



**PIMA COUNTY
MERIT SYSTEM COMMISSION
OPEN MEETING MINUTES OF JANUARY 2, 2020**

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

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

Also Present Were

Barry Corey	Counsel for the Commission/Council
Mary Jo Furphy	Director, Pima County Procurement
Jennifer Moore	Appellant
Ana Wilber	Division Manager, Pima County Procurement
Denise Waldo	Lead Procurement Officer, Pima County Procurement
Lorraine Gonzalez	Senior Buyer, Pima County Procurement
Stephen Romero	Principal Buyer, Pima County Procurement
Nancy Page	Procurement Officer, Pima County Procurement
Michael Warren	Procurement Officer, Pima County Procurement
Maria Canizales	Procurement Officer, 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 9:00 AM. Roll call was taken and a quorum present. All persons in attendance were asked to state their names for the record. Pledge was led by Mr. Fink.

ACTION: Construction noise was very loud so the Commission went off the record while Ms. Hernandez left to find out if she could get the noise to stop. The Commission reconvened at 9:04 AM.

Ms. Moore cross examined Ms. Furphy. She asked her about the following documents.

Exhibit 25, Process Ownership and Responsibility.

Ms. Furphy testified the document was created recently and is a summary of Buyer Senior, Procurement Officer, and Division Manager responsibilities and tasks.

Exhibit 26, 2018 Department Outreach, Department Goals. Topics covered:

- Outreach meetings with department leads, manager and Procurement Officers
- Frequency of outreach meetings

ACTION: Exhibit U, a Notice to Cure to AvraGrow was introduced by Ms. Moore. Mr. Jurkowitz objected on relevance. Objection sustained. Exhibit U was not admitted.

Ms. Moore questioned Ms. Furphy on the allegations referring to typos. Ms. Furphy said depending on the typo and how many there are dictates when they become an issue. Many documents are prepared by the Buyer Senior and the Procurement Officer is responsible for reviewing their work.

Mr. Fink asked Ms. Furphy to expound on the typos in:

- 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.

The page numbering was off and causes confusion. The Clerk of the Board cross checks electronic and paper to make sure it all matches. Ms. Furphy would categorize these as critical errors.

- Allegation #18, your supervisor rejected MA-PO-19-039 due to numerous formatting errors.

Ms. Furphy would not consider the typos a critical error. Having the correct references in contracts is very important. Page numbers are important to make sure we have all pages.

- 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.

Typos were page numbers were wrong, cross references were wrong. Ms. Furphy said those would be a critical error.

Exhibits 33-36 This particular solicitation was for investment broker. Ms. Furphy testified the solicitation was reviewed by Ms. Wilber and herself prior to publication. That was why they noted all the errors. Ms. Furphy explained if there are too many errors, a solicitation amendment has to be issued replacing the entire document.

ACTION: Exhibit B, *Emails Regarding Investment Broker Services* was introduced by Ms. Moore and admitted without objections.

Ms. Moore asked Ms. Furphy if it was her contention the draft should have no errors. Ms. Furphy said that was correct.

ACTION: Commission recessed at 9:40 AM while an IT issue was addressed. Commission reconvened at 9:47 AM

Mr. Fink had questions about *Exhibit U* to assess whether or not the documents pertain to Ms. Moore. Mr. Corey explained that you cannot determine if the documents have value to the case without first admitting them to be examined. It was again decided that *Exhibit U* would not be admitted.

Exhibit 4, *Notice of Suspension, Bates 6,7, and 8*

Ms. Moore asked if her past performance appraisals were taken into consideration overall or if only specific areas of needed improvement were considered. Ms. Furphy knew only that Ms. Wilber pulled the pages on the advice of Human Resources.

ALLEGATION #7: You added an erroneous scope to the Housing First MA amendment requiring the Procurement Director to return the amendment for correction. Exhibit 68 (Replaced by Exhibit 83),

Ms. Furphy stated this limited competition contract was approved by Mr. Huckelberry and could not be amended but, Ms. Moore tried to amend a different contract to add in a new scope.

Ms. Moore questioned Ms. Furphy on a number of things related to her own seniority.

