



Purchasing power: Best practices in township procurement

Even in the midst of an economic downturn, all townships still need to make purchases, continue to offer services—both statutory and those expected by the community—and ensure that the township is getting the best value for its dollar and spending taxpayers' money responsibly.

While soliciting bids for township purchases is not obligatory unless specifically required by statute—and such statutes are rare—it is considered prudent for townships to make efforts to find the best quality and price for township projects, goods and services.

From contracting for assessing services to purchasing a new fire truck to construction of a new park pavilion, having the proper bidding and procurement knowledge and policies in place can help ensure proper handling of public money, allowing residents to remain confident that their elected township officials are taking the utmost care and consideration in the use of township funds.

Procurement—purchasing goods and services at the best cost, without sacrificing quality, timing, quantity, etc.—is an essential township function. Governmental reforms undertaken in the U.S. since the 1990s have focused on improving flexibility and efficiency in procuring goods and services. The following article aims to stimulate some discussion about

procurement, inspire some positive changes in township procurement practices and policy, and assist in educating Michigan township officials in these best practices. Officials can consider two crucial aspects of public procurement: the choice and use of different procurement methods, and the monitoring of performance after contracts have been awarded.

PROCUREMENT METHODS

There are several different methods townships can use to procure goods and services through contracts—each with its own strengths and weaknesses. Four commonly used methods are the competitive sealed bidding, competitive negotiations, the two-step method, and the sole source method.

Competitive sealed bidding

The competitive sealed bidding method is traditionally the method most townships use for obtaining bids for goods and services, and is the most basic and straightforward method available. Often referred to as an “invitation for bids” or “invitation to bid,” competitive sealed bidding requires local officials to develop a solicitation document with a comprehensive, detailed and accurate description of the service that is being sought—contracted out—including descriptions of work processes, performance schedules, quality standards, performance measures and goals, special terms and conditions, and other contractor requirements.

The township then issues a notice that is widely advertised and that briefly describes the township's needs, the solicitation schedule (including the deadline for submitting bids, date of any pre-bid conference, and when bids will be opened), how and where to obtain the solicitation document, and instructions on how to respond to the solicitation. Several weeks later (after any scheduled pre-bid conference, where officials can explain the project or review plans and specifications with prospective bidders), providers submit a sealed bid with a fixed total price or fixed unit prices.

These sealed bids are opened and announced in public, and are not negotiable.

The award then is made to the lowest responsible and responsive bidder. "Responsible" refers to a bidder's viability as a service provider and its ability to perform the service as requested, while "responsive" refers to a response by a bidder that addresses all of the requirements and specifications outlined in the solicitation document.

Advantages:

- The process local governments must follow when using competitive sealed bidding is transparent, which helps local officials to avoid questions about corruption or unfair contract awards.
- Competitive sealed bidding helps to ensure that the lowest price is obtained.

Disadvantages:

- Competitive sealed bidding requires considerable technical knowledge regarding the service, as well as time and resources to develop comprehensive, detailed and accurate specifications. For competitive sealed bidding to be successful, township officials must know precisely what they want in order to specify their requirements in considerable detail. Mistakes or omissions in the description of the contractual requirements can result in a level of performance or type of service being provided that is not what is needed.

In short, this method does not provide much flexibility once the solicitation process is underway. For these reasons, competitive sealed bidding typically is used for procuring goods and basic or commercial services, and not for more technically complex or highly customized services.

Competitive negotiations

The competitive negotiations method, often called a request for proposal (RFP), differs considerably from competitive sealed bidding. Competitive negotiations or RFPs typically are used when service quality or the qualifications of the provider are more important than price, when a local government wants to accomplish a task but cannot describe its requirements in great detail (due to the complexity of the task), or when local officials would like providers to propose the best way to accomplish the task.

The solicitation document for a competitive negotiations process contains many of the same kinds of information

What the statutes say ...

Attorney General Opinion 5599 of 1979 states that, in the absence of a statutory requirement, a municipality is not required to seek competitive bids before awarding a construction contract. However, municipal ordinances and some grant programs may require the use of competitive bidding procedures.

Although competitive bidding is not required by statute for the majority of township purchases, services and projects, it is considered a best practice—especially for large projects and long-term service contracts.

Several Michigan statutes, do, however, place requirements on bids for township projects.

