



**DEPARTMENT OF PURCHASING & CONTRACT COMPLIANCE**

**Winner 2000- 2008 Achievement of Excellence in Procurement Award  
National Purchasing Institute**

**Felicia Strong-Whitaker, Interim Director**



April 16, 2009

**Re: 09RFP01120K-DJ, Operation & Maintenance Services for  
Fulton County Wastewater Facilities & Pump Stations**

Dear: Proposers

Attached is one (1) copy of Addendum #2, hereby made a part of the above referenced 09RFP01120K-DJ, Operation & Maintenance Services for Fulton County Wastewater Facilities & Pump Stations.

Except as provided herein, all terms and conditions in the RFP referenced above remain unchanged and in full force and effect.

Sincerely,

*Donna Jenkins*

Donna Jenkins, CPPO  
Interim Contracts Administrator

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Wastewater Facilities & Pump Stations  
Addendum No. 2  
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This Addendum forms a part of the contract documents and **modifies** the original RFP documents as noted below:

**Question 1.**

Compliance Responsibility for a New Facility/RFP Sections 1.2.2.1 and 3.3.19. The Johns Creek Environmental Campus is currently under construction and the County “anticipates acceptance” of this facility in November 2009. The RFP calls for a separate agreement for this facility that will serve as a 30-day transition agreement during October 2009, with full O&M responsibility commencing in November 2009. The facility will be still in startup phase and still under the construction contractor’s performance responsibility. We recommend that the County’s O&M contract require operations on a “best efforts” basis until it is certain that the facility is capable of complying with applicable law. The current language creates an irresolvable conflict of responsibilities between the construction contractor and the O&M contractor and the potential for multiple lawsuits.

**Response:** As stated in Sections 1.2.2.1 (Johns Creek Environmental Campus (JCEC)) and Section 3.3.19 (Transition of Service), the successful proposer will be required to commence services pursuant to service agreement by October 1, 2009 at the Johns Creek Environmental Campus (JCEC) only. This 30 day transition period is specifically designed to familiarize Operator with the facility to ensure smooth and uninterrupted transition from Design/Build Operator. The successful proposer will have no contractual O&M responsibilities during this 30 day period. However, maintenance staff should begin developing the plan for the implementation of the Computerized Maintenance Management System (CMMS) during this 30 day period to ensure expedited functionality as required beginning November 1, 2009. The plan is due within 15 days of award of the Contract. The price proposal form has been amended to include a line item entitled -30 Day Transition Period – Staffing. By November 2009, the startup phase of the facility will be concluded and the ability of the facility to meet permit conditions will have been established.

**Question 2.**

Letter of Credit Requirements/RFP Section 2.12 and Contract Section 38.2. The Letter of Credit requirements in the RFP appear to be costly and unnecessary. The County could be able to adequately protect itself by requiring a performance bond. We recommend a performance bond instead of a Letter of Credit. If the

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County will not make this modification, we would ask the County to precisely define the trigger points for drawing on the Letter of Credit so actual risk costs could be evaluated. We recommend that the County allow reasonable notice and opportunity to cure period before drawing on the Letter of Credit as opposed to the ability to immediately drawing following the issuance of a notice of default. The change would lower the O&M prices significantly.

**Response:** As stated in Section 2.12.1 (Letter of Credit Requirements) the County will keep these requirements as outlined. Also the Conditions to Drawing will remain the same as stated in Section 2.12.1.2 of the RFP.

**Question 3.**

Waste Disposal/RFP Section 3.3.9 and Contract Section 60.8. This section describes the Operator's responsibility for sludge and hazardous waste disposal and states that the Operator must hold the County "free of liability for any and all actions relating to waste disposal." Since the Operator is not the generator or owner of the sludge, under federal RCRA laws the Operator cannot legally assume responsibility for cleanup costs related to the content or composition of the sludge, if such content or composition is not altered or rendered hazardous due to the Operator's fault. We recommend the County consider revising or removing this statement.

**Response:** The language will remain as stated in RFP Section 3.3.9 and Contract Section 60.8 (Waste) and as stated in any and all other Sections found in the RFP and /or Contract that reference sludge hauling, handling and disposal etc. The County is fully aware of its regulatory responsibilities in reference to the content of the sludge. They will assume the responsibility for sludge that would become hazardous due to circumstances beyond the Operator's reasonable control. However, the County would require the Operator to dispose of any hazardous sludge in an appropriate manner where the County would assume the related reasonable cost.

