



**PIMA COUNTY  
MERIT SYSTEM COMMISSION  
OPEN MEETING MINUTES OF DECEMBER 5, 2019**

---

**Continuation of  
Jennifer Moore v. Pima County Procurement Department**

Commission Members present were Mr. Fink, Chair; Mr. Freund and Mr. Rubin

Also Present Were:

Barry Corey	Counsel for the Commission/Council
Jennifer Moore	Appellant
Ana Wilber	Division Manager, Pima County Procurement
Dan Jurkowitz	Deputy County Attorney for the Respondent
Laureen Pew	Paralegal, Pima County Attorney's Office
Aurora Hernandez	MSC Recording Secretary

The Open Meeting of the Pima County Merit System Commission was called to order by John Fink, Chair, at 9:03 AM. Roll call was taken and a quorum was present. All persons in attendance were asked to state their names for the record. The Pledge was led by Mr. Fink. Mr. Fink ask if there were any preliminary matters.

**FOR THE RECORD:** Mr. Freund wanted to put on the record that he provided guidance to Ms. Moore on December 2, 2019. He did not intend to present her case and hoped his assistance didn't cross the line of helping versus presenting her case to the Commission.

Mr. Jurkowitz had one administrative item. His records did not reflect *Exhibits 17* through *21* were officially admitted. After a brief discussion it was determined the Exhibits were not admitted.

**ACTION:** *Exhibits 17* through *21* was introduced by Mr. Jurkowitz and admitted without objection.

*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 Performance Appraisal for period 03/20/14-02/2015, Bates 0066*

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

**ALLEGATION #6**

There was typo in BOS AIR packet MA-PO-216 [206], which was reported by the Clerk of the Board (COB)

**ACTION:** *Exhibit 61, BOS AIR MO-PO-19-216, Bates 2461-2462* was submitted by Mr. Jurkowitz and it admitted with no objection.

It contained a typing error that upper management didn't catch and it went to the Clerk of the Board who rejected the contract because of the error. Ms. Wilber stated the typing errors are reoccurring.

Ms. Moore cross examined and asked if she signed the document. Ms. Wilber did not have first-hand knowledge of Ms. Moore filling out the document.

**ALLEGATION #7**

You added an erroneous scope to the Housing First MA amendment requiring the Procurement Director to return the amendment for correction.

**ACTION:** *Exhibit 62, Proposed Amended Scope of Services MA-PO-19-035, Bates 2560* was introduced by Mr. Jurkowitz and was admitted without objection.

Ms. Wilber explained the original contract was for a specific task. Ms. Moore attempted to use the same contract for the same vendor but for a different task. The appropriate process would be to use a new contract for the specific task.

**ACTION:** *Exhibit 68, Approved Scope of Services MA-PO-19-035, Bates 2589* admitted with objection as *Exhibit 68* is a different contract. *Exhibit 68* was withdrawn. Mr. Jurkowitz would provide a copy of the original contract.

Ms. Moore asked if she could submit her documentation pertaining to Paragraph 7 which is Exhibit G. If the documentation is to be reviewed, Mr. Jurkowitz informed the Commission they would have to go into Executive Session as the material is Attorney-Client Privileged.

The Commissioners did not look at the document but discussed admitting the document. If it is to be considered by the Commission, it must take place in Executive Session. Mr. Corey referenced A.R.S. § 38-431.03(A)(2). Discussion or consideration of records exempt by law 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. Mr. Corey suggested they go into Executive Session.

**ACTION:** Mr. Rubin motioned to go into Executive Session and Mr. Freund seconded. Motion passed unanimously. At this time the document was not admitted as the Commissioners must review the information to determine if it should be admitted.

**ACTION:** *Exhibit G*, was reviewed and discussed in Executive Session because it contained Client/Attorney privileged information. Ms. Moore presented the document and was admitted with no objections. This document will be retained and sealed with the Executive Session minutes.

