



**PIMA COUNTY  
MERIT SYSTEM COMMISSION  
OPEN MEETING MINUTES OF DECEMBER 2, 2019**

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Commission Members Present:  
John Fink, Chair  
David Freund  
Paul Rubin

Also Present Were:

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|-------------------|---|
| Mr. Barry Corey   | Counsel for the Commission/Council                      |
| Dan Jurkowitz     | Deputy County Attorney for the Respondent               |
| Laureen Pew       | Paralegal, Pima County Attorney's Office                |
| Jennifer Moore    | Appellant, Procurement Officer, Pima County Procurement |
| Mary Jo Furphy    | Director, Pima County Procurement                       |
| Ana Wilber        | Division Manager, Pima County Procurement               |
| Denise Waldo      | Procurement Officer, Pima County Procurement            |
| Michael Warren    | Procurement Officer, Pima County Procurement            |
| Lorraine Gonzales | Buyer Sr., Pima County Procurement                      |
| Stephen Romero    | Principal Buyer, Pima County Procurement                |
| Maria Canizales   | Procurement Officer, Pima County Procurement            |
| Nancy Page        | Procurement Officer, Pima County Procurement            |
| Aurora Hernandez  | Human Resources, MSC Recording Secretary                |

The Open Meeting of the Pima County Merit System Commission was called to order by John Fink, Chair, at 11:12 AM. All previous Commission members present returning.

**ACTION:** Mr. Fink motioned to approve October 10-11, 2019, Lopez v Pima County Department of Transportation Minutes. Mr. Freund seconded the motion. Minutes approved unanimously.

Mr. Fink asked for all present to introduce themselves.

Items 1-3 on the agenda were concluded.

Item #4, Jennifer Moore v Procurement Appeal of Three Day Suspension without Pay. Mr. Fink read the Opening statement and asked if anyone wanted to invoke the Rule. Mr. Corey explained the invocation of the Rule. Ms. Moore invoked the Rule and all witnesses were sworn in by Mr. Corey. At this time Mr. Jurkowitz asked for all witnesses to be excused to return to work and be called as needed. Mr. Fink excused all the witnesses except for Ana Wilber the Department Representative.

Mr. Fink asked if there were any preliminary matters, Mr. Jurkowitz explained there were many exhibits and would be admitted one by one.

Mr. Jurkowitz began his opening statement. He listed Procurement acronyms on the board for edification during the hearing. Mr. Corey asked Ms. Moore if she had any objection and she stated no.

**ACTION:** Mr. Jurkowitz read the acronyms in to the record -

- AMS-Advantage Management System
- BOS AIR- Board of Supervisors Agenda Item Report
- CCO-Commodity Contracts Officer
- COB- Clerk of the Board
- DO-Delivery Order
- IFB- Invitation for Bid
- MA- Master Agreement
- MQ- Minimum Qualifications
- MS-Materials and Services
- NORFA-Notice of Recommendation for Award
- PD-Procurement Director
- PO-Procurement Officer or Purchase Order
- RFP-Request for Proposal
- RQM-Master Agreement Requisition
- RQS-Requisition
- SBE- Small Business Enterprise
- STD-Standard

Mr. Fink asked if these could remain on the board or if paper copies would be provided. The listing would remain on the board and Mr. Jurkowitz would provide copies.

Mr. Jurkowitz reminded the Commission that some of the Exhibits requested by Ms. Moore are Client-Attorney Privilege and would have to be heard in Executive Session. These are e-mails from the Appellant to the County Attorney in performing her work as a Procurement Officer.

Mr. Corey stated there is a specific Rule in the Open Meeting Law that provides for such Executive Sessions and is stated on the Agenda, under Section E. Executive Session (B), A.R.S. §38-431.03(A)(2), "discussion or consideration of records exempt from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law, pursuant to ARS § 38-431.03(A)(2);

The consensus was for Ms. Moore to present her exhibits individually and the Executive Session would be called at the time of admission of the exhibit containing attorney-client privilege emails.

**ACTION:** Mr. Jurkowitz moved to admit the "Moore Merit Appeal" listing which identified the Exhibits according to each allegation. Mr. Fink accepted.

Mr. Corey explained the opening statement to Ms. Moore and asked if she would like to make an opening statement, Ms. Moore declined

**Respondents Witness #1** Ana Wilber- Materials and Services Division Manager.

**ACTION:** Exhibit 25, Process Ownership and Responsibility by Role, Bates 0457-0465 was introduced by Mr. Jurkowitz and admitted with no objections.

