



Contract Award Notification

Title	:	Group 05900 – NATURAL GAS (Firm Supply - Indexed Price) (Interruptible Supply-Indexed Price) Classification Code(s): 15
Award Number	:	<u>22775</u> (Replaces Award 22458)
Contract Period	:	November 1, 2014 – January 31, 2017
Bid Opening Date	:	May 7, 2014
Date of Issue	:	May 7, 2014 (revised October 13, 2016)
Specification Reference	:	As Incorporated In The Intent to Bid, IFB and Three Purchasing Memos dated 4/25/2014, 4/29/2014 and 5/2/2014.
Contractor Information	:	Appears on Page 2 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
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**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 Firm Supply of Natural Gas to the city-gate of 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.

PR # 22775

NOTE: See individual contract items to determine actual awardees.

<u>CONTRACT #</u>	<u>CONTRACTOR & ADDRESS</u>	<u>TELEPHONE #</u>	<u>FED.ID</u> <u>NYS VENDOR ID</u>
PC66673 Effective until 10/31/2016	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 1000041068
PC66674 Effective until 10/31/2016	East Coast Power & Gas LLC 340 Jackson Avenue Bronx, NY 10454	718-402-5107 EXT 129 Vincent Palmieri vpalmieri@ecpowerandgas.com	510669436 1100023626
PC66675 Lot #6 effective until 01/31/2017 Lot #9 effective until 10/31/2016	Direct Energy Business Marketing, LLC One Hess Plaza Woodbridge, NJ 07095	800-437-7265 Kevin George 732-750-6888 FAX: 732-750-6927 E-mail: kgeorge@directenergy.com	800909818 1100124613

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

(continued)

E*	EPA Energy Star
ES	Environmentally Sensitive

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

INDEXED PRICE/INTERRUPTIBLE SUPPLY

Item No. Agency	12 Months Approx. Quantity MMBtu's	Basis Cost* per MMBtu's Delivered to LDC City Gate
1. Fishkill Correctional Facility	368,670	
<u>LOT 1 - Total Quantities</u> (Item 1)	368,670	NO AWARD (INDEXED PRICE/INTERRUPTIBLE SUPPLY)

LOT 2 - DELIVERY TO CENTRAL HUDSON GAS & ELECTRIC

INDEXED PRICE/FIRM SUPPLY

Item No. Agency	12 Months Approx. Quantity MMBtu's	Basis Cost* per MMBtu's Delivered to LDC City Gate
1. Fishkill Correctional	368,670	
<u>LOT 2 - Total Quantities</u> (Item 1)	368,670	\$2.6470** (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 CONSOLIDATED EDISION

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. Bedford Hills Correctional Facility	142,056	
<u>LOT 3 - Total Quantities</u> (Item 1)	142,056	NO AWARD

LOT 4 - DELIVERY TO CONSOLIDATED EDISON TERRITORY

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. Bedford Hills Correctional Facility	142,056	
<u>LOT 4 - Total Quantities</u> (Item 1)	142,056	\$1.9900 (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: EAST COAST POWER & GAS, LLC

LOT 5 - DELIVERY TO NATIONAL GRID

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. Hudson Correctional Facility	41,554	
<u>LOT 5 - Total Quantities</u> (Item 1)	41,554	NO AWARD

(continued)

LOT 6 - DELIVERY TO NATIONAL GRID ****Effective until January 31, 2017 or until new award, whichever occurs first.****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 Correctional Facility	41,554	

**LOT 6 - Total Quantities
(Item 1)**

41,554

**\$,3440
(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 6: Direct Energy Business Marketing LLC.****LOT 7 - DELIVERY TO NATIONAL GRID****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.	OGS Utilities Management	68,700	
2.	OGS Utilities Management	1,335,643	

**LOT 7 - Total Quantities
(Item 1- 2)**

1,762,326

NO AWARD

**LOT 8 - DELIVERY TO NATIONAL GRID (East Gate)
With Monthly Excess/Deficiency Usage)**

<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.	OGS Utilities Management	68,700	
2.	OGS Utilities Management	1,335,643	

LOT 9 - Total Quantities

1,762,326

NO AWARD

(continued)

LOT 9 - DELIVERY TO NATIONAL GRID (East Gate) *

***Effective until October 31, 2016.**

<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	68,700	
2.	OGS Utilities Management	1,335,643	
<u>LOT 9 - Total Quantities</u>		1,762,326	\$1.5240 (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 9: Direct Energy Business Marketing LLC.

