



Staff Summary Report

Council Meeting Date: 08-14-2008

Agenda Item Number: _____

SUBJECT: Request to award a sole source contract to Khemia Software for the Laboratory Information Management System software upgrade for the Water Utilities Department.

DOCUMENT NAME: 20080814fst13 **PURCHASES (1004-01)**

SUPPORTING DOCS: Yes

COMMENTS: (Sole Source #WUD09-035-01) Total cost for this contract shall not exceed \$90,000 during the contract period.

PREPARED BY: Ted Stallings, CPPB, Procurement Officer, 480-350-8617

REVIEWED BY: Michael Greene, CPM, Central Services Administrator, 480-350-8516
Don Hawkes, Water Utilities Manager, 480-350-2631
Miyoung Kim, Planning and Research Analyst, 480-350-2631
Gene Obis, IT Manager, 480-350-8353
Brigette Lesurf, Sr. Management Assistant, 480-350-2920

**LEGAL REVIEW AS
TO CONTRACT FORM**

ONLY: Jenae Naumann, Assistant City Attorney, 480-350-8402

FISCAL NOTE: Sufficient funds have been appropriated in 3027-6675.

RECOMMENDATION: Award the contract.

ADDITIONAL INFO: The City has used the Khemia Laboratory Information Management System since 1998. Khemia Software is the sole provider of software maintenance and upgrades for the City's Laboratory Information Management System (LIMS). The Laboratory Information Management System is a computer based application which collects, compiles, stores, archives, and produces reports on analytical tests used to demonstrate regulatory compliance with Arizona Department of Health Services, the Federal Safe Drinking Water Act and Clean Water Act, as well as with regulations set forth by the State of Arizona and Maricopa County.

Memorandum

TO: Michael Greene, CPM
Central Services Administrator

FROM: Don Hawkes
Name of Department Director (Printed)

June 18, 2008
Date

Water Utilities Department
Department Name

SUBJECT: Sole Source Determination

As Director of the City Department for which the item(s) will be purchased, I have made a determination that only one (1) reasonable and practicable source exists to supply the required material. As such, I am authorizing the City Procurement Office to work with my Department to negotiate an acceptable contract with:

Khemia Software, Inc
Name of Supplier

Description of Item(s) to be purchased:

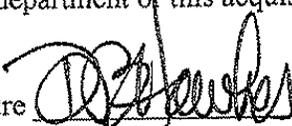
Upgrade to the current **Laboratory Information Management Systems (LIMS)**. See attached memo for more information.

Estimated value of purchase: \$ 74,700

My department contact for this purchase is Mike Golden at Ext. 2674.

My Sole Source determination is based upon extensive research conducted by my department as to possible suppliers for this need and a written justification is attached for City Procurement Office records.

As related to this purchase, there are no conflicts of interest, legal, ethical or preference issues which would compromise my department of this acquisition.

Department Director's Signature  Date 6/19/08


Central Services Administrator


Procurement Officer

City Procurement Ordinance 97.55, Sec. 26A-12 identifies the basis for a sole source procurement as follows:

“A purchase may be made or contract awarded by the procurement office without competition when the using department manager determines in writing, after conducting a good faith review of available sources, that there is only one reasonable and practicable source for the required material or service. The using department requesting the sole source procurement shall provide written evidence to support a sole source determination. The procurement officer will participate with the using department in the conduct of negotiations, as appropriate, to price, delivery and terms. The procurement officer may require the submission of cost or pricing data in connection with a purchase or award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A record of sole source procurements shall be maintained as a public record.”

Memorandum

Environmental Services Division



DATE: June 11, 2008

TO: Don Hawkes, Water Utilities Manager

CC: Oliver Ncube, Deputy Water Utilities Manager
David McNeil, Environmental Services Administrator
Tara Ford, Laboratory Supervisor
Alan Tanana, Business Analyst
Miyoung Kim, Planning & Research Analyst

FROM: Michael Golden, Environmental Compliance Supervisor

SUBJECT: Sole Source Request – LIMS Software

The Water Quality Laboratory is requesting an upgrade of the existing laboratory information management system (LIMS). The original software, installed in 1997, was developed by Khemia Software, using Microsoft Access 97 data base as the data structure. One software upgrade was purchased in September of 2006.

The upgraded version of LIMS is written in Structured Query Language (SQL), which will allow stored procedures to be compiled and executed faster as well as provide a much more stable/secure platform for the analytical data.