**Question 4.**

Facility Security/RFP Section 3.3.14 and Contract Sections 50.8 and 60.13. Please note that, in addition to its responsibilities for providing and implementing security measures, the Operator is responsible for, "all damage or injury to such properties caused by trespass, negligence, vandalism, theft, or malicious mischief of third parties." We recommend the County revise or remove this requirement. This risk is normally assumed by the owner and covered by owner's

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insurance for the facilities. This wording means the owner's facility insurance for fire, hazards, floods, etc., would have to be duplicated by the Operator, therefore incurring unnecessary costs. At present, we must own or lease the actual facilities to obtain this insurance, making this insurance cost prohibitive and a duplicate of County's existing insurance.

**Response:** As stated in RFP Section 3.3.14 and Contract Section 60.8 the Operator is responsible for security for all facilities and maintain security systems including system hardware and software. Therefore the County is requesting each proposer to respond to address facility security as stated.

**Question 5.**

Insurance and Risk Management/RFP Section 7 and Contract Sections 6.8, 21 and 22

- With regard to the indemnity provisions, they appear to be not mutual, are not limited to personal injury and property damage claims, do not apportion liability in the event of joint fault and do not contain any limit of liability. We recommend the County revise the language to address these issues and would be happy to supply acceptable examples.
- While Section 6.8 of the Contract excludes indirect and consequential damages, there are exceptions made for third party indemnity claims, claims arising from a breach of warranty and claims arising from the Operator's "performance or non-performance" of the Contract. In fact, it is not clear where this exclusion actually applies. We recommend that this be clarified by further defining the issues and would be happy to supply examples.

**Response:** As stated in RFP Section 7 (Insurance and Risk Management Provisions) and Contract Section 6.h (No Consequential or Punitive Damages), Article 21 (Insurance and Uncontrollable Circumstances) and Article 22 (Indemnification)- The County accepts the fact that the indemnity provision may not be mutual or limited to personal injury and property damage claims. These indemnity provisions are for the protection of the County indemnities only and shall establish, of themselves, any liability to third parties. Each proposer shall assess the risk/liability that is inherent with Operation and Maintenance of wastewater facilities as referenced in the RFP and Contract.

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**Question 6.**

Upsets and Excessive Influent/Contract Section 52.6(B). The County will not relieve the Operator of liability for violations caused by upsets or bad influent unless all of the listed conditions are met. These include: (i) EPD and EPA concurrence that an excusable upset occurred, which is unlikely since enforcement and review would generally be undertaken by only one of these entities; (ii) a requirement that the Managed Assets have been managed and maintained in accordance with the Contract – meaning that a Contract violation that is unrelated to specific environmental violation may be used to deny the Operator relief from liability; and (iii) that the notice of the violation to the government and the public complied with applicable law, meaning that a technical violation of the notice requirements may be used to deny relief from liability. We recommend the County revise this clause and would be happy to supply examples.

**Response:** As stated in Contract Section 52.f.ii.6 (Upsets and Excessive Influent)-the language in this section shall remain as stated in the Contract.

**Question 7.**

In order for us to assume liability for each of the facilities covered by this RFP, it is vital that we be able to fully investigate them. We recommend that the County consider allowing each proponent to spend up to two days at the plants and two days at the pump stations independently without the other firms present. This will allow each firm to assess the actual condition of the facilities and equipment and the risk associated with the \$25,000 per item limit maintenance limit. An alternate approach would be modifying the entire maintenance clause approach to one that is typical of O&M contracts instead of design-build-operate contract. The existing procedures will drive up costs for all firms that participate.

**Response:** The County agrees to extend the number of days available for potential proposers to visit the plants and pump stations. The County also realizes that an initial assessment of all equipment to obtain the actual level of service of the existing equipment is essential. Therefore, pursuant to Section 60.14 of the Contract and Exhibit 3 and 4 the selected Operator will be required to establish these benchmarks and maintain equipment at these levels, once agreed upon by both parties, throughout its remaining life. All new equipment must be maintained at manufacturers recommended warranty levels or better during its lifecycle. The Operator must perform all tests and testing as may be required or recommended pursuant to applicable warranties. As stated in Exhibit 3.4 (CMMS) data must be kept current documenting all predictive, preventive and corrective maintenance at a minimum to manufactures specification. The

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Contractor's financial responsibility relative to the replacement of major equipment will be reduced to \$10,000 per item, if the Contractor demonstrates compliance with Section 1.3.2, Exhibit 3-Section 3.2.2.2 (Preventive Maintenance) and Exhibit 4-Section 4.5 (Operations and Maintenance Plan) related to preventive maintenance standards. The Contractor shall be exempt from paying the \$10,000 repair/replacement cost related to major equipment for the first two years from the Effective Date pursuant to Article 8-Section 8.a provided the Contractor has demonstrated full compliance with the above mentioned standards.