(continued)

SCOPE

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.

CONTRACT PERIOD AND RENEWALS

The Contract is awarded for two (2) Years and may be renewed under the same terms and conditions for up to an additional 3 years but, not to exceed a total contract term of five (5) years.

SHORT TERM EXTENSION

In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to three (3) months upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, prices and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to six (6) months in lieu of three (3) months. However, this extension terminates should the replacement Contract be issued in the interim.

DEFINITIONS:

Except in those instances where the text states another meaning, the following terms, as used in in this 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.

Authorized User(s): as defined in State Finance Law §163(1)(k).

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.

Basis Cost: defined as the sum of the immediate upstream supply trading point basis plus the transportation basis to the LDC's city gate. The immediate upstream supply trading point basis shall be bid as Component 1 of the total basis. Examples of an immediate upstream trading point basis would be (Platts – ICE) IFERC Dominion South Point basis futures, (Platts – ICE) IFERC Columbia Gas TCI basis futures. Component 2, transportation basis, shall include all transportation fixed and variable costs, LDC balancing, overhead, and profit. Total Basis = (Immediate Upstream Supply Trading Point + Transportation Basis) carried to the fourth decimal place. Total basis cost shall be firm for the life of the contract and does not include the commodity cost.

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.

Commodity: natural gas.

Contract: as defined in Appendix B.

Contractor: shall refer to a responsive and responsible Bidder who is working under an executed contract with New York State. Contractor is a general term.

Curtailement: interruption of flowing natural gas supplies imposed by pipelines and LDC's 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 alternate 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.

Forward Basis Price: the forward basis cost shall be the cost quoted from a service such as Platts, Bloomberg or Clearport that is recognized by the industry as indicative of forward natural gas deliveries. The publication shall be agreed to at contract award and incorporated into this contract.

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.

LDC: Local Distribution Company, also known as Local Utility Company, which transports gas from the city gate to the customer’s meter.

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

MMBtu’s: one million British Thermal Units, also known as a dekatherm. (Dth)

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.

MWBE: shall refer to a business certified with the New York State Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.

May: denotes the permissive in a contract clause or specification. “May” does not mean “required”. Also see “Shall” and “Must”.

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.

Must: denotes the imperative in a contract clause or specification. “Must” is synonymous with “required”. Also see “Shall” and “May”.

NYMEX: New York Mercantile Exchange.

NYS Vendor File: shall refer to a centralized repository to maintain timely and reliable information on all contractors registered to do business with the State. The Office of the State Comptroller’s Bureau of State Expenditures created the Vendor Management Unit (VMU) to manage this file.

NYS Vendor ID: shall refer to the ten-character identifier issued by New York State when a vendor is registered with the NYS Vendor File. See also “NYS Vendor File”.

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.

New York State Procurement (NYSPRO): shall refer to the division of the New York State Office of General Services which is authorized by law to issue centralized, statewide contracts for use by New York agencies, political subdivisions, schools, libraries, and other authorized by law to participate in such contracts.

PSC/DPS: New York State Public Service Commission.

Primary Pipeline: the pipeline(s) that transports the gas to the LDC (city gate).

Primary Point of Delivery: the point where the gas enters the LDC (city gate).

Seller: the awarded contractor.

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Shall: denotes the imperative in a contract clause or specification. “Shall” is synonymous with “required”. Also see “Must” and “May”.

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.

