

State of New York Executive Department
Office Of General Services
Procurement Services Group
Corning Tower Building - 38th Floor
Empire State Plaza
Albany, New York 12242
<http://www.ogs.state.ny.us>

CONTRACT AWARD NOTIFICATION

Title	:	Group 05900 – NATURAL GAS (Firm Supply - Indexed Price) (Interruptible Supply-Indexed Price) Classification Code(s): 15
Award Number	:	<u>22023</u>
Contract Period	:	November 1, 2010 – October 31, 2012
Bid Opening Date	:	April 7, 2010
Date of Issue	:	April 7, 2010 (Revised 2/7/11)
Specification Reference	:	As Incorporated In The Invitation for Bids and Purchasing Memorandums dated 3/30/10 and 4/1/10
Contractor Information	:	Appears on Page 2 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Colleen Messier Title : Purchasing Officer I Phone : 518-474-1108 Fax : 518-474-1160 E-mail : colleen.messier@ogs.state.ny.us	Procurement Services Group Customer Services Phone : 518-474-6717 Fax : 518-474-2437 E-mail : customer.services@ogs.state.ny.us

**The Procurement Services Group values your input.
Complete and return "Contract Performance Report" at end of document.**

Description

This Award describes a contract for the purchase of Indexed Priced Firm Supply of Natural Gas to the City-Gates of the facilities listed herein.

PR # 22023

(continued)

NOTE: See individual contract items to determine actual awardees.

<u>CONTRACT #</u>	<u>CONTRACTOR & ADDRESS</u>	<u>TELEPHONE #</u>	<u>FED.IDENT.#</u>
PC65138	COLONIAL ENERGY INC. 3975 FAIR RIDGE DRIVE FAIRFAX, VA 22033	703-218-3048 David Arndt FAX: 703-218-3059 E-mail: darndt@colonialenergy.com	582209516
PC65139	HESS CORPORATION ONE HESS PLAZA WOODBIDGE, NJ 07095	800-437-7265 732-750-6888 Steve Parks FAX: 732-750-6927 E-mail: sparks@hess.com Website: www.hessenergy.com	134921002

Cash Discount, If Shown, Should be Given Special Attention.

**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
(See "Contract Payments" and "Electronic Payments" in this document.)**

AGENCIES SHOULD NOTIFY THE PROCUREMENT SERVICES GROUP PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES GROUP.

SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

The Procurement Services Group supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

(continued)

NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

LOT 1 - DELIVERY TO CENTRAL HUDSON GAS & ELECTRIC - CITY GATE

INDEXED PRICE/INTERRUPTIBLE SUPPLY

<u>Item No.</u>	<u>Agency</u>	<u>12 Months Approx. Quantity MMBtu's</u>	<u>Basis Cost* per MMBtu's Delivered to LDC City Gate</u>
1.	Hudson River Psy. Center	<u>17,200</u>	
<u>LOT 1 - Total Quantities</u> (Item 1)		17,200	NO AWARD (INDEXED PRICE/INTERRUPTIBLE SUPPLY)

LOT 2 - DELIVERY TO CENTRAL HUDSON GAS & ELECTRIC - CITY GATE

INDEXED PRICE/FIRM SUPPLY

<u>Item No.</u>	<u>Agency</u>	<u>12 Months Approx. Quantity MMBtu's</u>	<u>Basis Cost* per MMBtu's Delivered to LDC City Gate</u>
1.	Hudson River Psy. Center	<u>17,200</u>	
<u>LOT 2 - Total Quantities</u> (Item 1)		17,200	\$1.2131 (INDEXED PRICE/FIRM SUPPLY)

*Cost reflects all shrinkage including Fuel Retaining Losses, G.R.I. Surcharge, etc.
This cost is added to the Nymex average as described herein to arrive at the city gate price.

CONTRACTOR, LOT 2: COLONIAL ENERGY, INC.

