



MEMORANDUM

Date: April 22, 2014

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **April 15, 2014 Board of Supervisors Meeting Agenda, Item 19: Appeal of Procurement Director's Decision Regarding Award of Contract Pursuant to Solicitation No. 106981 Pump Repairs**

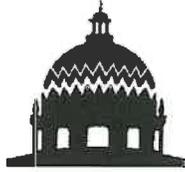
Regarding the April 15, 2014 Board of Supervisors meeting public discussion on Item 19 regarding the appropriateness of the standing of Phoenix Pumps and their appeal, I am enclosing an April 17, 2014 memorandum from our Procurement Director with the County Code definition of interested party, which includes a "prospective bidder." One would assume the vendor holding the existing contract for what is being procured would be an interested party.

As the Board can see, the Procurement Director is recommending minor code adjustments to clarify any confusion over who may be an interested party. I have authorized the Procurement Director to pursue these code amendments with the County Attorney.

CHH/anc

Attachment

c: Chris Straub, Chief Civil Deputy County Attorney
George Widugiris, Director, Procurement Department



PIMA COUNTY

PROCUREMENT

130 W. CONGRESS ST., 3rd FLOOR

Mailstop DT-AB3-126

TUCSON, ARIZONA 85701-1317

TELEPHONE (520) 724-8161, FAX (520) 222-1484

Date: April 17, 2014

To: C. H. Huckelberry
County Administrator

From: George Widugiris
Procurement Director *George*

Subject: April 15, 2014 BOS Meeting Agenda, Item 19: Appeal of Procurement Director's Decision regarding award of contract pursuant to Solicitation No. 106981 Pump Repairs

During the Board's discussion of the above referenced item questions were posed regarding vendor standing related to filing an appeal of the Procurement Director's decision on a protest. In this particular case, I believe the intent was to question whether Phoenix Pumps, which did not submit a bid to this solicitation, had standing to file a protest, and whether Bestway Electric had standing to file an appeal, since it did not file a protest.

The questions posed were:

1. How can you file an appeal when you never submitted a bid, how can you have standing?
2. So any interested party can file an appeal to one the Procurement Director's decisions?
3. There should be something in our ordinance about who has standing to file an appeal?

Pima County Procurement Code

P.C.C. Section 11.04.030(K) Definitions

"Interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract, or by the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.

P.C.C. Section 11.20.010 Protests

A. Applicability. This section applies to procurement of materials, general and professional services and construction. An interested party may file a protest regarding any aspect of a solicitation, evaluation, or recommendation for award.

To answer Question #1, with regard to a protest by an 'interested party', pursuant to the above cited Code provisions, the Procurement Director does not have the discretion to deny a protest by an interested party for lack of standing. However, I will be recommending a minor Code revision to P.C.C. Section 11.20.010 (D.) to substitute "interested party..." for "a bidder or offeror...", in order to make it clear that any interested party, as defined by P.C.C. Section 11.20.010 (A.), may file a protest. The current language does not exclude parties that do not bid or offer, but it is unnecessarily confusing.

To answer Questions #2 and #3, P.C.C. Section 11.20.010(J)(1.) could more clearly establish an interested party's standing to appeal the Procurement Director's decision to the BOS when that interested party did not file a protest, or when that interested party did not submit a bid. For this, I will be recommending another minor Code revision as follows:

P.C.C. Section 11.20.010(J)(1.) ~~A protester or any other~~ Any interested party who participated in the protest hearing may file a written appeal of the procurement director's decision specifying the reason for the appeal.

Subsequent to any protest decision the Code provides for specific remedies as follows:

P.C.C. Section 11.20.010(I) Remedies

If the protest is sustained in whole or part, an appropriate remedy shall be implemented.

1. In determining an appropriate remedy, consideration shall be given to all the circumstances surrounding the procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, costs to the county, the urgency of the procurement and the impact of the relief on the department's mission.

2. An appropriate remedy may include the following:

- a. Withdraw staff recommendation and reissue the solicitation;
- b. Withdraw staff recommendation and issue a new solicitation;
- c. Withdraw staff recommendation and recommend award of contract consistent with this title; or
- d. Such other relief as is determined appropriate.

This information is provided to answer the stated questions and concerns at the recent Board meeting and to provide references to the Code requirements that the Procurement Director must abide by.