

IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

WASTE MANAGEMENT OF MISSISSIPPI, INC.

PLAINTIFF

VS.

CIVIL ACTION NO.

22-103

CHOKWE A. LUMUMBA, MAYOR OF
JACKSON, MISSISSIPPI; CITY OF JACKSON

DEFENDANTS

APPEAL AND COMPLAINT FOR DECLARATORY,
EQUITABLE AND INJUNCTIVE RELIEF

Waste Management of Mississippi, Inc. files this action against Chokwe Antar Lumumba (the "mayor") in his official capacity as mayor of the City of Jackson and the Jackson city council members as follows:

PARTIES

1. Plaintiff is Waste Management of Mississippi, Inc. ("WM") a Mississippi Corporation.
2. Chokwe Lumumba is the Mayor of the City of Jackson and may be served with process at his office located at City Hall, 219 President Street, Jackson, Mississippi. The City of Jackson, Mississippi may be served with process in accordance with Mississippi law.
3. The court has jurisdiction over this lawsuit and appeal pursuant to Miss. Code Ann. §11-51-75 and Mississippi law. Venue is proper in the Circuit Court of Hinds County, Mississippi.
4. WM is a private entity which does business with the City of Jackson. WM submitted a proposal to provide solid waste collection services to the City of Jackson pursuant to the City's October 2021 RFP.

FACTS

5. WM has a clear right to the relief sought in this action as set forth below. The Mayor has a legal obligation to follow the RFP process, including negotiating in good faith with participants who submitted proposals in the October 2021 RFP process and to make a recommendation to the City Council for a solid waste collection service provider as set forth in the RFP. The mayor has a ministerial obligation to comply with requirements of the RFP and Miss Code Ann § 31-7-13. The Mayor's initial proposal of vendor to the City Council has been rejected on two occasions by the City Council. The Mayor has refused to engage in negotiations with the second ranked proposer to the RFP.

6. Because the Mayor has refused to make a second recommendation to the City Council of Jackson in compliance with the terms of the RFP and Miss Code Ann §31-7-13, WM has no adequate remedy at law and will be irreparably harmed if equitable relief is not provided.

7. Pursuant to the RFP process initiated by the RFP, WM submitted a proposal to the City of Jackson on November 23, 2021.

8. The Mayor appointed a committee to review and rank the proposals. WM was ranked first in the rankings for twice week service with no cart, the current service provided to City residents, and second for twice a week service with a cart. Richard's Disposal was ranked first for twice a week with cart. The Mayor recommended to the City Council that Richard's Disposal be awarded a contract providing twice a week service with a cart. This recommendation was rejected by the City Council on two occasions and pursuant to Jackson city ordinance cannot be reconsidered by the City Council for a period of one year. After the City Council rejected the proposal to award the contract to Richards Disposal, the mayor refused to

initiate discussions with WM even though the RFP states that if negotiations with the highest-ranking service provider fail, negotiations may be initiated with the next highest ranking service provider and so on until agreement is reached. The City reserved the right to reject all offers. While the City reserves the right to negotiate a contract and reserves the right not to enter a contract with anyone, it is obligated to comply with the requirements of Mississippi Code annotated section 31 – 7 – 13 and the RFP.

9. Because the contract with WM expires on March 31, 2022, the mayor has a ministerial duty to present to the City Council a contract that complies with Mississippi Code Annotated Section 31 – 7– 13.

10. As such, the Mayor has failed to fulfill his obligation to negotiate in good faith. Instead, he purportedly has signed a contract to Richard's Disposal for a period of one year on an emergency basis without following the RFP procedure set forth under Mississippi law. The Mayor cannot create his own "emergency" to end run Mississippi law or the approval of the City of Jackson City Council. WM has offered to extend the current contract until April 30, 2022, so there is no "emergency".

11. The Mayor's actions are arbitrary and capricious and he cannot in bad faith create a "fake" emergency. Mississippi law defines an emergency as "an unforeseen occurrence or combination of circumstances which calls for immediate action or remedy; a pressing necessity." There is not an emergency and the Mayor's actions do not comply with MS 31-7-13. The Mayor is attempting to circumvent the intention of the law by attempting to execute a one year contract after the City Council rejected his recommendation to award the contract to Richard's Disposal. These actions are in bad faith, are arbitrary and capricious and violate the dictates of the RFP and the statute that governs the RFP process for solid waste collection contracts (31-7-13).

**COUNT I.
CLAIM FOR SPECIFIC ENFORCEMENT OF THE RFP**

12. WM requests that the court issue an order directing the Mayor in his individual capacity as mayor to follow his obligations under statute, city ordinances, and the RFP and engage in good faith negotiations pursuant to the RFP for a six-year term. The six-year term required by the RFP cannot be varied unilaterally by the Mayor by a false declaration of “emergency.” In fact, Mississippi law and AG opinions provide that contract requirements for an RFP cannot be varied by agreement or coercion by the Mayor.

13. The Court should require the Mayor to present the council with a six-year contract as required by Miss Code Ann § 31-7-13 and the RFP.