- Ms. Furphy testified Ms. Moore's title was Procurement Officer, there is no such title as Procurement Officer Senior.
- Nancy Page has been with the County longer, Ms. Moore has been with the Procurement Department the longest, 20 years.
- Ms. Moore stated she was trying to get a feel for when someone needs to be placed on Special Observation Period and that was why she was asking about Ms. Page.
- Ms. Furphy stated she was working on solar contracts with Ms. Page to help her get caught up. It was not about observing her performance.

ACTION: *Exhibit V, IFB Solicitation Template* was introduced by Ms. Moore. Mr. Jurkowitz asked if it was relevant to any of the allegations in the suspension. Ms. Moore said Number 1 - Small Business Enterprise. *Exhibit V* was admitted.

ACTION: *Exhibit C, Draft Request for Proposals for Investment Broker Services and Request for Proposals Template* was introduced by Ms. Moore and admitted with no objections.

Topics covered:

- The RFP Process
- Preference evaluation points and when they are applied
- Notice of whether preference points are applied or not
- The difference between an RFP and an IFB
- SBE Language
- No cost contracts

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]. Ms. Moore questioned Ms. Furphy on Notice of Suspension

Ms. Furphy explained the standard process for Procurement Officers evaluating bids as they come in. The Procurement Officers take the bids that come in, put them in Excel, total it up, and notate any differences. If it's clear-cut, the Procurement Officer prepares their BOS-AIR and all the paperwork and presents it to Ms. Wilber. If they're not sure, they should be discussing it with their manager. Ms. Furphy testified in this case there were irregularities and only two bidders. Before going through the whole process of deeming this unresponsive and completing all the paperwork Ms. Moore should have gone to the Division Manager because the goal is to have as much competition as possible.

Appellant Witnesses

Mr. Jurkowitz made the point that Ms. Moore should explain how the witnesses on her list were relevant. Ms. Moore explained the witnesses know how the processes work and can attest to her working relationships and whether they were the ones who completed the work. Mr. Jurkowitz agreed some of those things were relevant.

Ms. Furphy stated Lorraine Gonzalez was not in the Division during that time period, but she did complete work for the Division.

ACTION: Commission recessed for break at 10:49 AM and reconvened at 11:02 AM

Appellant Witness #1 Denise Waldo, Procurement Officer, Pima County Procurement Department, previously sworn in.

Ms. Waldo spoke about her experience in Pima County and the Procurement Department. She supervises Buyers and her working title is Lead Procurement Officer. Her role is auditing her staff, training, modifying or approving their processes. The Procurement Officers tell her if there is a problem. She provides training to Buyer Seniors and discusses procedure changes in meetings.

Exhibit 42, Email regarding errors on MA-PO-19-128, Bates 0881-882 Ms. Waldo received information there was a page numbering issue. She described the current process for reviewing documents before they go to the Clerk of the Board. It's a joint effort between Procurement Officers and Buyer Seniors. The BOS AIR, the contract (bid response from vendors), Master Agreement and other documents go to County Administration.

Mr. Johnson came to her on this Exhibit because he noticed the numbering was not correct. At the time, Mr. Johnson worked solely for Ms. Moore and she left the packet that needed to go to the Board of Supervisors. He thought it was all put together and ready to go but as he was scanning things in he realized there was a problem and he attempted to correct.

Ms. Moore said these mistakes were how the bid was submitted by the Respondent and those are an exact copy of what was submitted. Ms. Waldo said Mr. Johnson had to submit within the time frame. To this day, she does not know what went wrong. Ms. Moore couldn't be asked because she wasn't there that day and she left Mr. Johnson instruction to get the packet to the Board of Supervisors. Ms. Waldo wasn't aware of the email from Ms. Moore to Mr. Johnson.

Mr. Jurkowitz objected because this witness lacks personal knowledge.

Ms. Waldo said Mr. Johnson told her the numbering was incorrect and she told him to fix it if it could be fixed. That was the extent of her involvement.

Ms. Moore asked what alerted Mr. Johnson it was ready to go to the Board of Supervisors?

Mr. Jurkowitz again objected on the basis the witness did not have personal knowledge.

Ms. Moore stated she had knowledge of the process and procedure and asked if the Buyer is responsible for knowing what needs to go to the Administrator or the Clerk of the Board.

Ms. Waldo stated to a certain extent, yes.

Exhibit J, BOS AIR rejected by the Clerk of the Board Ms. Moore asked if Ms. Waldo recalled working with Mr. Johnson and going to the Clerk of the Board.

