

**Wicomico County Purchasing Department
125 N. Division Street, Room B-3
Salisbury, Maryland 21801**



REQUEST FOR PROPOSALS

PROJECT	Natural Gas Supplier
DEPARTMENT:	Administration – Purchasing

VENDOR:

NAME:	_____
ADDRESS:	_____ _____

RFP OPENING:

DATE:	August 27, 2015 – Step One Qualifying Submission September 29, 2015 – Step Two Price Proposals
TIME:	August 27, 2015 – 3:00 PM EST September 29, 2015 – 3:00 PM EST

I. PROPOSAL INSTRUCTIONS

A. SUBMISSION OF PROPOSALS

1. *Three* full copies of the Proposal must be submitted on the Proposal form provided in the solicitation.
2. The Proposal form shall be signed and submitted in a sealed envelope clearly identified on the outside of all envelopes with the name of the Proposal/project and date and time of the scheduled Proposal opening as indicated in the advertisement.
3. Electronically mailed Proposals are **not** considered sealed Proposals and will **not** be accepted.

B. DELIVERY OF PROPOSALS

1. Proposals should be mailed or hand carried to **Wicomico County Purchasing Department, 125 N. Division Street, Government Office Building, Room B-3, Salisbury, MD 21801**, in order to be received in the office of the Purchasing Agent prior to the announced Proposal opening.
2. *Proposals received after said time or delivered to the wrong location will be returned to the Proposer unopened.* If you are delivering a Proposal in person please keep in mind to allow time to sign-in at the security station in the lobby.
3. It is fully the responsibility of the Proposer to insure that the Proposal is received on time. The County will not speculate as to reasonableness of the postmark, nor comment on the apparent failure of a public carrier to have made prompt delivery of the Proposal.

C. QUESTIONS/ADDENDUM

1. Proposals are subject to change in the form of an addendum. Questions must be addressed in writing to Wicomico County Purchasing at purchasing@wicomicocounty.org.
2. All questions should be asked no later than seven (7) calendar days in advance of the RFP deadline. Addenda are posted on the County website at www.wicomicocounty.org under Government: Departments: Purchasing: at www.wicomicocounty.org/bids.aspx at least five (5) calendar days before proposal opening.

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3. It is the proposers responsibly to make sure all addenda are acknowledged in their offering. Failure to do so could result in the proposals being disqualified.

D. QUALIFICATIONS

1. The Proposer must be in compliance with the laws regarding conducting business in the State of Maryland.
 - a) All Offerors shall provide a copy Certificate of Status from the Maryland Department of Assessments and Taxation, evidencing the Proposer is in good standing with the State of Maryland. See https://sdatcert1.resiusa.org/certificate_net/ for information on obtaining the Certificate of Status. *Certificates of status are not available for trade names, name reservations, government agencies, sole proprietorships, and some other accounts as these are not legal County and thus are not required for these categories of offerors.* For more information on the Certificate of Status please see <http://www.dat.state.md.us/sdatweb/COSinfo.html> .

Wicomico County reserves the right, at its sole discretion, to extend the date this documentation must be provided. The Proposer's inability to provide this documentation could result in the submission being rejected.

- b) On RFPs with a contract value **over \$25,000** bidders must certify that they have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Proposal submitted to Wicomico County by completing Attachment B.
- c) Maryland Law requires that any person doing business with a Maryland government organization that involves **a single contract of \$200,000 or more** shall file a Disclosure of Contributions. The disclosure form, along with more information on these requirements, can be found through the following website:

http://www.elections.state.md.us/campaign_finance/disclosure_of_contributions.html

2. All vendors who wish to provide a proposal on County projects and contracts need to register as a proposer/bidder at www.wicomicocounty.org/list.aspx?Mode=Subscribe#bids by checking off the categories for which you wish to be informed of future offerings.

E. DESCRIPTIVE LITERATURE

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1. Descriptive literature fully describing the product Proposal (where such literature exists) shall be included with the Proposal to assist the Purchasing Department in evaluating the submission. Failure to do so may be cause for rejection of the Proposal.
2. Any items, systems or devices supplied in this Proposal that are proprietary in nature relative to maintenance, repair, servicing or updating must be disclosed on the Proposal form.

F. EXCEPTIONS

1. Any exceptions to the specifications requested should be listed on a separate sheet of paper attached to the Proposal.
2. An exception to the specifications may not necessarily disqualify the Proposal. The County will determine if the exception is an essential deviation or a minor item.
3. In the case of a minor deviation, the County maintains the option to award to that Proposer if it determines the performance is not adversely affected by the exception.

G. APPROVED EQUALS

1. In all specifications where a material or article is defined by describing a proprietary product or by using the name of a vendor or manufacturer, it can be assumed that an approved equal can be substituted.
2. The use of a named product is an attempt to set a particular standard of quality and type that is familiar to the County. Such references are not intended to be restrictive.
3. However, the County shall decide if a product does in fact meet or exceed the quality of the specifications listed in the solicitation. It shall be the responsibility of the vendor that claims his product is an equal to provide documentation to support such a claim.

H. SALES TAX

1. In buying products directly from a vendor Wicomico County is exempt from being directly charged Federal excise and Maryland sales tax. A copy of an exemption certificate shall be furnished upon request.
2. According to the Office of the Comptroller of Maryland, a Contractor is responsible for paying sales tax on his/her purchases relating to any projects or services and should incorporate it into their proposals.

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3. Contractors cannot use the County tax exemption to buy products.

I. DELIVERY

1. All items shall be delivered F.O.B. destination and delivery costs and charges included in the Proposal unless otherwise stated in the specifications or Proposal form.

J. INSURANCE

1. If required by the General Conditions or Terms and Conditions, the Proposer shall provide the County with Certificates of Insurance within ten (10) days of Proposal award notification evidencing the required coverage.
2. Proposer must provide Certificates of Insurance before commencing work in connection with the contract.

K. PROPOSAL EVALUATION

1. If some characteristic of the Proposal requires that the Proposal must be reviewed by the County Council, the award can be expected within 30 days.
2. Proposal evaluations typically take 2-4 weeks.

L. RIGHT TO REJECT

1. Wicomico County reserves the right to reject any and/or all Proposals or to waive any technicality it deems in the best interest of the County.

M. AWARD OF PROPOSAL

1. The County shall award a Proposal to the best, responsive and responsible Proposer complying with the provisions of the Invitation for Proposal.
2. All Proposal awards are contingent upon available funding.
3. The County reserves the right to award a Proposal by individual items, in aggregate, or in combination thereof as deemed necessary to fulfill the anticipated requirements of the County.
4. All awards over \$1000.00 require a Purchase Order to be executed before any work can be started. Some awards will require a County contract, please allow 2-3 weeks for execution of a contract.