**ALLEGATION #8**

On 7/15/2019, you submitted an untimely request for approval of supervisor/subordinate relationship of panel members for RFP-PO-19-007. This request should have been submitted when RQM was approved on 4/4/2019.

**ACTION:** *Exhibit 69, Request for Approval RFP-1900007, Bates 0876* was introduced by Mr. Jurkowitz and admitted without objection.

The title is "Procurement Department Administrative Procedure for Evaluation Committee Selection and Administration." It is the process and procedure for nominating panel members who evaluate the proposals that are received in the department.

Ms. Wilber read Section VI, Responsibilities; Bates #2601, paragraph 2; and Section VII, Preferred Proposal Evaluation Process for Solicitations, paragraph A, Bates #2603.

Mr. Jurkowitz explained this is the Procurement Department procedure for selecting evaluation panels. Request for Proposals require a panel. If there is a superior-subordinate relationship the Procurement Director has to approve those members to the panel to avoid having a supervisor influencing the decision-making of an employee.

**ACTION:** Exhibit 39, *Request for Approval RFP-19000007, Bates 0876* was introduced by Mr. Jurkowitz and admitted without objection. This is a Memorandum from the Pima County Treasurer that was sent to the Procurement Director to approve the panel members.

The RQM must have a list of the panel members for the procurement. If there are issues it has to be addressed at that point. Requisition was approved in April, published in June and was closed in July. The selection panel had not been approved which should have been done at the beginning and not at the end of the process.

**ACTION:** Exhibit 70, *RFP Specifications Package Form, Bates 2607-2614* was introduced by Mr. Jurkowitz and admitted without objection.

Someone should have noticed there was a superior/subordinate issue with the panel and it should have been addressed. This was prior to the other problems that occurred.

The RFP was approved on April 4<sup>th</sup> and published on June 10<sup>th</sup>. Why does *Exhibit 70* list two panel members versus three like *Exhibit 39*. It is assumed the panel was not complete. The Procurement Officer is responsible to ensure the RFP is complete. Ms. Wilber described the role of the Procurement Officer. Ms. Moore was to review and approve the document, *Exhibit 70*. She should have paid attention to the evaluation panel and determined if there was supervisor/subordinate relationship in the panel members. If the panel has a supervisor/subordinate relationship in the panel, it should not have gone forward.

Mr. Fink asked for clarification of Allegation 8. Is this stating the document was submitted late and should have been submitted when the RQM was approved on 4/4/2019. Ms. Wilber agreed. Mr. Fink asked if there was a document that shows the approval date versus a comment on the memorandum. The Commission and Mr. Jurkowitz discussed the process and wording of Allegation 8. Mr. Fink stated the evidence does not establish number 8 allegation. Early in the process there were two names submitted by the Treasury Department.

Ms. Moore cross-examined Ms. Wilber. She stated the following topics:

- The evaluation panel members are not certified and approved prior to receiving proposals.
- The Procurement Officer is not responsible for ensuring the panel members are approved prior to receiving and evaluating proposals.
- When the procurement process begins, the Procurement Officer then confirms the panel members are approved.
- The Procurement Officer is ensuring the solicitation process is conducted in a timely manner.
- Notifications are sent three to four months prior to the contract expiring and advising them to submit an RQM.

**ACTION:** Open Meeting recessed 10:54 AM at was Reconvened at 11:06 AM.

**ALLEGATION #9**

You deemed a vendor non-responsive for not bidding on two items out of 51 items, which is not standard practice and required corrective action directed by your supervisor [MA-PO -20-007].

**ACTION:** *Exhibit 40, Tabulation & MQ Evaluation, Bates 0878* was introduced by Mr. Jurkowitz and admitted without objection.

IFB 1900007, Telephone Equipment and Supplies. Two bids were submitted, Anixter Incorporated and Graybar. Anixter did not submit bids for 2 items, lines 34 and 35. The vendors were to bid on the entire contract.