Ms. Waldo said she remembered grabbing some of the documents and getting them fixed.

Ms. Moore asked if part of the Buyer Senior's responsibilities is to prepare BOS-AIR and send for signature through the chain and to the Clerk of the Board. Ms. Waldo stated yes. She testified sometimes Buyer Seniors work with seasoned staff to learn a process or procedure. There is instructions for processing paperwork for the Clerk of the Board.

Mr. Johnson was going through training before being assigned as Buyer Senior to Ms. Page and

Ms. Moore. He was involved with renewing contracts, solicitations, expiring notices, and reports. He did not assist in writing the procedures, but helped update them.

Exhibit 45, Email regarding Randstad Customer Information, Bates 0950

Ms. Moore questioned Ms. Waldo on the procedure available to Buyers for discontinuing a vendor in the system. Ms. Waldo testified if the Buyer has completed the same task several times they have leeway with that particular task. The procedure was available to Mr. Johnson at the time he was processing.

Ms. Waldo answered questions from Ms. Moore about the BOS-AIR packets and the BOS-AIR guidance. She also returned packets to the Buyer Senior for correction about 95% of the time.

Commissioners asked questions about Buyer Seniors and Procurement Officers and what their responsibilities are and how new contracts are assigned.

Ms. Waldo stated most of what the Buyers do is administrative. Ultimately the Procurement Officer is responsible for contracts. Buyer Seniors can renew contracts, contact departments, etc. Ultimately, it is the responsibility of the Procurement Officer before a solicitation goes out.

Mr. Rubin asked what the duties of the Procurement Officers were? He asked for a specific example like chairs.

Ms. Waldo explained the Department puts together what they think is the scope of work, how much they'll need per year etc. The requisition comes in, the system procurement looks at all they provide, including what the insurance requirements might be and they spend a lot of time putting it into a contract-type format along with the bid solicitation information. It eventually gets sent out to vendors to bid and could be blasted out to 200 possible vendors.

They typically hold a pre-bid/pre-proposal conference where the vendors are allowed to ask questions about particular items needed or to ask about the contract itself and Procurement is there along with the department to answer questions. Then Procurement Officers go through the Minimum Qualification process and the rest of the award process, review the cost, tabulate from the evaluation, come up with suggested award, send to department for approval and go through the awards process.

Mr. Rubin asked if there was a high workload.

Ms. Waldo said it's up and down, sometimes slower than others. She said their Manager is approachable and will reassign workloads if necessary and Procurement Officers help each other.

Exhibit 25. Process Ownership and Responsibility by Role, Bates 0457-0465

Ms. Waldo testified the Buyer Senior is to assist the Procurement Officer. The Procurement Officer is ultimately responsible for the procurement process and practices and Mr. Johnson was a relatively new Buyer Senior. She would ask if the Buyer Senior had removed a vendor from the system before and if they were comfortable doing the task.

Ms. Moore asked if she met with Mr. Johnson to discuss some of the tasks he performed while assisting Ms. Moore and Ms. Page. She did not meet with him regularly because he was new. Ms. Moore asked about Buyer meetings and reviewing updates to procedures. Ms. Waldo stated everyone in Procurement is notified of new procedures or modifications. Ms. Waldo goes over these changes in the Buyer meetings.

Ms. Waldo said she did not know if Mr. Johnson had successfully performed a vendor change prior to this one and she did not know his involvement processing BOS-AIR paperwork prior to this either. Ms. Moore asked if Mr. Johnson worked with other Buyer Seniors or Principal Buyers. Ms. Waldo said if he had any questions she referred him to Mr. Romero.

Ms. Moore asked if Buyer Seniors generally do the processing. Ms. Waldo stated different Procurement Officers handle things differently. The Procurement Officer is always involved.

Mr. Fink asked Ms. Waldo how many of the 90% of errors on the paperwork were critical errors. Ms. Waldo stated about 30% of the errors she finds are critical. Mr. Fink asked how she addressed those errors. She said she talks to the Buyer Senior and sometimes brings the Procurement Officer into the conversation. She stated she is responsible for evaluating the Buyer Seniors on a regular basis.

Mr. Freund asked if those 30% of critical errors were in documents presented as ready to go. Ms. Waldo said yes. She was specifically referring to those two pages of the BOS-AIR.

