secretary of the Mississippi Board of Contractors, who affirmed that neither EDNS nor Federal Signal Corporation possessed a certificate of responsibility at the time of its bid submission in direct violation of Miss. Code Ann. §§ 31-3-15 and 31-3-21. (R. E. 8).<sup>1</sup> Accordingly, the Circuit Court was well aware not only that EDNS should not have been awarded the siren contract, but also that the contract between EDNS and the County was null and void pursuant to Section 31-3-15.

**III. The Circuit Court Erred in Interpreting Its Role As An Appellate Court Under Miss. Code Ann. § 11-51-75.**

**1. The Circuit Court Did Not “Render Such Judgment as the Board Ought to Have Rendered.”**

Miss. Code Ann. § 11-51-75 governs Circuit Court appeals from a decision of a county board of supervisors. It provides, in relevant part:

Any person aggrieved by a judgment or decision of the board of supervisors, or municipal authorities of a city, town, or village, may appeal within ten (10) days from the date of adjournment at which session the board of supervisors or municipal authorities

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<sup>1</sup> Precision also set forth uncontraverted evidence that no bidder for the siren project except Precision possessed an certificate of responsibility in the field of Communications Systems, thus rendering it the only bidder who could legally be awarded the contract. *Id.* *See also* MISS. CODE ANN. § 31-3-13(g) (requiring that contractors possess industry-specific certificates of responsibility and prohibiting an award of contract to contractor uncertified in such specific industry).

rendered such judgment or decision, and may embody the facts, judgment and decision in a bill of exceptions which shall be signed by the person acting as president of the board of supervisors or of the municipal authorities. The clerk thereof shall transmit the bill of exceptions to the circuit court at once, and the court shall either in term time or in vacation hear and determine the same on the case as presented by the bill of exceptions as an appellate court, and shall affirm or reverse the judgment. If the judgment be reversed, the circuit court shall render such judgment as the board or municipal authorities ought to have rendered, and certify the same to the board of supervisors or municipal authorities. Costs shall be awarded as in other cases. The board of supervisors or municipal authorities may employ counsel to defend such appeals, to be paid out of the county or municipal treasury. Any such appeal may be heard and determined in vacation in the discretion of the court on motion of either party and written notice for ten (10) days to the other party or parties or the attorney of record, and the hearing of same shall be held in the county where the suit is pending unless the judge in his order shall otherwise direct.

The statute explicitly states the Circuit Court's role in such appeals: to "affirm or reverse the judgment...[and] [i]f the judgment be reversed, the circuit court shall render such judgment as the board or municipal authorities ought to have rendered, and certify the same to the board of supervisors or municipal authorities." MISS. CODE ANN. § 11-51-75.

The Mississippi Supreme Court has time and time again affirmed the Circuit Court's clear authority "to render the decision a board or municipality ought to have rendered." In *City of Durant v. Laws Construction Company, Inc.*, 721 So. 2d 598, 602 (Miss. 1998), this Court held that even when a contractor possessed a Mississippi certificate of responsibility, but failed to attach it to the outside of its bid, the award of contract to that contractor is illegal. *Id.* at 601. The Court held that the circuit court properly found that the City of Durant violated Section 31-3-21 by opening and considering a bid that did not have a certificate of responsibility on the outside of the bid envelope. *Id.* Based on this holding, the Supreme Court explained the circuit court's actions under Section 11-51-75:

Pursuant to Miss. Code Ann. § 11-51-75(1972), the circuit court is required to render a judgment which the municipal ought to have rendered. Thus the circuit court would have ordered the City not to consider King's bid, and either accept the next lowest bid or reject all bids and rebid the project. However, rather than wait for a decision of the appeal, the City proceeded with the illegal award of the contract. At the initial hearing, King was substantially through with the project. Since the project was precluded from being



awarded to [the appellant] due to its substantial completion, the circuit court determined that [the appellant] was entitled to recover damages.

*Id.* at 601. Even more explicitly, the Court stated that “[e]ven under the plain language of the statute, it seems that the circuit court had the authority to “render such judgment as the board or municipal authorities ought to have rendered” by awarding the contract to [the appellant].” *Id.* at 606.

