

Non-Competitive Procurement Justification

Project Name: Hurricane Ian Lighting Repairs

FEMA Identifier: TBD

Purpose: Justification for the Non-Competitive Procurement of Utility Structures Inc. for Customized Street Light Fixture Components

I. Regulatory Basis for the Non-Competitive Procurement

A non-competitive procurement was undertaken by the City on the basis of the following regulatory exception found at 2 CFR Part 200.320(c)(3):

- The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

II. Brief Description of the Product or Service Being Procured

The following products will be procured from Utility Structures Inc. as part of the sole source request:

- (107) XCOR-2102021 B-ACR-CCG-TX teardrop luminaire

III. Why a Non-Competitive Procurement Was Necessary

The products procured from Utility Structures, Inc. are customized to the City's existing street lighting infrastructure. This infrastructure cannot accept "off the shelf" products, and any attempt to force foreign products into the system would create interoperability issues and bifurcation of maintenance responsibilities. Further, the service at issue, City Lighting, directly impacts public health and safety by ensuring pedestrian and vehicular safety during evening and night-time hours. The City of North Port's Department of Public Works has diligently tackled various Ian-related repairs across the City, and the duration of having inoperable lighting creates an exigency to obtain the necessary, required parts to facilitate replacement as quickly as possible

IV. Duration of Non-Competitive Contract Scope of Work

Delivery of streetlighting components including freight charges to the City of North Port for the lighting products and equipment needed.

V. Why a Competitive Procurement Would Not Have Been Suitable

As described above, Utility Structures, Inc. is the only entity that can provide the customized, unique parts for the City's lighting infrastructure. As the manufacturer, Utility Structures, Inc. is the obvious and best-placed entity to provide these parts as quickly as possible to the City so that it [the City] can restore its street lighting infrastructure to its 100% operational capacity prior to the storm. Theoretically, to introduce competition, the City would have needed to require potential vendors to assess, test, and possibly remove key street lighting infrastructure in order to design or fabricate suitable interoperable replacement part. All this would be required before a vendor could provide a quote for the specific parts needed.

Patent issues may have arisen as a part of that process, but the biggest drawbacks to the theoretical competitive approach would be time and cost. The time necessary to reverse engineer and re-design an existing product available elsewhere would add months, if not longer, to the City's timeline for this critical work. Similarly, the added cost for the reverse engineering and re-design would saddle the City, and potentially FEMA, with unnecessary and potentially un-justified costs. It could also be argued that the City could simply issue a competitive procurement to replace its entire system, giving multiple vendors an opportunity to present proposals. This is also an unreasonable approach, as the City's entire system does not need replacing, and the cost of doing so relative to simply ordering available parts to repair the system to pre-disaster conditions is grossly disproportionate. Based on the present circumstances, the most reasonable and cost-effective approach to address storm-related damage that directly impacts public health and safety is to order the parts from the one vendor that can provide them.

VI. Conflict of Interest Checks

No conflicts of interest, either known or apparent, exist between Utility Structures Inc. and the City of North Port.

VII. Additional Considerations

The City respectfully requests that FEMA and/or FDEM balance the importance of working streetlight infrastructure across City thoroughfares and parks with the added cost, in both time and taxpayer dollars, of trying to introduce competition into a situation that the present circumstances cannot reasonably support. We further request that this procurement be viewed in conjunction with the Pemco Lighting Products, Inc. and Nova Pole procurements, as all three collectively share the same context and justification.