Ms. Moore asked if the Procurement Officer was always aware of the changes made before the BOS-AIR goes to the Board of Supervisors. Ms. Waldo said maybe.

ACTION: Commission recessed for lunch break at 12:09 PM reconvened at 1:22 PM. Mr. Corey clarified for the record there will not be any discussion of this case over lunch.

Appellant Witness #2 Lorraine Gonzalez- Buyer Senior, Pima County Procurement, previously sworn in by Mr. Corey, Counsel to the Commission provided testimony.

ACTION: For the record, Ms. Moore stated that Ms. Gonzalez's official name is Maria Lorraine Gonzalez.

Ms. Gonzalez testified she worked in the Procurement Department since 2003. She has worked in Materials and Services and Design and Construction Divisions. She described her working relationship with Ms. Moore as collaborative.

Ms. Gonzalez recalled working on a contract for a transcriber. She created the Master Agreement in the system, commodity lines, and gathered paperwork.

Ms. Moore asked if she processed BOS-AIR packets for signature and sent them to County Administration and the Clerk of the Board. Ms. Gonzalez said she did. Her process was to assist typing BOSAIR amendments, route for signature to the Procurement Officer, Manager, Procurement Director, Department Director, County Attorney, vendor, and finally to the Board of Supervisors for the final meeting. Ms. Moore asked if the Procurement Officer reviews it at each stage of the process or just initially. Ms. Gonzalez said just initially.

Mr. Freund said what he was hearing from Ms. Gonzalez was the Buyer Senior does all the work. He asked what the Procurement Officer does. She stated the Procurement Officer actually does the solicitations. She said they don't send anything without Procurement Officer approval.

ACTION: Witness excused subject to recall, reminded of oath.

Appellant Witness #3 Stephen Romero- Principal Buyer, Pima County Procurement, previously sworn in by Mr. Corey, Counsel to the Commission provided testimony.

Ms. Moore asked if he helped train in his position. He stated he gives direction or answers questions, but does not train. Ms. Moore asked if he recalled helping train Troy McMaster and

James Johnson on processing BOS-AIRs. He stated they came to him with questions. He walked them through it.

Ms. Moore asked Mr. Romero questions about a conflict they had and he began to describe a memo.

Mr. Jurkowitz objected to the testimony saying he didn't see the relevance.

Mr. Fink asked if Ms. Moore was aware of the memo. She was not. Mr. Jurkowitz stated Ms. Moore was talking about a matter that was in the Special Observation Period which was offered solely to demonstrate the Department was working with Ms. Moore. It was not one of the 22 allegations and he did not believe it was relevant. Mr. Fink agreed and asked Ms. Moore to skip to her next question. She had nothing further.

ACTION: Witness dismissed subject to recall.

Appellant Witness #4 Nancy Page- Procurement Officer, Pima County Procurement, previously sworn in by Mr. Corey, Counsel to the Commission provided testimony.

Ms. Moore asked about James Johnson, Senior Buyer. She did not have Mr. Johnson help her with tabulations. She does them all herself. She did not recall working with him to add vendors to the Master Agreement or on closing out vendor lines. Ms. Page recalled asking Mr. Johnson to seek clarification from Mr. Romero or another buyer when doing certain tasks.

Mr. Jurkowitz began his cross. Ms. Page testified Mr. Johnson was a new Buyer and came to Procurement with little experience. He had to learn everything. Mr. Jurkowitz asked where Senior Buyers get their work. Ms. Page said it comes to them through the Procurement Officer.

ACTION: Witness excused subject to recall.

Appellant Witness #5 Michael Warren-Procurement Officer, Pima County Procurement, previously sworn in by Mr. Corey, Counsel to the Commission provided testimony.

Ms. Moore questioned the witness regarding a Request for Proposal for legal services for the Merit Commission. He described the process as a standard Procurement Officer collaboration on a solicitation. He stated it was standard practice to submit drafts to the Division Manager.

Witness excused subject to recall.

ACTION: Commission recessed for break at 2:07 PM and reconvened at 2:22 PM.

Appellant Witness #6 Maria Canizales-Procurement Officer, Pima County Procurement, previously sworn in by Mr. Corey, Counsel to the Commission provided testimony.

