

REQUEST FOR PROPOSAL



Issued by
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215

**Determining the appropriateness of recovering deferred costs and test year costs
in a rate case related to environmental remediation on manufactured gas plant sites.**

RFP Number: 2013-01
Issued: August 29, 2012

**REQUEST FOR PROPOSAL
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Organization:

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PART ONE: EXECUTIVE SUMMARY

Purpose:

This is a Request For Proposal ("RFP") issued by the Office of the Ohio Consumers' Counsel ("OCC") to solicit bids from an Independent Contractor seeking assistance in the identification, analysis and development of the specified issues related to the Manufactured Gas Plant ("MGP") proposed by Duke Energy ("DE-Ohio"), the Public Utilities Commission of Ohio ("PUCO") and other parties.

Background:

The OCC plays an integral part in Ohio's government and economy by fulfilling its role as the advocate agency for residential utility consumers. Established in 1976, the OCC participates in major rate, fuel, rule-making and federal cases affecting the utility service of Ohio's residential consumers.

The law governing the agency's activities is contained in Chapter 4911 of the Ohio Revised Code.

The Consumers' Counsel is appointed by and remains responsible to a nine-member Governing Board. The representative role of the Governing Board can be viewed as incorporating three broad functions: accountability to the Public, the General Assembly and the Attorney General; policy-making in directing the Consumers' Counsel; and oversight of the Consumers' Counsel Office.

The Consumers' Counsel appoints and administers a staff to carry out legislative mandates. The office works to protect the interests of residential utility consumers, which is accomplished by formal case interventions, informal negotiation and dispute resolution, educational efforts and analytical and legal assistance to legislators and others on public utility issues.

PART TWO: GENERAL INSTRUCTIONS

Calendar of Events. The schedule for this RFP and the work to be addressed is given below. The OCC reserves the right to change this schedule as needed.

Firm Dates

RFP Issued:

August 29, 2012

Bid Due Date/Time:

September 12, 2012 at 2:00p.m.**Estimated Dates**

Contract Award:

September 19, 2012**Contract End Date****June 30, 2013****Contacts:**

The following individual will represent the OCC as the primary contact for matters relating to the RFP and during the contract negotiation/award process and subsequent invoicing.

Robin Tedrick

Records Management Coordinator

Office of the Ohio Consumers' Counsel

10 W. Broad Street, Suite 1800

Columbus, Ohio 43215

614-466-9591

E-mail: tedrick@occ.state.oh.us**Proposal Submission:**

Proposals are to be mailed or delivered to: Robin Tedrick, Office of the Ohio Consumers' Counsel, 10 W. Broad Street, Suite 1800, Columbus, Ohio 43215-3485. Proposals can be sent via mail or e-mail to tedrick@occ.state.oh.us. The deadline to submit proposals for this RFP is **2:00 p.m. on Wednesday September 12, 2012.**

The OCC may reject any proposals or unsolicited proposal amendments that are received after the deadline. A prospective contractor that mails its proposal must allow for adequate mailing time to ensure its timely receipt.

Each prospective contractor must carefully review the requirements of this RFP and the contents of its proposal. All prospective contractors are on notice that the OCC will not be liable for any costs incurred by any prospective contractor in responding to this RFP, regardless of whether the OCC awards the contract through this process, decides not to go forward with the work, cancels this RFP for any reason, or contracts for the work through some other process or by issuing another RFP.

By submitting a proposal, the prospective contractor acknowledges that it has read this RFP, understands it, and agrees to be bound by its requirements. The prospective contractor also agrees that the contract

will be the complete and exclusive statement of the agreement between the OCC and the contractor and will supersede all communications between the parties regarding the contract's subject matter.

The OCC may reject any proposal if the prospective contractor takes exception to the terms and conditions of this RFP, fails to comply with the procedure for participating in the RFP process, or the prospective contractor's proposal fails to meet any requirement of this RFP. The OCC may reject any proposal that is not in the best interest of the OCC to accept. Further, the OCC may decide not to do business with any of the prospective contractors responding to this RFP.

All proposals and other material submitted will become the property of the OCC and may be returned only at the option of the OCC. Proprietary information should not be included in a proposal or supporting materials because the OCC will have the right to use any materials or ideas submitted in any proposal without compensation to the prospective contractor.