CONTRACT TYPE

The sales and deliveries of gas shall commence as soon as practicable after the completion of necessary transportation arrangements. The contract type has distinct characteristics and requires specific customer commitments and obligations. The more significant aspects of this contract type are described as follows:

Indexed Price – Firm Supply

- The customer will receive “firm” supply.
- The customer will pay for quantities actually used (with the exception of Lot 8, if awarded).
- 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 NYSPRO 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 IFB means primary firm non-recallable primary delivery point capacity to the city gate and not secondary firm supply.
- The customer/facility can burn an alternate fuel for the purpose of testing or maintaining the equipment’s capability of burning an alternate fuel, or in the event of the need for fuel tank turnover (burning and replacing the alternate fuel) to maintain the integrity of stored fuel. The customer/facility **MUST** notify the ESCO via e-mail at least 14 days prior to switching. The customer/facility **MUST** provide the ESCO with an estimate of the duration of the anticipated alternate fuel use.

Price per dekatherm will be calculated as follows:
ESCO’s actual cost + \$.30

ESCO’s actual cost is defined as the price listed on the above mentioned Transaction Confirmation Sheet. This confirmation sheet is required for all quantities of gas purchased. Authorized user must document the reasonableness of price in the procurement record.

- The customer shall notify the ESCO in writing not less than five (5) calendar days before the first day of each delivery of the estimated monthly and/or daily gas nomination of the agency. If agreed to by the ESCO, nominations may be submitted to the ESCO on an alternate date. The ESCO should make certain that the using agency submits a nomination each month, even if the nomination is zero. If agency nominations are not timely, the ESCO may contact the NYSPRO contract management specialist for assistance.

CONTRACT BILLINGS AND PAYMENTS

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

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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.

Payment of Contract Purchases Made by an Authorized User when the State Comptroller is Responsible for Issuing 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's website at www.osc.state.ny.us, by email at epunit@osc.state.ny.us, or by telephone at 518-486-1255. 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.

Payment of Contract Purchases Made by an Authorized User when the State Comptroller is Not Responsible for Issuing Payment

The authorized user and the contractor agree that payments for such contract purchases shall be billed directly by the 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 proper invoice. Such authorized user and contractor are strongly encouraged to establish electronic payments.

REBATES

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

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.

MONTHLY EXCESS/DEFICIENCY USAGE ADJUSTMENT PROGRAM (LOT 8 ONLY)

For Excess Usage during a Month

- **November through March:** During these months, the price for the excess city gate gas shall be the excess volume multiplied by the average of the daily prices reported by Natural Gas Week's Gas Market Reconnaissance for the delivery month under the heading "Natural Gas Spot Prices for Dominion North Point" plus the DTI Firm Transportation (FT) tariff rate in effect for Usage Charge, Fuel Retention and 1.75 times the pipeline Reservation Charge. If the Dominion North Point Price is not posted, the Dominion South Point Price will be used.
- **April through October:** During these months, the price for the excess city gate gas shall be the excess volume multiplied by the average of the daily prices reported by Natural Gas Week's Gas Market Reconnaissance for the delivery month under the heading "Natural Gas Spot Prices for Dominion South Point" plus the DTI Interruptible Rates (IT) in effect for the month including fuel retention charges.

For Deficient Usage during a Month

- **November through March:** During these months, the price for the deficient city gate gas shall be deficient volume multiplied by the difference between the contract price and the average of the daily prices reported by Natural Gas Week's Gas Market Reconnaissance for the delivery month under the heading "Natural Gas Spot Prices for Dominion North Point". If the Dominion North Point Price is not posted, the Dominion South Point Price will be used.
- **April through October:** During these months, the price for the deficient city gate gas shall be the deficient multiplied by the difference between the contract price and the average of the daily prices reported by Natural Gas Week's Gas Market Reconnaissance for the delivery month under the heading "Natural Gas Spot Prices for Dominion South Point".

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CONTRACT OPTION

Prior to the beginning delivery period, agency shall have the right to trigger forward prices pursuant to the “Trigger Price” as stated in this IFB in section *pricing information*.

