

City of Independence

MEMORANDUM

Office of the City Council

DATE: July 5, 2017

TO: Public Utilities Advisory Board

FROM: Independence City Council



SUBJECT: Response to PUAB Questions on Missouri City Divestiture

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- 1. The RFP provided 14 criteria that the bid responses would be evaluated against. Did IPL provide to the City Council an evaluation of the bid responses based upon the 14 evaluation criteria?**

Yes, IPL did provide the City Council with an evaluation of the bid responses based upon the RFP evaluation criteria. Many of the evaluation criteria in the RFP were duplicative to the RFQ that was previously issued. Since both respondents to the RFP were previously evaluated in the RFQ process, the Council, as is their right and duty, determined the RFP evaluation to be adequate without duplicating all aspects of the prior analysis. The firms who responded to the RFQ in regard to the liability transfer model were interviewed and ranked by the evaluation team. The RFQ process, by its nature, does not seek price-related information. While there was no formal evaluation matrix produced, the RFP evaluation criteria were sufficiently covered in other formats and findings were shared with City Council, including a staff determination that Commercial Liability Partners had submitted the apparent lowest cost and most responsive proposal in accordance with the RFP.

- 2. A document titled Proposal Evaluation lists eight evaluation comments that do not correspond to the 14 evaluation criteria of the RFP. The document does not include the evaluation criteria to compare the respondents' qualifications, demonstrated successful experience with demolition and environmental remediation, financial reputation, soundness and capability to finance the project, demonstrated record of safe operations, demonstrated record of compliance with environmental regulations, experience and qualifications of potential subcontractors. The "Preliminary Bid Evaluation Narrative" document only partially mentions these criteria but it does not pass judgment on the responses. Why didn't the City Council request more information on criteria referred to in the RFP?**

As stated in the response to question one, many of the criteria in the RFQ were duplicative to the criteria of the RFP. The criteria listed in question two represent the very vendor qualifications that were thoroughly vetted and assessed in the RFQ evaluation process. Through the RFQ process, staff made a determination that

Environmental Operations, Inc. represented the most qualified vendor for this project. City staff presented an analysis to the City Council of the three proposals received in response to the RFP, and the City Council felt it had sufficient findings and insights to direct City staff to engage in contract negotiations with Environmental Operations, Inc.

3. Was the City Council provided information from other sources to influence their decision to award the contract to Environmental Operations?

The City Council has not voted to award the contract to Environmental Operations. City staff sought direction from the City Council when the proposal with the lowest cost did not align with the firm deemed by staff to be most qualified. The Council gave direction to staff to negotiate with Environmental Operations on the basis of their qualifications to determine if acceptable contract terms could be reached, but the Council has not yet reviewed or acted upon a contract.

With regard to the direction to negotiate, it is impossible to itemize the many factors that may have influenced the decision process of seven individual elected officials. Members of the City Council receive information daily from numerous sources such as professional associations, news media, and interactions with local constituents. Plus, each brings to the office his or her unique background, perspective, training, etc. All of this information and experience influences the decisions of elected officials. City Council members are elected to exercise wide discretion in local policymaking. They rely on staff recommendations and their own judgment in the course of their duties.

4. Apparently the review committee did not prepare and submit to the City Council a formal recommendation. Why didn't the City Council request a recommendation from IPL since the RFP indicated they would receive one?

City staff did recommend to the City Council that Environmental Operations, Inc. was the most qualified vendor to respond to the RFQ and that Commercial Liability Partners provided the apparent lowest cost and the most responsive proposal in response to the RFP.

5. The Proposed Evaluation document was more favorable towards Commercial Liability Partners than Environmental Operations. What are the reasons why the City Council did not instruct IPL to negotiate with Commercial Liability Partners?

The Council directed staff to negotiate with Environmental Operations in a closed meeting pursuant to RSMo 610.021.(12). The Missouri Sunshine Law permits closed meetings to discuss sealed bids and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected. In summary, it was the judgment of a majority of the City Council that Environmental Operations has the superior qualifications to assure the project will be completed to the full satisfaction of the City. To disclose details from that discussion in advance of the City Council's action on a contract could potentially jeopardize active negotiations with the preferred vendor, or potential future negotiations with the alternate vendor. A vote on the contract will take place in an open meeting, and it is customary for individual Council members to share their rationale for their votes at that time if they so desire.