(continued)

LOT 3 - DELIVERY TO NATIONAL GRID EAST GATE – CITY GATE

INDEXED PRICE/INTERRUPTIBLE SUPPLY

<u>Item</u> <u>No.</u> <u>Agency</u>	12 Months Approx. Quantity <u>MMBtu's</u>	Basis Cost* per MMBtu's Delivered to <u>LDC City Gate</u>
1. OGS Utilities Management	244,006	
2. OGS Utilities Management	<u>1,406,505</u>	
<u>LOT 3 - Total Quantities</u> (Items 1 - 2)	1,650,511	NO AWARD (INDEXED PRICE/INTERRUPTIBLE SUPPLY)

LOT 4 - DELIVERY TO NATIONAL GRID EAST GATE – CITY GATE

INDEXED PRICE/FIRM SUPPLY

<u>Item</u> <u>No.</u> <u>Agency</u>	12 Months Approx. Quantity <u>MMBtu's</u>	Basis Cost* per MMBtu's Delivered to <u>LDC City Gate</u>
1. OGS Utilities Management	244,006	
2. OGS Utilities Management	<u>1,406,505</u>	
<u>LOT 4 - Total Quantities</u> (Items 1 - 2)	1,650,511	\$1.1410 (INDEXED PRICE/FIRM SUPPLY)

*Cost reflects all shrinkage including Fuel Retaining Losses, G.R.I. Surcharge, etc.
This cost is added to the Nymex average as described herein to arrive at the city gate price.

CONTRACTOR, LOT 4: HESS CORPORATION

(continued)

LOT 5 - DELIVERY TO ORANGE AND ROCKLAND CITY GATE

INDEXED PRICE/INTERRUPTIBLE

<u>Item</u> <u>No.</u> <u>Agency</u>	12 Months Approx. Quantity <u>MMBtu's</u>	Basis Cost* per MMBtu's Delivered to <u>LDC City Gate</u>
1. OMH Rockland Psych. Ctr.	157,000	
2. OMH Cook Chill Ctr.	<u>15,340</u>	

LOT 4 - Total Quantities
(Items 1 - 2)

172,340

**NO AWARD
(INDEXED PRICE/INTERRUPTIBLE SUPPLY)**

LOT 6 - DELIVERY TO ORANGE AND ROCKLAND CITY GATE

INDEXED PRICE/FIRM

<u>Item</u> <u>No.</u> <u>Agency</u>	12 Months Approx. Quantity <u>MMBtu's</u>	Basis Cost* per MMBtu's Delivered to <u>LDC City Gate</u>
1. OMH Rockland Psych. Ctr.	157,000	
2. OMH Cook Chill Ctr.	<u>15,340</u>	

LOT 6 - Total Quantities
(Items 1 - 2)

172,340

**\$9680
(INDEXED PRICE/FIRM)**

*Cost reflects all shrinkage including Fuel Retaining Losses, G.R.I. Surcharge, etc.
This cost is added to the Nymex average as described herein to arrive at the city gate price.

CONTRACTOR, LOT 6: HESS CORPORATION

(continued)

REQUEST FOR CHANGE:

Any request by the agency or contractor regarding changes in any part of the contract must be made in writing to the Office of General Services, Procurement Services Group, prior to effectuation.

CONTRACT PAYMENTS:

Payments cannot be processed by State facilities until the contract products have been delivered in satisfactory condition or services have been satisfactorily performed. Payment will be based on any invoice used in the supplier's normal course of business. However, such invoice must contain sufficient data including but not limited to contract number, description of product or service, quantity, unit and price per unit as well as federal identification number.

State facilities are required to forward properly completed vouchers to the Office of the State Comptroller for audit and payment. All facilities are urged to process every completed voucher expeditiously giving particular attention to those involving cash discounts for prompt payment.

If the contract terms indicate political subdivisions and others authorized by law are allowed to participate, those entities are required to make payments directly to the contractor. Prior to processing such payment, the contractor may be required to complete the ordering non-State agency's own voucher form.

See "Contract Billings" in Appendix B, OGS General Specifications.

CONTRACT BILLINGS AND PAYMENTS:

a. Billings. Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Commissioner and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

b. Payment of Contract purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment. The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.ny.us, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

c. Payment of Contract purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment. The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

PSG's DISPUTE RESOLUTION POLICY:

It is the policy of the Office of General Services' Procurement Services Group (PSG) to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to PSG bid solicitations or contract awards. PSG encourages vendors to seek resolution of disputes through consultation with PSG staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of PSG's Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this document or through the OGS website (www.ogs.state.ny.us).

