

**BOROUGH OF WESTVILLE
SALE OF WATER AND/OR WASTEWATER UTILITY
SYSTEMS AND/OR LABORATORY
INSTRUCTIONS TO BIDDERS**

1.0 DEFINED TERMS

Capitalized terms used in Bid Documents have the meanings assigned herein as set forth below. Other capitalized terms not defined herein shall have the meanings assigned in the Agreement of Sale. Terms used in the Bid Documents have both singular and plural meanings.

ADDENDA shall mean the as written amendment(s) to Bid Documents issued prior to Bid Opening to prospective Bidders who obtained Bid Documents, in accordance with the time frames established by the Public Utilities Law (*N.J.S.A. 40:62-1 et seq.*, specifically *N.J.S.A. 40:62-4*).

AGREEMENT OF SALE shall mean the agreement attached hereto as Tab 5.

BID shall mean the completed and executed Bid Forms, attached Statement of Ownership, enclosed Bid Security and any and all other information required in Instructions to Bidders.

BID DOCUMENTS shall mean the Invitation to Bid, Instruction to Bidders, Bid Form, Agreement of Sale, Addenda, if issued, and all other documents appended hereto.

BID OPENING shall mean the **July 6, 2016 at 1:00 PM** Prevailing Time at Westville Municipal Building, 165 Broadway Westville, New Jersey 08093.

BID SECURITY shall mean the amount of Twenty Thousand Dollars (\$20,000), by a certified check or bid bond issued by a surety/bonding company licensed in the State of New Jersey and acceptable to the Borough.

BOROUGH shall mean the Borough of Westville, in the County of Gloucester, New Jersey.

BOROUGH ADMINISTRATOR shall mean William J. Bittner, Jr., Borough Administrator, Administrators Office, 165 Broadway Westville, New Jersey 08093

BIDDER shall mean an investor-owned utility regulated by the State Board of Public Utilities or a government entity, either of which operate a water and wastewater system of the same size and magnitude as the Systems.

BUYER shall mean the highest responsible Bidder who receives a Notice of Intent.

CLOSING DATE shall mean 30 days of the receipt of BPU approval of the municipal consent or such other date as provided for in the terms of the Agreement of Sale.

CONSULTING ENGINEER shall mean Remington & Vernick Engineers, 232 Kings Highway East, Haddonfield, NJ 08033 Attention: Stephanie Cuthbert, (856) 795-9595 (Phone), (856) 429-5904 (Fax).

DATE OF AGREEMENT shall mean a date following the issuance of the Notice of Intent, on or about December 2, 2016, to execute the Agreement of Sale, and make certain deposits thereunder.

DAY shall mean a calendar day irrespective of a holiday.

DEPOSIT shall mean an amount of money equal to 10% of the purchase price specified in the Bid.

NOTICE OF INTENT shall mean a written notice issued by Seller to the highest responsible Bidder that sets forth Seller's intention to enter into an Agreement of Sale regarding the sale of the Systems subject to voter approval, acceptance by the governing body and the terms and conditions of the Agreement of Sale.

NOTICE OF VOTER APPROVAL shall mean a written notice issued by Seller to Buyer confirming voter approval to sell the Systems to the highest responsible Bidder, who receives a Notice of Intent.

SELLER shall mean the Borough of Westville, a municipal corporation of the State of New Jersey, whose principal offices are located at 165 Broadway, Westville, New Jersey.

SYSTEMS shall mean the combined Water and/or Wastewater Utility Systems and/or Laboratory of the Borough.

2.0 **COMPLETION OF BID FORM**

2.1 Bid Documents.

(a) Seller is not responsible for any failure of Bidder to examine Bid Documents or to notify Seller of any questions regarding Bid Documents or to complete all requirements set forth in the Bid Documents.

(b) Bidder should verify that Bid Documents are complete in the number and pages of documents indicated in Table of Contents to the Bid Documents to insure that Bidder is in possession of a complete set of Bid Documents. Each Bidder is entitled to one hardcopy of the Bid Documents and one disc containing an electronic copy of the Bid Documents. Failure to have a complete set of Bid Documents shall be at the BIDDER'S RISK.

(c) Bidder should contact the Borough Administrator to obtain written verification of the number, if any, of Addenda issued.

