
RFP ADDENDUM #9

Date of Addendum: 6/12/2018

NOTICE TO ALL POTENTIAL RESPONDENTS

The Request For Proposals (RFP) is modified as set forth in this Addendum. The original RFP Documents, and any previously issued addenda, remain in full force and effect, except as modified by this Addendum, which is hereby made part of the RFP. Respondent shall take this Addendum into consideration when preparing and submitting its Proposal.

PROPOSAL SUBMITTAL DEADLINE

The Proposal submittal deadline of 10:00 am on June 15, 2018 remains the same and is not altered by this Addendum.

QUESTIONS AND ANSWERS

The following questions and answers are provided as a matter of information to clarify issues raised about the RFP.

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1. Please provide the summary tables entitled "Runyon Water Treatment Plant - Water Production and Quality Summary" for Contract Years 15, 16, 17, and 18.

See the McManimon, Scotland & Baumann File Transfer Protocol site (FTP) site at <https://msbnj.ftptoday.com/> with the following sign-in information:

Username: PerthAmboySystems

Password: 2018RFP

2. Please provide total wastewater gallons pumped to MCUA for Contract Years 15, 16, 17, and 18.

See FTP Site

3. Please clarify whether under the final agreement the City will evidence property insurance carried for all City Systems, and waive subrogation in favor of the Company. The following contractual language necessitates this inquiry, "*The City shall maintain insurance on the City Systems during the Term of this Contract substantially similar in kind, scope and amount as that maintained by the Company as of the Commencement Date. If any damage occurs to the City Systems during the Term of this Agreement that is an insured risk under the policies described in this Section 6.14, the Company agrees that its policies provide the primary coverage and should be used as the first basis of recovery.*" Absent evidence of City property insurance with a waiver of subrogation in favor of the Company, the Company would essentially be required to secure a duplicate property insurance program on all City Systems, which would unnecessarily drive up the cost for the City.

Section 6.14 of the Contract is revised as follows to clarify and confirm that the Company's coverage will be primary and that the coverage will be on a non-contributory basis meaning that their coverage will respond to any loss and defense of the City will be provided without contribution from the City:

The City shall maintain insurance on the City Systems during the Term of this Contract substantially similar in kind, scope and amount as that maintained by the Company as of the Commencement Date. If any damage occurs to the City Systems during the Term of this Agreement that is an insured risk under the policies described in this Section 6.14, the Company agrees that its policies ~~provide the primary coverage~~ provide coverage on a primary and non-contributory basis and should be used as the first basis of recovery.

4. Please confirm that deviations from the insurance requirements needing approval by the City (i.e. deductibles over \$10,000) will not be unreasonably withheld by the City. Strict compliance with these requirements, as written, could affect the final price the Company is able to offer.

Confirmed. Section 6.14 of the Contract is revised as follows:

Section 6.14 Insurance. The Company shall not commence the performance of the Services under this Contract until it has provided insurance of the types and in such amounts as set forth herein and such other insurance as shall be reasonably requested by the City provided such insurance is commercially reasonably available and such insurance has been approved by the City, such approval shall not be unreasonably withheld, nor shall the Company allow any subcontractor to work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved or the Company has determined that the Company's insurance is sufficient to cover the actions of the subcontractor. The Company shall maintain such insurance in full force and effect for the Term of this Contract.

(e) Professional Liability Insurance in the case of any consulting engineering firm hired by the Company or any engineers, architects or other professionals to the extent the coverage is not provided by the comprehensive general liability insurance, in an amount not less than \$2,000,000.

The Company shall require each of its subcontractors to take out and maintain during the life of its subcontracts the same insurance coverage required of the Company under Section 6.14(a), (b) and (c), including the extensions of coverage required under Section 6.14(a)(ii) naming the City as additional insureds thereon unless the Company has determined that its insurance coverage is sufficient to cover the actions of the subcontractor. Each subcontractor shall furnish to the

Company (2) copies of a certificate of insurance and such certificate shall contain the same information required hereinabove. The Company shall furnish one (1) copy of the certificate to the City.

All insurance policies shall have a maximum deductible of \$10,000 unless otherwise approved by the City which approval shall not be unreasonably withheld.

If the Company derives insurance proceeds to cover any liabilities under this Contract, the Company shall have no claim against the City for such amounts provided that the City did not cause the events that result in the claim against the applicable insurance company.

If at any time the Company fails to maintain any of the foregoing policies, or if a company issuing any such policy shall become unsatisfactory to any of the City, the Company shall, upon notice to that effect from such party, promptly obtain a new policy, submit the same to the City for its approval and submit a certificate of insurance as described above. Failure of the Company to take out and/or maintain or the taking out and/or maintenance of any required insurance, shall not relieve the Company of any liability under the Contract.

The City shall maintain insurance on the City Systems during the Term of this Contract substantially similar in kind, scope and amount as that maintained by the Company as of the Commencement Date. If any damage occurs to the City Systems during the Term of this Agreement that is an insured risk under the policies described in this Section 6.14, the Company agrees that its policies provide the primary coverage and should be used as the first basis of recovery. The Company, however, may request the City to file a claim under its insurance policy or policies for any amounts not covered under the policies maintained by the Company, and if insurance proceeds are paid to the City for such amounts, the City shall reimburse the Company but solely from such proceeds for the actual, documented cost it incurs to repair the damage to the City Systems in an amount not to exceed such insurance proceeds.

