

City of Chester
RFP 2020-CWA-01

Addendum No. 1
February 28, 2020

The City of Chester received multiple submissions of questions relating to RFP 2020-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 appropriate, relevant, and useful to the process have been answered below.

Q1. The Chester Water Authority (CWA) apparently allows some public access to the areas surrounding the Octoraro Reservoir (including its surface) pursuant to certain terms and conditions? Will the City be evaluating prospective Offerors on their commitment to this practice?

A1. All public benefits any Offeror wishes to designate will be considered. The City does not have sufficient information to provide the nature and details of the terms of the limited access granted by the CWA, so each prospective offeror is encouraged to submit any details it wishes to be considered.

Q2. The RFP states that the City “may impose certain restrictions or limitations on some assets prior to transferring them to a third party.” Please clarify what assets might be impacted and the nature of any “restrictions or limitations”?

A2. The nature of these restrictions are uncertain at this time, and likely will pertain to maintaining public benefits that the City desires to maintain, or if necessary to address litigation. For example, and without any commitment to do so, the City may adopt a deed restriction to permanently protect certain watershed areas from further development unrelated to water system usage. It is anticipated that, where appropriate, such conditions will be negotiated as part of a contract with a successful Offeror.

Q3. Several questions were presented about the City’s legal authority and planned activity related to the CWA assets.

A3. Such matters are, inter alia, part of the ongoing litigation in the Delaware County Court of Common Pleas in four actions and in several appeals to the Commonwealth Court from those actions. The actions below are styled as *In re: Chester Water Authority Trust*, No. 217-2019 (Orphans’ Court Division), *Aqua Pennsylvania, Inc. v. Chester Water Authority*, No. CV-2019-002924, *Chester Water Authority v. Aqua Pennsylvania and City of Chester*, No. CV-2019-005400, and *City of Chester v. Chester Water Authority*, No. CV-2019-005976. Interested

parties are directed to the pleadings in those litigations to understand the positions of the City and other relevant parties.

The bidding process that the City is undertaking is expressly permitted by a stipulated order adopted by the City and the CWA and entered by the Court on February 3. A copy of that order is being released as part of this Addendum 1.

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 Municipality Authorities Act (the MAA), and specifically 53 Pa. C.S. § 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, other than public obligations of state and federal law and interstate compacts, that might survive the transaction and be required, either as a matter of law or underlying facts, to be assumed by the successful Offeror. However, the City 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 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 other stakeholders.

Q5. What approvals does the City believe it needs to obtain as conditions precedent to closing? Is approval of the Act 47 Coordinator required to close? Other specific questions were submitted about whether approval from the Pennsylvania Public Utility Commission (PaPUC) will be sought.

A5. The nature of the approvals depends on the nature of the entity that will be acquiring the assets and the nature of the transaction. The City expects to eventually obtain approval from an appropriate Court of its rights under the MAA. 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. Each prospective Offeror is encouraged to explore these issues with its own counsel.

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

A6. As is indicated in the RFP, the Authority has not provided requested information that the City would like to make available as part of the RFP. 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.

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, including the weighing of each factor.

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 does not believe that a linear model for scoring is appropriate for the transaction that is potentially anticipated. A failure to adequately address any material component of the RFP may be disqualifying. However, amongst proposals that the City determines to be sufficient in respect to each element, the overall package will be weighted. For example, the total consideration and amount of immediately available deposit will be adjusted to recognize the implicit risks associated with any conditions proposed by an offer or any refundability on initial deposits.

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. This RFP is very similar to one that the market has been aware of since at least June 12, 2019. As such, the initial timetable is maintained.

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 March 9, 2020 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.

Q9. An explanation was requested about whether the CWA will cooperate with the transaction and what effect that would have on the proposals.

A9. As discussed above, the current management of the CWA has not provided requested information and commenced litigation to halt this process. Information has been requested on multiple occasions. While litigation continues, a positive sign was the stipulation to the February 3 order, but continued willingness to cooperate remains uncertain.

The City anticipates that some offerors may condition a portion of their consideration on whether the CWA's management cooperates in the transaction, including provision of desired information beyond what can be gathered under applicable law prior to closing. Such conditions will not necessarily be disqualifying, however, the nature and scope of the conditions, and the economic and deal conditions proposed, are expected to be evaluated and may end up becoming material factors in consideration of prospective offers.

Q10. A question was raised about the content of the potential data room.

A10. The CWA has not provided information such that a data room would be appropriate. If that situation changes in a timely manner, the City will consider whether it is appropriate to make the information available and, if appropriate, to extend the time to respond to this RFP. At this time, Offerors should expect neither an extension nor additional information from the City.