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TO: Pat Hohl, Supervisor
Mike Dolan, Clerk
Jason Negri, Treasurer
Township Board of Trustees

FROM: Thelma Kubitskey, Director of Accounting

DATE: February 3, 2023

SUBJECT: Update to Administration Policy and Procedures, Section 4.9 Purchase Control

Please find attached the proposed changes to section 4.9 Purchase Control. These changes reflect the current practice that the Township is using for any purchases over \$10,000.00.

Please contact me with any questions or concerns you may have.

4.9 PURCHASE CONTROL

Any purchase in excess of \$10,000 requires Township Board approval, and shall provide proof of solicitation of a minimum of three (3) bids.

(a) **Exceptions.** MIBid, sole source vendors, emergency repairs or replacements; routine and operational services; small purchases; and when such procedures are deemed unnecessary and burdensome and not in the best interests of the Township by the Township Board of Trustees are exceptions to the sealed bid and sealed proposal requirements of this Section.

(b) **Purchases of \$10,000 or Less.** All supplies and contractual services not exceeding ten thousand dollars (\$10,000) in cost may be made in accordance with purchase procedures established by the Township Board.

4.9(a) INVITATION FOR BIDS.

- (a) The Invitation for bids is used to initiate the competitive bid process.
- (b) The Invitation for Bids should generally include:
 1. Instructions to bidders (time and date set for receipt of bids, address where bids are to be delivered, other special information).
 2. Description of proposed purchase.
 3. Contract terms and conditions.
- (c) The Invitation for Bids should always reserve the municipality's right to reject any and all bidders.
- (d) The bidding time (the period of time between the date of distribution of the Invitation for Bids and the time and date set for receipt of bids) should be set to provide bidders a reasonable time to prepare their bids.
- (e) The Invitation for Bids may provide a form that includes a space in which the bid price may be inserted and which the bidder must sign and submit along with all other necessary submissions.
- (f) Invitations for Bids or notices of the availability of Invitations for Bids should be furnished to sufficient number of bidders for the purpose of securing competition.

In the case of larger purchases, notices shall be placed in newspapers or applicable trade publications.

4.9(b) NOTICE SOLICITING BIDS OR PROPOSALS.

- (a) **Publication.** A notice inviting bids or requesting proposals shall be published as least once in the most appropriate medium or media, as determined by the Department, at least seven days before the last day set for receiving proposals or bids by the Township. This seven-day time period may be reduced if a written determination is made by the Department that the acquisition is urgent and sufficient vendors have been notified directly. The notice shall include a general description of the articles or services to be acquired and shall state where the complete solicitation package may be secured. The notice shall also include the time and place for submitting and opening bids.
- ~~(b) **Vendor List.** The Department shall also solicit responsible prospective vendors who have requested their names to be added to a vendor list, by sending to such prospective vendors, in a timely manner, such notice as will acquaint them with the proposed acquisition of goods or services. In any case, invitations sent to the prospective suppliers on the vendor list shall be limited to commodities or services that are similar in character and ordinarily handled by the trade groups to which the invitations for bids or proposals are sent.~~
- (c) **Posting.** The Department shall also advertise all pending invitations for bid and requests for proposals by posting a notice on the Township's website.
- (d) **Definitions.** As used in this Section:
 - (1) **"Medium or media"** means and includes, but is not limited to, website postings, Cable TV postings, advertisement in trade magazines, direct mailings, and advertisement in a newspaper of general circulation in The Township.
 - (2) **"Most appropriate medium or media"** means notification in a medium or combination of media which, in the best judgment of the Department, will result in the greatest number of responsible vendors.

4.9(c) PRE-BID CONFERENCES.

- (a) Pre-bid conferences may be conducted to explain the procurement requirements. If used, they should be announced to all prospective bidders known to have received an Invitation for Bids.

- (b) The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids.
- (c) Nothing stated at the pre-bid conference should change the Invitation for Bids unless a change is made by written amendment.

4.9(d) PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS.