(continued)

DELIVERY SCHEDULE

FOR LOTS 2, 4 and 6 – INDEXED PRICE/FIRM SUPPLY

Locations in Lots 2, 4, and 6 are classified as interruptible transportation service. Confirmation on all transactions below must be in the format as approved by the North American Energy Standards Board. If on any day when OGS is receiving firm supply and the facility is required by the LDC to switch to an alternative fuel (Event) supplier shall during such Event make a credit or debit adjustment for the excess city gate gas using the following calculations:

FOR NATIONAL GRID

For Sales Upstream of the City Gate:

A). During the months of November through March, the price for the excess city gate gas will equal the difference between the contract price and the price reported by Natural Gas Week's Gas Market Reconnaissance for the Event day under Natural Gas Spot Prices for Dominion North Point. If that is not posted, the Dominion South Point will be used.

B). During the months of April through October, the excess city gate gas will equal the difference between the contract price and the price reported by Natural Gas Week's Gas Market Reconnaissance for the Event day under Natural Gas Spot Prices for Dominion South Point.

For Sales at the City Gate:

A). During the months of November through March, the price for the excess city gate gas will equal the difference between the contract price and the price reported by Natural Gas Week's Gas Market Reconnaissance for the Event day under Natural Gas Spot Prices for Dominion North Point plus DTI Firm transportation variable and fixed charges plus losses to the city gate in effect at the time of the Event. If that is not posted, the Dominion South Point will be used.

B). During the months of April through October, the price for the excess city gate gas will equal the difference between the contract price and the price reported by Natural Gas Week's Gas Market Reconnaissance for the Event day under Natural Gas Spot Prices for Dominion North Point plus DTI Firm transportation variable and fixed charges plus losses to the city gate in effect at the time of the Event.

C). City Gate Sales shall include any LDC that has DTI Primary Delivery Points.

FOR ORANGE & ROCKLAND & CENTRAL HUDSON

For Sales Upstream of the City Gate:

A). During any month the price for the excess city gate gas will equal the difference between the contract price and the price reported by Natural Gas Week's Gas Market Reconnaissance for the Event day under Natural Gas Spot Prices for Transco, Zone 6, Non-NY for Central Hudson and Columbia Appalachia for Orange & Rockland.

For Sales at the City Gate:

A). During any month the price for the excess city gate gas will equal the difference between the contract price and the price reported by Natural Gas Week's Gas Market Reconnaissance for the Event day under Natural Gas Spot Prices for Algonquin City Gate. (Applicable to Central Hudson and Orange and Rockland.)

NOTE: When interrupted refer to Natural Gas Week's Gas Market Reconnaissance published on the event day under flow date. (i.e. – published 4/14, trade date 4/14, flow date is 4/15)

CONTRACT PERIOD AND RENEWALS:

If mutually agreed between the Procurement Services Group and the ESCO (Energy Service Company), the contract may be renewed under the same terms and conditions up to an additional three (3) years.

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REPORT OF CONTRACT PURCHASES:

ESCO shall furnish quarterly reports containing total sales for contract purchases no later than forty-five (45) days after the close of each calendar quarter. In addition to contractor direct sales, contractor shall submit sales information for all resellers, dealers, distributors or other authorized distribution channels, where such contract sales are provided by other than the contractor. ESCO shall verify if each alternate vendor is a NYS Certified Minority (MBE) or Women (WBE) Owned Businesses. Contractors shall verify such status through the Empire State Development Minority and Women Owned Businesses Database web site at:

<http://www.nylovesmwbe.ny.gov/cf/search.cfm>

A separate report shall be provided in the following format for each authorized distribution channel. The sales report form is forwarded to each contractor at time of award for completion in accordance with the contract terms and conditions:

	Total Dekatherms Purchased	Total Value Purchased (\$)
All Political Subdivisions/Authorized Users	N/A	N/A
All State Agencies		
TOTAL SALES		\$

The report is to be submitted electronically in Microsoft Excel 2003 or lower format to the Office of General Services, Procurement Services Group, Tower Bldg., Empire State Plaza, Albany, NY 12242, to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the Group Number, the Award Number, Contract Number, sales period, and contractor's (or other authorized agent) name.

The outlined sales report is the minimum information required. Additional related sales information, such as monthly reports, and/or detailed user purchases may be required and must be supplied upon request.

EMERGENCY PURCHASING:

In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or that the Commissioner determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of products or services, the Commissioner reserves the right to obtain such products or services from any source, including but not limited to this contract, as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for products or services procured from other sources pursuant to this paragraph.