(d) Bidder should notify the Borough Administrator, in writing only, of all questions regarding the Bid Documents on or before June 27, 2016, or such other date specified by the Borough in any addenda. No faxed or email questions or inquiries shall be answered.

2.2 Agreement of Sale.

(a) Bidder, if issued a Notice of Intent shall, within the time set forth herein, execute the Agreement of Sale substantially in the form included in the Bid Documents, which thereafter survives the Bid Documents.

(b) Bidder, in addition to scheduled pre-bid meetings or the additional due diligence items available for inspection in accordance with Tab 7 of the Bid Documents, may direct requests, in writing, to the Borough Administrator to conduct further examinations of assets listed in the Bid Documents. Seller reserves the right to schedule additional pre-bid meetings for all Bidders based on such written examination requests to the Borough Administrator.

(c) Bidder shall make any further examinations of assets at no cost to Seller and shall agree to indemnify and hold Seller harmless from any and all claims arising from Bidder's obtaining access and/or having access to the Systems.

(d) Bidder shall understand and accept that the Systems mean the assets described herein and in the Notice to Bidders and that any additional descriptions, data, reports, representations or other information made available to Bidder during Bidder's examination of assets are solely for Bidder's informal purposes and do not constitute a part of the Bid Documents, unless contained in an Addenda.

2.3 Bid Security.

(a) Bid Security is required in the amount of Twenty Thousand Dollars (\$20,000), by a certified check or bid bond issued by a surety/bonding company licensed in the State of New Jersey.

(b) Bidder shall understand and accept that the Bid Security shall be forfeited if Bidder fails to enter into an Agreement of Sale with Seller after receiving a Notice of Intent.

(c) If a bond is submitted, the surety shall acknowledge in the bond document that the total amount of the bond shall be subject to forfeiture if Bidder fails to enter into the Agreement of Sale with Seller after receiving a Notice of Intent.

2.4 Bid Prices. Bidders shall set forth all Bid prices in words, and numbers, either handwritten in black ink or type written.

2.5 Disclosure of Ownership. No instructions other than what is set forth on Bid Form.

2.6 Non-Collusion Affidavit. No instructions other than what is set forth on Bid Form.

2.7 Signature. No instruction other than what is set forth on Bid Form.

3.0 **SUBMISSION OF BID DOCUMENTS**

3.1 The Bid.

Bidder shall complete and execute the Bid Form, the Non-Collusion Affidavit, the Ownership Disclosure Certification, the Bid Security and the requested information set forth in Sections 3.2 to 3.6 hereof. Together these documents shall constitute a Bid. **Bidder shall submit one (1) original of each item and nine (9) copies of the entire Bid.**

3.2 Operation of Borough Systems.

The Borough will continue to operate the Systems until the Closing Date. Buyer will operate the Systems thereafter at its own cost and expense. Buyer must be aware that the customers of the Systems (domestic users, industrial users and commercial users) have received the services as set forth in the Customer Service Standards as defined in the Agreement of Sale. By executing the Agreement of Sale, Buyer will covenant to continue to provide services in accordance with the Customer Service Standards and will covenant to guarantee the continuous, uninterrupted service, as well as, a supply of potable water, including all seasonal variations and subject to any governmentally mandated restrictions on the use of water, and collection and conveyance of wastewater to the customers of the Borough's Systems as part of the purchase in a manner that meets all local, state and federal laws and regulations relating to potable water and the collection and conveyance of wastewater.

3.3 Buyer's Financial Capability Must Be Demonstrated.

Buyer must demonstrate to the satisfaction of the Borough that Buyer has the adequate financial resources to purchase the Systems from the Borough in accordance with the terms contained within the Bid Documents. Buyer shall provide annual audited financial reports of its operations for the past three (3) years as part of the Bid.

3.4 Buyer Must Demonstrate Adequacy of Personnel & Physical Plant.

Buyer must demonstrate to the satisfaction of the Borough that it has on staff a sufficient number of qualified personnel to operate the Systems, maintain the physical plants and maintain all equipment in order to adequately operate and maintain the existing Systems. Buyer shall provide, in a separate written document accompanying the Bid, an outline of all personnel to be involved in the operation of the Systems, with a list of their educational degrees, licenses held and years of experience in water and wastewater utility service operation and maintenance.