**ACTION:** *Exhibit 71, Pima County Standard Terms and Conditions IFB-PO-1900054, Bates 2615* was introduced by Mr. Jurkowitz and admitted without objection.

Ms. Wilber read the third paragraph of Section 2. Evaluation. The County has the discretion to deem them responsive or not responsive. Contractors should bid on all items unless otherwise indicated. If they don't, any missing item could be waived by the Procurement Director. If there are any irregularities on a bid, the Procurement Director could make the final decision.

Ms. Wilber explained the appropriate decision for bid procedure for *Exhibit 40* was not to ding the entire bid for a not responsive but to excuse the two missing items. There were only two responses and to be fair, not to ding the vendor. Because there were only two bids, it would have been appropriate to excuse the two items versus eliminating the entire bid.

The "non-responsive" notation is on *Exhibit 40* under the column for Anixter Incorporated. Ms. Wilber testified Ms. Moore prepared the sheet. The typed notation placed at the bottom of column was done by Ms. Moore. Ms. Moore presented a folder to Ms. Wilber with the BOS-AIR document the tabulation showing the bid results and no fault document. Ms. Wilber reviewed the folder and returned it to Ms. Moore and informed her Anixter Incorporated should not have been dinged for being non-responsive.

Commission discussed the appropriate action of what should have happened when Anixter Incorporated was noted as being non-responsive. Ms. Wilber said Ms. Moore should have taken the information to her and ask for further guidance. Ms. Moore should not have taken the action to eliminate Anixter Inc. for an incomplete bid.

Ms. Wilber stated a Procurement Officer cannot deem a bidder as non-responsive. When there is a problem with a bid the Procurement Officer is to speak with management. There is no written policy to support this action but it is standard practice. Procurement Officers should make a preliminary determination of the bids and any issues should be brought to the attention of upper management before they complete a tabulation and assessment. Ms. Moore prepared the document and noted the vendor was non-responsive because the vendor did not bid on two line items. The information was given to Ms. Wilber for review. The issue is Ms. Moore did not discuss the issue with Ms. Wilber, but put her findings in writing.

Ms. Moore cross examined the witness. She asked Ms. Moore if she should have discussed it with Ms. Wilber in person or submitted it in writing. Ms. Wilber stated she was to come to her to discuss it.

**ALLEGATION #10:**

Your supervisor logged three past due requisitions, reference RQM 19-082, RQM 19-081 and RQS 19-101.

**ACTION:** Exhibit 41, *Past Due/Award Milestones, Bates 0880* was introduced by Mr. Jurkowitz and admitted without objection.

Mr. Jurkowitz asked Ms. Wilber about the Procurement Officers listed as having past due items and what the concern was. Ms. Wilber stated they have metrics to achieve and if a requisition is not completed within the time frame it effects the contract date and could result in a lapse of service. Mr. Jurkowitz asked if a Procurement Officer has complete control over when they end up on the list. Ms. Wilber stated yes. She explained Ms. Moore is on the high end of number of outstanding projects. Ms. Wilber did not recall any external factors causing the delay.

Ms. Moore cross examined the witness and asked if she was evaluated on percentages. Ms. Wilber said yes. She asked if there was a lapse in service due to the late requisitions. Ms. Wilber said possibly for some of the projects. She also asked if the housing contract was put in place ahead of schedule. Ms. Wilber said yes.

**ALLEGATION #11:**

A BOS AIR packet was rejected by COB on 2/26/2019 because it contained several errors including pages not numbered in sequence, missing NORFA document and bid documents.