The OCC will retain all proposals, or a copy of them, as part of the contract file for at least five (5) years. After the required retention period, the OCC may return, destroy, or otherwise dispose of the proposals or the copies.

Waiver of Defects:

The OCC has the right to waive any defects in any bid or in the submission process followed by a prospective contractor. However, the OCC will only do so if it is in the best interest of the OCC and will not cause any material unfairness to other prospective contractors.

Amendments to Bids:

Amendments or withdrawals of bids will be allowed if the amendment or withdrawal is received before the bid due date. No amendment or withdrawals will be permitted after the due date, except as expressly authorized by the OCC.

Amendments to the RFP:

If the OCC decides to revise this RFP, amendments will be made available to all prospective contractors. When the OCC makes amendments to the RFP after bids have been submitted, the OCC will permit prospective contractors to withdraw or modify their bids.

Contract:

If this RFP results in a contract award, the contract will include by reference this RFP and authorized written amendments to this RFP. It will also include any purchase orders and change orders issued under the Contract.

In addition, the prospective contractor will agree to abide by all laws, rules and directives of the State of Ohio, as they pertain to vendors doing business with the State of Ohio.

PART THREE: SCOPE OF WORK AND DELIVERABLES

This section describes the scope of work and what the selected Independent Contractor must deliver as part of the completed work (the "Deliverables") to meet the terms and conditions of a subsequent contract. The Independent Contractor shall perform any or all of the following upon request to do so by the OCC employee(s) assigned to the project.

History:

On June 7, 2012, Duke Energy Ohio ("DE-Ohio") submitted Applications with the Standard Filing Requirements ("SFR") to the Public Utilities Commission of Ohio ("PUCO") to make changes and increases in gas distribution rates that would result in approximately \$44.6 million in additional annual revenue.

On July 9, 2012, DE-Ohio filed direct testimony of its witnesses supporting its Application¹. DE-Ohio's test year for the case is the twelve months ending December 31, 2012, with a date certain of March 31, 2012.

In the direct testimony of DE-Ohio witness Don Wathen, (Director of Rates and Regulatory Strategy for Ohio and Kentucky) indicates that the primary drivers of the proposed gas distribution rate increase include the following:

- a. \$6.5 million – incremental plant investment;
- b. \$5.9 million – declining gas sales volumes;
- c. \$11.8 million - increased operating costs;
- d. \$1.7 million - higher property and non-income related taxes;
- e. \$10.3 million - increased depreciation and other amortization expense;
- f. \$21.8 million – amortization of Manufactured Gas Plant (MGP) site remediation; and
- g. Offsetting the increase is \$3 million due to lower debt financing costs and return on equity and \$10.4 million in increases in accumulated deferred taxes and other rate base items.

According to the testimony of DE-Ohio witness Jessica Bednarcik, (Engineer at Duke Energy for Charlotte and North Carolina) DE-Ohio has two former Manufactured Gas Plant sites – East End and West End – which are at issue in DE-Ohio's Application. Both of these former plants are located within the city of Cincinnati. Manufactured Gas operations ceased at the East End plant in 1963 and in 1967 at the West End plant. DE-Ohio is currently performing its cleanup work at both MGP sites pursuant to the Ohio EPA's Voluntary Action Program. Witness Bednarcik's testimony provides further detail on where DE-Ohio is in the site remediation process and what measures DE-Ohio has taken to control the costs of the clean-up. In 2009, DE-Ohio filed an Application with the PUCO in Case No. 09-712-GA-AAM asking for permission to defer costs for later collection related to environmental investigation and remediation. In this case, DE-Ohio is requesting recovery of \$65.3 million in site remediation costs to be amortized over three years. The \$65.3 million includes the cost of the deferrals and a test year amount of expenses related to the same. DE-Ohio witness Andrew Middleton also provides testimony on the history of the manufactured gas plant industry in the United States and industry practices on how residuals from gas manufacture are handled.

