

REQUEST FOR PROPOSALS
FOR THE PURCHASE OF THE WASTEWATER
COLLECTION SYSTEM
OF THE
BOROUGH OF COLWYN, DELAWARE COUNTY, PENNSYLVANIA

ISSUE DATE: OCTOBER 9, 2017

SUBMISSION DUE DATE: NOVEMBER 22, 2017

ISSUED BY:

COLWYN BOROUGH

221 Spruce Street
Colwyn, PA 19023

TABLE OF CONTENTS

SECTION 1 - INTRODUCTION AND GENERAL INFORMATION	
1.1	Introduction and Purpose1
1.2	Communications.....1
1.3	RFP Documents3
1.4	Submission of Proposal and Proposal Security.....3
1.5	Conditions with Respect to this RFP3
1.6	Reservation of Rights and Options with Respect to this RFP4
1.7	Responsibilities of the Respondent in Connection with this RFP5
1.8	Confidential and Proprietary Information5
 SECTION 2 - DESCRIPTION OF THE SYSTEM ASSETS	
2.1	Description of the Water System6
2.2	Regulatory Considerations.....6
 SECTION 3 - INSTRUCTIONS FOR PREPARATION AND SUBMISSION OF PROPOSALS	
3.1	General Provisions7
3.2	Proposal Part I.....7
3.3	Proposal Part II8
3.4	Format and Required Information for Proposals8
3.5	Acknowledgment and Agreement12
3.6	Review of Proposals13
 SECTION 4 - SELECTION AND CONTINUING CONFIDENTIALITY	
4.1	General.....13
4.2	Purchase Award and Purchase Agreement Execution.....13
4.3	Continuing Confidentiality14

APPENDICES

Appendix A – Calendar of Events

Appendix B – Agreement of Proposal Security

Appendix C – Transmittal Letter

Appendix D – Non-Collusion Affidavit

Appendix E – Statement of Ownership

Appendix F – Contract and Lobbyist Disclosure

Appendix G – Business Proposal

Appendix H – Escrow Agreement

NOTE: The information provided herein as Appendices is intended to give the Respondents and potential Respondents a general understanding of the System. Said information may not in all instances be up to date since the initial data, and consequently the Appendices, are not guaranteed as to accuracy.

**SECTION 1
INTRODUCTION AND GENERAL
INFORMATION**

1.1 Introduction and Purpose

The Borough of Colwyn, Delaware County, Pennsylvania (the "Borough") is the owner of all of the assets comprising the municipal wastewater collection system (the "System"). The Borough serves approximately 962 customers in and around the Borough. Wastewater is collected using the Borough's system and then conveyed to the Darby Creek Joint Authority, which in turn conveys it to the Delaware County Regional Authority and the City of Philadelphia for treatment purposes.

This request for proposals ("RFP") provides to those interested in submitting proposals for the purchase of the System sufficient information to enable them to prepare and submit those proposals. This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included and other requirements specific to this RFP. The Borough may award the sale of its wastewater assets if determine to be in the best interest of the Borough and its residents. Any such sale shall be carried out in accordance with the Borough Code, 8 Pa.C.S. §101 et seq., and other applicable law.

1.2 Communications

Except as specifically authorized in this RFP, effective as of the RFP notice date, October 9, 2017, and prior to the time that a decision is made by the Borough and the closing of this RFP proceeding, there shall be no communication of any type regarding this RFP, any aspect of a response to this RFP, or the awarding of a contract related in any way to this RFP between any Respondent or perspective Respondent and any appointed official of the Borough, employee of the Borough, or any other persons in a position to influence the Borough's decision at any time during the RFP process in regards to this RFP. Any Respondents to this RFP are hereby warned that, effective as of the RFP notice date, October 9, 2017, the only authorized communication of any kind regarding this RFP between the Borough and any Respondent will be through the designated Point of Contact ("POC"). Respondents or potential Respondents may only make requests for technical clarifications. This restriction does not preclude the POC from contacting the applicant and requesting clarification or additional information, by whatever means deemed necessary, in order to effectively manage the RFP process, which request can be timely responded by the Respondent. This restriction will remain in effect until the RFP proceedings close. Any breach of this restriction, whether intentional or otherwise, will result in the Respondent's immediate disqualification from the RFP process.

