Staff Summary Report

Council Meeting Date: **05-01-2008** **Agenda Item Number: _____**

SUBJECT: Request to award a nine-month, sole source contract to United Fire Equipment Company for MSA repair and replacement parts for self-contained breathing apparatus (SCBA).

DOCUMENT NAME: 20080501fslg05 **PURCHASES (1004-01)**

SUPPORTING DOCS: Yes

COMMENTS: (Sole Source #08-130-01) Total cost for this contract shall not exceed $40,000 during the contract period.

PREPARED BY: Lisa Goodman, CPPB, Procurement Officer, 480-350-8533

REVIEWED BY: Michael Greene, CPM, Central Services Administrator, 480-350-8516
Cliff Jones, Fire Chief, 480-858-7201
Tom Ryff, Police Chief, 480-350-8214
Don Hawkes, Water Utilities Manager, 480-350-2660

LEGAL REVIEW AS TO CONTRACT FORM ONLY: David Park, Assistant City Attorney, 480-350-8907

FISCAL NOTE: Sufficient funds have been appropriated in 3029-6420 and 2340-6421.

RECOMMENDATION: Award the contract.

ADDITIONAL INFO: The Fire, Police and Water Departments use MSA self-contained breathing apparatus exclusively. United Fire is the only authorized regional distributor and service center in Arizona that can provide services and replacement parts for this equipment. Staff recommends award of a contract to United Fire for these services and products.

Memorandum

TO: Michael Greene
Central Services Administrator

FM: Cliff Jones
Name of Department Head (Director/Chief)

2-19-08
Date

Fire
Name of Department

SUBJECT: Sole Source Determination

As Head of the City Department for which the needed 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:

United Fire Equipment
Name of Supplier

Description of Item(s) to be purchased:

The Fire Department uses MSA breathing apparatus exclusively and as such we can only use MSA repair and replacement parts for maintenance on our Self-Contained Breathing Apparatus. With regard to SCBA parts, they are only manufactured by MSA, and MSA uses a dedicated market format with their distributors. Under that format United Fire Equipment is our exclusive regional distributorship for MSA. Therefore, United Fire is the only place from which we can purchase parts.

We recommend implementing a new sole source similar to last year's for SCBA parts.

Refer to Requisition No. _____, dated _____ which has been transmitted to the City Procurement Office to initiate this Sole Source purchase.

My (customer) department contact for this purchase is George Loeding at Ext. 7253.

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 (customer) department or this acquisition.

Department Head's Signature _____ Date 2-20-08

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 director 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."

Purchase Agreement #T08-130-01

This Agreement is attached to the Sole Source Contract Award Notice and made a part thereof and is entered into by the City of Tempe (the "City") and United Fire Equipment Company ("Contractor").

The parties agree as follows:

1. **Products:** Contractor shall provide the following equipment to the City as identified below and incorporated by reference:

   MSA repair and replacement parts for self-contained breathing apparatus (SCBA)
   Additional products may be procured in accordance with attached pricing document (Exhibit A).

2. **Price:** Total value of the agreement shall not exceed $40,000.

   MSA repair and replacement parts are priced at 10% off the current MSA published list price. The suggested price list is effective January 1, 2008 and pricing is attached to this Agreement in Exhibit A.

3. **Term of Agreement:** The term of this Agreement shall commence on April 1, 2008 and shall expire December 31, 2008.

4. **Agreement Termination:** At any time prior to the delivery of the product, this Agreement may be terminated without default by either party by providing a written thirty (30)-day notice of termination to the other party. This provision is not applicable after performance by either party.

5. **Default Provisions:** The City reserves the right to immediately cancel the whole or any part of this agreement due to failure of the Contractor to carry out any obligation, term, or condition of the agreement. The City will issue a written notice of default effective at once and not be deferred by any interval of time. Default shall be for acting or failing to act as in any of the following:

   a. The Contractor provides material that does not meet the specifications of the agreement;
   b. The Contractor fails to adequately perform the services set forth in the specifications of the agreement;
   c. The Contractor fails to complete the work required or furnish the materials required within the time stipulated in the agreement;
   d. The Contractor fails to make progress in the performance of the agreement and/or gives the City reason to believe that the Contractor will not or cannot perform to the requirements of the agreement.

