CITY OF NEW BEDFORD
Department of Public Infrastructure

ADDENDUM #4

The City of New Bedford issues the following Addendum #4 for

**RFP # 20439047 Contract Operation, Maintenance, & Management Services of the Wastewater Treatment Facility**

To: All Bidders of Record

This addendum is issued to advise Bidders of the below questions and answers, as well as the below statement regarding negotiations. Additional files will also be uploaded to the City’s website per request of interested bidders.

*The City’s RFP requests and allows proposers to suggest modifications to the contractual terms and conditions as part of its proposal. The City will consider all such requests during its evaluation and will discuss those during negotiations with the selected Proposer. However, the City retains its right to determine a proposer to be negotiating in bad faith if it raises material changes to the terms and conditions in negotiations but had not included such concerns in its proposal.*

1. Will the City consider the following items, representative of typical provisions in wastewater contract operations service agreements, as discussion items for good faith negotiations in the post-award period?

• With respect to the Service Agreement, inclusion of exceedance of design capacity and non-specification influent (including influent containing toxic materials) as an Uncontrollable Circumstance.

Answer: The City has made available plant performance for the past 3 years that provides relevant influent data. Based on the DMRs and effluent data, it is clear that the plant has historically and consistently met the enhanced standards, so the City does not believe that any
additional information or limitations are necessary. The city is posting a design criteria document as well to assist with proposals.

• With respect to the insurance and performance bond, minor language changes to align with corporate programs in place.

Answer: The City has no problem with this so long as the changes are not imposing unacceptable conditions on enforcement. We would have to see proposed language change.

• With respect to the Parent Company Guaranty the following:

Guarantee obligations should reflect provisions included in the service agreement (e.g. limitation of liability, claims and defenses, exhaustion of remedies, etc.).

Answer: The City agrees with this. Guaranty guarantees performance as described in the contract, including all allocations of liability described in it; so, it is not unreasonable to request that the guarantee, not guarantee aspects beyond performance required under the contract. However, nothing less than what the contract requires, either. Guaranty and contract should square up. We are talking about performance of the contract, not PI liabilities or the like that will be covered by insurance.

• Clarification on mechanics for assumption of the Guaranty by successor entities.

Answer: Successor must be qualified via same process as original guarantor, unless City waives right to so qualify at time of substitution.

• Requirement for City to exhaust other remedies available under the Service Contract prior to enforcing the Guaranty.

Answer: The city would not consider this.

• Allowance for Guarantor to raise claims and defenses available to the Company under the Service Contract.

Answer: The city would not consider this.

• Limitation of Guarantor’s obligations under the Guaranty so as not to exceed obligations of the Company under the Service Agreement.

Answer: This can be clarified so as to obligate the Guarantor to the terms of the contract without permitting it to assume, or the City to recognize, any defenses available to the original contractor.
under the contract. As noted above, the Guarantor is to come in and replace the original contractor, so permitting it to assume defenses to its performance available to the original contractor defeats the purpose of the guaranty. The guarantor has to perform what was required under the original contract. Nothing more and nothing less. It is stepping in with a clean slate on both sides of the contract. Litigation and claims and defenses between the City and original contractor are not relevant to the guarantor’s obligation to perform the contract as written.

- Allow for Guarantor to satisfy its obligations under the Guaranty through the use of a properly licensed corporate affiliate.

Answer: The city would consider this so long as the substitute is qualified.

2. Please confirm the units (i.e. gallons per day) of the numerical data on chemical usage data that was released with Addendum #1. Currently, there is no information on the units that these numbers correspond to.

Answer: Chemical data has been given in GPD (Gallons per day).

3. In section 2.2.6 “UTILITIES” of the Service Contract, it states: “The cost for electricity shall be a Pass through Cost up to the maximum usage limits more particularly described in Schedule 7”. One interpretation of this statement would be that the Proponent is responsible for procuring and paying electricity invoices, thus accepting electricity unit price risk and reimbursement from the City. This would require the Annual Operations and Management Fee to include electricity charges. However, we believe that the intent of the City is for the City to procure and pay for electricity invoices directly with reimbursement from the Proponent to the City for any exceedances above the guaranteed maximum electricity usage, as will be described in Schedule 7. Please clarify the intent of the Service Contract with respect to this matter.

