

RESOLUTION NO. 2017-04-10

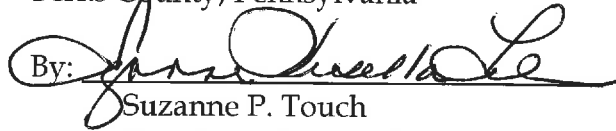
A RESOLUTION OF BOROUGH OF FLEETWOOD, BERKS COUNTY, PENNSYLVANIA, ADOPTING WRITTEN PROCEDURES REGARDING HOW PROFESSIONAL SERVICES CONTRACTS ARE CHOSEN FOR THE BOROUGH'S PENSION PLANS IN ORDER TO COMPLY WITH ACT 44 OF 2009.

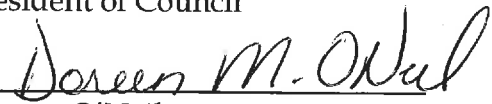
WHEREAS, Section 702-A of Act 44 of 2009 (the "Act") requires each municipality to develop and adopt procedures to select the most qualified applicant to enter into a professional services contract for the provision of professional services related to its pension plans, including investment services, legal services, real estate services and other consulting services.

NOW, THEREFORE, intending to be legally bound thereby, the Borough Council of the Borough of Fleetwood hereby consents to the adoption of and does hereby unanimously adopt the attached document entitled the "Borough of Fleetwood Procedures for Compliance with the Professional Services Contract Provisions of Act 44 of 2009".

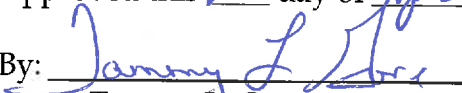
PASSED AND ADOPTED this 10th day of APRIL, 2017.

BOROUGH OF FLEETWOOD
Berks County, Pennsylvania

By: 
Suzanne P. Touch
President of Council

Attest: 
Doreen O'Neil
Secretary of Council

Approved this 10th day of April, 2017.

By: 
Tammy L. Gore, Mayor

**BOROUGH OF FLEETWOOD
BERKS COUNTY, PENNSYLVANIA**

**PROCEDURES FOR COMPLIANCE WITH THE PROFESSIONAL SERVICES CONTRACT
PROVISIONS OF ACT 44 OF 2009**

Below are the procedures for the procurement of professional services, including investment services, legal services, real estate services and other consulting services related to the pension plan of the Borough of Fleetwood, Berks County, Pennsylvania (the "Borough") pursuant to Act 44 of 2009 (the "Act"):

1. **Request for Proposal (RFP) Application(s) Including Disclosures.** Applications will be drafted at the time services are needed. The application provisions will address the applicant's qualifications, experience, expertise and compensation to be charged. An Act 44 compliant Disclosure Form (the "Disclosure Form"), a copy of which is attached hereto, will be included as part of the application. The applications submitted pursuant to the RFPs are not subject to a requirement that the lowest price be accepted.

2. **Advertisement.** The Borough shall advertise and otherwise give notice of the RFP to potential participants or candidates in a timely and efficient manner. An advertisement of such will include the following:

- a. The services that are the subject of the proposed contract;
- b. Specifications relating to the services;
- c. Procedures to compete for the contract(s); and
- d. All information contained on the Disclosure Form and additional information desired.

3. **Review.** The initial responses to the RFP will be evaluated by the Borough. The Borough will determine a list of finalists, conduct interviews of finalists, if applicable, and make a final decision. The criteria to be used in the evaluation process may differ depending upon the professional services requested, but all will include:

- a. The applicant's qualifications, experience and expertise related to Pennsylvania municipal pensions and approach to managing risk and research capabilities;
- b. The applicant's knowledge of Act 205, Act 600 and Act 44;
- c. The quoted fee(s) associated with the desired service(s) sought;
- d. The applicant's availability to attend meetings;

- e. The response of the references provided by the applicant; and
- f. The ultimate confidence of the Borough of the applicant's ability to meet the Borough's goals and address the Borough's concerns, as represented by the vote to accept the applicant in contract.

4. **Personnel.** Prior to entering into a professional services contract, the applicant shall disclose (and update in the event of any changes) all information contained on the Disclosure Form, and shall provide a resume upon request of the Borough.