Ms. Moore asked her to describe what her Senior Buyer does. She stated renewals, research, calculations, notifications of expiring renewals, any issues, communicates what needs to be taken care of, drafts PDAIR forms, and corresponds with departments and vendors. Her Senior Buyer processes vendor name changes if asked. She stated her Senior Buyer does not come back to her each time a signature is obtained and also enters commodity lines which she reviews. Ms. Canizales testified she does get a lot of BOS-AIR rejects when it is something new. The Clerk of the Board provides opportunity for correction.

Mr. Jurkowitz began his cross exam.

Ms. Canizales testified it is her responsibility to approve what is on the form. She looked to other Procurement Officers for examples if there is a grey area. She feels it is important to correct her Senior Buyer for the next time. It is ultimately her responsibility.

ACTION: Witness excused subject to recall.

ACTION: Commission recessed for a five-minute break at 2:45 PM and reconvened at 2:50 PM.

Respondent's Witness #7 Jennifer Moore-Procurement Officer, Pima County Procurement Department, previously sworn in by Mr. Corey, Counsel to the Commission provided testimony.

Ms. Moore stated she would go through each allegation and give her testimony. She testified the final solicitation for the investment broker RFP did not include Small Business Enterprise (SBE) points. Ms. Moore testified she left SBE language in RFPs in the past and was not dinged for it.

Mr. Freund asked if she was instructed to remove that language from the RFP. She stated yes. She was instructed to remove that language from the draft. Ms. Moore said she didn't think it needed to be removed because an IFB is different from an RFP.

Mr. Jurkowitz asked if it was her contention she left this language intentionally in the drafts so she could have an opportunity to discuss them. Ms. Moore said the second one was approved and published.

Mr. Jurkowitz asked if at any point Ms. Moore flagged that specifically for her supervisor to review and discuss with her. Ms. Moore said no, but remembered specifically leaving it in to highlight the difference.

ACTION: Exhibit B, Emails regarding Investment Broker Dealer Services, was introduced and admitted with no objections.

Ms. Moore testified she flagged evaluation of award criteria section. It was a total revamp of the template. She expected her manager to review everything. She expected everyone to go through it and thoroughly review it. She believed that it was thoroughly reviewed by the County Attorney, and Management.

Exhibit 31, Email and notated page with SBE Language, Bates 0770-0772, Mr. Jurkowitz stated Ms. Moore leaving the SBE language in the IFB would result in the vendor doing extra work for something that doesn't apply to them. Ms. Moore stated there is a yes or no box the vendor can check if they are SBE certified they can check the box, if not they do not need to certify. Ms. Moore stated she was not told to omit the SBE language.

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.

Ms. Moore testified she did not provide instructions to the Sheriff's Department to submit a requisition for popcorn. She stated she advised the department to discuss their concerns at the meetings with the Procurement Director. She advised them to work with the vendor.

Mr. Jurkowitz asked if Ms. Wilber was aware the Sheriff's Department was having a problem with the vendor and trying to find a new one. Ms. Moore said no. Mr. Jurkowitz asked Ms. Moore if she had taken the issue to Ms. Wilber and she said no.

ALLEGATION #3: You left language in Solicitation IFB 19-054 that stated these items were not to be substituted with another brand name, but your language allowed equivalent product to be offered.

ACTION: *Exhibit E, Copy of Telephone Supplies and Equipment Solicitation 19054 pertaining to allegation number 3*, was introduced by Ms. Moore and admitted with no objection.

Ms. Moore testified she used brand, make and model to elevate the standard of quality and equivalent performance defined for this solicitation.

Mr. Jurkowitz stated in *Exhibit 65, on Bates 2570* “no substitution of material or style is authorized” and on the next page 2572 says “all items bid must be equivalent to the specifications defined by the background information.” He asked Ms. Moore if she found those two statements contradictory. She said no. She stated Ms. Wilber asked her to delete those from the final solicitation and she did.

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.

Ms. Moore admitted to the typos. She stated the solicitation had gone through multiple reviews, there were changes at the last minute and she requested posting for the wrong version. It was posted and corrected by Solicitation Amendment.

Mr. Fink asked if she considered these typos critical. Ms. Moore said they should not be in there, it was easily corrected and now the Treasurer has four additional investment brokers on her list of qualified investors.

ACTION: Commission adjourned at 3:54 PM

/s/ Mike Hellon
Mike Hellon, Chair

September 14, 2021

Minutes approved on September 14, 2021