N. PIGGYBACKING

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1. Wicomico County may authorize, upon request, any governmental entity (hereafter Authorized User) within the County to purchase items under the contract awarded pursuant to this Proposal solicitation.
2. All purchase orders issued against the contract by an authorized User shall be honored by the Contractor in accordance with all terms and conditions of this contract.
3. The issuance of a purchase order by an Authorized User pursuant to this provision shall constitute an express assumption of all contractual obligations, covenants, conditions and terms of the contract. A breach of the contract by any particular Authorized User shall neither constitute nor be deemed a breach of the contract as a whole which shall remain in full force and effect, and shall not affect the validity of the contract nor the obligations of the Contractor thereunder respecting the County.
4. The County specifically and expressly disclaims any and all liability for any breach by an authorized User other than the County and each such Authorized User and Contractor guarantee to save the County, its officers, agents and employees harmless from any liability that may be or is imposed by the Authorized User's failure to perform in accordance with its obligations under the contract.

O. PUBLIC INFORMATION ACT (PIA)

1. Wicomico County is subject to the Maryland Public Information Act and may be required to release submissions in accordance with the Act.
2. Any materials you deem to be proprietary or copyrighted must be marked as such; however, the material may still be subject to analysis under the Maryland Public Information Act.

II. SPECIFICATIONS

A. INTRODUCTION

1. PURPOSE

- 1.1. The purpose of this Request for Proposal (RFP) is to select a Natural Gas Supplier (herein referred to as “Vendor”) from whom the Wicomico County (herein referred to as “County”) will purchase natural gas supply services. The natural gas will be delivered to various County locations as shown on Chart A.
- 1.2. The goal of this RFP is to secure an Agreement to provide Natural Gas Supply Services which provides the County’s with long-term fixed rates assuring budget stability.

2. FILLING OUT PROPOSAL DOCUMENTS

- 2.1. Use only forms supplied by the County.
- 2.2. Submit Proposal Documents per the instructions in this RFP.
- 2.3. All blanks in the Proposal Documents will need to be filled in electronically or manually in ink.
- 2.4. Any interlineation, alteration, or erasure will be initialed by the signer of the Proposal Documents.
- 2.5. Each copy of the Proposal Documents will be signed by the person(s) legally authorized to bind the Vendor to a contract, using the legal name of the signer. Proposal Documents submitted by an agent will have a current Power of Attorney attached certifying the agent’s authority to bind the Vendor.
- 2.6. Vendor will supply all information and submittals required by the Proposal Documents to constitute a responsive and responsible completed Proposal Document package.
- 2.7. Any ambiguity in the Proposal Documents as a result of omission, error, lack of clarity or non-compliance by the Vendor with specifications, instructions, and/or all conditions of bidding will be construed in the light most favorable to the County’s.

3. OPENING OF PROPOSALS

- 3.1. Proposal Documents received on time will be opened publicly and only vendor’s names will be read aloud for the record.

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3.2. If awarded, this Contract will begin on the designated meter read dates as per this RFP.

4. ACCEPTANCE OR REJECTION OF PROPOSALS

4.1. Unless otherwise specified, the Contract will be awarded to the most RESPONSIBLE and RESPONSIVE Vendor complying with the provisions of the Proposal Documents, provided the proposal price is reasonable, does not exceed the funds available, and it is in the best interest of the County to accept it.

4.2. The County reserves the right to reject the Proposal Documents of any Vendor who has previously failed to perform properly in any way or complete on time contracts of a similar nature; or a Proposal Document from a Vendor who, investigation shows, is not in a position to perform the Contract; or Proposal Documents from any person, firm, or corporation which is in arrears or in default to the County's for any debt or contract.

4.3. In determining a Vendor's Responsibility, the County may consider the following qualifications, in addition to price:

4.3.1. Ability, capacity, and skill to provide the commodities or services required within the specified time, including future maintenance and service, and including current financial statement or other evidence of pecuniary resources and necessary facilities.

4.3.2. Character, integrity, reputation, experience and efficiency.

4.3.3. Quality of past performance on previous or existing contracts, including a list of current and past contracts and other evidence of performance ability.

4.3.4. Previous and existing compliance with laws and ordinances relating to contracts with the County's and to the Vendor's employment practices.

4.3.5. Evidence of adequate insurance to comply with Contract terms and conditions.

4.3.6. Statement of current work load and capacity.

4.3.7. Explanation of methods to be used in fulfilling the Contract.

4.3.8. The Vendor, if requested, will be prepared to supply evidence of its qualifications, listed above, and its capacity to perform the Services; such evidence to be supplied within a specified time and to the satisfaction of the County.

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- 4.4. In determining a Vendor's Responsiveness, the County's will consider whether the submitted Proposal Document conforms in all material respects to the Proposal Documents. The County's reserve the right to waive any irregularities that may be in its best interest to do so.
- 4.5. The County will have the right to reject any and all Proposal Documents, where applicable to accept in whole or in part, to add or delete quantities, to waive any informalities or irregularities in the Proposal Document received, to reject a Proposal Document not accompanied by required proposal security or other data required by the Proposal Documents, and to accept or reject any Proposal Document which deviates from specifications when in the best interest of the County's. Irrespective of any of the foregoing, the County's will have the right to award the Contract in its own best interests.

5. NOTICE TO VENDORS

- 5.1. Before a Vendor submits their Proposal Documents it will need to become fully informed as to the extent and character of the Services required and are expected to completely familiarize themselves with the requirements of this Proposal Document's specifications. Failure to do so will not relieve the Vendor of the responsibility to fully perform in accordance therewith. No consideration will be granted for any alleged misunderstanding of the material to be furnished or the Services to be performed, it being understood that the submission of a Proposal Document is an agreement with all of the items and conditions referred to herein.

END OF SECTION

B GENERAL INFORMATION

1. ECONOMY OF PROPOSAL

1.1. Proposal Documents should be prepared simply and economically, providing straightforward and concise description of the Vendors' capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. Elaborate brochures and other representations beyond that sufficient to present a complete and effective proposal are neither required nor desired.

2. RESPONSIBILITIES OF THE VENDOR

2.1. The Vendor will be responsible for the professional quality and technical accuracy of their advice and other services furnished in the Proposal Documents. The Vendor will perform services with the degree of skill that is normally exercised by recognized professionals as the Standard of Care with respect to services of a similar nature.

2.2. Neither the County review, approval or acceptance of, nor payment for, any of the Services required under the awarded Contract will be construed to operate as a waiver of any rights under the Contract or any cause of action arising out of the performance of the Contract, and the Vendor will be liable to the County in accordance with applicable law for all damages to the County caused by the Vendor's negligent performance of any of the Services furnished under the Contract.

2.3. The rights of the County provided for under the awarded Contract are in addition to any rights and remedies provided by law.

3. PROPRIETARY INFORMATION OR TRADE SECRETS

3.1. The Vendor may invoke proprietary information or trade secret protection for submission of any data/material by (1) identifying the data/material in a written description, (2) clearly marking the data/material as proprietary, and (3) providing a written statement detailing the reasons why protection is necessary. The County reserve the right to ask for additional clarification prior to establishing protection.

4. OWNERSHIP OF MATERIALS

4.1. Ownership of all material and documentation originated and prepared pursuant to the Proposal Documents will belong exclusively to the County and is subject to public inspection in accordance with the Freedom of Information Act. Trade secrets or proprietary information submitted by a Vendor in connection with a procurement transaction will not be subject to disclosure under the Freedom of Information Act. However, the Vendor must invoke the protections of this

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section and be in accordance with Section 3.1.

