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INCORPORATED f/k/a SEVEN	:	BERKS, PENNSYLVANIA
DEVELOPMENT GROUP, LLC.,	:	
	:	
Plaintiff,	:	CIVIL ACTION – LAW
	:	
v.	:	
	:	DOCKET NO. 25-12104
EXETER TOWNSHIP,	:	
	:	
Defendant.	:	

**BRIEF IN SUPPORT OF EXETER'S TOWNSHIP'S
PRELIMINARY OBJECTIONS TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant Exeter Township (the "Township" or "Defendant"), by and through its undersigned counsel, MacMain Leinhauser PC, hereby submits this Brief in Support of the Township's Preliminary Objections to Plaintiff's Amended Complaint seeking dismissal of all claims asserted against the Township pursuant to Pa.R.C.P. 1028(a)(4) and Pa.R.C.P. 1028(a)(5) of the Pennsylvania Rules of Civil Procedure, and in support thereof avers as follows:

I. INTRODUCTION/PROCEDURAL HISTORY

On July 21, 2025, Plaintiff filed a Praecipe for a Writ of Summons in this matter against the Township. In response to the Praecipe for a Writ of Summons, the Township filed a Praecipe for Rule to File Complaint, along with a proposed order to compel Plaintiff to file a Complaint on August 22, 2025. On August 25, 2025, the Office of the Prothonotary issued a Rule to File Complaint, requiring Plaintiff to file a Complaint within twenty (20) days. Plaintiff filed a Civil Action Complaint in this matter (the "Complaint") on August 22, 2025, alleging two (2) separate

Counts: (1) Count I – Violation Act of May 1, 1933, P.L. 103, as reenacted and amended, 53 P.S. § 66503 (“53 P.S. § 66503”) ; and (2) Count II – Negligence.

On October 2, 2025, the Township filed Preliminary Objections (the “First Preliminary Objections”) as to the Complaint seeking dismissal of the Complaint in its entirety pursuant to Pa.R.C.P 1028(a)(4) and Pa.R.C.P 1028(a)(5) of the Pennsylvania Rules of Civil Procedure. *See* the First Preliminary Objections, attached hereto as Exhibit “A”, at ¶ 82. Plaintiff filed the Amended Complaint on October 16, 2025, thus rendering both the Complaint and First Preliminary Objections moot. *See* the Amended Complaint, attached hereto as Exhibit “B.”

Plaintiff’s claims against the Township should be dismissed due to legal insufficiency under Pa.R.C.P 1028(a)(4) and lack of standing under Pa.R.C.P 1028(a)(5).¹ Plaintiff’s Count I is legally insufficient for: (1) Plaintiff fails to plead any facts which would allow a reader to infer that the Township violated 53 P.S. § 66503; and (2) there does not exist a private cause of action under 53 P.S. § 66503. Furthermore, even if Plaintiff’s Count I was legally sufficient, Plaintiff’s vague allegation of general negligence as alleged against the Township is legally insufficient for: (1) the Township is immune under the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa.C.S. § 8542(b); and (2) Plaintiff fails to allege a duty owed by the Township towards the Plaintiff which the Township breached. Plaintiff’s claims should be dismissed with prejudice.

II. RELEVANT FACTUAL ALLEGATIONS²

Plaintiff alleges that that in 2023, the Township put the property located at 3925 Perkiomen Avenue, Township of Exeter, Berks County, Pennsylvania, identified as Property ID

¹ The Township limits its objection pertaining to lack of standing under Pa.R.C.P 1028(a)(5) to Plaintiff’s Count I only.

² Plaintiff includes multiple Exhibits attached to and support of the Amended Complaint. To the extent that the allegations contained within the Amended Complaint accurately reflect the nature of the attachments, the Township directly addresses Plaintiff’s allegations and provides reference to the relevant Plaintiff Exhibit. Where Plaintiff’s allegations appear divergent from the content of one or more of Plaintiff’s Exhibits, this is noted and addressed by the Township.

43532614435099 (the “Property”), out for public bid for prospective buyers to purchase. *See* the Amended Complaint at ¶ 8. Plaintiff further alleges that the bidding process was publicly advertised in the Reading Eagle on May 3, 2023 (the “5/3/23 Advertisement”), as evidenced within Plaintiff’s Exhibit F, and that the 5/3/23 Advertisement stated that the time for bids to be submitted and accepted would end at 12:30 p.m. on June 8, 2023, and that the minimum opening bidding price for the Property was \$3 million dollars. *See* the Amended Complaint at ¶ 10; *see also* Plaintiff’s Exhibit F at 38.

The 5/3/23 Advertisement, as evidenced by Plaintiff’s attachment, also provided other requirements for all bids on the Property, including, but not limited to: (1) all bids must be received at the Exeter Township Municipal Building; (2) all bids must be sealed and plainly marked, “Attention: Township Manager, Exeter Township Property Bid”; and (3) all bids must “be accompanied by a certified bank or cashier’s check payable to Exeter Township in an amount not less than ten (10%) of the amount of the bid.” *See* Plaintiff’s Exhibit F at 38. Additionally, the 5/3/23 Advertisement stated that “[t]he Township reserves the right to reject any and all bids.” *See Id.*

Plaintiff alleges, per the May 8, 2023, Meeting Minutes (the “5/8/25 Minutes”)³ of the Township Board of Supervisors Meeting on May 8, 2023, that the Township Board of Supervisors (the “Board”) extended the deadline to submit bids to purchase the property from June 8, 2023, to July 6, 2023. *See* the Amended Complaint at ¶ 11. As evidenced in by Plaintiff’s attachments, on May 22, 2023, the Township again ran an advertisement in the Reading Eagle Newspaper (the “5/22/23 Advertisement”) which: (1) amended the bidding period for the Property by extending the deadline for bids to be made on the Property to “no later than 12:30

³ While referenced in the Amended Complaint, Plaintiff does not attach the 5/8/25 Minutes as an exhibit.

pm on July 6, 2023”; (2) included all aforementioned requirements that were in the 5/3/23 Advertisement; and (3) again stated that “[t]he Township reserves the right to reject any and all bids.” *See* Plaintiff’s Exhibit F at 67-69.

