

REQUEST FOR PROPOSALS FOR

**ACQUISITION OF ALL ASSETS OF
THE CHESTER WATER AUTHORITY**

**AFTER TERMINATION OF THE AUTHORITY
BY THE CITY OF CHESTER
PURSUANT TO THE MUNICIPALITY AUTHORITIES ACT**

ISSUED BY

**CITY OF CHESTER
OFFICE OF THE MAYOR
1 E. FOURTH STREET
CHESTER, PA 19013**

**RFP NUMBER
2019-CWA-01**

**DATE OF ISSUANCE
JUNE 12, 2019**

**SUBMISSION DEADLINE
1 P.M. – JULY 1, 2019**

I. PRIMARY INFORMATION

- I-1. Purpose.** This request for proposals (this “RFP”) provides to those interested in submitting proposals for the subject procurement (“Offerors”) sufficient information to enable them to prepare and submit proposals for the consideration of the City of Chester (“Chester” or the “City”) to satisfy a need for **the sale of all assets of the Chester Water Authority**. This RFP contains instructions governing the requested proposals, required elements, general evaluation criteria, and other matters specific to this RFP.
- I-2. Point of Contact.** The Office of the Mayor of the City (the “Mayor’s Office”) has issued this RFP on behalf of the City. The sole point of contact in the Mayor’s Office for this RFP shall be Candice Thompson, Clerk (the “Point Person”). **All inquiries about this RFP shall be directed to the Point Person and must be submitted in writing, preferably by electronic mail to cthompson@chestercity.com.**
- I-3. Background.**
- A.** The City organized the predecessor to the Chester Water Authority (the “Authority”) to provide services to the people of Chester in 1866 and reorganized the entity as the Chester Municipal Authority (later renamed the Chester Water Authority) in 1939.
- B.** The Chester Water Authority supplies water to a population of approximately 200,000 in a service area which includes 31 municipalities in Delaware and Chester Counties. Amongst its operations, the Authority uses water from the Susquehanna River and Octoraro Creek, treats water at a treatment plant located near the Octoraro Reservoir, owns and operates transmission facilities, storage facilities, and a distribution system, including transmission mains comprised of approximately 665 miles of pipeline. These assets, and others used in the provision of water services by the Authority, including real and personal property, are the “Water System Assets”.
- C.** Pursuant to the Municipality Authorities Act, 53 Pa. C.S. §§ 5601-5622 (the “MAA”), as the incorporating entity, the City is authorized to cause the Authority to be terminated, after satisfying outstanding obligations of the Authority. Upon termination, the City will become owner of the Authority’s Water System Assets by operation of law.
- D.** In 2016, the Commonwealth of Pennsylvania adopted Act 12 pursuant to which the Commonwealth, *inter alia*, established a process to facilitate the privatization of the assets of certain municipal authorities, while ensuring that the incorporating governments received a fair market value for such assets and ensuring that the ratepayers receive services of the highest quality within a rate structure regulated by the Pennsylvania Public Utility Commission (the “PaPUC”).

- E. On or about May 8, 2017, Aqua America, Inc. (“Aqua”), made an unsolicited offer to the Authority to acquire the Water System Assets. While the Authority’s Board of Directors rejected the offer from Aqua, the City was not so quick to reject the idea of a monetization.
- F. On October 25, 2017, Chester Mayor Thaddeus Kirkland informed the Authority that Chester was considering “every possibility” in its plans to exit Act 47 and, with respect to the Authority, including a monetization of the Water System Assets, and that as the sole municipality which created the Authority, Chester had the unilateral power to reclaim and transfer operation of the Authority’s assets and, subsequently, dissolve the Authority. The Authority objected in writing to the City’s declaration of its ability to terminate the Authority.
- G. For the better part of the next year, the City and the Authority attempted to resolve this impasse, and, for a period of time in Fall, 2018, it appeared that they had done so. However, the apparent agreement was illusory as the Authority continually resisted incorporating into proposed documents important elements of the apparent agreement.
- H. Despite the failure to agree on the path forward, on or about January 24, 2019, the Authority’s board adopted a ten (10) percent rate increase (the “Rate Increase”), purportedly to provide the cash for the settlement, and to pay for expansion of the Authority’s system. It appears the Rate Increase has not been finally implemented.
- I. Even after the Rate Increase, the Authority refused to amend the agreement to ensure the City would receive its benefit of the bargain. As such, it is now apparent to the City that the agreement with the Authority will not be consummated on terms acceptable to the City and thus the City must pursue other alternatives.

I-4. Anticipated Transaction and Key Criteria. The City has determined that it will consider proposals under which it will, in simultaneous transactions, satisfy all outstanding obligations of the Authority, including defeasing obligations under the outstanding indentures, obtain a conveyance of all the assets of the Authority either by contract or operation of law, terminate the existence of the Authority, and sell the Water System Assets as a complete system to a third party. This process is designed to comply with Act 12, if applicable, and the MAA.

