



Contract Award Notification

Title	: Group 05900 – Natural Gas (Firm Supply) (Specific Locations Within National Grid Territories) Classification Code(s): 15
Award Number	: 23321 (Replaces Award 23261)
Contract Period	: December 1, 2023 – September 30, 2024
Bid Opening Date	: October 4, 2023
Date of Issue	: November 10, 2023
Specification Reference	: As Incorporated Herein
Contractor Information	: Appears on Page 2 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
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**Procurement Services 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 and Indexed Interruptible Supply of Natural Gas to the city-gate of the facilities listed herein. The pricing included in this document is the pricing bid by the contractors. For current pricing, please click on the "Pricing Information" link listed below in this document.

This Award has 0% MBE, 0% WBE and 0% SDVOB goal requirements.

PR # 23321

(continued)

NOTE: See individual contract items to determine actual awardees.

<u>CONTRACT #</u>	<u>CONTRACTOR & ADDRESS</u>	<u>TELEPHONE #</u>	<u>FED.IDENT.# / NYS VENDOR#</u>
PC70307 SB	Empire Natural Gas Corp 173 Airport Road Greene, NY 13778	<p>Seth R. Barrows President Phone: 607-656-7851 Toll Free: 888-659-8967 Email: seth@empirenatgas.com</p> <p><u>Customer Service Contact for NYS Contract Orders (Mon-Fri 8:00am-4:30pm):</u> Julie Micha Administrative Assistant Phone: 607-656-7851 Toll Free: 888-659-8967 Email: jmicha@empirenatgas.com</p> <p><u>Contact for After Hours, Weekend, Holiday Emergency, and NYS Declared Emergencies or Disasters:</u> Seth R. Barrows President Phone: 607-656-7851 Toll Free: 888-659-8967 Email: seth@empirenatgas.com</p> <p><u>Contact for Billing Issues (M-F 8AM-430PM):</u> JoAnne Young VP of Finance Phone: 607-656-7851 Toll Free: 888-659-8967 Email: joanne@empirenatgas.com</p> <p><u>Contact for Hedging/Forward Triggering:</u> Seth R. Barrows President Phone: 607-656-7851 Toll Free: 888-659-8967 Email: seth@empirenatgas.com</p>	161352123 1000047921

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

AGENCIES SHOULD NOTIFY NEW YORK STATE PROCUREMENT SERVICES 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 PROCUREMENT SERVICES.

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:

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Procurement Services 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

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).

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Price

LOT #	UTILITY TERRITORY	SUPPLY TYPE	AWARDED VENDOR	BID PRICE
1	National Grid East	Indexed Price, Firm Supply	No Bid	N/A
2	National Grid West	Fixed Price, Firm Supply	Empire Natural Gas Corporation	\$3.5600
3	National Grid West	Fixed Price, Firm Supply	Empire Natural Gas Corporation	\$3.6060
4	National Grid West	Indexed Price, Firm Supply	No Bid	N/A
5	National Grid West	Indexed Price, Firm Supply	Empire Natural Gas Corporation	\$0.0230
6	National Grid West	Indexed Price, Firm Supply	Empire Natural Gas Corporation	\$0.0580

Scope

This Contract is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services to provide Authorized Users with a means of acquiring Natural Gas to Authorized Users’ facilities. 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.

The Natural Gas Contract places special obligations on a participating Customer and is governed by Uniform Commercial Code § 2-306. A Customer that wishes to purchase must commit in advance to make all necessary purchases for Natural Gas from the awarded Contractor. In the Fixed Price – Firm Supply and Indexed Price – Firm Supply Lots, the quantities listed are intended to be indicative of the amount of Natural Gas to be purchased. However, 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 clause 25, “Participating in Centralized Contracts” and clause 28, “Estimated/Specific Quantity Contracts” in Appendix B, OGS General Specifications.

Contract Types

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

A. Fixed Price – Firm Supply

1. The Customer will receive Firm Supply.
2. The Customer will pay for quantities actually used.
3. The Customer will pay one final Fixed Price for the life of the contract.
4. The Contractor is responsible for all Balancing to the Burner Tip.
5. The Contractor is required to deliver Natural Gas at all times. Firm supply specified in this Contract means primary firm non-recallable primary delivery point capacity to the City Gate and not secondary Firm Supply as defined below.

B. Indexed Price – Firm Supply

1. The Customer will receive Firm Supply.
2. The Customer will pay for quantities actually used.
3. 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 scheduled for release by OGS Procurement Services during the last week of the month preceding the month of delivery.
4. The Contractor is responsible for all Balancing to the Burner Tip.
5. The Contractor is required to deliver a Firm Supply of Natural Gas at all times. Firm Supply specified in this Contract means primary firm non-recallable primary delivery point capacity to the City Gate and not secondary Firm Supply as defined below.