Plaintiff alleges that the Meeting Minutes from a July 10, 2023, meeting of the Board (the “7/10/23 Minutes”) ⁴ indicate that the Township had received a two-million-dollar (\$2,000,000.000) bid for the Property. *Id.* at ¶ 14. Plaintiff claims that per the 7/10/23 Minutes, the Board rejected the two-million-dollar (\$2,000,000.000) bid. *Id.* at ¶ 14. Plaintiff does not allege that the Board extended the bid period pertaining to the Property at the July 10, 2023 Board Meeting. *See, generally, Id.*

As referred to in Plaintiff’s allegations, and included as an attachment to the Amended Complaint, on July 21, 2023, Dr. Jason Hartman (“Hartman”), allegedly on behalf of Plaintiff, emailed a Letter of Intent (the “LOI”) to purchase the Property for a sum of three million dollars (\$3,000,000.00) to Larry Piersol (“Piersol”), the Director of Public Works of the Township, and Betsy McBride (“McBride”), the Township Manager of the Township at the time. *Id.* at ¶15; *see also* Plaintiff’s Exhibit E at 6. The July 21, 2023 email containing the LOI, as attached by Plaintiff, contains the subject title of “LOI - Exeter Promenade”, and reads, “Larry and Betsy, [o]n behalf of Seven Development Group, I am pleased to submit the attached LOI for the Exeter Promenade. We look forward to your response. Respectfully submitted, Jason.” *See* Plaintiff’s Exhibit E at 6.

The LOI, as attached by Plaintiff, is dated July 21, 2023 and titled “Letter of Intent to Purchase property owned by Exeter Township located in Exeter Township and is identified as 43-5326-14-43-5099, also known as the Exeter Promanade [sic].” *See* Plaintiff’s Exhibit A at 3.

⁴ The 7/10/23 Minutes are not attached as an Exhibit to the Amended Complaint.

Neither the LOI, nor the email from Hartman containing the LOI, as attached by Plaintiff, are marked as sealed, nor otherwise indicated to be sealed. *See* Plaintiff's Exhibit E at 6; *see also* Plaintiff's Exhibit A at 3. The LOI, as attached by Plaintiff, is not marked with the caption of "Attention: Township Manager, Exeter Township Property Bid." *See* Plaintiff's Exhibit A at 3. In fact, neither the LOI nor the email from Hartman containing the LOI, as attached by Plaintiff, include the word 'bid' once. *See* Plaintiff's Exhibit E at 6; *see also* Plaintiff's Exhibit A at 3. Furthermore, the LOI and the email from Hartman containing the LOI, as attached by Plaintiff, do not mention, reference, or include a check in the amount of 10% of the offered purchase price of three million dollars (\$3,000,000.00). *See* Plaintiff's Exhibit E at 6; *see also* Plaintiff's Exhibit A at 3.⁵

As included in Plaintiff's attachments, at 3:19 pm, on July 21, 2023, Hartman received an email response from McBride to his previously sent July 21, 2023 email with the attached LOI, in which McBride informs Hartman that the offer as contained within the LOI was being forwarded to the Township Solicitor, J. Chadwick Schnee ("Solicitor Schnee") and that there were restrictions regarding how the Township can sell the Property, such as through auction or sealed bids. *See* Plaintiff's Exhibit E at 6. As referred to in Plaintiff's allegations, and included as an attachment to the Amended Complaint, Hartman emailed McBride on August 20, 2023, asking if there had been a decision made regarding the Property. *See* the Amended Complaint at ¶ 18; *see also* Plaintiff's Exhibit E at 5. As referred to in Plaintiff's allegations, and included as an attachment to the Amended Complaint, on September 15, 2023, Hartman emailed McBride,

⁵ The Township further attaches a copy of the LOI, identical to the LOI attached by Plaintiff, and confirms that this is a full, complete, and accurate copy of the LOI. *See* the LOI, attached hereto as Exhibit "C." As evidenced by both the Township's and Plaintiff's attachment of the LOI, the LOI does not contain any attachments or additional documents, such as a check. *See* Plaintiff's Exhibit A at 3; *see also* Exhibit "C."

copying Solicitor Schnee, Ted Gardella (“Gardella”), and Piersol, asking, “Any updates on the previous emails?” *See* the Amended Complaint at ¶ 19; *see also* Plaintiff’s Exhibit B at 5.

As referred to in Plaintiff’s allegations, and included as an attachment to the Amended Complaint, the Meeting Minutes from the Township Board Meeting of September 25, 2023 (“9/25/23 Minutes”) indicate that a motion was passed to authorize the Township to again advertise that the Township was accepting bids for sale of the Property. *See* the Amended Complaint at ¶ 20; *see also* Plaintiff’s Exhibit G at 2. As evidenced in the 9/25/23 Minutes, a timeline for the second bidding window was not decided upon at the September 25, 2023 Board Meeting, and a second bidding period was not actually opened, rather the ability to put the Property out for bid was simply authorized. *See* Plaintiff’s Exhibit G at 2.

Plaintiff alleges that the Meeting Minutes from the March 11, 2024 Township Board Meeting (the “3/11/24 Minutes”), which are attached to the Amended Complaint as Plaintiff’s Exhibit D, indicate that a motion was made to sell the Property to the Berks County Redevelopment Authority⁶ (the “BCRA”) for three million dollars (\$3,000,000.00). *See* the Amended Complaint at ¶ 25; *see also* Plaintiff’s Exhibit D at 2. While Plaintiff does not allege that the motion to sell the property was approved at the March 11, 2024 Board Meeting, the 3/11/24 Minutes as attached by Plaintiff show that the motion to sell the Property to the BCRA was approved by the Board. *See* Plaintiff’s Exhibit D. Plaintiff alleges that the 3/11/24 Minutes indicate the Solicitor for the Township stated that the Township had not received an acceptable bid amount for the Property when the property went to bid in 2023. *See* the Amended Complaint

⁶ The Berks County Redevelopment Authority appears to be another name for the Redevelopment Authority of the County of Berks. The Redevelopment Authority of the County of Berks is directly referenced within multiple exhibits as attached by Plaintiff. The Township willingly stipulates that the Berks County Redevelopment Authority is the Redevelopment Authority of the County of Berks for purposes of the Amended Complaint and these Preliminary Objections.

at ¶ 25; *see also* Plaintiff's Exhibit D at 2. Plaintiff alleges that the sale of the Property to the BCRA was entered on March 26, 2024. *See* the Amended Complaint at ¶ 27.