Answer: Electricity is billed to and paid for by the City directly. Should a contractor exceed the maximum usage limit the City would bill the contractor for all electrical costs above the limit.

4. We ask the City clarify Section 3.19 of the RFP, page 66 (3rd paragraph) which states the following:

"All costs for keeping the facility and site in good working order and repair, including in the necessary spare parts inventory, shall be included in the Operation and Maintenance Fee including major repairs and replacements with a cost (exclusive of contract labor) of $10,000 or less."

Is it the intent of the City to require the contractor to carry and report these costs in Proposal Forms 3a and 3b on the first line titled "Annual Operations and Maintenance WWTF" or are these costs included in the R&R Allowance as discussed on Page 30 second paragraph, second sentence as stated as "the proposer shall add to its price proposal a value of $500,000 dedicated to routine repair and replacements....."? We assume that clarification of this topic will also apply to the R&R of the pumping stations.

Answer: The intent is for the contractor to carry operational costs (example, but not limited to: office supplies, everyday cleaning supplies, paper products). Maintenance and repair costs will come from the R and R allowance. Anything over $10,000 will need prior approval from the City. This will be the same for Pump Stations.

5. The indemnity appears to be very similar to the current agreement with Veolia except that the language “which may arise in favor of any third party” was eliminated from the indemnity in the proposed agreement which means both first party claims by the City and third party claims are now covered by the indemnity. However, the exception at the end of the proposed indemnity continues to be limited to third party claims, which we assume is a typo. We assume that the phrase “of third parties” should have been deleted from the exception to the indemnity to make the exception for City fault to apply as an exception to both first party claims and third party claims to be consistent with the change to the indemnity itself. Please confirm.

Answer: The deleted “third party” reference was deleted because it tried to limit the causes of action to which it applied:

“in favor of any third party on account of illness, disease, loss of property, services, wages, death or personal injuries...”

We intend for the indemnification to apply to every situation imaginable.

6. In addendum one, question 12 states the length of the executive summary can be up to 6 typed pages. However, addendum three lists the executive page count not to exceed five pages. Which is permissible?

Answer: question was answered in addendum 1 as follows:

Section 6.4.1 Executive Summary (page 28), it says the Executive Summary "shall not exceed six typed pages." This should prevail and 6.2.1 should be changed to “6 pages or less".
7. Will the City consider permitting increasing the length of section 2.0 Technical Proposal from 50 pages to 75 pages?

Answer: The city will allow for an increase in section 2.0 Technical Proposal from 50 to 60 pages.

8. In addendum three, question 12 provides budget numbers for the pump stations. Can you please indicate what the dollar figures presented represent (labor, maintenance, capital, other)?

Answer: Labor cost is what the city paid for subcontractors; other cost is maintenance. The city does not have everyday labor cost separated in budget.

9. Per schedule 2 of the Veolia agreement, an addendum refers to the formation of an Odor Committee. Does the Odor Committee still exist and if so are minutes or records from it available? Please provide any records.

Answer: No such committee still exists.

10. Schedule 2.5 of the Veolia agreement requires the submittal of an Operation and Maintenance plan from Veolia to the City. Please provide this (preferable inclusive of the revised dewatering operation).

Answer: Unavailable.

11. Per schedule 2 of the Veolia agreement, an independent audit of the facilities is required by an engineer approximately every five years and prior to the closure of the term of the contract. Please provide the most recent audit report.

Answer: Unavailable.


Answer: Provided.
13. Please provide Inventory of Laboratory equipment available to the Contractor.

Answer: List provided.

14. Please provide copies of any Laboratory Certification if certified.

Answer: Not Certified.

Addendum No. 4 becomes part of the Contract Documents.

Acknowledge receipt of this addendum by inserting its number on the Bid form. Failure to acknowledge receipt of the Addendum may subject the Bidder to disqualification.

End of Addendum
I HEREBY CERTIFY THAT I HAVE RECEIVED THE FOLLOWING ADDENDUM

ADDENDUM #'S________________________________________________________

________________________________________

Person submitting bid

________________________________________

Company Name

Please include this form with your bid if applicable.