

Justification for Other than Full and Open Competition

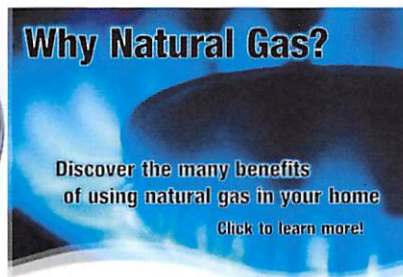


Public Utility – Electric, Natural Gas, Water, and Waste Water Service
Federal Correctional Institution Memphis
Memphis, Tennessee

Contractor: City of Memphis- Memphis, Light, Gas, and Water (MLGW)

Period of Coverage: 02/01/2023 through 02/28/2023

Estimated Amount: \$180,000.00



JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION **ELECTRICITY, NATURAL GAS, WATER, AND SEWER UTILITY SERVICE FCI MEMPHIS**

Pursuant to Federal Acquisition Regulation (FAR) Part 6.302-1(a) and 6.302-1(b)(3), and the Bureau of Prisons Acquisition Policy (BPAP) Part 6.304(c), the Federal Bureau of Prisons (FBOP) has determined that the procurement of electricity, natural gas, water, and sewer utility service for the Federal Correctional Institution (FCI) Memphis and Federal Prison Camp (FPC) located within city limits of Memphis, Tennessee, meets the criteria established for other than full and open competition. It is further determined that only one responsible source and no other supplies and /or services will satisfy agency requirements. This limitation on competition is justified as supported by the following information in accordance with FAR Part 6.303-2:

(1) Identification of the Agency:

U.S. Department of Justice
Federal Bureau Of Prisons
FCI Memphis
1101 John A. Denie Road
Memphis, TN 38134-7690

(2) Nature and/or Description of Action Being Approved:

This justification for other than full and open competition is for acquisition of electricity, natural gas, water, and sewer utility services provided to the FCI Memphis located in Memphis, TN, from the sole provider of such services in the Memphis area. FCI Memphis has a present and continuing requirement for electricity, natural gas, water and sewer utility service for the proper operation of the facility.

(3) Description of Supplies or Services Required to Meet the Agency Needs:

Memphis Light, Gas, and Water (hereinafter referred to as "MLGW") shall provide to the government facility at FCI Memphis, electricity, natural gas, water, and sewer services in a manner and form that is consistent with all applicable laws, rules, codes, industry standards, permits, and regulations, promulgated by any and all governmental authorities having jurisdiction. MLGW shall provide services on an un-interruptible daily basis 365 days per year. MLGW will be responsible to maintain and/or repair all associated pipelines and equipment, including associated costs for such repair, up to the delivery point or meter of FCI Memphis. MLGW will be responsible to ensure that the pipelines and associated equipment, utilized to provide electricity, natural gas, water and wastewater services will be maintained and operated in compliance with all rules and regulations set by the Tennessee Code, in accordance with all Federal, State, County, and local government for electric, natural gas and safe and sanitary water and wastewater service. Pursuant to FAR Part 41.202, MLGW continues to provide the "entire electricity, natural gas, water, and sewer utility service" (i.e., production, distribution system operation and maintenance, treatment, metering, billing, etc.).

MLGW shall provide electricity, natural gas, water, and sewer utility services for a 1-month period from February 1-28, 2023, subject to funds availability (FAR Clause 52.232-1 8). The total estimated quarterly amount for electricity, natural gas, water, and sewer utility service is \$180,000.00.

(4) An Identification of the Statutory Authority Permitting Other than Full and Open Competition:

This justification to award as a sole source is prepared pursuant to the exception to full and open competition requirements in accordance with the statutory authority for these services that is found at 41 USC § 3304(a)(1), when the supplies or services required by the agency are available from only one responsible source. The application which permits use of the cited statutory authority are stated at FAR Part 6.302-1(b)(3), "When Acquiring Utility Services (see FAR 41.101), and circumstances may dictate that only one supplier can furnish the service (see FAR 41.202). When a public utility supplier refuses to execute a tendered contract, the agency may proceed with the acquisition and pay for utility service under provisions of 31 USC § 1501(a)(8). Analysis of the market indicates that MLGW has proprietary rights up to the meter at FCI Memphis. In order for another provider to be capable of providing the service, significant capital improvements would be needed. The Bureau would be

required to pay for capital improvements, would not recover the costs of duplication of services, connection fees, and infrastructure installation costs through competition. The current requirement is for follow-on services and does not include funding for capital improvements. In accordance with FAR 9.102(b), a contracting officer is not required to make a responsibility determination when awarding to a Foreign, State, or local government.