Based on the clear statutory directive of Section 11-51-75 and similar cases such as *Laws Construction Company*, the Circuit Court was obligated to hear Precision’s Appeal, and determine the decision of the Hinds County Board of Supervisors should have made at the time it awarded the contract to EDNS. Under this directive, the Circuit Court could have made one of three decisions: 1) determine that the contract was properly awarded to EDNS; 2) determine that the County should not have considered EDNS and/or other contractors’ bids, and determine the contractor’s bid that should have been accepted; or 2) determine that the County should have rejected all bids and rebid the project. *See Laws Construction Company, Inc.*, 721 So. 2d at 602. However, the Circuit Court did not “hear and determine the same on the case as presented by the bill of exceptions as an appellate court.” MISS. CODE ANN. § 11-51-75. The Circuit Court did not consider the parties’ briefs or the Bill of Exceptions. Rather, the Circuit Court relied on the County’s Motion to Dismiss Appeal in making its decision to remand the decision of the award of the siren contract for reconsideration by the Board of Supervisors as of the original bid submission date of August 29, 2008. The Court’s decision in this regard was clearly not a proper action by the Circuit Court as contemplated by the statute or by this Court in interpreting Section 11-51-75, and as set forth more fully below, provided the County an opportunity to remedy its wrong.

**2. The Circuit Court Ignored § 11-51-75 by Allowing the County to Remedy Its Prior Error.**

In the County's Motion to Dismiss Appeal, it informed the Circuit Court that it had decided to re-advertise for bids for the early warning siren contract. (R. E. 11). The County further argued that even if the Circuit Court were to consider Precision's Appeal, the County would not have awarded the contract to Precision, thus rendering Precision's Appeal moot. (R. E. 11). In response, Precision argued that rebidding the project does not cure the violation of law committed by the County in awarding the contract to EDNS in contravention of Miss. Code Ann. §§ 31-3-15 and 31-3-21. (R. 73). Precision further urged the Court that no Mississippi authority has previously permitted a court "to dismiss a properly noticed appeal, when a County tried to undo an illegal decision." (R. E. 10). Nevertheless, the Circuit Court, being unsatisfied with the County's ad hoc decision to re-advertise the project prior to resolution of the action, ruled that the Board of Supervisors should go back to the drawing board and reconsider all bids that were submitted as of August 29, 2008. (R. E. 12). The Circuit Court's order specifically stated that the Board of Supervisors' "reconsideration shall include all licensure, certifications and other legal requirements applicable and held by ALL bidders, to include but not limited to, Appellant Precision Communications, Inc." (R. E. 12). The Circuit Court stayed Precision's Appeal during the time that the Board should comply with the order. *Id.*

By allowing the Board to reconsider the bids as of the date of the original submission of bids for the project, the County was able to remedy its prior error of considering bids of contractors that did not possess or include certificates of responsibility in accordance with Mississippi law. The order to reconsider also allowed the Board to develop a reason that it should not have to award the contract to Precision—in this case, the County alleged that

Precision was ineligible to be awarded the contract because it assisted with the procurement of the grant awarded to Hinds County to replace its sirens.<sup>2</sup>

A Mississippi federal district court interpreting Mississippi law has held that even if a board reserves the right to reject bids at its discretion, that does not give the board “unlimited or infinite authority to reject bids.” *Northeast Mississippi Community College Dist. v. Vanderheyden Constr. Co.*, 800 F. Supp. 1400, 1402 (N.D. Miss. 1992). Instead, “[a] public body’s option of rejecting any and all bids is available ‘only prior to the time that it accepts one of the bids it has received.’” *Id.* Accordingly, the district court held that under Mississippi law, a board of trustees erred in first awarding the contract to one bidder, then subsequently rescinding the award, rejecting all bids and ordering the project to be readvertised. *Id.* at 1401-02. The reasoning behind this rule is simple: “to allow the board to readvertise under the present facts would, in the court’s opinion, sanction arbitrary rejection and hence would have the effect of opening the door to the possibility of favoritism in future public bidding.” *Id.* at 1403 (quoting *Gurtler, Herbert & Co. v. Orleans Parish School Bd.*, 251 So. 2d 51, 53 (La. App. 4<sup>th</sup> Cir. 1971)). Like in *Vanderheyden*, to allow the Board to reconsider bids nearly eight (8) months following its award of contract to EDNS accomplished no purpose except to allow the County to correct its error and compromise the integrity of the bidding process in Hinds County.