Ms. Wilber explained the Procurement Officers and the Buyers roles and responsibilities in the Procurement Department as well as hers. She answered questions from commissioners regarding what types of things the department is procuring.

**ACTION:** Exhibit 26, Procedure Information, Bates 0467-0469 was introduced by Mr. Jurkowitz. Ms. Moore objected on the basis of no relevance. Mr. Jurkowitz and Mr. Fink discussed this was not something Ms. Moore was disciplined for, but Mr. Jurkowitz felt that it was helpful for understanding the workings of the department. Exhibit 26 was admitted.

**ACTION:** Mr. Jurkowitz introduced the following Exhibits and were admitted with no objections.

Exhibit 4, Notice of Suspension 09/13/2019, Bates 0002-0008

Exhibit 5, Notice of Intent to Suspend 09/09/2019, Bates 0009-0015

Exhibit 6, Special Observation Period Performance Appraisal 05/04/19-08/03/19, Bates 0016-0019,

Exhibit 7, Performance Appraisal 01/18-01/19, Bates 0021-0024,

Exhibit 8, Notice of Special Observation Period 05/13/19, Bates 0025,

Exhibit 9, Special Observation Period Performance Appraisal 02/04/19-05/14/19, Bates 0026-0028,

Exhibit 10, Notice of Special Observation Period 02/01/19, Bates 0030,

Exhibit 11, Performance Appraisal 01/19-01/20, Bates 0031-0033,

Exhibit 12, Letter of Reprimand 09/19/18, Bates 0034-0037,

Exhibit 13, Performance Appraisal 03/17-01/18, Bates 0041-0044,

Exhibit 14, Response to Performance Appraisal, Bates 0045,

Exhibit 15, Performance Appraisal 03/16-02/17, Bates 0046-0049,

Exhibit 16, Response to Performance Appraisal issued 03/03/17, Bates 0050

Exhibit 17, Performance Appraisal 03/15-02/16, Bates 0057-0060

Exhibit 18, Response to Performance Appraisal dated 02/24/16, Bates 0061.

Exhibit 19, Manager's Note to J. Moore Response to Performance Appraisal 02/24/16, Bates 0062

Exhibit 20, Response to Annual Performance Appraisal for the period 03/2014-02/2015, Bates 0066

Exhibit 21, Performance Appraisal 03/14-02/15, Bates 0067-0070

Exhibit 81, List of procurement acronyms

**ACTION:** Exhibit 1, was introduced. Ms. Moore objected to the exhibit due to an inconsistency in the dates listed in the document and due to two typos contained within the document. Mr. Jurkowitz responded it was not a basis not to admit the exhibit. Mr. Fink overruled the objections and admitted the exhibit.

**ACTION:** Mr. Fink recessed the hearing for lunch break at 12:31 PM and called the meeting back to order at 1:02 PM.

**ALLEGATION #1**

You left Small Business Enterprises (SBE) language in the solicitation documents for Investment Broker Services. Since this was a solicitation without a cost component, SBE points are not applicable and should not have been included as explained by your Supervisor on 6/18/2019. On 8/8/2019, you left SBE language again in solicitation documents for Bio Solids Land Application for which the expected contract amount (\$3,300,000.00) was over the required threshold amount of \$500,000.00 to be SBE eligible.

**ACTION:** The following Exhibits were introduced by Mr. Jurkowitz and admitted with no objections:

*Exhibit 60, Board of Supervisors Policy D 29.8, Bates 2277-2281*

*Exhibit 31, Email and notated pages with SBE Language, Bates 0770-0772*

*Exhibit 28, Invitation for Bid IFB-PO-2000010, Bates 0679*

*Exhibit 29, Solicitation IFB-PO-2000010, Bates 0683*

**ALLEGATION #2**

You provided instructions to the Sheriff's Department to submit a new requisition for popcorn instead of working with them to resolve performance issues via notice to cure to the current contractor Keefe.

