

The regular meeting of the Midland County Road Commission was called to order by Chairman Atton on Thursday, July 23, 2020 at 9:00 a.m. via conference call due to COVID-19 restrictions.

Present: Mike Atton, Chairman
Al Kloha, Vice Chairman
Jim Hyatt, Commission Member
Jon Myers, Managing Director
Brenda Gordert, Finance Director
Russ Inman, Design Engineer
Ashley Rockefeller, GIS Technician
Jeff Brown, Construction Technician

Absent: Art Buck, Superintendent
Ben Mead, Facilities Manager

Public Present: Jeanette Snyder, Midland County Board of Commissioners; Maria Sandow, Larkin Township Supervisor; Laura Dawson, Lee Township Clerk.

The Pledge of Allegiance was said

Additions to Agenda:

New Business: TAP Grant Smith Crossing Bridge modification

Approval of Minutes:

Moved by Commissioner Kloha and seconded by Commissioner Hyatt to approve the minutes of the July 9, 2020 meeting.

Roll Call.

Yeas: Commissioners Hyatt, Atton, Kloha

Nays: None

Motion Carried

Public Comment:

None

Approval of Open Accounts:

The pre-pay for July 23, 2020 was discussed.

Moved by Commissioner Hyatt and seconded by Commissioner Kloha to approve payment for the payroll and open accounts for July 23, 2020 in the amount of \$494,646.59.

Roll Call.

Yeas: Commissioners Atton, Kloha, Hyatt

Nays: None

Motion Carried

Flood Update:

Jon stated he met with the DDIR consultant at the Curtis Road bridge and he hopes to have a meeting with FHWA next week to review the project. Curtis Road bridge is our number one priority for FHWA and Poseyville Road will be next. The filing deadline for FEMA projects is August 8th.

Correspondence and Items of Information:

East Central Council meeting has been canceled due to COVID-19. The group is hoping to meet as scheduled in October.

Permit listing was reviewed

Unfinished Business:

A draft of the Procurement Policy and Procedures for Emergencies and Disasters related to FEMA reimbursement was presented for review on July 9th. Jon recommends adopting policy as presented:

SUBJECT: PROCUREMENT POLICIES AND PROCEDURES FOR EMERGENCIES AND DISASTERS

POLICIES:

1. Those closely involved in the establishment of the written selection criteria and selection shall have no potential conflicts of interest with any of the individuals, firms, or agencies under review (e.g., family relationships, close friendships, business dealings). Any person who might potentially receive benefits from grant-assisted activities may not participate in the decision-making process. Nepotism and conflict of interest regulations can be found in the Michigan Public Acts, including but not limited to M.C.L. 15.321 et. seq., and M.C.L. 46.30, and 2 CFR 200.318(c)(1).
2. All procurement transactions will be conducted in a manner providing full and open competition, unless specifically authorized. As part of this policy of full and open competition, and to the extent consistent with the circumstances of the procurement transaction, the following principles shall apply:
 - a. No unreasonable requirements are placed on firms in order for them to qualify.
 - b. No unnecessary experience or excessive bonding required.
 - c. Noncompetitive pricing practices between firms or between affiliated companies is disallowed.
 - d. Noncompetitive contracts are disallowed.
 - e. No Organizational Conflicts of Interest (“OCI”) are permitted. An OCI is a situation where a bidder has an unfair competitive advantage due to work performed on other contracts or grants. A vendor that intends to respond to the Request for Proposals, Request for Qualifications and/or Invitation for Bid may not participate in the development or drafting of specifications, requirements, statements of work, or invitations for bids or requests for proposals, including, but not limited to, the development of the scoring criteria, the final selection of firms to be contacted, or the scoring of proposals.
 - f. If a “brand name” product is specified, an equal or like product is acceptable, unless the “brand name” requirement is justified, in writing, by the Managing Director. There shall be a presumption against “brand name” requirements.
2. All procurement transactions shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Those descriptions must be based on the Road Commission’s actual requirements.
3. All procurement transactions shall identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. To the extent possible, the weights given to evaluation factors shall be listed. If weights are not listed, all evaluation factors shall be deemed to be weighted equally. Price must be a factor in every evaluation; the relative weight given to the price evaluation factor should be clearly set forth.
4. Award may be made on either a “low price” or a “best value” basis. “Best value” shall be based on a combination of technical and other factors, and price. Best value procurements should clearly state in the solicitation documents that award may be made to other than the lowest priced offered. In all procurements, the basis of award should be clearly described.
5. If the Road Commission uses a prequalified list when acquiring goods or services, the Road Commission will ensure the list is updated regularly, provides enough qualified sources to ensure maximum open and free competition, and provides a reasonable and continual

process for vendors to be added to the list.

