

## SCOPE OF SERVICES

Middlesex County College invites bids for the firm supply of natural gas to the College. It is intended that the contract that will be entered into between Middlesex County College and the successful bidder will be for a term of twelve (12) months starting on the delivery day January 1, 2015 and ending inclusive of December 31, 2015 (1/1/15 – 12/31/15) delivery day as defined by Elizabethtown Gas Company with the option for a twenty-four (24) month term (1/1/15 – 12/31/17) and thirty-six (36) month term (1/1/15 – 12/31/18). The successful bidder will acquire, transport, and deliver to the Local Distribution Company (LDC) on a firm basis for redelivery to the Facilities those quantities of natural gas necessary to meet the full requirements of the Facilities.

ALTERNATE BIDS – will not be accepted unless specifically requested

Proposals must be submitted on the Proposal form enclosed herewith and must include all required accompanying documentation. All blank spaces for bid prices must be filled in. Any contract with the College exceeding one (1) year shall be subject to the availability and appropriation annually of sufficient funds. The College reserves the right to reject any or all bids or any part thereof. Proposals submitted on forms other than provided herewith shall be rejected.

## QUALIFICATIONS OF BIDDERS

The College may make such investigation, as it deems necessary to determine the ability of bidder to perform the work. The College reserves the right to reject any bid if investigation of such bidder fails to satisfy the College that such bidder is properly qualified to carry out obligations of the contract, and to complete the work contemplated therein.

Bidders are required to submit the names and addresses of the officers or principals of the corporation, firm, or partnership submitting a bid. Failure to comply will result in the rejection of such bid as non-responsive.

## FINANCIAL STATUS

The College reserves the right to reject any and all bids from any bidder that is in or contemplates bankruptcy of any chapter or nature. Said bidder must notify the College in writing of any existing condition or knowledge of the same.

## EVALUATION OF BIDS

Evaluation of bids will be accomplished in the following manner:

1. Cost Proposal – Bids will be ranked in order of lowest price bid to highest price bid. In evaluating bids, discrepancies between words and figures will be resolved in favor of words. Discrepancies between unit prices and totals of unit prices will be resolved in favor of unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum of the column of figures.

2. Mandatory Submission Items – After ranking of the bids in order of price, the bids will then be reviewed for mandatory submission items as outlined elsewhere in this bid proposal.
3. Certification and/or License Requirements – The Contractor’s bid will be reviewed for certification license requirements that are required.
4. Award Recommendation – Shall be based on the criteria listed above and other qualifications set forth in this bid. Award recommendation(s) will be issued to the governing body of the College.

#### ESTIMATES OF QUANTITIES OF GAS TO BE DELIVERED BY THE SUCCESSFUL BIDDER

The quantities of gas specified in Appendix A are derived Elizabethtown Gas Company usage, and are given for the information of bidders and for the purpose of bid evaluation. The bidder understands that the usage estimates set forth in Appendix A are provided only as a basis for the uniform comparison of bids and are not in any way guaranteed or intended to be relied upon by the bidder as minimum or maximum quantities. The historical usage reports do not indicate the actual quantity that the successful bidder will be required to sell and deliver to the College, since the actual quantity will include fuel retention required by the LDC and will depend upon actual usage, which may vary with several factors including, but not limited to, weather, and which will develop during the term of the contract. The successful bidder shall deliver quantities determined by the LDC except that Seller shall not be required to deliver quantities for any one day exceeding the quantity required by the LDC for delivery on behalf of the College for the Facilities at the contract price.

#### ENERGY USE TAX

The College is subject to the Energy Use Tax, P.L. 1997, C. 162. Bidders are not to include the Energy Use Tax on the Natural Gas Bid Form. The successful bidder will invoice for the tax on a monthly basis.

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## CONTRACT SPECIFICATIONS

The successful bidder shall be required to enter into a contract with the College that will also include terms and conditions the same as or substantially similar to the following.

### Definitions

Unless clearly indicated otherwise by its use in context, capitalized terms shall have the meaning ascribed to such terms below or where such terms are initially defined throughout the contract. A capitalized term will be given the defined meaning ascribed hereunder whether the definition appears before or after the initial use of such capitalized term. The definitions below shall also apply to such terms as they are used in this invitation for bids.

“Contract” shall mean the contract between the College and the Contractor.

“Annual Estimated Quantity” shall mean the College’s estimate of the total annual quantity of gas to be delivered under the contract by the Contractor to the LDC for redelivery by the LDC to each Facility as set forth in Appendix A.