5. CONTRACT AWARD

5.1.A written award by the County to the Successful Vendor in the form of a Purchase Order or other contract document will result in a binding Contract without further action by either party. If the Successful Vendor fails or refuses to sign and deliver the Contract and the required insurance documentation, the County will have the right to award to the next responsible and responsive Vendor.

5.2.Proposal Documents and Contracts issued by the County will bind the Vendor to applicable conditions and requirements herein set forth, unless otherwise specified in the Proposal Documents, and are subject to all federal, state, and municipal laws, rules, regulations, and limitations.

5.3.Vendor's personal property taxes ("Taxes") must be on a current basis; if any such Taxes are delinquent, they must be paid before award of Contract. Failure to pay will result in the award of Contract to another Vendor. (See I. Proposal Instructions, D.1.a. Certificate of Status)

5.4.The County reserve the right to engage in individual discussions and interviews with those Vendors deemed fully qualified, responsible, suitable and professionally competent to provide the required Services should the project size warrant it. Vendors will be encouraged to elaborate on their qualifications, performance data, and staff expertise. Proprietary information from competing Vendors will not be disclosed to the public or to competitors.

6. AUDIT

6.1.The Successful Vendor agrees to retain all books, records, and other documents relative to the awarded Contract for five (5) years after final payment, or until audited. The County, its authorized agents, and/or State auditors will have full access to and the right to examine any of said materials during said period.

7. NONPERFORMANCE

7.1.The County reserve the right to inspect all operations and to withhold payment for any Service not performed or not performed in accordance with the specifications in this Proposal Document. Errors, omissions or mistakes in performance will be corrected at no cost to the County. Failure to do so will be cause for withholding of payment for said Service. In addition, if deficiencies are not corrected in a timely manner, the County may characterize the Successful Vendor as uncooperative, which may jeopardize future project order solicitations.

8. ASSIGNMENT

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8.1. Successful Vendor will not assign, transfer or subject the Contract, or its rights, title interests or obligations therein without County's prior written approval.

8.2. Violation of the terms of this paragraph will constitute a breach of Contract. All rights, title, interest and obligations of the Successful Vendor will thereupon cease and terminate.

9. MODIFICATION OR WITHDRAWAL OF PROPOSAL

9.1. A Proposal Document may not be modified, withdrawn, or cancelled by the Vendor during the stipulated time period following the time and date designated for the receipt of Proposal Documents, and each Vendor so agrees in submitting Proposal Documents.

10. DEFAULT

10.1. The Contract may be cancelled or annulled by the County in whole or in part by written notice of default to the Successful Vendor upon non-performance, violation of Contract terms, delivery failure, bankruptcy or insolvency, any violation of state or local laws, or the making of an assignment for the benefit of creditors. An award may then be made to the next most highly rated Vendor, or when time is of the essence, similar commodities and/or service may be purchased on the open market. In either event, the defaulting Vendor (or his surety) will be liable to the County for cost(s) to the County in excess of the defaulted Contract price.

11. COLLUSION/FINANCIAL BENEFIT

11.1. The Vendor certifies that his/her Proposal is made without any previous understanding, agreement, or connection with any person, firm, or corporation making a Proposal Document for the same project; without prior knowledge of competitive prices; and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action.

11.2. Upon signing the Proposal Document, Vendor certifies that no member of the governing body of the County, or members of his/her immediate family, including spouse, parents or children, or any other officer or employee of the County, or any member or employee of a Commission, Board, or Corporation controlled or appointed by the Mayor or Council has received or has been promised, directly or indirectly, any financial benefit, related to this Contract.

12. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION

12.1. All Vendors are subject to, and must comply with, the provisions of all applicable state and federal anti-discrimination laws. The County encourage

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equal employment opportunity to businesses owned and controlled by minorities and women.

12.2. The Successful Vendor will not discriminate against any employee or applicant for employment or any member of the public because of race, color, creed, religion, national origin, sex, sexual preference, disability, marital status, age; or otherwise commit an unfair employment practice. Vendor further agrees that this nondiscriminatory agreement will be incorporated by the Vendor in all contracts entered into with suppliers of commodities and services, contractors and subcontractors, and all labor organizations furnishing skilled, unskilled, and craft union skilled labor, or who may perform any such labor or services in connection with the Contract.

13. INDEMNITY

13.1. The Successful Vendor agrees to indemnify, defend, and hold harmless the County and their officers, employees, and agents from any and all liability, loss, cost, damage, and expense (including reasonable attorney's fees and court costs) resulting from, arising out of, or incurred by reason of any claims, actions, or suits based upon or alleging bodily injury, including death, or property damage rising out of or resulting from the Vendor's operations under the Contract, whether such operations be by the Vendor or by any subcontractor or by anyone directly or indirectly employed by either the Vendor or Vendor's subcontractor.

13.2. Vendor further agrees to furnish adequate protection against damage(s) as a result of the Vendor's and Vendor's sub-contractors negligence in providing the Services under the Contract.

14. STATUS OF VENDOR

14.1. The Vendor will be responsible to the County for acts and omissions of their employees, subcontractors, and their agents and employees, and other persons performing portions of the Services under the Contract or other arrangement with the Vendor.

14.2. It is understood that the relationship of the Vendor to the County will be that of an "Independent Contractor." Nothing contained herein will be deemed or construed to (1) make the Vendor the agent, servant, or employee of the County, or (2) create any partnership, joint venture, or other association between the County and the Vendor.

15. APPLICABLE LAWS

15.1. Vendor will observe and comply with all applicable federal, state, and local laws and regulations in the performance of the Contract. The Contract will be construed and interpreted in accordance with the laws of the State of Maryland

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and all questions of performance hereunder will be determined in accordance with such laws.

16. CONTRACT CHANGES

- 16.1. NO CLAIMS may be made by anyone that the scope of the project or that the Vendor's Services have been changed (requiring changes to the amount of compensation to the Vendor or other adjustments to the Contract) UNLESS such changes or adjustments have been made by an approved WRITTEN AMENDMENT (Change Order) to the Contract signed by the Assistant Director of Internal Services-Procurement Division (and the City Council, if required), prior to additional Services being initiated. Extra Services performed without prior, approved, written authority will be considered as unauthorized and at the expense of the Vendor. Payment will not be made by the County for said Extra Services not approved as aforementioned.
- 16.2. NO ORAL conversations, agreements, discussions, or suggestions, which involve changes to the scope of the Contract, made by anyone including any County employee, will be honored or valid. No written agreements or changes to the scope of the Contract made by anyone other than the Purchasing Agent and signed by the County Executive will be honored or valid.
- 16.3. If any Change Order in the Services results in a reduction in the Services, the Vendor will neither have, nor assert any claim for, nor be entitled to any additional compensation for damages or for loss of anticipated profits on Services that are eliminated.
- 16.4. No inspection, or any failure to inspect, at any time or place, will relieve the Vendor from its obligation to perform all the Services strictly in accordance with the requirements of the specifications of the Contract. The County's Project Representative(s) are NOT authorized to revoke, alter, enlarge, relax, or release any requirement of these specifications, or to approve or accept any portion of Services, or to issue instruction contrary to the specifications of the Contract.