5. **Conflict of Interest.** All RFP proceedings shall include a minimum restriction of one (1) year on:

- a. Participation by a former employee of an applicant in the review of a proposal or negotiation of a contract with that applicant.

- b. Participation by a former employee of the Borough in the submission of a proposal or the performance of a contract.

Additionally, all RFP proceedings shall include a permanent disqualification for any person or entity currently holding a professional services contract with the Borough, responding to an RFP, applying for, or otherwise seeking, a professional services contract with the Borough, which person or entity has a direct financial, commercial or business relationship with any official of the Borough, unless the Borough consents in writing to the relationship, following full disclosure.

6. **Public Information.** Following the award of a professional services contract, all applications and Disclosure Forms shall be made public, except for proprietary information or other information protected by law.

7. **Notification and Post of Proceedings.** Following the decision by the Borough of a finalist, the relevant factors that resulted in the selection for award of the professional services contract must be summarized in a written statement and included or attached to the documents awarding the contract. Within ten (10) days of the selection for award of the professional services contract, the original application, the summary of RFP proceedings and selection statement and all Disclosure Forms must be transmitted to all unsuccessful applicants and posted on the Borough's website, at least seven (7) days prior to the execution of the professional services contract.

8. **Increase.** A professional services contract shall not be amended to increase the cost of the contract by more than ten percent (10%) or Ten Thousand Dollars (\$10,000), whichever is greater, unless the increase and a written justification for the increase are public and posted on the Borough's website, at least seven (7) days prior to the effective of the amendment.

**ACT 44 DISCLOSURE FORM FOR PERSONS OR ENTITIES
PROVIDING PROFESSIONAL SERVICES TO THE
BOROUGH OF FLEETWOOD PENSION SYSTEM**

CHAPTER 7-A OF ACT 44 OF 2009 MANDATES the annual disclosure of certain information by every entity (hereinafter "**Contractor**") which is a party to a professional services contract with one of the pension funds of Borough of Fleetwood, Berks County, Pennsylvania (hereinafter the "**Borough of Fleetwood**"). Act 44 disclosure requirements apply to *Contractors* who provide professional pension services and receive payment of any kind from the **Borough of Fleetwood** pension fund. The **Borough of Fleetwood** has determined that your company falls under the requirements of Act 44 and must complete this disclosure form. You are expected to submit this completed form to the **Borough of Fleetwood** below, by _____, 20___. If, for any reason, you believe that Act 44 does not require you to complete this disclosure form, please provide a written explanation of your reason(s) by _____, 20__.

**RETURN COMPLETED
DISCLOSURE TO:**

Borough of Fleetwood
Attn: Suzanne P. Touch, President of Council
110 West Arch Street, Suite 104
Fleetwood, PA 19522
Telephone: 610-944-8220
Email: administration@fleetwoodboro.com

REQUIRED UPDATES:

Where noted, information in this form must be updated in writing as changes occur.

DEFINITIONS FOR DISCLOSURE

TERM:	DEFINITION:
CONTRACTOR	Any person, company, or other entity that receives payments, fees, or any other form of compensation from a municipal pension fund in exchange for rendering professional services for the benefit of the municipal pension fund.
SUBCONTRACTOR OR ADVISOR	Anyone who is paid a fee or receives compensation from a municipal pension system – directly or indirectly from or through a contractor.
AFFILIATED ENTITY	Any of the following: 1. A subsidiary or holding company of a lobbying firm or other business entity owned in whole or in part by a lobbying firm. 2. An organization recognized by the Internal Revenue Service as a tax-exempt organization under section 501(c) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501 (c)) established by a lobbyist or lobbying firm or an affiliated entity.
CONTRIBUTIONS	As defined in section 1621 of the act of June 3 RD , 1937 (P.L.1333, No. 320), known as the Pennsylvania Election Code.
POLITICAL COMMITTEE	As defined in section 1621 of the act of June 3 rd 1937 (P.L. 1333, No. 320), known as the Pennsylvania Election Code.
EXECUTIVE LEVEL EMPLOYEE	Any employee or person or the person's affiliated entity who: 1. Can affect or influence the outcome of the person's or affiliated entity's actions, policies, or decisions relating to pensions and the conduct of business with a municipality or a municipal pension system; or 2. Is directly involved in the implementation or development policies relating to pensions, investments, contracts or procurement or the conduct of business with a municipality or municipal pension system.
MUNICIPAL PENSION SYSTEM	Any qualifying pension plan, under Pennsylvania state law, for any municipality within the Commonwealth of Pennsylvania; includes the Pennsylvania Municipal Retirement System.
MUNICIPAL PENSION SYSTEM OFFICIALS AND EMPLOYEES; MUNICIPAL OFFICIALS AND EMPLOYEES	Specifically , those listed in TABLE 2 titled: " <i>List of Pension System and Municipal Officials and Employees</i> " on the next page. Where applicable, includes any employee of the Borough of Fleetwood .
PROFESSIONAL SERVICES CONTRACT	A contract to which the municipal pension system is a party that is: (1) for the purchase of professional services including investment services, legal services, real estate services, and other consulting services; and, (2) not subject to a requirement that the lowest price be accepted.

