New Orleans Coalition on Sewerage and Water Board

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Comments on the Draft Request for Proposals for the Management, Operations, and Maintenance of Sewerage and Water Board Systems

Presented by New Orleans Coalition on Sewerage and Water Board
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Summary: Enough already

In preliminary comments presented at a public hearing in July, the New Orleans Coalition on Sewerage and Water Board, which includes Service Employees International Union Local 100, ACORN and the national consumer advocacy group Public Citizen, called on the board to quit wasting even more of the public's money on a privatization scheme that had turned into a farce and a fiasco, and halt the privatization process immediately.

Nothing has changed to alter the coalition's position. If anything, events of recent weeks have made it even clearer that the expensive and time-consuming privatization process should at long last be put out of its misery so that the work of real reform can begin. The board and its financial advisory team continue to wander confused paths. Will there be qualified bidders? Should the employees be allowed to bid? How much will the process cost?—all good questions, all twisting in the wind unanswered. Meantime, statements made by industry officials, some intended for public consumption and some not—cast doubt on the industry's commitment to and respect for the people and institutions of New Orleans, and of any other city in the country, for that matter. Not only do those statements call into question the sincerity of company motives, they dictate that any additional bid be treated with strong skepticism.

To reiterate the main points of coalition's July comments:

•Additional bidders are unlikely. As of Sept. 5, no new bidders have in fact emerged. In the unlikely event that a new bidder does appear on the scene, there is reason to suspect that bidder will not be sincere, but instead merely presenting the façade of more than one private bid to allow the process to go forward.

•There is no credible cost analysis. It is impossible to determine if any savings can be achieved without first establishing a credible baseline cost analysis.

•There are no "qualified" bidders. The companies that the board treats as "qualified" were granted that designation during an earlier round of privatization that was far more

limited in scope than the wide-ranging duties outlined in the current draft RFP. The companies themselves have undergone significant structural and financial transformations since they were "qualified" in any case, and their qualifications for bidding on and fulfilling the obligations of any contract should be judged in light of those transformations.

•The draft RFP itself is a confusing mish-mash of holes where information should be. Safeguards against a contractor cutting corners to save costs are inadequate, with the result that public health and safety could be at risk.

•The board can start saving money now, without embarking on a massive system-wide privatization scheme more far-reaching than anything conceived by privatization's initial enthusiasts in the prior city administration. For instance, it is generally agreed that capital program consultant fees are both enormous and enormously out of control. If the board spent more time reining in those costs instead of frittering away even more months—and more money—on an ill-conceived privatization plan, the board could take an immediate and positive step toward serving the public interest.

The board should stop dithering in the hope that new bidders might be coaxed or seduced into entering the privatization fray in New Orleans. The fact is that the private water industry has completely changed its philosophy in just the past year. Whereas the huge corporations such as Suez (United Water), Veolia (formerly Vivendi; USFilter), RWE (Thames) and CH2M Hill (OMI) boasted not long ago of landing showcase contracts in huge metropolitan areas, they are now openly disavowing that strategy. Despite infiltrating groups such as the U.S. Conference of Mayors through financial support, and intensive lobbying of Congress for regulatory and legal changes that would favor privatization, the companies could not overcome the hard economic and political realities of operating a big city water system. *Global Water Intelligence*, a leading water industry and infrastructure publication, summed up the corporate shift in emphasis in its August 2003 issue:

"The new game plan is focused on smaller, more profitable projects with less risk of loss. The most appealing projects will serve populations between 50,000 and 500,000 and, most importantly, will be located near the private company's operating base."

What remains of the New Orleans privatization scheme is the dying gasp of a failed business model. Don't look now, but the companies have all taken a hike. It's time—past time—that board members face facts and move on. Enough already.

A new *serious* bidder?

The board has resolved that if there is only one bidder, the privatization process will stop. If a new bidder does come onto the scene, the board must receive assurances that the bidder is a serious one, and not merely a contrived bid submitted by a firm with no

intention of winning a contract but thrown up solely to keep the process alive for USFilter.

United Water, the U.S. subsidiary of Suez, one of the largest water and wastewater corporations in the world, has indicated that it is frightened of public scrutiny. Citing the recent Louisiana legislation confirming that the New Orleans privatization proposal must be approved by a vote of the people, Suez has all but pulled out of the process.

One other "qualified" bidder, OMI/Thames, pulled out of the process more than two years ago, and has since expressed little interest in revisiting that decision. Indeed, it should be noted that OMI/Thames earlier this year worked to thwart citizen efforts to subject a water privatization contract to a public vote in Stockton, Calif. Like Suez, OMI/Thames fears public scrutiny, and is not likely to enter a process that, by virtue of Louisiana law affirming citizen participation, the company can't control.