- 6. The cost proposal from Environmental Operations included an asbestos abatement cost of \$1,650,000 compared with the Commercial Liability Partners cost of \$1,292,000. No costs were provided by either firm for lead abatement. Environmental Operations was allowed to increase their proposal cost by nearly \$800,000 for asbestos and lead abatement upon further investigation of the plant. Why wasn't Commercial Liability offered the same opportunity? Did IPL independently verify the extent of the asbestos and lead contamination to determine if the proposed remediation costs were justifiable?**

As was previously stated, City staff engaged in contract negotiations with Environmental Operations, Inc. at the direction of City Council following the RFP process based upon the determination by City staff that EOI possessed superior qualifications. The Council intentionally decided not to negotiate with both firms due to the time and expense involved for both parties for legal fees and related costs. These contract negotiations included additional environmental due diligence by the vendor to determine the amount in which certain contaminants might be present, the results of which were shared with Independence Power & Light. Additionally, IPL previously engaged a third-party vendor to perform an asbestos survey, the results of which were included in the RFP documents.

- 7. Environmental Operations included in their bid \$750,000 for submittal of the asbestos completion report and the remediation completion report. Commercial Liability Partners' bid for the two reports was \$8,500. This is just one example where there was a wide discrepancy in project costs. Why weren't there discussions with the bidders on these wide cost variations?**

Environmental Operations, Inc.'s pricing was, in fact, high for the report requirement as EOI included a large financial portion which would be retained by the City until the report was completed. This issue, along with several other items, was successfully resolved to the satisfaction of City staff during contract negotiations. It should also be noted that this contract negotiation represents a great example of the value of doing the RFP process following the RFQ. The City could have proceeded to contract negotiations with EOI after the RFQ, but accepting cost proposals gave City staff good information to assist in negotiations and, arguably, to get better pricing while still working with the best qualified firm.

- 8. Why did the City Council make the decision to award the contract with Environmental Operations before the PUAB met to consider the Mo City proposals?**

The City Council has not awarded a contract. The PUAB met and discussed the matter at length at the June 19 meeting as well as at the special meeting held on June 23, 2017. A decision of whether or not to award this contract to this vendor, or to take alternative action, will be made at the July 10, 2017, City Council meeting.

- 9. Environmental Operations has several past questionable dealings and political connections as documented by the St Louis Post Dispatch:**

- a) The owner of Environmental Operations has a felony conviction for operations of his company.**
- b) Earlier this year, the company was fined in Illinois for illegal dumping**

- c) **Hazelwood Commerce Center is stalled because Environmental Operations failed to clean a former dump on the largely vacant site despite receiving \$6.4 million in state tax credits. The developers and Bancorp South sued Environmental Operations in 2011, complaining that the cleanup left unsafe levels of methane gas in the soil. The suit is pending in federal court.**
- d) **In the cleanup of the Carondelet Coke site in St. Louis, the owner of Environmental Operations told city and state officials in 2009 that he could cap the cost at \$6.7 million even though environmental testing was incomplete. After tests found more pollution, he could not get coverage, and the cost to taxpayers ballooned to \$12.3 million.**
- e) **Former Missouri Auditor Tom Schweich criticized the lack of competitive bidding that involved Environmental Operations.**
- f) **A June 16 article in the St Louis Post Dispatch documented several irregularities with the Environmental Operations bid to raze the North Plaza Shopping Center in St Louis. The irregularities resulted in increased costs.**

Did the Environmental Operations reveal any of this information in their proposal, as required by the RFP? Was the City Council aware of these issues when it made the decision to award the Mo City contract to Environmental Operations? Does this information affect the City Council's decision to award the Mo City project to Environmental Operations?

Environmental Operations, Inc., as required by the RFP, provided claims and litigations history for the last five years and further indicated that there is no pending litigation. In the course of interviews, EOI addressed their claims and litigation history to the satisfaction of City staff.