List of Municipal Officials for the Borough of Fleetwood

Certain requests for information in this form will refer to a **“List of Municipal Officials.”** To assist you in preparing your answers, you should consider the following names to be a complete list of pension system and municipal officials and employees. Throughout this Disclosure Form, the names set forth below will be referred to as the *“List of Municipal Officials.”*

Elected Officials:

Tammy Gore, Mayor
Suzanne Touch, Council President
Peter Merkel, Council Vice President
Jim Meals, Council Member
Chris Young, Council Member
Ralph Touch, Council Member
John Rothenberger, Council Member
Colin Boyer, Council Member

Appointed Officials or Employees:

Kap Stauffer, Treasurer
Doreen O’Neil, Secretary
Janice De Lay, Borough Administration
Chris Young, Police Department Liaison
Pete Merkel, Personnel Committee Chairman
Chris Young, Personnel Manager
Jim Meals, Personnel Committee Member

IDENTIFICATION OF CONTRACTORS & RELATED PERSONNEL

CONTRACTORS: (See “Definitions” – page 2) Any entity who currently provides service(s) by means of a Professional Services Contract to the Municipal Pension System of the **Borough of Fleetwood**, please complete all of the following:

**Identify the Municipal Pension System(s) for which you are providing information:
Indicate all that apply with an “X”:**

- Borough of Fleetwood Non-Uniformed Employee’s Pension Plan**
- Borough of Fleetwood Police Pension Plan**

****NOTE:** For all that follow, you may answer the questions / items on a separate sheet of paper and attach it to this Disclosure Form if the space provided is not sufficient. Please reference each question / item you are responding to by the appropriate number. (example: REF – Item #1.)

1. Please provide the names and titles of all individuals providing professional services to the **Borough of Fleetwood** pension plan(s) identified above. Also include the names and titles of any advisors and subcontractors of the Contractor, identifying them as such. After each name provide a description of the responsibilities of that person with regard to the professional services being provided to each designated pension plan.

2. Please list the name and title of any *Affiliated Entity* and their *Executive-level Employee(s)* that require disclosure; after each name, include a brief description of their duties. (See: **Definitions**)

3. Are any of the individuals named in **Item 1 or Item 2** above, a current or former official or employee of the **Borough of Fleetwood**?
→ IF “YES”, provide the name of the person employed, their position with the municipality, and dates of employment.

4. Are any of the individuals named in **Item 1 or Item 2** above, a current or former registered Federal or State lobbyist?
→ IF “YES”, provide the name of the individual, specify whether they are a state or federal lobbyist, and the date of their most recent registration /renewal.

NOTICE: All information provided for items 1- 4 above must be updated as changes occur.

5. Since _____ [date] has the **Contractor** or an **Affiliated Entity** paid compensation to or employed any third party intermediary, agent, or lobbyist that is to directly or indirectly communicate with an official or employee of the **Municipal Pension System** of the **Borough of Fleetwood** (OR), any municipal official or employee of the **Borough of Fleetwood** in connection with any transaction or investment involving the **Contractor** and the **Municipal Pension System** of the **Borough of Fleetwood**?