- (a) Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time and date set for bid opening.
- (b) **Disposition of Bid Security.** If a bid is withdrawn prior to the time and date set for bid opening, the bid security, if any, should be returned to the bidder.
- (c) **Records.** All documents relating to the modification or withdrawal of bids should be made a part of the appropriate procurement file.

4.9(e) LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS

- (a) **General Discussion.** Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late.
- (b) **Treatment.** No late bid, late modification or late withdrawal shall be considered unless received before contract award, and the bid modification or withdrawal would have been timely but for the action or inaction of municipal personnel directly serving the procurement activity.
- (c) **Records/Notice.** Bidders submitting late bids that will not be considered for award should be so notified as soon as practicable. Records shall be made and kept for each late bid, late modification, or late withdrawal.

4.9(f) MISTAKES IN BIDS.

- (a) **General Discussion.** Correction or withdrawal of a bid because of an inadvertent, non-judgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness.
 1. If the mistake is attributable to an error in judgment, the bid may not be corrected.

2. Bid correction or withdrawal by reasons of a non-judgmental mistake is permissible, but only to the extent that it is not contrary to the interest of the Township or the fair treatment of other bidders.
- (b) **Mistakes discovered before opening.** A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid.
 - (c) **Confirmation of Bid.** When the Department knows or has reason to conclude that a mistake has been made, the Department should request a bidder to confirm the bid. Examples:
 1. Obvious apparent errors on the face of the bid, or
 2. Bid unreasonably lower than the other bids submitted.
 - (d) **Mistakes discovered after Award.** Mistakes may not be corrected after award of the contract, except where the Township Board of Trustees makes the determination that it would be unconscionable not to allow the mistake to be corrected.

4.9(g) BID DEPOSITS.

Under certain circumstances, bid security (cash deposits, bonds, etc.) may be advisable.

When deemed necessary by the Department, bid deposits shall be required and shall be prescribed in any published notice inviting bids, as well as in the bidding documents. Unsuccessful bidders shall be entitled to return of such deposit or surety. A successful bidder shall forfeit any surety or deposit required by the Township if he fails to enter into the contract within the time required in the specifications or bidding documents, unless such forfeiture is waived or the time limit extended by the Township Supervisor or Board of Trustees.

4.9(h) RECEIPT, OPENING, AND RECORDING OF BIDS.

- (a) **Receipt.** Sealed bids shall be submitted only to the office of the Clerk's Office on the prescribed forms, or another Township official as designated in the solicitation for bids, on or before the date and time specified for the receipt of bids or proposals in the invitations to bid and bidding instructions. Upon its receipt, each bid and modification should be time-stamped but not opened and should be stored in a secure place by the Purchasing Agent until the time and date set for bid opening.

(b) **Opening and Recording.**

1. Bids shall be publicly opened by the Department or the designee of the Department, in the presence of 1 or more witnesses, at the time, day and place specified in the invitation to bid and bidding instructions. All persons interested shall be allowed to be present at the bid opening. The names and addresses of witnesses shall be recorded at the opening.
2. The name of each bidder and the total amount of each bid shall be read aloud by the ~~Purchasing Agent~~ Department representation or their assistants, as well as, in appropriate cases, the unit cost of each substantial item making up the total amount of each bid.
3. All bids and specifications and invitations to bid shall be preserved and available for public inspection at the office of the Department for a period of not less than one year from the date the bids are submitted, with respect to any specific commodity or proposal.
 - (a) Exceptions shall be limited to the extent that trade secrets or other proprietary data may be confidential under the Freedom of Information Act. Confidential material that accompanies the bids must be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid.
 - (c) **Tabulation.** A tabulation of all bids shall be made by the Department and be available for public inspection. Tabulations ~~may~~ shall be posted on the Township's website.
 - (d) **Analysis.** The Township Board of Trustees or designee of the Board shall examine all bid tabulations and recommendations from the Department to select the ~~lowest~~-best responsible bidder.
 - (e) **Substantially Low Bid Review.** In the event the amount of the lowest bidder's bid appears disproportionately low when compared with estimates undertaken by or on behalf of the Township and/or compared to other bids submitted, the Department reserves the right to inquire further of the apparent lowest bidder to determine whether the bid contains mathematical errors, omissions, or erroneous assumptions and whether the apparent lowest bidder has the capacity to perform a complete contract for the bid amount.