- 10. What due diligence beyond the proposal submission did city staff undertake? Was there an effort to check information about the businesses or their reputations through online searches? Why didn't the City Council ask IPL to contact the bidders' references?**

As stated in the evaluation criteria for both the RFQ and RFP, *"The respondent is cautioned that it is the respondent's sole responsibility to submit information related to evaluation categories. The City is under no obligation to solicit such information, if it is not included in the respondent's original proposal."* As part of the RFQ and RFP, consideration was in fact given to the demonstrated successful experience of the firm along with that of its subcontractors and consultants.

- 11. What concerns did the City Council have about the low bidder, Commercial Liability? Why didn't they direct staff to investigate their concerns?**

Environmental Operations, Inc. was deemed to be the most qualified firm by City staff through the RFQ evaluation process. The evaluation completed by City staff found that EOI has "provided environmental and brownfield consulting and contracting services on various projects with six being in Missouri", EOI "proposes a deal structure that not only assures successful completion of the demolition and environmental remediation/closure at the Missouri City Power Plant, but also transfers all environmental liabilities from IPL to EOI and its affiliates", and EOI possesses "good financial strength" with "good

subcontractor list and safety record.” In short, the City Council felt most comfortable with the qualifications of EOI to successfully complete this unprecedented project.

- 12. The Mo City site has been vacant for nearly two years. The ash pond has been capped. Wells are monitoring the ground water. The site meets current DNR and EPA standards. What is the urgency to award a contract with Environmental Operations at this time when there are several other major expenditures facing IPL?**

The decision to cease production at the Missouri City Power Plant was made in July 2014. City Council sees this as an opportunity to rid the City of this distressed asset without undue delay for approximately one-half the cost of the 2015 Engineer’s estimate of \$17 million. In time, inflation will naturally increase project management expenses, so there will never be a more affordable time to complete this project. Moreover, the City has been subject to previous federal consent decree mandates, such as the 2008 decree and corresponding Settlement Agreement, which resulted in a significant financial investment to the Wastewater Treatment Plant and the sanitary sewer collection system to bring these assets into compliance. Completing this project at a time when the City is not subject to state and federal mandates will ensure that project costs are minimized and future rate payers are protected from higher project costs.

- 13. IPL is planning to have a consultant prepare an energy master plan. The plan should address the potential multi-hundred million dollar costs associated with the Blue Valley plant and turbines. Because of the potential high costs which may be recommended by the consultant wouldn’t it be better to wait for the consultant report and prioritize the Mo City project in relationship with the other projects?**

The City has an opportunity to rid itself of this distressed asset at very reasonable cost. Deferring this expense will ultimately result in increased cost for this retirement obligation. As reported at the June 26, 2017 City Council Study Session, a completed power production master plan could take as long as 8-12 months to complete, not including time for City Council consideration and deliberation.

- 14. If the City Council contracts with Environmental Operations for \$9.7 million the plan is to impose an environmental rider on customer bills. How much will IPL recommend for the rider and for how long? Would the Council consider only including a rider for the cost of \$4.25 million submitted by the low bidder and take the remaining \$5.5 million from the IPL reserve fund?**

The City Council first needs to determine whether or not the project is to be approved in its current form. Once that determination has been made, staff will be asked to provide financing options. City staff has assured the City Council that there are sufficient cash reserves on hand to complete the project, but the City Council will consider a variety of options to replenish the fund balance in accordance with our commitment to improved financial sustainability.

- 15. How will the proposed environmental rider affect low income customers with low energy usage?**

A recommendation has not yet been made by City staff, nor determination reached by the City Council, as to the need for or amount of an environmental rider.

- 16. What contacts (meetings, telephone conversations, emails) were made between any city council member or the council as a whole with any of the Mo City bidders? What was the date of those contacts? What council member(s) were involved in the contact? What company was the contact with? What was the nature of the contact? Who initiated the contact? Provide any minutes, emails or other documentation of any contacts. Were there any promises or suggestions made by any contact party?**

Environmental Operations, Inc. provided an overview of their company and the liability transfer model at a City Council Study Session on June 27, 2016.