This question does not apply to an officer or employee of the **Contractor** who is acting within the scope of the firm's standard professional duties on behalf of the firm, including the actual provision of legal, accounting, engineering, real estate, or other professional advice, services, or assistance pursuant to the professional services contact with municipality's pension system.

- **IF "YES"**, identify: (1) who (the third party intermediary, agent, or lobbyist) was paid the compensation or employed by the **Contractor** or **Affiliated Entity**, (2) their specific duties to directly or indirectly communicate with an official or employee of the **Municipal Pension System** of the **Borough of Fleetwood** (OR), any municipal official or employee of the **Borough of Fleetwood**, (3) the official they communicated with, and (4) the dates of this service.

6. Since _____ [date], has the **Contractor**, or any agent, officer, director or employee of the **Contractor** solicited a contribution to any municipal officer or candidate for municipal office in the **Borough of Fleetwood**, or to the political party or political action committee of that official or candidate?

- **IF "YES"**, identify the agent, officer, director or employee who made the solicitation and the municipal officials, candidates, political party or political committee who were solicited (to whom the solicitation was made).

7. Since _____ [date], has the **Contractor** or an **Affiliated Entity** made any contributions to a municipal official or any candidate for municipal office in the **Borough of Fleetwood**?

- **IF "YES"**, provide the name and address of the person(s) making the contribution, the contributor's relationship to the **Contractor**, the name and office or position of the person receiving the contribution, the date of the contribution, and the amount of the contribution.

8. Does the **Contractor** or an **Affiliated Entity** have any direct financial, commercial or business relationship with any official identified on the **List of Municipal Officials**, of the **Borough of Fleetwood**?

- **IF "YES"**, identify the individual with whom the relationship exists and give a detailed description of that relationship.

****NOTE:** A written letter is required from the **Borough of Fleetwood** acknowledging the relationship and consenting to its existence. The letter must be attached to this Disclosure Form. Contact the **Borough of Fleetwood** to obtain this letter and attach it to this Disclosure Form before submission.

9. Has the **Contractor** or an **Affiliated Entity** given any gifts having more than a nominal value to any official, employee or fiduciary – specifically, those on the **List of Municipal Officials** of the **Borough of Fleetwood**?
- ➔ **IF “YES”**, Provide the name of the person conferring the gift, the person receiving the gift, the office or position of the person receiving the gift, specify what the gift was, and the date conferred.

10. Disclosure of contributions to any political entity in the Commonwealth of Pennsylvania **Applicability**:
A “yes” response is required and full disclosure is required **ONLY WHEN ALL** of the following applies:

- a) The contribution was made within the last 5 years (specifically since: _____ [date])
- b) The contribution was made by an officer, director, executive-level employee or owner of at least 5% of the **Contractor** or **Affiliated Entity**.
- c) The amount of the contribution was at least \$500 and in the form of:
 1. A single contribution by a person in (b.) above, **OR**
 2. The aggregate of all contributions all persons in (b.) above;
- d) The contribution was for:
 1. Any candidate for any public office or any person who holds an office in the Commonwealth of Pennsylvania;
 2. The political committee of a candidate for public office or any person that holds an office in the Commonwealth of Pennsylvania.

- ➔ **IF “YES”**, provide the name and address of the person(s) making the contribution, the contributor’s relationship to the Contractor, the name and office or position of the person receiving the contribution (or the political entity / party receiving the contribution), the date of the contribution, and the amount of the contribution.

11. With respect to your provision of professional services to the **Municipal Pension System** of the **Borough of Fleetwood**:

Are you aware of any apparent, potential or actual conflicts of interest with respect to any officer, director or employee of the **Contractor** and officials or employees of the **Borough of Fleetwood**?

NOTE: If, in the future, you become aware of any apparent, potential, or actual conflict of interest, you are expected to update this **Disclosure Form** immediately in writing by:

- Providing a brief synopsis of the conflict of interest (and);
- An explanation of the steps taken to address this apparent, potential, or actual conflict of interest.

- ➔ **IF “YES”**, Provide a detailed explanation of the circumstances which provide you with a basis to conclude that an apparent, potential, or actual conflict of interest may exist.