Upgrading to the SQL version of LIMS, an interface with other database management systems (DBMS) will reduce the need for non-laboratory staff from having to obtain a license. The proposal is to use a DBMS called Flashpoint, a web portal which provides unlimited/unlicensed access with security. Laboratory staff will have the capability to provide electronically deliverable data (EDD) to all of its clients as well as the capability to receive (import) data from contract laboratories, eliminating the need for manual entry.

Several recently purchased analytical instruments are capable of directly interfacing with the upgraded version of LIMS, through the network. As other instruments are purchased and upgraded, this feature will also be available. This will eliminate the current practice of reading the analytical data from the instrument computers, entering the analytical data into an excel spreadsheet on a network computer, and then importing this data into LIMS.

In addition to time savings to the laboratory staff, EDD will eliminate data entry currently being completed by Environmental Compliance Inspectors and Environmental Quality specialists in order to determine regulatory compliance for

the Kyrene Water Reclamation Plant, the pretreatment program, stormwater, and Safe Drinking Water Act reporting requirements.

As the developer of the LIMS software, The Khemia Company is the only source available to make upgrades to the proprietary software. As the developer of the software they will provide staff with necessary training required to operate, maintain, and archive data which is required to demonstrate regulatory compliance with Arizona Department of Health Services, the Federal Safe Drinking Water Act, and Clean Water Act, as well as with regulations set forth by the State of Arizona and Maricopa County.

Khemia Software, Inc.

Purchase Agreement

The Khemia Software, Inc, a Michigan Corporation (hereafter referred to as "Seller") and City of Tempe with its principal place of business at 6600 South Price Road, Tempe, Arizona 85283 (hereafter referred to as "Purchaser") do hereby enter into this Purchase Agreement ("Agreement") pursuant to the terms and conditions contained herein. This Agreement supercedes any terms and conditions of any documents dated prior to the date of this Agreement, except as incorporated herein.

The Seller hereby grants to Purchaser a non-exclusive, limited license to use the Omega Laboratory Information Management System (**Omega 11**), along with any Add-on Packages, and customizations to be made and incorporated therein as specified in the Quotation. The Omega software along with any Reporting Packages, customizations made to the Omega product and all documentation included with the software shall hereafter be referred to as the "Software".

Except as otherwise provided for herein, this Agreement and the license shall not be transferrable, assignable, salable, and shall not be subject to any levy, execution, security, consignment, creditors and/or bankruptcy claim. Any violation or attempted violation hereof shall cause the Agreement and the license to be immediately and automatically terminated. Subject to the same, the license given to Purchaser shall be transferable to any new owner of Purchaser or any successor of Purchaser or its new owner. In addition, Seller agrees to provide certain services related to the installation, training and support of the Software as hereby specified.

The Purchaser hereby agrees to purchase the Software and make payments to Seller in the amounts and at the times specified herein. Time is of the essence and any payments not made when due and payable shall be subject to late fees and/or other penalties specified herein.

Section I - The Software:

The Software is copyrighted by Seller and Purchaser agrees and understands that no title to the Software is being transferred to Purchaser. This Agreement includes a Single Site License that allows Purchaser to utilize the Software and shall grant the Purchaser five (5) concurrent user licenses on a single Local Area Network at the single site location plus any additional concurrent user licenses specified in the Quotation. This license does not allow Purchaser to use the Software at other locations owned by Purchaser unless additional site licenses are purchased.

The Software shall be provided in a compiled format that is fully functional. The Seller warrants the Software to perform as represented to Purchaser in writing herein and in accordance to specifications published by Seller. The Purchaser acknowledges that it must provide additional software and hardware in order to run the Software provided by Seller and that Seller assumes no liability for the purchase, installation and/or functionality of said additional software and/or hardware.

The Seller agrees to address software defects (a/k/a "software bugs") found in the Software during the Warranty Period and while the Software is under a continuing maintenance agreement. If Purchaser notifies Seller of a software defect Seller shall promptly correct such defect and provide Purchaser with such correction within a reasonable time. The term "software defects" shall be defined as the inability of the software to perform its intended function. It does not include the inability to perform functions not specifically designed therein. The determination of whether the Software is performing as intended or whether there is a defect in the software is at the sole-discretion of Seller.