As referred to in Plaintiff's allegations, and included as an attachment to the Amended Complaint, on August 12, 2024, Hartman sent another email to McBride, copying Solicitor Schnee, Gardella, and Piersol, at which time Hartman asked for an update regarding his previous emails. *See* the Amended Complaint at ¶ 28; *see also* Plaintiff's Exhibit E at 4. As referred to in Plaintiff's allegations, and included as an attachment to the Amended Complaint, later on August 12, 2024, Solicitor Schnee responded to Hartman's email, informing Hartman that an agreement had been reached with the BCRA regarding the Property, and that the BCRA is soliciting offers for the sale of the property. *See* the Amended Complaint at ¶ 29; *see also* Plaintiff's Exhibit E at 3. As referred to in Plaintiff's allegations, and included as an attachment to the Amended Complaint, Hartman responded to Solicitor Schnee via email on August 12, 2024, stating his belief that the Property was in an open bid process by the Township, and requested clarification as to whether Plaintiff's bid was contested or beat, and what the normal process is in these situations. *See* the Amended Complaint at ¶ 30; *see also* Plaintiff's Exhibit E at 2-3. As referred to in Plaintiff's allegations, and included as an attachment to the Amended Complaint, Solicitor Schnee again responded via email to Hartman on August 12, 2024, stating that no sufficient bids were received when the Property was originally put out for bids. Solicitor Schnee clarified that the Township is normally unable to directly sell the Property but was legally permitted to sell the Property directly to the BCRA. Solicitor Schnee again suggests that Hartman contact the BCRA to the extent that he is interested in purchasing the property. *See* the Amended Complaint at ¶ 31; *see also* Plaintiff's Exhibit E at 1.

The Amended Complaint contains a single Count against the Township, for the alleged Violation of 53 P.S. § 66503. However, while not contained within a separate Count, Plaintiff

also alleges that “Defendant was negligent following receipt of Plaintiff’s bid/LOI,” which could amount to a general negligence claim, and will be addressed as such.

III. **QUESTIONS PRESENTED**

1. Should This Honorable Court grant the Township’s Preliminary Objection and demur to Count I of the Complaint against the Township because as Plaintiff does not plead sufficient facts alleging the Township violated 53 P.S. § 66503?

Suggested Answer: Yes.

2. Should This Honorable Court grant the Township’s Preliminary Objection and demur to Count I of the Complaint against the Township because there is no private civil cause of action for damages under 53 P.S. § 66503?

Suggested Answer: Yes.

3. Should This Honorable Court grant the Township’s Preliminary Objection and dismiss Count I of the Complaint against the Township with Prejudice, as Plaintiff lacks legal standing to bring a claim under 53 P.S. § 66503?

Suggested Answer: Yes.

4. Should This Honorable Court grant the Township’s Preliminary Objection and demur to any claims of negligence raised by Plaintiff against the Township as the Township is immune from Plaintiff’s negligence claim under the Pennsylvania Political Subdivision Tort Claims Act?

Suggested Answer: Yes.

5. Should This Honorable Court grant the Township’s Preliminary Objection and demur to any and all claims against the Township as the Township did not owe the Plaintiff any special duty under the law?

Suggested Answer: Yes.

IV. **ARGUMENT**

A. THE TOWNSHIP PRELIMINARILY OBJECTS TO PLAINTIFF’S CLAIMS AS THEY ARE INSUFFICIENTLY PLEAD UNDER 1028(A)(4) (DEMURRER)

Preliminary objections may be filed based upon the legal insufficiency of a pleading (demurrer). Pa. R. Civ. P. 1028 (a)(4). When evaluating whether to grant a Preliminary Objection in the nature of a demurrer, it has been recognized that:

[T]he question presented in a demurrer is whether, on the facts averred, the law indicates with certainty that no recovery is possible. . . . In ruling on preliminary objections in the nature of a demurrer, [the] . . . Court accepts as true all well-pleaded facts in the complaint and draws all inferences reasonably deducible therefrom in favor of the nonmoving party. . . . However, [the Court] . . . need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. . . .

Vasquez v. Berks County., 279 A.3d 59, 75-76 (Pa. Cmwlth. Ct. 2022) (internal citations and quotation marks omitted).

“Pennsylvania is a fact-pleading state and plaintiff’s complaint must not only give a defendant notice of what the plaintiff’s claim is and the grounds upon which it rests, but it must also contain facts that are essential to support the claim.” *Brown v. Blaine*, 833 A.2d 1166, 1171 (Pa. Cmwlth. Ct. 2003).

B. COUNT I FAILS AS PLAINTIFF DOES NOT PLEAD SUFFICIENT FACTS ALLEGING THE TOWNSHIP VIOLATED 53 P.S. § 66503

Plaintiff alleges that the Township violated 53 P.S. § 66503, specifically alleging that the “[Township] failed to follow the required procedure as set forth in 53 P.S. § 66503...thus causing Plaintiff to suffer damages including the ability to purchase the Promenade at the three million dollar purchase price.” *See* Amended Complaint at ¶ 36. Plaintiff further alleges the Township violated 53 P.S. § 66503 by knowingly making “material misrepresentations to Plaintiff by extending the bidding deadline in September of 2023 and then the following year responding that the LOI was untimely and further representing at the March 11, 2024 meeting that no acceptable amounts were received despite knowing of Plaintiff’s July 21, 2023 conforming bid.” *Id.* at ¶ 37. Simply put, Plaintiff’s claim is that if the Township followed 53 P.S. § 66503, then Plaintiff would have been able to purchase the Property. *See Id.* at ¶¶ 36-37.