END OF SECTION

C. SCOPE OF SERVICES

1. BACKGROUND

1.1. The purpose of the Proposal Document is to select a Vendor from whom the County will purchase natural gas supply services. The gas will be delivered to accounts as shown on Chart A.

2. SCOPE OF SERVICES

2.1. The goal of this Proposal Document is to secure a Contract to provide Natural Gas Supply Services which provides the County with long-term fixed rates assuring budget stability.

2.2. This RFP will consist of a two-step process.

2.2.1. Step One - Qualifications Proposal that will consist of a Qualifications Review, Data Review, and Vendor Natural Gas Purchase Contract Review

2.2.2. Step Two - Price Proposal Price and Term of Contract

2.3. The intent of the two-step process is to resolve any concerns with the Proposal Document and the Vendor's Natural Gas Purchase Contract during the Step One process.

3. NATURAL GAS PURCHASE AGREEMENT

3.1. As part of the submission of the Step One Proposal the Vendors must submit a copy of their "Natural Gas Purchase Contract" for consideration and review by the Entity's staff and attorneys

3.2. The County will submit comments and concerns regarding the Vendors "Natural Gas Purchase Contract" for consideration by Vendor as acceptable changes and submit them back to the Vendor.

3.3. The Vendor will notify County that they accept the Final Changes to the Vendors "Natural Gas Purchase Contract" as a condition for approval by the County for the Vendor to Submit a Price Proposal as part of the Step Two Price Proposal submission process.

3.4. Vendors who do not accept the County's Final Changes to the Vendors "Natural Gas Purchase Contract" will not be qualified and will not be invited to submit

Step Two - Price Proposals

3.5. As part of the Step Two Submission process the Vendor will submit a

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Transmittal Letter issued from the Chief Executive Officer or designee that the Vendor agrees to the acceptance of the Contract terms and conditions described in the final “Natural Gas Purchase Contract”.

- 3.6. An independent contract to be entered into as a result of this RFP between the Vendor and the County. The Contract will contain the provisions included in the RFP and Addendum.
- 3.7. The “Natural Gas Purchase Contract”, RFP, and Addendum are to be the operating conditions for this Service and will become an integral part of the resulting Contract as an exhibit.

4. Changes In County Accounts:

- 4.1. The “Natural Gas Purchase Agreement” is a full requirements contract for Accounts, whether in existence at the beginning of the Agreement Term or added at any time or deleted at any time throughout the Agreement Term.
- 4.2. County shall notify Vendor of each additional Account that it wishes Vendor to serve throughout the Agreement Term. Along with such notice County shall provide Vendor with documents and authorizations required to permit Vendor to serve such accounts.
 - 4.2.1. The price for the new services to the designated new accounts shall be mutually agreed to by the Vendor and County in writing and shall be for the remaining Agreement Term of the existing contract. The price offered by the Vendor at the time of the request from County shall not be higher than the current posted Standard Offer Service rate offered by the EDC –Delmarva. The County can elect not to accept the price offer by the Vendor and seek other pricing from alternate suppliers without changing any other non-price term or conditions of the County final Natural Gas Purchase Agreement.
 - 4.2.2. Vendor will issue an Addendum to the Natural Gas Purchase Agreement with the price for the new services as mutually agreed to by the Vendor and County with the specified service start meter read date and all service shall be for the remaining Agreement Term. No new account shall be added for a term greater than the remaining Agreement Term or TERMS.
 - 4.2.3. Upon receipt of the signed Addendum, the Vendor shall promptly provide EDC with all electronic files and other information required by Law and the Tariff to enable EDC to establish Vendor as the supplier of Natural Gas for the additional Accounts.
- 4.3. At any time throughout the Agreement Term, County may direct Vendor to discontinue deliveries of Natural Gas to an Account for which the Contract Quantity of Energy (Natural Gas supply service) is no longer required. Vendor

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shall not increase the Contract Quantity of Energy or change any other non-price term or condition of the Natural Gas Purchase Agreement as a result of the cessation of deliveries to any Account.

4.3.1. Vendor will issue an Addendum to the Natural Gas Purchase Agreement showing the Vendor has discontinued deliveries of Natural Gas for the remaining Agreement Term.

4.3.2. Upon receipt of the signed Addendum the Vendor shall promptly notify the EDC with all electronic files and other information required by Law and the Tariff to enable EDC to discontinued deliveries of Natural Gas for the remaining Agreement Term.

5. TWO STEP RESPONSE AND CONDITIONS

5.1. The County will notify Vendors that meet the evaluation criteria for selection based on the Step One - Qualifications Proposal submission by Addendum that the Vendor is qualified to submit the Step Two - Price Proposal in accordance with the conditions outlined in this Proposal Document.

5.2. Step Two - Price Proposal will be requested on the date set for the submission as outlined in the Timetable or as per an Addendum designating a revised date and time.

5.3. The submission of the Step Two - Price Proposal will be in accordance with guidelines outlined in this Proposal Document.

6. VENDOR RESPONSIBILITIES

6.1. Monthly invoices will be submitted to the County's individual Departments for each account shown on Chart A indicating billings for the facility account and meter, with individual records to include unit usage readings

6.2. Unless otherwise specified, while receiving service from the Vendor, the County will receive an invoice from billing entity describing Vendor's charges for the natural gas supply services delivered in the previous period. Charges will appear on the invoice.

6.3. Comply with all applicable Federal, State, and local laws as they apply to the Services being provided.

6.4. Maintain any and all documentation, records, and information in a safe and secure manner that will allow inspection and audit by the County, or its agents, upon proper notification and within the scope of the awarded Contract.

6.5. Provide the County with a report of all accounts past due more than 10 days

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including all pertinent facts regarding said accounts.

7. RESPONSIBILITIES OF THE COUNTY

7.1. The County will comply with all Federal, State and local laws, rules and regulations as applicable to the Contracted Services.

7.2. The County will agree to use the Successful Vendor exclusively for the Services specified herein as long as the Contract term is current and in force.

8. PERFORMANCE SCHEDULE

8.1. The Contract will end on the date designated in the Natural Gas Purchase Contract with the corresponding date, unless extended by mutual agreement, in writing, between the County and the Vendor.