SCOPE:

This contract is for the purchase of natural gas directly from gas suppliers and/or ESCO's for use at the facilities listed herein. This concept is in accordance with gas deregulation actions of the Federal Energy Regulatory Commission, the New York State Legislature and the New York State Public Service Commission.

DEFINITIONS:

Except in those instances where the text states another meaning, the following terms, as used in the Award shall have the meanings as set forth below:

Alternate Fuel - fuel used other than natural gas

Alternate Transporting Pipeline(s) - the pipeline(s) which transports the gas to the LDC (City gate) when the primary pipeline is unavailable

Average of the last three days of the Close of the NYMEX - shall mean the average of the last three days NYMEX Close (Settlement Price) of the NYMEX for natural gas at the Henry Hub Louisiana delivery point as published in the Wall Street Journal Futures Column and shown on the NYMEX website.

(continued)

DEFINITIONS: (Cont'd)

Basis Cost - all costs associated with the acquisition and transportation of natural gas from the ESCO's point of acquisition to the LDC's City gate. This includes all costs associated with balancing services to the burner tip, fuel retainage losses, GRI surcharge, and overhead and profit carried to the fourth decimal place. Basis costs shall be firm for the life of the contract and does not include the commodity cost.

Commodity - Natural Gas

Burner Tip - Consumption at end user's billing meter

Buyer – Authorized agency personnel assigned to trigger gas buy

City gate - The point of interconnection between a pipeline and a Local Distribution Company where gas is delivered to the LDC

Contract - Any contract award resulting from this Invitation for Bids

Contractor - any bidder to whom a contract award has been made by the State as a result of bidding process.

Curtailment - interruption of flowing natural gas supplies imposed by pipelines and LDCs as a result of the demand for transportation service exceeding the capacity of the pipeline

DTI - Dominion Transmission, Inc.

ESCO – Energy Service Company

Event - Any day when an authorized user is receiving firm supply to the city gate and is required by the LDC to switch to its alternative fuel.

FERC - Federal Energy Regulatory Commission

FT - Firm Transportation

Firm Supply - service that anticipates no interruptions. Firm supply means primary firm, non-recallable primary delivery point capacity to the city gate and does not mean secondary firm supply. All natural gas specified herein as firm supply shall be primary firm supply.

Fuel Retainage Losses - charges for fuel retention due to gas used for "PRESSURE"

GRI- Gas Research Institute

Gas day - A period of twenty-four (24) consecutive hours commencing at a specified hour on a given calendar day and ending at the same specified hour on the next succeeding calendar day.

Indexed Price – the combined price of indexed commodity cost and the "basis cost". The commodity price will vary monthly based on the last 3 day settlement of the New York Mercantile Exchange (NYMEX) futures commodity prices. A fixed "basis cost" will be added to the commodity price to determine each month's Indexed price.

Interruptible Supply – gas service which may be interrupted by the ESCO with satisfactory justification, which is an interstate pipeline or LDC curtailment.

LDC - Local Distribution Company, also known as Local Utility Company, which transports gas from the City gate to the customer's meter.

(continued)

DEFINITIONS: (Cont'd)

Line Loss - the reduction in quantity of natural gas that results from leaks, venting, and other physical circumstances on a pipeline system

MPDQ - The MPDQ assigned per customer represents the use of certain pipeline assets and storage assets to accommodate the daily imbalance tolerance. The MPDQ pass through should not be included in the bid price.

MMBtu's - one million British Thermal Units, also known as a dekatherm.

Month - a period beginning at 10:00 a.m. on the first day of a calendar month and ending at 10:00 a.m. on the first day of the calendar month immediately following.

NYMEX - New York Mercantile Exchange

Natural Gas - a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth's surface and used as a fuel

PSC/DPS - New York State Public Service Commission

Primary Point of Delivery - the point where the gas enters the LDC (City Gate)

Primary Pipeline - the pipeline(s) that transports the gas to the LDC (City Gate)

Seller – The Awarded Contractor

Shrinkage - reduction in volume of wet natural gas due to removal of natural gas liquids, hydrogen sulfide, carbon dioxide, water vapor, and other impurities

State - The State of New York, its agencies and authorized non-State users

System Alert - An announcement of actual or pending events that if unchecked may result in an operational flow order

Taxes - Contact NYS Tax Department at 1-800-225-5829 with questions concerning any relative taxes/refund

Trigger Price – Pricing alternative made available under the Indexed Price-Firm Supply that authorizes designated agency individual to instruct the ESCO to fix the commodity price for a future month(s) based on the NYMEX natural gas futures price.