**ACTION:** The following Exhibits were introduced by Mr. Jurkowitz and admitted with no objections:

*Exhibit 58, Board of Supervisors Policy D 29.2, Bates 2241-2250*

*Exhibit 37, Email RE: Sheriff Procurement Quarterly, Bates 0830-0831*

Mr. Corey asked if Ms. Moore could be allowed to cross examine after each allegation. Mr. Jurkowitz said he would prefer to get through his questioning. Commissioners discussed if Ms. Moore should cross examine the witness after each allegation. She had no objections and it was decided Ms. Moore would cross examine the witness after each allegation.

Ms. Moore asked if there was a distinction between Board of Supervisors Policy D 29.8 Section 3 Paragraph B and C when it comes to applying a preference to a bid. Ms. Wilber asked if Ms. Moore was asking if Paragraph C applied to solicitations for investment broker services. Ms. Wilber stated it did apply to solicitations for professional services. Ms. Moore asked her if the SBE language was left in the solicitation because it was a draft she provided because the solicitation was unusual. Ms. Moore asked if she used the investment broker template to create the new professional service template. Ms. Wilber stated yes. Ms. Wilber stated Ms. Moore should not have left the SBE language in the solicitation.

Mr. Jurkowitz asked if each template needed to be customized based on the circumstances of a particular purchase. Ms. Wilber said yes. He asked if that is where the judgement of the Procurement Officer comes in to customize the template for that particular process. Ms. Wilber stated yes.

**ACTION:** The following Exhibits were introduced and admitted with no objections:

*Exhibit 63, Letter to Keefe Commissary Network, LLC, Bates 2563-2564*

*Exhibit 64, Sections of Solicitation No. 299754, Bates 2565-2567, 2569*

Mr. Jurkowitz asked what was the point of *Exhibit 63*. Ms. Wilber stated the vendor was not following the contract and the vendor needs to cure the non-delivery of the product. The Notice to Cure letter gives the vendor a chance to correct. Mr. Jurkowitz asked if reaching out to the vendor would be Ms. Wilber's preferred way to handle the situation rather than to go out to bid for a new vendor. Ms. Wilber stated yes.

Ms. Wilber stated *Exhibit 64* points to the vendor's responsibility and what they are failing to do.

Ms. Moore pointed to *Exhibit 37* and asked if the purpose of the email was to demonstrate she instructed the Sheriff's Department to submit a new requisition for popcorn. Ms. Wilber stated yes. Ms. Moore asked where it stated she directed them to submit a requisition. Ms. Wilber stated they submitted a requisition by someone's advice and Ms. Moore was working with them. Ms. Moore stated Management instructed them to submit a new requisition.

Mr. Fink asked if Ms. Wilber had direct evidence or personal knowledge of Ms. Moore instructing the Sheriff's Department to submit a new requisition. She stated she had personal knowledge. Paul Robles of the Sheriff's Department told her Ms. Moore instructed them to submit a new requisition. Mr. Rubin asked if there was a document showing the request. Ms. Wilber said there was not.

Ms. Moore asked if there was a negative impact to County operations due to the Sheriff's Department submitting a requisition for a new popcorn vendor. Ms. Wilber stated if there are issues with a vendor not providing an item they need to be given a chance to correct before creating a new solicitation. Ms. Wilber said the harm is in the time spent processing a new requisition which uses County resources. Ms. Wilber said Ms. Moore instructed the Department incorrectly and guided them to the wrong process wasting time and resources.

Ms. Moore asked which procedure directs a Procurement Officer a Notice to Cure is required to correct an issue. Ms. Wilber stated there is not a procedure.

Ms. Moore had no further questions.

### **ALLEGATION #3**

Language remained in Solicitation IFB 19-054 which stated these items were not to be substituted with another brand name, but your language allowed equivalent product to be offered.

**ACTION:** The following Exhibits were introduced by Mr. Jurkowitz and admitted with no objections:

*Exhibit 32, Email re: IFB 19\*054, Bates 0775*

*Exhibit 66, Procurement Department Administrative Procedure PO-45, Bates 2576-2579*

*Exhibit 65, Sections of IFB-PO-190054 and Screenshot of No Substitution Form, Bates 2570, 2572 & 2574*

Mr. Jurkowitz asked Ms. Wilber if no substitution of materials or styles were authorized for this bid, *Exhibit 65*. She stated yes and said the Statement of Solicitation indicated no substitution, but the next page lists equivalents. The language of no substitutions should have been removed. Ms. Wilber said the email in *Exhibit 32* is where she asked Ms. Moore to remove the language. The solicitation was corrected before it was sent, but would have been incorrect if she hadn't caught it.

