



Term Contract

Vendor No. 100214160  
 Contact Teresa Tessman  
 Your reference SP-20-0006

BERNHARD TME LLC  
 1 ALLIED DR STE 2600  
 LITTLE ROCK AR 72202

Contract No. 4600045444  
 Date 10/01/2019

Contact Judy Shirley  
 Telephone 501-324-9314  
 Fax 501-324-9311

Our ref. ST  
 Incoterms FOB  
 DESTINATION

Send Invoice To:  
 As shown on Purchase Order

Ship To:  
 BERNHARD TME LLC  
 1 ALLIED DR STE 2600  
 LITTLE ROCK AR 72202

Valid from: 10/01/2019  
 Valid to: 09/30/2020

Target value 74,400.00 USD  
 Tracking No: SP-20-0006  
 Commodity: Energy Management- Natural Gas

Vendor Contact: Teresa Tessman  
 Phone: 501-823-4327 Direct 501-551-1532 Mobile  
 Email: TTessman@BernardTME.com

THIS IS A TERM CONTRACT ISSUED BY THE OFFICE OF STATE PROCUREMENT. THIS DOES NOT REPRESENT YOUR AUTHORITY TO SHIP. THE ORDERING AGENCY WILL ISSUE A PURCHASE ORDER TO AUTHORIZE SHIPMENT. THIS CONTRACT CONSTITUTES ACCEPTANCE OF YOUR BID ALONG WITH ALL TERMS AND CONDITIONS THEREIN AND SIGNIFIES THE OFFERER'S KNOWLEDGE AND ACCEPTANCE OF ALL TERMS AND CONDITIONS SET FORTH WITH THE COMPETITIVE BID.

CONTRACT PERIOD: The term of this contract shall be for a period of twelve months (12) beginning October 1, 2019 through September 30, 2020 with option(s) to renew in six (6) one (1) year increments or a portion thereof upon mutual agreement.

Office of State Procurement Contact: Judy Shirley, CPPB

SCOPE: This contract is for the management of natural gas only. It will be the Contractor's responsibility to present the cost advantages of their services to State agencies, colleges, and universities currently not participating in a management program.

The total management fee which is applicable to all agencies currently under a management program and any new agencies added in the future, will be the cost evaluated. Monthly management fees for any new accounts added in the future will be the same as for the existing accounts.

**GENERAL CONDITIONS AND INSTRUCTIONS TO VENDOR:**

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Purchasing Official/Fiscal Officer

**09/30/2019**



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The Contractor shall agree that State agencies, colleges, and universities may be added or deleted throughout the lifetime of the contract.

State agencies, colleges, and universities listed in Attachment 'A' of the Competitive Bid were previously participating in a contract for this service.

Table with 5 columns: Item, Material/Description, Target Qty, UM, Unit Price, Amount. Rows include items 0001 and 0002 for TECH SERVICE,MANAGEMENT,NATURAL GAS, and a total Estimated Net Value of 74,400.00.

As shown on Purchase Order

GENERAL REQUIREMENTS

- A. Contractor shall manage the day-to-day natural gas usage from a qualified licensed supplier...
B. Contractor shall analyze and procure the natural gas, including transportation arrangements...
C. Contractor shall provide a Cost-Effective way to outsource management of natural gas accounts...
D. Contractor shall daily monitor all rate cases based on market costs.
E. Contractor shall provide the client with the lowest natural gas supply cost.
F. Contractor shall manage the de-regulated savings between commodity and procuring the gas.
G. Contractor shall negotiate the margins of the natural gas product.
H. Contractor shall monitor and provide a baseline cost comparison between natural gas supply costs and that of the local provider.
I. Contractor shall define the program performance through quarterly reporting.

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J. Contractor shall provide commodity management services, to include, but not be limited to the following:

1. Convert accounts to transport
2. Investigate natural gas supply options
3. Negotiate with utility providers
4. Storage levels

K. Contractor shall audit invoices against the applicable tariff and/or contract to ensure the billed costs are correct and that tax exemptions are applied before an agency remits payment, including but not limited to the following:

1. Invoice auditing must be completed within (90) days of original billing date.
2. Auditing methods must be completed within (90) to (120) days of application of current applicable tariff charges. Including, but not limited to, storage, accurate usage, accurate billing rates, demonstrated efforts by quarterly audit reporting methods.

L. Contractor shall identify any cost savings for conversions, errors discovered on monthly bills, and any savings achieved through the natural gas bid process.