Designated Point of Contact:

Borough Manager
The Borough of Colwyn
221 Spruce Street
Colwyn, PA 19023
Telephone: 610.461.2000
E-mail: tmason@colwynborough.com

If a Respondent (defined as any entity considering a response to this RFP) has any questions regarding this RFP, the Respondent must submit the questions by email (with the subject line "Wastewater RFP Question") to the POC. Questions must be submitted via email no later than the date indicated on the Calendar of Events (as hereinafter defined). A Respondent who submits a question after the deadline date for receipt of questions indicated on the Calendar of Events assumes the risk that its Proposal will not be responsive or competitive because the Borough is not able to respond before the Proposal receipt date or otherwise in sufficient time for the Respondent to prepare a responsive or competitive Proposal.

All questions and responses will be posted on the Borough's web site (www.colwynborough.com) and are considered as an addendum to, and part of, this RFP. Each Respondent shall be responsible to monitor the web site for new or revised RFP information. The Borough shall not be bound by any verbal information nor shall they be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Borough. The Borough does not consider questions to be a protest of the RFP specifications or of the process.

The Borough will hold a pre-Proposal conference as specified in the Calendar of Events attached hereto as **Appendix A** (the "Calendar of Events"). The purpose of this conference is to provide opportunity for clarification of the RFP and to schedule a physical inspection of the System as part of each Respondent's due diligence activity. Respondents should forward all questions to the POC to ensure adequate time for analysis before the Borough provides an answer. Respondents may also ask questions at the conference. In view of the limited facilities available for the conference, Respondents should limit their representation to two (2) individuals per Respondent. The pre-Proposal conference is for information only. Any answers furnished during the conference will not be official until they have been verified, in writing, and posted at the web site. All questions and written answers will be posted on the web site as an addendum to, and shall become part of, this RFP.

Subsequent to issuance of this RFP, the Borough, through the issuance of an addendum posted on the web site, may modify, supplement or amend provisions of this RFP. If the Borough deems it necessary to revise any part of this RFP, the POC will post an addendum to the web site. It is the Respondent's responsibility to periodically check the web site for any new information or addenda to the RFP. Answers to the questions asked during any questions and answers period also will be posted to the web site as an addendum to the RFP.

To be considered for selection, sealed hard copies of Proposals must arrive at the Borough offices on or before the times and dates specified for them in the Calendar of Events. Proposals will not be accepted via email or facsimile transmission. Respondents who send materials by mail or other delivery service should allow sufficient delivery time to ensure timely receipt. If, due to inclement weather, natural disaster, or any other cause, the offices of the Borough are closed on the applicable response date, the deadline for submission will be automatically extended until the next business day on which the office is open. The hour for submission shall remain the same. The Borough will reject, unopened, any late materials.

The successful Respondent will be required to enter into an Asset Purchase other similar Agreement that captures the details of the proposed sale of assets.

1.3 RFP Documents

It is the responsibility of each Respondent to inspect its copy of this RFP to determine that a complete set of the documents, including appendices, are included. If a Respondent believes that its copy of this RFP is incomplete, it should contact the POC. The Borough will make reasonable arrangements with the Respondent to provide any missing documents, including any addenda and/or clarifications, to this RFP.

Neither the Borough, nor its agents, employees nor consultants shall be responsible for errors, omissions, incomplete submissions or misinterpretations resulting from the Respondent's use of an incomplete set of RFP documents in preparing or submitting its Proposal.

The RFP documents have been made available only for the purpose of soliciting Proposals for the purchase of the System. No license or grant is conferred or implied to the Respondent or to any other person for any purpose.

1.4 Submission of Proposal and Proposal Security

A Proposal submitted in response to this RFP is deemed responsive if it complies with the provisions of Sections 3.2, 3.3 and 3.6. Each Respondent must read Sections 3.2, 3.3 and 3.5 carefully in order to obtain a complete understanding of the requirements for submission of its Proposal.