4.9(i) REQUESTS FOR PROPOSAL (RFP) OPENING PROCEDURE.

Requests for proposals (RFP) are often used to solicit professional services, i.e. Engineers, Auditors, Attorneys, Planners, and other professional consultants; this process is referred to as Qualifications-Based Selection ("QBS").

An RFP should include as much detail about the proposed project or requested services as possible. More information will allow more complete and relevant proposals. Successful RFP's should include the following:

1. The RFP should solicit relevant information about the firm's personnel, their particular qualifications, and experience with similar engagements.
2. The Township may consider publishing the notice of RFP in relevant trade publications to increase the response rate.
3. Send the RFP to firms recommended by other municipalities (call around to other municipal officials or the applicable municipal association).
 - (a) **Receipt of Sealed Proposals.** Sealed proposals shall be submitted only to the office of the Department on the prescribed forms, or another Township official as designated in the solicitation for proposals on or before the date and time specified in the request for proposals and related instructions. Sealed proposals shall be marked as to the time and date received at the office of the Department or other designated Township official by someone in that office.
 - (b) **Opening.** Proposals shall not be considered fully received for the purpose of Freedom of Information Act requests until the Township has determined that no additional clarifications or revisions of offers shall be accepted; therefore, no details of proposals shall be released until contract award. After contract award, all proposals shall be preserved and available for public inspection at the office of the Department for a period of not less than one year from the date the proposals are submitted.
 - (c) **Analysis.** The Township Board of Trustees or designee of the Board shall examine all proposal recommendations from the Department to select the proposal of best value or to select those firms they wish to further review prior to awarding a contract. If the Board wishes to interview those selected firms, the following should be completed:
 1. Interview each firm, meet the professionals who will actually do the work.
 2. Contact references and past clients.

3. Visit the firms' offices and specific projects they have handled (if applicable).
4. Rank the firms based upon Board consensus.

(d) **Rejection of Proposals.** The Township Supervisor, Department Head, or the Township Board of Trustees has the authority to waive any irregularity of informality in any proposal and reject any or all proposals, in whole or in part.

4.9(j) AWARDING OF CONTRACTS.

(a) **Authority.** Except as provided by subsection (b) of this section, the Township Board shall award all contracts after receiving the recommendation of the Department or other designated Township official.

(b) **Exceptions.** A Township Administrator (Supervisor, Clerk and Treasurer) is authorized to enter:

- (1) All contracts that do not exceed **ten** five thousand dollars (~~\$5,000~~) **(\$10,000)**;
- (2) All contracts for expenditures necessary to perform statutory functions, i.e. assessment notices, tax bills, etc. do not require prior Board approval provided that the goods or services are within budget, and if the contract adheres to current purchasing policies; and
- (3) All sole-source contracts not more than **ten** five thousand dollars (~~\$5,000~~) **(\$10,000)**.

(c) **Bid Selection.** Contracts, except as otherwise provided in this chapter, shall be awarded by the Township Board considering the following;

- (1) The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- (2) Whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay or interference;
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
 - a) The Township shall require the bidder to provide proof that they are responsible in paying their property taxes; both real and personal; whether it be in this township or other municipalities.

- (4) The quality of performance of previous contacts or services;
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to any contract or service;
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- (7) The quality, availability and adaptability of the supplies or contractual services to the particular use required;
- (8) The ability of the bidder to provide future maintenance and service for the use of the subject of the contact; and
- (9) The number and scope of conditions attached to the bid.
 - a) **Tie Bids.** If two or more low bids are received for the same total amount or unit price, and the quality and service are equal, the contract shall be awarded to one of the tie bidders by drawing lots in public, unless one of the bidders is a taxpayer or resident of the Township, in which case such taxpayer or resident shall be awarded the contract.
 - b) **Default.** The Department shall not accept the bid or proposal of a vendor or Contractor who is in default to the Township.