3.5 Buyer Must Demonstrate Qualifications to Run the Systems.

Buyer must demonstrate to the satisfaction of the Borough that it has the necessary qualifications to operate the Systems, maintain the physical plants and maintain all equipment in order to adequately operate and maintain the Systems. Buyer shall provide, in a separate written document accompanying the Bid, a document outlining Buyer's experience and qualifications relevant to the operation and maintenance of Systems, with the emphasis on the Operation/oversight of municipal owned/operated systems, where applicable. A list of Borough employees who operate the System identifying their functions is located in Tab 7. Buyer will be under no obligation to hire existing employees of the System, **although Buyer is required to interview and consider such employees for employment, if qualified.**

3.6 Additional Information.

By submission of its Bid, each Bidder agrees to provide any additional information about its finances, qualifications, staff or management reasonably requested by the Borough.

3.7 Delivery of Bid.

Bidder shall place the Bid in an opaque envelope, which must be sealed, marked "**BOROUGH OF WESTVILLE - SALE OF WATER AND/OR WASTEWATER UTILITY SYSTEMS AND/OR LABORATORY**" and shows the name and address of Bidder. The sealed opaque envelope shall be enclosed in a separate envelope, addressed to the Borough Administrator and must bear the notation "BID ENCLOSED". In a sealed box or package, attached to the envelope, shall be nine (9) copies of the Bid.

3.8 Withdrawal of Bid.

Bidder may modify or withdraw the Bid at any time prior to the Bid Opening by submitting to the Borough Administrator written notification, duly executed, in the manner set forth in the Bid forms located in Tab 4.

3.9 Pre-Bid Meetings.

Bidders may request pre-bid meetings to be held at the Borough with during normal business hours for informal questions and examination of records. These pre-bid meetings may include tours and inspections of the facilities. All requests for pre-bid meetings, including any tours, can be arranged by contacting William Bittner , Borough Administrator, (856) 456-0030 x. 11 (Phone). Attendance any pre-bid meeting is optional. Any information provided to any Bidders as the result of such meetings, to the extent deemed to be a clarification of or supplement to the information provided in the Bid Documents, will be provided to all Bidders who requested a copy of the Bid Documents.

4.0 **CONDITIONS OF BID**

4.1 The Borough of Westville is requesting that the following items be included bids submitted by each bidder. Bidder shall acknowledge each of the below items in their bid and provide comment on meeting and/or exceeding the requirements set forth below:

- a. The Borough currently provides discounted utility rates to qualifying senior citizens and disabled residents as detailed in Tab 7. Bidders shall provide discounted rates and acknowledge the discounted rates in the bid;**
- b. The fire district currently includes hydrants; list to be provided by the Borough. Bidder shall specify the cost for these hydrants in the fire district and provide comment on a discounted or no fee for these specified hydrants;**
- c. Buyer is required to interview and consider such employees for employment, if qualified. Buyer is under no obligation to hire said employees. Acknowledgment of this condition should be specified in the bid;**
- d. It is requested that the Borough of Westville Logo remain on the elevated water storage tank. Acknowledgment of this condition should be specified in the bid;**
- e. The Borough is requesting a five (5) year freeze on current rates currently adopted by the Borough. Acknowledgement of this condition should be specified in the bid;**
- f. Bidders shall provide comment on the anticipated staffing, response time, and location of offices for operation of system upon successful bid;**
- g. The Borough is requesting coordination of the utility improvements with the Borough Road Program. Should the awarded utility complete utility improvements in a road not scheduled for repaving/reconstruction, the awarded utility shall be responsible for curb to curb paving of the roadway.**

This requirement shall remain for the life of the contract. Acknowledgement of this condition should be specified in the bid;

- h. The Borough is requesting comment on the monetary commitment to the Borough Utility Infrastructure over the first five (5) year period;**
- i. The Borough is requesting that the Borough's metered facilities are not charged for water up to the current usage. Should the Borough exceed the current usage, the Borough will be responsible for the exceedance at the rates charged by the private utility at that time. Acknowledgement of this condition should be specified in the bid.**

4.2 Seller, at any time prior to Bid Opening, may withdraw the Invitation to Bid and not accept Bids. Any Bid received prior to withdrawal of the Invitation to Bid will be returned unopened to the Bidder.

