



**PIMA COUNTY
MERIT SYSTEM COMMISSION
OPEN MEETING MINUTES OF DECEMBER 6, 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
Mary Jo Furphy	Director, Pima County Procurement
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	Recording Secretary

The Open Meeting of the Pima County Merit System Commission was called to order by John Fink, Chair, at 9:07AM. Roll call was taken and a quorum is 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. Ms. Moore asked if *Exhibit 68* was admitted. It had not been admitted yet.

ACTION: *Exhibit 68, Approved Scope of Services MA-PO-19-035.* Ms. Moore presented *Exhibit 68* with one objection from Mr. Jurkowitz. *Exhibit 68* was admitted.

ACTION: *Exhibit 85, Most Up-To-Date Operating Procedure* Mr. Jurkowitz moved to admit *Exhibit 85* in regards to Allegation #12 and asked if Ms. Wilber could identify it. She identified it as the Procurement Department Operating Procedure adding a vendor to a Master Agreement dated 6-1-2018.

Ms. Moore sked Ms. Wilber if she was aware Mr. Johnson had sent the message to Isabel Villanueva advising her to delete the vendor. Ms. Wilber stated no. Ms. Moore asked if it was in her control to know about his advice to Ms. Villanueva. Ms. Wilber stated it was Ms. Moore's responsibility to make sure Mr. Johnson knew how to handle the situation.

ALLEGATION #16:

Your supervisor returned MA-PO-19-158 three times with corrections in sections 1.3, 3 & 4.

ACTION: *Exhibit 49, Selections form MA-PO-19-158, Bates 0976-0978, 0982;* admitted by Mr. Jurkowitz with no objections. A corrected page was admitted to this Exhibit with an additional page 2 of both vendors.

Mr. Jurkowitz questioned Ms. Wilber on what she and Ms. Furphy saw that was wrong with the sections. Ms. Wilber pointed out the following:

- Section 1.41 the contract should be either attached or incorporated by reference, not both. It was both attached and referred to.
- There was not an Exhibit C attached.

- Number 2, Section 3, Ms. Wilber asked Ms. Moore to add scope of services as Exhibit A and for Exhibit B she asked her to add a title.
- On Section 3, the contract was going to two vendors to share an annual award amount. Section 4 should have included information on the shared award amount and it did not.

Ms. Moore cross examined and asked Ms. Wilber:

- If a shared contract includes a Master Agreement document. Ms. Wilber said it includes a Master Agreement cover page. Ms. Wilber explained the cover page is not binding. The individual copy of the contract is binding and the contract must say "shared." The contract is either attached or incorporated by reference, not both.
- Ms. Moore asked about the corrections on the standard Co-op agreement template. Ms. Moore asked if the template states "delete one or the other". Ms. Wilber said yes.
- Ms. Moore asked if past practice had been to include both statements. Ms. Wilber said no. Ms. Wilber explained a scope should have been a price page as Ms. Moore submitted another document entitled Scope of Services.

ALLEGATION #17:

You posted NORFA for RFP-PO-1900001 on 3/05/2019 without the contract being in final stage as required by standard process.

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

Exhibit 78, Materials and Services Request for Proposal Procurement Process, Bates 2648-2650

Exhibit 79, M&S Weekly Meeting Agenda, Bates 2651

Ms. Moore cross examined. Topics covered:

- If Ms. Moore approved the Notice of Recommendation for Award
- The responsibility of the Buyer Senior to post the Notice of Recommendation for Award
- The Procurement Officer training of Buyer Seniors
- The Buyer Senior assigned to Ms. Moore at this time was James Johnson

ALLEGATION #18:

Your supervisor rejected Ma-PO-19-039 due to numerous formatting errors.

ACTION: *Exhibit 50, Notes and sections of IFB-PO-1900039, Bates 0987-0991* was introduced Mr. Jurkowitz and admitted with no objection.

Mr. Jurkowitz asked Ms. Wilber to identify the formatting errors.

- Section 11 contains an extra space between final acceptance and the paragraph.
- Section 13.3 should read 13.3.3.
- There are no page numbers on Moore 0989.

- On the next page there is an attachment stating there are 63 pages when there are actually 62 pages.
- The Excel file was improperly formatted which made it look like there were 123 pages instead of 62
- On Moore 0991 the word county does not match the rest of the formatting. It should be all caps like the rest of the title.

Ms. Moore did not cross examine.