However, Plaintiff fails to sufficiently plead that the Township violated 53 P.S. § 66503 pertaining to the sale of the Property in three respects. *See, generally, Id.* First, the facts alleged in the Amended Complaint clearly establish that Plaintiff never made a conforming bid for the Property as required by both the 5/3/23 Advertisement and 5/22/23 Advertisement and thus was not entitled to the Property. *See, generally, Id.* Second, both Plaintiff's plead facts and attachments actually establish that the Township wholly complied with the requirements for selling the Property under 53 P.S. § 66503. *See, generally, Id.*

1. Requirements to for a Second Class Township to Sell a Property Under 53 P.S. § 66503

Regarding the requirement of second-class townships to put properties the township wishes to sell out for bid, 53 P.S. § 66503(a) states:

No real estate owned by the township having a value in excess of six thousand dollars (\$6,000) may be sold except to the highest bidder after due notice by advertisement for bids or advertisement of a public auction in one newspaper of general circulation in the township. The advertisement shall be published once not less than ten days before the date set for the opening of bids or public auction, and the date for opening bids or public auction shall be announced in the advertisement. The award of contracts shall be made only by public announcement at a regular or special meeting of the board of supervisors or at the public auction. All bids shall be accepted on the condition that payment of the purchase price in full shall be made within sixty days of the acceptance of bids. Real estate owned by the township may be sold at a consideration of six thousand dollars (\$6,000) or less without advertisement or competitive bidding only after the board of supervisors estimates the value of the real estate upon receipt of an appraisal by a qualified real estate appraiser. Prior to selling real estate valued at six thousand dollars (\$6,000) or less without advertisement or competitive bidding, the board of supervisors shall make a public announcement of the board of supervisors' intention to sell the real estate at a regular or special meeting of the board of supervisors at least thirty days prior to the sale.

Furthermore, there are two separate statutory processes provided in 53 P.S. § 66503(b.1) and 53 P.S. § 66503(c) respectively that allow for a second class township to sell a property valued over six thousand dollars (\$6,000.00) outside of a bidding process. First, under 53 P.S. § 66503(b.1) provides an option for townships to privately sell property where the bidding process

fails, stating:

The board of supervisors may sell real property under the act of October 27, 1979 (P.L. 241, No. 78), 1 entitled, as amended, “An act authorizing political subdivisions, municipality authorities and transportation authorities to enter into contracts for the purchase of goods and the sale of real and personal property where no bids are received,” if no bids are received on real property after proper notices.

53 P.S. § 66503(b.1) (emphasis added).

The act of October 27, 1979 (P.L. 241, No. 78), codified as the Public Contract Bid Nonreceipt Act, 73 Pa. Stat. Ann. § 1641, states in relevant parts that where no bids are received for a property after initial advertisement:

1) The political subdivision, municipality authority or transportation authority may advertise for bids a second time. (2) If no bids are received within 15 days of the second advertisement, the political subdivision, municipality authority or transportation authority may initiate negotiations for a private sale of the property, taking into consideration its fair market value.

73 Pa. Stat. Ann. § 1641.1(b)(1-2) (emphasis added).

The second option to sell a property valued over six thousand dollars (\$6,000.00) is found in 53 P.S. § 66503(c) which establishes that “[t]he requirements of this section do not apply to conveyances or leases of real property by a township to any of the following:...(6) A municipality authority.” “A plain reading of [53 P.S. § 66503(c)] reveals a second class township may convey township-owned real property to municipal authorities without adherence to Section 1503's public notice and bidding requirements.” *Carbo v. Redstone Twp.*, 960 A.2d 899, 902 (Pa. Cmwlth. 2008). As such, a second class township is free to sell property valued over six thousand dollars (\$6,000.00) to a municipal authority at will, and without adherence to any of the requirements found within 53 P.S. § 66503(a). *See* 53 P.S. § 66503(c); *see also Carbo v. Redstone Twp.*, 960 A.2d 899, 902.

Furthermore, it has been long established in Pennsylvania that a public entity may provide additional requirements for bids such as deadlines for bids, mandatory downpayments to be supplied with the bids, specific mode of delivery of bids, sealing of seals, and other requirements as to the content and process of bids, content, method of delivery, and timing of a bid for a contract, other than those that are statutorily required under the applicable law. *See Tactical Pub. Safety, LLC v. Pa. Dep't of Gen. Servs.*, 297 A.3d 41, 43 (Pa. Cmwlth. Ct. 2023) (Where Section 512(e) of the Procurement Code, 62 Pa. C.S. § 512(e) did not supply a mandatory deadline for the period that bids would be accepted, the requirement that all bids be submitted by 1:00 p.m. on July 19, 2022 which was provided in the bidding documents and advertisements was allowed); *see also Karp v. Redevelopment Auth. of Phila.*, 566 A.2d 649, 651 (Pa. Cmwlth. Ct. 1989) (where the Redevelopment Authority required all bids for the purchase of a specific property to be accompanied by a deposit of ten percent (10%) of the total value of the bid in question); *see also Dragani v. Borough of Ambler*, 37 A.3d 27, 30 (Pa. Cmwlth. Ct. 2012) (where the Borough required all bids to be submitted with a surety bond). Additionally, regarding all matters where a public entity is statutorily required to put a perspective contract out for bids “[the Commonwealth Court] has repeatedly held that requirements set forth in a bidding document are mandatory and must be strictly adhered to in order for a bid to be valid.” *Dragani v. Borough of Ambler*, 37 A.3d 27, 31 (Pa. Cmwlth. Ct. 2012) (citing *Fedorko Properties, Inc. v. Millcreek Township School District*, 755 A.2d 118 (Pa. Cmwlth. Ct. 2000); *Kimmel v. Lower Paxton Township*, 633 A.2d 1271 (Pa. Cmwlth. Ct. 1993)).

In fact, “[a]n award in the competitive bidding context must be overturned if mandatory requirements in the bid instructions are not followed.” *Karp*, 566 A.2d at 651. For example, in *Tactical Pub. Safety, LLC v. Pa. Dep't of Gen. Servs.*, the Court held that the Pennsylvania

Department of General Services was not even able consider a bid that was received past the bidding deadline specified in the advertisement for solicitation for bids, as the requirement that a bid must “be submitted electronically through the Portal by the due date” was determined to be “a material, non-waivable defect.” 297 A.3d 41, 49. Similarly in *Karp v. Redevelopment Auth. of Phila*, the Redevelopment Authority was found to have properly ignored a bid which did not contain the correct amount required for a downpayment, per the bidding requirement. 566 A.2d at 651.