4.3 Seller reserves the right to accept and/or reject any or all Bids or to waive any immaterial defect or informality in any Bid.

4.4 Seller, if Bids are received, will open the Bids and read such Bids aloud publicly at the location, date and time set forth for Bid Opening in the Invitation to Bid.

4.5 Seller will reject Bids other than the three (3) apparent highest responsible Bids and return the Bid Security for rejected Bids within ten (10) business days after the Bid Opening. Seller reserves the right not to carry out the provisions of this section if it is in the best interests of Seller.

4.6 Seller may hold the three (3) apparent highest responsible Bids or any other amount of Bids, if so desired, subject to acceptance for ninety (90) days after the Bid Opening. Seller reserves the right, with the approval of the Bidders, to extend said acceptance period.

4.7 Seller will be the sole party to determine whether or not Bids comply with the prescribed requirements set forth in the Bid Documents.

4.8 Seller may conduct investigations to determine the responsibility of Bidders to purchase the Systems in accordance with the Bid Documents and applicable law.

4.9 Notwithstanding any terms to the contrary, Seller reserves the right to reject any and/or all Bids if Seller deems it in its best interest to do so, pursuant to law.

4.10 If all Bids are rejected for a reason other than the inability to enter into the Agreement of Sale, Seller will return Bid Security to Bidders within ninety (90) days after Bid Opening, unless such time is otherwise extended.

4.11 The successful Bidder shall be aware that the Bid Security shall be held until at least twenty (20) days after receiving the certification of referendum from the November 8, 2016 General Election and may be returned then if the voters reject said sale. Otherwise, the Bid Security will be held until the Agreement of Sale is executed between Buyer and Seller.

5.1 AWARD

5.2 If a Bid is accepted, Seller will issue a Notice of Intent to the highest responsible Bidder ("Buyer") within ninety (90) days after Bid Opening and will hold Buyer's Bid Security pending execution of the Agreement of Sale.

5.3 Bidders acknowledge and agree that all information in prospective Buyer's Bid may be disclosed by Seller in conjunction with the referendum.

5.4 Seller's Notice of Intent will state Seller's intention to enter into the Agreement of Sale with Buyer and Buyer shall execute the Agreement of Sale within forty-five (45) days following receipt of Notice of Intent; otherwise, Seller shall consider Bid to be abandoned and Bid Security forfeited to Seller. Execution of the Agreement of Sale reflects the intent of the parties for Seller to sell the Systems to Buyer, subject to voter approval at a referendum to be held at General Election on November 8, 2016 and adoption of a municipal consent ordinance.

5.5 If the voters reject the sale of the Systems, Seller will return the prospective Buyer's Bid Security within twenty (20) days after receiving a certification of referendum.

5.6 If the voters approve the sale of the Systems, Seller will issue a Notice of Voter Approval to Buyer upon acceptance by the governing body within forty-five (45) days after receiving a certification of referendum.

5.7 Seller's Notice of Voter Approval will establish a Closing Date and the transfer of the Systems to Buyer subject to the terms of the Agreement of Sale.

6.0 **INFORMATION FOR BIDDERS - DESCRIPTION TERMS AND CONDITIONS OF SALE OF THE SYSTEMS BY BOROUGH**

6.1 Water Utility Assets to be Sold by Seller

Seller will sell and Buyer will purchase, for monetary consideration, and subject to the requirements stated hereinafter in this document, all rights in real property as defined during the bidding period and provided in the Addendum, permits and other related regulatory approvals and documents, and all contract rights relating to the water supply, treatment and distribution system identified in the Description of Existing Water and Sanitary Municipal Utility Facilities by Remington & Vernick Engineers located at Tab 6.

If awarded, the purchase will include all transferable water allocation rights, water supply wells, water treatment facilities, pumping stations, emergency generators, water storage facilities, water distribution and transmission mains, interconnections with Woodbury City and Deptford Township, fire hydrants, water meters, water service connections, valves, fittings and appurtenances, but shall exclude personal property, supplies, cash, securities and accounts receivable of the water systems up to and including the Closing Date.

Buyer is advised that this Sale and the Agreement of Sale is subject to review by the New Jersey State Board of Public Utilities (the "BPU"). Further, the New Jersey Department of Environmental Protection (the "DEP") will be required to issue or transfer certain permits and licenses currently held by Seller to Buyer. Buyer must determine, through its own means, as to the transferability of water allocation rights.

