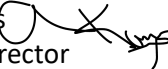


MEMORANDUM

TO: Interested Parties

FROM: Andrew Kays   
Executive Director

DATE: December 22, 2021

RE: Addendum No. 1 to the Request for Proposals for Operation and Maintenance of Landfill Gas to Energy Facility at the Millersville Landfill and Resource Recovery Facility (Issued November 8, 2021)

Below are responses to questions received from interested vendors by the deadline on December 10, 2021.

Per Section 1.9 of the RFP, by submitting a proposal, a Proposer agrees to accept the terms substantially in the form of the Service Agreement. This includes responses to the following questions stated herein. Any exceptions to the Service Agreement that are not addressed herein, the Proposer shall assume the exception was not accepted by the Authority.

Attached is a copy of the latest Audit Report from November 2021.

The Proposal due date is 4:00 p.m. (local time) on January 13, 2022.

**Questions**

- 1.) Will the Authority accept an Annual Renewable Bond to satisfy the Performance Bond requirement in Exhibit F of the Draft O&M Agreement?

**Response:** *The performance bond will be a one-year term consistent with the Contract Term. "The Bond may be continued in full force by a continuation certificate, executed by the Surety. If Surety elects to not renew the bond upon the expiration of any annual term, Surety shall provide written notice to both the Obligee and the Principle of such intention at least 60 days prior to the expiration of any such annual term. Non-renewal or cancellation of the bond shall constitute a default under the bond and be the basis or trigger for a claim." (See Exhibit F to the Draft Service Agreement, Form of Performance Bond, page F-2).*

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nmwda.org / Business-to-Business Recycling: mdrecycles.org  
Tower II – Suite 402, 100 S. Charles Street, Baltimore, MD 21201-2705

**Comprehensive Waste Management Through Recycling, Reuse, Resource Recovery and Landfill**

**MEMBERS:**

Rhody R. Holthaus, Anne Arundel County / Vacant, Baltimore City / D'Andrea L. Walker, Baltimore County / Jeffrey D. Castonguay, Carroll County  
Phillip S. Harris, Frederick County / Joseph J. Siemek, Harford County / Mark A. DeLuca, Howard County / Guillermo Wainer, Montgomery County  
Charles Glass, Maryland Environmental Service / Andrew Kays, Executive Director



- 2.) Regarding Section 37.10 Limitations of Liability – will the Authority accept the following language:  
37.10.1 With respect to the performance hereunder, a Party will not be liable to the other Party, whether arising out of contract, tort (including negligence) or strict liability, for loss of anticipated profits, cost of money, loss of use of capital, or consequential loss or damage of any other nature. *Furthermore, notwithstanding anything to the contrary herein, Contractor’s total aggregate liability for all claims and causes of action arising hereunder, whether based in contract, warranty, tort, strict liability, indemnity or any other cause of action, shall not exceed, for each twelve (12) month period commencing on the effective date of this Agreement, a maximum amount of One Million (\$1,000,000) Dollars in the aggregate for all claims during such twelve (12) month period, and for each subsequent twelve (12) month period thereafter, which claims arise while Contractor is performing Work hereunder, and which amount includes any fees and costs incurred in reperforming the Work. For the avoidance of doubt, the Parties agree that Contractor’s liability exposure shall be calculated for each specific twelve (12) month period and shall not carry over from one twelve (12) month period to the next.*

**Response:** *The Authority does not accept the additional language proposed in italics.*

- 3.) With regards to Section 6.1 of the O&M agreement: Exhibit H specifies In-Frame overhauls to occur 24,000 hours of operation but Section 6.1 does not list a reimbursement rate for In-Frame Overhauls. Are “In Frame” Overhauls also to be included in Major Overhauls? If so, what is the reimbursement amount by the Authority for an In-Frame Overhaul?

**Response:** *In-Frame overhauls are considered Major Project Maintenance per Exhibit H to the Service Agreement. In Frame Overhauls and Major Overhauls shall be performed per Caterpillar’s procedures. When Contractor performs an In Frame Overhaul, Contractor will be entitled to apply retainage funds in an amount not to exceed \$34,000 per engine. Contractor’s actual costs to perform such work in accordance with Agreement will be at the risk of Contractor.*

- 4.) If the retainage funds held by the Authority are insufficient to cover a Major Overhaul expense (Top End, In-Frame, Major) when it occurs, how will the Contractor be reimbursed for overhaul expenses? Will the Contractor be required to carry these costs until the Authority has withheld sufficient funds (or the non-renewal of the options years) to be reimbursed?

**Response:** *The Contractor shall be responsible for any and all routine maintenance costs and Major Project Maintenance costs per Exhibit H to the Service Agreement for which the Contractor is responsible under the Agreement during the entire contract term and upon completion of the Agreement, even if the costs incurred by the Contractor exceed the available retainage fund balance. If the Agreement is terminated for any reason, an assessment will be made of completed, incomplete, and outstanding Major Project Maintenance. Final distribution of retainage funds among the Parties will be based on the status of Major Project Maintenance.*

- 5.) Please provide a copy of any current permits the Facility is required to comply with under Section 3.1.2 of the RFP and Exhibit C of the Draft Service Agreement.

**Response:** *Contractor will prepare and process applications and renewal applications for all Project Permits listed in Exhibit C and included herein, and will use reasonable efforts to maintain all Project Permits to the satisfaction of the Authority. Attached are the following permitting documents:*

- a) Title V Operating Permit**
  - a. *Semi-Annual Monitoring Reports*
  - b. *Emissions Certification Report*
  - c. *Annual Compliance Certification Report*
  - d. *Annual Compliance Report - NESHAP*
  - e. *November 2, 2021 Emissions Testing Report*
- b) Landfill Gas Treatment Plan**
- c) Oil Permit**
- d) Certificate of Registration and Inspection (not attached)**

- 6.) Please provide data for the previous 3 years that documents the calculated Availability Bonus/Penalty outlined in Exhibit E and Section 14.1.

**Response:** *Attached are FY2020 thru FY2022 Service Fees and Availability Calculations.*

- 7.) Please provide data for the previous 3 years that documents compliance (or non-compliance) with the Performance Guarantees (emissions, heat rate, performance, etc.) listed in Exhibit E.

**Response:** *See Permitting Documents in response to Question 5. Based on the project compliance monitoring and reporting records, the project remains in full regulatory compliance. Also attached is Archaea's latest monthly report.*

- 8.) Is the proposer required to submit a Base Bid or can we submit an Alternative Bid only?

**Response:** *All Proposers are required to submit a Base Bid.*

- 9.) Will the Authority extend the proposal due date by 30 calendar days?

**Response:** *The Authority has no plans to extend due date.*

- 10.) Will Authority allow for mutual renewal terms under Agreement?

**Response:** *No. The Authority's rules and regulations, as well as established case law, require a competitive bidding process that does not allow for the mutual renewal of options for contracts (see COMAR Sec. 14.13.01 (Procurement Procedures) and Mayor of Baltimore v. Bio Gro Systems, Inc., 300 Md. 248 (Md. 1984)). Accordingly, the one-year renewal terms will be at the sole option of the Authority, as set forth in Section 2.2 of the RFP.*

- 11.) Will the Authority provide sixty days' notice to the Contractor if the Authority intends to exercise its right to each option renewal term?

***Response:*** *The Authority will provide 30 days' notice to the Contractor of the Authority's intention to exercise any applicable renewal option. Accordingly, Section 20.1 of the draft Service Agreement will be amended to reflect the 30-day notice requirement.*

Attachments

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