2. Plaintiff’s Alleged Facts Establish that Plaintiff Did Not Submit a Valid and Conforming Bid

Plaintiff’s alleged facts clearly fail to sufficiently plead that Plaintiff submitted a valid bid for the Property as required by both the 5/3/23 Advertisement and 5/22/23 Advertisement and, in fact, Plaintiff’s alleged facts clearly established that Plaintiff’s alleged bid for the Property was invalid, and unable to be accepted by the Township. *See, generally*, the Amended Complaint. Plaintiff pleads that the Board voted to set the deadline for bid to be placed pertaining to the Property for 12:30 pm on July 6, 2023, amending the previous deadline of June 8, 2023. *Id.* at ¶¶ 10-11.

As evidenced by Plaintiff’s own attachment, on May 22, 2025, the Township issued a public advertisement soliciting bids for the Property, containing the exact terms and conditions for bids, which included the requirements that: (1) all bids must be submitted “no later than 12:30 pm on July 6, 2023”; (2) all bids must be received at the Exeter Township Municipal Building; (3) all bids must be sealed and plainly marked, “Attention: Township Manager, Exeter Township Property Bid”; and (4) all bids must “be accompanied by a certified bank or cashier’s check payable to Exeter Township in an amount not less than ten (10%) of the amount of the bid.” Plaintiff’s Exhibit F at 38. Plaintiff was required to comply with all of these requirements

when submitting their alleged bid. *See Dragani v. Borough of Ambler*, 37 A.3d at 31 (internal citations omitted).

Through its factual averments and attachments, Plaintiff admits that they failed to comply with the July 6, 2021 deadline for bids to acquire the Property established in the May 22, 2023 advertisement, as Plaintiff alleges that it sent an email containing the LOI on July 21, 2023, as evidenced by Plaintiff's own attachments, which is fifteen (15) days past the July 6, 2021 deadline for bids. *See* the Amended Complaint at ¶¶ 15, 22, 23; *see also, generally*, Plaintiff's Exhibit A. Furthermore, as attached by Plaintiff, the Plaintiff's LOI and accompanying email were not marked as sealed, nor did they include the language, "Attention: Township Manager, Exeter Township Property Bid." *See, generally*, Plaintiff's Exhibit A. Additionally, the LOI and accompanying emails do not include a certified check in the amount of ten percent (10%) of Plaintiff's alleged offer for the Property. *See* Plaintiff's Exhibit A at 3.

As established by legal precedent, Plaintiff's failure to submit their alleged bid by the deadline provided by the Township disqualified it from being considered by the Township. *See Tactical Pub. Safety, LLC*, at 43. Furthermore, Plaintiff's failure to submit the required down payment with the alleged bid also disqualifies the bid from being considered by the Township. *See Karp* at 651. As such, Plaintiff establishes by its own averments and attachments, that the alleged July 21, 2023, LOI could not be considered by the Township as a valid bid for the Property, as it did not comply with the material requirements established in the May 22, 2023 advertisement. *Karp* at 651.

Furthermore, to any extent that Plaintiff implies that the deadline for bids was extended, this is both irrelevant and contradicted by Plaintiff's own attachments. *See* the Amended Complaint at ¶ 37. Plaintiff pleads that the "[t]he [9/25/23 Minutes] state that the Promenade was

to be placed out for bid again.” *Id.* at 34. The 9/25/23 Minutes as attached by Plaintiff state that the Board simply voted to authorize the Township “to advertise for bids for the sale of the Property.” Plaintiff’s Exhibit G at 2. The 9/25/23 Minutes clearly do not state that the original bidding period was extended. *Id.* Furthermore, the 9/25/23 Minutes do not establish dates for a new bidding period, the requirements for bids, or any other specifications, but rather merely authorizes the ability to advertise the Property for bidding again. *Id.*

Even if, *arguendo*, Plaintiff did plead sufficient facts to sufficiently allege that the bidding process was re-opened on September 25, 2023, this is irrelevant as Plaintiff’s own alleged facts establish that Plaintiff sent the LOI on July 21, 2023, which would not be compliant with the alleged new bidding window. *See, generally*, Plaintiff’s Exhibit A. Furthermore, even if Plaintiff alleges sufficient facts to establish that Plaintiff submitted a bid within an open bidding period, this is irrelevant as Plaintiff’s facts still show that his bid did not comply with the material requirements to bid on the Property, such as submitting a ten percent (10%) down payment with the bid, submitting the bid under seal, and including certain language in the bid; thus the alleged bid could not be legally accepted by the Township. *See Karp* at 651. As such, under any interpretation of Plaintiff’s alleged facts, an inference cannot be drawn that Plaintiff submitted a valid bid for the Property under 53 P.S. § 66503.

3. Plaintiff’s Alleged Facts Establish that the Township was in Compliance with 53 P.S. § 66503, as the Township was Not Required to Put the Property Back Out for Bid, and the Property was Sold to the BCRA

First, to the extent that Plaintiff claims the Township was required to put the Property out for bid following the September 25, 2023 Board meeting, this is clearly a factually and legally deficient assertion. *See* the Amended Complaint at ¶ 41. Following the failure to receive compliant bids during the advertising period that ended on July 6, 2025, the Township was under

no statutory obligation to put the Property out for bid again. *See, generally*, § 66503. The 9/25/23 Minutes as attached by Plaintiff state that the Board simply voted to authorize the Township “to advertise for bids for the sale of the Property.” Plaintiff’s Exhibit G at 2. The Township was not required to put the Property out for bid, as that is a discretionary decision, and rather was simply authorized to do so. *See Hoffmaster v. Cty. of Allegheny*, 121 Pa. Commw. 266, 281, 550 A.2d 1023, 1030 (1988) (“The Township cannot be held liable for failure to exercise a power it has.”). As such, Plaintiff has no claim concerning the deficient allegation that the Township failed to put the Property out for bid following the September 25, 2025 Board meeting.

However, both the issues of whether the Township was required to put the Property back out for bid, and whether or not Plaintiff submitted a valid bid are actually irrelevant, for the Property was ultimately sold to the BCRA, as plead by Plaintiff. *See* the Amended Complaint at ¶ 27. Plaintiff does not dispute that the Property was sold to the BCRA and even attaches the contract of sale between the Township and the BCRA to the Amended Complaint. *See* Plaintiff’s Exhibit F at 72-83. Rather, Plaintiff merely alleges that the sale of the Property to the BCRA was done “without proper authority to do so under [§ 66503 (b.1)].” Amended Complaint at ¶ 45.