Firms submitting a Proposal are required to submit together with their initial submissions a refundable Proposal Security and a non-refundable Proposal Fee via certified checks or cashier's checks, payable to the Borough in the amount of Twenty Five Thousand Dollars (\$25,000.00) and Five Thousand Dollars (\$5,000), respectfully, along with an executed agreement for Proposal Security in the form attached hereto as **Appendix B**. Any Proposal Security must be valid for a period of at least one hundred eighty (180) days. No Proposal shall be considered unless accompanied by the required Proposal Security and the Proposal Fee, which shall be immediately deposited in the accounts of the Borough. The Proposal Fee will not be refunded under any circumstances. The Proposal Security submitted by the unsuccessful Respondents will be returned within ten (10) business days after the execution of an Agreement by and between the Borough and the successful Respondent or earlier, if the Respondent is determined to be unqualified. The Proposal Security from the selected Respondent will be returned promptly after the financial close under the Agreement.

1.5 Conditions with Respect to this RFP

By responding to this RFP, the Respondent acknowledges and consents to the following conditions relative to the submission, review and consideration of its Proposal:

- (a) The issuance of this RFP is not intended, and shall not be construed, to commit the Borough to execute any Asset Purchase or other similar Agreement.
- (b) Neither the Borough, nor its agents, staff or consultants, will be liable for any claims or damages resulting from the solicitation or collection of Proposals, nor will there be any reimbursement to Respondents for the cost of preparing the Proposals or for participating in this RFP process.
- (c) All Proposals will become the property of the Borough and will not be returned.
- (d) Information of a confidential or proprietary nature will be kept confidential during and after the procurement process as permitted by law when such information is properly so identified by the Respondents, as further described in Section 1.8, but only to the extent permitted by the Pennsylvania Right to Know Law.
- (e) Failure of any Respondent to submit a Proposal that completely addresses the requirements of this RFP (including submittal as part of such Proposal of all documents required to be submitted under the terms of this RFP) at the times and in the manner specified in this RFP, may result in the rejection of the Proposal in the sole discretion of the Borough.
- (f) All activities related to the RFP as contained herein and the operation and maintains of the System shall be subject to compliance with all applicable federal, State and local laws, environmental regulations and requirements.
- (g) Any and all proposal submissions not received by 3:00 pm Eastern Time on November 22, 2017 will be returned, unopened, to the firm or person submitting such and will not be considered.

1.6 Reservation of Rights and Options with Respect to this RFP

The Borough, in its discretion, reserves the following rights and options with regard to any Proposal:

- (a) To abandon the procurement process including the right to decline to sell the System for any reason.
- (b) To accept the Proposal that, in the Borough's judgment, best serves the interests of the Borough and the citizens of the Borough.
- (c) To waive any condition, requirement or informality which would otherwise constitute non-conformance of the Proposal with the provisions of this RFP.
- (d) To reject any or all Proposals.
- (e) To reject incomplete or nonresponsive Proposals.

- (f) To change or alter the terms and conditions of this RFP so long as the changes have been posted to the web site.
- (g) To engage in simultaneous negotiations with two or more Respondents regarding the purchase contemplated in this RFP.

1.7 Responsibilities of the Respondent in Connection with this RFP

It is the obligation and responsibility of each Respondent before submitting a Proposal to:

- (a) Review the terms of this RFP so that it is familiar with all aspects of it.
- (b) Inspect the System.
- (c) Analyze all applicable federal, state and local laws, regulations, ordinances, permits, approvals and orders that may affect the cost, performance or furnishing of the Services required under the terms of this RFP.
- (d) Notify the POC in writing prior to the submission of responses to this RFP of any conflicts, errors or discrepancies therein.

Each Respondent is responsible for obtaining whatever information it deems necessary and in undertaking all inspections, examinations and studies it deems necessary to obtain sufficient data and information to enable it to submit a Proposal. Any document provided to one Respondent will be made available all Respondents. By submitting a Proposal, a Respondent will be deemed to have acknowledged its opportunity to undertake all inspections and to examine all necessary data and information to enable it to submit a Proposal.

At any time prior to the receipt of Proposals by the Borough, Respondents may ask questions or request information in accordance with the provisions of Section 1.2 above. All such questions or information requests shall, together with the Borough's response thereto, be made available to all Respondents.

