

STATE OF WISCONSIN

PERSONNEL COMMISSION

DIANE JANECEK,
Appellant,

v.

**Secretary, DEPARTMENT OF
TRANSPORTATION and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**
Respondents.

DECISION
AND ORDER

Case No. 01-0092-PC

This is an appeal of a decision to deny a reclassification request from Purchasing Agent to Purchasing Agent Objective. A hearing was held on May 21, 2002, before Commissioner Kelli Thompson.

The parties agreed to the following statement of the issue for hearing (see Conference Report dated February 4, 2002):

Whether respondents' decision to deny the appellant's request to reclassify her position from Purchasing Agent to Purchasing Agent – Objective was correct.

Both parties agreed the effective date of the reclassification would be November 19, 2000. At all times relevant here, appellant's position has been Purchasing Agent for respondent's Transportation District 5 office. The most accurate description of the duties and responsibilities of appellant's position during the relevant time period is incorporated in the position description signed by the appellant on September 10, 2001. The position description states as follows, in pertinent part:

SUMMARY This position has delegated local purchasing authority. This position is responsible for all purchasing functions for 100 to 150 employees. This includes ensuring that all State Statutes, DOA and DOT rules, regulations and procedural guidelines are appropriately applied within the district; use of Transportation Interactive Procurement System (TIPS) to facilitate purchasing activities; serving as the TIPS Coordinator for the district, negotiation of contracts, solicitation and award of bids; and coordination of the district's inventory program. Under general supervision of the Transportation District Business Chief, this position makes in-

dependent judgments concerning complex purchasing activities based on thorough knowledge of market conditions, purchasing principles and practices, and analytical skill in addressing cost-benefit issues, along with negotiation skill in representing the agency and administering procurement rules and regulations. This position develops sealed bids, including RFPs, within authorized spending limits, including the resolution of appeals. This position reviews and approves justification for bid waivers within delegated authority and provides training to district staff and management on purchasing requirements regarding policies and practices.

70% A. Organize and administer district purchasing activities.

A.1 Provide guidance to staff in procuring goods and services in conformance with State and Department policies and procedures by direct counsel through one on one meetings, in-service training, and information sessions concerning procurement regulations.

A.2 Meets with vendor representatives to maintain current information on products or services, including prices, to facilitate favorable relations to expedite the purchase and delivery of commodities and services.

A.3 Prepare and issue purchase orders obtaining necessary commodity code information and budgetary approvals through the Transportation Interactive Procurement System. Maintain purchase order files and records.

A.4 Procure items using best judgment considering quality, price, life cycle costing or other pertinent factors for goods and services up to \$5,000.

A.5 Develop bid specifications based on information provided by requestor or commodity service.

A.6 Conduct and award simplified bids for goods or services \$5,000 to \$25,000. Involves competition from a minimum of three vendors. Judgment is used to determine if an "unofficial" sealed bid is necessary.

A.7 Serve as a point of contact for vendors seeking clarification or having questions and consults with program area staff on questions or issues raised regarding specifications or bids.

A.9 Negotiate and prepare contracts for conferences, meetings and training sessions requiring public and private facilities.

A.10 Administer blanket purchase orders. Establish periods of procurement activity. Arrange vendors and coordinate accurate and timely record keeping.

A.11 Resolve problems or conflicts encountered in connection with contracts, requisitions or orders such as delivery time, specifications, prices, prompt payment and disputed invoices, etc.

A.13 Review and edit purchase requisitions over \$25,000 prior to submission to central purchasing for official sealed bid processing.

A.14 Determine and approve appropriate bid waivers within delegated authority (up to \$25,000).

A.17 Solicit and verify vendor commodity information. Prepare commodity for entry into TIPS.

10% B. Implement and monitor the District Inventory System/Program

5% C. Assist Business Chief with the administration of the District's Risk and Safety Management Programs

5% D. Provide training to new employees regarding State purchasing guidelines and their responsibilities

10% E. Serve as District Fleet Coordinator

The classification specifications for the Purchasing Agent series, which have a modified effective date of May 20, 2001, state as follows:

INTRODUCTION

D. Entrance Into and Progression Through This Series Entrance into this classification series is typically by competitive examination. Progression to the objective and senior levels may occur through reclassification or a competitive process. The majority of a position's duties and responsibilities must be recognized in the classification definition in order for the position to be assigned said level.