Plaintiff incorrectly attributes the sale of the Property as occurring under the provisions of § 66503 (b.1), which adopts 73 Pa. Stat. Ann. § 1641.1, and allows for the sale of property valued over six thousand dollars (\$6,000.00) by a second class township to any buyer, after a property has failed to sell by bid twice. *See* § 66503 (b.1); *see also* 73 Pa. Stat. Ann. § 1641.1(b).⁷ Instead, the Property was sold by the Township to the BCRA under 53 P.S. § 66503(c), which

⁷ To any extent that Plaintiff is alleging the Township should have privately sold the Property to Plaintiff outside of the bidding process under 53 P.S. § 66503(b.1), Plaintiff’s own averments allege that he requirements for a private sale under 53 P.S. § 66503(b.1) were not met. Additionally, the ability to privately sell a property 53 P.S. § 66503(b.1) is a wholly discretionary ability which the Township was under no obligation to utilize pertaining to Plaintiff. *See Breeden v. Borough of Crafton*, 57 A.3d 222, 223 (Pa. Cmwlth. 2012) (“[b]ecause § 771(h) uses the word may, that section is within a borough’s discretion.”).

states all other requirements of § 66503, such as the requirements to put a sale of real property out for bid and to accept the highest bid, “do not apply to conveyances or leases of real property by a township to any of the following:....(6) A municipality authority.”⁸

The BCRA was created pursuant to the Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, as amended, 35 P.S. §§ 1701-1719.1 (the “Urban Redevelopment Law”), with the intention of supporting development projects throughout Berks County. *See Eastern Inv. Co. v. Com., Bd. of Fin. & Revenue*, 614 A.2d 223, 225 (Pa. 1992) (stating that “the Redevelopment Authority of Berks County was formed” under the Urban Redevelopment Law”). It is a matter of established law that redevelopment authorities created under the Urban Redevelopment Law are municipal authorities. *Greer v. Metro. Hosp.*, 341 A.2d 520, 527 (Pa. Super. 1975). Thus, the BCRA qualifies as a “municipal authority” under § 66503(c).

As such, in selling the Property to the BCRA, the Township was not required to abide by any of the other requirements under 53 P.S. § 66503. *See* 53 P.S. § 66503(c). All of Plaintiff’s averments alleging that the Township violated 53 P.S. § 66503 concern aspects of 53 P.S. § 66503 which are not required to be followed where real property is being sold to a municipal authority under § 66503(c).

Therefore, as supported by Plaintiff’s pleadings and attachments, as well as the applicable law, it is legally impossible for the Township to have violated 53 P.S. § 66503 regarding the sale

⁸ Plaintiff has previously been made aware of the fact that the Property was sold to the BCRA under the provisions of 53 P.S. § 66503(c). Specifically, in the Township’s Preliminary Objections to Plaintiff’s Original Complaint (“First Preliminary Objections”) filed on October 2, 2025, the Township explicitly states “[a]ll of Plaintiff’s averments alleging that the Township violated 53 P.S. § 66503 concern aspects of 53 P.S. § 66503 which are not required to be followed where real property is being sold to a municipal authority under § 66503(c).” First Preliminary Objections at ¶ 82. Despite being put on notice of the legal basis of the sale of the Property to the BCRA, Plaintiff failed to amend the Original Complaint to even acknowledge this fact, let alone addressing it in any substantive fashion. *See, generally*, the Amended Complaint.

of the Property, for the Property was sold to a municipal authority, thus exempting it from any of the requirements which Plaintiff alleges the Township violated. Thus, the Township wholly complied with 53 P.S. § 66503 regarding the sale of the Property to the BCRA.

**C. THERE IS NO PRIVATE CIVIL CAUSE OF ACTION FOR DAMAGES UNDER
53 P.S. § 66503**

In Plaintiff's Count I which alleges that the Township violated 53 P.S. § 66503, Plaintiff alleges "damages including the ability to purchase the Promenade at a purchase price of three million dollars." Amended Complaint at ¶ 50. However, there does not exist a civil cause of action for damages under 53 P.S. § 66503.

In determining whether a statute provides a private cause of action, "[t]he central focus remains whether the legislature intended to create, either expressly or by implication, a private cause of action." *See Alfred M. Lutheran Distribs. v. A.P. Weilersvacher, Inc.*, 399, 650 A.2d 83, 87 (Pa. Super. 1994) (*citing Touche Ross & Co. v. Redington*, 442 U.S. 560, 575, 99 S. Ct. 2479, 2489, 61 L. Ed. 2d 82, 96 (1979)). Neither in the Second Class Township Codes generally, nor in 53 P.S. § 66503, does the language indicate any intention to allow an entity to bring a private cause of action based upon the alleged failure of a public entity to follow the procedures outlined in 53 P.S. § 66503.

While there may exist other aspects of the Second Class Township Codes which create specific causes of actions based upon other provisions, the law is clear that specific causes of actions contained within a statute do not function as an indication that a cause of action exists elsewhere in a statute. *See Alfred M. Lutheran Distribs. v. A.P. Weilersvacher, Inc.*, 650 A.2d 83, 88 ("[o]ther than these three extremely limited types of actions, none of which are applicable here, there is absolutely no indication, either explicit or implicit, that the General Assembly intended or otherwise contemplated that an aggrieved party may institute a private

statutory action either to enforce the provisions of the Liquor Code or to recover damages.”).

Absent strong and clear statutory language within a law establishing a private cause of action, a court should not find one exists, because “the General Assembly has aptly demonstrated its ability to create a private statutory cause of action whenever it has chosen to do so.”⁹ *Id.* As such, it is clear that no private cause of action exists under 53 P.S. § 66503, thus rendering Plaintiff’s claim legally insufficient.