**ACTION:** Mr. Jurkowitz introduced the Exhibits below and they were admitted without objection.

Exhibit 72, *Procurement Department Administrative Procedure PO-44, Bates 2617-2619*

Exhibit 42, *Email regarding errors on MA-PO-19-128, Bates 0881-0882*

Exhibit 44, *Selections of MA-PO-19-128, Bates 0905, 0910, 0914, 0936-0943, 0945*

Exhibit 43, *Procurement Scheduled Time-Off – February 2019, Bates 0887-0888*

Ms. Wilber outlined all of the mistakes in the submittal packet and stated Ms. Moore told her she was not responsible for what was submitted to the clerk because she was out on vacation. *Exhibit 43* shows Ms. Moore as being in the office on the day it was submitted.

**ACTION:** Exhibit J, *Email chain regarding the missing NORFA document* was introduced by Mr. Jurkowitz and admitted with no objections.

Ms. Moore asked Ms. Wilber if it was correct the Buyer Senior had submitted the packet while Ms. Moore was off of work. Ms. Wilber stated it was correct. She asked Ms. Wilber if the Clerk of the Board had rejected the packet or if they contacted Procurement to give them a chance to correct it. Ms. Wilber said that it was the latter.

**ACTION:** Commission recessed for lunch at 12:07 PM and reconvened at 1:15 PM.

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

Exhibit 83, *Proposed Amended Scope of Services MA-PO-19-035, Bates 2678*

Exhibit 84, *County Administrator Authorization of Limited Competition MA-P0-19-035, Bates2680*

**ALLEGATION #12:**

You instructed the Buyer to discontinue Randstad US LP in the system without ensuring issued Delivery Orders and related invoices were closed.

**ACTION:** *Exhibit 73, Procurement Department Standard Operating Procedure PO-DPT-15 (Bates 2625) Bates 2620-2630* was introduced by Mr. Jurkowitz was introduced and withdrawn in order to verify if that was the correct version of the procedure in effect at the time of the allegation.

**ACTION:** *Exhibit 45, Email Re: Randstad Customer Information, Bates 0950* was introduced by Mr. Jurkowitz and admitted with no objections.

Mr. Jurkowitz asked Ms. Wilber to state what *Exhibit 45* was. She stated it was an email string about Randstad changing their legal name. Ms. Wilber stated all of the invoices in the system under the old vendor name must be paid before it is discontinued in the system and the new vendor name can be used. She explained Ms. Moore changed the vendor name while there were still outstanding invoices which prevented the contractor from being paid. Ms. Wilber stated they had to go back and reactivate the old vendor name and clear the old invoices with Finance. She stated the instructions Ms. Moore provided her Buyer Senior were not adequate.

Ms. Moore cross examined the witness and asked her if she spoke to her about coordinating the activity with the Buyer Senior. Ms. Wilber said she did not, but she saw her instructions on the email. Ms. Moore asked if the email stated she advised the Buyer to discontinue Randstad in the system without making sure the invoices are closed. Ms. Wilber stated no, but she instructed the Buyer to please discontinue the Master Agreement.

**ALLEGATION #13:**

Your supervisor found several system error entries including commodity codes without a description, using the term “vendor” instead of “discount” for free-form lines, leaving old comments on requisitions notes and approving requisitions with incorrect descriptions.

**ACTION:** Mr. Jurkowitz introduced the Exhibits below and approved without objections.

*Exhibit 74, Procurement Department Administrative Procedure PO-49, Bates 2631-2633*

*Exhibit 75, Screenshot of commodity code entries, Bates 2634*

*Exhibit 76, Screenshot of case notes for MA 19\*31, Bates 2637-2638*

*Exhibit 77, Email RE: MA 19\*31, Bates 2639-2641*

*Exhibit 46, Screenshot of case notes, Bates 0964*

Commissioners asked questions about comments not being up-to-date in the screenshot of case notes in *Exhibit 46*. Ms. Wilber stated that comments are required to be updated every Friday.

On cross examination, Ms. Moore asked Ms. Wilber if she was aware Ms. Moore was on vacation when the comments were not updated. Ms. Wilber said she did not know if Ms. Moore was on vacation at the time, but if she was then it would be her back-up Procurement Officer's responsibility to update the comments.