8.2. Wicomico County service will begin on the October 1, 2015 meter read dates for all accounts shown on Attachment A.

9. TIMETABLE

9.1. RFP Distribution: August 8, 2015

9.1.1. Documents:

9.1.1.1. RFP DOCUMENT

9.1.1.1.1. NOTICE OF RFP

9.1.1.1.2. PROPOSAL INSTRUCTIONS

9.1.1.1.3. SPECIFICATIONS

9.1.1.2. CHART A: DESIGNATED COUNTY ACCOUNTS

9.1.1.3. PROPOSAL FORM: STEP ONE

9.1.1.4. PROPOSAL FORM: STEP TWO

9.1.1.5. ATTACHMENT A: REFERENCES

9.1.1.6. ATTACHMENT B: VENDORS AFFIDAVIT OF QUALIFICATION TO BID

9.1.1.7. ATTACHMENT C: DISCLOSURE BY PERSON DOING PUBLIC BUSINESS

9.1.1.8. ATTACHMENT D: NON-COLLUSIVE AFFIDAVIT

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- 9.2. The County will receive responses to the Proposal Document, Step One - Qualifications Proposals by 3:00 pm on Thursday, August 27, 2015.
- 9.3. The County's response back to the Vendors on the Step One - Qualifications Proposal Documents to include comments and concerns for consideration by Vendor as acceptable changes to the Vendor's "Natural Gas Purchase Contract" by Friday, September 11, 2015.
- 9.4. The Vendor will notify the County by 4:00 pm on Friday, September 18, 2015 that they accept the Final Changes to the Vendor's "Natural Gas Purchase Contract" as a condition for approval by the County for the Vendor to Submit a Price Proposal as part of the Step Two submission process.
- 9.5. The County will notify the qualified Vendors by issuing an Addendum to this Proposal Document for initiation of a Step Two – Price proposal request by Tuesday, September 22, 2015.
- 9.6. The initial request date to respond to Step Two - Price Proposals to be received no later than 3:00 P.M. EST, on Thursday, September 29, 2015.
- 9.7. Step Two - Price Proposals are to be valid on the day the Proposals are submitted up till 8:00 pm EST on the closing date for the Step Two RFP submission. This period may be extended by mutual written agreement between the Vendor and the County.
- 9.8. The County reserves the right not to accept the price offers on the date submitted and request refreshed pricing by Addendum at a date to be determined.

10. PRICING

- 10.1. Vendors must use the Proposal Form provided by the County to be considered responsive. THIS IS MANDATORY REQUIREMENT
- 10.2. Vendors will provide a list of County accounts the Vendor has included in the final pricing and Contract offer as active accounts. THIS IS MANDATORY REQUIREMENT
- 10.3. Write NO BID for the price option if the Vendor cannot provide pricing for the Contract period or individual account.
- 10.4. Pricing will be based on unit pricing for Natural Gas measured in CCF/Therms

END OF SECTION

D. STEP ONE – QUALIFICATIONS PROPOSAL SUBMISSION

1. SUBMISSION REQUIREMENTS

1.1. Step One – Qualifications Proposal must be sent by mail or delivered to the County submitted in a SEALED ENVELOPE and clearly identified by 2014-10 Natural Gas Supply Services RFP, Step One – Qualifications Proposal.

1.2. Step One – Qualifications Proposal sent by email will NOT be accepted.

2. Vendor submitting a response to the Step One – Qualifications Proposal will include the following:

2.1.1. Submit a transmittal letter prepared on the Vendor’s business stationary should accompany the Step One – Qualifications Proposal submission. The purpose of this letter is to transmit the Proposal Response; therefore it should be brief. A duly authorized representative of the Vendor must sign the letter.

2.1.2. Submit the Vendor’s current licensed documents stating eligibility to conduct business in the State of Maryland to provide Natural Gas Supply Services.

2.1.3. Submit the Vendor’s Natural Gas Service Purchase Contract for consideration, review, and comment by the County.

2.1.4. Submit the Vendor’s list of “comments, questions, and concerns” regarding the Account Numbers, location addresses, and related data shown on Chart A.

2.1.5. Submit the Vendor’s most recent annual report which is to include a copy of an audited financial statement.

2.1.6. Submit the Vendor’s similar Experience/References (Attachment A) for three (3) clients the Vendor has provided natural gas supply service Contracts, which are similar to the type and scope of the Contract described herein:

- 2.1.6.1. Name of Contract and location;
- 2.1.6.2. Owner’s name, address, telephone number and contact person;
- 2.1.6.3. Brief, but informative, description of the services provided;
- 2.1.6.4. Start date and completion date.

NOTE: Use other sheets as necessary

2.1.7. Submit the Vendor’s fully executed:

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- 2.1.7.1. ATTACHMENT A: REFERENCES
- 2.1.7.2. ATTACHMENT B: VENDORS AFFIDAVIT OF QUALIFICATION TO BID.
- 2.1.7.3. ATTACHMENT C: DISCLOSURE BY PERSON DOING PUBLIC BUSINESS
- 2.1.7.4. ATTACHMENT D: NON-COLLUSIVE AFFIDAVIT

2.2. SUBMITTALS

- 2.2.1. Responses sent by mail must be delivered and addressed to:

Wicomico County Purchasing
125 N. Division Street, Room B-3
Salisbury, MD 21801

END OF SECTION

E. STEP TWO – PRICE PROPOSAL SUBMISSION

1. SUBMISSION REQUIREMENTS

1.1. Step Two – Price Proposal responses can be sent by email to wicomocounty.org

1.2. Step Two – Price Proposal responses can be sent by mail or delivered to the County must be submitted in a SEALED ENVELOPE and clearly identified by 2015-10 Natural Gas Supply Services RFP, Step Two –Price Proposal.

2. Vendor submitting a response to the Step Two – Price Proposal will include the following:

2.1. Submit a letter issued from the Chief Executive Officer, or designee, affirming the Vendor agrees to the acceptance of this Proposal Document and the final accepted and approved Vendors Natural Gas Purchase Agreement, as operating conditions and understanding that they will become an integral part of the Contract as an exhibit. This is a MANDATORY requirement even if the submission is being sent by email or fax.

2.2. Submit a completed and signed Proposal Form provided by the County. This is a MANDATORY requirement even if the submission is being sent by email or fax.

2.3. Submit a list of Account Numbers, location addresses, and related data for all accounts included by Vendor for the prices shown on the completed Proposal Form - Pricing as provided. This is a MANDATORY requirement even if the submission is being sent by email or fax.

3. The County will not accept any proposed changes in the final Natural Gas Purchase Contract submitted with the Proposal Form - Pricing and could be considered a reason for disqualifying a Vendor's Proposal Document for further evaluation.

4. The selected Vendor may be requested to issue a final Natural Gas Services Purchase Contract and a Price Confirmation Sheet to the County immediately following the notification of pending award. Vendors should be prepared to issue these documents upon request by 3:00 pm EST on the day Step Two – Price Proposals are submitted.

5. SUBMITTALS

5.1. Responses **sent by mail** must be delivered and addressed to:
Wicomico County Purchasing
125 N. Division Street, Room B-3
Salisbury, MD 21801

END OF SECTION

F. EVALUATION AND SELECTION PROCESS

1. EVALUATION

1.1. An Evaluation Committee will be responsible for recommending selection of the most highly ranked responsive and responsible Vendor. The Evaluation Committee will review and rate the Step One and Step Two submission documents. The Vendors with the highest ranked submittals *may* be asked to make a detailed presentation of their product/service to the County. The Committee may request additional technical assistance from any source.

1.2. All Vendors are advised that in the event of a receipt of adequate number of Proposal Documents which, in the opinion of the Evaluation Committee, require no clarification and/or supplementary information, such Proposal Documents may be evaluated without discussion. Hence, Proposal Documents should be initially submitted on the most complete and favorable terms which Vendors are capable of offering the County.