M. At the request of an agency, the Contractor shall be responsible for managing the conversions of transportation service when an opportunity is identified.

N. Contractor shall not charge any type of fee when an agency, although listed as a State Agency, is not participating in the Natural Gas program.

O. Contractor shall prorate billing fees for each location.

**COMMODITY MARKET UPDATES**

A. Contractor shall provide a summary of current and future market conditions to contract participants to keep clients informed about commodity prices that impact their utility bills and budgets.

B. Contractor shall provide summary information that is applicable to market conditions. E.g. Yearly, quarterly, bi-annually, or as requested by a participant, etc.

C. Contractor shall provide summary information electronically to each participant based on the format established by the Contractor to best include all available market condition information.

D. Contractor shall provide optional information to contract participants, to include, but not limited to the following:

1. Hedging # reduces commodity price volatility to assist clients to meet their budget requirements.
2. Enhanced Buying Power # reduces commodity costs by pooling similar clients together based upon utility and pipeline.

**OPTIONAL SERVICES FOR ELECTION BY AGENCIES**

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Contractor shall provide the following services as optional services. These optional services may be participated in by State agencies as determined by State agencies:

A. Peak Shaving Monitoring

1. Provides energy load monitoring services to reduce energy costs by notifying clients when to shift loads from peak to non-peak hours.

B. Utility Cost Allocations

1. Allocates utility costs to departments that are not sub-metered.

C. Billing Consolidation

1. Consolidate large volumes of utility invoices into one understandable invoice.

D. Manufacturing Tax Calculation

1. Calculate and determine applicable sales tax reductions and rebates for qualifying manufacturing clients.

E. Nominations

1. Ensure client's natural gas usage remains within tolerance levels between natural gas utility and supplier.

F. Utility Budgeting

1. Prepare fiscal year utility budgets based upon historical and projected utility data.

#### REPORTING

A. Contractor shall provide utility reports to each agency which are based on the information from the billing/invoices on a quarterly basis, or at a duration of time as determined by the State agency. The formatting of the reports will be determined after the award of the contract and as determined by the State agencies.

B. The information contained in the utility reports could change over the duration of this contract and the Contractor shall adjust reports as directed by the State, and/or as determined by OSP and/or the end-users participating in the natural gas program.

C. The utility reports must include, but not be limited to, the following:

1. Natural Gas Account Summary

2. Natural Gas Cost Comparison

3. Monthly Natural Gas Usage Comparison

4. Daily Natural Gas Usage per month

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5. Energy Procurement Performance including any fees that may be assessed
6. Natural Gas Storage Data
7. Natural Gas Storage Levels
8. Natural Gas Commodity Market Pricing
9. NYMEX Natural Gas Forward Pricing & Settlement
10. Glossary of Terms and Definitions
11. Local Distribution Service
12. Pipeline Transportation Service
13. Third-Party Commodity Supply
14. Natural Gas System Overview

D. Contractor shall provide a summary of each client's utility usage, cost, and service-associated savings to OSP and to the end-user within fifteen (15) days of each ending fiscal quarter. Ending quarters are based on the current calendar year (January # March, April # June, July # September, and October # December).

E. Should OSP request adjustments to the reporting, the Contractor shall make the adjustments to the reporting per OSP's request within the next reporting period.

**PERFORMANCE STANDARDS**

A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided that a Contractor must meet in order to avoid assessment of damages.

B. The State may be open to negotiations of Performance Standards prior to contract award, prior to the commencement of services, or at times throughout the contract duration. Performance Standards identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards.

C. The State has the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in its best interest to do so. Any changes or additions to performance standards will be made in good faith following acceptable industry standards and may include the input of the Contractor so as to establish standards that are reasonably achievable.

D. All changes made to the Performance Standards will become an official part of the contract.

E. Performance Standards will continue throughout the aggregate term of the contract.

F. Failure to meet the minimum Performance Standards as specified will result in the assessment of damages.

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G. In the event a Performance Standard is not met, the Contractor will have the opportunity to defend or respond to the insufficiency. The State has the right to waive damages if it determines there were extenuating factors beyond the control of the Contractor that hindered the performance of services. In these instances, the State has final determination of the performance acceptability.

H. Should any compensation be owed to the State agency due to the assessment of damages, Contractor shall follow the direction of the State agency regarding the required compensation process.

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Criteria  
Performance Standards  
Damages

Invoice Auditing  
Completed within (90) days of original billing date.  
1% fee based on the total corrected billing amount.