¹ The Applications, SFR and other documents filed in Case No. 12-1685-GA-AIR et al. are available to the public in the specified dockets on the PUCO's website at <http://www.puco.ohio.gov/puco/docketing/>. DE-Ohio's press releases on these rate cases are available at DE-Ohio's website at <http://www.duke-energy.com/news/releases/>

Scope of Work:

The Independent Contractor will be fully responsible for the review, analysis, and evaluation of all materials filed by DE-Ohio and any other parties in DE-Ohio's gas rate case relative to the area involving Manufactured Gas Plants. Selected areas of review may include, but are not limited to:

- a. Appropriate ratemaking treatment of all MGP costs in this case;
- b. Current used and usefulness of MGP sites by DE-Ohio;
- c. Ratemaking treatment of the MGP costs in other states;
- d. Whether the costs that were granted deferral are just and reasonable; and
- e. Reasonableness of DE-Ohio's exploration of recovery of MGP costs from other sources besides customers.

The Independent Contractor will be responsible for providing the appropriate ratemaking treatment for the selected areas to the OCC witness presenting OCC's recommended overall revenue requirement.

Work Requirements and Deliverables:

The Independent Contractor shall undertake the following work and activities, as requested and approved by OCC, for the identification, analysis and development of the specified issues related to the MGP proposed by DE-Ohio, the Staff of the PUCO and other parties and the recommendation of an appropriate treatment of the specified areas of revenue requirement for DE-Ohio in this proceeding:

Specifically, upon request, the Independent Contractor shall be responsible for the following:

Deliverable I

1. Review and prepare an analysis and critique of DE-Ohio's proposed treatment of the specified areas of the MGP including a review of DE-Ohio's Application, work papers and supporting testimonies related to proposed rate base and operating income components.
2. Provide technical support on the specified areas of the MGP issues for the discovery process in the proceeding, including:
 - a. Prepare discovery (interrogatories and requests for production of documents);
 - b. Review responses to OCC's discovery; such review may require travel (i.e. DE-Ohio may make documents available in Ohio);
 - c. Attend any depositions of DE-Ohio's personnel and/or other parties' personnel, as required by OCC's Lead Attorney; such depositions may require travel;
 - d. Attend any depositions of the Independent Contractor conducted by DE-Ohio or other parties, as required by OCC's Lead Attorney
 - e. Review all discovery served upon the OCC by other parties and assist in preparing OCC's responses to such discovery.
3. Review and prepare an analysis and critique of the Staff of the PUCO's proposed treatment of the specified areas of the MGP in its Staff Reports of Investigation ("Staff Report"), work papers and supporting testimony, including preparation of objections to the Staff Report on

the same or related issues. It is estimated that the Staff Reports will be issued approximately five months after DE-Ohio files its SFRs. DE-Ohio, OCC and other parties' objections to the Staff Report, along with testimony, are due thirty days from the date a Staff Report is issued.

4. Provide technical support on the specified areas of the MGP, as identified by OCC's Lead Attorney, for the legal preparation involved in the proceeding including an analysis of written and oral testimony of other witnesses (DE-Ohio, PUCO Staff and other parties) to assist with cross-examination. Such testimony will include DE-Ohio's initial direct testimony, all parties' testimony supporting objections to the Staff Report, PUCO Staff testimony responding to parties' objections and any party's subsequent update and/or rebuttal testimony.
5. Provide technical assistance needed for any pre-hearing or settlement conferences.
6. Recommend and calculate an appropriate treatment of the specified areas of the MGP for DE-Ohio:
 - a. Prepare written, direct and, if needed, rebuttal testimony and presentation of that testimony at hearing.
 - b. Testimony shall include the appropriate regulatory treatment of the rate base and operating income items for the specified areas of the MGP and supporting schedules.
7. Review the information developed by, and the testimony of, any co-consultants retained by OCC in order to coordinate the OCC's development of issues in this proceeding.
8. Provide technical assistance on the specified areas of the MGP subsequent to the hearing in order to prepare post-hearing briefs and evaluate issues for possible rehearing and/or appeals including, but not limited to, evaluation of those and related issues in the PUCO's Opinion and Order and, if requested, by OCC's Lead Attorney.

PART FOUR: BID REQUIREMENTS

Bid Format:

Each bid must include sufficient data to allow the OCC to verify the total cost for the work and all of the prospective contractor's claims of meeting the RFP's requirements. These instructions describe the required format for a responsive bid. The prospective contractor may include any additional information it believes is relevant.

1. **Contractor Profile.** Each bid must include a general profile of the prospective contractor's relevant experience working on projects similar to this work. In the **Contractor Profile**, or in **Personnel Profile Summaries** (see below), details on prior and current similar and/or relevant work projects should be provided, including the scope of such work and clients. While detail is generally preferred on a contractor's most recent work, contractors are encouraged to provide detail on all relevant work in Ohio.