2. Step One – Qualifications Proposal will be evaluated using the following criteria: will be evaluated as follows:

2.1.1.1. Failure of a Vendor to provide a signed copy of documents related to and proving proof of eligibility to conduct business in the State of Maryland for providing “Natural Gas Supply Services” as required by state law will disqualify the Vendor from being considered by the County.

2.1.1.2. Vendors who have provided and meet the requirements to provide proof of eligibility to conduct business in the State of Maryland for providing “Natural Gas Supply Services” proposals will be evaluated based on the following criteria:

<u>Weighting Factor</u>	<u>Criterion</u>
30%	Expertise, experience, and qualifications of the Vendor, as related to the Scope of Services and Vendor’s submission of Similar Experience/References for Three (3) client contracts which are similar to the type and scope of the Contract described herein
15%	Vendor’s “comments, questions, and concerns” regarding the Account Numbers, location addresses and related data shown on CHART A
50%	Review of Vendor’s <u>Natural Gas Service Purchase Agreement</u>
5%	Vendor’s most recent annual report, including a copy of audited financial statement.

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3. Step Two – Price Proposal will be evaluated, following the completion of the Step One Process, according to a uniform set of criteria, consisting of the following categories:

<u>Weighting Factor</u>	<u>Criterion</u>
10%	Receipt of Transmittal Letter stating acceptance of this Proposal Document, addendum, and the final revised Vendor's <u>Natural Gas Purchase Contract</u> as operating conditions and understanding that they will become an integral part of the Contract as an exhibit
60%	Price
10%	Term, length of Contract period.
20%	Vendor's final list of Account Numbers and location addresses as shown on Chart A to be included in the resulting Contract.

4. Each Vendor will be rated for each criterion on a scale of zero to four as described below.

Unacceptable	0
Below Average	1
Average	2
Good	3
Superior	4

5. A Vendor's final grade will be the sum of each criterion's rating multiplied by the weighting factor listed above.

END OF SECTION

Natural Gas Supplier RFP

CHART A
WICOMICO COUNTY USAGE CHART NATURAL GAS
MEASURED IN CCF/THERMS

Natural Gas Usage FY 15 (July 1, 2014 - June 30, 2015)					
Site	Location	Address	City/State	Meter Number	Units FY 15
<u>General Services</u>					
1	Government Office Building	125 N. Division Street	Salisbury, MD 21801	03-020105	26,230
1	Government Office Building	125 N. Division Street	Salisbury, MD 21801	03-012846	30
1	Old Courthouse	101 N. Division Street	Salisbury, MD 21801	03-014949	12,733
1	New Courthouse	102 Court Street	Salisbury, MD 21801	03-010495	4,950
1	New Courthouse	102 Court Street	Salisbury, MD 21801	03-014947	3,475
Total General Services Usage					52,560
<u>Detention Center</u>					
2	Detention Center	411 Naylor Mill Road	Salisbury, MD 21801	03-24031	38,483
2	Detention Center	411 Naylor Mill Road	Salisbury, MD 21801	03-16618	48,720
Total Detention Center Usage					87,203
<u>Public Safety Building</u>					
2	Public Safety Building	401 Naylor Mill Road	Salisbury, MD 21801	03-024245	490
2	Public Safety Building	401 Naylor Mill Road	Salisbury, MD 21801	03-016315	4,652
Public Safety Building Usage					5,142
<u>Wicomico Youth and Civic Center</u>					
3	Wicomico Youth and Civic Center	500 Glen Ave.	Salisbury, MD 21804	03-20109	61,520
Total Wicomico Youth and Civic Center					61,520
Total Usage					201,283
NOTE: Locations within sites 1 and 2 are contiguous with each other					

III. PROPOSAL FORM (Step One page 1 of 2)

TO: Wicomico County Purchasing Department
Government Office Building
125 North Division Street, Room B-3
Salisbury, MD 21801

PROPOSAL – Natural Gas Supplier

Date: _____

Step One Proposal

Three copies of Proposal provided? Yes _____

Addenda acknowledged (if applicable) -

- | | | | |
|-------------|-----------|----------|-----------|
| 1. Addendum | YES _____ | NO _____ | N/A _____ |
| 2. Addendum | YES _____ | NO _____ | N/A _____ |
| 3. Addendum | YES _____ | NO _____ | N/A _____ |

Step One Submissions/Attachments –

- | | | |
|--|-----------|----------|
| Transmittal Letter | YES _____ | NO _____ |
| Licensed documents | YES _____ | NO _____ |
| Natural Gas Service Purchase Contract | YES _____ | NO _____ |
| Vendor’s list of “comments, questions, and concerns” | YES _____ | NO _____ |
| Vendor’s most recent annual report | YES _____ | NO _____ |
| A – REFERENCES | YES _____ | NO _____ |
| B – QUALIFICATIONS | | |
| Disclosure of Contributions form on file with the State of Maryland? | YES _____ | NO _____ |
| C – ATTACHMENT C: DISCLOSURE BY PERSON DOING PUBLIC BUSINESS | | |
| | YES _____ | NO _____ |
| D – NON-COLLUSIVE AFFIDAVIT | YES _____ | NO _____ |

III. PROPOSAL FORM (Step One page 2 of 2)

I have read, understood, and agreed to the terms and conditions of all contents of this PROPOSAL. The undersigned agrees to furnish the commodity or service stipulated in this PROPOSAL as stated above.

SIGNATURE: _____

NAME: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____ FAX: _____

EMAIL: _____

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III. PROPOSAL FORM (Step Two – page 1 of 2)

TO: Wicomico County Purchasing Department
 Government Office Building
 125 North Division Street, Room B-3
 Salisbury, MD 21801

PROPOSAL – Natural Gas Supplier

Date: _____

Pricing – Submit Step Two only

Site	Location	Meter Number	Unit Cost 12 month	Unit Cost 24 month
	<u>Government Office Complex</u>			
1	Government Office Building	03-020105		
1	Government Office Building	03-012846		
1	Old Courthouse	03-014949		
1	New Courthouse	03-010495		
1	New Courthouse	03-014947		
	<u>Detention Center</u>			
2	Detention Center	03-24031		
2	Detention Center	03-16618		
	<u>Public Safety Building</u>			
2	Public Safety Building	03-024245		
2	Public Safety Building	03-016315		
	<u>Wicomico Youth and Civic Center</u>			
3	Wicomico Youth and Civic Center	03-20109		

III. PROPOSAL FORM (Step Two – page 2 of 2)

I have read, understood, and agreed to the terms and conditions of all contents of this PROPOSAL. The undersigned agrees to furnish the commodity or service stipulated in this PROPOSAL as stated above.

SIGNATURE: _____

NAME: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____ FAX: _____

EMAIL: _____

ATTACHMENT A
PROPOSER'S EXPERIENCE/REFERENCES

Name of Vendor: _____

Each Proposer must submit below a minimum of three (3) references each, from current or past clients, for whom proposer has similar experience

Complete contact information for each reference, including name, telephone number, mailing address and E-mail address, must be included with the bid.

