

6.19.2019

**PURPOSE OF RFQ:**

On June 12, 2019 the Chester Water Authority ("Authority") Board of Directors authorized the issuance of a Request for Qualifications (RFQ) for Investigative/Research Services.

The purpose of the RFQ is to seek proposals and ideas from interested parties qualified to perform review, compilation, research and investigative services into the attempted purchase and takeover of the Authorities customers and assets which began in 2017 and continues to the present.

**BACKGROUND:**

On May 8, 2017 the Authority received an uninvited offer letter from the CEO of Aqua America ("Aqua") inviting the Authority Board of Directors to sell the Authority's customers and assets. The letter also suggested the proceeds of sale be distributed between and among the local governments that appointed the Authority Board of Directors. A copy of the (8) eight page letter is attached. The Authority Board of Directors unanimously rejected the uninvited offer (10) ten days later at a public meeting.

It is highly unusual for a private sector company to attempt an uninvited takeover of a government entity (The Authority).

It is suspected that there are numerous 3rd parties involved in this uninvited takeover attempt, only some of whom have been identified.

The Authority website contains sections detailing litigation currently brought by Aqua against the Authority and the City of Chester. [www.chesterwater.com](http://www.chesterwater.com)

Most recently the City of Chester, without prior notice, joined the group attempting to take over the Authority by issuing an RFP offering to sell the customers and assets of the Authority to a for-profit corporation. The RFP was issued on June 12, 2019, with a due date only (13) thirteen business days later (July 1, 2019).

**RFQ GOALS:**

The Authority Board wants its ratepayers to know exactly what is going on.

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The Authority has uncovered some of the behind the scenes actions and communications but much remains to be investigated.

For the benefit of its ratepayers, the Authority Board, by authorizing the RFQ, seeks assistance in assembling information it has uncovered to date and seeks assistance in investigating and researching all actors involved in the continuous hostile takeover attempt, much of which has been behind the scenes.

The (3) three page RFQ is attached.

**If you would like to receive additional information and documents please send an email to: [RFQ@chesterwater.com](mailto:RFQ@chesterwater.com) and you will be added to the distribution list.**

## **Request for Qualifications (RFQ) Investigative/Research Services**

### **REQUEST FOR QUALIFICATIONS OVERVIEW**

Chester Water Authority (the “Authority”) is currently seeking bids from interested parties qualified to perform review, compilation, research and investigative services into the attempted purchase and/or takeover of the Authority’s assets in 2017. Through certain requests issued under Pennsylvania’s Right-to-Know Law (the “RTK Requests”), and other sources, the Authority has learned that the Pennsylvania Department of Community and Economic Development (“DCED”), the statutorily-appointed recovery coordinator, Econsult Solutions, Inc. (“Econsult”) and/or its subcontractors, McNees, Wallace and Nurick (“McNees”), Fairmount Capital Solutions, Inc. (“Fairmount Capital”), and possibly other entities and/or individuals, had involvement in the efforts by Aqua Pennsylvania, Inc. (“Aqua”) and the City of Chester (“Chester” or the “City”) to purchase or takeover the assets of Authority. To date the Authority has learned:

- Despite previously denying it had communications with Aqua, DCED produced emails on the day of an emergency Authority board meeting which reflected meetings and communications between DCED, Econsult and/or Fairmount Advisors and Aqua concerning the City of Chester’s financial condition. These meetings occurred in April of 2017, one-month prior to Aqua issuing its uninvited \$320,000,000.00 purchase offer to the Authority;
- DCED and/or Econsult encouraged Chester to take action on a takeover of the Authority. They met with the Auditor General twice to elicit his assistance in analyzing a potential sale of the Authority. They sent numerous correspondence and reports to the City that addressed the City’s purported entitlement to the Authority’s assets; and
- DCED and/or Econsult arranged a network of individuals and entities to guide the City of Chester, including lobbying firm(s); attorneys and consultants, with ties to and experience with Investor Owned Utilities (“IOU”) and/or utility takeovers, including the sale of the Scranton Sewer Authority, which remains the subject of pending litigation over the sale and use of proceeds.
- Additional information can be found at the Chester Water Authority website at <http://chesterwater.com/> on the Home Page and by clicking on the Home Page link titled, “Notice of CWA Legal Proceeding” and the Home Page link titled, “Potential Sale of CWA?”