- A. This RFP seeks bids from Offerors in such a transaction.
- B. The City intends to sell to the Offeror substantially all of the Water System Assets, including real and personal property, which it acquires from the Authority upon termination of the Authority as a matter of law, with a few exclusions. The only assets expected to be retained by the City will be cash, cash equivalents, insurance policies, certain books and records, and any assets which may not be sold as a matter of law.

- C.** Offerors may be an existing authority, a government, or a private for-profit or not-for-profit entity. Each Offeror must be able to provide high quality water services to users serviced through the Water System Assets, must meet federal and state standards for water quality and service, and must provide high quality customer service. Each Offeror must have experience with large water systems and be able to comply with applicable law. Each Offeror's history and record of performance will be weighed by the City when evaluating bids. Such history may include work of Offeror personnel in prior positions.
- D.** The City is also interested in protecting the ratepayers throughout the Authority's geography, including the people of the City. Specifically, Offerors will also be evaluated on the rates to be set initially, the duration of those rates, and whether additional increases can be restricted or need third-party approval. These protections will be weighed by the City when evaluating bids.
- E.** Because of the unusual situation at present, where the City has only a residual interest and does not have control of the information relating to the Water System Assets, the City expects it will only be able to provide extremely limited due diligence, representations, and warranties. Offerors are encouraged to review the public filings of the Authority for such information as is available about the Water System Assets. Some such information is available from the Authority's website and other information may be found in filings in other governmental filings, for example, those with the EMMA service of the Municipal Securities Rulemaking Board.
- F.** The scope of required information, representations, and warranties and the City's ability to meet such obligations will be considered by the City when evaluating bids.
- G.** The City will agree to endeavor to get the Authority to cooperate in any transaction. However, such efforts should not be relied upon by Offerors.
- H.** There are likely to be certain approvals needed for the transaction, ranging from environmental approvals to, if the sale is not to an authority or government, approval of the PaPUC. Additionally, the City may choose to seek a declaratory judgment regarding its rights under the MAA prior to closing of the anticipated transaction with the selected Offeror. All such approvals may be conditions precedent to closing if so specified in the proposed agreement. However, the City will weigh the reasonableness and burden of such conditions when evaluating bids.
- I.** The City is economically distressed and has short-term economic needs. As such, two key factors in the analysis of proposed bids 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 such deposit and the terms offered with respect to each will be weighed by the City when evaluating bids.

- I-5. Identification of Prospective Offerors and Questions.** Offerors are requested to identify themselves by submitting their entity name, and their name, email address and phone number to the Point Person on or before noon on June 19, 2019.

If an Offeror has any questions regarding this RFP, the Offeror must submit the questions by email (with subject line “2019-CWA-01 Questions”) to the Point Person. All questions must be submitted before 11 a.m. local time on June 19, 2019. Where the Mayor’s Office chooses to answer or respond to a question, the Mayor’s Office will provide the additional information, and if it believes appropriate, the text or a summary of the question (“Answers”). Answers will be emailed to all Offerors who have registered pursuant to item I-8 and, for those who have not registered, will be available in hard copy for pickup from the Mayor’s Office during normal business hours (the “Distribution”).

All Answers are considered as an addendum to, and part of, this RFP. The City shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within this RFP or formally issued as an addendum by the City. The City does not consider questions to be a protest of the specifications or of the solicitation.

- I-6. Addenda to the RFP.** If the City deems it necessary to revise any part of this RFP before the proposal response date, the City will undertake the Distribution described in Subsection I-5.

- I-7. Response Date.** To be considered for selection, submissions as described below must arrive at The Office of the Mayor, 1 E. Fourth Street, 2nd Floor, Chester, Pennsylvania, on or before 1 p.m. local time on July 1, 2019. The Mayor’s Office will not accept proposals via email or facsimile transmission. Offerors who send proposals by mail or other delivery service should allow sufficient delivery time to ensure timely receipt of their proposals. If, due to inclement weather, natural disaster, or any other cause, Chester City Hall is closed on the proposal response date, the deadline for submission of proposals will be automatically extended until the next business day on which the Mayor’s Office is open, unless the Mayor’s Office otherwise notifies Offerors. The hour for submission of proposals shall remain the same. The Mayor’s Office will reject, without review, any late proposals.