Among private companies, that leaves USFilter. It is noteworthy that in a now-infamous June 27 corporate memo from USFilter CEO Andy Seidel to other USFilter executives, Seidel wrote that USFilter "continues to work the project hard to find a way" to win the contract, "meet the peculiar government barriers—such as a public referendum" and "*meet the need for the City to have a set of competitive choices*" (italics added).

Between gloating over the mayor's "pissing contest," unloading on "crappy little newspapers" and even finding time to boorishly make light of homeless man's murder, Seidel in his memo did not explain how a single company can possibly provide a "set" of competitive choices. One interpretation that the board is forced to consider, however, is that USFilter may actively recruit a new bidder, so as to have more than one bidder and keep the privatization process alive. In that event, managed competition would be a hoax, and the board would be wasting money to consider a façade and a contrivance, not a sincere bid but artificial life support for the privatization process.

The more likely scenario is that no new bidders will emerge. That means that the board is frittering away time and an additional—albeit an either undisclosed or undetermined—amount of money to further consider a doomed remnant of a prior mayor's administration under a process that has already failed once, and that will prove a waste of money because there will only be one "qualified" bidder, the U.S. subsidiary of a French-headquartered multinational corporation now known as Veolia Environnement.

Up until April, the company was named Vivendi Environnement. The company's name change reflects its attempt to distance itself from its erstwhile debt-plagued scandal-ridden corporate parent, Vivendi Universal (still a 20 percent shareholder in Veolia). As Seidel, who as head of USFilter is Veolia's chief executive in the United States, explained while giving an address in Washington, D.C. earlier this year, "anything's better than Vivendi." (Seidel may have further—though unintentionally—distanced USFilter from Vivendi with his June 27 memo mentioned above. In his missive, Seidel expressed hope that all those "crappy little newspapers" would be purchased by the Fox

News Network. To Seidel's chagrin, perhaps, it was announced in early September that Vivendi Universal had merged not with Fox, but with General Electric, owner of NBC).

"Qualified" bidders

Vivendi's name change is more than a cosmetic corporate rebranding effort. It spotlights a key procedural flaw in the S&WB's decision to resuscitate a privatization effort duly and rightly killed last October. The new privatization process continues to define "qualified" bidders as those that met the board's requirements for qualification for that earlier process, despite mergers, acquisitions, asset sales, restructurings, altered business plans, plummeting stock prices and other developments that have marked all three "qualified" bidders in recent months, and which are substantively more significant than a mere name change.

•Thames Water, one half of the partnership comprising OMI/Thames, is also a subsidiary of the German corporation RWE, which earlier this year finalized its acquisition of what had been the largest U.S.-headquartered private water utility, American Water Works. By its own calculations, RWE's $7.6 billion deal for American Water Works included a premium equal to 36.5 percent more than the company's market value. The corporation is laboring under $27 billion in debt—as Debra Coy, an analyst with Schwab Capital Markets and a leading analyst of water corporations describes it, the corporation has gone "from cash-rich to capital-constrained" and is suffering from "indigestion." The corporation has also sprinkled promises to communities and state public utility commissions from coast to coast that it will not shift the costs of its overspending to its newly captured American Water Works customers. Rather, as Thames Managing Director James McGivern explained to California regulators in December 2002, the company will realize future revenue growth through operation and management contracts—like the one in Stockton, where the company worked so hard to assure that voters would be locked out of the decision. All of these events occurred or came to light after the OMI/Thames partnership was qualified by the S&WB as a bidder.

•OMI, the other half of the OMI/Thames partnership, is facing a federal investigation that stretches literally from coast to coast regarding pollution and the falsification of federally required records regarding pollutants. In October 2002, EPA officials entered wastewater treatment plants in Norwalk and New Haven Connecticut with search-and-seizure warrants. The EPA simultaneously subpoenaed the company for documents related to sludge handling, lab tests, and discharges from the plants, among other things. Earlier this year, a wastewater plant in Santa Paula, California was the focus of a raid by county and federal agents who hauled off computer records, documents and water samples as part of the investigation of OMI.