II. DEFINITIONS

PURCHASING AGENT

This is a professional level work performed by Purchasing Agents. Positions allocated to this level (1) are involved with the development of bids and contracts with limited authority to make decisions relative to the actual vendor award or to take action when problems with a given contract occur; or (2) develop and award simplified bids independently; gather supportive information used in the bidding process; work with selected vendors in assuring that the tenets of the established contracts are followed; solicit verbal and written quotes, price lists, and catalogs; and receive delivery of orders and approve invoices. Work performed by positions described in the first allocation is performed under close, progressing to limited, supervision. Work performed by positions described by the second allocation is performed under general supervision.

PURCHASING AGENT OBJECTIVE

This is objective level profession work performed by purchasing agents. In addition to activities performed at the prior level, positions at this level are granted authority to perform activities such as develop generic bid specifications: developing, conducting and awarding sealed bids. These activities include developing or reviewing and approving justification for bid waivers within delegated authority; developing Requests for Purchas-

ing Authority; providing agency staff and management with training and advice regarding policies and practices; and conducting product research and effectively recommending standards for agency use. The individuals in this class are expected to function independently in their decision-making. This work is performed under general supervision.

The three positions submitted by appellant's supervisor as comparisons for the reclassification request were: (1) Michael Mohr, Purchasing Agent Objective, Green Bay Correctional Institution; (2) David Brauner, Purchasing Agent Objective, University of Wisconsin – Madison, University Housing, and (3) Steven Slind, Purchasing Agent-Objective, University of Wisconsin-Eau Claire.

Mr. Slind's position description, dated August 19, 1999, specifies that 50% of his time is spent on sealed bids and requests for quotations, which include:

A.4 Write bid requests, specifications, special conditions of bid; respond to inquiries about the bid package.

A.5 Confer with requisitioning department and bidder, if necessary, to clarify bid information. Analyze bids and examine specification of commodity bid to determine successful bidder. Award bid or if purchase is not awarded to lowest bidder, document rationale for decision.

Mr. Mohr's position description, dated July 28, 1995, under the section titled "Goals and Worker Activities," include:

A.2 Write or review specifications for required non-contract items and send out for competitive bids. Competitive bids include telephone quotes, written bids, and official sealed bids. Notify Business Administrator when official sealed bids are complete and need to be opened.

Mr. Brauner's position description, dated February 19, 1997, (but unsigned by Mr. Brauner), included a section titled "Goals and Worker Activities," which stated, in part:

A.4 Carry out simplified bidding within delegated authority. Abstract and evaluate each bid and make awards based on principles of value analysis. Maintain records to justify awards.

The Commission notes that according to Mr. Brauner's position description, he is responsible for performing "simplified" bidding within the delegated authority. However, the reclassification denial memo explains that when questioned about the scope of Mr. Brauner's authority, a Human Resources Manager with UW-Madison, clarified that Mr.

Brauner has been granted authority for more complex purchasing activities, i.e. for conducting "official sealed bids" in amounts above \$25,000. Appellant did not dispute the information provided by respondent as set forth in the reclassification denial memo.

In contrast, appellant's September 2001, position description specifically states:

A.4 Procure items using best judgment considering quality, price, life cycle costing or other pertinent factors for goods or services up to \$5,000.

A.6 Conduct and award simplified bids for goods and services \$5,000 to \$25,000. Involves competition from a minimum of three vendors. Judgment is used to determine if an "unofficial" sealed bid is necessary.

None of the employees in the other Transportation districts who perform comparable work to appellant are classified at the Purchasing Agent Objective level. All are classified at the Purchasing Agent level.

A Purchasing Agent position for respondent's District 3 office, held by Carol Calliari, performs the duties noted in her position description. (Exh. R119). The duties of her position are similar to those of the appellant's position. For example, both prepare specifications, bids, and the bid awards analysis for purchases up to \$25,000, provide guidance and advice to staff and management in procuring goods and services in conformance with State and Department policies and procedures, and prepare and issue purchase orders obtaining necessary budgetary approvals through TIPS.

Sharon White, a former Purchasing Agent with respondent's District 1 office, testified that she performed the duties noted in her previous position description. (Exh. 114). The duties of her position were similar to those of the appellant's position. For example, both prepared requests for quotations for all items within the delegated \$25,000 limit, contacted vendors to acquire specifications relating to quality, price, deliverability and other considerations, prepared Requests for Bids, solicited price quotations and competitive bids from qualified vendors, and awarded the bids to vendors meeting state specifications.