Ms. Moore asked if the language in *Exhibit 66* specifically states no substitute of a particular product, brand, manufacturer or model number. Ms. Wilber stated she believes it does. Ms. Moore asked if *Exhibit 65* specified products and brands in order to identify the standard of quality sought in the solicitation. She asked if the language was used as a performance specification. Ms. Wilber said yes, but if it doesn't apply to the solicitation it must be removed.

**ACTION:** Mr. Fink called for a 5-minute recess at 2:43 PM and called the meeting back to order at 2:50 PM.

#### **ALLEGATION #4**

There were three typos in Request for Proposal (RFP) 19-007 in Sections 19 and 30 of the Instruction to Bidders, and Section 24 of Professional Services.

**ACTION:** The following Exhibits were introduced Mr. Jurkowitz and admitted with no objections:

*Exhibit 35, Sections 19-24 RFP-PO-1900007, Bates 0794*

*Exhibit 33, Instruction to Offerors RFP-PO-1900007, Bates 0783*

*Exhibit 36, Last page of RFP-PO-1900007, Bates 0797*

*Exhibit 34, Professional Services Contract, Sections 4-6 RFP-PO-1900007, Bates 0790*

**ACTION:** Mr. Jurkowitz pointed out there were typos and errors within exhibits.

Ms. Wilber identified and located the errors within the documents. Pages and sections were misnumbered. Mr. Fink asked Ms. Wilber if these were critical errors. She said yes. Mr. Jurkowitz asked is that professional work product. Ms. Wilber stated no.

Ms. Moore asked if this solicitation was reviewed by her for publication. She stated yes. Ms. Moore asked Ms. Wilber if she recalled her offering an explanation of why she had made the errors and put it through the way she did. Ms. Wilber did not recall the conversation.

Mr. Jurkowitz redirected the witness. He asked if she had time to go through every line and page and every document. Ms. Wilber stated no and it was not her job to verify each line item. She expects Procurement Officers to do that.

#### **ALLEGATION #5**

You included language in the BOS AIR packet for MA-PO-19-220 indicating County Administrator had award authority for this contract. On 7/18/2019, your supervisor explained that the County Administrator only has authority over some procurement processes not award authority. This misinformation was again included in the PowerPoint slides on 7/24/2019 and had to be corrected prior to presentation to staff.

**ACTION:** The following Exhibits were introduced by Mr. Jurkowitz and admitted with no objections:

*Exhibit 38, BOS Agenda Item Report MA-PO-19-220, Bates 0870*

*Exhibit 57, Pima County Procurement Code 11.12.060, Bates 2184*

*Exhibit 59, Board of Supervisors Policy D 29.4, Bates 2257-2267*

*Exhibit 67, Slide for Solicitation Processes D 29.6, Bates 2580*

Mr. Jurkowitz asked Ms. Wilber if the County Administrator has award authority. She stated the County Administrator does not have award authority.

Exhibit 38, Ms. Moore asked if Procurement Officers standard practice to follow guidelines for BOS-AIRs word-for-word. Ms. Wilber said no.

**ACTION:** *Exhibit E, BOS AIR Guidance Document* was introduced by Ms. Moore and Commissioners had questions on the document before admitting the Exhibit. It was eventually admitted with no objections.

Mr. Jurkowitz asked Ms. Wilber if Management approves the BOS-AIR Guidance. She said sometimes, yes. Mr. Fink asked Ms. Wilber if it was pointed out to Ms. Moore the guidance document was incorrect and if she continued to use the incorrect information in her presentation. She said yes.

Ms. Moore continued her cross examination. *Exhibit 67*, Ms. Moore asked if she believed the intent of the PowerPoint slide was to indicate the County Administrator has approval authority in the award process. Ms. Wilber said no.

Mr. Fink asked how the screenshot in *Exhibit F* compares with the screenshot in *Exhibit 67, Bates 2580*. It was determined the Exhibits were two different slides.

Ms. Moore rested.

Mr. Jurkowitz redirected the witness and asked Ms. Wilber if she saw anything in *Exhibit F* contradicting what was in *Exhibit 67*. She stated no.

**ACTION:** Mr. Freund Motioned adjourn, Mr. Rubin seconded. Meeting adjourned at 3:52 PM.

/s/ Mike Hellon  
Mike Hellon, Chair

September 14, 2021

Minutes approved on September 14, 2021