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6. 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 Contractor via E-mail at least 14 Business Days prior to switching. The Customer/facility MUST provide the Contractor with an estimate of the duration of the anticipated Alternate Fuel use.

Estimated Quantities

This Contract is an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Contract, based on Authorized Users' filed requirements, is approximately \$174,814.36 for ten months.

Numerous factors could cause the actual quantities of Products purchased under this Contract to vary substantially from the estimates in the Solicitation. Such factors include, but are not limited to, the following:

- Such Contracts may be non-exclusive Contracts
- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities used during the contract period.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contract could vary substantially from the estimates provided in the Solicitation.

All dollar values and quantities quoted in the Solicitation are based on Authorized Users' estimated use in Dekatherms. The estimates by Lot are specified in Attachment 1 – Pricing, and in Attachment 9 – Delivery Schedule.

The resulting contract under this award will be a centralized contract based on Authorized Users' filed requirements. By providing an estimate to OGS Procurement Services, the Authorized User has agreed to purchase all of the Authorized User's needed and required Natural Gas under the terms of the Contract for the duration of the awarded Contract. The individual value of the Contract is indeterminate. OGS makes no guarantee as to how much Natural Gas will actually be ordered and/or delivered. See 25, "Participation in Centralized Contracts" and Clause 28, "Estimated/Specific Quantity Contracts" in Appendix B, OGS General Specifications.

Definitions

Capitalized terms used in this Contract shall be defined in accordance with Appendix B, Definitions, or as below.

"Alternate Fuel" shall refer to fuel used other than Natural Gas.

"Balancing" shall refer to the Contractor's managing of a Customer's Natural Gas supply to enable the Contractor to match the Customer's daily usage with the confirmed pipeline delivery of Natural Gas supplies by the utility company.

"Basis Cost" shall refer to 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

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bid as Component 1 of the total basis. Examples of an immediate upstream trading point basis would be Dominion, South Point Natural Gas (Platts IFERC) basis futures, Columbia Gas TCO (Platts IFERC) basis futures. Component 2, transportation basis, shall include all transportation fixed and variable costs, LUG, line loss, LDC Balancing (except for an annual bank balance cash-out for Customers serviced by Liberty Utility), overhead, and profit. Total Basis equals (=) (Immediate Upstream Supply Trading Point plus (+) 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.

“Broker” shall refer to a retail agent who arranges or negotiates for the purchase and sale of Natural Gas. Brokers usually act on behalf of others and do not buy energy for their own end-use Customers.

“Burner Tip” shall refer to the point at which Natural Gas is used as a fuel consumption at end user’s billing meter.

“Business Day” shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.

“Business Hours” shall refer to 8:00 AM to 5:00 PM ET on Business Days.

“BTU” shall refer to British thermal unit – this standard unit of measurement is used to measure heat energy and to convert CCFs to therms. It is the amount of heat required to increase the temperature of a pint of water (which weighs exactly 16 ounces) by one degree Fahrenheit.

“City Gate” shall refer to a point or measuring station at which a distributing gas utility receives gas from a Natural Gas pipeline company or transmission system.

“Curtailement” shall refer to a reduction in gas deliveries or gas sales necessitated by a shortage of supply or pipeline capacity.

“Customer” shall mean an Authorized User that participates in the contract.

“Dekatherm (Dth)” shall mean one Dekatherm of Natural Gas which contains one million BTU (one MMBTU) of energy. One Dekatherm is equal to 10 therms.

“Delivery Point” shall mean the point where Natural Gas exits one system and enters another.

“ESCO” shall refer to an Energy Service Company that offers Customers energy and energy related products and services; usually required to be approved by state public utility companies.

“Event” shall refer to 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” shall refer to the Federal Energy Regulatory Commission. This federal agency is responsible for the regulation of the production, transmission, and sale of Natural Gas and electric power, as well as the transportation of oil.

“Firm Supply” shall refer to 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.

“Fixed Price” shall refer to the combined price of the NYMEX commodity cost and the Basis Cost as one price that does not change for the term of the contract.

“Indexed Price” shall refer to the combined price of the commodity price and the Basis Cost. The commodity price will be determined monthly based on the average of the settlements for the last 3 days of the New York Mercantile Exchange (NYMEX) futures contract for delivery to Henry Hub in Louisiana for the month. A fixed Basis Cost will be added to the commodity price to determine each month’s Indexed Price (See Section *Price*).