The Seller warrants that its Software shall be fit for the purpose for which it is intended. The Seller does not warrant its software to be error-free, except as specified above or to operate uninterrupted. The Seller does not represent that The Software will operate in conjunction with or to be compatible with software from any other vendors.

Section II - Hardware:

The Purchaser shall be responsible for providing all computer hardware, network hardware, printers and other peripheral devices and software required for operation of the Software. Any questions regarding hardware, software or networking requirements should be addressed with Seller prior to the installation.

Section III – Installation and Training:

The Seller, by entering into this Purchase Agreement, agrees to perform certain services for Purchaser related to the installation of the Software and the training of certain designated personnel at Purchaser's site. In the performance of the services described under this Agreement, Seller along with any employees or agents thereof, are acting as independent contractors and not as employees or agents of Purchaser. The Seller shall assume all costs associated with travel and maintenance of its personnel while at the location of Purchaser except as specified in this Agreement.

The Purchaser shall provide and make available its facilities, hardware and required software as specified herein for the purposes of installation of the Software and for training of Purchaser's personnel in the operation of the Software.

Prior to the installation, Seller and Purchaser shall mutually agree to a time period during which Seller shall perform the installation and training as specified in the Quotation. By scheduling the installation and training, Purchaser assumes responsibility to verify that all hardware and software as being required to run the Software are in place and operational. In addition, Purchaser shall designate personnel within its organization that will participate in the training and shall be designated as System Administrators for the Software. System Administrators shall be proficient and knowledgeable in the overall operations of the laboratory, including current test methods and protocols. All System Administrators should be proficient in basic computer operations including a general working knowledge of Microsoft Windows, Microsoft Office products and relational databases.

Failure on behalf of Purchaser to provide the appropriate hardware and/or software for installation and training or unavailability of the designated personnel may prevent Seller from providing the designated installation and training services. If such failure results in the need to extend the training or to reschedule the training, Purchaser shall be obligated to reimburse Seller for any costs related to such delays or rescheduling, including the daily installation rate plus any additional expenses.

Training shall include instruction on the administrative and operational functions of the Software sufficient to provide a good working knowledge of the Software. It does not include programming training or training in the use of Databases. The training may include implementation of some test methods and some instrument interfaces. The Seller does not warrant or imply that the Software will be fully implemented nor that all test methods will be established nor that all instrument interfaces will be generated during the installation and training. Additional assistance in these functions shall be provided as part of the Technical Phone Support after the installation and training is completed.

Section IV – Technical Support:

The Seller, by entering into this Agreement and by accepting payment from Purchaser, does hereby contract and agree to provide Purchaser with Technical Support for a period of twelve (12) months from the date that the Software is initially installed, unless a different period of time is specified in the Quotation.

Technical support shall be provided free of charge until this twelve (12) month period has elapsed or until a maximum of one hundred (100) hours have been utilized, whichever occurs first. The one hundred (100) hours is a maximum limit and not a guaranteed number of hours under this Agreement. If the customer does not utilize the hours up to the maximum limit, it does not entitle them to a credit or refund of any charges associated with this Agreement, nor does it allow them to carry these hours over into an additional Agreement or to extend the Agreement beyond the 12 month period.

Technical support shall be defined as telephone assistance to answer technical questions and to assist with the productive use and operation of The Software. Technical Support does not include custom programming by the

Seller's personnel and the number of hours specified in this Agreement for Technical Support may not be substituted for custom programming time, even if this Technical Support time is not used by Purchaser.

Section V - Payments, Terms and Conditions:

The Quotation numbered 620 ("Quotation") issued by Seller on 7/17/08 shall hereby be included and incorporated into this Agreement. Pricing for the Software, including all Add-on Packages as itemized in the Quotation shall apply. The Software is provided "AS IS" and Seller is under no obligation to customize or modify the Software unless specifically detailed in the above referenced Quotation or in this Agreement.

The Purchaser shall pay Seller an amount equal to the Installation Charges plus the Zone Charges as specified in the Quotation, plus an amount equal to twenty-five percent (25%) of the software and licenses included in the Quotation at the time this Agreement is executed.

The Seller shall invoice Purchaser for the balance due as referenced in the attached quotation upon completion of the installation and training. This entire balance shall be due and payable upon receipt of the invoice. Any payments not received within thirty (30) days of the date of the invoice shall be subject to a late charge in the amount of 1.5% of the amount due per month or any portion of a month that the payment is in arrears.