Public Act 170 of 1933, the Bidders on Public Works Act, MCL 123.501, *et seq.*, authorizes a township to require any person proposing to bid on the construction, maintenance and/or repair of public works other than public buildings to submit a sworn statement at least 10 days before bids are opened setting forth his or her qualifications to satisfactorily carry out the work to be performed within the time specified for the project. The act allows the township to judge the bidder's qualifications based on his or her past performance on work of a similar nature, financial resources, and the construction equipment and facilities proposed for use on the project. Any person determined not to be a suitable person to bid on the proposed work must be notified of that determination in writing five days before bids are opened.

Under MCL 339.2011, a township may not engage in a "public work" project costing \$15,000 or more, unless the plans and specifications for the project are prepared by a licensed architect or licensed professional engineer, the land is surveyed by a licensed professional surveyor, and the work is supervised by either a licensed professional architect or engineer.

Under MCL 129.201, if the "public work" project exceeds \$50,000, the principal contractor is required to furnish both a performance bond and a payment bond to the township for the completion of the project in accordance with the plans and specifications, and for the payment of all subcontractors, laborers and material suppliers.



Field inspections and customer surveys are among the methods to monitor project performance after awarding a contract.

included in the solicitation document for a competitive sealed bidding process. However, the description of the township's requirements in an RFP is generally less comprehensive and detailed. Providers are instructed to submit a proposal that offers the best plan for meeting the township's needs.

Once all proposals are received, township officials review and evaluate them—based on the criteria in the solicitation document—and then develop a short list of providers with which to negotiate. Unlike competitive bidding, under competitive negotiation procedures, nearly all aspects of the contract, including quality and price, are negotiable. The township may negotiate with more than one provider until it reaches the best mutually satisfactory agreement with a provider. The final contract document, with all of its terms, conditions and technical specifications, is arrived at through this negotiation process.

Advantages:

- Flexibility is the greatest strength of this solicitation method. The competitive negotiations approach offers providers the opportunity to propose innovative methods for delivering a service. The parties also have the opportunity to negotiate many technical aspects of the work. This becomes important when contracting out for highly complex services, where it is difficult for the township to specify all or most contractual requirements before the solicitation document is issued. In addition, the township has the flexibility to award the contract to the provider submitting the best technical proposal, even if it did not respond with the lowest bid.

Disadvantages:

- The method is not as transparent as competitive sealed bidding, given all of the negotiations that typically take place after the proposals have been submitted.
- Competitive negotiations can result in a higher cost.

The two-step method

The two-step method is a hybrid method that combines elements of competitive sealed bidding with those of competitive negotiations. This method requires providers to submit a technical proposal *and* a sealed bid. The sealed bid may be submitted along with the technical proposal or after all of the technical proposals have been evaluated. Local officials then open up the technical proposals to evaluate them based on their technical merits and responsiveness to the requirements of the township, as spelled out in the solicitation document.

A short list of the best-qualified proposals is then selected and, if necessary, officials begin to negotiate the terms of the technical proposal with one or more of these providers. Finally, local officials open the sealed bids from the best-qualified proposals and select the lowest bidder.

This two- or multi-step method is most effective when services are moderately complex so that they cannot be specified in great detail, when the task performed by the contractor involves a moderately high level of uncertainty, or when quality is as important or more important than price.

Advantages:

- This method offers the township flexibility to negotiate elements of the technical proposal.
- The preliminary evaluation phase helps to ensure the township contracts with a provider that can deliver a high quality of service.
- The sealed bidding phase lends transparency to the selection process and helps to reduce the cost of procuring services, since the lowest bidder among the best-qualified proposals is selected for the contract.

Disadvantages:

- This method works well only if the township has the knowledge and ability to evaluate the technical proposals.
- Qualified proposals must be roughly equal in the level of service and amount of resources required to implement the contract so that they then can be compared in terms of price to select the winner.

Sole source method

The sole source method is generally the least preferred method for procurement, as it limits competition and transparency. A township may use this method when there is only one provider that can satisfy its requirements—which is often the case when the township purchases very specialized services or services that involve advanced or innovative technologies. Township boards that decide to use sole source contracting

should negotiate with the sole provider to ensure that the price is fair and to arrive at a set of contractual requirements that is acceptable to both parties. A written justification by local officials is strongly recommended, including justification for forgoing the competitive procurement process, or why the provider chosen is the only one that can satisfy the township's requirements, or both, if sole source contracting is used.

Advantage:

- This method may be the only option when purchasing specialized services.

Disadvantage:

- Competition and transparency are compromised.