•The S&WB is well aware of Suez subsidiary United Water's fiasco in Atlanta, and as mentioned above, the company has all but abandoned New Orleans. Since the board qualified United Water as a bidder, the corporate parent has also suffered major blows elsewhere in the world, notably Argentina, Brazil and the Phillipines, recording write-downs and exceptional expenses of nearly $2 billion in 2002 and posting a $903 million

net loss. The departure of Troy Henry from United Water's regional operations is only one of the changes in key personnel within the company in recent months, changes that include the ouster in March of United Water Chairman and CEO Michael Chesser. Suez adopted an "action plan" earlier this year marking a fundamental shift in its corporate strategy and emphasizing a near refusal to commit any investment or expose any capital resources, a withdrawal from the developing world, and a commitment to shareholders to "become more demanding with regard to its' partners upholding their contractual negotiations." The company's "major makeover," as it was dubbed in the March issue of the trade journal *Public Works Financing*, was undertaken long after United Water was qualified by the S&WB as a bidder.

•Veolia—or Vivendi as it was called when the S&WB qualified subsidiary US Filter as a bidder—has undergone far too many changes to inventory here. Suffice it to say that the corporate structure and ownership has transformed, and arguably the most powerful ownership interest is now a consortium of French banks through the state-owned Electricite de France. Veolia officials are taking great pains to assure shareholders that the company has distanced itself from former majority shareholder Vivendi Universal, and the French consortium is expected to buy out Universal's remaining 20 percent interest in the company next year. Company executives are adamant that Veolia is not Vivendi. The New Orleans S&WB should take those executives at their word, and recognize that the company they qualified as a bidder in the last round of privatization is not the company that is currently the only likely bidder on the New Orleans privatization horizon.

Of course, the structures, ownership and financial circumstances of "qualified" bidders is not the only thing that has changed dramatically since the S&WB rejected privatization in October. The new round of privatization greatly increases the scope of services that would be contracted out, including not only water and wastewater operation and management, but also the system's substantial capital program (as outlined in Volume I, Section 3.1, and further delineated in Volume II, Appendix A, Schedule 6) and a host of support services (Volume I, Section 3.3).

The board, apparently, has adopted the assumption that companies which qualified to bid on the O&M privatization are also qualified to bid on a much larger scope of projects. While grandfathering these corporations' qualifications may seem convenient and even plausible—they are, after all, the world's largest private water and wastewater corporations—the board's assumption totally fails to take into account the developments that have produced genuine and very real transformations in the natures and missions of these corporations since they were qualified as bidders for the earlier round of privatization.

In assuming these corporations are somehow naturally qualified to bid on a vastly expanded scope of privatization, the board is engaged in wishful thinking, recklessly exposing New Orleans citizens to innumerable unknown risks at the hands of an industry renowned for circumventing the public interest in the pursuit of profit at every opportunity. And that's the charitable view. Less charitably, the board is scrambling to

rush through a politically driven process while displaying a staggering disregard for the public interest.

The cost question: Déjà vu all over again

Here is a partial list of things that are not included in the New Orleans Sewerage and Water Board's draft RFP:

- •a credible baseline cost analysis against which private bids can be measured;
- •a cost estimate of reengineering services under public control;
- •a cost estimate, firm or otherwise, of a revised RFP and bidding process;
- •an estimate of administration and contract monitoring costs, change order negotiation costs, one-time conversion costs or a host of other costs the public would continue to bear, above and beyond the fee paid to a private contractor.

These omissions, coupled with the expanded scope of privatization envisioned in the draft RFP, points up a fundamental problem with the board's attempt to revive privatization—a problem that the board, and New Orleans citizens, are already all too familiar with: establishing a credible cost analysis against which any privatization bid can be measured.

The board has indicated that it in fact possesses a baseline cost analysis. But that analysis not been made readily available to the public and is not included in the draft RFP. Additionally, that alleged analysis is preliminary, and has not been adopted by the board. In fact, under the schedule outlined in the RFP, (Volume 1, Section 4, Table 4.1), the board does not expect to have a final baseline analysis for several weeks.

The credibility of baseline cost estimates was one of the most contentious features of the S&WB's privatization process halted in October. And yet the board has not included baseline cost estimates in the documents for which the board is currently seeking public comment. The time to establish—and publicly discuss—baseline costs is before public money is squandered soliciting private bids, not after. Given their own history on this issue, if anybody should know that, it should be the members of the S&WB.

Board members cannot contend that the earlier privatization push has armed them with enough information to render a credible baseline analysis at hand, because earlier—and failed, it should be noted—attempts to establish the baseline fail to take into account the expanded scope of privatization outlined in the current draft RFP, which includes not only O&M but the capital program and various support services.