Auditing Methods Completed within 90 to 120 days of application of current applicable tariff charges. Including, but not limited to; storage, accurate usage, accurate billing rates, demonstrated efforts by quarterly audit reporting methods.  
1% fee on invoices that are shown to be incorrect or fail to meet the current billing rate.

**OUTLINE AGREEMENT AWARD TERMS AND CONDITIONS**

1. **GENERAL:** All terms and conditions stated in the invitation for bid govern this contract.
2. **PRICES:** Prices are firm and not subject to escalation, unless otherwise specified in the invitation for bid.
3. **DISCOUNTS:** All cash discounts offered will be taken if earned.
4. **TAXES:** Most state agencies must pay state sales tax. Before billing, the contractor should contact the ordering agency to find out if that agency must pay sales tax. Itemize state sales tax when applicable on invoices.
5. **BRAND NAME REFERENCES:** The contractor guarantees that the commodity delivered is the same as specified in the bid.
6. **GUARANTY:** All items delivered are to be newly manufactured, in first- class condition, latest model and design, including, where applicable, containers suitable for shipment and storage unless otherwise indicated in the bid invitation. The contractor guarantees that everything furnished hereunder will be free from defects in design, workmanship, and material; that if sold by drawing, sample or specification, it will conform thereto and will serve the function for which furnished. The contractor further guarantees that if the items furnished hereunder are to be installed by the contractor, such items will function properly when installed. The contractor also guarantees that all applicable laws have been complied with relating to construction, packaging, labeling, and registration. The contractor's obligations under this paragraph shall survive for a period of one year from the date of delivery, unless otherwise specified in the invitation for bid.
7. **AWARD:** This contract award does not authorize shipment. Shipment against this contract is authorized by the receipt of a purchase order from the ordering agency. A written purchase order mailed or otherwise furnished to the contractor results in a binding obligation without further action by either party.
8. **DELIVERY:** The term of the contract is shown on the face of the contract award. The contractor is required to supply the state's needs during this term. The number of days required to place the commodity in the receiving agency's designated location under normal conditions is also shown. Consistent failure to meet delivery without a valid reason may cause removal from the bidders' list or suspension of eligibility for award.

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9. **BACK ORDERS OR DELAY IN DELIVERY:** Back orders or failure to deliver within the time required may be default of the contract. The contractor must give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. If the reason is not acceptable, the contractor is in default. The Office of State Procurement has the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere.

10. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery shall be made during agency work hours only, 8:00 a.m. to 4:30 p.m., unless prior approval for other delivery has been obtained from the agency. Packing memoranda shall be enclosed with each shipment.

11. **STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.

12. **DEFAULT:** All commodities furnished will be subject to inspection and acceptance of the ordering agency after delivery. Default in promised delivery or failure to meet specifications authorizes the Office of State Procurement to cancel this contract or any portion of same and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting contractor.

13. **VARIATION IN QUANTITY:** The state assumes no liability for commodities produced, processed or shipped in excess of the amount specified herein.

14. **INVOICING:** The contractor shall submit an original and two copies of an itemized invoice showing the bid number and purchase request number when itemized in the invitation for bid. Invoices must be sent to "Invoice to" point shown on the purchase order.

15. **STATE PROPERTY:** Any specifications, drawing, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for the use hereunder shall remain property of the state, be kept confidential, be used only as expressly authorized, and be returned at the contractor's expense to the F.O.B. point, properly identifying what is being returned.

16. **ASSIGNMENT:** This contract is not assignable nor the duties hereunder delegable by either party without the written consent of the other party to the contract.

17. **OTHER REMEDIES:** In addition to the remedies outlined herein, the contractor and the state have the right to pursue any other remedy permitted by law or in equity.

18. **LACK OF FUNDS:** The state may cancel this contract to the extent funds are no longer legally available for expenditures under this contract. Any delivered but unpaid for goods will be returned in normal condition to the contractor by the state. If the state is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the contractor may file a claim with the Arkansas Claims Commission. If the contractor has provided services and there are no longer funds legally available to pay for the services, the contractor may file a claim.

19. **QUANTITIES:** The state may order more or less than the estimated quantity in the invitation for bid.

20. **DISCLOSURE:** Failure to make any disclosure required by the Governor's Executive Order 98-04, or any

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# STATE OF ARKANSAS

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violation of any rule, regulation, or policy adopted pursuant to that order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

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