5. During the previous procurement phase, Veolia submitted a written question asking if the City would consider a monetary liability cap, and the City responded it would not. This remains a threshold issue, and, recognizing this is a new procurement phase, we respectfully pose the same question again. Would the City agree to an overall liability cap in some commercially viable amount, for instance, three times the annual contract amount? For example, Veolia's standard liability limitation language, which is very similar, if not identical, to the provisions we see in all our contracts, as provider or purchaser, is as follows:

To the fullest extent permitted by applicable laws, in no event shall Veolia or City be liable to the other for any indirect, consequential, exemplary, special, incidental or punitive damages of any kind, including, without limitation, damages for any loss of profits, interruption of business, loss of business

information or other pecuniary loss, whether such liability is based upon contract, tort, negligence or other legal theory. In no event shall Veolia's cumulative aggregate liability to City for losses due to any claims arising out of, relating to, or occurring in connection with this Agreement exceed [three times the total amounts paid by City to Company under this Agreement over the twelve (12) months preceding the claim giving rise to liability].

There have been questions raised about the indemnification language contained in the Operating Contract attached to the RFP and the resulting unlimited liability for negligence of the operator. The current 20 year contract that expires at the end of 2018 contains the same language and liability without incident. The City proposes to contract for the next 10 years with an operator with experience and expertise in operating systems similar to those of the City. It does not expect that negligence will be an issue throughout the 10 year term of the contract. It recognizes that private operators nevertheless as a business matter seek to protect against circumstances that may lead to liability for acts or omissions of its employees. The City as a matter of public policy, however will not change the indemnification language in this contract. To the extent that any proposer has concerns about liability it should weigh that in determining whether to submit a proposal or otherwise insure against any such risk based on its experience and confidence in operating the City's Systems.

6. Considering the absence of an overall liability cap in the sample contract, the following questions seek clarification to address Veolia's requirement that all contracts contain some measures of liability limitation:
 - a. Please confirm if the City's rights to "actual damages" under Section 3.2 is limited to recovery of "direct damages" only.
 - b. Recognizing that the City, in a Company Event of Default, has a right to pursue a cause of action for actual damages under Section 3.2, is the Company afforded the same right upon a City Event of Default under Section 3.3?
 - c. Please confirm that the parties' indemnification obligations are only with respect to third party liabilities, actions, damages, fines, penalties, claims, demands, judgments, loss, costs, expenses, suits and actions.

See response to Question #5.

7. Due to the high cost and periodic need to jet and TV the Perth Amboy sewer interceptors, which the City has paid in the past, will this cost continue to be paid by the City?

Jetting and cleaning of debris from sewer interceptor lines which occur once every several years, have traditionally been a capital project and would continue to be in

the future. The cost of same would be borne by the City. Jetting and cleaning of mains however, is a maintenance function that is a cost to the Company.

8. Due to the high cost of traffic control required by the Perth Amboy Police Department during work performed on the City's water and wastewater systems, will this cost be paid by the City?

Traffic control provided by off duty police is directed by the Police Department. It should occur on collectors and arterial streets and state and county highways. It should not occur on local streets unless there is a significant hazard identified by the police department. When the police traffic control is required for the repair or replacement of a water or sewer service line (lateral), the cost is eventually paid by the property owner. When the police traffic control is required for the repair or replacement of water or sewer main that is part of a capital project, the cost of traffic control is included in the contract cost. When the police traffic control is required for emergency repair or replacement of a water or sewer main that is not part of a capital project, the cost of traffic control is borne by the Company. However, if the repair after deducting labor costs exceeds \$500, the City will reimburse the Company as a direct expense.

9. Currently, blacktop, soil and other spoils from work performed on the City's water and wastewater systems is disposed of at the Bayshore Recycling Facility at the City's cost. Will the City continue to pay this cost?

Yes

10. If the Bayshore Recycling Facility were to cease operations during the term of the contract and the spoils disposal costs increase as a result would this incremental cost be paid by the City?

Yes

11. Currently the sludge from the Runyon Treatment Plant goes to the Edgeboro Landfill, if the Landfill ceases operation, and the sludge needs to be taken to another landfill, would the City pay the disposal costs at the new facility.

No. The hauling and disposal of sludge at Runyon is the Company's expense.

12. The New Jersey Water Quality Accountability Act (WQAA) requires that certain activities be performed including:
- a. The development of a pipeline replacement prioritization model
 - b. The development of an asset management plan for the water distribution system
 - c. The development of an asset management plan for the water treatment system
 - d. Will the development cost of the model and asset management plans be paid by the City?

The Company is responsible for ensuring that the City is compliant with the WQAA. After consultation with the City and the incorporation of the work in the Capital Improvement Program, the City would pay the cost of a, b, & c above as a capital project, however the Company is responsible for implementation of the plan.

13. The WQAA requires replacement of pipeline assets in a cycle of 150 years or less based on a “sound engineering analysis.” In adoption by NJDEP of the final regulations there is a possibility the replacement cycle could be amended to as low as 100 years. Is the City willing to commit to funding the ultimate replacement cycle at whatever level is ultimately required?

The Company’s responsibly under the WQAA regarding capital improvements is to provide plans and recommendations for compliance with the law. The cost of capital projects is a responsibility of the City. The City and the Company would need to work hand in hand with the State agency to develop a cost effective, workable and sustainable plan of action for compliance. Therefore, the answer to the above question is YES.

14. Will the City consider modifying the agreement to address risk transfer issues previously raised and addressed in Addenda 1-8?

No.