6.2 Wastewater Utility Assets to be Sold by Seller

Seller will sell and Buyer will purchase, for monetary consideration, and subject to the requirements stated hereinafter in this document, all rights in real property as defined during the bidding period and provided in the Addendum, permits and other related regulatory approvals and documents, and all contract rights relating to the wastewater collection and pumping system identified in the Description of Existing Water and Wastewater Municipal Utility Facilities by Remington & Vernick Engineers located at Tab 6.

If awarded, the purchase will include all existing assets and rights thereto, pumping stations, emergency generators, gravity collection mains, force mains, manholes, and appurtenances, but shall exclude personal property, equipment, supplies, cash, securities and accounts receivable of the wastewater system up to and including the Closing Date.

6.3 Explanation of Real Property Interests to be Conveyed

Seller will transfer its interest in all of its title, easements or other interests in the real property it is conveying or will provide easements as defined during the bidding period and provided in the Addendum. Seller will covenant to convey good title to the real property conveyed under the Agreement of Sale, to the extent owned in fee by Seller. If good title is not apparent in any interest in real property to be conveyed, Seller will covenant to move to quiet title in such real property interest. In all other instances, Seller shall convey its interest in such property to Buyer.

6.4 Ongoing Capital Improvements

Seller has developed plans to undertake certain capital improvements for fiscal years

2016 to 2035. Bidders are directed to review and take into consideration the terms of the 20 Year Capital Improvement Plan as detailed in the Description of Existing Water and Sanitary Municipal Utility Facilities by Remington & Vernick Engineers located at Tab 6. Copies of the plans are available for inspection to all Bidders at the offices of the Borough Administrator during normal office hours. The foregoing improvements are required if the facilities are to remain in service. Seller will pursue these improvements and expects to complete same within the timeframe required to secure the BPU approval of the municipal consent. Bidders are instructed to include the foregoing capital improvements in their consideration of the acquisition of the Systems, as such improvements shall be included in the sale of the Systems.

6.5 Existing Collateral Agreements Relating to the Systems

Bidders are directed to Tab 8 which includes copies of all existing collateral agreements relating to the Systems. As part of the sale of the Systems, Seller shall assign all of its right, title, interest and obligations under the existing collateral agreements to Buyer.

6.6 Reports on the Systems

Bidders are directed to the reports located in Tab 6 that provide a detailed description and analysis of the Systems, the revenues generated and a report of a cost estimate of the Systems value.

6.7 Allocation and Outlying Customers

At present, Seller is permitted to draw 250,000,000 gallons per year from Borough wells. The Borough is also in the process of purchasing 18,000,000 gallons per year from Brooklawn. The request has been reviewed by the NJDEP. The additional allocation has been incorporated in the the NJDEP Allocation Permit renewal currently being reviewed by the NJDEP. This allocation will be included as part of the sale upon approval by the NJDEP.

The Borough currently services approximately 20 water accounts in West Deptford and approximately 200 water accounts in Deptford. The infrastructure is owned and maintained by the Borough and the outlying customers are billed directly. The awarded bidder shall be responsible for continuation of this service to the outlying customers. The awarded bidder is responsible for adhering to all requirements of notification to the outlying customers upon receiving the Notice of Intent.

6.8 Independent Due Diligence Required

While Seller believes that the information supplied as part of these Bid Documents is an accurate reflection of its understanding related to the Systems being sold, it is provided only to assist Bidders in evaluating the Systems. Neither Seller nor its employees, officials, consultants or advisors make any warranty as to the accuracy or completeness of such information. Bidders are required to make their own evaluations before submitting a Bid and should not rely on the documents listed above or contained herein as the basis for their Bid.

7.0 **ADDITIONAL INFORMATION AND MISCELLANEOUS TERMS**

7.1. Indemnification

Buyer will indemnify and hold harmless Seller from and against any and all claims, demands suits, actions, damages, liabilities or expenses in respect to or arising out of operation or ownership of the Systems and shall be paid for all legal expenses incurred by Seller regarding the sale and/or operation of the Systems by Buyer.

7.2. Applicable Law

After certification of election and approval, the parties shall enter into an agreement of negotiated terms and governed, interpreted, construed and regulated by the laws of the State of New Jersey.