- I-8. Proposal Requirements.**

- A. Proposal Submission:** To be considered, Offerors should submit a complete response to this RFP to the Mayor’s Office, using the format provided in this Section I-12.C, providing both eight printed copies, and PDF copies submitted on a CD or a standard USB flash drive. Spreadsheets included in the PDF should also be provided in Excel, and Offerors may not lock or protect any cells or tabs. The CD or flash drive should clearly identify the Offeror and include the name and version number of the virus scanning software that was used to scan the CD or flash drive before it was submitted. An official authorized to bind the Offeror to its provisions must sign the proposal. For this RFP, the proposal must remain valid for 270 days or until a contract is fully executed. If the Mayor’s Office selects the

Offeror's proposal for award, and such award is approved by the City Council of the City, the contents of the selected Offeror's proposal will become contractual obligations, except to the extent the contents are changed through negotiations.

Each Offeror submitting a proposal specifically waives any right to withdraw or modify it, except that the Offeror may withdraw its proposal by written notice received at the Mayor's Office address for proposal delivery prior to the hour and date specified for proposal receipt. An Offeror or its authorized representative may withdraw its proposal in person prior to the exact hour and date set for proposal receipt, provided the withdrawing person provides appropriate identification. An Offeror may modify its submitted proposal prior to the exact hour and date set for proposal receipt only by submitting a clearly identified revised submission, which should contain any written pages of errata and a complete revised electronic submission on CD or flash drive marked as "Revised Proposal" which complies with the RFP requirements.

- B. Proposal Format:** Except as expressly required herein, Offerors are encouraged to communicate their proposal in a form that best meets their needs. Offerors should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to its proposal. Offerors are encouraged to prepare their proposals simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of this RFP.

Each proposal shall contain at least the following elements:

- i) Summary of key economic terms. Such summary shall set forth:
 - a) the total purchase price to be paid at Closing for the Water System Assets, and any material conditions or terms relating thereto;
 - b) the amount of the initial deposit or payment, the timing thereof, and any material conditions or terms relating thereto;
 - c) any subsequent deposit(s) or payment(s) to be made prior to closing, the timing thereof, and any material conditions or terms relating thereto;
 - d) any cap on rate increases (and the baseline for such increases) for any period of years, and the process by which the rates will be increased thereafter;
 - a) It is expressly requested that Offeror compare the total change in estimated customer revenues from Authority customers based on Offeror's proposed rates for calendar years 2020-2022 to those previously authorized by the Authority's board of directors, based on an assumed transition date of January 1, 2020;
 - b) These dates and rates are acknowledged to be estimates, but are requested for the purpose of making like comparisons between proposals; and
 - e) any cap, if any, on post-closing economic exposure for the City.

- ii) A history of Offeror's experience with public water systems and the qualifications of Offeror and its key personnel. This section shall be as comprehensive and complete as is necessary to ensure the comfort of the City in the partner that would be providing water to its citizens and its neighbors.
- iii) A form of proposed contract for the purchase of the Water System Assets.
- iv) Such other information as Offeror deems appropriate to set forth its qualifications, including, but not limited to, Offeror's financial capabilities and the proposed value initiative to the City and to ratepayers.

The City reserves the right to request additional information which, in its opinion, is necessary or advisable to assure that the Offeror's competence, number of qualified employees, business organization, and financial resources are adequate to perform the requirements of this RFP.

The City may make investigations as deemed necessary to determine the ability of the Offeror to complete the anticipated transaction to acquire the Water System Assets, and provide high quality services post-closing, and the Offeror shall furnish to the City all requested information and data. The City reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Offeror fails to satisfy the City that such Offeror is properly qualified and has sufficient resources.

- I-9. Alternate Proposals.** While the City has identified the basic approach to meeting its requirements, it encourages Offerors to be creative and propose their best ideas for meeting the requirements set forth herein. The City may, at its sole discretion, accept alternate proposals that do not meet the strict requirements set forth herein.
- I-10. Discussions for Clarification.** Offerors may be required to make an oral or written clarification of their proposals to the City to ensure thorough mutual understanding and responsiveness to the solicitation requirements. The Mayor's Office will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process.
- I-11. Best Offers.** While not required, the City reserves the right to conduct discussions with one or more Offerors for the purpose of obtaining "last and best offers." To obtain last and best offers from Offerors, the Mayor's Office may, in any combination and order, schedule oral presentations or meetings, request revised proposals, enter into pre-selection negotiations, or take such other actions as it deems necessary and prudent.

II. CRITERIA FOR SELECTION

II-1. Mandatory Requirements. To be eligible for selection, a proposal must both be timely received from the Offeror and be properly signed by an officer of Offeror who may legally bind the Offeror. These requirements are the only RFP requirements that the City will consider to be non-waivable. The Mayor's Office reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Offeror's proposal, (2) allow the Offeror to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Offeror's proposal.