The Authority is exploring engaging an investigative services person, persons, or entities to utilize its full-range of services to further review, compile, research and investigate the actions of the various persons and entities involved with the issues above. The person, persons, or entities selected would be expected to enter into a consulting agreement, supplemented by statements of work detailing the specific requirements of any engagement.

### **ABOUT THE AUTHORITY**

The Chester Water Authority is an Authority organized and existing under the Municipality Authorities Act, 53 Pa.C.S. Ch. 56, as amended. The mission of the Authority is to provide access to clean and affordable water for all present and future ratepayers within the community, consistent with its obligations under the Act and its fiduciary duties under the Pennsylvania Constitution. For over 150 years the Authority has successfully implemented and advanced its mission; when first formed the Authority provided water services to sixty-seven (67) customers solely within the south end of Chester City. Today, the Authority serves more than 200,000 residents and businesses throughout southern Chester County, western Delaware County and the City of Chester.

The Authority continuously strives to invest in and improve its water treatment and distribution infrastructure, and Authority water consistently meets or exceeds the criteria established by the Pennsylvania Department of Environmental Protection (PA DEP), the United States Environmental Protection Agency (US EPA), and the American Water Works Association (AWWA). All of its growth and funding of investments and improvements has been through the Authority's ratepayers; the Authority has not received funds from the City, Chester County, or Delaware County to support its endeavors.

The Authority provides safe, quality water at some of the lowest rates in the region. For example, in 2017, a residential customer using an average of 18,000 gallons of water a quarter paid \$119.28 in the Authority's Eastern Region and \$142.86 in the Western region. These rates remain on average approximately 40% less than those charged by private water companies in the region.

### **OBJECTIVES OF THE RFQ**

The Authority is issuing this RFQ in an attempt to pre-qualify) person, persons, or entities that could provide investigative /research services. Selected person(s) or firm(s) would be expected to enter into a consulting agreement that would be supplemented by statements of work.

Services will include, among other things:

- gather pertinent evidence and documents for identified entities and all other sources of information including courts, media, recorder's office, etc.; analysis of documents and records obtained;
- conduct interviews to include, but not be limited to, written; recorded or paraphrased reports;
- provide typed reports per specifications agreed upon by the Authority;
- interact with Authority representatives to enhance investigation/research, follow up on suggestions and further develop new evidence and theories; and
- maintain adequate file documentation.

- prepare a final public report

### **PROPOSAL FORMAT AND CONTENTS**

The following must be included in your response to this request for qualification:

1. Name, address, telephone number and email address for principal contact.
2. A brief outline of your organization and services offered.
3. Description of your company's experience, qualifications and expertise in providing investigative/research services.
4. Name and professional qualifications of personnel who would provide the services.
5. Names, addresses, phone numbers and email addresses of at least two clients of similar scope of work that the Authority could contact as references.
6. Proposed compensation for such services on an hourly or daily basis, with applicable expenses and taxes clearly identified, or a description of the manner in which such compensation would be calculated.
7. The process and timetable necessary to begin an investigation and/or conduct additional research.
8. Any additional information about your investigative/research abilities or experiences.

### **UPDATES**

If you would like to receive additional information and documents please send an email to: [RFQ@chesterwater.com](mailto:RFQ@chesterwater.com) and you will be added to the distribution list.

### **SUBMISSION AND DEADLINE**

Questions regarding this RFQ should be directed to: [RFQ@chesterwater.com](mailto:RFQ@chesterwater.com) on or before July 15, 2019.

Responses in electronic format should be addressed to: [RFQ@chesterwater.com](mailto:RFQ@chesterwater.com) and are due no later than July 15, 2019.

### **DISCLAIMER**

The contents and information provided in this Request for Qualifications is meant to provide general information to interested parties. The successful responders will be required to execute a consulting agreement with the Authority that will govern the rights, duties and obligations between the Authority and the successful responders. ACCORDINGLY, THE TERMS SET FORTH WITHIN THIS REQUEST FOR QUALIFICATIONS DO NOT CONSTITUTE ANY CONTRACT BETWEEN THE AUTHORITY AND THE SUCCESSFUL RESPONDER(S). MOREOVER, THE AUTHORITY ACCEPTS NO RESPONSIBILITY FOR ANY OMISSIONS OR DELETIONS RELATING TO THIS REQUEST FOR QUALIFICATIONS.