1.8 Confidential and Proprietary Information

If the Respondent chooses to include material of a proprietary nature in the initial submission or the Proposal, the Borough in its sole discretion and subject to applicable law, will keep such material confidential, but only to the extent that it contains trade secrets which if disclosed would cause substantial injury to the Respondent's competitive position and as permitted by the Pennsylvania Right to Know Law. However, the Borough will not assume any liability for any loss, damage, or injury that may result from any disclosure or use of marked data or any disclosure of this or other information during the review of the Proposals. The Respondent must specifically identify the section of its Proposal that contains such information by properly marking the applicable pages. Preferably, any sections which contain material of a proprietary

nature shall be severable or removable to assist the Borough in protecting this information. The Respondent also shall include the following notice in the introduction of the relevant material:

Material in the following sections labeled "Proprietary Information," contain information that is a trade secret which, if disclosed, would cause substantial injury to (Respondent's) competitive position. (Respondent) requests that such data be used only for the evaluation of the Proposal, and understands that disclosure will be limited only to the extent that the Borough determines it proper or to the extent that the Borough deems disclosure necessary according to law and otherwise pursuant to the Confidentiality Agreement. If a sale is awarded to (Respondent), the Borough will have the right to use or disclose the data as may be provided in the applicable Asset Purchase or other similar Agreement executed with the Respondent.

Notwithstanding the above, Proposal forms and appendices (including cost information) will not, under any circumstances, be considered proprietary or confidential information. Respondents are advised to read Section 4.3 of the RFP carefully regarding the limitations of Pennsylvania Law.

SECTION 2 DESCRIPTION OF THE SYSTEM ASSETS

2.1 Description of the System

The Borough's wastewater collection and treatment services are provided by a combination of agencies including the Borough, the Darby Creek Joint Authority (the "Authority"), the Delaware County Regional Water Quality Control Authority ("DELCORA"), and the City of Philadelphia. The Borough operates its own collection system within the Borough and conveys the wastewater to the Authority. The Authority conveys the Borough's wastewater to DELCORA. DELCORA then conveys the wastewater to the City of Philadelphia for treatment. Per that agreement, the City of Philadelphia bills DELCORA, which in turns bills the Authority. The Authority then allocates the charges among 12 municipalities, including Colwyn, that contract with the Authority for wastewater conveyance. The charges are billed quarterly by the Authority.

The municipalities that contract with the Authority must set their own fees in accordance with the Authorities requirements. Currently, Colwyn charges each household a \$365 annual sewer fee.

2.2 Regulatory Considerations

Regulatory requirements, including potential compliance filings to the PUC and the Pennsylvania Department of Environmental Protection ("DEP") may need to be satisfied as it relates to the transaction. The filing and approval of all such regulatory approvals will be the responsibility of the purchaser. The Borough will cooperate with and support regulatory filings made by the purchaser to the PUC, DEP, or other similar regulators in connection with the transaction. The

operation of the System by the Purchaser will be in accordance with all applicable federal, state and local laws.

**SECTION 3
INSTRUCTIONS FOR PREPARATION
AND SUBMISSION OF PROPOSALS**

3.1 General Provisions

Proposals will be divided into two parts:

Part I: Description of Respondent Team Structure, Operational and Technical Capability and Financial Capability

Part II: Financial Proposal

Parts I and II will be collectively referred to as the Proposal. All Proposals submitted by the Respondents must be submitted in accordance with the procedure set forth in this Section 3. *Failure to deliver timely the initial submission prior to the date and time indicated on the Calendar of Events will result in the automatic disqualification of the potential respondent.*

3.2 Proposal Part I

Phase I requires the Respondent to submit describe its qualifications, to be reviewed by the Review Committee. The Respondent is required to address: (a) team structure; (b) operational technical capability; and (c) financial capability, all as set forth below. With regard to team structure, operational and technical capability, and financial capability, the Review Committee will give equal weight to each of these criteria, such that each criterion will be given a maximum of 25 points for an aggregate maximum of 50 points. In order to qualify to participate in the review of Part II of the proposals, the Respondent must score at least 15 points for each criterion, and must also score at least 35 points in the aggregate. Any Respondent that does not meet the minimum criteria after the initial submission or the amended initial submission will not be permitted to participate in the subsequent phases.

RESPONDENT TEAM STRUCTURE

To qualify as a potential purchaser, the Respondent alone or with its partner(s) must demonstrate sufficient team structure with respect to the following areas:

- (a) Adequacy of definition of roles and responsibilities of team members and key personnel.
- (b) Adequacy of disclosure of controlling interests and team integrity.