II-2. Evaluation Criteria. Evaluation of the proposals involves a weighing of different economic and non-economic interests, and thus there is no single numeric metric that will be applied. In evaluating the proposals to determine the best responsible offer, a non-exclusive list of elements likely to be considered by the City include:

A. Economic Factors.

- i) Total purchase price for the Water System Assets, and timing thereof.
- ii) Deposits or preliminary payments, and timing and conditions thereof.
- iii) Rate concessions for residential ratepayers, including the initial level and duration of such concessions and the process applicable to rate setting after such period.
- iv) Tax implications to the City of Chester from the Offeror's proposal.
- v) Financial structure of Offeror, and ability to perform obligations under the contract, and whether such abilities are conditioned on market or other conditions.
- vi) Other economic factors.

B. Technical Quality.

- i) History of performance with a similar water system or systems.
- ii) Record of legal compliance in operation of prior water systems or systems.
- iii) Customer service record in other operations.
- iv) Likelihood to close transactions, including any past record of acquisitions of water systems.
- v) Requirements for approval and expected likelihood of approval of transaction by required regulators.
- vi) Other technical factors.

C. Contract Structure.

- i) Conditions on economic terms.
- ii) Ability for the City to provide the desired representations, warranties and covenants and City's desire to limit same.
- iii) Flexibility if the Authority is not cooperating.
- iv) Maximum cap on City liability post-closing.

- v) Excluded assets and performance of outstanding contracts of the Authority.
- vi) Other terms of the proposed agreement.

D. Other Issues.

- i) Long-term responsiveness to concerns of Chester residents.
- ii) Commitments to gender and racial diversity in recruitment, employment, and contracting.
- iii) Commitments to recruitment of employees and contractors from the people and businesses located in the City.
- iv) Track record and experience working with small diverse businesses.
- v) Workforce treatment history.

II-3. Evaluation Process and Determination of Best Responsible Offeror. The Mayor of the City has designated a team of staff and outside professional advisors to provide advice on this decision and negotiate a contract and related terms, but the final decision to accept any proposal must be made by the City Council of the City.

III. ADDITIONAL TERMS

III-1. Use and Disclosure of Proposals.

- A. Confidential Information.** The City is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Offerors' submissions to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Offerors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Offeror who determines that it must divulge such information as part of its proposal must submit the signed written statement described in paragraph III-1.B. below and must additionally provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.

- B. Public Disclosure.** After the award of a contract pursuant to this RFP, all proposal submissions are potentially subject to disclosure in response to a request for public records made under the Pennsylvania *Right-to-Know-Law*, 65 P.S. § 67.101, *et seq.* If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. If financial capability information is submitted in response to this RFP, such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

C. **City Use.** All material submitted with the proposal shall be considered the property of the City. The City has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Offeror copyright designations contained in proposals, the City shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of the City's policies, any applicable law, or rule or order of any court of competent jurisdiction.

III-2. News Releases. Offerors shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this RFP without prior written approval of the Mayor's Office, and then only in coordination with the Mayor's Office.

III-3. Notification of Award. Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed and the City has received the final negotiated contract signed by the selected Offeror.

III-4. Cancellation of RFP; Rejection of Proposals. The Mayor's Office reserves the right, in its sole and complete discretion, to cancel this RFP or to reject any proposal received in response to this RFP.

III-5. Incurring Costs. The City is not liable for any costs the Offeror incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of a contract.

III-6. Inclusion of Contract. Offerors shall provide with their bid a proposed form of contract for the purchase of the Water System Assets. The Mayor's Office, in its sole discretion, may undertake negotiations with Offerors whose proposals, in the judgment of the Mayor's Office, show them to be qualified, responsible, and capable of closing the anticipated transaction and providing long-term services. Contracts with significant post-closing obligations on the City will be disfavored. It is anticipated that the Offeror's representations and authorizations in Section III-7 below will also be restated in the final contract. Nothing herein shall preclude the City from negotiating the form of any contract.

III-7. Offeror's Representations and Authorizations. By submitting its proposal, each Offeror understands, represents, and acknowledges all of the following:

A. All of the Offeror's information and representations in its proposal are material and important, and the City may rely upon the contents of such Offeror's proposal in awarding the contract. The City shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.

B. The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential Offeror.

- C.** The Offeror has not disclosed the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential Offeror for this RFP, and the Offeror shall not disclose any of these items prior to the deadline to submit this RFP nor will it share such information with other Offerors or their agents during the process of negotiations.
- D.** The Offeror makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- E.** To the best knowledge of the person signing the proposal for the Offeror, the Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last five (5) years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Offeror has disclosed in its proposal.
- F.** To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror has no outstanding, delinquent obligations to the City or the Commonwealth.
- G.** The Offeror is not currently under suspension or debarment by the City, the Commonwealth of Pennsylvania, any other state or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.