

GENERAL INFORMATION

1. **SCOPE:**

1.1 This invitation for Bids and Specifications describes a contract for the purchase of gas directly from gas producers or gas supply companies. The direct purchase of Natural Gas is in conformance with gas deregulation action of the Federal Energy Regulatory Commission, the New York State Legislature and the New York State Public Service Commission. The bid for the supply of Natural Gas to the Participants is developed to allow any qualified bidder to be considered.

1.2 ADDITIONS: The Participants reserve the right to add additional sites to the contract at any time for existing Participants for new locations if mutually agreeable.

1.3 DELETIONS: The Participants reserve the right to remove from the contract any site for reasons including but not limited to sale, fire, demolition, etc. Notice will be given, if possible.

2. **AMENDMENTS TO BID:**

Any verbal information obtained from or statements made by representatives of Wayne-Finger Lakes BOCES at the time of examination of the documents or site shall not be construed as, in any way, amending contract documents. Only such corrections or addenda as are used by the BOCES in writing to all Contracts shall become a part of the Contract. Any addendum issued during the time of bidding shall be included in bids and become a part of the Contract Agreement.

3. **DEFINITIONS:**

Except in those instances where the text state another meaning, the following terms, as used in this invitation for Bids and Specifications, shall have the meaning as set forth below:

- GAS – Means Natural Gas produced from gas wells and gas produced in association with oil (casing-head gas) and/or the residue gas resulting from processing both casing-head gas and gas-well gas.

CONTRACT – means any contract awarded resulting from this invitation for Bids.

- DAY - means the period of twenty-four (24) consecutive hours beginning at 8:00 A.M. Eastern time of any calendar day and ending at 8:00 A.M. Eastern time of the calendar day immediately following a contract award.
- SELLER – means any bidder to whom a contract award has been made by the Participant.
- PARTICIPANT – means Schools, Counties, Towns, Villages, BOCES and other Public Agencies (list of participants will be sent upon receipt of the “Confirmation Receipt Form”).
- MONTH – mean a period beginning at 8:00 A.M. Eastern time on the first day of a calendar month and ending at 8:00 A.M. Eastern time of the first day of the calendar month immediately following.
- LDC – means Local Distribution Company (ie: Corning Natural Gas, National Fuel Gas Distribution, NYSEG, RG&E) which transports gas from Intrastate or Interstate Pipeline from their City Gate to meter(s) at Participant(s).

- MCF – means one thousand (1000) cubic feet.
- BASIS – All cost associated with the transporting of natural gas to primary point of delivery at the LDC's City Gate for the Participants including LDC shrinkage.
- BTU – means the amount of heat that must be added to one pound (avoirdupois) of pure water to raise its temperature from 58.5 degrees F to 59.5 degrees F under standard pressure conditions.
- DEKATHERM – equal to ten (10) Therms.
- THERM CONVERSION – means that measurement formula that converts volumes of gas to BTU equivalents at a factor of 1000 BTU's per cubic foot of gas.
- PRIMARY POINT OF DELIVERY – means the point where the gas enters the first Transporting Pipeline of the participant's LDC referred to as City Gate.
- TRANSPORTING PIPELINE – means any pipeline which transports the gas from the source area to the LDC.
- INTERMEDIATE PIPELINE – means the pipeline between the first transporting pipeline and the LDC.
- ALTERNATE POINT OF DELIVERY – means the point where the gas enters an intermediate pipeline for transportation to the transporting pipeline.
- NOMINATION POINT – means the point that the seller will sell Natural Gas quantities to the Participant.
- TRANSPORTER – means the party or parties, if any, to be designated by the Participant to receive and handle gas at the "Nomination Point" for the account of the Participant.
- ☐ ALTERNATE NOMINATION POINT – means an alternate gas supply point that may be used if the first nomination point is unable to provide a supply of gas.

4. **TITLE:**

Bidder shall identify "The Primary Point of Delivery", and, if applicable, the "Alternate Point of Delivery" at which title shall pass to the Participant. Seller shall be responsible for coordination and scheduling of transportation volumes including completing all arrangements for transportation services for delivery of the Natural Gas to existing meters at the Participant. Seller shall be in control and possession of the gas delivered hereunder and responsible for any damage or injury caused thereby until title transfers to the Participant.

5. TRANSPORTATION CHARGES:

The Seller shall pay all costs associated with the transportation of the gas to the primary point of delivery. The Participant shall enter into a separate agreement with the LDC and pay all costs associated with the transportation of gas from the primary point of delivery to the existing meters at the Participant.

6. PRIMARY POINT OF DELIVERY CHANGE:

In the event sufficient capacity is not available at the original designated Primary Point of Delivery, the Participant will have the option of accepting deliveries via a different Primary Point of Delivery approved by the Participant's LDC, as arranged by the Seller to suspend deliveries whichever option serves the Participant's best interest. If the delivery point is changed due to cause(s) outside of the supplier's control to supply contracted gas quantities, then the respective BASIS price can be adjusted reflecting changes in the supplier's delivery charges only.

