

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. CATHERINE M WOODS

CASE NO. C20161761

COURT REPORTER: Barbara Short
Courtroom - 583

DATE: August 07, 2017

RICHARD RODGERS,
SHELBY MANGUSON-HAWKINS, and
DAVID PRESTON
Plaintiffs

James M Manley, Esq. counsel for Plaintiffs

VS.

CHARLES H HUCKLEBERRY,
SHARON BRONSON,
RAY CARROLL,
RICHARD ELIAS,
ALLYSON MILLER,
RAMON VALADEZ, and
PIMA COUNTY
Defendants

Andrew Lawrence Flagg, Esq. and Regina L.
Nassen, Esq. counsel for Defendants

MINUTE ENTRY

DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING COUNTS 3

AND 4

No parties are present.

The Court and counsel discuss a media request received earlier this date.

On agreement of counsel,

IT IS ORDERED that the media shall be permitted to capture an audio recording of this hearing.

Mr. Flagg and Mr. Manley argue to the Court.

THE COURT FINDS AS FOLLOWS:

- 1) The defendants failed to establish that the claims raised in Counts 3 & 4 of the Complaint are moot.
- 2) By their own concessions, the defendants acknowledge that the work to be performed by Swaim Associates, Ltd. and Barker Morrissey Contracting, Inc. has not been completed, nor

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Deputy Clerk

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have the service providers been fully paid for the services the county engaged them to perform.

- 3) Even if the county had proven that the issues were moot, the Court finds that the issues in this matter present issues of great public importance and/or issues that are capable of repetition yet evading review.
- 4) For many decades, Arizona case law has recognized that competitive bidding is an issue of great public importance. The same analysis applies to what the county refers to as competitive qualifications-based solicitation processes. In fact, the relevant case that both sides relied upon, *Secrist v. Diedrich*, 6 Ariz. App. 102, 106 (1967), made a specific reference to public policy when the Arizona Court of Appeals determined that even though the issues were moot, the Court decided to rule upon the underlying issue regarding the competitive bidding statute.
- 5) The issues raised by Counts 3 & 4 are whether there existed an emergency or impracticability and whether A.R.S. § 34-606 and the requirements of the Pima County Procurement Code allow the Pima County Administrator and the Board of Supervisors to “manufacture emergency or impracticability by agreeing to a compressed time frame, design, or construction”.
- 6) The contracts at issue raise a legitimate factual question of whether the county truly believed the emergency exception of A.R.S. § 34-606 truly applied or whether invoking the words “public interest and impractical” were a mere pretext for avoiding a standard competitive qualifications-based solicitation process. The Court is referring specifically to the contracts that the defendants attached to their Statements of Fact as Exhibit 1. Instead of citing public interest or impracticality, the county’s own language states that a competitive procurement for this project would be contrary to the county’s interest. There is a legitimate factual question of whether the emergency provisions of A.R.S. § 34-606 and the county code apply to the facts and circumstances in this case.
- 7) There are questions of fact whether the county’s alleged need for a compressed time frame would merit invoking the emergency procurement provisions of A.R.S. § 34-606 or the associated Pima County Procurement Code.

IT IS ORDERED that the motion is DENIED.

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IT IS FURTHER ORDERED that the Pretrial Conference currently set on February 26, 2018, at 9:15 AM, in Division 17, is affirmed.

IT IS FURTHER ORDERED that the Court Trial currently set on April 11, 2018, at 9:00 AM, in Division 17, is affirmed.

cc: Hon. Catherine M Woods
Andrew Lawrence Flagg, Esq.
James M Manley, Esq.
Regina L. Nassen, Esq.
Veronica M Thorson, Esq.

Karla Ronquillo
Deputy Clerk