6. All procurement transactions must conform to all applicable local, state, and federal laws and regulations.
7. Small and minority businesses, women's business enterprises, and labor surplus area firms are encouraged to participate. If the awarded vendor is a prime contractor and may use subcontractors, the following affirmative steps are required of the prime contractor:
 - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

PROCEDURES:

Procurement Cycle Steps

Need Defined - Request and specifications are submitted to the Managing Director. Managing Director reviews request and specifications for unnecessary or duplicative items in accordance with 2 CFR 200.318 (d).

Procurement Method Selected - Based on type and estimated cost of good/service, Managing Director determines the procurement method that will result in a best value acquisition for the Road Commission.

Contract Cost and Price - A cost or price analysis must be conducted in connection with every procurement action more than the federal Simplified Acquisition Threshold including contract modifications (2 CFR 200.323). The uses of cost or price analysis methods other than those described in 2 CFR 200.323 must be approved in writing, in advance, by the Managing Director. The purpose of the cost or price analysis is to ensure that the price paid is fair and reasonable.

The simplified acquisition threshold for federal procurement actions is currently set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908 as \$250,000, but this threshold is periodically adjusted for inflation. 2 C.F.R. §200.88

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, an independent estimate must be made before receiving bids or proposals. 2 C.F.R. § 200.323(a).

Cost analysis is the evaluation of the separate elements (e.g., labor, materials, etc.) that make up a contractor's total cost proposal or price (for both new contracts and modifications) to determine if they are allowable, directed related to the requirement and ultimately, reasonable.

Price analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., lump sum) without analyzing any of the separate cost elements of which it is composed. Price

analysis techniques include comparisons to prices paid for the same or similar products or services within a reasonable time frame; comparisons to published catalogs or price lists; comparisons to prices paid by other jurisdictions or organizations for the same or similar products or services; and other reasonable methods of comparing prices. Full and open competition is presumed to result in a fair and reasonable price.

Solicitation - Midland County Road Commission creates the appropriate solicitation document, with terms and conditions and evaluation criteria clearly defined, and notifies vendor sources for an informal or formal bid process.

Receipt of Bids and Responses to Solicitation - Vendors submit their response to the solicitation by the deadline specified in the solicitation.

Evaluation and Awards - Midland County Road Commission reviews the responses from vendors, determines compliance with the solicitation and makes an award recommendation based on the pre-defined evaluation criteria.

Negotiation of Profit - Federal Guidelines require negotiations of profit as a separate element of the price for each contract and modification in which there is no price competition and in all cases where cost analysis must be performed. 2 C.F.R. § 200.323(b)

The Midland County Road Commission will use one of the following five methods of procurement described at 2 CFR §200.320: (1) procurement by micro-purchases (the current federal micro-purchase threshold is \$10,000.00), (2) procurement by small purchase procedures, (3) procurement by sealed bids, (4) procurement by competitive proposals, or (5) procurement by noncompetitive proposals.

1. Simplified Acquisition Procedures for Purchases Below Micro-Purchase Threshold

For purposes of this section, the micro-purchase threshold is \$10,000.00.

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. To the extent practicable, the Road Commission must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Road Commission considers the price to be reasonable.

2. Small Purchase

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that cost less than the Federal Simplified Acquisition Threshold (currently \$250,000.00). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. "Adequate number" may vary depending on the type of good or service being procured, the number of available sources, and the size of the small purchase.

For service contracts that are under the small purchase threshold and do not fall under professional services, the Road Commission may receive quotes and award the contract to any reasonable and responsible bidder. The Road Commission has the final authority to award contracts.

3. Construction and Materials Contracts (Sealed Bids)

In order for sealed bidding to be feasible, the following conditions should be present:

- a. A complete, adequate, and realistic specification or purchase description is available;
- b. Two or more responsible bidders are willing and able to compete effectively for the business; and

- c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- a. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, and the invitation for bids must be publicly advertised;
- b. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- c. All bids will be opened at the time and place prescribed in the invitation for bids, and the bids must be opened publicly;
- d. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- e. Any or all bids may be rejected if there is a sound documented reason.

4. Professional Services Contracts (Competitive Proposals)

This method is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- a. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- b. Proposals must be solicited from an adequate number of qualified sources;
- c. The Road Commission must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- d. Contracts must be awarded to the responsible firm on the basis set for the in the solicitation. Generally, the basis of award should be to award to the firm whose proposal is most advantageous to the program, with price and other factors considered; and
- e. The Road Commission may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

5. Noncompetitive Proposals

This method may be used only when one or more of the following circumstances apply, and the circumstances must be documented, in writing, in advance of any noncompetitive procurement:

- a. The item is available only from a single source;
- b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request; or
- d. After solicitation of a number of sources, competition is determined inadequate.

These Policies and Procedures are implemented through the Midland County Road Commission Managing Director, Finance Director, and the Board of Commissioners.

Roll Call.

Yeas: Commissioners Hyatt, Atton, Kloha

Nays: None

Motion Carried

New Business:

Discussion was held regarding Public Act 202 of 2017 Retirement Health Benefit Systems Report Form and the Protecting Local Government Retirement and Benefits Act Corrective Action Plan.