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“**Local Distribution Company (LDC)**” shall refer to the entity responsible for receiving Natural Gas or power from the wholesale transmission system and distributing it to end use Customers. LDCs are state-jurisdictional entities whereas most transmission providers are federal jurisdictional. In addition to local delivery of energy, the LDC is typically also responsible for providing metering and billing services.

“**Lot**” shall, for the purpose of this Contract, refer to a grouping of Authorized Users by utility company (e.g., ConEd, NYSE&G, etc.), price/delivery (e.g., fixed, Indexed, etc.), and by Authorized User’s delivery locations in order to consolidate usage.

“**MDQ**” shall mean maximum daily quantity of Natural Gas contracted by the Contractor to the Authorized User.

“**MMBtu’s**” shall refer to ten therms or one million British Thermal Units, also known as a Dekatherm (Dth).

“**Month**” shall refer to a period beginning at 10:00 AM on the first day of a calendar month and ending at 10:00 AM on the first day of the calendar month immediately following.

“**MWBE**” shall refer to a business certified with NYS Empire State Development (“ESD”) as a Minority- and/or Women-owned Business Enterprise.

“**N/A**” shall mean not applicable or not available, used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.

“**Natural Gas**” shall refer to a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth’s surface and used as a fuel.

“**Nomination**” shall refer to a request for delivery of Natural Gas for a specific quantity over a specific period of time or for its delivery at a specific point under a purchase.

“**NYMEX**” shall refer to New York Mercantile Exchange. The commodity exchanges based in New York where Natural Gas futures contracts and other energy futures are traded.

“**NYS Holidays**” refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Dr. Martin Luther King, Jr. Day; Washington’s Birthday (observed); Memorial Day; Juneteenth; Independence Day; Labor Day; Columbus Day; Veterans’ Day; Thanksgiving Day; and Christmas Day.

“**NYS Vendor ID**” is a unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the Vendor File System.

“**Operational Flow Order**” shall refer to orders which are issued by a pipeline to protect the operational integrity of the system. The Orders may restrict service or require actions by shippers to correct the problem.

“**PSC/DPS**” shall refer to New York State Public Service Commission.

“**Preferred Source Products**” shall refer to those Products that have been approved in accordance with New York State Finance Law § 162.

“**Preferred Source Program**” shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State

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Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to a state agencies, political subdivisions and public benefit corporations (including most public authorities).

“**Procurement Services**” shall refer to a business unit of OGS, formerly known as New York State Procurement (“NYSPPro”) and Procurement Services Group (“PSG”).

“**SDVOB**” shall refer to a NYS-certified Service-Disabled Veteran-Owned Business

“**System Alert**” shall refer to an announcement of actual or pending Events that if unchecked may result in an Operational Flow Order.

“**Tariff**” shall refer to compilation of all of the effective rate schedules for a company, along with general terms and conditions.

Conflict of Terms

Conflicts among the documents shall be resolved in the following order of precedence:

1. Appendix A, June 2023, Standard Clauses for New York State Contracts;
2. Contract Award Letter;
3. Invitation for Bid #23321 including all other Appendices and Attachments referenced therein;
4. Contractor’s Bid Prices;
5. Contractor’s Bid.

Delivery

Subject to the terms and conditions of the contract, the Contractor agrees to sell and deliver to designated facilities, and Customers agree to purchase and accept from the Contractor the nominated quantity of MMBtu’s of Natural Gas per month listed in Attachment 9 – *Delivery Schedule*, which reflects estimated quantities only.

The Delivery Schedule, based on Authorized Users’ requirements submitted to Procurement Services by Requirement Letter RL217, are available as a guide to indicate proposed Delivery Points and estimated annual quantities. Contractor is advised that the Delivery Schedule may be revised up to the date of the Bid opening to accommodate the addition and/or deletion of Delivery Points and quantities. Contractor should therefore make note of the revisions. This information is available to clarify delivery conditions, where possible. Any specific questions regarding the site conditions should be directed to the end-user via any communication available, as shown on Attachment 9 - *Delivery Schedule*. All revisions are announced via the New York State Contract Reporter.

Any Authorized User, which has not filed a requirement with OGS as of the date of the Bid and requests a Contractor to add a location to the Delivery Schedule, shall be eligible to be added to the Delivery Schedule as a new account at the Contractor’s option. This being done upon placement of a valid purchase order (or other ordering mechanism between the Contractor and the ordering entity) to the Contractor’s address as indicated in the award. Contractors must notify OGS of any new business created from Authorized Users request for delivery so that OGS Procurement Services can make adjustments to the Delivery Schedule to capture these new accounts. See Section New Accounts, in this Contract.