FILED REQUIREMENTS CONTRACT:

The natural gas contract is referred to as a filed requirements contract, placing special obligations on a participating agency and governed by Uniform Commercial Code section 2-306. In a filed requirements contract, an agency that wishes to purchase must commit in advance to make all necessary purchases for the natural gas from the awarded contractor. The quantities listed are intended to be indicative of the amount of natural gas to be purchased, however it is expressly agreed and understood that the contract shall only be for the quantities actually used during the contract term.

See also "Estimated/Specific Quantity Contracts" in Appendix B, OGS General Specifications.

CUSTOMER OBLIGATIONS:

While OGS Procurement Services Group is responsible for administering the natural gas contract, it is expected the customer will attempt to work directly with the ESCO to resolve any difficulties that may arise. OGS Procurement Services Group is available to provide assistance as needed, but should not be considered the first avenue of recourse.

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TRIGGER PRICE: (FIRM SUPPLY ONLY) (Lot 2, Lot 4, and Lot 6)

The per Dth Commodity Charge for any volume designated by the Buyer (purchasing agency) for any month(s) during the Delivery Period may be converted from an indexed price to a fixed price by agreement of the Parties (“Triggered”) at any time prior to 12:00 noon on the second day prior to the expiration date of such month’s NYMEX futures contract (the “Pricing Deadline”) in accordance with the procedures set forth below. If the Parties do not agree on a price by the Pricing Deadline for any month during the Delivery Period, the Commodity charge for that month will default to the index formulas set forth in herein.

Once awarded, the parties agree that the Buyer has the right, but is not required, to Trigger up to 100% of all Natural Gas needs for use during the contract period.

Between 8:30 a.m. and 2:30 p.m. on any business day, the buyer may request the Awarded ESCO (Seller) provide a quote for the Commodity Charge for any month or months during the Delivery Period for which no Commodity Charge has yet been agreed or determined. Upon receiving such request, the Seller shall provide the buyer with a Commodity Charge quote for such month or months, as applicable. The Parties acknowledge and agree that if the Buyer accepts a quoted Commodity Charge offered by the Seller for one or more months, such Commodity Charge will be Triggered and will be legally and validly binding on the Parties from the moment of such acceptance. The Buyer acknowledges and agrees that any quote provided by the Seller shall be valid, and may be accepted, only during the call on which such quote is offered.

Any Triggered price shall be confirmed by the Seller in writing or such other form as the Seller may prescribe from time to time. The Seller shall deliver the written confirmation of such agreed Commodity Charge promptly after such charge is agreed by the Parties; provided that the Seller’s failure to deliver such written confirmation shall not give rise to an event of default in respect of the Seller. The Seller’s written confirmation of the agreed Commodity Charge shall be deemed binding on the Buyer. Agency representatives will send written confirmation of acceptance via e-mail by the end of business day and after receipt of seller’s confirmation of Triggered volumes.

In the event that the triggering option is utilized, the final price for the given term will be determined as follows:

$$\text{Commodity Charge} + \text{Basis Cost} = \text{Triggered Price}$$

If in any month the volumes consumed by the accounts are less than the volumes that the Buyer Triggered for that month pursuant to the above, than the difference between the consumed volumes and the Triggered (the “Under-Consumed Volumes”) shall be settled as follows. All Under-Consumed Volumes shall be priced at the difference between the (Commodity Charge + Basis Cost) for that month and the average of all daily prices for that month as reported by Natural Gas Week’s Gas Market Reconnaissance under Natural Gas Spot Prices for the applicable sales point (as identified on page 7 of this Award). The difference, whether positive or negative, shall be credited or debited accordingly by the Seller to the buyer on that month’s invoice.

NOTE: Agency shall have the right after contract approval and prior to the beginning delivery period to trigger forward prices pursuant to the “Trigger Price” section above. Additionally, payment for Triggered gas should not be invoiced until the delivery month.