OPERATIONAL AND TECHNICAL CAPABILITY

To qualify as a potential purchaser, the Respondent must demonstrate technical capability with respect to the following areas of expertise:

- (a) Operation and maintenance of wastewater systems.
- (b) Customer service improvements and enhancements.
- (c) Customer safety, security, and environmental responsibilities.
- (d) Ability to execute an efficient, timely and seamless transition plan.
- (e) Capability to undertake required capital improvements.
- (f) Ability to offer other System enhancements with a demonstrated knowledge of technologies.

FINANCIAL CAPABILITY

To qualify as a potential purchaser, the Respondent must demonstrate financial capability with respect to the following areas:

- (a) Financial capability to undertake commitments required under the RFP.
- (b) Financial ability to maintain and upgrade the System.
- (c) Adequate sources of operating capital.
- (d) Ability to secure financing.
- (e) Ability to finance future System expansion

3.3 Proposal Part II

All Respondents who submit a response to this RFP must comply with the requirements set forth in this Section 3.3 for submitting a Proposal. ***Provided that the Proposal requirements are met and the Respondent is found to be qualified, responsible and responsive***, the award of the RFP will be based on the amount of purchase payment (the "Consideration"), a commitment to maintain current consumer rates, and the operational and technical capabilities of the Respondent. The commitment to maintain current consumer rates will be measured in years. The contents of Proposals will not be disclosed at the time of opening of the Proposals.

3.4 Format and Required Information for Proposals

All Proposals should follow the format outlined below. The written submission shall be bound and prepared on 8-1/2" x 11" paper. A limited number of 11" x 17" fold-out sheets for

exhibits are acceptable. One original and four (4) hard copies of the initial submission shall be submitted, with the original copy of the initial submission clearly marked as the original and must contain the original signed documents and the certified check. Proposals shall be enclosed in an opaque, sealed envelope or otherwise boxed, marked with the name and address of the Respondent and with the legend: "**PROPOSAL SUBMISSION TO THE BOROUGH OF COLWYN FOR THE PURCHASE OF THE WASTEWATER COLLECTION SYSTEM.**" All pages are to be sequentially numbered. Unnecessarily elaborate Proposals are not being sought. Elaborate artwork, expensive paper and binding, and expensive visual and other preparation aids are neither necessary nor desirable. Any concerns with providing the required information should be communicated to the Advisor Representatives in a prompt manner.

3.4.1 Part I Format

Part I of each Proposal shall be in writing and contain the following:

- (a) Cover Page (to include identification of all team members)
- (b) Cover Letter (2 pages maximum)
- (c) Table of Contents
- (d) Executive Summary (optional)
- (e) Respondent Information:
 - (i) *Description of Respondent:* Provide a description of the team, including a description of all team members and the anticipated legal relationship (governance and capital structure) among the team members (e.g., partners, shareholders, members, operators, subcontractors, etc.) as appropriate. All equity investors should be identified.
 - (ii) *Roles of Team Members and Key Personnel:* Briefly outline the roles of the team members and key personnel.
 - (iii) *Structure, Management, and Working History:* Employee relations, including transition experience; corporate support and resources.
 - (iv) *Contact Person:* Provide a single contact person for all future communication between the Advisor Representatives and the Respondent. Please identify the contact person's name, title, organization, address, telephone number, fax number, and email address.
 - (v) *Controlling Interest:* Identify the individuals or companies who hold a major or controlling interest in each team member.

- (vi) *Expected Advisors*: Identify the companies and individuals who are expected to act as legal, financial, or other advisors for the team.
 - (vii) *Comparable Projects*: Provide a list of comparable projects in which team members have participated. Respondents should specify how these comparable projects relate to the proposed Purchase, their specific role(s) on these other projects, and the extent to which team members have worked together in prior projects.
 - (viii) *References*: Provide a list of team member references. Include each reference's organization, title, e-mail and phone number. These references should be able to describe the relevant qualifications and capabilities of each team member seeking to take leading roles in the governance, operations, and maintenance of the System.
- (f) Operational and Technical Capability. Respondents must address the following areas with respect to technical capability:
- (i) *Operation & Maintenance Expertise*: Respondents must provide evidence demonstrating their ability to operate and maintain facilities similar to the System. Specifically, Respondents should have:
 - A. substantial wastewater facility maintenance and operation experience;
 - B. advanced knowledge of wastewater facilities maintenance, repair, construction, and practical application of equipment and materials in water and wastewater facility operations;
 - C. demonstrated understanding in wastewater facility aging behavior to assess and determine the applicability of remedial maintenance action; and
 - D. all the capabilities necessary to operate and maintain the System successfully including wastewater fee management and operations, administration, marketing and public relations;
 - (ii) *Customer Service*: Respondents must demonstrate their commitment to achieving the highest standards of customer service and satisfaction. Specifically, the Respondent must highlight its experience and qualifications providing excellent customer service to the public using its wastewater services. Additionally, as a prerequisite, the Respondent will be expected to provide a plan to execute a seamless transition to the Purchaser's operations while maintaining the highest standards of customer service.
 - (iii) *Safety and Security*: Respondents must demonstrate their ability to address and resolve safety and security issues. Specifically, the Respondent should have:

- a. knowledge of wastewater and public safety and security techniques and methodologies; and
 - b. experience in emergency response support.
- (iv) *Capital Improvements*. Respondents must demonstrate their ability to undertake efficiently the required capital improvements to the System. Respondents must demonstrate expertise in relevant wastewater engineering standards, specifications, policies, practices, and processes.
- (j) Financial Capability. Respondents should address the following areas with respect to financial capability:
 - (i) *Financial Capacity*: Respondents must provide copies of audited financial statements for the past three years, together with any other relevant financial information. If audited financial statements cannot be provided, team members should provide enough financial information to demonstrate that they have the financial resources to successfully execute a project of this nature and scope.
 - (ii) *Ability to Raise Financing*. Respondents must provide specific evidence demonstrating their ability to raise financing for a project of this nature and scope. Specific factors that will be assessed include:
 - A. capability of issuing debt and raising equity in the current capital market;
 - B. the number and size of past relevant transactions;
 - C. specific experiences on past relevant transactions;
- (k) Certified check and executed agreement for Proposal Security in the form attached hereto as **Appendix B** and as described in Section 1.4.

The Borough reserves the right to request additional information from any Respondent at any time if they determine in their discretion that such information is necessary for consideration of the Respondent's qualifications.

3.4.2 Part II Format

Part II of the Proposal shall contain the following completed forms:

- Appendix C:** Transmittal Letter
- Appendix D:** Non-Collusion Affidavit
- Appendix E:** Statement of Ownership - Respondent

Appendix F: Contract and Lobbyist Disclosure

Appendix G: Business Proposal

Appendix H: Escrow Agreement secured by Cash Deposit

- (b) **FIVE COPIES OF RESPONDENTS SEALED PROPOSAL MUST BE RECEIVED NO LATER THAN 3:00 P.M. EASTERN TIME ON NOVEMBER 22, 2017. IN ADDITION, RESPONDENTS MUST SUBMIT THE PROPOSAL SECURITY AND NON-REFUNDABLE PROPOSAL FEE VIA CHECKS MADE OUT TO COLWYN BOROUGH NO LATER THAN 3:00 P.M. EASTERN TIME ON NOVEMBER 22, 2017.**

3.5 Acknowledgment and Agreement.

By submitting a Proposal, Respondents acknowledge and agree to the following conditions:

- a) All Proposals submitted in response to this RFP shall become the property of the Borough. As such, after the award of the RFP, or after the opening and rejection of all Proposals, Proposals submitted will become public records subject to public review under applicable law, subject to certain exceptions as described in Section 4.3.
- b) The selection of a Proposal by the Borough shall not waive or limit any assumptions of risk, provision of indemnity, or other obligations of the Respondent under the Purchase Agreement as may be executed between the Respondent and the Borough.
- c) Respondents and their representatives shall comply with the communications protocol set forth in Section 1.2 with respect to all communications concerning this RFP.
- d) Only one Proposal from each Respondent shall be considered, and each Selected Respondent may not be involved in more than one Proposal.
- e) Proposals shall comply with all content requirements of this Section. Failure to comply with such requirements may result in a Respondent being deemed non-responsive.
- f) The receipt of a Proposal from any Respondent does not waive or abridge the rights of the Borough to find such Respondent is not qualified or that the Respondent's Proposal is non-responsive to the requirements of this RFP.
- g) The purchaser will cooperate with the Borough, and vice-versa, throughout the implementation stage to provide for a timely and seamless transfer of customers to the purchaser.