“Total Annual Estimated Quantity” shall mean the sum of the Annual Estimated Quantities for all Facilities as set forth in Appendix A.

“Balancing” shall mean the deliveries of gas to the Point of Delivery by the Contractor in accordance with all requirements, including volumetric and scheduling requirements, of the LDC such that receipts of gas at the Point of Delivery by the LDC from the Contractor for the College’s use under this contract are equal to the LDC’s deliveries to the Facilities, including any LDC fuel retention under the Premises Service Tariff(s).

“Contractor” shall mean the successful bidder to whom a contract award has been made by the College.

“College” shall mean Middlesex County College.

“Day” shall mean a period of twenty four (24) consecutive hours beginning at the time applicable to Transporter’s gas day as defined in Transporter’s tariff as filed with and approved by the Federal Energy Regulatory Commission (FERC).

“Daily Contract Quantity” or “DCQ” shall mean the quantity of gas to be delivered each day by the Contractor at the Point of Delivery as determined by the LDC.

“Decatherm” or “DTH” shall mean ten therms, i.e. one million BTUs.

“Facilities” shall mean those locations at which the gas sold and delivered by the Contractor under the contract will be redelivered by the LDC and consumed by the College, as set forth in Appendix A.

“First Delivery Day” shall mean the first day on which the Contractor must deliver gas under the contract.

“Gas” shall mean natural gas of acceptable quality to the LDC and also of acceptable quality to the Transporter in accordance with the appropriate Transporter’s tariff as approved by the FERC.

“Last Delivery Day” shall mean the last day on which the Contractor must deliver gas under this contract.

“Local Distribution Company” or “LDC” shall mean the regulated public utility providing transportation from the Point of Delivery to the Facilities.

“MMBTU” shall mean one (1) million British thermal units (BTUs), i.e. ten (10) therms. One MMBTU equals one dekatherm.

“Month” shall mean a period of time beginning at 10:00am on the first day of any calendar month and ending at 9:59am Eastern Time on the last day of such calendar month.

“Nomination” shall mean the monthly (or more often if required by the LDC) procedure whereby notification is made to the LDC by the Contractor of quantities and pipeline and shipper identification for gas that will be delivered to the Point of Delivery by the Contractor for further transportation to the Facilities by the LDC.

“Point of Delivery” shall mean the point of interconnection between the facilities of the Transporter and the facilities of the LDC.

“Point of Measurement” shall mean the point of interconnection between the facilities of the LDC and the Facilities of the College, i.e. the meter(s) at each Facility.

“Premises Service Tariff” shall mean the rate schedule(s) or tariff(s) under which the LDC provides transportation from the Point of Delivery to the Facilities for gas purchased from the Contractor under the contract.

“Transporter” shall mean the transporting pipeline(s) immediately upstream of the Point of Delivery engaged by the Contractor and paid by the Contractor for deliveries of gas to the Point of Delivery under the contract.

“Upcharge” shall mean the charge that is additive to the NYMEX gas price at the Point of Delivery.

### Requirements

The Contractor supplying gas under the contract must be certified or licensed to purchase, sell, and supply natural gas in New Jersey. The Contractor must have certification as a Third Party Supplier of natural gas in accordance with the requirements of Elizabethtown Gas Company.

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The gas shall be delivered by the Contractor through the interstate pipeline system to the Point of Delivery.

The Contractor shall complete, sign, and submit the LDC's Application for Transportation services and such other forms as may be required of the Contractor by the LDC in order to begin or maintain deliveries.

#### Gas Quality

Gas quality shall be such that it is pipeline quality and meets all specifications that are required by the LDC and the Transporter.

#### Regulatory Approval

The Contractor is responsible for securing approvals from all regulatory bodies having jurisdiction and making filings or reports, as required, pertaining to the acquisition of the gas and/or the transportation of the gas from the Contractor's source to the Point of Delivery.

#### Control and Possession, Title and Taxes

As between the parties, the Contractor shall be deemed to be in control and possession of the gas deliverable under the contract, until the same is delivered to the LDC at the Point of Delivery after which the Contractor shall be deemed to be no longer in possession of the gas deliverable under the contract. Title to the gas shall pass from the Contractor to the College at the Point of Delivery.

The Contractor shall warrant title or the right to deliver title to all gas delivered under the contract and shall warrant that such gas is free from liens or encumbrances of any kind. The Contractor shall indemnify, defend, and hold the College harmless from and against any and all taxes, fees, or any adverse claims regarding the title to the gas arising prior to the point at which title passes to the College.