ESTABLISHING PERFORMANCE STANDARDS

In procurement, most of the critical work is done after a contract is awarded and the work of monitoring the contractor's performance begins. Contract monitoring helps determine whether the contractor is performing according to the agreement and not in an inappropriate or opportunistic manner. Contract monitoring also helps local officials to detect problems or fluctuations in performance that might be indicative of more serious problems to come. It can also improve decision-making about the goals of service delivery and the means to achieve them—including whether to contract for a service in the future and what to require in upcoming contracts.

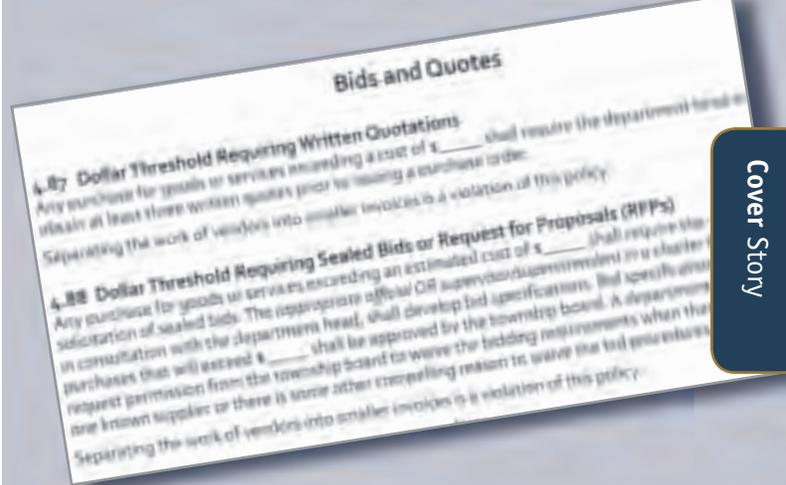
While, for certain types of projects, performance monitoring may be handled by the engineering or architectural firm with which the township has contracted, it is still important for township officials to understand the process and, in some cases, undertake monitoring tasks themselves, or assign such tasks to a staff person or department head.

Contract monitoring can be both broad in scope and high in frequency. That is, local officials should regularly monitor different dimensions of performance simultaneously using a variety of monitoring tools. Common dimensions of performance that are monitored include:

- Quality
- Cost
- Timeliness
- Customer satisfaction

While monitoring can impose some additional costs, officials may wish to monitor at least some of these dimensions of performance, as they may be critical for judging the success of the contract.

Once the essential dimensions of performance success have been identified, it is necessary to develop performance measures for each of the dimensions. A performance measure is an indicator that tells something important about how the contractor is performing or behaving. Single measures may be inadequate for telling decision-makers much about a contractor's performance in terms of cost, timeliness or any of



Purchasing policies can ensure value and fairness

Formalized purchasing policies, developed by the township board, can help ensure that all purchases of goods and services provide the best value for the township, and that all vendors are treated fairly and impartially. Policies delineate who can make purchases—authority may vary by amount of the purchase—and outline how requirements change as the cost of the item, service or project increases. While Michigan law does not mandate written policy on procurement, it does include some minimal requirements for purchases made for public works (*see sidebar article on page 19*).

Depending on cost, the township's purchasing systems can include formalized processes to select vendors: competitive bidding, quotations or small purchase orders (blankets). Exceptions are generally granted to emergency purchases; any policy should define approval methods for the "emergency" and the method to report the exception to the township board.

Many communities have a high dollar threshold for purchasing through competitive bids or RFPs (requests for proposal), a mid-term policy for other purchases, and a small purchase policy, where department heads and employees can accomplish small purchases through "blanket orders," which are purchase orders awarded to vendors on an annual basis to accomplish small dollar transactions.

For example, a township may have these thresholds:

- Formal competitive bid—Transactions exceeding \$100,000
- Quotations—Transactions less than \$100,000, but more than \$5,000
- Small purchases—Transactions under \$5,000

Learn more about township purchasing and bidding policies in MTA's latest publication, Policy Matters! Using Board & Administrative Policies to Manage Your Township.

Visit www.michigantownships.org/books.asp or call (517) 321-6467 to order your copy today!

What is QBS?

Township boards may use a “qualifications based selection” (QBS) approach to selecting consultants, including architects and engineers. QBS is a proven process in which a design professional is selected based on experience and ability, not price, although price is an important factor in the process.

The QBS Coalition (www.qbs-mi.org) was formed in response to Michigan House Concurrent Resolution No. 206 of June 1987, which urges state and local governments to select services of design professionals based on qualifications. The federal government has been selecting consultants this way since the 1972 enactment of Public Law 92-582, better known as the Brooks Selection Bill.

the other dimensions. A particular performance measure could convey valuable information to one stakeholder (board member, staff, or citizen) but not to others, who might prefer a different measure or set of measures. More than one measure can be used for each dimension of performance to help ensure that the data collected are adequate for assessing the contractor’s performance.

