

**Date:** December 6, 2016

Agenda Item No. 8(F)(5)

**To:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor



**Subject:** Recommendation for Approval to Award; LED Lights

**Recommendation**

It is recommended that the Board of County Commissioners (Board) approve award of *Contract No. FB-00357, LED Lights*, to purchase light-emitting diode (LED) lights for the Department of Transportation and Public Works. The lights will be installed in exterior light fixtures, ceiling and wall mounts at 15 Metrorail stations with the most need throughout the County (Attachment A), ensuring well-lit stations for patrons. A comprehensive project for the remaining stations, as well as other transit facilities, will be solicited separately.

LED lights last longer and are more energy-efficient than traditional lighting sources. The lights are UL-certified (i.e., meet specific safety standards). The new lights will replace outdated mercury vapor lights that have exceeded their useful life of five (5) years. The useful life for the new LED lights is estimated to be 10 years.

**Scope**

The impact of this item is countywide in nature.

**Fiscal Impact/Funding Source**

The fiscal impact for the one-year term is \$2,325,000.

Department	Allocation	Funding Source	Contract Manager
Transportation and Public Works	\$2,325,000	Federal Transit Administration Funds	Jesus Valderrama
<b>Total</b>	<b>\$2,325,000</b>		

**Track Record/Monitor**

Jesus Lee of the Internal Services Department is the Procurement Contracting Officer.

**Delegated Authority**

If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise all provisions of the contract pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

**Vendors Recommended for Award**

An Invitation to Bid was issued under full and open competition on March 24, 2016. There were 13 responses to the solicitation, including four (4) "No Bids." The method of award was to the single lowest-priced responsive, responsible bidder in the aggregate. Seven (7) of the bids were deemed non-responsive by the County Attorney's Office for failure to comply with Federal Transit Administration Buy America requirements.

Awardee	Principal Address	Address of Branch Offices or Headquarters in Miami-Dade or Broward*	Number of Employee Residents	Principal
			1)Miami-Dade 2)Broward 3)Percentage*	
Consolidated Electrical Distributors, Inc. dba Mercedes Electric Supply	1920 Westridge Drive Irving, TX	8550 NW South River Drive Medley, FL	11	Kurt Lasher
			8	
			Less than 1%	

\*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendors' employees who reside in Miami-Dade County or Broward County as compared to the vendor's total workforce.

**Vendors Not Recommended for Award**

Vendor	Reason for Not Recommending
Anixter, Inc.	Vendor's bid was higher than lowest bidder.
Graybar Electric	Vendor deemed non-responsive by the County Attorney's Office for failure to comply with the solicitation's Buy America requirements. See the attached opinion from the County Attorney's Office.
LED are Us, LLC	
OEO Energy Solutions, LLC	
Onpeak Energy, LLC	
South Dade Electrical Supply, Inc.	
Torres Electrical Supply Co.	
World Electric Supply	
American Safety Utility Corp	No Bid
Dade Pump and Supply Co.	
Great Mountain Lighting	
Green-Energy-Products.com, LLC	

\*A "No Bid" means the vendor responded indicating it will not be providing an offer.

**Due Diligence**

Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Internal Services Department's Procurement Guidelines to determine contractor responsibility, including verifying corporate status and that there are no performance or compliance issues with the recommended vendor. The lists that were referenced include: convicted vendors, debarred vendors, delinquent contractors, suspended vendors and federal excluded parties. There were no adverse findings relating to contractor responsibility.

**Applicable Ordinances and Contract Measures**

- The two (2) percent User Access Program provision does not apply due to the federal funding source.
- The Small Business Enterprise Bid Preference and Local Preference ordinances do not apply due to the federal funding source.
- The Living Wage ordinance does not apply.

Attachment

  
 Alpha T. Hudak  
 Deputy Mayor

# Memorandum



**Date:** June 16, 2016

**To:** Jesus Lee  
Procurement Contracting Officer 2  
Division of Procurement Management

**From:** Alexander S. Bokor *Alexander S. Bokor*  
Assistant County Attorney

**Subject:** Responsiveness Determination for Invitation to Bid ("ITB") No. FB-00357; LED Lights

You have requested a responsiveness determination based upon the bid submittals of seven of the nine bidders. Specifically, you inquired as to whether the submittals at issue are responsive based on the respective bidders' Buy America affidavits. Specifically, you noted that:

OnPeak Energy, LLC	Bidder did not submit a signed Buy America certificate
OEO Energy Solutions LLC	Bidder signed and checked non-compliance paragraph of the Buy America certificate
Graybar Electric	Bidder did not submit a signed Buy America certificate
World Electric Supply	Bidder did not submit a signed Buy America certificate
South Dade Electrical Supply	Bidder did not submit a signed Buy America certificate
Torres Electrical Supply Co.	Bidder submitted a Buy America certificate signed by representative of the manufacturer of the product bidder offered
LED are Us	Bidder submitted a Buy America certificate signed by representative of the manufacturer of the product bidder offered

After a review of the relevant bid specifications and the bid submittals provided by the above-referenced bidders, it is my determination that the Buy America certificates submitted by the above-referenced bidders render their bids non-responsive to the above-referenced ITB, with the exception of OED Energy Solutions LLC, which bid is deemed responsive but, for the reasons discussed below, would not at this time, and without further action, be eligible for award.

## FACTS

This determination relies on the information provided in your e-mails dated April 21, 2016 as well as including relevant portions of bid solicitation materials and the above-referenced bid submittals.<sup>1</sup> For ease of discussion, the bidders are grouped as follows: (A) Bidder did not submit a Buy America certificate with its bid (OnPeak Energy, LLC, Graybar Electric, World Electric Supply, and South Dade Electrical Supply); (B) Bidder submitted a Buy America

<sup>1</sup> This memorandum examines only the Buy America issue referenced, and is without prejudice as to any other responsiveness issues that may exist.

certificate and checked non-compliance (OEO Energy Solutions LLC); or (C) Bidder submitted a Buy America certificate signed by the representative of the manufacturer of the product offered, not by the bidder (Torres Electrical Supply Co., and LED are Us).

The bid solicitation materials contain a page entitled Exhibit FED-BY2 "Buy America Certificate of Compliance or Non-Compliance." Further, that page contains the notice that "[i]f Bidder does not submit this signed certification with the bid, submits the wrong certification of compliance, or certifies both compliance and non-compliance, that bid is non-responsive and cannot be considered." (Emphasis and underline in original). See also Solicitation FB-00357 at page 1 of 6, section 2.3.2 ("Bidders shall complete, sign, and upload all certificates found in Appendix A. Except for the Buy America Certificate of Compliance in Appendix A, County reserves the right to request any certificates during evaluation of bids") (emphasis in original).

#### DISCUSSION

Buy America requirements are non-waivable and constitute a material assurance to the County that the contract will be performed in accord with applicable federal laws and procedures governing the County as grantee of federal funds. See, e.g., 49 CFR § 661.13(a) ("grantee shall adhere to the Buy America clause set forth in its grant contract with FTA"). A variance is material if (1) effect of the variance would be to deprive the County of the assurance that the contract would be entered into, performed and guaranteed according to its specific requirements; and (2) whether it would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders. See Robinson Elec. Co. v. Dade Cnty., 417 So.2d 1032, 1034 (Fla. 3d DCA 1982). Here, the bid documents and relevant federal law and regulations require strict compliance with the Buy America requirements as outlined in the bid solicitation documents. A bidder's failure to comply with the requirements or the relevant law or regulations would therefore render its bid non-responsive.

The first category of bidders, Group "A" above, failed to submit a signed Buy America certificate. This is a violation of the solicitation instructions on its face which require submission of the Buy America certificate with the bid. Further, federal regulations governing Buy America require submission with the bid documents. See 49 CFR § 661.13(b) (requiring submission of a Buy America certificate as a condition of responsiveness). Accordingly, the failure failed to include a Buy America certification with a bid submittal renders those bidders in Group "A" non-responsive.

The second category of bidder, Group "B" above, submitted a Buy America certification and checked the box indicating "Certificate of Non-Compliance with Buy America Requirements." A responsiveness determination evaluates the bid at the time of submittal. At this stage of the procurement, the submission of such a certification of non-compliance, and nothing more, complies with Buy America requirements outlined in the federal statutes and regulations referenced on that certificate. Specifically, the bidder indicated with its bid submittal on April 15, 2016, that it was non-compliant with Buy America but that it may qualify for a

statutory exception. The bidder "who seeks to establish grounds for an exception must seek the exception, in a timely manner, through the grantee." 49 CFR § 661.9(b).<sup>2</sup>

Finally, the third category of bidder, Group "C" above, submitted Buy America certificates with their respective bids but failed to sign them. Instead, these bidders had their proposed manufacturers sign the certification. The lack of a signature of the bidder on its Buy America Certification renders its bid nonresponsive because the signature of a party other than the bidder cannot bind the bidder to this material requirement required at the time of bid submittal.

Please contact me if you have any questions or additional information that you would like for me to consider.

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<sup>2</sup> At this time, I have been provided with no information that this bidder has pursued a waiver or sought to establish an exception to the Buy America requirements.