#### Contract Prices

The contract price shall be a total price in dollars and cents per Dth of gas at the Point of Delivery to be paid the College to the Contractor for the gas sold and delivered by the Contractor to the College. The contract price shall include all charges assessed on the gas or incurred in transportation of the gas prior to and at the Point of Delivery including, but not limited to, taxes. The contract price shall be set forth in Appendix B of the contract. The College shall pay the LDC for the cost of transportation on the LDC's system.

#### Addition of Facilities

Upon mutual agreement in writing of the College and the Contractor, additional facilities may be added to the contract and the Contractor's service to such additional facilities shall be subject to all terms and conditions of the contract including, but not limited to, the pricing terms in effect at the time that the facilities are added to the contract.

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## Measurement

The Measuring Party shall be the LDC.

For payment hereunder, the College and the Contractor shall rely on the information provided by the Measuring Party as to the quantity of gas in cubic feet and therms measured at the meter(s) at the Facilities and at the Point of Delivery.

The College shall not be liable for any errors or failures in the measuring devices at the Facilities and/or the Point of Delivery.

Any disputes between the College and the Contractor resulting from a failure in whole or in part of the measuring device(s) at the Facilities or Point of Delivery shall be resolved in accordance with accepted practices of the Measuring Party.

## Imbalances

The Contractor shall (a) prevent and/or correct the occurrence of a condition on the LDC's system caused by the LDC's receipt of quantities of gas for the College's account at the Point of Delivery Point greater or less than either (i) the quantities required by the LDC for the Contractor to deliver on behalf of the College, or (ii) the quantities delivered by the LDC to the Facilities (either such condition being an "imbalance"), whichever is applicable under the LDC's tariff and operating rules and procedures, and (b) eliminate or mitigate Buyer's exposure to any penalties, costs or charges, including, but not limited to, losses or net costs assessed by the LDC as a consequence of "cash out" or similar provisions of the LDC's tariff attributable to an imbalance ("Imbalance Costs"). The Contractor shall promptly reimburse the College for any Imbalance Costs that the LDC may charge the College in connection with any Imbalance, except that the College shall be responsible for such costs to the extent that the College does not reasonably cooperate with the Contractor to prevent and/or correct the occurrence of imbalances.

The Contractor shall be responsible for all "Standby Charges" and "Balancing Charges" incurred by the College. Additionally, the Contractor shall reimburse the College for such charges imposed by the LDC upon the College.

## Force Majeure

For purposes of the contract, "force majeure" shall consist only of the following: acts of God; acts of public enemy; wars; civil disturbances; riots; landslides; earthquakes; fires; restraints imposed by governmental authority, which have the effect of substantially preventing or curtailing the supply of gas to the Contractor's customers generally and which were not the result of any action or inaction of the Contractor. In the event of a force majeure occurrence, the Contractor's obligation to deliver gas shall be suspended for the actual period of the force majeure occurrence, but only for that period. The term of the contract shall not be lengthened as the result of any force majeure occurrence. The Contractor's obligation to deliver gas shall be suspended as the result of any force majeure occurrence if, and only if, the Contractor notifies the College within twenty four (24) hours of the occurrence with respect to the occurrence itself and, if known, the anticipated period of interruption.

### Continuity of Service

The Contractor shall be responsible for delivering sufficient gas on a firm basis to the LDC at the Point of Delivery on behalf of the College to meet the full natural gas requirements of the Facilities on a 24-hour, 7-day continuous basis during the term of the contract. For any day or part of a day on which the Contractor fails to deliver the required quantities of gas, the College shall have the right to procure gas or other alternate fuel from another supplier or the LDC and the Contractor agrees to pay the difference in cost between the contract price and the amount paid by the College for the substitute gas or other alternate fuel for the duration of time when the Contractor failed to deliver the required quantities of gas.

### Invoicing and Payments

The Contractor shall provide a summary invoice to the College monthly for gas sold and delivered by the Contractor in the preceding month. The amount payable by the College in any month shall equal the product of the applicable contract price times the quantity of gas that the Contractor was required by the LDC to deliver to the Point of Delivery on behalf of the College under the contract in such month. Except as provided for in the Imbalance section above, in the event that the College is billed by or receives a credit from the LDC as the result of any Balancing or similar adjustment, the College shall charge or credit the Contractor in a corresponding amount; it being the intent of the contract that the amount payable by the College for all gas purchased from the Contractor under the contract at the expiration or termination of the contract shall not exceed the contract price multiplied by actual usage at the Facilities plus applicable LDC fuel retention, in MMBTU. The College shall pay all bills in accordance with the College's standard procedures. The Contractor on the invoice may list other customary units such as therms with the unit price adjusted proportionately.