LOTS 2, 4, 6, 8, and 9 (INDEXED PRICE – FIRM SUPPLY)

Locations in these lots are utility classified as interruptible transportation rate. If on any day when facility is receiving firm supply and the facility is required by the LDC to switch to an alternative fuel (event) supplier shall during such event establish the excess gas as the quantities of gas that was nominated or scheduled for delivery at the time of the notice of curtailment. Such quantities shall continue to be a proxy for delivery until the LDC cancels the curtailment. ESCO shall make a credit or debit adjustment for the excess city gate gas using the following calculations:

FOR NATIONAL GRID TERRITORY**Sales Upstream of the City Gate**

- **November through March:** During these months, the price for the excess city gate gas will equal the difference between the contract price (for LDC nominated amount) and the price reported by Natural Gas Week’s Gas Market Reconnaissance for the event day using the nominated under Natural Gas Spot Prices for Dominion North Point. If that is not posted, the Dominion South Point will be used.
- **April through October:** During these months, the excess city gate gas will equal the difference between the contract price (for LDC nominated amount) and the price reported by Natural Gas Week’s Market Reconnaissance for the event day under Natural Gas Spot Prices for Dominion South Point.

Sales at the City Gate

- **November through March:** During these months, the price for the excess city gate gas will equal the difference between the contract price (for LDC nominated amount) 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.
- **April through October:** During these months, the price for the excess city gate gas will equal the difference between the contract price (for LDC nominated amount) 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.
- **Note:** City gate sales shall include any LDC that has DTI primary delivery points.

FOR CON EDISON TERRITORY AND CENTRAL HUDSON TERRITORY**Sales Upstream of the City Gate**

- During any month the price for the excess city gate gas will equal the difference between the contract price (for LDC nominated amount) 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 Transco-NY for Con Edison.

Sales at the City Gate

- During any month the price for the excess city gate gas will equal the difference between the contract price (for LDC nominated amount) 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, for Central Hudson; Con Edison will be Transco-NY.

FACILITY CLOSURE MANDATE

If as the result of an Executive or Legislative mandate that requires the closure of a facility in any of the Lots awarded under this IFB, the sole and exclusive remedy for the remainder of that facility’s contract requirement shall be settled as follows:

Forward Triggered Volumes

All remaining triggered months shall be priced at the difference between the weighted average trigger price plus contract basis cost minus the forward natural gas cost plus the forward basis price times the triggered volume. The difference, whether positive or negative, shall be credited or debited accordingly by the seller to the buyer on that month’s invoice.

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Non-Triggered Volumes

Shall be priced at the difference between the contract basis cost minus the forward basis price times the remaining monthly contract quantity. The difference, whether positive or negative, shall be credited or debited accordingly by the seller to the buyer on that month's invoice.

Note: In the event the forward basis price publication does not quote a city gate basis, the forward basis price shall be calculated by using the quote for the immediate upstream pipeline trading point (i.e. Columbia Gas Appalachia, Dominion South Point) plus the pipeline firm transportation rates in effect if the facility was receiving firm supply, or in the case of the facility receiving interruptible supply the lesser of the pipelines interruptible tariff rate or the forward capacity release market for the remaining contract period.

PRICING INFORMATION

Prices shall be bid as Indexed, as either Firm or Interruptible Supply as specified in each Lot.

Indexed Price

For Lots indicated as indexed price, the ESCO shall include only basis cost in the bid price. Indexed prices shall be calculated by taking the average of the last three (3) days closing settlement price of NYMEX natural gas daily settlement for the month of gas delivery and adding the basis cost. Prices will be carried to the 4th decimal place. While commodity price may increase or decrease from month to month, increases to basis costs are not allowed. However, basis cost decreases are allowed at any time.

Trigger Price (Firm Supply Only) (Lot 2, Lot 4, Lot 6, Lot 8, and Lot 9)

The per Dekatherm 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 2nd 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 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.

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

Triggered price + Basis cost = Final 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, then 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. The difference, whether positive or negative, shall be credited or debited accordingly by the seller to the buyer on that month's invoice.

All volumes in excess of the triggered volumes used in a given month will be purchased at the awarded contract price.

(continued)

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. Additionally, payment for triggered gas should not be invoiced until the delivery month.