12. To the extent that you believe that **Chapter 7-A of Act 44 of 2009** requires you to disclose any additional information beyond what has been requested above, please provide that information below or on a separate piece of paper.

Please provide the name(s) and position(s) of the person(s) participating in the completion of this Disclosure Form.

One of the individuals identified by the Contractor in Item #1 above must participate in completing this Disclosure Form and must sign the below verification attesting to the participation of those individuals named below.

Name:	Name
Position:	Position:
Name:	Name:
Position:	Position:
Name:	Name:
Position:	Position:

Signature

Title

Date

VERIFICATION

I, _____, hereby state that I am _____
for _____ and I am authorized to make this verification.

I hereby verify that the facts set forth in the foregoing Act 44 Disclosure Form for Entities Providing Professional Services to the **Borough of Fleetwood Pension System** are true and correct to the best of my knowledge, information and belief. I also understand that knowingly making material misstatements or omissions in this form could subject the responding Contractor to the penalties in Section 705-A(e) of Act 44.

I understand that false statements herein are made subject to the penalties of 18 P.A.C.S. § 4904 relating to unsworn falsification to authorities.

CONTRACTOR

BY: _____
Name: _____
Title: _____

Date

INSTRUCTIONS FOR MUNICIPALITY:

DO NOT INCLUDE THIS INSTRUCTION PAGE WITH THE DISCLOSURE

You will need to prepare and send one of these disclosure forms to **each Contractor** that you have a contract for providing service to your pension plan (AND) a separate **set of disclosures** for each type of plan – fire, police, etc. If ONE CONTRACTOR services two or more plans, then only one disclosure is required, but the contractor must indicate he / she is completing the disclosure for more than one plan...**PAGE 4, Question One.**

You should also prepare a brief cover letter explaining the reason you are sending this disclosure out.

➤Who should receive this disclosure?

Generally there are 5 primary service providers for each pension plan but it is not limited to just these:

Actuarial Services Investment Services Administration Services Advisory Services
Legal Advisory Services - usually performed by the municipal solicitor.

IF some of these services are combined through one service provider or **Contractor**, then you only need to send this to that one entity. **For Example**, your administrative services and actuarial service are conducted through **Robert Smith and Associates** and your contract is with this company. However, **Robert Smith and Associates** subcontracts certain portions of these services to two other companies, you need only send one disclosure to **Robert Smith and Associates**, and one to any other entity that provides specific services - other than administrative and actuarial.

➤**PLEASE CHECK WITH YOUR SOLICITOR**...as a precaution regarding whom you should send this disclosure to.

Every place you see this: [ENTER NAME OF MUNICIPALITY] Enter the name of the municipality. Change the Font color to Black and remove the brackets.

Pages 1, 3, and 8 are the only pages that require modification and reprinting by the Municipality.

Instructions for the “Requesting Municipality” for completion of Page 3:

Under the header, prepare a list of Names and Positions of all personnel that are a party to ANY Pension Plan the municipality has. This should include: every Elected Official, Municipal Manager or equivalent position, Municipal Finance Director or equivalent position, Chief Administrative Officer for each plan, the Solicitor, any Pension Advisory Committee or Pension Board Members (not listed above).

SAMPLE Municipal List

Elected Officials

Bobby Jeffries - Mayor
Clyde J. Smith - Borough Council President
Edith Moniker - Borough Council Vice President / Police Pension Committee Chair
Janie Whitehead - Council Member
Tonya Gray - Council Member and Non-Uniformed Pension Committee Chair
Walter Doorstop - Council Member
Walter Special, Esq. - Solicitor

Appointed Officials or Employees

Sammy Special - Borough Manager / CAO, Non-Uniformed Plan / CAO, Police Plan
Alice Victory - Borough Secretary and Non-Uniformed Pension Committee Member
Michael Gum - Chief of Police / Police Pension Committee Member

Pension Committee(s)

Jeffrey Right - Non-Uniform Committee Member
Patty Wrong - Non-Uniform Committee Member
Fred Albright - Police Pension Committee Member
John Duggan (Retired Police Officer) / Police Pension Committee Member