- 17. What contacts (meetings, telephone conversations, emails) were made between any city council member or the council as a whole with any IPL employee on the Mo City project? What was the date of those contacts? What council member(s) were involved in the contact? What was the nature of the contact? Who initiated the contact? Provide any minutes, emails or other documentation of any contacts. Were there any promises or suggestions made by any contact party?**

There have been numerous contacts between City staff and the City Council as a whole on this matter dating back to July 2014 including, but not limited to, discussions on Resolution 5933, the findings of the Segal Missouri City Report from 2015, the RFQ findings, and the RFP findings. See the attached "Missouri City Timeline" document.

- 18. Under the City Charter the PUAB may:**
- (a) initiate on its own or upon request of the council or city manager investigations of public utilities operated within the city;**
 - (b) request the city manager to assign such clerical, legal, and investigatory personnel and to contract with other persons for goods and services that are required for its work, provided that resulting expenditures are duly authorized by the city manager, within amounts appropriated by the council, and made pursuant to proper purchasing procedures;**
 - (c) conduct public hearings on matters relating to public utilities and, through its chairperson, administer oaths and affirmations;**
 - (d) obtain from any city department, officer, and agency and from any public utility operated within the city any available information that is required for its work;**
 - e) subpoena witnesses to testify and compel the production of documents and other effects as evidence;**

If the PUAB chooses to pursue any of these options what resources and support will the City provide for the PUAB to conduct its business?

The City Council will not unreasonably withhold resources and support to the PUAB as allowed by the City Charter and any City, State, and Federal laws.

City of Independence

MEMORANDUM

Office of the City Council

DATE: July 5, 2017

TO: **Public Utilities Advisory Board**

FROM: Councilmembers Scott Roberson & Karen DeLuccie

SUBJECT: **Response to PUAB Questions**



As you know, the PUAB submitted a list of 18 questions to the City Council regarding the decision to award the Missouri City remediation and divestiture project to Environmental Operations Inc. Responses to those questions have been prepared and approved by the members of the Council comprising the majority, which authorized the City staff to negotiate a contract with EOI. As the two members of the Council who have remained steadfast in our opposition to this project, we felt it would be problematic for us to join with the majority in explaining how and why that decision was made. We have instead prepared this memorandum, which attempts to explain why we stand opposed to this project.

First, it is our belief that there is no need to move forward with this project under the present circumstances at this time. The City has done everything we have been required to do now to shut down the plant, and we are under no obligation or order to do more at this time. We therefore feel it would be better to use our resources for other, immediate needs. At the June 26th Study Session, the City Council was once again reminded of the multiple generational decisions facing Independence Power & Light, including the possible installation of Advanced Metering Infrastructure. The City has also posted a Request for Proposals to conduct a Generation Master Plan, which will detail how best to replace aging production infrastructure. With these and other pressing needs coming up, we feel it would be unwise to move forward with remediation of the Missouri City site, as the City is under no mandate to do so at this time, and the current regulatory climate does not seem to indicate that such a mandate is imminent.

Even if we put aside our reservations about moving forward with this project, and accept that a contract will be awarded for Missouri City remediation, we cannot agree to award a contract to Environmental Operations, Inc (EOI). When the City issued a Request For Proposals (RFP) for this project, three proposals were received. The lowest of these was thrown out as being non-responsive. The other two were both considered responsive to the RFP. While some analysis was made comparing the proposals, we feel the entire review and recommendation process was made in haste with insufficient information provided to justify selecting EOI over CLP.

We understand that our Council colleagues placed considerable emphasis on the experience and qualifications of EOI. It was pointed out, for instance, that EOI had 20 years of experience compared to four years for CLP. This difference may not be that critical, however, in light of the fact that the CEO of CLP has many years of experience, including previous service with EOI. In any case, we feel more importance should have been placed on cost, and staff should have been directed to attempt to negotiate a contract with CLP.

Finally, we would like to express our appreciation to the PUAB for giving your full attention to the concerns that have been raised regarding the proposed contract with EOI for the remediation and divestiture of the Missouri City plant. Thank you also for providing us an opportunity to offer this response for your consideration.