

ADDENDUM NUMBER 1

TO REQUEST FOR BIDS

Directed Biogas Derived from Swine Waste

Issued by the Fayetteville Public Works Commission

Issuance Date: January 24, 2022

Bid Due Date and Time: 2:00 p.m., February 21, 2022

The Request for Bids issued by the Fayetteville Public Works Commission (PWC) is hereby amended as set forth in the following three paragraphs (A) through (C):

A. In order to correct a grammatical error, the first sentence of Paragraph 5 of the Request for Bids shall state as follows: "An alternative or second bid may be submitted in the bidder's discretion for an average delivered daily quantity of directed biogas of 180 MMBtu, with an imbalance tolerance of plus or minus two percent (2%) for the daily amount that PWC nominates."

B. In order to provide for liquidated damages when cover damages are either limited due to lack of supply alternatives in the market or entirely unavailable and to provide additional clarity, Section 3.3 of Exhibit B, the Base Contract for Sale and Purchase of Directed Biogas Derived from Swine Waste, shall state as follows:

3.3. Subject to Section 10, the sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas, and no such replacement is available for all or any portion of the Contract Quantity of Gas for the Day(s), then in addition to (i) above, as applicable, the remedy of Buyer shall also include, with respect to the Gas for which no replacement is available, an amount equal to the positive difference of the Swine Waste REC Price multiplied by the number of in-state (North Carolina) swine waste renewable energy certificates (SWRECs) that Buyer is able to acquire for the Day(s) (not to exceed the amount of SWRECs that would have produced by Buyer using the Generator from the Gas that Seller failed to deliver, based upon the most recently determined heat rate of the Generator) minus the cost of the Gas Buyer would have paid to Seller if Seller had delivered sufficient Gas to generate the same number of SWRECs purchased by Buyer as a result of Seller's failure to deliver Gas; and (iv) in the event that Buyer has used commercially reasonable efforts to replace the Gas and to acquire SWRECs and replacement Gas and SWRECs are unavailable for all or any portion of the Contract Quantity of Gas for the

Day(s), then in addition to (i) and (iii) above, as applicable, the remedy of Buyer shall further include, with respect to the Gas and SWRECs for which no replacement is available, a daily liquidated damage determined by the following formula when it yields a positive number:

\$1,230 per day multiplied by [(the undelivered quantity of the Contract Quantity for the Day(s) minus (a) the Gas quantity purchased using the Cover Standard in accordance with (i) above, and minus (b) the Gas quantity that would have been consumed to generate the SWRECs that Buyer was able acquire in accordance with (ii) above) divided by the undelivered quantity of the Contract Quantity for the Day(s)]

For purposes of example only to illustrate (iv) above, (a) if PWC nominated 135 MMBtu for delivery on a particular Day, Seller delivered zero (0) MMBtu, the failure to deliver was unexcused, PWC was able to acquire 50 MMBtus of replacement Gas on the open market and 5 SWRECs that (based on the heat rate of PWC's Generator) equate to 40 MMBtus of delivered Gas, the liquidated damage amount for the Day would be $\$1,230 \times [(135 - 50 - 40) / 135] = \410 ; (b) if PWC nominated 135 MMBtu for delivery on a particular Day, Seller delivered 42 MMBtu, the failure to deliver the remaining 93 MMBtu was unexcused, PWC was able to acquire 15 MMBtus of replacement Gas on the open market and 2 SWRECs that (based on the heat rate of PWC's Generator) equate to 16 MMBtus of delivered Gas, the liquidated damage amount for the Day would be $\$1,230 \times [(93 - 15 - 16) / 93] = \820 ; and (c) if PWC nominated 135 MMBtu for delivery on a particular Day, Seller delivered 100 MMBtu, the failure to deliver the remaining 35 MMBtu was unexcused, PWC was able to acquire 20 MMBtus of replacement Gas on the open market and 2 SWRECs that (based on the heat rate of PWC's Generator) equate to 16 MMBtus of delivered Gas, the liquidated damage amount for the Day would be zero because $\$1,230 \times [(35 - 20 - 16) / 35]$ is not a positive number. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated. Imbalance Charges shall not be recovered under this Section 3.3, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4. 3.

C. In order to limit the ability of a party to claim a force majeure event for its own equipment failure resulting from its failure to maintain the equipment or operate it properly beyond the 20 days of planned and unplanned outages allowed in the Request for Bids, Section 11.2 of Exhibit B, the Base Contract for Sale and Purchase of Directed Biogas Derived from Swine Waste, shall state as follows:

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage, or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance; provided, however, Force Majeure specifically excludes the breakage or necessity of repair of machinery or equipment or lines owned, operated, or otherwise controlled by a Party unless such breakage or other need for repair is caused by or necessitated by the tortious act(s) of either the other Party or one or more unrelated third parties.

All inquiries related to this Addendum Number 1 to Request for Bids, which is issued February 8, 2022, shall be submitted to PWC via e-mail to Nikole Bohannon, Procurement Advisor (nikole.bohannon@faypwc.com) no later than 5:00 p.m. on February 15, 2022 in order to be considered for response.