### Transitional Period

In the event that the contract resulting from this bid expires at the end of its terms without a replacement contract operational it shall be incumbent upon the Contractor to continue to provide services until a new contract is awarded or the services are no longer required by the College.

In the event that the Contractor is engaged to provide services and subsequently the contract expires and is not replaced with a new contract, it shall be incumbent upon the Contractor to complete the services under the terms and conditions of the prior contract. The commodity price for natural gas provided during a contract extension will be based on current NYMEX prices and mutually agreeable to both parties on the date of extension.

### Emergency Service

The Contractor shall provide the contract telephone number at which responsible employees of the Contractor can be reached with respect to the performance of the contract during the hours of 9am to 5pm Eastern Time. In addition, the Contractor shall provide the College with at least two (2) telephone numbers at which responsible employees of the Contractor can be reached on an emergency basis, and shall keep these numbers up to date at all times.

## Assignment

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or any part thereof to anyone without the prior written consent of the College.

## Termination

1. Delay by the Contractor:
  - a. The Contractor is responsible for performing the work according to the terms of the contract. Any unauthorized delay may subject the Contractor to liquidated or other damages or to contract termination.
  - b. Any extension of a task schedule within the overall project schedule must be approved in writing. Any extension of the project schedule must be approved as a written change order by the College.
2. Termination of Work
  - a. The College may terminate the contract, in whole or in part, for material fault or substantial failure of the Contractor to meet the terms and conditions of the contract. Material faults and substantial deficiencies shall include, but not be limited to, the following:
    1. Failure to renew required certifications, licenses or any other agreements which would effect the Contractor's ability to provide the services required under the contract;
    2. Failure to meet federal and/or state regulations concerning the delivery, purchase and selling, and interstate transportation of the commodity purchased under the contract;
    3. Failure to renew insurance and/or any bonding requirements of the contract;
    4. Failure to rectify deficiencies arising from announced or unannounced compliance inspections or audits;
    5. Failure to notify the College of any action other than contract suspensions and/or termination;
    6. Failure to deliver sufficient quantities to the College of the contracted for natural gas;
    7. Any breach of the term and/or conditions of the contract by the Contractor;
    8. Failure to address or rectify any of the items listed above in section 2 pursuant to which the contract was suspended;
    9. If the Contractor is adjudged to be bankrupt or insolvent;

10. If the Contractor makes a general assignment for the benefit of creditors;
  11. If the Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
  12. If the Contractor repeatedly fails to make prompt payments to subcontractors for labor, materials, or equipment;
  13. If the Contractor disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction;
  14. If the Contractor fails to comply with local, state, or federal laws, rules, or regulations applicable to the contract and the work to be done thereunder; or
- b. If the College terminates the contract, the College shall notify the Contractor in writing of such termination.
- c. Upon termination, the College shall determine an equitable adjustment of the contract price as follows:

If termination for default is effected by the College, an equitable adjustment in the contract price shall be made for work successfully completed prior to the date of termination, but

1. No amount shall be allowed for anticipated costs or profit on unperformed services or other work;
2. No amount shall be allowed for termination settlement costs incurred by the Contractor relating to commitments which had become firm prior to the termination, and;
3. Any payment due to the Contractor at the time of termination may be reduced to cover any additional costs to the College because of the Contractor's default.

- d. Upon receipt of a termination notice, the Contractor shall:

1. Immediately stop all deliveries (unless the notice directs otherwise) and;
2. Deliver or otherwise make available to the college all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the contractor in performing this contract, whether completed or in the process.

3. Complete performance of such part of the work as shall not have been terminated by the notice of termination.
  4. The contractor shall submit to the college its termination adjustment request. Such request shall be submitted promptly, but in no event later than forty-five (45) days from the effective date of the termination, unless one or more extensions in writing are granted by the college upon request of the contractor within such forty-five day period.
  5. Upon termination, the college may take over the work and award another contract to complete the work.
- e. Where contractor's services have been terminated by the college, the termination shall not affect any rights of the college against the contractor then exist or which any thereafter accrue. Any retention or payment of moneys due the contractor by the college will not release the contractor from liability.

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