4.9(k) AWARDING OF CONSTRUCTION PROJECT CONTRACTS.

- (a) **Bid Selection.** The Township Board of Trustees shall award Municipal building construction project contracts in the amount of five thousand dollars (\$5,000) or more to the lowest responsive, responsible bidder as determined by this section.
- (b) **Definitions. As used in this section:**
 - (1) "Township" means the Township Board of Trustees, Township Supervisor, Purchasing Agent or their designees.
 - (2) "Construction project" means the labor and material necessary for the construction, renovation, repair or improvements of a Township-owned building, except repair in emergency situations.
 - (3) "Lowest responsive, responsible bidder" means the responsible contractor with the lowest bid which satisfies the requirements of all local, State and Federal laws, this section, any bid documents used to solicit bids, and any other guidelines and specifications required for the construction project.

- (4) "Responsible contractor" means any contractor or sub-contractor who is sufficiently qualified to satisfactorily perform the construction project, or any relevant part of the construction project as determined by the Township, based on the following:
 - A. An overall review of the contractor or subcontractor's evidence of compliance or lack of compliance with the responsibility criteria, as described in this section;
 - B. The contractor or sub-contractors' compliance with all applicable local, State and Federal laws; and
 - C. Input from the Township's architect and/or construction manager, if applicable.
- (c) **Responsibility Criteria.** The Township Supervisor and Board of Trustees shall consider at least each of the criteria listed in this section in determining whether a contractor is a responsible contractor. The list set forth in this section does not preclude any additional criteria that the Township may deem relevant for deciding of contractor responsibility. Any criteria deemed relevant by the Township that is in addition to the items listed in this section shall be specified in the documents soliciting bids together with the requirements of this section.
- (d) **Bid Documents.** This bid documents for a construction project shall require any contractor or subcontractor bidding on the construction project, or any part of the construction project, to submit with its bid, written responses and other supporting or explanatory information demonstrating its compliance, or non-compliance and the reason for such non-compliance, with the listed responsibility criteria and any other criteria declared pertinent by the Township and included in the bid documents. For each separate bid package of a construction project, the Township may accord such weight as it deems appropriate to the responsibility criteria and any other criteria included in the bid documents for purposes of determining whether a contractor is a responsible contractor.
- (e) **Criteria.** The Township will consider the following information in determining whether or not a contractor is a responsible contractor. As used in this section, "contractor" includes any subcontractor holding a subcontract of five thousand dollars (\$5,000) or more. This list is not intended to be all inclusive or exhaustive:
 - (1) General information about the contractor's company, its principles and its history, including the State and date of incorporation;

- (2) Trade categories of contractor's employees and information regarding the State and local licenses and license numbers held by the contractor;
- (3) A confirmation that all subcontractors, employees and other individuals working on the construction project will maintain current applicable licenses with the Michigan Bureau of Construction, Codes and Fire Safety, and as may otherwise be required by law for all licensed occupations and professions;
- (4) The ratio of masters or journey persons to apprentices proposed to be used on the construction project job site;
- (5) Documentation that the contractor maintains, participates in and contributes to a bona fide apprentice training program in which less than full journey-persons utilized on the project will be participants; as used in this section "bona fide apprentice training program" means a training program registered and approved by the United States Department of Labor, Bureau of Apprenticeship and Training Programs;
- (6) Documentation of a completed Michigan Occupational Safety and Health Administration approved safety training program for employees used on the proposed job site;
- (7) Evidence of the contractor's Workers' Compensation Experience Modification Rating (EMR). A bidder with a current EMR greater than 1.1 will not be considered a responsible contractor under this section;
- (8) A list of similar or comparable projects completed within the past five years, including dates of work and each project's approximate dollar value and size. Documentation from these previous projects of comparable size or complexity, including but not limited to all costs related to the bidder's timeliness, performance, quality of work, extension requests, contractual fines and penalties imposed, including proof of such fines and penalties, and liens filed, history of claims for extra work and any contract defaults with an explanation of the reason for the default and how the default was resolved;
- (9) Evidence of contractor's experience with construction techniques, trade standards, quality workmanship, project scheduling, cost control, management of projects of comparable size or complexity, and building codes by documenting the bidder's ability and capacity to perform the project. The bidder must identify those portions of the project it reasonably believes will be subcontracted and the names of the subcontractors;
- (10) A list of individuals or contact persons for entities that have received in the past five years, or are currently receiving, the contractor's services from

which references may be obtained, which shall include contacts for any similar or comparable projects; and include information regarding the records of performance and job site cooperation;