D. PLAINTIFF LACKS STANDING TO BRING A CLAIM UNDER 53 P.S § 66503 A PLEAD IN COUNT I¹⁰

The Amended Complaint is subject to preliminary objection under Pennsylvania Rule of Civil Procedure 1028(a)(5), because Plaintiff lacks the capacity to sue under the doctrine of standing. Plaintiff’s claim relies upon the premise that Plaintiff was owed a legal right under 53 P.S. § 66503 for the Township to abide by the specific premises of 53 P.S. § 66503 concerning the sale of real property. *See* the Amended Complaint at ¶¶ 39-50. Plaintiff clearly lacks standing to bring this claim. *See* Pa. R.C.P. No. 1028.

Standing relates to *who* may make a legal challenge and “may be conferred by statute or by having an interest deserving of legal protection.” *Pennsylvania National Mutual Casualty Ins. Co. v. Dept. of Labor and Industry, Prevailing Wage Appeals Board*, 715 A.2d 1068, 1071 (Pa. 1998). “To have standing to entertain suit, a party must be aggrieved and must have a direct interest in the matter.” *Alfred M. Lutheran Distribs* at 94 (*citing Application of El Rancho*

⁹ To any extent that Plaintiff attempts to argue that a cause of action was recognized in *Greater Fourth St. Assocs. v. Smithfield Twp.*, 816 A.2d 388, 390-91 (Pa. Cmwlth. Ct. 2003), where the Commonwealth Court denied a claim for a declaratory judgment under 53 P.S. § 66503, this does not evidence that a private cause of actions exists under 53 P.S. § 66503, as the question of a private cause of action’s existence under the statute was not before the Court.

¹⁰ While issues of standing can involve questions of fact that require “evidence by depositions or otherwise” Pa.R.Civ.P. 1028(c)(2) - they can also “can turn on questions of pure law”, which do not require any additional evidence. *C.G. v. J.H.*, 2017 PA Super 320, 172 A.3d 43, 54 (Pa. Super 2017). In this matter, the question of standing pertains only to questions of law. To the extent it is determined that the objection to Plaintiff’s standing involves questions of fact, this Court should first rule upon the questions challenging the legal sufficiency of the Complaint prior to ordering any standing related discovery be taken.

Grande, Inc., 437 A.2d 1150, 1153 (Pa. 1981)). “A person who is not adversely affected in any way by the matter he seeks to challenge is not aggrieved thereby and has no standing to obtain a judicial resolution of his challenge.” *Application of El Rancho Grande, Inc.*, 437 A.2d at 1153. “[I]t is not sufficient for the person claiming to be aggrieved to assert the common interest of all citizens in procuring obedience to the law.” *Id.* “Moreover, the relationship between the challenged action and the asserted injury must be direct and immediate, not a remote consequence.” *Id.*

It is a matter of established law that where a public bidding process is being challenged, that “[a]bsent a statutory provision, a disappointed bidder lacks standing because he has no property interest in a public contract and, therefore, has suffered no injury that would entitle him to redress in court.” *Clearwater Constr., Inc. v. Northampton Cty. Gen. Purpose Auth.*, 166 A.3d 513, 516 (Pa. Cmwlth. 2017) (internal citations omitted); *see also Black Ash Servs. v. Dubois Area Sch. Dist.*, 764 A.2d 672, 674 (Pa. Cmwlth. 2000) (“[a] mere disappointed bidder to a public contract does not have standing to challenge its award because he has no property interest and has suffered no injury that would entitle him to redress.”). Plaintiff alleges they it was a competing bidder which was denied the Property despite submitting a valid bid. *See* Amended Complaint at 46. As an alleged competing bidder on the Property, Plaintiff lacks any standing to bring a claim against the Township pertaining to any issues of process related to the sale of the Property. *See Clearwater Constr.*, at 516 (internal citations omitted); *see also Black Ash Servs.*, at 674.

To the extent that Plaintiff may argue that they have standing under a provision of 53 P.S. § 66503 – a plain reading of 53 P.S. § 66503 clearly shows that there is no provision establishing a separate basis to claim standing. *See, generally*, 53 P.S. § 66503. Even if *arguendo*, standing

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did exist for competing bidders under 53 P.S. § 66503, Plaintiff would still lack standing. As has already been established, Plaintiff never submitted a conforming bid for the Property under 53 P.S. § 66503 and therefore had no potential at any time relevant to this litigation of receiving the Property. Since Plaintiff could not have potentially possessed the property, then any alleged failure by the Township to abide by the procedures outlined in 53 P.S. § 66503 could not have led to any of the injuries alleged by Plaintiff, specifically the alleged injury of not receiving the Property.

Even if the Township did fail to abide by 53 P.S. § 66503 – Plaintiff could not have been harmed or aggrieved by the Township’s hypothetical violation of 53 P.S. § 66503, because the Plaintiff was never in a position to receive the Property in the first place. Since Plaintiff is not in any way harmed or aggrieved by the alleged violation of 53 P.S. § 66503, then Count I amounts to Plaintiff merely asserting the “common interest of all citizens in procuring obedience to the law,” which is inadequate to establish standing to bring a claim. *See Application of El Rancho Grande, Inc*, 437 A.2d at 1153. As such, Plaintiff lacks standing to bring a claim for the Township’s alleged failure to abide by 53 P.S. § 66503.

E. THE TOWNSHIP IS IMMUNE FROM ANY GENERAL NEGLIGENCE CLAIM ALLEGED BY PLAINTIFF UNDER THE TORT CLAIMS ACT

The Pennsylvania Political Subdivision Tort Claims Act (“Tort Claims Act”) provides immunity to municipalities for damages arising from its own acts or the acts of its employees, unless two (2) distinct conditions are satisfied: (1) the damages will be recoverable under statutory or common law against a person unprotected by governmental immunity; and (2) the negligent act of the political subdivision that caused the injury falls within one (1) of the nine (9) enumerated exceptions to governmental immunity identified in § 8542(b) of the Tort Claims Act. 42 Pa.C.S. § 8542(b); *Star v. Veneziano*, 747 A.2d 867 (Pa. 2000). There are nine (9) exceptions

to the Township's statutory immunity. *See*, Pa.C.S. § 8542. The nine (9) exceptions are: (1) vehicle liability; (2) care, custody or control of personal property; (3) real property; (4) trees, traffic controls, and street lighting; (5) utility services facilities; (6) streets; (7) sidewalks; (8) care, custody, or control of animals; and (9) conduct constituting an offense perpetuated against a minor in the nature of sex trafficking, sexual servitude, rape, statutory sexual assault, involuntary deviate sexual intercourse, sexual assault, institutional sexual assault, aggravated indecent assault, or incest. *Id.*