Any payment due pursuant to Paragraph 3 of this Section that is not received within 45 days from the date of the invoice shall be reason to find Purchaser in default under this Agreement. If Purchaser is in default under this Agreement, Seller may at its option terminate this Agreement and terminate all licenses for use of the Software by Purchaser by providing written notice thereof to Purchaser.

Upon such notification, Purchaser shall immediately terminate use of the Software. In addition, it shall return the original copies of the Software to Seller and destroy and/or delete all copies thereof in its possession. The Purchaser acknowledges that the Software contains certain date sensitive code that will cause it to cease to operate in the event that Purchaser is in default according to the terms of this Paragraph. The Seller agrees to immediately provide an update to the Software to re-enable its use and operation once Purchaser has corrected such default.

If Purchaser is in default, Seller may alternatively, and in its soles discretion, maintain this Agreement in full force and effect and pursue the collection of such funds due under this Agreement by any and all legal means available to it, including through a court of law. In the event any legal action is required to enforce any provisions of this Agreement, the prevailing party shall be entitled to collect reasonable fees and costs associated with such action. Arizona law shall govern terms and conditions of this Agreement.

The Seller agrees to use its best efforts to provide Software and Services in accordance with this Agreement, providing that Seller is not responsible for the success or failure of the Software to perform to the needs of Purchaser except as expressly stated in this agreement. If during the first thirty (30) days after the installation of the Software, Purchaser determines that the software does not perform as represented or to specifications and such defects cannot be addressed or corrected by Seller, the Purchaser may at its option notify the Seller in writing within thirty (30) days after the installation of the Software of its dissatisfaction and return the Software and all included documentation to Seller, destroy any and all copies thereof in its possession and to discontinue the use of the Software. If this Agreement is cancelled by Purchaser according to the terms and conditions of this paragraph, the Agreement and license shall be considered cancelled without further obligation of either party, however the cost of the Installation and Training, the Zone Charge and all costs for customizations completed by Seller and for Purchaser are non-refundable. All other payments made by Purchaser to Seller for The Software shall be refunded in full to Purchaser.

THERE ARE NO WARRANTIES, WHETHER EXPRESSED OR IMPLIED FOR THE SOFTWARE OR SERVICES OTHER THAN THOSE DESCRIBED HEREIN. THE SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT OR INDIRECT, WHETHER CONSEQUENTIAL OR, INCIDENTAL, LOST PROFITS, PUNITIVE DAMAGES, EXEMPLARY DAMAGES OR SPECIAL DAMAGES, DUE TO ITS FAILURE TO PERFORM THE SERVICES REQUIRED UNDER THIS AGREEMENT OR FOR THE FAILURE OF THE SOFTWARE TO PERFORM TO THE PUBLISHED SPECIFICATIONS. INSTEAD THE

PURCHASERS SOLE REMEDY FOR ANY CLAIM WHATSOEVER SHALL BE LIMITED TO THE REFUND OF TOTAL DOLLAR AMOUNTS ACTUALLY RECEIVED BY SELLER FROM PURCHASER UNDER THIS AGREEMENT LESS THE COST OF THE INSTALLATION AND TRAINING, THE ZONE CHARGE AND ALL COSTS FOR CUSTOMIZATIONS COMPLETED BY SELLER, AND PURCHASER AGREES THAT THEIR SOLE RECOURSE SHALL BE TO RECOVER THE AMOUNTS ACTUALLY PAID (LESS THE COST OF THE INSTALLATION AND TRAINING, THE ZONE CHARGE AND ALL COSTS FOR CUSTOMIZATIONS COMPLETED BY SELLER) ACCORDING TO THIS AGREEMENT. It is the responsibility of Purchaser to verify within ninety (90) days of installation that the Software is performing to their expectations and that any data and/or reports generated by the use of The Software are true and accurate representations of their laboratory's results. The Seller in no event shall be held liable for damages resulting from the use of the Software provided under this Agreement in excess of the amounts actually received under this Agreement.

Supplemental Terms and Conditions:

None.

The above terms and conditions are hereby agreed to and shall be binding on the parties.

Ralph Davis 7/17/08 _____ _____
Khemia Software, Inc, By: Date Purchaser, By: Date

RALPH DAVIS
Business Development Manager _____
(Typed or Printed Name and Title) (Typed or Printed Name and Title)