- (11) Audited financial information current within the past twelve months, such as a balance sheet, statement of operations, and bonding capacity. Evidence that the applicant has financial resources to start up and follow through on the project and to respond to damages in case of default, as shown by written verification of bonding capacity equal to or exceeding the amount of the project. The written verification must be submitted by a licensed surety company rated B+ or better in the current A.M. Best Guide and qualified to do business within the State of Michigan.
- (12) A warranty statement regarding labor and materials;
- (13) A list of all litigation and arbitrations currently pending and within the past five years, including an explanation of each. Evidence of satisfactory resolution of claims filed by or against the contractor asserted on projects of the same or similar size within the past five years. Any claim against the contractor shall be deemed to have been satisfactorily resolved if final judgment is rendered in favor of the contractor or any final judgment rendered against the contractor is satisfied within ninety days of the date the judgment became final;
- (14) Proof of insurance, including certificates of insurance naming the Township as an additional insured, confirming existence and the amount of coverage for liability, property damages, workers' compensation and any other insurances required by the proposed contract documents;
- (15) Evidence of compliance with the Fair Labor Standards Act, and with regulatory agencies such as the Environmental Protection Agency; the Michigan Department of Labor and Economic Growth, including the Occupational Safety and Health Administration, Workers' Compensation Agency, the Wage and Hour Division; and all other applicable State and Federal laws or agencies;
- (16) Evidence of any quality assurance program used by the contractor and the results of any such program on the contractor's previous projects;
- (17) Contractor's policy addressing drugs and alcohol use for employees working on the project site;
- (18) Documentation of whether the contractor provides health insurance and pension benefits to its employees;

(19) Assurance that all construction work for this project shall proceed economically, efficiently, continuously and without interruption.

(f) Effective Date. This section is effective for any solicitation of bids or proposals for construction projects issued by the Township on or after July 1, 2022.

4.9(I) PURCHASE ORDERS.

Where required the purchase order is the legal document used by the Township to initiate and control purchases. A purchase order shall be deemed a sufficient written contract within the meaning of this Section when the interests of the Township are protected by its use.

4.9(m) RESPONSIBILITY FOR INSPECTION AND ACCEPTANCE.

The responsibility for the inspection and acceptance of all materials, supplies or services purchased by the Township shall rest with the Department or other Administrative officer as may be designated by the Township Board, with respect to the particular commodity or service purchased.

4.9(n) PREVAILING WAGES ON TOWNSHIP PROJECTS.

(a) Projects requiring prevailing wages, in an initial amount of ten thousand dollars (\$ 10,000.00) or more for the performance of services or work for and on behalf of the Township, involving craftsmen, mechanics and laborers employed directly upon the site of the work, shall not be entered into, approved or executed unless a contract, agreement, understanding or arrangement provides and requires that all craftsmen, mechanics and laborers so employed are to be paid not less than the wages and fringe benefits prevailing in the locality of the building trades industry for corresponding classes of craftsmen, mechanics and laborers, as published as of the time of execution of the contract by the Michigan Department of Labor and Economic Growth, Wage and Hour Division. In addition, such contract, agreement, understanding or arrangement, shall provide that all subcontracts entered into by the contractor shall contain the provisions set forth in this subsection with respect to the contractor, and all such contracts, agreements, understandings or arrangements shall provide that all contractors and subcontractors engaged in the performance of services or work for the Township, to which this section applies, shall as required by this section, furnish payrolls to the Township if applicable.