The profile must also include the prospective contractor's legal name, address, and telephone number; home office location; date established; ownership (such as public firm, partnership, or subsidiary); firm leadership (such as corporate officers or partners); total number of employees nationwide and in Ohio; the percentage of women employees nationwide and in Ohio; the percentage of minorities nationwide and in Ohio; number of employees to be engaged in tasks directly related to the work; and any other background information the prospective contractor believes would be useful during the bid evaluation process.

2. **Work Plan.** The prospective contractor must fully describe its approach, methods, and specific work steps for doing the work and producing the **Work Requirements and Deliverables** set forth in Part Three of this RFP. The OCC encourages responses that demonstrate a thorough understanding of the nature of the work and what the Contractor must do to get the work done well. The prospective contractor must also provide a complete and detailed description of the way it will do the work that addresses the areas identified below. The OCC seeks insightful responses that describe proven, state-of-the-art methods. Recommended solutions should demonstrate the prospective contractor's ability to quickly undertake and successfully complete the required tasks.

The prospective contractor's work plan must clearly and specifically identify key personnel assignments by individual as to who would be addressing the potential issues set forth in Part Three of this RFP.

3. **Personnel Profile Summaries.** Each bid must include a profile and/or resume that demonstrates the competency of the contractor and team members by submitting the following information:
 - **Team Members' Names**
 - **Experience and Qualifications.** Experience and qualifications relevant to this project.
 - **Dates of Employment.** The length of time the team members performed relevant work requiring the necessary technical expertise.
 - **Project Experience.** The work of the team members on projects of similar or greater size and scope.

4. **References.** The prospective contractor must include three references for which the prospective contractor has successfully provided services on projects that were similar in their nature, size, and scope of work. These references must relate to work that was completed within the past five (5) years.
Note: Each reference must be willing to discuss the prospective contractor's performance with an OCC representative.
5. **Cost Summary.** Each prospective contractor must provide a cost summary table showing: (1) Team Members' names, (2) their hourly rates, (3) their estimated hours, and (4) total estimated project cost for the Work Requirements and Deliverables set forth in Part Three of this RFP.
 - a) The OCC requires the inclusion of ALL expenses associated with this project within the hourly rates and hours used to determine the costs for the deliverables, thereby eliminating the need for expense billings. Items to be taken into consideration in determining the cost of each deliverable should include supplies and materials, transportation and per diems, copying and overnight mail charges, etc. The successful bidder will be responsible for direct payment to vendors for any requirements for overnight mail and any "on-site" photocopying charges.
 - b) Contractor may invoice only for actual work performed and documented.
6. The OCC will not be liable for any costs the prospective contractor does not identify in its bid.
7. The prospective contractor must complete the Standard Affirmation and Disclosure form attached to this RFP which addresses Executive Order 2011-12K, Governing the Expenditure of Public Funds on Offshore Services. This executive order states in part "...No State Cabinet Agency, Board or Commission ("Executive Agency") shall enter into any contract which uses any public funds within its control to purchase services which will be provided outside of the United States..." By the signature affixed to this response, the Bidder/Offeror affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, the Bidder/Offeror becomes the Contractor and affirms that both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States. To access the executed Executive Order, Please visit: <http://procure.ohio.gov/pdf/EO201112K.pdf>.
8. Submit an original W9 form along with your response to this RFP so that, if a contract is awarded, the OCC can process any invoices submitted by your company. The Internet link to the form is: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>. The form must be signed and dated.
9. Submit a statement as part of your response to this RFP, affirming that you or members of your staff do not currently owe any money to the state of Ohio or have an unresolved finding for recovery from the Auditor of State.
10. **Declaration of Material Assistance/Non-Assistance.** If you will receive or have received in the aggregate an amount greater than \$100,000 from the state of Ohio, you must complete this certification. You can complete the pre-certification process electronically by going to <http://www.obg.ohio.gov>.

11. **Campaign Contribution.** House Bill 694 requires that every contract for goods or services of more than \$500 must contain a certification signed by the contract recipient certifying that the recipient is in compliance with Ohio Revised Code 3517.13. If awarded a contract, contractor will certify the following:

"Contractor hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of Ohio Revised Code Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of Ohio Revised Code Section 3517.13."