Christopher Franklin, President & Chief Executive Officer

O: 610.645.1081 • F: 610.645.1081 • CHFranklin@AquaAmerica.com

May 8, 2017

Cynthia F. Leitzell, Chair  
Chester Water Authority  
P.O. Box 467  
Chester, PA 19016

Re: Proposal for the Acquisition of the Water System Assets of Chester Water Authority

Dear Ms. Leitzell:

As your neighboring water utility immediately to the north and west of your service area, Aqua Pennsylvania ("Aqua") has long respected the Chester Water Authority (the "Authority"), its well-run operations, management team, and employees. In addition, Aqua has enjoyed a partnership with the Authority on regional water issues through our numerous interconnects. We are well aware of the Authority's long history and outstanding reputation in southeast Pennsylvania, and we applaud the regional leaders for having the foresight to secure the water supply, develop the Octoraro Reservoir, and construct the water supply infrastructure during the first half of the last century.

As members of the governing bodies of our respective utilities, we are responsible to constantly search for options that benefit our customers. For the reasons we list below, we believe combining our assets will help improve service to our customers. In this regard, we are pleased to present Aqua's proposal (the "Proposal") for the acquisition of the Water Utility Assets of the Authority (the "Water Utility Assets").

Based upon publicly-available records, Aqua believes the Water Utility Assets of the Authority may be worth \$320,000,000, in accordance with recently adopted legislation establishing a fair market valuation methodology. This estimate should serve as a starting point for our discussions with the Authority and is subject to our due diligence and final Aqua America Board of Directors and Authority approval. This Proposal has the full support of the Aqua America Board of Directors.

We are requesting that we enter into a six-week, non-binding discussion period. During this time, both Aqua and the Authority would fully vet this conceptual proposal, advance the valuation process, perform due diligence, and weigh the implications of a combination on the various constituencies. At the conclusion of this period, a mutual determination would be made as to whether this combination is value-creating for both parties and whether to proceed forward with the transaction.

We believe that a sale to Aqua would provide the following:

- Full value compensation for the Water Utility Assets;
- Aqua's proximity/interconnections with the Authority creates an opportunity to expand Authority access to Aqua's water supplies to address regional challenges;
- A transfer of risk to a best-in-class, regulated utility with deep operating experience and a strong balance sheet;
- Exceptional and proven customer service;
- Infrastructure investment programs to more aggressively replace aging water lines, rehabilitate aging facilities, and increase the reliability of the water supply;
- Continued employment for the Authority staff and management;
- New opportunities for advancement of the Authority staff and management;
- A reliable and sustainable company with which the municipalities can partner on economic development, educational programs, job training and community matters;
- An opportunity for the City of Chester to reduce or eliminate other existing financial obligations, thereby achieving a structurally balanced operating budget; and,
- Financial assistance with the City's efforts to emerge successfully from Act 47 status in a timely manner.

We further expound on these benefits below.

Aqua envisions the principal terms of any proposed relationship would be substantially as follows:

- *Preliminary Terms, Conditions and Options:* We recognize there are many factors to consider when evaluating the Proposal. Though all terms and conditions will be finalized upon completion of due diligence and negotiation with the Authority Board, we believe we can offer a variety of flexible frameworks to meet your needs. These include:
  - Cash payment for assets currently associated with the Water Utility Assets. As previously stated, our preliminary assessment indicates the value of the Water Utility Assets could be \$320,000,000. After netting out the approximately \$70,000,000 in long-term debts associated with the Water Utility Assets as noted in the Authority's December 31, 2015 financial statements, this would result in net proceeds of approximately \$250,000,000;
  - Aqua's commitment to a smooth and seamless transition of the Authority's operations, customers and its employees. While Aqua has extensive experience

in these transitions, we recognize the expertise of the Authority and, as such, the transition would be completed in consultation with the Authority management and its employees;