Each performance measure must be tied to a performance standard. Standards should be set sufficiently high to ensure adequate performance, but not so high that they seem unattainable and discourage the contractor from performing well on the contract.

Finally, the performance measurement system for monitoring the contract must clearly describe the consequences—both of failing to meet performance standards and of exceeding performance standards. Will penalties be imposed for failure to meet a performance standard? How many times must a contractor fail to meet a performance standard before a penalty is imposed? What will be the penalty? Also, will the contractor be rewarded for meeting or exceeding a performance standard? How often must the contractor meet or exceed a performance standard before a reward is offered? What will be the reward?

All of these questions should be addressed in the contract document. Officials must be judicious in their monitoring and enforcement of a contract, offering warnings to the contractor, giving the contractor the opportunity to correct a performance shortfall, and imposing penalties only for serious errors or in response to a pattern of poor performance. Frequent penalties can produce animosity and distrust, which ultimately can damage an effective working relationship with the contractor. Consider offering rewards for good performance.

MONITORING PERFORMANCE

Once performance measures and standards have been developed, officials can use a variety of monitoring tools and techniques to collect and analyze the performance data. Some tools and procedures, such as field inspections of work in progress, are more preventive measures that help to identify problems at an early stage. Others, such as complaint monitoring, are more reactive measures that yield information about performance only *after* a problem has occurred. Effective performance monitoring typically requires using several of these monitoring tools in conjunction with one another, and at frequent intervals.

Field inspections

A commonly used method for monitoring contracts, field inspections can be conducted either while work is in progress or after the work has been completed. Field inspections of work in progress can be particularly useful when a township is concerned about the manner in which the work is being performed and about the methods or materials that are being used. A township official or employee can work closely with the contractor and perform regular field inspections by surveying the work on site and assessing its quality based on one or more performance measures.

Field inspections can either be announced or unannounced. Inspections of work in progress and work completed should be performed, as well as in response to any serious complaint or a pattern of complaints received by the township.

Complaint monitoring systems

Complaint monitoring systems are used as a means for monitoring contractor performance. For many small contracts performing routine tasks, complaints monitoring is the only monitoring approach used by many local governments, although this practice is not recommended. Complaints may be filed by citizens receiving the service, or by departments that receive the service or that work closely with the contractor.

The manner in which townships handle complaints can range from a very formal system, with rules and procedures in place for filing complaints and following up on them, to a very informal, ad hoc process. The township official, staff person or

department responsible for monitoring the contract should be kept informed of all complaints, keeping a log of all the serious complaints that have been filed, and periodically following up with the contractor to determine whether any corrective action has been taken.

Contractor reports

The township may also include in its contract a requirement that the provider make regular—weekly or monthly—reports to the board or designated department head. These reports describe the tasks performed and status of work in progress. Such reports represent the contractor’s formal statement about its compliance with the contract.

By closely examining contractor reports, board members or staff can gather a wealth of information to monitor performance. Collecting data for these reports and preparing them can impose an added financial burden on the contractor, and ultimately on the township. Therefore, contractors should be asked to report only essential information. The information expected in such reports should be clearly delineated in both the original solicitation document and the contract.

Surveys

Townships may use periodic “customer” surveys—of citizens and/or employees—to collect various types of performance data, including data on outcomes and customer satisfaction. Surveys can be conducted using a “convenience sample” of individuals who can be easily and quickly contacted, for example, everyone who received a particular service on a given day. A more rigorous survey of a broader spectrum of residents or employees can allow decision-makers to make generalizations with greater certainty and precision than with a convenience sample; however, larger surveys can be more costly and difficult to design and implement.

Local officials can learn much about complaints and performance shortfalls from a very basic survey. Conducting even a modest survey of citizens who receive a service or employees who work with a contractor can yield valuable information to supplement data collected from other sources such as contractor records or field inspections.

A MULTI-FACETED PROCESS

Procurement methods and performance monitoring are just two crucial aspects of public procurement for Michigan townships. There are many other facets to the procurement process that are also essential for success, including planning for acquisitions, developing solicitation documents and scope of work, evaluating bids and proposals, drafting contract documents, resolving contract disputes, and managing the transition between service providers.

By applying knowledge and adopting policies for township procurement, officials can ensure they are doing the best job possible for their community and residents. ■

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