7. USAGE:

7.1 The estimated total annual natural gas usage for all Participants is approximately 1,000,000 to 1,200,000 Dekatherms and is for Full Requirements Firm using Primary Firm Transportation Rights gas supply and Firm Non-Recallable capacity.

7.2 The Seller shall notify the LDCs before the first day of each month of the estimated MONTHLY fuel requirements of the Participants or as required by the LDCs. The Participants shall pay for volumes of gas which are delivered to the Participant, subject to the Force Majeure Clause listed herein. The sale and delivery of gas by Seller shall be on a firm primary non-recallable basis and the seller shall not be liable to the Participant for any interruption or curtailment of Natural Gas to the Participant where satisfactory justification for such action can be provided.

8. PRICE:

Seller's bid price shall be the BASIS price as defined in this bid specification document. For the contract period, prices will be determined by "Other Terms and Conditions" items #7, #8 and bid sheets.

9. METHOD OF AWARD:

Award will be made based on the lowest total BASIS cost delivered to each LDC's city gate. The Bid will possibly consist of four (4) different and distinct awards **one for each LDC which covers all that LDC's rate classes** as follows:

CATEGORY I: LDC

National Fuel Gas Distribution Corporation
10 Lafayette Square
Buffalo, NY 14203

CATEGORY II: LDC

New York State Electric & Gas Corp., (NYSEG)
480 Border City Road, P.O. Box 313
Geneva, NY 14456

CATEGORY III: LDC

Rochester Gas & Electric Corp., (RG&E)

89 East Avenue
Rochester, NY 14649-0001

CATEGORY IV: LDC

Corning Natural Gas

330 West William Street
Corning, NY 14830

10. PRODUCT SPECIFICATIONS:

10.1 The Natural Gas to be supplied under the contract shall be at a pressure acceptable for delivery into the pipeline of the Transporter or its agent. The Natural Gas will also be of sufficient quality as mandated by the regulated body of jurisdiction in the first place, by the Transporter's standard in the second place, and within industry practice in the third sense. The gas delivered to the LDC City Gate must conform to the quality and pressure acceptable to the transporting pipelines and to the LDC.'

10.2 All gas which enters the LDC pipelines hereunder shall be clean and commercially free from dust, objectionable odors or other solid, gaseous or liquid matter which may interfere with its merchantability or cause injury to or interference with proper operation of the pipelines, regulators, meters or other equipment through which the gas flows. Should any of the above substances enter the facilities as a result of this transportation service and cause damage to any facility, the Participant may bill Seller for the cost to repair such damage that has been assumed by the Participant and Seller shall pay for same within 15 days of receipt of such bill. In addition, should any of the above substances enter the facilities of any pipeline company whose transportation services will be employed by the LDC to complete the transportation contemplated herein, and cause damage to any such facilities, the Participant may bill Seller for any cost incurred by the LDC to repair such damage; and Seller shall pay for same within 15 days of receipt of such bill. The Participant(s) will maintain all rights to processing after purchase at the Nomination Point.

10.3 Any processing such as BTU/CF adjustments made to enhance or reduce the gas quality for any reason after the Nomination Point will nullify an awarded contract between the Seller and the Participant(s).

11. QUALIFICATION OF BIDDER:

11.1 Bids will be accepted only from Natural Gas producers or marketers who have access to a supply of Natural Gas from which it is willing to make sales to the Participant, subject to completion and continuance of necessary transportation arrangements. No bid will be considered unless bidder is authorized to transfer gas under Section 311 of the Natural Gas Act of 1978 or be able to enter into an agreement with the LDC to gain access to appropriate interstate pipeline for delivery to the Participant.

11.2 Successful bidder must have the capability of delivering through a Natural Gas collector and furnishing only Natural Gas whole quality as outlined under product specification above. The successful Bidder must have access to major producers of pipeline quality Natural Gas.

11.3 The successful Bidder must warrant absolute clear title to all Natural Gas delivered to the point of entry into the transporting pipeline at which time such title will pass to the Participant.

11.4 The successful Bidder shall maintain records of the metering, measurement and related facilities required to measure the Natural Gas purchased by the Participant at point of entry into the pipeline. Such records will be made available for examination by the Participant(s) upon request.

11.5 The successful Bidder must be in compliance with all Federal and New York State requirements involved with the sale and transportation of Natural Gas.

11.6 The successful Bidder has no authority to assign any portion of this contract without prior written permission of the Purchasing Agent for the Participants (BOCES).

11.7 The successful Bidder must be a currently approved "Gas Energy Service Company" under now current RG&E, NYSEG, National Fuel and Corning Gas LDC tariffs.

12. IRAN DIVESTMENT ACT:

12.1 By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") currently posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to this solicitation, it must provide the same certification at the time the Contract is renewed or extended.

12.2 During the term of the Contract, should BOCES receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, BOCES will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then BOCES shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

12.3 BOCES reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

13. OBLIGATION OF BIDDERS:

At the time of the opening of the bids, each Bidder will be presumed to have read and be thoroughly familiar with the contract documents. The failure or omission of any Bidder to receive or examine any form, instrument, or document shall in no way relieve any Bidder from any obligation in respect to the submitted bid.