The board is clearly aware that an expanded scope of services has huge ramifications not only for a total estimated baseline cost, but also for the manner in which that cost might be calculated, and that the new scope encompasses not only new responsibilities, but wholly and qualitatively different categories of expenditures and costs—categories that were never rigorously analyzed in the earlier consideration of privatization. Perhaps

nowhere is it more evident just how much the new RFP is a departure from the earlier privatization scheme than in the new "bonus round" of evaluation categories (Vol. 1, Section 6.2.7) under which a bidder can win additional points for paring capital program "soft costs" such as engineering design work and consultants fees.

Additionally, part and parcel of a thorough consideration of privatization is a forecast of the cost of reengineering delivery of services under public control—how can decision-makers determine if privatization will yield savings greater than public delivery, if the decision-makers don't know how much reengineered public delivery will cost?

New Orleans gets singled out

Noting attempts by companies to win long-term municipal drinking water and wastewater management contracts in the United States, the Association of Metropolitan Water Agencies (AMWA) and the Association of Metropolitan Sewerage Agencies (AMWA) earlier this year published a report titled "Public vs. Private: Comparing the Costs."

Only one city earned its own section in the AMWA/AMSA paper: New Orleans. Analyzing the city's earlier privatization process that culminated in the October 2002 vote by the board to reject all bids, AMSA/AMWA noted that many uncertainties, inadequacies, omissions and other problems plagued the attempt to establish an accurate baseline number against which to weigh any savings promised by bidders. "Despite spending some $3.5 million on the process, cost comparison in practice proved too uncertain to render a clear decision" that would warrant awarding a contract to any of the bidders, the report explained.

"One can only speculate about why this cost comparison process left so many questions unanswered," the AMWA/AMSA report concluded, adding:

"At best, one might conclude that the RFP simply asked for costs and related information in a form that was inadequate to render an impartial decision based on future public versus private costs. No less than three subsequent and different estimates of current costs appeared to be politically as opposed to analytically driven, and so not surprisingly, they were used as instruments in lobbying efforts, creating widespread confusion. Given these observations, a cost comparison framework similar to the one described in this paper may well have helped the process in New Orleans come to a more definitive and rational conclusion."

Maybe. But the people of New Orleans will never know, because the revived privatization push as represented by the S&WB's current draft RFP bears little resemblance to an efficient and analytical process described by the water and wastewater utility associations. On the contrary, the RFP process itself echoes the same mistake that doomed the integrity of the earlier process.

Simply, the Sewerage and Water Board is not ready to solicit competitive bids, because the board still hasn't accomplished the crucial and necessary first step of establishing current costs.

Only when current costs are established can the board determine if there is a gap between those costs and what private companies might be expected to charge. If a substantial gap is discovered, then and only then should decision-makers solicit bids. But as the AMWA/AMSA report makes clear, the gap should indeed be substantial, because the public sector is bound to incur a host of "residual" costs above and beyond the bottom-line number in a private sector bid, costs that can substantially erode any savings or promised savings from a private contractor.

If, after a thorough and credible cost analysis is prepared, and public agencies have a clear understanding of the impact of residual costs—conversions, monitoring, costs of solicitation and, in New Orleans, an election, etc.—on the savings promised by private bidders, it still may be in the public interest to retain public service, the AMWA/AMSA report notes. Federal guidelines, for instance, call for retaining public control unless a private bid can perform a service at a cost that is at least 10 percent less expensive than the public sector.

As was so sadly illustrated in Atlanta, just because a private company promises a percentage savings doesn't mean that the savings will occur. Anything less than 10 percent is far too marginal to risk privatization.

Risking public health and safety

Another area where the draft RFP falls short, potentially putting the health and safety of the public at risk in the process, is contained in the less than impressive safeguards regarding the maintenance of an adequate and adequately trained workforce.

•Section 3.1.4 of Volume I requires that a contractor maintains a workforce "at a level sufficient to meet operational needs…pursuant to the agreement and MOU." The agreement (Volume II, Appendix A, Section 9.02) likewise refers to a "sufficient number" of employees. Apart from vague references to adequate operation of the system and compliance with the law, the question of just how many employees trained in what areas constitutes a "sufficient" number remains a mystery. This is not an area where the board can accept a "trust us" response from a private bidder. United Water's curtailment of the work force in Atlanta to less than "sufficient" numbers is well-documented. Similarly, USFilter walked away from a contract in Bridgeport, Conn., rather than meet state-mandated staffing requirements. A draft RFP must contain specific staffing levels below which a bidder must not go. Until the board has credibly established such levels, it is doubtful at best that the board is adequately prepared to issue a final RFP. Crafters of the draft RFP may have believed that minimum staffing levels could be addressed through listing "affected employees" in Volume II, Appendix A, Schedule 9. However, that schedule is currently blank, save a promise that it will be provided with the final RFP. In other words, the board is not seeking or taking public comment on employee staffing levels, and those who are in the best position to gauge the staffing levels envisioned by the board in a final RFP—the employees themselves—have no opportunity to review and comment on those levels. Yet again, the board is putting carts before horses.

