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Heidi Fought, Executive Director

Ohio Township Association

6500 Taylor Road, Suite A

Blacklick, OH 43004

RE: American Rescue Plan Funds

Dear Heidi:

This letter follows your conversation with Greg Beck relating to the procurement policies and forms we have been providing to clients relating to the American Rescue Plan Act funds. As most Townships do not receive federal funding, Townships are not generally familiar with federal procurement standards, which are applicable to all ARPA expenditures. Compliance with federal procurement requirements was not an issue under the CARES Act because everyone was under a state of emergency, which is one of the exceptions to the federal guidelines. Our firm similarly was not familiar with federal procurement standards, and it soon became apparent that we would need to be fluent in that aspect in order to properly advise the Townships we represent, as well as other entities. For that reason, last month Attorney Jim Mathews and I, along with one of our associates, Adam Ares, spent a considerable amount of time reviewing the federal procurement standards and determining best practices.

The Final Rule was clear that all funds would be subject to federal procurement standards, which are referred to as the Uniform Guidance (“UG”) and generally set forth in 2 C.F.R. Part 200. Notably, however, the UG does not only contain requirements for when funds are spent, but the UG also has requirements for recipients to have in place prior to the expenditure of any funds. The UG specifically requires any recipient to have “internal controls” in place (2 C.F.R. 200.303), documented procurement policies (2. C.F.R. 200.318(a)), and written standards of conduct relating to conflicts of interest (2 C.F.R. 200.318(c)(1)). The entity is also required to maintain all records necessary to document the detail involved in the procurement. (2 C.F.R. 200.318(i)).

Attorney Mathews and I reviewed all of 2 C.F.R. part 200, as well as accompanying provisions, and drafted comprehensive procurement policy, a copy of which is attached. The UG are created and monitored by the Office of Management and Budget (OMB), which significantly revamped the UG in 2020. As such, we were unable to rely on many other procurement policies or trainings, as we had to review all the new provisions and determine which had been updated, added, or removed. Additionally, although federal funds are governed by the UG, recipients are always required to comply with the most stringent regulation. Therefore, if Ohio has a more stringent procurement requirement than federal law, then Ohio law governs. For that reason, Attorney Ares and I drafted a spreadsheet to compare all the UG requirements to state of Ohio procurement requirements for Townships. After comparing all applicable UG requirements to Ohio requirements, Attorney Mathews and I determined when the UG controls and when Ohio law controls. This is most significant in purchases between $50,000 and $250,000, as well as when Township attempt to utilize cooperative purchasing programs. As you are aware, the Ohio Department of Administrative Services (DAS) provides a cooperative purchasing program, which is how most Township purchase vehicles or other machinery. As explained below, R.C. 9.48, which exempts Townships from engaging in competitive bidding when items are purchased from the DAS program will not be applicable, and therefore Townships will need to obtain quotes for vehicles or machinery that cost more than $50,000, but less than $250,000. For any purchase over $250,000, competitive bidding is required, regardless of whether it is available under the DAS program.

**Micro-purchase**

Under the UG, a micro-purchase is a purchase below a federally determined threshold for which bidding, or obtaining quotes, is not required. The previous micro-purchase threshold was $3,500. In 2020, it was raised to $10,000. In 2020, OMB also added a provision to 200.320(a)(1)(iv)(C) which allows a non-Federal entity may self-certify a micro-purchase threshold of up to $50,000 on an annual basis if: (1) it maintains documentation to be made available to a federal awarding agency or pass-through entity and auditors in accordance with 2 C.F.R. 200.334, and (2) within the self-certification it:

(1) includes a justification for the threshold;

(2) clearly identifies the threshold; and

(3) includes supporting documentation of any of the following:

(A) a qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

(B) an annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or

(C) for public institutions, a higher threshold consistent with State law.

Under Ohio law, most Township procurements do not require bidding unless the cost exceeds $50,000. A notable exception is contracts for road repairs and maintenance, which has a $45,000 threshold. We have advised our clients that it is in their interest to self-certify the micro-purchase threshold to $50,000, and have prepared a resolution for that purpose, attached.

Importantly, the resolution that we prepared specifically addresses all Ohio statutes which address Township bidding. Several of our clients have asked if they can add other categories to increase the micro-purchase threshold. Our response has been no, as the resolution provides the only applicable statutes, and thus contain the only instances in which the threshold can be raised to be consistent with Ohio law.

**Small Purchases**

The next level of procurement under the UG are “small purchases”, which are purchases which exceed the micro-purchase threshold ($10,000) but are below the simple-acquisition threshold ($250,000). For small purchases, the Township is required to solicit an adequate number of bids (no less than 2) for every purchase and must award to the lowest bidder, consistent with 2 C.F.R. 200.320(a)(2). Therefore, without self-certification, the Township will be required to obtain no less than two bids for any purchase exceeding $10,000.00.

It is at this level that cooperative purchasing becomes relevant. Again, as you know, Townships are not required to publicly bid purchases of machinery or other items if they are a member of a cooperative purchasing agency, in which case the entity can simply purchase from that program regardless of the value. Here, Townships would still need to obtain a quote from at least one other source in order to comply with the UG. This is not, however, applicable if the Township enters into an agreement with another government entity for the purchase, or otherwise “piggybacks” off the negotiated price from another government entity.

**Large Purchases**

The third tier of procurement are large purchases, which is any purchase that exceeds $250,000. Those purchases require sealed bidding or competitive bidding depending on the nature of the purchase. Sealed bidding requires advertising of the specific project, as well the date and time that the bids will be opened. Competitive bidding requires a similar process, although the procedures are slightly different. Both require a cost or price analysis, which is a little complicated and confusing, but necessary for any large procurements. Finally, for purchases over the $250,000 threshold, the Townships cannot rely on cooperative purchasing, unless it is an inter-government purchase.

**Additional Requirements**

The UG requires all contracts relating to expenditures of federal funds to include a series of provisions, such as a clause guaranteeing that the contractor abides by the Equal Employment Opportunity Act and the Contract Work Hours and Safety Standards Act, as set forth in the attached policy. To assist in compliance with these requirements, we prepared a contract addendum which should be added to all contracts entered into by the Township, attached.

Finally, an entity in North Carolina prepared an ARPA request form to assist entities in evaluating how to classify and report ARPA expenditures. A few of the columns were off, or otherwise not consistent with our reading of the Final Rule, so we modified the form and have made it available to some larger entities that are dealing with larger requests. The form assists in determining how to categorize the expenditure and will be most beneficial for reporting purposes, attached.

As always, if you have any questions or concerns on this topic, please feel free to contact me or Greg Beck at any time.

Very truly yours,

*s/Tonya J. Rogers*

Tonya J. Rogers

Enc.

-Procurement Policy

-Contract Addendum

-Procurement Chart

-Self-certification Resolution

-ARPA Request Form