CUSTOMER/AGENCY AND ESCO RESPONSIBILITIES FOR ALL UTILITY TERRITORIES

Customer Responsibilities

- Customer will be responsible for placing nominations for natural gas supply to the ESCO “in writing” not less than five (5) calendar days prior to the first day of the month for which supply is needed; or at a later date if mutually agreed upon by ESCO and the agency.
- 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 the 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/ Specific Quantity Contracts”)
- ESCO, prior to the start of the 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.
- 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 in this solicitation but may also include other customers served by the successful bidder within this LDC territory.
- ESCO is responsible for monitoring customer 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 NYSPRO 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.
- ESCO 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 NYSPRO contract administrator immediately of any difficulties obtaining meter reads from individual facilities.
- ESCO, where required (all lots excluding interruptible supply), 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.

(continued)

THE ESCO'S RESPONSIBILITIES DURING CURTAILMENTS/INTERRUPTIONS

If an agency nominates natural gas, and there is pipeline capacity available to the ESCO, the ESCO is expected to supply gas for the entire month and the facility is required to burn gas for the entire month. The State agrees to be interrupted only when the ESCO can provide satisfactory justification of interruptions or curtailments that occur on pipelines or at the LDC level, as a result of demand for transportation service exceeding capacity.

ESCO shall be responsible for notifying both customer and NYSPRO, in writing via fax or e-mail, of any pipeline curtailments as soon as possible after ESCO becomes aware that a curtailment will take place.

ESCO is required during periods of upstream pipeline interruptions, to contact LDC for the availability of excess city gate supply, enabling facility to purchase gas directly from the LDC. Price shall be approved prior to purchase by the individual agency.

As a result of a scheduled and confirmed nomination ("Nominated") on the delivering upstream pipeline(s) being interrupted which prevents city gate delivery of customer's gas, ESCO shall use all commercially reasonable efforts to secure replacement gas for the customers. Such efforts shall include, but not be limited to, supplies on alternate pipeline serving the affected LDC requests to other ESCO's, energy brokers, and requests to the affected LDC for the availability of excess system supply gas. (see additional information in Section 1.4 *Contract Types*)

If gas should flow due to ESCO's failure to notify the customer and NYSPRO of curtailment and customer purchases gas directly from the utility, the customer will have sufficient justification to apply a charge-back, which shall be the difference between the contract natural gas prices versus the utility supplied price, including any LDC imposed charges.

If customer nominates "0" or at the time of the monthly nomination notified ESCO of a scheduled plant shutdown/maintenance during said month, and gas flows, ESCO will be liable for all added cost incurred caused by failure to manage customer's account.

ESCO is required to notify customers and NYSPRO of lifting of curtailment/interruption as soon as possible and to enable gas flow at the next available opportunity. ESCO will be liable for any charges caused by ESCO's failure to inform customer and LDC, if applicable, of lifting of curtailment/interruption. Curtailment/interruption of one or more pipelines will not be considered a force majeure situation.

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 (Other than those requested in this Invitation for Bids)

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

NATURAL GAS QUALITY

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. 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 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 specification included in the interstate transporter's tariff as approved by the Federal Energy Regulatory Commission (FERC) and/or those required by delivering pipelines authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

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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 § 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. In the Indexed Price-Firm Supply and the Indexed Price-Interruptible Supply Lots, 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, unless the customer is participating in the monthly excess/deficiency usage adjustment program. See also “Participation in Centralized Contracts” § 39 and “Estimated/Specific Quantity Contracts” § 42 in Appendix B, OGS General Specifications.

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 [attachment 4] reflects estimated quantities only). Customers will be billed for actual quantity consumed (excluding facilities in Lot 8). The sale and delivery of gas by the ESCO shall be on an interruptible of firm basis, as specified within each Lot. Where interruptible gas is specified, the ESCO shall not be liable to the State for any interruption or curtailment of deliveries of natural gas to the State where satisfactory justification for such action can be provided in writing to NYSPRO.

ESTIMATED QUANTITIES

The quantities included in the delivery schedule are estimated only. See “Estimates/Specific Quantity Contracts” and “Participation in Centralized Contracts” in Appendix B, OGS General Specifications.