For more information please refer to <http://www.obm.ohio.gov>.

12. The prospective contractor must complete the Standard Affirmation and Disclosure form attached to this RFP which addresses Executive Order 2011-12K, Governing the Expenditure of Public Funds on Offshore Services. This executive order states in part "...No State Cabinet Agency, Board or Commission ("Executive Agency") shall enter into any contract which uses any public funds within its control to purchase services which will be provided outside of the United States..." By the signature affixed to this response, the Bidder/Offeror affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, the Bidder/Offeror becomes the Contractor and affirms that both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States. To access the executed Executive Order, Please visit: <http://procure.ohio.gov/pdf/EO201112K.pdf>.

PART FIVE: EVALUATION OF BIDS

Evaluation of Bids:

Generally, the evaluation process may consist of up to four distinct phases:

1. The Initial Review of all bids for defects
2. The Evaluation of the bids by the Evaluation Committee
3. Request for More Information (Interviews, Presentations, and Demonstrations)
4. Negotiations

It is within the purview of the OCC Evaluation Committee ("Committee") to decide whether phases three and four are necessary.

Rejection of Bid:

The OCC may reject any bid that is not in the required format, does not address all the requirements of this RFP, or that the OCC believes is excessive in price or otherwise not in the best interest of the OCC to consider or to accept. In addition, the OCC may cancel this RFP, reject all the bids, and seek to do the work through a new RFP or other means.

Clarifications:

During the evaluation process, clarifications may be requested from any prospective contractor under active consideration and the clarification may give any prospective contractor the opportunity to correct defects in its bid. This may be done in cases where doing so would not result in an unfair advantage to the prospective contractor and the clarification is in the best interest of the OCC.

1. **Initial Review:** The bids will be reviewed for their timeliness, format, and completeness. Any late, incomplete, or incorrectly formatted bids may be rejected. Likewise, any defects may be waived or a prospective contractor may be allowed to submit a correction.

If a late bid is received, it will not be opened unless the prospective contractor has received prior OCC approval for a late bid for good cause shown.

All timely, complete, and properly formatted bids will be forwarded to the Evaluation Committee.

2. **Committee Evaluation of the Bids:**

The Committee will evaluate each bid forwarded to it. The Committee may also have the bids or portions of them reviewed and evaluated by independent third parties or other OCC personnel with technical or professional experience that relates to the work or to the criteria used in the evaluation process. The Committee may adopt or reject any recommendations it receives from such reviews and evaluations. At any time during this phase, the Committee may ask a prospective contractor to correct, revise, or clarify any portions of its bid.

Contract Award. The OCC plans to tentatively award the Contract for the work on **September 19, 2012**. The OCC reserves the right to change the contract award date if it becomes necessary. The contract will be awarded to the contractor that demonstrates a clear understanding of OCC's expectations; can complete the scope of work and deliverables within the designated timeframe, and at the lowest or competitive cost.

STANDARD AFFIRMATION AND DISCLOSURE FORM

EXECUTIVE ORDER 2010-09S

Banning the Expenditure of Public Funds on Offshore Services

All of the following provisions must be included in all invitations to bid, requests for proposals, state term schedules, multiple award contracts, requests for quotations, informal quotations and statements of work. This information is to be submitted as part of the response to any of the procurement methods listed.

CONTRACTOR/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE:

By the signature affixed to this response, the Bidder/Offeror affirms, understands and will abide by the requirements of Executive Order 2010-09S issued by Ohio Governor Ted Strickland. If awarded a contract, the Bidder/Offeror becomes the Contractor and affirms that both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States. The Executive Order is attached and is available at the following website: (<http://www.governor.ohio.gov/Default.aspx?tabid=1495>).

The Bidder/Offeror shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information as part of the response will deem the Bidder/Offeror not responsive and no further consideration will be given to the response. Bidder/Offeror's offering will not be considered. If the Bidder/Offeror will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

(Address)

(City, State, Zip)

Name/Principal location of business of subcontractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

(Address)

(City, State, Zip)

Name/Location where services will be performed by subcontractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Contractor:

(Address)

(Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by subcontractor(s):

(Name)

(Address, City, State, Zip)

4. Location where services to be performed will be changed or shifted by Contractor:

(Address)

(Address, City, State, Zip)

Name/Location(s) where services will be changed or shifted to be performed by subcontractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)