

## City of Chester

RFP 2019-CWA-01

### Addendum No. 1 June 21, 2019

The City of Chester received multiple submissions of questions in connection with RFP 2019-CWA-01 (the RFP). This Addendum is issued in response to the questions received. Questions have in many cases been paraphrased or organized to consolidate requests from multiple potential Offerors. Questions deemed relevant or useful to the process have been answered below.

**Q1. Section I-8.A references a format to be used that is provided in “Section I-12. C”, but there is no Section I-12.C. Please clarify the format required.**

A1. The reference should be to Section 1-8.B, instead of 1-12.C, and the RFP is so amended.

**Q2. Section I-8 states that proposals will be binding for 270 days or until an agreement is fully executed. Is that the “sooner of 270 days or until an agreement is fully executed”?**

A2. Yes.

**Q3. Several questions were presented about the City’s legal authority and planned activity related to the Chester Water Authority (CWA).**

A3. Such matters are, inter alia, part of the ongoing litigation in the Delaware County Court of Common Pleas in two actions. The actions are styled as *In re: Chester Water Authority Trust*, No. 217-2019 (Orphans’ Court Division) and *Aqua Pennsylvania, Inc. v. Chester Water Authority*, No. CV-2019-002924. Interested parties are directed to the pleadings in those litigations to understand the positions of the City and other relevant parties.

Were the City to decide to pursue its options under the Municipal Authorities Act (MAA), the City anticipates that it would seek to obtain more detailed records and information, and, hopefully, cooperation from CWA management to ease the transition for customers, employees, and all other stakeholders in the process.

Each Offeror is encouraged to seek advice of counsel as to the proper path it believes appropriate and to develop its proposal accordingly.

**Q4. Several questions were presented about the outstanding obligations of the CWA.**

A4. While the exact nature of an anticipated transaction will vary by the nature of the counterparty/counterparties, were the City to exercise its rights under the MAA, and specifically 53 Pa. C.S.A. § 5619 and 5622(a), the City anticipates a simultaneous transaction wherein it sells the water system assets, defeases the lien of the CWA's indenture, and satisfies all other obligations of the CWA required to be satisfied under the MAA.

The City is specifically not aware of any outstanding obligations that might survive the transaction and be required, either as a matter of law or underlying facts, to be assumed by the successful Offeror, but does not have sufficient information to determine if there are any such obligations, or whether such survival is material. An Offeror may want to retain, for example, leased equipment or supply contracts. An Offeror may condition its offer, or its price, on some such conditions, but the nature and extent of such conditions will be factors to be considered by the City in evaluating the proposals.

Were the City to decide to pursue its options under the Municipal Authorities Act, the City anticipates that it would seek to obtain more detailed records and information, and, hopefully, cooperation from CWA management to ease the transition for customers, employees, and all other stakeholders in the process.

**Q5. Questions were submitted about whether approval from the Pennsylvania Public Utility Commission (PaPUC) will be sought.**

A5. Whether PaPUC approval is required will depend on the nature of the Offeror selected, if any is selected. The City would anticipate such approval to be a condition precedent to the closing of the transaction in the proposed agreement submitted by any Offeror whose acquisition would require PaPUC approval.

The nature and triggers for any and all conditions precedent will also be factors to be weighed in the evaluation of proposals.

**Q6. A wide variety of specific requests for information about CWA operations and history were submitted.**

A6. As is indicated in Section 1-4.E of the RFP, the CWA is not participating in this RFP process and has not shared any information in support of this process. Nor has the City yet exercised its right to terminate the CWA under the MAA. As such, information about the activities of the CWA is limited to public records, such as those available from the EMMA service of the Municipal Securities Rulemaking Board and from the website of the CWA. For example, the official statement for the most recent bond issue of the CWA contains information about the CWA, its finances and operations that the CWA has disclosed subject to applicable law. Certain documents, such as collective bargaining agreements, employee benefit plans,

personnel lists, supply contracts, and financial records are not in the possession of the City at this time.

The City understands that the lack of cooperation from the CWA presents an unusual situation and thus some Offerors may require some additional, post-selection or post-contracting, diligence. The City expects Offerors to specify any proposal conditions related to (i) the scope of diligence sought, (ii) possible adjustments to proposed consideration, (iii) documents to be sought after notice of termination is provided under the MAA and (iv) any other relevant and material factors. The scope of such requests, and any collars pertaining to adjustments related to subsequent discovery, are elements for consideration by the City in evaluating proposals.

Were the City to decide to pursue its options under the Municipal Authorities Act, the City anticipates that it would seek to obtain more detailed records and information, and, hopefully, cooperation from CWA management to ease the transition for customers, employees, and all other stakeholders in the process.

**Q7. Questions were submitted about the evaluation mechanism and process.**

A7. The City will pursue the best responsible and responsive proposal weighing the various evaluation criteria set forth in Section II-2 of the RFP.

The City requires a high-quality, experienced system operator.

A key factor for the City's analysis will be efforts, structures, or commitments to ameliorate any impact on residential ratepayers over the short- and medium-term.

The City is economically distressed and has short-term economic needs. As such, two additional key factors in the analysis of proposals will be (i) the total amount of consideration at closing and (ii) the amount of any immediately accessible payments or deposits. Both the total amount bid and the amount of any such immediately accessible payment or deposit and the terms offered with respect to each will be weighed by the City when evaluating bids. Within this analysis, the City will look favorably upon a large up-front deposit with limited conditions on refundability.

**Q8. Extensions of time were requested, as was information about the anticipated transaction schedule.**

A8. The City has been involved in the process of monetizing the CWA assets for over two years and is anxious to proceed. As such, the timetable will not be adjusted at this time.

Offerors who are unable to promptly make a concrete proposal are encouraged to submit a conditional offer or to include terms to address material uncertainty, but the City intends to assess its situation and proceed with the contemplated transaction, a settlement with the CWA, or other possible resolution as rapidly as possible.

After July 1 the City will evaluate proposals and decide whether to proceed to a best and final offer process, or proceed directly to negotiations with a single proposer, or to negotiate with multiple proposers. The City will pursue the course that it believes will best allow it to maximize the return and protections for itself, its citizens, and its neighbors.