The sale and delivery of gas by the Contractor shall be on a firm basis, as specified within each Lot (See Attachment 9 – *Delivery Schedule*).

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Customer and Contractor Responsibilities

A. Customer Responsibilities

1. Customer will be responsible for supplying usage data to Contractor on an as-needed basis as required by the Contractor in order to serve Customer under the utility/LDC.
2. Customer will be responsible for supplying faxed meter reads to Contractor on an as-needed basis.
3. Customer will be responsible for having installed and utility approved remote telemeter devices, if needed.
4. Customer will be responsible for timely completion of utilities aggregation form upon receipt from Contractor for further submission to the utility company.
5. Customer will be responsible for completion of any additional documentation as deemed necessary by Contractor and utility/LDC.
6. Customer will be responsible for notifying Contractor of any changes in plant usage (significant increased usage, shutdowns/closures, Maintenance etc.) that will affect the nomination of gas usage either positively or negatively (Also see Section Facility Closure Mandate).

B. Contractor Responsibilities

1. Contractor will be responsible for placing Nominations for Natural Gas supply to LDC "in writing" in accordance with utilities nomination schedule (see Appendix B, "Estimated/ Specific Quantity Contracts").
2. Contractor, for each lot they are awarded, will be responsible to inform each Authorized User to 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. Contractor will provide to the Authorized User a sample of the stated billing format prior to the first invoice.
3. Contractor will be responsible for requesting faxed meter reads from the Customer locations as deemed necessary by the Contractor in order to serve Customer under the applicable utility company's program.
4. Contractor will be responsible for executing the completion and submission of the utilities aggregation form as required by the utility/LDC.
5. Contractor 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 Contract but may also include other Customers served by the Contractor within this LDC territory.
6. Contractor is responsible for monitoring Customer accounts at all times, including but not limited to System Alerts.
7. Contractor will be responsible for requesting any usage data from the Customer locations as deemed necessary by the Contractor in order to serve Customer under utility/LDC's program.
8. Contractor will be responsible for completion of any additional documentation as deemed necessary by the OGS Procurement Services or utility/LDC.
9. Contractor will be responsible for any and all daily/end-of-month "cash outs" as imposed by LDC, if applicable.
10. Contractor will adhere to MDQ procedures as outlined in each utility companies Tariff established through the NYS Public Service Commission.
11. Contractor shall bill Customer for actual quantities of Natural Gas consumed.
12. Contractor shall be required to deliver 100% of the Authorized Users' 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.
13. Contractor must be compliant with all Federal, State, and NYS Public Service Commission filed and approved utility Tariffs governing each individual utility territory bid, including but not limited to load aggregations, Balancing, and individual utility programs.
14. Contractor will be responsible for notifying the OGS Procurement Services contract administrator immediately of any difficulties obtaining meter reads from individual facilities.

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15. Contractor, where required, will secure adequate upstream capacity (and storage, when applicable) to ensure that service is "firm".
16. Contractor will be responsible to own the balance control account for all agencies listed herein, in accordance with individual utility/LDC when applicable.

Facility Closure Mandate

If as the result of an Executive or Legislative mandate that requires the closure of a facility in any Fixed Price – Firm Supply or Indexed Price – Firm Supply Lot(s) awarded under this Contract, the sole and exclusive remedy for the remainder of that facility's contract requirement shall be settled as follows:

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 Contractor to the Customer 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 for the remaining contract period.

Customer Training

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

Natural Gas Quality and Measurement

All Gas delivered by Contractor shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

Contractor's Responsibilities During Curtailments/Interruptions

If a Customer nominates Natural Gas, and there is pipeline capacity available to the Contractor, the Contractor 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 Contractor 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.

Contractor shall be responsible for notifying both Customer and OGS Procurement Services, in writing via fax or e-mail, of any pipeline Curtailments as soon as possible after Contractor becomes aware that a Curtailment will take place.

Contractor 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 Customer. However, if there are LDC and/or pipeline Curtailment of firm services, to the extent that the Contractor has Firm Supply and firm transportation available at the City Gate delivery shall be made pro-rata to all the Contractor's firm Customers prior to purchasing directly from the LDC.

As a result of a scheduled and confirmed Nomination on the delivering upstream pipeline(s) being interrupted which prevents City Gate delivery of Customer's gas, Contractor 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 Contractor's, energy

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Brokers, and requests to the affected LDC for the availability of excess system supply gas. (See additional information in Section Contract Types).