ALLEGATION #19:

You approved RQM 19-213 for Broker-Dealer Investment Services with an incorrect description.

ACTION: *Exhibit 51, Screenshot for RQM 19-213, Bates 0992* was introduced by Mr. Jurkowitz and admitted with no objection.

Ms. Wilber testified the description should have said Broker Dealer Investment Services. It's the Procurement Officer's responsibility to make sure the description is entered correctly. Ms. Moore should have rejected it back to the department to correct the description before moving it forward.

ALLEGATION #20:

You left comments in RQM 19-192 that were no longer applicable.

ACTION: *Exhibit 52, Open Requisition Detail 04/15/2019, Bates 0993* was introduced by Mr. Jurkowitz and admitted with no objection.

Ms. Wilber explained only the most current comments should be showing on the front page. Everyone is instructed to update comments every Friday.

ALLEGATION #21:

The Procurement Director received an email from a vendor stating they were not notified of award notice for IFB 306608 for Occupational Medical Services.

ACTION: *Exhibit 53, Email and screenshot regarding IFB 306608, Bates 0994-0995* was introduced by Mr. Jurkowitz and admitted with no objection.

Ms. Wilber stated it was Ms. Moore's responsibility to make sure her Buyer Senior manually input the vendor emails into the system and it was not done. One of the vendors was left off of the notice.

Ms. Moore cross examined the witness and asked Ms. Wilber if providing Notice of Recommendation for Award to vendors was a courtesy. Ms. Wilber said not for the vendors that participated in the bid process. The vendors have to know what decision the County made. Ms. Moore asked if it is the vendor's responsibility as per our instructions and solicitation documents to check the website for addenda or notifications. Ms. Wilber said it has language that encourages them to check the website. Ms. Wilber said it was the Department's internal process to notify vendors because of the protest period triggered after the document is released. Ms. Wilber explained to Commissioners that it was a requirement to notify vendors.

ACTION: Commission recessed for a ten-minute break at 10:49 AM and reconvened at 10:57 AM.

ALLEGATION #22:

The Procurement Director received a complaint from a vendor who was not happy they were deemed non-responsive on IFB 296954 over not owning collection facilities when you improperly told them they could subcontract these facilities.

ACTION: *Exhibit 80, Email and Addendum No. 3 Solicitation No. 296954, Bates 2652-2655* was introduced by Mr. Jurkowitz and admitted with no objection.

Ms. Wilber testified about the pre-bid conference where the vendor claimed to have received the wrong information from the Procurement Officer. The Procurement Office did not provide clear direction to the vendor's question regarding a third party administrator for the collection facilities.

Ms. Moore cross examined. Ms. Moore asked if her error was that the Procurement Director received a complaint. Ms. Wilber said no.

Mr. Jurkowitz asked what the error was. Ms. Wilber stated Ms. Moore did not give the vendor a clear response via email and addendum No. 3. Ms. Wilber testified about a survey the vendor responded to expressing they were not pleased with the bid process.

Ms. Wilber asked to confer with her attorney and stepped out with Mr. Jurkowitz. It was determined Ms. Furphy would be a better witness to respond to these questions.

Mr. Jurkowitz asked Ms. Wilber about her efforts to work with Ms. Moore to obtain better work product from her. Ms. Wilber explained she reallocated work to others to decrease Ms. Moore's workload, but there are still on-going performance issues. Ms. Wilber described a Special Observation Period for Ms. Moore. Ms. Wilber stated that it was a way to work with the employee over a set time period to help them improve their work. A Special Observation Period is not discipline.

ACTION: *Exhibit 54, Special Observation Period Notes 04/24/2019, Bates 0999-1000* was introduced by Mr. Jurkowitz and admitted with no objection.

ACTION: *Exhibit 55, Comments to Special Observation Performance Appraisal discussed 05/14/2019, Bates 1985-1986* was introduced by Mr. Jurkowitz and admitted with no objection.

Ms. Wilber testified the actions taken were not improving the situation and that is why the decision to go forward with the suspension was made.

ACTION: *Exhibit 30, Special Observation Period Notes 07/18/2019-08/08/2019, Bates 0733-0734* was introduced by Mr. Jurkowitz and admitted with no objection.