(b) As used in this section:

- (1) "Craftsmen, mechanics and laborers" means all skilled and unskilled craftsmen, mechanics, laborers, workers, and apprentices, but not executive, administrative, professional, supervisory, office or custodial employees.
 - (2) "Construction work" means new construction, alterations, repair, installation, completion, demolition, or improvement of a Township-owned or Township-occupied building or other public works.
 - (3) "Fringe benefits" means compensation due an employee pursuant to a written contract or written policy for holiday, time off for sickness or injury, time off for personal reasons or vacation, bonuses, authorized expenses incurred during the course of employment, and contributions made on behalf of an employee.
 - (4) "Locality" means the Township of Hamburg or Livingston County.
 - (5) "Project" means construction work to be contracted by the Township by one or more contracts for which the Township establishes a single budget; or construction work to be contracted by the Township when the Township Board declares a contract or group of contracts to be a project. The Township Board shall make this declaration at the time of establishing the budget for the work or later, but before bidding the contracts for the construction work to be declared a project.
 - (6) "Wages" means all earnings of an employee whether determined on the basis of time, task, piece, commission, or other method of calculation for labor or services except those defined as fringe benefits.
- (c) All solicitations for construction projects shall contain the prevailing wages and fringe benefits in effect at the time the solicitation is issued. The wage scales to be paid shall be posted by the contractor in a prominent and easily accessible place at the work site. The Township Supervisor is hereby directed to see that the provisions of this section are contained in and complied with in all contracts, agreements, understandings or arrangements for work or services to be performed for the Township in accordance with this section.
- (d) If applicable, certified weekly payrolls covering the project contractor's and each subcontractor's work force shall be submitted to the Township Director of Accounting or the Township's designee. All payrolls submitted shall identify by name all employees working on the project contract during the weekly reporting period, their place of residency, their trade, their classification within that trade, and all wages and fringe benefits paid. Supervisory personnel must be reported as well as craftsmen, mechanics and laborers to ensure full Township income tax compliance. Failure to make any such report can result in the Township withholding payments on the contract until such reports are filed, at the Township's option. In addition,

each failure to file such payroll within seven (7) business days of the receipt of a notice from the Township of such failure, or any deliberate misrepresentation or false statement contained in such report, shall be deemed a violation of this section, punishable pursuant to guidelines established by the Township Board.

- (e) The Township Supervisor or his or her designee is hereby authorized to withhold payment to such project contractors or subcontractors who fail to pay prevailing wages and fringe benefits as required in subsection (a) hereof in such amounts as may be required to compensate such craftsmen, mechanics and laborers with the amount of money they should have received under subsection hereof.
- (f) This section shall not govern contracts subject to Federal Davis-Bacon requirements which contracts shall be enforced pursuant to Federal law.

4.9(o) EQUAL OPPORTUNITY AND FELONY RE-ENTRY EMPLOYMENT

- (a) The Township shall accept bids for goods and/or services in the amount of ten thousand dollars (\$10,000) or more from only those persons, partnerships or corporations that are committed to equal opportunity employment of all persons, consistent with Article I, Section 26 of the Michigan Constitution and which has adopted a hiring policy which does not preclude a person with a felony conviction from being considered for employment unless otherwise precluded by State or Federal law.
- (b) This section shall apply to all subcontractors holding subcontracts of ten thousand dollars (\$10,000) or more when such subcontractors are a direct and inclusive result of a Township purchase or contract of ten thousand dollars (\$10,000) or more.
- (c) Any contractor, subcontractor, supplier or vendor which is subject to this section and who employs fifteen or more employees, shall submit equal opportunity employment compliance documentation with their bid or proposal.
- (d) Any contractor, subcontractor, supplier or vendor which is subject to this section and who employs fifteen or more employees, shall submit in writing with its bid or proposal, its hiring policy which shall provide that a felony conviction is not an absolute bar to, or otherwise preclude, possible employment with the contractor, subcontractor, supplier or vendor.
- (e) Failure to submit the equal opportunity employment and felony conviction re-entry to employment policy documentation required by this section shall render the bid or proposal non-responsive.