Moved by Commissioner Hyatt and second by Commissioner Kloha to offer the following resolution:

WHEREAS, the Midland County Road Commission has made changes eliminating retiree healthcare for new hires effective December 1, 2014.

WHEREAS, the Midland County Road Commission has established a qualifying trust and has been making additional contributions annually to the trust since 2009.

WHEREAS, the Midland County Road Commission is determinedly working on a plan to become 40% funded by 2021.

THEREFORE BE IT RESOLVED, that the Board of County Road Commissioners, County of Midland, approve the Protecting Local Government Retirement and Benefits Act Corrective Action Plan for Retirement Health Benefit Systems.

Roll Call.

Yeas: Commissioners Atton, Kloha, Hyatt

Nays: None

Resolution Passed

Discussion was held on Smiths Crossing Historic Bridge TAP Grant resolution adopted on September 5, 2019. Original resolution named Terry Palmer as acting agent of the Midland County Road Commission.

Moved by Commissioner Hyatt and seconded by Commissioner Kloha to amend resolution and name Jonathan Myers as acting agent of the Midland County Road Commission.

WHEREAS, the Midland County Road Commission (MCRC) in cooperation with the Great Lakes Bay Regional Trail (GLBRT) Committee is desirous of rehabilitating the Smith's Crossing Historic Bridge, as part of and an extension to the GLBRT, with a MDOT Transportation Alternatives Program (TAP) grant, and

WHEREAS, the trail expansion is consistent with the goals and objectives of the MCRC, the GLBRT Regional Trail Plan, the Midland County Five Year Park and Recreation Plan, and Midland Area Transportation (MATS) long range transportation study, and

WHEREAS, the proposed project is part of the Iron Belle Trail, and

WHEREAS, the MCRC, as the Act 51 agency, will sponsor the TAP grant application, and

WHEREAS, Jonathan Myers, the Managing Director of the MCRC, is the agent/representative authorized to act on behalf of the applicant agency during project development and to sign a project agreement (contract) upon receipt of a grant funding award, and

WHEREAS, the MCRC commits to owning/operating the constructed facility and, in cooperation with the GLBRT Committee, will provide an on-going maintenance plan for the constructed facilities in perpetuity, and

WHEREAS, a public hearing was held on September 5, 2019 to allow the citizens to provide input on the proposed project, and

WHEREAS, the MCRC has received numerous letters of support from residents, businesses and adjoining communities for the proposed project, and

WHEREAS, MCRC expects the financial level of support of the project in the amount of \$1,241,030.00 (35%) matching funds (participating costs), and

WHEREAS, the MCRC also expects the financial level of support for the project in the amount of \$738,200.00 for the non-participating funds of the project which will fund the required survey, preliminary engineering, construction engineering and staking and the roadway improvements, and

WHEREAS, the MCRC is working with the Iron Belle Trail Foundation, the GLBRT Committee and the Midland Community Foundation to raise funds from various foundations for the local match (\$1,241,030.00) and the Non-Participating (\$738,200.00) costs of the project, for a total local financial commitment of \$1,979,230.00:

NOW THEREFORE BE IT RESOLVED, that the MCRC hereby authorizes submission of a MDOT TAP application requesting \$2,304,770.00 (65%) and further resolves to make available its expected level of financial support in the 2021 fiscal year.

Roll Call.

Yeas: Commissioners Hyatt, Atton Kloha

Nays: None

Resolution Passed

Miscellaneous:

None

Staff Reports:

Jon stated the Eastman Road federal aid project has started. The contractor is working on the sewers on the east side. Traffic control measures are in place.

The repairs on the 13 projects from the 2017 flood are in progress. Shaffer Road is complete and the contractor is working on 9 Mile Road and Saginaw Road.

The rural paving is complete with pavement marking except for 3rd Street in Coleman due to washboarding. The contractor has performed a micro-mill to smooth the surface and the Road Commission is taking bids for a micro-surfacing treatment.

Jon stated construction on the Meridian Road bridge over the Bullock Creek started last week, crews are working on the north side abutment. Bridge is scheduled to be open by Labor Day. The millage brochure will be going out in the mail next week.

He has been meeting with the Spicer Group on the DDIR's for the flood projects.

Jon has developed a draft of the User Agreement for DTE Wind Farms that will cover the roads if damages occur.

Russ stated he met with MDOT and an Edenville Township resident regarding the M30 paving project. The contractor is hauling on the local roads and causing damages. MDOT is working with contractor on repairs.

Russ stated Jon did an interview with TV 9 & 10 news to discuss flood repairs at the Curtis Road Bridge.

Russ has been attending many meetings and webinars regarding FEMA and FHWA flood funding. He stated the millage brochure references the extensive flood damages showing residents what a portion of the millage money could be used for.

Ashley stated the new county road maps have been printed and are ready for distribution.

Meeting was adjourned by Commissioner Atton at 9:40 a.m. until Thursday, August 6, 2020.

Brenda Gordert, Finance Director

Mike Atton, Chairman