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** December 6, 2016

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No. 8(F)(5)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_\_, 3/5's \_\_\_\_\_, unanimous \_\_\_\_\_) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor

Agenda Item No. 8(F)(5)  
12-6-16

Veto \_\_\_\_\_

Override \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING AWARD OF CONTRACT NO. FB-00357 FOR PURCHASE OF LED LIGHTS FOR THE DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS IN A TOTAL AMOUNT NOT TO EXCEED \$2,325,000.00; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO GIVE NOTICE OF THIS AWARD, ISSUE THE APPROPRIATE PURCHASE ORDER TO GIVE EFFECT TO SAME AND EXERCISE ALL PROVISIONS OF THE CONTRACT PURSUANT TO SECTION 2-8.1 OF THE CODE AND IMPLEMENTING ORDER 3-38

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board approves award of Contract No. FB-00357 for purchase of LED lights for the Department of Transportation and Public Works as set forth in the incorporated memorandum in a total amount not to exceed \$2,325,000.00, and authorizes the County Mayor or County Mayor's designee to give notice of this award, issue the appropriate purchase order to give effect to same and exercise all provisions of the contract pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38. A copy of the contract is on file with and available upon request from the Internal Services Department, Procurement Management Services Division.

The foregoing resolution was offered by Commissioner who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman	
Esteban L. Bovo, Jr., Vice Chairman	
Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Joe A. Martinez	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

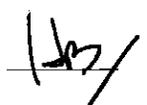
The Chairperson thereupon declared the resolution duly passed and adopted this 6<sup>th</sup> day of December, 2016. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.  
Hugo Benitez



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## Metrorail Stations Subject to LED Light Upgrade

	STATION	ADDRESS
1	Hialeah	125 E 21 Street
2	Coconut Grove	2780 SW 27 Avenue
3	Historic Overtown/Lyric Theatre	100 NW 6 Street
4	Brownsville	5200 NW 27 Avenue
5	Northside	3150 NW 79 Street
6	Vizcaya	3201 SW First Avenue
7	Dadeland North	8300 South Dixie Highway
8	Dr. Martin Luther King, Jr. Plaza	6205 NW 27 Avenue
9	South Miami	5949 Sunset Drive
10	University	5400 Ponce de Leon
11	Culmer	701 NW 11 Street
12	Civic Center	1501 NW 12 Avenue
13	Allapattah	3501 NW 12 Avenue
14	Santa Clara	2050 NW 12 Avenue
15	Tri-Rail	1125 E 25 Street



## Memorandum

**To:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**From:** Charles Scurr, Executive Director *Charles Scurr*

**Date:** November 16, 2016

**Re: CITT AGENDA ITEM 5E:**  
RESOLUTION BY THE CITIZENS' INDEPENDENT TRANSPORTATION TRUST (CITT) RECOMMENDING THE BOARD OF COUNTY COMMISSIONERS (BCC) APPROVE AWARD OF CONTRACT NO. FB-00357 FOR PURCHASE OF LED LIGHTS FOR THE DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS IN A TOTAL AMOUNT NOT TO EXCEED **\$2,325,000.00**; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO GIVE NOTICE OF THIS AWARD, ISSUE THE APPROPRIATE PURCHASE ORDER TO GIVE EFFECT TO SAME AND EXERCISE ALL PROVISIONS OF THE CONTRACT PURSUANT TO SECTION 2-8.1 OF THE CODE AND IMPLEMENTING ORDER 3-38 (DTPW – BCC Legislative File No. 162378)

On November 16, 2016, the CITT voted (10-0) to forward a favorable recommendation to the Board of County Commissioners (BCC) for the approval of the above referenced item, CITT Resolution No. 16-062. The vote was as follows:

Hon. Anna E. Lightfoot-Ward, Ph.D, Chairperson – Absent  
Glenn J. Downing, CFP®, 1<sup>st</sup> Vice Chairperson – Aye  
Joseph Curbelo, 2<sup>nd</sup> Vice Chairperson – Aye

Alfred Holzman – Aye  
Peter L. Forrest – Absent  
Prakash Kumar – Aye  
Alicia Menardy, Esq – Absent  
Paul J. Schwiep, Esq. – Aye  
L. Elijah Stiers, Esq. – Aye

Oscar Braynon – Aye  
Ricardo E. Gonzalez – Aye  
Jonathan Martinez – Aye  
Miles E. Moss, P.E. – Aye  
Marilyn Smith – Absent  
Hon. Linda Zilber – Absent

cc: Alina Hudak, Deputy Mayor  
Bruce Libhaber, Assistant County Attorney