- Aqua's commitment to a capital spending plan to maintain compliance and ensure reliability. Because we recognize the expertise of the Authority and its employees, this plan will be created in consultation with the Authority; and,
- Aqua's commitment to creating an "Aqua – Chester Water Authority tariff" that applies to the Authority's customers. We commit to keeping the Authority's rates below Aqua's state-wide rate for at least a decade. Aqua would further commit to a period of unchanged rates beginning at closing.
- **Value and Consideration:** Subject to our confirmatory due diligence, entering into an agreement of sale upon customary terms and conditions, and Aqua America Board of Director's approval, Aqua is prepared to take responsibility for and obtain ownership of the Water Utility Assets used in connection with the provision of water utility service to the residents, businesses, and wholesale customers now served by the Authority, including:
  - All Authority facilities, equipment and land related to the collection, distribution, and treatment of water;
  - Fee parcels or permanent easements, and any and all Authority structures and facilities related to the system;
  - All vehicles, equipment, services, meters, buildings and the associated easements and/or occupancy rights;
  - All customer accounts for the Authority services;
  - All permits, licenses, and other rights to provide such service in the current and anticipated future service territory; and,
  - Future Commonwealth, Federal, and other regulatory compliance costs and liabilities.
- **No Requirement for a Bidding Process:** Based on our legal review of the Municipality Authorities Act (53 Pa. C.S.A. Ch. 56), the Authority does not need to run a broad sale or procurement process in order to select a buyer for the Water Utility Assets. Instead, the Authority can make the decision based on a combination of (i) the value received, (ii)



the long-term benefits for the customers, and (iii) the benefits for the customers, employees and management of the Authority.

- **Assurance of a Fair and Appropriate Purchase Price:** To ensure that the purchase price constitutes fair value, we are proposing that the purchase price be determined utilizing the fair market value appraisal methodology outlined in the Public Utility Code (Act 12 of 2016) – Valuation of Acquired Water and Wastewater Systems for Ratemaking Purposes. Under this approach, separate valuation experts are retained by Aqua and the Authority, and Aqua and the Authority perform their respective valuation modeling independently, but concurrently. The ultimate purchase price is then calculated as the average of the two appraisals or as otherwise negotiated. This methodology, now being used throughout Pennsylvania, ensures that the Authority is receiving the appropriate value for the Water Utility Assets.
- **Employee Matters:** We understand and agree that the welfare of employees is of significant concern. We also recognize the level of commitment, professionalism, and knowledge of employees is critical to all stakeholders to ensure success. Aqua is committed to working with the Authority to keep all of the current water system employees and management, addressing any existing labor agreements, and maintaining competitive benefits and other arrangements.
- **Continuing Board Roles:** We envision establishing a compensated, nine-member advisory board to assist Aqua management on matters related to the utility currently operated by the Authority. This advisory board would be in place for a negotiated period of time to solicit local insights, provide continuity, and ensure optimal results for all constituents – customers, employees, and municipal officials.
- **Government Stakeholder Benefits:** The City of Chester and both Chester and Delaware Counties would benefit from this transaction in the following ways:
  - Based on Act 12 of 2016 (referenced above), realization of full value for the Authority's assets;
  - A sale would provide the City and the Counties with a meaningful share of net proceeds allowing each of them to reduce long term financial obligations, reduce or maintain the present level of taxation, or to otherwise invest in the future of the municipality;

- Aqua, a best-in-class operator, would provide additional sources of water, system redundancies, and operational economies of scale;
- Aqua would be a long-term owner and partner, supporting local initiatives and preferences regarding open space and economic development. We already serve municipalities in 32 counties in the Commonwealth and have a longstanding track record of supporting the mission and vision of those local governments;
- Aqua's holdings would provide a new source of property taxes;
- A sale would provide for a transfer of the risks of owning and operating a multi-municipality water system (e.g. contamination, service interruptions, lead services, security, increasing stringency of environmental regulations, etc.) to a regulated utility with deep, local operating experience and a strong balance sheet, and;
- Finally, a sale would allow the City of Chester to emerge from Act 47 status.
- *Partnership with the City of Chester:* We expect that our proposal will be attractive to the City of Chester for the following reasons:
  - The proceeds of the purchase price would help the City emerge from Act 47 status and would provide funding for identified economic development projects;
  - Partner with the City of Chester on economic development;
  - Aqua would continue to operate from the Authority's existing facilities within the City;
  - Aqua would partner with the Mayor's office and local institutions on student education and awareness about utility careers, internships, as well as contributing to vocational and STEM training, as we do in our current service territories; and
  - Aqua is committed to using local contractors for infrastructure projects within the City, where feasible.

