

Ordinance No. 829-10

Mayor Jackson

AN EMERGENCY ORDINANCE

Authorizing the purchase by requirement contract of LED streetlights, LED fluorescent tube replacements, LED bulbs, and LED traffic lights as specified for a term of up to 10 years for the various departments of City government.

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Director of Finance is authorized to make a written requirement contract under the Charter and the Codified Ordinances of Cleveland, Ohio, 1976, for the requirements for a term of up to 10 years for the various departments of City government of the necessary items of LED streetlights, LED fluorescent tube replacements, LED bulbs, and LED traffic lights ("LED products") that 1) comply with UL and LM 79 testing prior to being furnished to the City; 2) comply with LM 80 testing within 24 months after the first LED products are furnished to the City; 3) are lead-free and meet the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations ("RoHS"); 4) are designed to fit the City's existing fixtures without modification other than wiring reconfiguration, with the exception of LED street lights which shall be designed to fit the City's existing street light arms without modification of the arms or modification of the maintenance processes and shall in other respects meet the City's street light specifications; 5) are, starting no later than 18 months after execution of the contract, assembled and distributed from the contractor's facility located in Cleveland and used to supply the LED products to the City under the contract throughout the term; 6) are, starting no later than 36 months after execution of the contract, manufactured at one or more facilities located and maintained in Cleveland throughout the remainder of the contract term; 7) are assembled, distributed and manufactured at one or more of its Cleveland facilities that (a) includes, by no later than 60 months after execution of the contract, a research and development facility which is maintained in Cleveland throughout the remainder of the

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contract term, (b) employs within 60 months after execution of the contract and maintains in employment for the remainder of the contract term a minimum of 350 new jobs, and (c) employs Cleveland residents as at least 20% of the total workforce; and 8) are warranted for full replacement if the furnished products fail at any time during the term to meet the contract specifications, to be purchased by the Commissioner of Purchases and Supplies on a unit basis for the various departments of City government.

The contract shall provide that the contractor shall 1) comply with the Cleveland Fair Employment Law, Chapter 189 of the Codified Ordinances of Cleveland, Ohio, 1976, as a "Covered Employer" as that term is defined in the law; 2) comply with the CSB, MBE, and FBE subcontractor participation goals established by the City's Office of Equal Opportunity ("OEO") under Chapter 187 of the Codified Ordinances of Cleveland, Ohio, 1976, for like contracts in any contract the contractor enters into (a) for the construction, rehabilitation, improvement, alteration, conversion, extension, demolition or repair of the contractor's Cleveland facilities, and (b) with suppliers and subcontractors employed by the contractor in the performance of its obligations to supply LED products; 3) require its contractors under 2(a) of this paragraph to employ City of Cleveland residents to perform 20% of the total "Construction Worker Hours" as that term is defined in Section 188.01 of the Codified Ordinances of Cleveland, Ohio, 1976; 4) use, to the extent practicable, "Local Producers," "Local-Food Purchasers" and "Local Sustainable Businesses" as defined in Section 187A.01 of the Codified Ordinances of Cleveland, Ohio, 1976, in contracts for goods and services for contractor's Cleveland facilities, increase the number of Local Producers, Local-Food Purchasers and Local Sustainable Businesses in proportion to its decrease in use of component parts obtained outside Cleveland, and purchase a minimum of 25% of component parts from Local Producers meeting the contractor's specifications within 5 years after the contract

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execution date ; 5) enter into a Workforce Development Agreement under which, among other things, the contractor shall notify the City of job openings at contractor's Cleveland facilities, request referrals of potential job candidates for the job openings from the City's workforce agencies, give first consideration to hiring candidates referred by those agencies, and provide reasonable feedback regarding the status and results of the referrals; and 6) pay all royalties, license, or other intellectual property fees required in connection with its products and processes and shall hold and save the City and its officers, agents, servants, and employees harmless from liability of any nature or kind, including costs and expenses, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including but not limited to the use by the City, and defend at its own cost all suits or claims for infringement of any patent, license, or other intellectual property right.

The contract shall further provide that 1) the term during which the City is obligated to purchase LED products shall begin upon the contractor filling the City's first order with products assembled and distributed from its Cleveland facilities; 2) the City may provide upgraded requirements for LED products as required to meet technological advancements during the term of the contract; 3) so long as the contractor's unit price for any LED product is at or below that of other providers for a like product, the City shall purchase that LED product from the contractor during the term of the contract; 4) if any LED product is available at a lower cost from another firm and the contractor fails to meet that lower cost, the City shall have the right to purchase the lower-priced product(s) from another supplier; and 5) if the contractor cannot meet the quantity or quality requirements of the City for any LED product, the City shall have the right to purchase that LED product from another supplier.

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The contract shall further provide that 1) the contractor agrees to develop LED products that meet Energy Star Standards as those standards may be promulgated by the U.S. government from time to time during the contract term and to actively work toward achieving an Energy Star Rating for those products; 2) if the contractor achieves an Energy Star Rating for any of its LED products, the City shall have the right to purchase that product from the contractor at or below the price of another like LED product with an Energy Star Rating; 3) if the contractor offers an Energy Star-rated LED product but a like Energy Star-rated LED product is available from another supplier at a lower price, and the contractor does not at least meet the lower price, the City may purchase that Energy Star-rated product from the other supplier; and 4) if the City determines that any Energy Star Rated LED product is available for purchase in the marketplace and the contractor does not have a like Energy Star-rated LED product, the City shall have the right to purchase the Energy Star-rated LED product(s) from another supplier.

Notwithstanding any Codified Ordinance to the contrary, 1) each bid shall be accompanied by a bid bond signed by a surety company authorized to do business in Ohio, or by a cashier's check or certified check on a solvent bank, which bond or check shall be five percent (5%) of the amount of the bid for the estimated purchases during the first term year of the contract and shall be given as security that if its bid is accepted, the bidder will enter into a contract and properly secure its performance; and 2) upon execution of the contract, the contractor shall furnish a performance bond or other irrevocable security acceptable to the Director of Law in an amount equal to at least twenty-five percent (25%) of the bid amount for the City's estimated purchases during the first term year of the contract and shall maintain a performance bond or security in that amount in effect during each term year of the contract.

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Section 2. That the cost of the contract shall be charged against the proper appropriation accounts and the Director of Finance shall certify the amount of the initial purchase, which purchase, together with all later purchases, shall be made on order of the Commissioner of Purchases and Supplies under a requisition against the contract or contracts certified by the Director of Finance.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

**RH:nl
6-7-10**

For: Mayor Jackson

**Directors of Economic Development, Public Utilities, Office of Equal Opportunity, Finance, Law;
Committees on Community and Economic Development, Public Utilities, Employment, Affirmative Action, and Training, Finance.**

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READ FIRST TIME
and referred to Directors of Economic Development, Public Utilities, Office of Equal Opportunity, Finance, Law;
REPORTS
Committees on Community and Economic Development, Public Utilities, Employment, Affirmative Action, and Training, Finance.
by the council **June 7, 2010.**

CITY CLERK

by the council
READ SECOND TIME

CITY CLERK

by the council
READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