If gas should flow due to Contractor's failure to notify the Customer and OGS Procurement Services 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 and has notified Contractor of a scheduled plant shutdown/maintenance during said month, and gas flows, Contractor will be liable for all added cost incurred caused by failure to manage Customer's account.

Contractor is required to notify Customers and OGS Procurement Services of lifting of Curtailment/interruption as soon as possible and to enable gas flow at the next available opportunity. Contractor will be liable for any charges caused by Contractor's failure to inform Customer and LDC, if applicable, of lifting of Curtailment/interruption.

Neither party shall be entitled to the benefit of the provision of Force Majeure to the extent performance is affected by the Curtailment of secondary firm transportation unless primary, in-path, firm transportation is also curtailed.

Contract Term

The Contract Term shall be for up to ten (10) months. The Contract term shall commence after all necessary approvals and shall become effective on December 1, 2023, or upon the date of OSC approval of the final executed documents, whichever is later, and the Contract term shall end on September 30, 2024.

Short Term Extension

This section shall apply in addition to any rights set forth in Appendix B, *Contract 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 months upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to six months in lieu of three months. However, this extension automatically terminates should a replacement Contract be issued in the interim.

Price Structure

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, *Savings/Force Majeure*.

Should the Commissioner in his or her sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State may terminate the Contract upon 10 business days written notice mailed to the Contractor.

Ordering

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, *Purchase Orders*. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically

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via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

Invoicing and Payment

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing*.

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/nys-vendors>.

Contract Administration

The Contractor shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Contractor shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five Business Days if its Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

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NYS Financial system (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS supports requisition-to-payment processing and financial management functions.

The State may be implementing additional PeopleSoft modules in the near future. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

N.Y. State Finance Law § 139-I

Pursuant to N.Y. State Finance Law § 139-I, every bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the Contractor has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Pursuant to N.Y. State Finance Law § 139-I, any bid by a corporate Contractor containing the certification required above shall be deemed to have been authorized by the board of directors of such Contractor, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the Contractor.

If the Contractor cannot make the required certification, such Contractor shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Contractor cannot make the certification.

Insurance

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 4 – *Insurance Requirements* of the Solicitation.

Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, semi-annually (twice per year – due January 30th, for sales July 1st through December 31st, and due July 30th, for sales January 1st through June 30th). If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the semi-annual report.

Contractors shall specify if any authorized resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBs), small business enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and shall

(continued)

reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The report in Attachment 8 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

Environmental Sustainability and NYS Executive Order Number 22

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. 22 (Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 22, including specifications for offerings covered by this Contract, may be found at <https://ogs.ny.gov/greenny/>. State entities subject to Executive Order No. 22 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.

Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in Centralized 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 Appendix B, *Participation in Centralized Contracts*. 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. A list of categories of eligible entities is available on the OGS web site (<https://online.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

Extension of Use

This Contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in this 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.

New Accounts

Contractor may ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State Agencies shall not be required to provide credit references.

Drug and Alcohol Use Prohibited

For reasons of safety and public policy, the Contractor's personnel shall not be impaired by alcohol or drugs of any kind in the performance of the Contract.

(continued)

Traffic Infractions

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

Purchasing Card Orders

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B, Purchasing Card), also referred to as the Procurement Card, the Contractor shall not charge or bill the Authorized User for any additional charges related to the use of the Purchasing Card, including but not limited to processing charges, surcharges or other fees.

Sales Title/Transfer Point

Contractor 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, Contractor 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 Customer.

Transportation Charges

Unless otherwise stated, the Contractor shall pay all costs associated with the transportation of the gas to the LDC City Gate (see Section Contract Types). The Customer 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 Customer.

Public Service Commission Retail Access Business Rules

The Contractor shall abide by the New York State Public Service Commission (PSC) Uniform Retail Access Business Practices Cases and Tariffs 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: <http://www.dps.ny.gov/>.

Rebates

OGS Procurement Services has the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc. which arise from the administration of this Contract.

Appendix B Modifications

The following Appendix B clauses are hereby amended as follows:
Section 43 (Termination) subparagraph (b) (For Convenience) is hereby deleted in its entirety.

(continued)

**State of New York
Office of General Services
PROCUREMENT SERVICES
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 return via e-mail to OGS.sm.ps_CM_FleetFuelRoads@ogs.ny.gov or mail to:

NYS Office of General Services
 Procurement Services
 Attn: Fuels Team
 38th FL, Corning Tower, ESP
 Albany, New York 12242