1) Company Name _____

Contact Name _____

Mail Address _____

Telephone Number _____ **Email Address** _____

2) Company Name _____

Contact Name _____

Mail Address _____

Telephone Number _____ **Email Address** _____

3) Company Name _____

Contact Name _____

Mail Address _____

Telephone Number _____ **Email Address** _____

NOTE: Attached additional sheets as needed.

Natural Gas Supplier RFP

ATTACHMENT B
AFFIDAVIT OF QUALIFICATION TO BID

I hereby affirm that,

1. I am the _____ and the
(Title)
authorized representative of the firm of _____
(Name of Firm)
whose address is _____

_____ and that I possess the legal authority to make this affidavit on behalf of myself and the firm for which I am acting.

2. Except as described in paragraph 3 below, neither I nor the above firm, nor the best of my knowledge, any of its officers, directors, or partners, or any of its employees directly involved in obtaining contracts with the State or any county, bi-county or multi-county agency, or subdivision of the State have been convicted of, or have pleaded nolo contendere to a charge of, or have during the course of an official investigation or other proceeding admitted in writing or under oath acts or omissions which constitute bribery, attempted bribery, or conspiracy to bribe under the provisions of Article 27 of the Annotated Code of Maryland or under the laws of any state or the federal government (conduct prior to July 1, 1977 is not required to be reported).

3. (State "none" or, as appropriate, list any conviction, plea, or admission described in paragraph 2 above, with the date; court, official, or administrative body; the individuals involved and their position with the firm, and the sentence or disposition, if any.)

_____ I acknowledge that this affidavit is to be furnished to Wicomico County and relevant agencies or County and, where appropriate, to the Board of Public Works and to the Attorney General under section 16D of Article 78A of the Annotated Code of Maryland. I acknowledge that, if the representations set forth in this affidavit are not true and correct, Wicomico County, Maryland, may terminate any contract awarded and take any other appropriate action. I further acknowledge that I am executing this affidavit in compliance with Section 16D of Article 78A of the Annotated Code of Maryland, which provides that certain persons who have been convicted of or have admitted to bribery, attempted bribery, or conspiracy to bribe may be disqualified, either by operation of law or after a hearing, from entering contracts with the State or any of its agencies or subdivisions.

I do solemnly declare and affirm under the penalties of perjury that the contents of this affidavit are true and correct.

Signature _____

Print Name _____ Date _____

ATTACHMENT C
DISCLOSURE BY PERSON DOING PUBLIC BUSINESS

Title 14 of the Annotated Code of Maryland requires persons doing business with a governmental entity involving contracts of at least \$200,000 *cumulatively* to file a Disclosure of Contributions. Reports are due every six months on August 5th and February 5th. Detailed information regarding the disclosure can be found at:

[HTTP://WWW.ELECTIONS.STATE.MD.US/CAMPAIGNFINANCE/DISCLOSUREOFCONTRIBUTIONS.HTML](http://www.elections.state.md.us/campaignfinance/disclosureofcontributions.html)

My signature certifies that _____ is in compliance with Title

(Bidders Name)

14 of the Annotated Code of Maryland, Election Law Article and is retaining all required records in

accordance with the Code

Signature _____

Name (type or print) _____

Official Title _____ Date: _____

ATTACHMENT D
NON-COLLUSION AFFIDAVIT

DATE _____

Wicomico County
125 N. Division Street
Salisbury, Maryland 21801

To Whom It May Concern:

This is to certify that the undersigned bidder _____
has not, either directly or indirectly, entered into any agreement, participated in any
collusion, or otherwise taken any action in restraint of free competitive bidding in
connection with this Bid submitted to Wicomico County

Proposal/Bid _____

Name of Bidder _____

Signature & Title of Authorized Representative

Swore to and subscribed before me this _____ day of _____,
20____

My commission expires _____, 20____.

Notary Public

(Notary Seal)

EXHIBIT A

**WICOMICO COUNTY, MARYLAND
STANDARD TERMS AND CONDITIONS**

This document sets out provisions generally applicable to all Wicomico County (“County”) contracts. The provisions herein do not constitute a complete agreement, and must be appended to a document, executed by all parties, which identifies the specific work to be performed, compensation, term, incorporated attachments, and special conditions, if any. This document and the Contract are intended to be complementary and shall be construed accordingly. However, should there be a direct contradiction between the terms and conditions contained herein and the Contract, then the Contract shall govern and control those contradictory terms and conditions. As used herein, the term "Department" includes the County, its various departments, unit, agencies, employees or agents as may be appropriate. The term “Contract” shall include a document entitled “agreement” or any other title on a document that is denoting a contract. The Wicomico County Executive is the person authorized to enter into contracts for Wicomico County.

Amendment. This Contract constitutes the entire agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Contract are superseded by this Contract. No amendment to this Contract shall be binding unless in writing and signed by the parties.

Bankruptcy. Upon filing for any bankruptcy proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Contractor must notify the County immediately. Upon learning of the actions herein identified, the County reserves the right at its sole discretion either to cancel the Contract or to affirm the Contract and hold the Contractor responsible for damages. The exercise of this right is in addition to any other rights the County may have as provided in this County or by law.

Compliance with Law. The Contractor hereby represents and warrants that:

- A. It has the power and authority to enter into and perform the Contract, that the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- B. Its performance under the Contract shall be in a good and workmanlike manner and in accordance with the professional standards;
- C. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- D. It is not in arrears in the payment of any obligations due and owing to the County or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- E. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract;
- F. It shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

Contingent Fee Prohibition. The Contractor, architect or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, architect or engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any commission, percentage, brokerage or contingent fee or other consideration contingent on the making of this Contract.

Counterparts. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.

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Force Majeure. Neither the County nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, County declaration of emergency, or war where such cause was beyond, respectively, the County's or Contractor's reasonable control. The County and Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Maryland and Wicomico County without regard to principles of conflicts of law.

Indemnification. The Contractor shall protect, hold free and harmless, defend and indemnify the County including its officers, agents and employees from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments (including Attorney's fees) resulting from injury to, or death of, any person or damage to property of any kind, which injury, death or damage arises out of, or is in any way connected with the performance of the work or failure to perform its obligations under this Contract. This obligation of indemnification shall apply to any acts or omissions, negligent conduct, whether active or passive, including acts or omissions of Contractor's agents or employees; except that it shall not be applicable to injury, death or damage to the property arising from the sole negligence of Wicomico County, its officers, agents and employees.

Independent Contractor.

- A. Contractor shall perform the work required by this Contract as an "Independent Contractor." Although the County reserves the right to determine the delivery schedule for the work to be performed and to evaluate the quality of the completed performance, the County cannot and will not control the means or manner of the Contractor's performance. The Contractor shall comply promptly with any requests by the County relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to the work under this Contract. Contractor is responsible for determining the appropriate means and manner of performing the work.
- B. Contractor represents and warrants that Contractor is not an employee of the County, is not currently employed by the Federal Government, and is not an officer, employee or agent of the County.
- C. Contractor shall be responsible for all federal or state taxes applicable to any compensation or payments paid to Contractor under this Contract. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.
- D. Contractor agrees to immediately provide the County notice of any claim made against Contractor by any third party. Contractor also agrees not to assign to any third party, without the County's written consent, any obligation of the County to indemnify Contractor for any actions under this Contract.