•A bidder must promise to provide "comparable" employment benefits with regard to pension plans, health care, payroll practices and other benefits (Volume II, Appendix A, Section 9.04). "Comparability," in turn, is to be determined "by an employee benefit specialist approved by the Board."

The sole bidder on the board's horizon currently, USFilter, is facing intense scrutiny in Indianapolis, Ind., including lawsuits and a special city council committee that is actively considering the cancellation of the company's contract, due in large part to allegations that the company has failed to comply with promises to maintain adequate employee benefits. Any RFP in New Orleans must hold a bidder to firm commitments with regard to employee benefits. Rather than providing a company an opportunity to cut corners on benefits through vague words such as "comparable," the RFP should demand in no uncertain terms that employee benefits *shall match or exceed* current benefits. Firm and certain language would not only help prevent company fiddling under the guise of "comparability," but also provide tangible guidance to any benefit specialist. Needless to say, employees must have a role in approving a benefit specialist, and that decision must not be left to the board alone. Until the board, in conjunction and cooperation with

employees, can determine the means by which employees can have a say in the adequacy or sufficiency of benefits packages, the board is not prepared to continue with the RFP process.

•The draft RFP effectively turns firing people into a profit stream for a private contractor. A portion of the draft agreement discussing service fees paid to the company goes like this:

"To the extent the number of Affected Employees hired and employed by the Company on the Commencement Date is less than the number of Affected Employees listed in Schedule 9 (the difference being hereinafter referred to as the "Non-Retained Affected Employees"), then the System and Support Service Fee shall be reduced by thirty thousand dollars ($30,000) per Non-Retained Affected Employee." (Volume II, Appendix A, Section 10.12).

The sickening euphemism for people who are thrown out of work (non-retained affected employee) aside, no rationale is provided for the $30,000 figure. Assuming for the sake of discussion that $30,000 is more or less an average employee salary, what, then, of payroll taxes, benefits expenses and other additional costs incurred in the course of employing personnel? Are those costs and expenses tabulated in a service fee offset?

Though not provided in the RFP, is seems safe to assume that when those costs are included, the total annual cost of an individual employee very likely averages higher than $30,000, and that is almost certainly the case for employees with the most seniority, i.e., those with the most expertise, who have earned the community's trust, and who should be most valued.

By reducing the fee for each worker who is not retained, the intention may be to prevent a company from reducing the workforce just to pad its bottom line. But the $30,000 figure in fact provides the opposite incentive, because the total annual cost of an employee, particularly an experienced employee, is in all likelihood substantially higher. The difference between $30,000 and what the employee actually costs turns into a windfall for the company, and an incentive to not only rid the system of as many employees as possible, but also of those employees with the most seniority. As private water companies have demonstrated time and again, they need no further incentives to slash workforces below acceptable levels in pursuit of fatter revenues. The service fee for companies should be reduced by an amount that, at a minimum, equals the actual annual cost of the so-called "non-retained affected employee."

Nothing is more important to the safe operation of a community's drinking water system than a sufficiently staffed, well-trained and dedicated workforce. The draft RFP gives a private company carte blanche to slash the workforce to unacceptable levels, perhaps starting with those employees who are most experienced. In the process, unrealistic burdens will be placed on those employees who are remain, employees who at the same time will almost certainly watch their benefits come under company assault. The draft

RFP is a recipe not for effective delivery of safe and clean water to New Orleans citizens, but for the creation of an embattled, understaffed workforce with low morale.

Live and let die

Even if water companies had a respectable track record—they don't—and even if privatization of a crucial public resource under a long-term monopoly contract was sound public policy—it isn't—the process under consideration in New Orleans would still be fatally flawed.

There are many ways the board could better spend its time and the public's money than continuing the privatization process and its accompanying paralysis of public system reform.

For instance, the board's emphasis on capital program soft costs in the draft RFP bid evaluation criteria suggests that is the area where the most savings can safely and effectively be achieved. The board can pursue those apparently substantial savings without embarking on a massive system-wide privatization scheme more far-reaching than anything conceived by privatization's initial enthusiasts in the prior city administration. Getting to work on reining in those consultant fees would be an excellent start for a board that wanted to manage the public's resources in the public interest.

The revived privatization process, by contrast, has deteriorated into a joke and a fiasco.