(5) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited:

MLGW is the sole provider and the only agent authorized by rules and regulations to provide electricity, natural gas, water, and sewer service in the Memphis area. Having a single supplier of electricity, natural gas, water, and sewer service for this area is the most efficient method of providing electricity, natural gas, water, and collecting and treating sewage.

(6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable including whether or not a notice was or will be publicized as required by FAR subpart 5.2:

As stated in FAR Part 5.202(a)(5), exceptions to transmitting a notice to the Government Point of Entry (GPE), the contracting officer need not submit a notice when "the proposed contract action is for utility services other than telecommunications services and only one source is available."

(7) A determination by the contracting officer that the anticipated cost to the government will be fair and reasonable.

The estimated average cost, which was based on invoice history, for electricity, natural gas, water, and sewer utility service is \$146,500.00 with a total estimated usage for a three-month period of \$439,500.00. The contracting officer has determined the estimated price for fiscal year 2023 is fair and reasonable based on the comparison of the proposed price with prices found reasonable on previous purchases. The services are regulated by the Memphis City Council. Pursuant to FAR 15.402, Pricing Policy, the Contracting Officer's preliminary determination is that the anticipated costs appear to be fair and reasonable. The establishment of the current supply and delivery of services began when the original service connections were installed.

(8) A description of the market research conducted:

This documentation is in accordance with FAR part 10, which describes the policies and procedures for conducting market research in a process of finding viable sources of goods, and services to meet government requirements and to find the most suitable approach to acquiring, distributing, and supporting supplies and services. The amount of market research will vary depending on such factors as urgency, estimated dollar value, complexity, and past experience. Market research involves obtaining information specific to the item being acquired. This report is submitted in support of an acquisition with an estimated value in excess of the simplified acquisition threshold. Below are the findings of the market research for the above referenced requirement:

- I. Background: A review of obligations reveals the following – Federal Correctional Institution of Memphis (FCI Memphis) has a current and continuing requirement for the purchase of electricity, natural gas, water, and sewer utility service for the continuation of normal operations of the institution in order to provide a safe, and secure environment to confine offenders and protect the general public.
 1. Title: Electricity, Natural Gas, Water, Sewer Utility Service – FCI Memphis
 2. Product/Service Code: S111 Utilities/Gas, S112 Utilities/Electricity, S114 Water Service, S110 Other Utilities
 3. North American Industry Classification System (NAICS): **221122** Electric Power Distribution This U.S. industry comprises electric power establishments primarily engaged in either (1) operating electric power distribution systems (i.e., consisting of lines, poles, meters, and wiring) or (2) operating as electric power brokers or agents that arrange the sale of electricity via power distribution systems operated by others. **221210** Natural Gas Distribution This industry comprises: (1) establishments primarily engaged in operating gas distribution systems (e.g., mains, meters); (2) establishments known as gas marketers that buy gas from the well and sell it to a distribution system; (3) establishments known as gas brokers or agents

that arrange the sale of gas over gas distribution systems operated by others; and (4) establishments primarily engaged in transmitting and distributing gas to final consumers. **221310** Water Supply and Irrigation Systems -This industry comprises establishments primarily engaged in operating water treatment plants and/or operating water supply systems. The water supply system may include pumping stations, aqueducts, and/or distribution mains. The water may be used for drinking, irrigation, or other uses. **221320** Sewage Treatment Facilities This industry comprises establishments primarily engaged in operating sewer systems or sewage treatment facilities that collect, treat, and dispose of waste.

4. Standard Industrial Classification (SIC) Code: 4911 Electrical Services, 4924 Gas Transmission and Distribution, 4941 Water Supply, and 4952 Sewage Services.

- II. Delivery / Performance: Purchase order to provide electricity, natural gas, water, and sewer utility services from February 1-28, 2023. MLGW shall provide to the government facility at FCI Memphis, electricity, natural gas, water, and sewer utility services in a manner and form that is consistent with all applicable laws, rules, codes, industry standards, permits, and regulations, promulgated by any and all governmental authorities having jurisdiction. MLGW shall provide services on an un-interruptible daily basis 365 days per year. MLGW will be responsible to maintain and /or repair all associated electrical, natural gas, water, and sewer lines and equipment, including associated costs for such repair, from the delivery point or meter of FCI Memphis. Pursuant to FAR Part 41.202 MLGW continues to provide the “entire electricity, natural gas, water, and sewer utility service” (i.e. collection, treatment, testing, system operation, and maintenance, metering, billing, etc.)