**ACTION:** *Exhibit L, Copy of notes provided by backup Procurement Officer when Jennifer Moore returned from vacation* was admitted by Ms. Moore after Mr. Jurkowitz asked her to lay the foundation for entry of the Exhibit. It was notes from Nancy Page to Ms. Moore advising her of

what she had done in her absence. The screenshot is of the Shop function the end user sees when they use the system. The Exhibit shows free form line and discount. It also includes an open requisition report. The following page is a copy of a total open requisitions report showing examples of note status updates.

**ALLEGATION #14:**

You changed unit prices in the tabulation sheet for IFB 1900020, which is not standard practice and required corrective action directed by your supervisor.

**ACTION:** Mr. Jurkowitz introduced the Exhibits below and admitted without objection.

*Exhibit 56, Pima County Procurement Code 11.12.010, Bates 2179-2181*

*Exhibit 47, IFB 1900020 Food Products Tabulation, Bates 0965-0966*

Ms. Moore cross examined the witness and asked Ms. Wilber if she should verbally speak to her or send an email instead of preparing a written report if there was an issue. Ms. Wilber stated that was correct.

**ACTION:** *Exhibit M, Copy of Solicitation for Food Products, email about specialty paper* was introduced by Ms. Moore. Mr. Jurkowitz objected based on relevance. Ms. Moore said she was intending to show it was acceptable to convert packages to increase competition. Mr. Fink said there was a lot of testimony, but no evidence. Mr. Jurkowitz objected to all documents except for the Invitation for Bids. Mr. Fink asked questions about the email on the solicitation for food products. Exhibit M was admitted excluding everything but the IFB and everything following the email except for the last page.

Ms. Moore asked if the primary issue was that she completed the tabulation sheet with an analysis and provided it for review without speaking to Ms. Wilber first. Ms. Wilber responded yes.

**ACTION:** Commission recessed for a ten-minute break at 3:02 PM and reconvened at 3:10 PM.

**ACTION:** *Exhibit M, Copy of Solicitation for Food Products, email about specialty paper* Ms. Moore re-introduced the email in Exhibit M and it was admitted with an objection from Mr. Jurkowitz.

Ms. Wilber answered questions from Commissioners regarding the error on the IFB. Ms. Wilber stated the last document in *Exhibit M* is instructions to vendors. Ms. Wilber stated there was an error on the vendor response and according to Procurement Code there is a process to follow.

Ms. Moore asked if there was an Exhibit showing the error in the vendor's response. Ms. Wilber stated Ms. Moore pointed out the error in the response.

**ALLEGATION #15:**

Your supervisor corrected numerous errors on NORFA for IFP-PO-1900020.

**ACTION:** *Exhibit 48, Notice of Recommendation for Award 1900020 Bates 0970-0972, 0974* was introduced by Mr. Jurkowitz and admitted with no objections.

Ms. Wilber answered Mr. Jurkowitz's questions regarding the problems with the NORFA.

- The main problem was they were awarding more than one bidder and the word bidder is singular.

- There is redundant language in the Notice of Recommendation for Award.
- The award amount on the packet was below what the historical annual amount spent for the commodity. Ms. Moore misstated the award amount and sales tax.

**ACTION:** *Exhibit N, BOS-AIR for Shamrock Foods and U.S. Foods, NORFA for Shamrock Foods and U.S. Foods, NORFA Template, BOS-AIR Guidance Document* Ms. Moore introduced this document and was asked to provide relevance. She stated the relevance is to show how BOS-AIR's are processed and establish that she followed current guidelines at that time. This was admitted.

Ms. Wilber gave testimony regarding the template used and typos that were made on the NORFA. She pointed out the numerous errors referenced in Allegation #15.

**ACTION:** Adjournment 3:58 PM

/s/ Mike Hellon  
Mike Hellon, Chair

September 14, 2021

Minutes approved on September 14, 2021