3.6 Review of Proposals

The Calendar of Events contains mandatory pre-Proposal conferences and submission requirements. Failure to attend and/or timely submit will result in a Respondent's automatic disqualification, the deemed withdrawal of the Respondent, and the forfeiture of its Proposal security.

Once Proposals have been opened, Respondents may not withdraw their Proposals for a period of one hundred eighty (180) days.

It is important for Respondents to deliver their best offers in their Proposals. The Consideration proposals of Respondents deemed qualified following the review of Part I of the Proposal will be considered. As noted, the award of the RFP will be based on the amount of the Consideration, the operational and technical capabilities of the Respondent, and the best interests of the Borough and its residents.

SECTION 4 SELECTION AND CONTINUING CONFIDENTIALITY

4.1 General

The objective of Borough in seeking responses to this RFP is to enable it to select an entity that will provide the best services in the most complete, dependable, cost effective, environmentally sound manner to the residents of the Borough while at the same time providing the most significant financial compensation to the Borough in terms of purchase Consideration. Each section of the Proposal will be evaluated in terms of the reasonableness of the claims and/or commitments made, the completeness of the data provided, the reliability of the approach taken, the continued ability of the Respondent to perform, and conformance with the requirements of the instructions provided in this RFP.

The project team of professionals together with staff of the Borough will evaluate the responses to this RFP and make recommendations to the Borough as to the operational and technical, financial and administrative aspects of each Proposal.

4.2 Purchase Award and Purchase Agreement Execution

Execution of the Purchase Agreement by the Borough will be subject to final approval and authorization by the Borough Council ("Council"). A recommendation will be submitted to the Council shortly after the conclusion of the Proposal process. Council may decide not to accept any Proposal if it deems the offered price too low and not in its best interests. After selection of a Proposal and approval by the Council, the selected Respondent shall be required to execute the Purchase Agreement. Notwithstanding the execution of the Purchase Agreement, the Proposals of all other Respondents shall remain binding on said Respondents for a period of one hundred eighty (180) days thereafter (subject to earlier termination as a result of financial close of the Purchase).

In the event that the selected Respondent is unable to meet its obligations under the Purchase Agreement at any time prior to financial close, or to achieve financial close, the Borough reserves the right to execute a Purchase Agreement with the next-best-qualified Respondent as determined by the Borough in its sole discretion. ***Proposals will remain open and binding on Respondents for a period of one hundred eighty (180) days following the opening of Proposals for this purpose (subject to earlier termination as a result of financial close of the Purchase).***

4.3 Continuing Confidentiality

All Proposals are the property of the Borough ***and will not be returned.*** At the conclusion of the procurement process, the Borough may dispose of any and all materials received from Respondents in whatever manner it deems appropriate. In no event will the Borough assume liability for any loss, damage or injury that may result from any disclosure or use of proprietary information.

Respondents should be aware that records of the Borough are subject to the provisions of the Pennsylvania Right-to-Know Law, 65 P.S. §67.101 *et seq.* ("RTK Law"), and that, with certain exceptions, such records are subject to public disclosure. The Borough understands that in responding to this RFP, Respondents will be submitting information, including financial data, which the parties desire to be kept confidential. It is the Borough's position that this RFP is part of a competitive Proposal transaction process, and that prior to the award of a contract or prior to the opening and rejection of all Proposals, all such submissions are confidential and exempt from disclosure under Section 708(b)(26) of the RTK Law, 65 P.S. §67.708(b)(26).

Respondents are advised, however, that following award of a contract or the opening and rejection of all Proposals, such submissions may be subject to public disclosure unless they are otherwise exempt from disclosure under another provision of the RTK Law. Records and information submitted by prospective Respondents that constitute "trade secrets" or "confidential proprietary information" as defined in the RTK Law are exempt from disclosure under Section 708(b)(11), 65 P.S. §67.708(b)(11). "Confidential proprietary information" includes commercial and financial information which is privileged or confidential to the submitting party and the disclosure of which would cause substantial harm to the competitive position of the person who submitted the information. Any such claims may be subject to review pursuant to the procedures set forth in the RTK Law. If the Borough, the Pennsylvania Office of Open Records or a court determines that such information does not qualify as a trade secret or confidential proprietary information, such information may be subject to public disclosure.