14. FORCE MAJEURE:

All obligations of the parties to this agreement (except for the payment of money for gas delivered) shall be suspended while and for so long as compliance is prevented in whole or in part by an act of God, strike, lockout, war, civil disturbance, explosion, breakage, accident to machinery or pipeline, failure of wells or sources of gas supply, federal or state or local law, inability to secure material or rights of way or permits or approvals or licenses, binding order of a Court of Government Agency, the failure of any pipeline or local distribution company to accept gas for delivery for any reason, the default of any party to other contracts (other than Buyer and Seller), or by any cause beyond the reasonable control of Buyer and Seller.

15. DISCREPANCY:

In the event of any discrepancy, disagreement or ambiguity among the documents which comprise this Bid and the Bidder's Bid, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity; 1) the Bid Document; 2) the Bidder's proposal or bid.

16. NON-ASSIGNMENT:

It is mutually understood and agreed that the vendor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or his right, title, or interest therein, or his power to execute such Contract, to any other person, company, or corporation, without the previous written consent of the BOCES.

17. GOVERNING LAW:

Any dispute arising under this Contract shall be governed by the laws of the State of New York, County of Wayne, Town of Arcadia. Any litigation under this Contract if commenced by Contractor shall be brought in a Court of competent jurisdiction in the State of New York. However, if the issue in dispute is not covered by the New York law or if there is a conflict between New York law and Federal law, i.e., decisions of the Federal courts, regulations and statutes, the New York court shall apply the Federal law. Pending the resolution of any dispute, the Contractor shall proceed as directed by BOCES in writing.

18. JUDGMENTS/LEGAL FINDINGS:

By submitting this bid for consideration, the vendor affirms that they currently have no judgments or other legal findings nor have any pending judgments or other legal findings against the company or any of its executives, with any federal, state or local government entities that in any way could impact or have potential to impact their ability to complete any contract awarded them as a result of this bid. Failure to disclose any such judgments and/or findings will result in the termination of any contracts and other penalties as deemed legal and appropriate by the BOCES.

19. NO ARBITRATION:

Disputes involving this contract including breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

20. EXECUTORY CLAUSE:

20.1 The Bidder specifically agrees that this contract shall be deemed executory only to the extent of monies available and no liability shall be incurred by BOCES or the Participants beyond the monies available for this contract.

20.2 For purposes of this clause "force majeure" which interferes with the Participant's ability to use Natural Gas shall be deemed to occur no later than twelve (12) hours after receipt of notification thereof by the Participant.

21. CONTRACT PERIOD:

Contract period shall be from October 1, 2020 and shall expire on September 30, 2021. The contract may be extended for up to two (2) additional periods of one year or less by mutual agreement of the parties.

22. SHORT TERM EXTENSION:

In the event the replacement contract has not been issued, any contract let and awarded hereunder by the BOCES, may be extended unilaterally by the BOCES for an additional period of up to one month, or less upon notice to the Seller with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such one-month extension), price, and delivery requirements. With the concurrence of the Seller, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should the replacement contract be issued in the interim.

23. WARRANTY OF TITLE:

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

24. CANCELLATION CLAUSE:

The Participants reserve the right to cancel the contract at any time during the contract term upon thirty (30) days written notice of cancellation mailed to the address of the vendor(s).

25. TERMINATION OF CAUSE:

Either Participant or Seller shall have the right to terminate for cause in the event of default by either party. The right to terminate the contract is conditioned upon prior written notice to the other party by certified prepaid mail. The defaulting party shall have fifteen (15) days after the receipt of such notice to remedy default. If the default is remedied within said fifteen (15) days, the contract shall not be terminated. In the event of termination, the terminating party loses the right to damages which accrue after the date of such termination.

26. NEW YORK STATE SEXUAL HARASSMENT LAWS:

26.1 By submission of this Bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder 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 section two hundred one-g of the NYS labor law. A model policy and training has been created by the NYS Department of Labor and can be found here: <https://www.ny.gov/programs/combating-sexual-harassment-workplace>.

26.2 The default of one Participant shall not be deemed the default of the other Participant(s) and the Contract shall remain in full force and effect with the non-defaulting Participants and the contractor.

27. BILLING:

27.1 The successful bidder shall forward, monthly, all costs for Natural Gas delivered from the well head to the LDC's City Gate. Invoices shall clearly state quantity Therms, billing period, BASIS, cost per unit and total cost, and according to "Other Terms and Conditions" items #7, #8 and bid terms. Each component making up the invoiced price must be shown on each invoice document; all calculations shown.

27.2 All participating Districts are tax-exempt organizations registered with the State of New York Department of Taxation and Finance. Current Exemption certificates will be sent by each District to Seller prior to start of Contract period.

27.3 The Participant's strive to pay Net 30. Interest penalties will not be allowed.

28. BILL TO:

Upon bid acceptance, the successful bidder will enter into a formal contract or contracts with each Participant listed in the bid document.