TAXES:

Governmental entities are to be automatically considered federal and state tax exempt. No supplier/ESCO shall incur separately identifiable taxes with the expectation that they are to be passed along to the governmental user, except in such cases where the agency specifically agrees in writing in advance.

(continued)

CONTRACT:

The sales and deliveries of gas shall commence as soon as practicable after the completion of necessary transportation arrangements.

INDEXED PRICE - FIRM SUPPLY:

- The customer will receive "firm" supply.
- The customer will pay for quantities actually used.
- The commodity price for natural gas will vary monthly based on the New York Mercantile Exchange (NYMEX) futures commodity prices. A fixed "basis cost" will be added to the commodity price to determine each month's indexed price. Prices are revised and released by the OGS Procurement Services Group during the last week of the month preceding the month of delivery.
- The ESCO is responsible for all balancing to the burner tip.
- The ESCO is required to deliver a firm supply of natural gas at all times. Firm supply specified in this Invitation for Bids means primary firm non-recallable primary delivery point capacity to the city gate and not secondary firm supply.

SALES/TITLE TRANSFER POINT:

ESCO shall be deemed to exercise or continue in control and possession of the gas being delivered and responsible for any damage or injury caused until gas has been delivered at the LDC city gate (delivery point). Also, ESCO shall be responsible for the coordination and scheduling of transportation volumes including completing all arrangements for transportation services for delivery of the natural gas to existing meter at each agency.

WARRANTY OF TITLE:

ESCO warrants title to all natural gas delivered and warrants that it has the right to sell the same and that such natural gas is free from liens and adverse claims of every kind. ESCO shall indemnify and save the State harmless against all loss, damage and expense of every kind on account of adverse claims that accrue before delivery to the State.

TRANSPORTATION CHARGES:

The ESCO shall pay all costs associated with the transportation of the gas to the LDC city gate. The State (i.e. ordering agency) shall enter into a separate agreement with the LDC and pay all costs associated with the transportation of gas from the LDC city gate to the existing meter at each agency.

PUBLIC SERVICE COMMISSION RETAIL ACCESS BUSINESS RULES:

The ESCO shall abide by the New York State Public Service Commission (PSC) Uniform Retail Access Business Practices Cases including all updates/revisions during the term of contract for all natural gas transactions and practices under this contract. This includes any PSC provisions covering "Single Billing". A copy of the PSC Uniform Retail Access Business Practices is available for download from the PSC web page: www.dps.state.ny.us.

QUANTITY:

Subject to the terms and conditions of the contract, the ESCO agrees to sell and deliver to designated facilities, and customers agree to purchase and accept from the ESCO the nominated quantity of MMBtu's of natural gas per month. (Delivery Schedule reflects estimated quantities only.) Customers will be billed for actual quantity consumed. The sale and delivery of gas by the ESCO shall be on a firm basis, as specified within each Lot. The locations in this Award are classified as Interruptible Transportation Services. When notified by the utility company of an interruption, the locations must discontinue service as ordered by the utility co. (See facilities transportation agreement made with utility company/LDC.)

AGENCY TRAINING:

ESCO is responsible for conducting training sessions of appropriate length for critical agency personnel. Such sessions shall explain the mechanism of the transportation gas contract and shall be scheduled as requested by agency.

(continued)

DELIVERY PRESSURE:

The gas purchased shall be delivered for the account of the State at a pressure sufficient to affect delivery into the pipeline facilities of the transporter.

NATURAL GAS QUALITY:

All gas delivered to the LDC's city gate shall have a total heating value of not less than 967 Btu per cubic foot and not more than 1100 Btu per cubic foot. The gas delivered to the local distribution company's city gate shall be commercially free from objectionable odors, dust or other solid or liquid matters which might interfere with the merchantability of the gas or cause injury to or interference with proper operation of the lines, regulators, meters, or other appliances through which gas flows. The gas supplied to the local distribution company's city gate shall not contain any active bacteria or bacterial agent capable of contribution to or causing operational problems. The gas delivered to the local distribution company's city gate shall be free of water and hydrocarbons in liquid form at the temperature and pressure at which the gas is delivered, and shall not contain any hydrocarbons which might condense to free liquids under normal conditions in the local distribution company's pipelines and shall not contain more than seven pounds of water in vapor phase per one million cubic feet. The gas delivered hereunder at the primary point of delivery shall be commercially free of gum, gum-forming constituents, gasoline and other solid and/or liquid matter that may become separated from the gas during transportation thereof and shall conform to quality specifications included in the interstate transporter's tariff as approved by the Federal Energy Regulatory Commission (FERC) and/or those required by delivering pipelines.