The Circuit Court did not have the statutory authority to allow the Board to remedy its wrong. The Circuit Court did have the statutory authority to hear Precision’s Appeal and determine what action the Board should have taken. The Circuit Court did not take this action—instead, it allowed the Board to reverse its prior decision, then dismissed Precision’s Appeal as

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<sup>2</sup> Precision specifically disputes this pretextual reasoning now asserted by the County, and submits that if the County truly harbored reservations about Precision’s participation in the procurement of a grant, it would have rejected Precision’s bid in August 2008. Nevertheless, this issue is one that is appropriate for consideration by the Circuit Court in its review of Precision’s Appeal pursuant to Section 11-51-75, in “rendering the judgment the Board of Supervisors ought to have rendered.”

moot. For this additional reason, the Circuit Court's dismissal of Precision's Appeal should be reversed.

**IV. The Circuit Court Erred in Declaring the Appeal "Moot" After Allowing Board to Remedy Its Error.**

Upon the County's notification to the Circuit Court that it desired to rebid the early warning siren project, the Circuit Court entered an Order Lifting Stay and Dismissing Appeal, stating as follows:

The court is persuaded and adopts the arguments advanced by the County that regarding the County's revocation of its initial bid award, the County's reconsideration of all the bids of initial weather siren bidders (to include Precision) and the County's ultimate rejection of all bids initially submitted to the County makes moot the appeal before the court. This is especially so considering the County's decision to rebid the weather sirens project.

(R. E. 2).

"Cases in which an actual controversy existed at trial but the controversy has expired at the time of review, become moot...[and] [t]his Court will not adjudicate moot questions." *Alford v. Mississippi Div. of Medicaid*, 30 So. 3d 1212, 1214 (Miss. 2010) (quoting *Monaghan v. Blue Bell, Inc.*, 393 So. 2d 466, 466 (Miss. 1980); *Allred v. Webb*, 641 So. 2d 1218, 1220 (Miss. 1994)). However, the Circuit Court erred in declaring Precision's Appeal moot for one simple reason—the controversy did not expire naturally as contemplated by the mootness rule—the Circuit Court took the very actions that rendered the appeal moot. *See, e.g., Alford*, 30 So. 2d at 1214 (during Medicaid eligibility lawsuit, potential recipient died); *Board of Trustees of Pascagoula Mun. Sep. School Dist. v. Doe*, 508 So. 2d 1081, 1084 (Miss. 1987) (during pendency of lawsuit concerning propriety of expulsion of student, student graduated from school). Indeed, theoretically, any court could order any party to an appeal the opportunity to go back and correct its actions, thereby rendering the merits of their appeal moot. Certainly, the mootness doctrine was not created for the purpose of allowing defendants to escape liability.

Therefore, the Court's remand to the Board of Supervisors and subsequent declaration of mootness was improper and should be reversed.

In any event, however, this Court has carved out an exception for matters that affect the public interest. "[T]he mootness rule will not be applied 'when the questions involved are matters affecting the public interest.'" *Alford*, 30 So. 2d at 1214. See also *Board of Trustees of Pascagoula Mun. Sep. School Dist.*, 508 So. 2d at 1084; *Allred*, 641 So. 2d at 1220. Public interest is of foremost importance in Precision's Appeal. Indeed, the Supreme Court recognized the public interest in maintaining the integrity of Mississippi's bid laws in *Hemphill Const. Company, Inc. v. City of Laurel*, 760 So. 2d 720, 724 (Miss. 2000). In *Hemphill*, the City of Laurel allowed a vendor to amend its bid price after the competitive sealed bids were opened. *Hemphill*, 760 So. 2d at 724. The City argued that the winning bidder had the lowest bid both before and after it was permitted to amend its bid, so no true harm was done. *Id.* Nevertheless, the Supreme Court reasoned that the public policy behind the statute controlled:

The purpose of provisions requiring that contracts with public authorities be let only after competitive bidding [is] to secure economy in the construction of public works and the expenditures of public funds for materials and supplies needed by public bodies; to protect the public from collusive contracts; to prevent favoritism, fraud, extravagance, and improvidence in the procurement of these things for the use of the state and its local self-governing subdivisions; and to promote actual, honest, and effective competition to the end that each proposal or bid received and considered for the construction of a public improvement, the supplying of materials for public use, etc., may be in competition with all other bids upon the same basis, so that all such public contracts may be secured at the lowest cost to taxpayers.

*Id.* (internal quotations omitted). The Court therefore found that "[w]hile the City may be comfortable with its decision in this instance, however, the broader public will lose in the long run if the public purchase laws are circumvented." *Id.*

Like in *Hemphill*, the County has argued that Precision's Appeal is moot, and that no harm was done because Precision would not have been awarded the contract even if the County had complied with Mississippi law in the first place. However, also like in *Hemphill*, the broader

public stands to lose if Mississippi's public purchase laws are circumvented at a County's whim. For these reasons, Precision's Appeal is most certainly a matter of public interest that should preclude dismissal on mootness grounds, whether or not the Circuit Court was justified in declaring the appeal moot. Therefore, this Court should find that the Circuit Court erred in declaring Precision's Appeal moot and find that it should have duly heard the appeal pursuant to Miss. Code Ann. § 11-51-75.

Accordingly, this Court should reverse the Circuit Court's dismissal of Precision's Appeal, and remand it back to the Circuit Court for it to "affirm or reverse the judgment...[and] [i]f the judgment be reversed, the circuit court shall render such judgment as the board or municipal authorities ought to have rendered, and certify the same to the board of supervisors or municipal authorities." MISS. CODE ANN. § 11-51-75. Alternatively, considering the fact that this matter has already been pending for over one and a half years, the Court may properly find that sufficient evidence is before it to consider the merits of Precision's Appeal. Indeed, based on the facts and authorities set forth above, there can be no question that the County's actions in considering the bids of non-licensed vendors was in violation of Mississippi law and thus reversible. *See Richardson*, 608 So.2d at 1240. Thus, the Court may reach the conclusion that the Circuit Court could have reached no other decision but that Precision was the only qualified bidder for the siren project, and that it should have been awarded the contract.

### **CONCLUSION**

The Circuit Court misconstrued the mandate of Section 11-51-75. Instead of "render[ing] such judgment as the board or municipal authorities ought to have rendered," it allowed the County to remedy its violation of Mississippi law and then dismissed Precision's Appeal. By taking this action, the County was given the opportunity to avoid liability for its illegal actions and Mississippi's public purchase laws were circumvented, while leaving Precision, the only

qualified bidder for the project, without a legal remedy for its unjustifiable denial of the contract. Therefore, this Court should find that the Circuit Court's denial of Precision's Appeal be reversed.

Dated, this the 25<sup>th</sup> day of May, 2010.

**PRECISION COMMUNICATIONS, INC.**



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Robert L. Gibbs, One of their Attorneys

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**CERTIFICATE OF SERVICE**

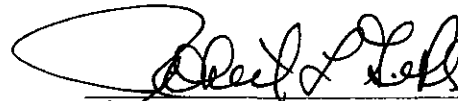
I, Robert L. Gibbs, do hereby certify that I have this day mailed, via United States mail, postage prepaid, a true and correct copy of Brief of Appellant to:

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Honorable Tomie T. Green  
Hinds County Circuit Judge  
P.O. Box 327  
Jackson, MS 39205

Dated, this the 25<sup>th</sup> day of May, 2010.

A handwritten signature in black ink, appearing to read 'Robert L. Gibbs', is written over a horizontal line.

Robert L. Gibbs