**Question 8.**

The incumbent operator for this contract has an advantage in that they do not have to price transition costs for this work. We recommend the County consider a separately priced allowance for transition cost for this contract so that this cost is not a part of the fee evaluation for Operations and Maintenance.

**Response:** The County will establish a separate price allowance for the selected Operator not to exceed \$100,000. This item will be billed to the County at the per hour rate for each staff person involved in the transition into the existing Fulton County facilities and does not apply to the JCEC. There is an allowance line item in the cost proposal to cover the transition cost for all proposers except the incumbent. It will not be included in the evaluation of the cost proposal. This takes away any potential advantage from the incumbent.

**Question 9.**

How will the County view proposals (and the accompanying bid bond) that may take exception to the commercial and technical specifications? Will they be rejected as non-responsive? Will the bid bond be forfeited?

**Response:** The County recommends that all proposers submit all exceptions to the technical and commercial specification before Monday, May 4<sup>th</sup>, 2009 at 4:00 PM. If proposals are submitted with exceptions to the Contract, they may be considered a non-responsive proposal.

**Question 10.**

Section 38.2. Letter of Credit.

Will the County accept a Performance Bond instead of a Letter of Credit?

**Response:** No. The County will only accept a Letter of Credit. In Exhibit 9 – Price Proposal Form, a line item is included for the Letter of Credit.

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**Question 11.**

Section 38.3. Cost of Providing Security for Performance.

This language does not allow the Operator to include a cost.

In Exhibit 9 – Price Proposal Form, a line item is included for the Letter of Credit.

Please confirm that the cost for providing security for performance is to be included.

**Response:** As stated in Article 38 (Security for Performance) under Section 38.3 (Cost of Providing Security for Performance) it is the Proposer's responsibility to include this in their overall price submittal.

**Question 12.**

Section 62.3 (F) Adjustment Factor. CPI Adjustment.

This provision states that the Service Base Fee will be subject to change only due to changes in the scope of services. Will the County accept an approach that provides for an annual Consumer Price Index or other index adjustment to the Service Base Fee each year even if there is not a change in the scope of services?

**Response:** The CPI applies to the Service Base Fee (fixed and variable components) on an annual basis pursuant to Article 62.c.vi.

**Question 13.**

Section 3.9.2 Utilities

This section states that the Contractor is responsible for paying for all utilities, including electricity. The Operator has some control of electrical usage, but no control of unit costs. Will the County allow an approach whereby the Operator guarantees usage and the County pays the electric bill directly? This would appear to be more cost effective since the County electric billing rate is less than that available to a private entity.

**Response:** The County will not consider changing its position on payment of utilities.

**Question 14.**

Section 8.2 County Renewal Option

This section provides that the County can renew the service contract at its sole option. Will the County change this provision to state that the renewal shall be mutually agreed upon by the County and Operator?

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**Response:** No. The County will not change the language of this provision as stated in the RFP.

**Exhibit 9, Price Proposal Form has been revised and the new revised form is attached at the end of this addendum.**

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**ACKNOWLEDGEMENT OF ADDENDUM NO. 2**

The undersigned proposer acknowledges receipt of this addendum by returning one (1) copy of this form with the proposal package to the Purchasing Department, Fulton County Public Safety Building, 130 Peachtree Street, Suite 1168, Atlanta, Georgia 30303 by the RFP due date and time **Monday, May 18, 2009, 11:00 A.M.**

This is to acknowledge receipt of Addendum No. 2, \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Legal Name of Bidder

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Title

**EXHIBIT 9**  
**(REVISED) PRICE PROPOSAL FORM**

**EXHIBIT 9  
PRICE PROPOSAL FORM**

**Managed Assets  
BIG CREEK, JCEC transition & JCEC, LITTLE  
RIVER  
and NORTH FULTON PUMP STATIONS**

**PRICE PROPOSAL FORM  
MANAGED ASSETS OPERATIONS PERIOD  
SERVICE FEE COMPONENT**

<b>Baseline Flow and Loadings combine all facilities</b>	<b>Annual Amount</b>
Flow (MGD)	26 MGD
Ammonia Nitrogen	5,421 lbs/day
Phosphate	1,518 lbs/day
CBODs	54,210 lbs/day
TSS	54,210 lbs/day
Sludge (Dry Tons)	32.5 tons/day