- **Constituent Benefits:** We expect that our proposal will be attractive to the Authority for a number of reasons:
  - Given our relative proximity of operations and existing interconnections, we are uniquely positioned to reinforce water supply in areas currently served by the Authority. Aqua has rights to source water from the Delaware and Schuylkill Rivers which, when combined with the Authority's Susquehanna River and Octoraro sources supplies, create a water supply portfolio that improves reliability and overall customer service;
  - Along with the expanded portfolio of sources of supply, our best-in-class operations offer enhanced customer service support, with prompt local field response to service inquires, electronic payment options, automated outbound emergency communication alerts by phone, text or e-mail, and a customer assistance program;
  - The acquired system and rates charged to the customers would be regulated by the Pennsylvania Public Utility Commission ("PUC") for economic and service matters and the Pennsylvania Department of Environmental Protection ("DEP") for health and environmental matters, which is consistent with the manner in which Aqua is currently regulated;
  - Customer availability to Aqua PA's Helping Hand Program - a program designed to assist low-income customers with managing monthly payments of their water account;
  - Accelerated infrastructure investment to upgrade water treatment plants and related facilities to ensure compliance with current and future water quality regulations, replacing old pipe lines, improving or replacing as appropriate aged facilities, and ensuring compliance with all regulatory requirements;
  - Continued employment and additional opportunities for advancement of the Authority staff and management. Aqua invests in training and development of our employees to prepare them for potential advancement opportunities anywhere in the Aqua America family of companies. Where possible, we will use local contractors to assist with this work; and,
  - Finally, Aqua is committed to serve as one of the pillars in the communities served by the Authority. As you are aware, Aqua invests hundreds of thousands of dollars and countless hours every year within the communities it serves to

support and sponsor local events, schools, charitable organizations and service organizations. We appreciate the privilege and importance of being the water provider for the communities the Authority currently serves.

- **Due Diligence Review:** We are prepared to move quickly and are committed to an efficient and expedited process. We expect to be able to complete our due diligence and negotiate a mutually-agreeable purchase agreement within approximately six weeks. Of course, any information obtained by us as a result thereof will be maintained by us in confidence subject to the terms of a Confidentiality Agreement.
- **Definitive Purchase Agreement:** All of the terms and conditions of the proposed transaction would be stated in a purchase agreement, as mutually negotiated, agreed to and executed.
- **Authorizations and Approvals:** Following confirmatory due diligence, Aqua America's Board will have to approve the acquisition and the final purchase price.
- **Regulatory Approvals:** Aqua has a longstanding history of working with its regulators on the regulatory approval process and has successfully received over 300 approvals on similar transactions over the last 25 years.
- **Principal Contacts:**

Christopher H. Franklin  
President and Chief Executive Officer  
Aqua America, Inc.  
762 W. Lancaster Avenue  
Bryn Mawr, PA 19010  
(O) 610.645.1081  
(C) 610.324.3179  
[chfranklin@aquaaamerica.com](mailto:chfranklin@aquaaamerica.com)

Daniel J. Schuller  
EVP, Strategy & Corp. Development  
Aqua America, Inc.  
762 W. Lancaster Avenue  
Bryn Mawr, PA 19010  
(O) 610.645.4266  
(C) 917.376.2875  
[djschuller@aquaaamerica.com](mailto:djschuller@aquaaamerica.com)

Marc A. Lucca  
President  
Aqua Pennsylvania, Inc.  
762 W. Lancaster Avenue  
Bryn Mawr, PA 19010  
(O) 610.645.1059  
(C) 610.883.3295  
[malucca@aquaaamerica.com](mailto:malucca@aquaaamerica.com)

Letter to Chester Water Authority  
May 8, 2017  
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This Proposal is intended as an expression of interest. It is not intended to and does not create an obligation to negotiate (in good faith or otherwise). The Proposal should not be considered or deemed a binding offer by Aqua, nor a contract between Aqua and the Authority. A binding commitment shall be created only upon execution and delivery of a definitive asset purchase agreement.

We look forward to meeting with you and the Authority Board in the near future to present our thoughts on how we can best meet the needs of the customers and employees of the Authority, and the constituents of the City of Chester, Chester County, and Delaware County. We will contact you to determine a mutually convenient date for a discussion on this matter.

Sincerely,



Christopher H. Franklin  
President and CEO

cc: Paul Andriole  
Wendell Butler, Jr.  
Thomas Chiomento, III  
Joseph McGinn  
William Riley  
Leonard Rivera  
John Shelton, Sr.  
Livia Smith  
Robert Judge, Executive Manager  
Chester County Commissioners  
City of Chester – Mayor and Council  
Delaware County Council