



July 22, 2014

TO: City Council

FROM: James A. Dickens, Assistant City Attorney
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SUBJECT: Authority of the City to Use Federal Funds from the FTA to Enter Into a Sole-Source Contract With Johnson Controls, Inc. to Install Devices On Its Proprietary Systems to Correct Fire Hazards Identified in the City's Risk Evaluation Report

This Memorandum will show that the City can use federal funds from the Federal Transit Administration ("FTA") to enter into a sole-source contract with Johnson Controls, Inc. to install automatic shut-off devices on Johnson Controls' proprietary systems located in the Greensboro Transit Authority's ("GTA") Maintenance, Operations, and Administrative Offices Facility located at 223 West Meadowview Road to correct the fire hazards identified in the City's Risk Evaluation Report from its insurance carrier, FM Global.

FACTS

The City completed construction of the federally and state funded 18.5 million dollar GTA Maintenance, Operations, and Administrative Offices Facility in January 2012. The City received the federal funds from the Federal Transit Administration ("FTA"). The City sought to obtain property insurance on the building, and as part of this process, the insurance company, FM Global, conducted a loss prevention site visit at the building. FM Global's field engineer visited the facility on October 15, 2012 and submitted an "All in One First Baseline Risk Evaluation Report" on November 20, 2012. As part of this report, FM Global identified two fire hazards that if not corrected would affect the City's liability coverage for the building in the event of a fire. These two fire hazards require the City to add automatic shut-off devices to the facility's ignitable liquid pumps. These existing pumps and systems are manufactured by Johnson Controls, Inc., and they are proprietary systems. Specifically, the required automatic shut-off devices will not be compatible with the building's fire alarm and liquid pump systems without Johnson Controls' specific proprietary software code that is in its liquid pump systems.

ANALYSIS

The FTA has issued guidelines in FTA Circular 4220.1F that permits the City to enter into sole source contracts if the vendor has a unique or innovative concept or capability that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted and not available from another source. FTA Circular 4220.1F also allows the City to enter into sole source contracts in the case of a follow-on or change order contract for the continued development or

production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition. Finally, FTA Circular 4220.1F allows the City to enter into sole source contracts when patent or data rights restrictions preclude competition.

The existing fuel pumps are manufactured by Johnson Controls, Inc., and the software code that operate these pumps are proprietary. Any device that will automatically shut-off these pumps must be compatible with the software codes that operate the pumps, and since these systems are proprietary, only devices manufactured by Johnson Controls, Inc. can be guaranteed to work. Additionally, this can be considered a change order contract to continue the production of these highly specialized fuel-pumps, which can be another reason to procure these devices directly from Johnson Controls, Inc. Finally, the proprietary nature of the software code that operates these fuel-pumps contains patent and/or data rights that preclude competition.

Therefore, the City Council has authority under FTA Circular 4220.1F to acquire and install these automatic shut-off devices from Johnson Controls, Inc. in a sole-source procurement.

JAD/

cc: Jim Westmoreland, City Manager
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