<b>Service Fee Fixed Base Components- BIG CREEK WRF</b>		<b>Annual Amount</b>
1	Labor (Including wages, benefits, etc.)	\$
2	Plant Operation, Maintenance and Repair	\$
3	Chemicals and Fuels	\$
4	Utilities Cost	\$
5	Sludge Hauling/Disposal	\$
6	Grit Hauling/Disposal	\$
7	Building & Grounds Maintenance	\$
8	Odor Control	\$
9	Performance Testing	\$
10	Public Education	\$
11	Letter of Credit	\$
12	<b>TOTAL Fixed Base Service Fee Component (1-11)</b>	\$

<b>Service Fee Fixed Base Components- JCEC</b>		<b>Annual Amount</b>
1	Labor (Including wages, benefits, etc.)	\$
2	Plant Operation, Maintenance and Repair	\$
3	Chemicals and Fuels	\$
4	Utilities Cost	\$
5	Sludge Hauling/Disposal	\$
6	Grit Hauling/Disposal	\$

7	Building & Grounds Maintenance	\$
8	Odor Control	\$
9	Performance Testing	\$
10	Public Education	\$
11	Letter of Credit	\$
12	<b>TOTAL Fixed Base Service Fee Component (1-11)</b>	\$

<b>Service Fee Fixed Base Components- LITTLE RIVER WRF</b>		<b>Annual Amount</b>
1	Labor (Including wages, benefits, etc.)	\$
2	Plant Operation, Maintenance and Repair	\$
3	Chemicals and Fuels	\$
4	Utilities Cost	\$
5	Sludge Hauling/Disposal	\$
6	Grit Hauling/Disposal	\$
7	Building & Grounds Maintenance	\$
8	Odor Control	\$
9	Performance Testing	\$
10	Public Education	\$
11	Letter of Credit	\$
12	<b>TOTAL Fixed Base Service Fee Component (1-11)</b>	\$

<b>Service Fee Fixed Base Components- Pump Stations</b>		<b>Annual Amount</b>
1	Labor (Including wages, benefits, etc.)	\$
2	Pump Station Maintenance, Repair and Replacement	\$
3	Chemicals & Fuels	\$
4	Utility Cost	\$
5	Grit Hauling/Disposal	\$
6	Building & Grounds Maintenance	\$
7	Odor Control	\$
8	Performance Testing	\$
9	Public Education	\$
10	Letter of Credit	\$
11	<b>Total Fixed Base Service Fee Component (1-10)</b>	\$

Total Service Fee (Big Creek, JCEC, Little River and Pump Stations) = \$ \_\_\_\_\_

<b>Service Fee Adjustment Rate Schedule for excess loadings</b>	<b>Annual Amount</b>
Ammonia Nitrogen	\$ lbs/day
Phosphate	\$ lbs/day
CBOD <sub>5</sub>	\$ lbs/day
TSS	\$ lbs/day

Sludge (Dry Tons)	\$	tons/day
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Contractual Allowance Funds (County Directed)	Annual Amount
Maintenance Allowance	\$1,700,000
Contingency Allowance	\$500,000

Total Annual Cost = \$ \_\_\_\_\_

Transition Allowance (all Facilities except JCEC)	\$100,000
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**Notes:**

1. Itemized components are for evaluating purpose only.
2. Sludge hauling & disposal cost shall be paid per dry ton of solid hauled and disposed.
3. The Contingency Allowance Fund will be used by the County to finance unforeseen and variable expenses during the Term at the County's sole discretion.
4. Maintenance Allowance will be used to repair/replace major equipment or upgrade the Managed Assets at the County's sole discretion (See Section 3).
5. The service fee adjustment pursuant to the service fee rate schedule shall be based on the average daily loading for a Contract Year. The service fee adjustment shall be applied in excess of 110 percent of the annual average daily baseline influent loadings set forth in Exhibit 9 and the actual loadings for the Contract Year times the number of days in the contract year. A service fee reduction shall be applied when the annual average daily loading is < 90% of the baseline.
6. CPI Adjustments applies to fixed and variable cost.
7. Contract Year shall be calendar year January 1<sup>st</sup> - December 31<sup>st</sup>.

**\*\*\*\* Incumbent shall not be allowed to bill against transition allowance.**