**COUNT II.
REQUEST FOR EQUITABLE AND INJUNCTIVE RELIEF**

14. The Mayor has declared an emergency and awarded a contract outside of the RFP process and the statutory scheme contemplated by 31 – 7 – 13. To the extent there is an “emergency,” it has been created intentionally by the Mayor. The RFP was dated October 2021 and the Mayor’s office has now had months to complete this process. However, because the City Council would not approve the Mayor’s preferred provider, the Mayor has slow walked this process and refused to negotiate with any other vendors including WM. Clearly the circumstance of this self-created “emergency” caused by the Mayor’s delay is not an “emergency”.

15. Accordingly, WM requests that this court enter an injunction expressly prohibiting the Mayor from declaring an “emergency” to circumvent Mississippi law and awarding any contract to Richards Disposal. Instead the Mayor should be ordered to negotiate with the other RFP participants in good faith under the terms of the RFP.

**COUNT III.
REQUEST FOR DECLARATORY JUDGMENT**

16. WM requests a declaratory judgment that the mayor has failed to comply with the RFP process and discharge his obligations under Mississippi law.

17. WM requests that the court declare that the mayor has an affirmative obligation to enter to negotiations which comply with the RFP process and rule that the Mayor may not unlawfully declare an “emergency” and award a temporary contract on an “emergency” basis outside RFP process.

18. The recommendation by the Mayor to the City Council for the Richard’s contract called for an award of a six-year contract. Only after the City Council rejected the Mayor’s recommendation to approve a six-year contract to Richard’s did the Mayor declare an “emergency” and unlawfully execute a contract with Richard’s. WM requests that the Court rule that the “contract”(which no one has seen) with Richard’s is unlawful, null and void. WM requests that this court declare and adjudge that due to the Mayor’s complete abdication of his responsibility, the Council may lawfully enter into a contract on terms consistent with the RFP process.

19. Additionally, due the Mayor’s failure to act, the Court should declare and decree that the Council as the governing authority, has the legal right and obligation to act for the City and can enter into and execute a contract since the Mayor has failed to act. The Court should declare that the Council has the right, duty, and obligation to execute a contract for waste collection.

**COUNT IV.
ESTOPPEL**

20. The Mayor should be estopped from entering a one-year contract or negotiating

outside of the RFP process. The participants in the RFP process relied on the City's representations and the terms of the RFP requiring at minimum a six-year contract. WM devoted substantial resources to participating in the RFP process to prepare and participate in the process and otherwise detrimentally relying on the City's representation that there would be a six-year contract awarded as part of the RFP. WM requests that the court rule that the Mayor is estopped from acting outside the RFP process.

**COUNT V.
APPEAL PURSUANT TO MISS CODE ANN 11-51-75**

21. WM appeals the Mayor's purported award of a "contract" to Richard's as an "emergency contract." A copy of the contract has not been provided to the Council or the public, but the City Attorney acting for the Mayor, advised the Council on February 24, 2022 that a contract had been entered and that because an emergency had been declared on February 17, 2022, the contract was valid. The purported state of "emergency" was entered into pursuant to Miss Code Ann 33-15-17 which is not applicable to these facts. There is not an "extreme emergency" that allows the Mayor to simply declare "emergency" and do as he wishes. The Court should rule that this action is void and that any purported contract signed by the Mayor is null and void. The record designation for this appeal is attached as exhibit "A."

Based on the foregoing, WM requests the following relief:

- A. That this court issue an order directing the Mayor to negotiate in good faith with the remaining RFP participants and present a six-year contract to the City Council;
- B. That this Court enjoin the Mayor from falsely declaring an "emergency" and order the mayor to comply with the terms of the RFP and 31-7-13;

- C. A declaratory judgment that the Mayor has an affirmative obligation to comply with the RFP and recommend a contract for six-year term to the City Council;
- D. A judgment that the mayor is estopped from declaring an “emergency” and refusing to comply with the terms of the RFP and must affirmatively recommend a six-year contract to the City Council.
- E. That to the extent the mayor deems his signing a contract with Richard’s an official and legally binding act, that this filing be treated as an appeal and that the Court rule that he has no authority to execute a contract with Richards without Council approval and that the “emergency contract” is invalid, null and void.

Dated: February 25, 2022

Respectfully submitted,

**WASTE MANAGEMENT OF
MISSISSIPPI, INC.**

By: s/ J. Chase Bryan
J. Chase Bryan, its Attorney

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CERTIFICATE OF SERVICE

I, J. Chase Bryan, hereby certify that I have served a copy of this via hand delivery and first class mail:

Jackson City Clerk
City Hall
219 President Street
Jackson, MS

This, the 25th day of February, 2022.

s/ J. Chase Bryan
J. Chase Bryan

Initial Designation of the record

1. The mayor's emergency declaration of 2/17/22
2. The "contract" signed by the mayor as referenced in the emergency declaration
3. The RFP dated October 2021
4. All city council minutes, packets and agendas relating to the RFP for solid waste collection including, but not limited to, meetings held on January 25, 2022, February 1, 2022 and February 24, 2022