The Pennsylvania Supreme Court has made it clear that the exceptions to governmental immunity in § 8542(b) must be narrowly construed in accordance with the legislature's intent to shield local agencies from tort liability. *Mascaro v. Youth Study Center*, 523 A.2d 1118, 1124 (Pa. 1987). It is well-settled that under Pennsylvania law that "the affirmative defense of governmental immunity may be raised by preliminary objections in the nature of a demurrer where that defense is apparent on the face of the pleading; that is, that a cause of action made against a governmental body and it is apparent on the face of the pleading that the cause of action does not fall within any of the exceptions to governmental immunity." *Wurth v. Philadelphia*, 584 A.2d 403, 407 (Pa. Cmwlth. Ct. 1990). Where it is apparent that an allegation of negligence does not fall within an exception of the Tort Claims Act, "it is needless to prolong proceedings when the matter can be correctly and quickly decided on preliminary objections in the nature of a demurrer." *Id.* at 407.

In the instant matter, while Plaintiff does not include a separate count for general negligence, Plaintiff does allege that "Defendant was negligent following receipt of Plaintiffs bid/LOI as the Defendant failed to present said bid/LOI to the Board and failed to take any action on the Plaintiff's bid/LOI thus causing Plaintiff to suffer damages including the ability of

Plaintiff to purchase the Promenade property at the bid price of three million dollars.” Amended Complaint at ¶ 38. To the extent that Plaintiff is alleging general negligence on the part of the Township, it is apparent on the face of the Amended Complaint that the facts of this matter as alleged by Plaintiff do not fall within any exceptions to governmental immunity. *See*, Pa.C.S. § 8542. Specifically, the personal property exception does not apply as “the personal property exception may only be applied to those cases where the property itself is alleged to have caused the injury.” *Sugalski v. Commonwealth*, 131 Pa. Commw. 173, 177, 569 A.2d 1017, 1019 (1990) (internal citation omitted). In this case, Plaintiff does not allege that the Property, or any other property owned by the Township caused an injury to Plaintiff. *See, generally*, the Amended Complaint.

Similarly, the real property exception does not apply as “[i]n order to fall within the real property exception, the injured party must show that (a) the injury resulted from a dangerous condition that (b) stemmed from the care, custody or control of real property, not personalty.” *Brewington v. City of Phila.*, 149 A.3d 901, 905 (Pa. Cmwlth. 2016) (internal quotations omitted). Plaintiff does not allege an injury caused by a dangerous condition in the Property or any other real property owned by the Township; rather, Plaintiff’s claim concerns the sale of real property, which is not protected by the real property exception to the Tort Claims Act. *See, generally*, the Amended Complaint.

Furthermore, other exceptions under the Tort Claim Act are clearly not applicable regarding Plaintiff’s negligence claim in Count II. Act. 42 Pa.C.S. § 8542(b). As such, Plaintiff’s negligence claim as plead in Count II is barred by the Tort Claims Act. *Id.*

**F. THE TOWNSHIP DID NOT OWE THE PLAINTIFF ANY SPECIAL DUTY
UNDER THE LAW**

To any extent Plaintiff is alleging a cause of action other than the violation of 53 P.S. §

66503, such claims fail as Plaintiff does not establish that the Township owes Plaintiff any other special duties under the law.¹¹ Under the Second Class Township Code, a township, “through its board of supervisors, is also charged with the general governance of the township and the execution of legislative, executive and administrative powers in order to ensure sound fiscal management and to secure the health, safety and welfare of the citizens of the Township.” *Twp. of W. Manchester v. Mayo*, 746 A.2d 666, 668 (Pa. Cmwlth. Ct. 2000) (*citing* The Second Class Township Code, 53 P.S. § 65607(1)). Townships do not owe special duties to businesses or individuals to perform certain actions, unless a special relationship exists which would create that duty. *See Starr v. Veneziano* 747 A.2d 867, 875 (Pa. 2000) (“while governmental entities possess limited duties connected with the implementation of traffic controls to remedy dangerous conditions on roadways under their control, it is a plaintiff’s burden to plead and prove the elements of such duty.”)

Here, Plaintiff fails to plead facts that establish any special relationship between the Township and Plaintiff. *See, generally*, the Amended Complaint. The only duty that the Township held to Plaintiff was the same duty it held to all people under the Second Class Township Code. *See Twp. of W. Manchester v. Mayo*, 746 A.2d 666, 668 (*citing* 53 P.S. § 65607(1)). As such, Plaintiff fails to sufficiently plead that the Township owed Plaintiff any other duty. *See Twp. of W. Manchester*, at 668. Therefore, to the extent that Plaintiff alleges general negligence or any other claim other than the violation of 53 P.S. § 66503, such claims are

¹¹ The Township, as already argued, takes the position that the Township did not owe, nor breach any duty under 53 P.S. § 66503, for which a cause of action exists. In no way should the averments contained within this section be interpreted to contravene that position. However, due to the general vagueness of the Amended Complaint, specifically concerning the legal basis for certain allegations, the Township finds it necessary that Plaintiff fails to identify any other possible legal basis for a cause of action against the Township.

insufficient on their face, for they fail to allege that the Township failed to perform and/or performed negligently any duty the Township owed to the Plaintiff.

V. CONCLUSION

For the foregoing reasons, Defendant Exeter Township respectfully requests that this Honorable Court grant its Preliminary Objections and dismiss all claims asserted against the Township pursuant to Rule 1028(a)(4) and Rule 1028(a)(5). There is no basis for granting leave to amend, and therefore, the Township requests that the dismissal be entered with prejudice.

Respectfully submitted:

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Dated: November 5, 2025

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CERTIFICATE OF COMPLIANCE

I, David J. MacMain, certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

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CERTIFICATE OF SERVICE

I, David J. MacMain, Esquire, hereby certify that on this 5th day of November, 2025, a copy of the foregoing was served upon the following counsel of record via electronic filing notification:

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