Ms. Wilber stated it was Ms. Furphy who recommended the suspension. Ms. Wilber did not disagree with the recommendation. They reached out to Human Resources for guidance on the appropriate length of suspension. Ms. Wilber was not at the suspension pre-action meeting. Ms. Wilber stated the 22 allegations were addressed with Ms. Moore prior to the Notice of Intent to Suspend.

ACTION: Commission recessed for lunch at 12 PM and reconvened at 1:01 PM.

Respondents Witness #2, Mary Jo Furphy Director, Pima County Procurement, previously sworn in provided testimony.

Ms. Furphy gave an overview of her position and experience in the Procurement Department and within Pima County as well as her credentials. She clarified Allegation 7, Exhibit 62. Ms. Furphy explained the approval by the County Administrator for the Housing First MA. 30k authorized by Mr.

Huckelberry for Corporation, specific Scope of Service and hourly fees. Ms. Moore tried to amend the award Scope of Services using another contract, but she should have created a new contract.

ALLEGATIONS 21 and 22:

Complaints from vendors, *Exhibits 53 and 80* were introduced by Mr. Jurkowitz and admitted with no objections.

Ms. Furphy described the vendor response to a customer service survey. The complaint was that they never received the NORFA. The NORFA is important because it's a trigger for the protest period. Ms. Furphy stated the wording is in the solicitation that the vendor is responsible to check for updates. The practice is to always notify the bidders on the NORFA to make sure the parties understand and have a chance to respond during the protest period. The Procurement Officer is responsible for this process. The sub-contractor question from the vendor to Ms. Moore was never answered clearly. The Department's intent was not to allow sub-contractors, but the contract allowed for it. The answer should have been yes or no. Ms. Moore deemed the bidder non-responsive because they did not own the collection sites, but nowhere in the contract did it state that a vendor had to own them.

ACTION: *Exhibit 86, Notice of Invitation for Bids and Addendum* was introduced by Mr. Jurkowitz and admitted with no objections. Ms. Furphy explained Ms. Moore's Minimum Qualifications tabulation has a note, the bidder was non-responsive because they did not have their own collection sites. Ms. Moore's notes on why she deemed the bid non-responsive/responsive were in the specifications disclosed to the Respondents so they are not factors that should be taken into account. They are reasons the Department wanted to take into account, but they can't just change the rules in the middle of the solicitation. There is a process for scoring and if the Department disagrees with the scores. That's the process that should have been used. The justification can then be presented to vendors who lost out. Ms. Wilber reviews everything from the Procurement Officer before bringing it to her. When it comes to procurement matters all elected officials have to abide by the Board of Supervisor policy.

Ms. Furphy stated she was aware of discipline issues within her department. Ms. Furphy talked about having weekly management meetings.

Exhibit 4, Notice of Suspension, Bates 0002-0008, Exhibit 5, Notice of Intent to Suspend 09/09/19, Bates 0009-0015, Exhibit 10 Notice of Special Observation Period 02/01/19, Bates 0030, Exhibit 8, Notice of Special Observation Period 05/13/19, Bates 0025, Exhibit 12, Letter of Reprimand 09/19/18, Bates 0034-0037.

Ms. Furphy talked about changes she made as the new Director. Updating policies, procedures, and working documents. All state laws, codes, procedures are in one spot on the Intranet. Division Managers make sure to share updated procedures with everyone in their Division. Procurement Officers are responsible for creating their procedures.

Ms. Furphy explained *Appellant's Exhibit F, BOS-AIR Guidance Form*. This form is used and edited by the Procurement Officers. They need to be customized for different situations, but we try to keep it as standard as possible.

Ms. Furphy stated she relied on Human Resources to guide them through the suspension recommendation. It was decided to proceed with the 3-day suspension recommended by Human Resources. She hoped Ms. Moore would improve, but Human Resources recommended to follow the progressive discipline steps and the next step was suspension. Ms. Furphy said she would like to see Ms. Moore make good decisions, communicate, be a team player. Ms. Moore has had positive feedback. Inconsistency is the issue. In the pre-action meeting Ms. Furphy does not remember if Ms.

Moore took any responsibility for her actions.

ACTION: Commission recessed for a ten-minute break at 2:32 PM and reconvened at 2:43 PM

Ms. Moore was not feeling well so they held her cross until Tuesday.

ACTION: Mr. Freund moved to adjourn and Mr. Rubin seconded. Commission adjourned at 2:45 PM.

/s/ Mike Hellon
Mike Hellon, Chair

September 14, 2021

Minutes approved on September 14, 2021