AGENCY/ESCO RESPONSIBILITIES FOR ALL UTILITY TERRITORIES:

Customers Responsibilities:

Customer will be responsible for supplying usage data to ESCO on an as-needed basis as required by the ESCO in order to serve Agency under the utility/LDC.

Customer will be responsible for supplying faxed meter reads to ESCO on an as-needed basis.

Customer will be responsible for having installed and utility approved remote telemeter devices, if needed.

Customer will be responsible for timely completion of utilities aggregation form upon receipt from ESCO for further submission to Utility Company.

Customer will be responsible for completion of any additional documentation as deemed necessary by ESCO and Utility/LDC.

ESCO Responsibilities:

ESCO will be responsible for placing nominations for natural gas supply to LDC "in writing" in accordance with utilities nomination schedule. (See Appendix B, Article 42 - "Estimated Quantity Contracts" and "Quantity" clause elsewhere herein.)

ESCO, prior to the start of contract, will inform user agencies of the format and manner of billing, including whether commodity will be billed separately by the contractor, or whether the contractor will be billing for the utility transportation on a single bill, and will provide a sample billing format.

ESCO will be responsible for requesting faxed meter reads from the Agency locations as deemed necessary by the ESCO in order to serve Agency under the applicable utility company's program.

ESCO will be responsible for executing the completion and submission of the utilities aggregation form as required by the utility/LDC.

(continued)

AGENCY/ESCO RESPONSIBILITIES FOR ALL UTILITY TERRITORIES: (Cont'd)

ESCO Responsibilities: (Cont'd)

ESCO will be responsible for creating a pool of customers within the LDC's pooled balancing program to better facilitate its daily balancing responsibilities. This pool will consist of customers included on this solicitation but may also include other customers served by the successful bidder within this LDC territory.

ESCO is responsible for monitoring customers accounts at all times, including but not limited to system alerts.

ESCO will be responsible for requesting any usage data from the Agency locations as deemed necessary by the ESCO in order to serve Agency under utility/LDC's program.

ESCO will be responsible for completion of any additional documentation as deemed necessary by the State or utility/LDC.

ESCO will be responsible for any and all daily/end-of-month "cash outs" as imposed by LDC, if applicable.

ESCO shall bill customer for actual quantities of natural gas consumed.

ESCOs shall be required to deliver 100% of the buyers' natural gas requirements on a daily basis and shall be required to balance deliveries to conform to actual consumption by lot on a daily basis.

ESCO must be compliant with all Federal, State and NYS Public Service Commission tariffs governing each individual utility territory bid, including but not limited to load aggregations, balancing and individual utility programs.

ESCO will be responsible for notifying the OGS Procurement Services contract administrator immediately of any difficulties obtaining meter reads from individual facilities.

ESCO, where required, will secure adequate upstream capacity (and storage, when applicable) to ensure that service is "firm."

ESCO will be responsible to own the balance control account for all agencies listed herein, in accordance with individual utility/LDC when applicable.

REBATES:

The Office of General Services has the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc. which arise from the administration of this contract.

INVOICES:

ESCO may be required to furnish copies of monthly invoices to PURCHASING TEAM 3, NYS OFFICE OF GENERAL SERVICES, PROCUREMENT SERVICES GROUP, 38TH FLOOR CORNING TOWER, ESP, ALBANY, NY 12242 for recording sales transactions and analysis.

(continued)

**State of New York
Office of General Services
PROCUREMENT SERVICES GROUP
Contract Performance Report**

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product’s end user.**

Contract No.: _____ **Contractor:** _____

Describe Product* Provided (Include Item No., if available): _____

***Note:** “Product” is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term “Product” includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

CONTRACTOR

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments: _____

_____ (over)

Agency: _____ Prepared by: _____

Address: _____ Title: _____

_____ Date: _____

_____ Phone: _____

_____ E-mail: _____

Please detach or photocopy this form & return by FAX to 518/474-2437 or mail to:

OGS PROCUREMENT SERVICES GROUP
Customer Services, 37th Floor
Corning 2nd Tower - Empire State Plaza
Albany, New York 12242
* * * * *

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