Evidence also showed that the duties of the Purchasing Agent position in respondent's District 6 office, as described in the position description dated December 8, 2000, were similar to those of appellant. (Exh. R117) For example, the duties include preparing solicitations and requests for quotations for all items within the District delegation, assisting staff to prepare specifications and justifications for non-standard purchases involving

purchase order materials, and preparing all TIPS purchase requisitions for electrical and traffic equipment, and services, materials, and supplies requested by District personnel.

The Commission finds appellant's duties and responsibilities were similar in comparison to the other district office purchasing agents for respondent, and this strongly supports classification of the appellant's position at the same Purchasing Agent level.

Barb Paltz, respondent's Human Resource classification coordinator, testified that she had reviewed appellant's reclassification request, as well as the Purchasing Agent classification specification, with Amy Hendrickson, a former Human Resource Specialist with respondent, who had originally denied the reclassification request, as well as consulted with Department of Employment Relations (DER), and concluded the Purchasing Agent level was the appropriate classification.¹ Ms. Paltz testified that the primary issue for appellant's reclassification denial was the limited delegated authority of up to \$25,000. Appellant still performs the "simplified" bidding process. Ms. Paltz stated the delegation limitation did not allow appellant to perform "official sealed" bidding. In addition, Ms. Paltz explained the distinction made between the Purchasing Agent and the Purchasing Agent-Objective was the Purchasing Agent was learning the "official sealed" bid process while the Purchasing Agent -Objective was performing the "official sealed" bid process.

Ms. Paltz testified that the term "sealed" bids referenced in the definition section for Purchasing Agent-Objective, actually refers to the "official" sealed bid process rather than to the "simplified" bid process.

One of appellant's primary arguments in this case relates to certain terms used in her position description and in the classification specification and arises from changes to

¹ Ms. Paltz also testified that in reviewing the Purchasing Agent classification specifications, she believed appellant fit most appropriately within allocation (2) at the Purchasing Agent level. The classification specifications definition section states the work performed by positions within this allocation perform under general supervision. In contrast, the positions allocated under allocation (1) perform under close, progressing to limited supervision. A Purchasing Agent-Objective position performs under general supervision. This appears to be an important distinction. The specifications provide that individuals who fit within allocation (1) at the Purchasing Agent level work under close supervision and progress to limited supervision and then have the opportunity to progress to the Purchasing Agent-Objective level, when they are performing under general supervision. However, an individual whose duties are part of the "simplified" bid process within the Purchasing Agent allocation (2) is properly classified at that level when working under general supervision.

the accepted meaning of those terms over time. Appellant testified that since receiving the reclassification denial letter, she had reviewed a variety of materials to help define the terms “sealed” bid, “simplified bid” and “official sealed” bid. References to the bidding process are found in the Wisconsin Administrative Code, Statutes, DOA’s Bureau of Procurement, VendorNet System, and the State Procurement Manual.² VendorNet is part of the State Bureau of Procurement, which contains information for agencies and registered vendors regarding which do business with the state. In addition, the appellant supplied a copy of the Transportation Administrative Manual, issued March 27, 2001, which provided guidelines to follow for purchasing under Chapter 16, of the Wisconsin State Statutes. The three categories were separated by designated dollar levels; including \$0 to \$5,000, \$5,001 to \$25,000 and over \$25,000. (Exh. A11)

Appellant pointed out language in the Wisconsin Statutes as well as Wisconsin Administrative Code which seemed to conflict with the terminology and the information regarding the bidding process in the abovementioned documents. But testimony from appellant’s witnesses and respondent’s witnesses, as well as the two delegation agreements and the information provided in the State Procurement Manual, established a general understanding of what is included in the definitions of “simplified bid” process and “official sealed” bid, as well as their delegated amounts.

Gregory Jacobson, Supervisor of the Purchasing Unit for respondent’s Bureau of Management Services testified that respondent’s “Purchasing Delegation Agreements,” dated February 26, 1996 and May 15, 2000, identified the parameters of the delegation of purchasing authority for District 5. (Exhs. 109 and 110) The most significant change identified between the two delegation agreements was listed under “Delegated transactions” which lists the change in dollar amount from “up to \$10,000” under commodities bids, contractual services bids and bid waivers (sole source procurements) to “up to \$25,000” under the same three headings.