Insurance Requirements.

- A. Contractor shall obtain, and at all times keep in effect, Commercial General Liability Insurance in the amounts listed below for its activities and operations. The insurance shall include coverage for personal injury, discrimination and civil rights violation claims. All such insurance shall name County, its employees, and agents as ADDITIONAL INSURED. A copy of the certificate of insurance shall be filed with the County prior to the time this Contract is executed, providing coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate and \$500,000 for property damage. Coverage shall be written on an occurrence form.
- B. Contractor shall obtain, and at all times keep in effect, automobile insurance on all vehicles used in this Contract with the County to protect Contractor against claims for damages resulting from bodily injury, including wrongful death, and property damage that may arise from the operations of any owned or hired automobiles used by Contractor in connection with the carrying out of this Contract. All such insurance shall name County, its employees, and agents as ADDITIONAL INSURED.

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- C. Contractor shall provide the County with certification of Workers' Compensation Insurance, with employer's liability in the minimum amount required by Maryland law in effect for each year of this Contract.
- D. All insurance policies shall have a minimum 30 days' notice of cancellation. Immediate written notice to the County shall be required in the event of cancellation or restriction by the insurance company of any insurance policy referred to in this section.
- E. When insurance coverage is renewed Contractor shall provide new certificates of insurance prior to expiration of current policies.

Nondiscrimination. A contractor who is the recipient of County funds, or who proposes to perform any work or furnish any goods under this Contract shall not discriminate against any worker, employee or applicant because of religion, race, sex, age, sexual orientation, physical or mental disability, or perceived disability. Contractor further agrees that this provision will be incorporated in all sub-contracts entered into in connection with this Contract.

Ownership of Documents and Materials.

- A. The Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanicals, artwork, and computations prepared by or for the Contractor under the terms of this Contract shall at any time during the performance of the services be made available to the County upon request by the County and shall become and remain the exclusive property of the County upon termination or completion of the services. The County shall have the right to use the same without restriction or limitation and without compensation to the Contractor other than that provided in this Contract. The County shall be the owner for the purposes of copyright, patent or trademark registration.
- B. If the Contractor obtains or uses for purposes of this Contract, or subcontracts for, any design, device, material, or process covered by letters of patent for copyright, it shall provide an assignment to the County of ownership for purposes of copyright, patent or trademark and of all right to possess and to use such design, device, material or process and a legally sufficient agreement with the patentee or owner, and a copy of such agreement shall be filed with the County.
- C. The Contractor shall indemnify and save harmless the County from any and all claims for infringement by reason of the use of any such patented design, device, materials, or process, or any trademark or copyright, and shall indemnify, protect and save harmless the County, its officers, agents, and employees with respect to any claim. Action, costs or infringement, for royalties or user fees, arising out of purchase or use of materials, construction, supplies, equipment or services covered by this Contract.

Payments. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the County's receipt of a proper invoice from the Contractor. If an invoice remains unpaid 45 days after the invoice was received, interest shall be charged at a rate of nine percent (9%) per annum, in accordance with state law.

Records. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance hereunder. Contractor acknowledges and agrees that the County and its duly authorized representatives shall have access to such fiscal records and all other books, documents, papers, plans, and writings of the Contractor that are pertinent to this Contract. All such fiscal records, books, documents, papers, plans, and writing shall be retained by Contractor and kept accessible for a minimum of three years, except as required longer by law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later. All subcontracts shall also comply with these provisions.

Remedies.

- A. Corrections of errors, defect and omissions. Contractor agrees to perform the work as may be necessary to correct errors, defects, and omissions in the services required under this Contract,

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without undue delays and without cost to the County. The acceptance of the work set forth herein by the County shall not relieve the Contractor of the responsibility of subsequent corrections of such errors.

- B. Set Off. The County may deduct from and set-off against any amounts due and payable to the Contractor any back-charges, penalties, or damages sustained by the County, its agents, employees of recipients of its services, by virtue of any breach of this Contract by the Contractor or by virtue of the failure or refusal of the Contractor to perform the services or any part of the services in a satisfactory manner. Nothing herein shall be construed to relieve the Contractor of liability for additional costs resulting from a failure to satisfactorily perform the services.
- C. Cumulative. All rights and remedies of County and Contractor shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the County by law.

Responsibility of Contractor.

- A. The Contractor shall perform the services with the standard of care, skill, and diligence normally provided by a Contractor in the performance of services similar the services hereunder.
- B. Notwithstanding any review, approval, acceptance or payment for the services by the County, the Contractor shall be responsible for the professional and technical accuracy of its work, design, drawings, specifications and other materials furnished by the Contractor under this Contract.
- C. If the Contractor fails to perform the services, or any part of the services, in conformance with the standard set forth in subparagraph A above it shall, if required by the County, perform at its own expense and without additional cost to the County, those services necessary for the correction of any deficiencies of damages resulting, in whole or in part, from the Contractor's failure. This obligation is in addition to and not in substitution for any other remedy available to the County under the "Remedies" paragraph, or otherwise available by law.

Severability/Waiver. The County and Contractor agree that, if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision of this Contract.

Subcontracting or Assignment. The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and neither this Contract nor the services to be performed hereunder shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of the County. The County has the right to withhold such consent for any reason the County deems appropriate.

Substance Abuse and Drug Testing. Contractors and contract employees are subject to the provisions of the County's policy on substance abuse and drug testing regarding the use, possession, or sale of drugs or alcohol while performing County business or while in a County facility. Violation of these provisions or refusal to cooperate with implementation of the County's policy on substance abuse and drug testing can result in the barring of contract personnel from County facilities or from participating in County operations.

Survival. The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.

Termination. If the Contractor fails to fulfill its obligations under the Contract properly and on time, or otherwise violates any provision of the Contract, the County may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the County's option, become the County's property. The County shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the County can affirmatively collect damages.

Natural Gas Supplier RFP

Termination of Contract for Convenience. The performance of work under this Contract may be terminated by the County, in whole or in part, upon written notice to the Contractor, when the County determines such termination is in the best interest of the County. The termination for convenience is effective on the date specified in the County's written notice. The County will pay for all reasonable costs allocable to the Contract for work or costs incurred by the Contractor up to the date of termination. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

Termination of Multi-year Contract. If the County fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the County's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the County from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The County shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

Third Party Beneficiaries. The County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

Time is of the essence. Time is of the essence in Contractor's performance of each and every obligation and duty under this Contract.

Use of County Facilities. Contractor and its employees or agents shall have the right to use only those facilities of the County that are necessary to perform the services under this Contract and shall have no right of access to any facility of the County without prior approval of County Administration. County shall have no responsibility for the loss, theft, mysterious disappearance of or damage to equipment, tools, materials, supplies, and other personal property of Contractor or its employees, subcontractors or agents which may be stored on County premises.

Whole Contract. This Contract constitutes the complete and exclusive statement of the Contract between the parties relevant to the purpose described herein and supersedes all prior agreements or proposals, oral or written, and all other communication between the parties relating to the subject matter of this Contract.