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.

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in Contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See "Participation in Centralized Contracts" in Appendix B, OGS General Specifications. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State Contracts. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS New York State Procurement's Customer Services at (518) 474-6717.

EXTENSION OF USE

Any Contract resulting from this IFB may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the ESCO. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

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 the 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

BUSINESS PARTICIPATION OPPORTUNITIES for MWBEs

(continued)

For purposes of this procurement, OGS has conducted a comprehensive search and has determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to the awarded Contractors. Contractors are, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. To locate MWBEs, the Directory of Certified Businesses can be viewed at: <http://www.esd.ny.gov/MWBE/directorySearch.html>.

DIESEL EMISSION REDUCTION ACT OF 2006

On February 12, 2007 the Diesel Emissions Reduction Act took effect as law (the "Law"). Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law ("NYECL") it is now a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra-low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. They need to be operated exclusively on ULSD by February 12, 2007. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

As a contract vendor the Law may be applicable to vehicles used by Contract vendors "on behalf of" State agencies and public authorities. All heavy duty diesel vehicles must have BART by December 31, 2012. The Law also provides a list of exempted vehicles. Regulations currently being drafted will provide further guidance as to the effects of the Law on Contract vendors using heavy duty diesel vehicles on behalf of the State. The Law also permits waivers of ULSD and BART under limited circumstances at the discretion of the Commissioner of Environmental Conservation. The Law will also require reporting from State agencies and from Contract vendors in affected Contracts.

Therefore, the Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19 0323, to be used under this Contract, will comply with the specifications and provisions of NYECL §19 0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the Bidder.... This needs to be updated to make current/past, not future!

USE OF RECYCLED OR REMANUFACTURED MATERIALS

New York State, as a member of the Council of Great Lakes Governors, supports and encourages vendors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this IFB. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See "Remanufactured, Recycled, Recyclable or Recovered Materials" in Appendix B, OGS General Specifications.

ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER 4

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program) (EO4), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <http://www.ogs.ny.gov/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract

REPORT OF CONTRACT USAGE

ESCO shall furnish quarterly reports containing total sales for State, Non-State governmental entities, and others authorized by law to utilize this contract, no later than forty-five days after the close of each calendar quarter.

In addition to Contractor direct sales, Contractor shall submit information regarding any subcontractors used. A Contractor shall verify if each subcontractor is a NYS Certified Minority (MBE) or Women (WBE) Owned Business. A Contractor 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>

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A separate report (attachment 7) is provided. The report is to be submitted electronically via e-mail in Microsoft Excel to NYSPRO, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

Additional related sales information, such as monthly reports, and/or detailed user purchases may be required by OGS must be supplied upon request. Failure to submit reports on a timely basis shall be considered poor performance in accordance with Section 5.18 *Poor Performance* and may result in Contract cancellation and designation of Contractor as non-responsible.

Additional related sales information and/or detailed Authorized User purchases may be required by OGS and must be supplied upon request. Failure to submit the required report shall be considered poor performance in accordance with Section 5.18 *Poor Performance*. ESCO may be required to furnish copies of monthly invoices to NYSPRO for recording sales transactions and analysis.

DISPUTE RESOLUTION POLICY

It is the policy of the Office of General Services' New York State Procurement (NYSPRO) to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to NYSPRO bid solicitations, contract awards and contract administration. NYSPRO encourages vendors to seek resolution of disputes through consultation with NYSPRO staff. All such matters shall be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of NYSPRO's Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this Request for Proposal or through the OGS website (<http://ogs.ny.gov/BU/PC/BizInfo.asp>, (click on Dispute Resolution Procedures).

REQUEST FOR CHANGE:

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

POOR PERFORMANCE

Authorized Users should notify NYSPRO Customer Service promptly (see form below) if the Contractor fails to meet the requirements of this Contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services:

Office of General Services, NYSPRO
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242
Customer Services E-mail: customer.services@ogs.ny.gov

**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, 38th Floor
Corning 2nd Tower - Empire State Plaza
Albany, New York 12242
* * * * *

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