² “Best judgment” is an order for less than \$5,000 to purchase commodities or services that may be issued without soliciting competitive bids. The procurer selects a vendor based on “best judgment.” (Exh. A 11) “Simplified bidding” means one of several simplified methods of procurement used when the estimated cost of a transaction is \$25,000 or less. (Exh. A12) The definition of “official sealed bid process” is the procedure used for soliciting bids from at least three (3) bidders (when available) when the procurement is expected to cost over \$25,000. (Exh. 13)

Mr. Jacobson testified that initially, as identified in respondent's 1996 "Purchasing Delegation Agreement," the simplified bidding process included bids for between the amounts of \$5,000 and \$10,000 and was defined as "sealed" bids; bids for between \$500 and \$5,000 included "other" types of bids such as written quotes or price lists; and below \$500 were described as "best judgment." (Exh. R109)

Mr. Jacobson testified that the Department of Administration (DOA) changed the bidding process and raised the \$10,000 limit to \$25,000, denoting bids over \$25,000 to be "official sealed" bids; identifying all bids under \$25,000 to be part of the simplified bidding process; and bids under \$5,000 to be considered as "best judgment." The new bidding process eliminated the term "sealed bid process" and rolled the category of bids from \$10,000 to \$25,000, into the "simplified bidding" process. Mr. Jacobson noted that these changes were identified in the 2000 "Purchasing Delegation Agreement" (Exh. 110). Mr. Jacobson testified that the "sealed bid" reference is obsolete, as that term had been identified in the past. He explained that he relies on Chapter 16 of the Wisconsin Administrative Code as well as applicable statutes and the State Procurement Manual as primary sources of information for the bidding process and procedures. Mr. Jacobson stated that if a reference were made to a "sealed bid" he would infer it to mean a dollar amount over \$25,000, even if the appropriate term of "official" was left off. Mr. Jacobson explained there are certain requirements in the "official sealed" bid process that are not present in the "simplified bid" process, including a formal appeals process.

Nancy Stroud, a Purchasing Agent Senior in respondent's central purchasing office for 11.5 years, also testified that the "sealed" bid process is obsolete and any reference to a "sealed" bid is now considered to be an "official" sealed bid.

The testimony from the witnesses and documentation consistently showed that the term "sealed" bids used in the definition for Purchasing Agent-Objective and relied upon in the reclassification denial memo, refers to the more complex purchasing process that is now formally referred to as "official sealed" bids.

Abraham Kaalele, respondent's District 5 Transportation District Business Chief and appellant's supervisor, testified that after a review of the duties and responsibilities of appellant's position description and the updated delegation agreement implemented in

April 2000, there has been an increased delegated purchasing authority up to \$25,000 in the areas of commodities, bids, contractual services bids, and bid waivers. The reclassification request read, in part:

Inherent in this delegation agreement is an increase in responsibility and duties of this position, oversight responsibility for purchasing activities in the district, but some of the work and responsibilities formally residing in our Central purchasing area, is being shared with this position. The incumbent of this position functions independently under general supervision. In addition, both allocations under Purchasing Agent have been met – (1) this position is involved in the development of bids and contracts and does have authority to take action when problems arise with such contracts and (2) develops and awards simplified bids independently on a regular basis. (Exh. A-4)

Appellant also testified that she believes she has the requisite knowledge and training to carry out the bid processing for bids over \$25,000 but the opportunity had been taken away at the district level. While appellant may have argued that she knew how to conduct the “official sealed” bid process for items over \$25,000, the record is clear that the responsibility for official sealed bids was never delegated to the districts and appellant did not perform those duties.

Section ER 3.01(3), Wis. Adm. Code, requires that there be a logical and gradual change in the duties and responsibilities of a position in order for it to qualify for reclassification.


The Commission finds that it is not necessary to address the “logical and gradual” issue because appellant’s duties as of November 2000, were still better described at the Purchasing Agent level rather than the Purchasing Agent Objective level.

ORDER

The action of respondent is affirmed and the appeal is dismissed.

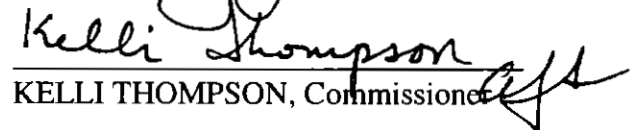
Dated: Sept. 5, 2002.

STATE PERSONNEL COMMISSION



ANTHONY J. THEODORE, Commissioner

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KELLI THOMPSON, Commissioner

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NOTICE

OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)

2/3/95