- III. Potential Sources: Memphis Light, Gas, and Water 245 South Main Street, Memphis, TN 38101
- IV. Market Analysis:

1. The results of market research have determined that the Government’s needs can be met by an item that is of a type customarily available in the commercial market place and is used by the general public.
2. The following methods were utilized to conduct market research:
 - Searched Database – Found no local area or single point of contact available
 - Searched Database – GSA, VA, Department of Treasury, DOD, and DHS are all issuing orders to City of Memphis (MLGW).
 - Searched previous purchases of similar acquisitions. MLGW is the current provider at FCI Memphis. This is a continuation of services.
3. Results: Result of the market research were as follows: Only one source could be found. A justification for other than full and open competition is provided for approval.

- V. Recommendation:

1. It is the Contracting Officer’s determination there is a source available that is capable of providing the required services. The requirement will be awarded to MLGW as a single award of a firm-fixed price requirements type electricity, natural gas, water and sewer utility purchase order utilizing FAR Part 6, 12, 13, and 41. A performance-based acquisition (PBA) method will not be used for this procurement as it is determined not applicable. A PBA relies on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institutes innovative and cost-effective methods of performing the work.
2. MLGW is the sole provider of electricity, natural gas, water, and sewer utility service in the FCI Memphis service area. The Memphis City Council is the governing body that approves all rates with the responsibility of electricity, natural gas, water, and sewer services for the locale in which FCI Memphis resides. I applied personal knowledge, interaction with knowledgeable individuals in local and Federal Government regarding market capabilities to meet the requirements, and research of generally accessible literature available on-line were the techniques used in researching this procurement for a supply/service of this type. MLGW is other than small business.
3. This requirement will not be posted on the Governmentwide point of entry to promote competition, broaden industry participation, and assist small business concerns in obtaining contracts for FCI Memphis. This requirement meets the exemption at FAR 5.202(a)(5) the

proposed contract action is for utility services other than telecommunication services and only one source is available.

4. No other company has presented itself with the capabilities nor the infrastructure to run electricity, natural gas, water, and sewer lines to the current connection site. No other sources have been located that are currently capable or that could acquire the capability of meeting the Bureau's requirement. The Bureau does not have the state or local approval or the resources to provide funding for another company to install new electricity, natural gas, water and sewer system at the institution, other pipelines are not available, and no other contractor can provide electricity, natural gas, water and sewer services through MLGW's pipelines.
5. I also make the determination that this procurement action "Not" be set-a-side for small business.

VI. Comments: The Government contemplates the single award of a firm fixed price requirements type electricity, natural gas, water and sewer utility service purchase order resulting from this requirement. The conclusion from this market research will be incorporated into the document for providing electricity, natural gas, and water and sewer services for FCI Memphis.

(9) **Any other facts supporting the use of other than full and open competition:**

None.

(10) **A listing of the sources, if any, that expressed, in writing, an interest in the acquisition:**

A sources sought announcement was published to the government wide point of entry to May 28, 2021. There were no sources that expressed an interest in this acquisition.

(11) **A statement of actions, if any, the agency may take to remove or overcome barriers to competition before any subsequent acquisition for the supplies or services required:**

Contracting and requirement staff continues to conduct appropriate market research to determine if sources capable of satisfying the agency's requirement exist and to overcome competition barriers. Deregulation laws are presently nonexistent, and no alternative source of service is currently available. FCI Memphis is a consumer of services from the public utility. If another potential source emerges, the agency will assess whether competition for future requirements is feasible.

(12) **Contracting Officer's Certification**

I hereby certify that this request for Justification and Approval of Other Than Full and Open Competition is made in good faith, that the supporting data and information is accurate and complete to the best of my knowledge and belief, and that I would not be making this request if it were feasible to fully compete this requirement. I further certify that this request is not the result of lack of planning or a desire to expend funds while those funds are still available.



Christine Lindon, Contracting Specialist
Mid-Atlantic Regional Office

03/27/23

Date

I certify that the supporting data provided by the technical and requirements personnel which forms the basis for this justification is complete and accurate to the best of my knowledge and belief.



Raymond Dixon, Acting Facilities Manager
FCI Memphis

3/27/23
Date