   The City may resort to any single or combination of the following remedies:

   a. Cancel this agreement;
   b. Reserve all rights or claims to damage for breach of any covenants of the agreement;
   c. Perform any test or analysis on materials (equipment/products) for compliance with the specifications of the agreement. If the results of any test or analysis find a material non-compliance with the specifications, the Contractor hereby expressly agrees that the actual expense of testing will be borne by the Contractor;
   d. In case of default, the City reserves the right to purchase materials and/or services from another source, or to complete the required work in accordance with the needs of the City. The City may recover any actual excess costs from the Contractor by:
      i. Deduction from an unpaid balance;
      ii. Collection against the bid and/or performance bond, or;
      iii. Any combination of the above or any other remedies as provided by law.

6. **Applicable Law:** This Agreement shall be governed by, and the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this resultant Agreement or in statutes or ordinances pertaining specifically to the City. This Agreement shall be governed by State of Arizona law and suits pertaining to this Agreement may only be brought in courts located in Maricopa County, Arizona.

7. **Shipping Terms:** Prices shall be F.O.B. Destination to the delivery location(s) designated herein. Contractor shall retain title and control of all goods until they are delivered and the Agreement of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. The City will notify the Contractor promptly of any damaged materials and shall assist the Contractor in arranging for inspection.

8. **Warranty Statement:** Contractor must provide a complete and exclusive statement of the product warranty. Warranty offers will be relatively considered as appropriate to life cycle costing.

9. **Infringement of Patent or Copyright:** The Contractor agrees to save, keep, hold harmless and fully indemnify the City and any of its officers and employees from any and all damages, costs, or expenses in law or equity, that may at any time arise out of or be set up for any infringement of the patent right, copyright, intellectual property or trademark of any person, persons, or entity in consequences of use by the City, or by any of its officers, or agents or employees of Contractor supplied materials and of which the Contractor is not a patentee or signee or lawfully entitled to sell or use or provide the same.

   Contractor (Seller) agrees to fully indemnify and hold harmless the City (buyer) from any and all license, royalty and proprietary fees or costs, including legal costs, which may arise out of the City's (buyer's) purchase and use of goods, including software, supplied by Contractor (seller).

   It is expressly agreed by seller that these covenants are irrevocable and perpetual.

10. **Insurance:** Prior to commencing services under this Agreement, Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, subcontractors, or sub-subcontractors.

    A Contract Award Notice or Purchase Order will not be issued to an awarded vendor until receipt of all required insurance documents by the City Procurement Office and such documents must meet all requirements of this Insurance clause. In addition, before any Agreement is renewed for additional time periods, all required insurance must be in force and on file with the City Procurement Office. An awarded vendor or Contractor must submit required insurance within ten (10) calendar days after request by the City Procurement Office or the award may be rescinded and another vendor selected for award.

    Minimum Limits of Insurance
    Contractor shall maintain limits no less than:

    a. Commercial General Liability: $1,000,000 combined single limit per occurrence for bodily injury and property damage, including coverage for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations and product liability. The general aggregate limit shall apply separately to this project/location or the general aggregate shall be twice the required occurrence limit.

    b. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage, including coverage for owned, hired, and non-owned vehicles as applicable.

    c. Workers' Compensation and Employers Liability: Workers' Compensation and Employers Liability statutory limits as required by the State of Arizona.

    d. Other Insurance: (If applicable, see supplement.)

Deductibles And Self-Insured Retentions
Any deductibles or self-insured retentions must be declared and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-ensured retentions as respects the City, its officials, employees, and volunteers, or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Other Insurance Provisions
The policies or self insurance certifications are to contain, or be endorsed to contain, the following provisions:

a. Commercial General Liability and Automobile Liability Coverage:

   i. The City, its officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor including the insured's general supervision of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers, for work related to the Contractors, employees, agents, subcontractors, or sub-subcontractors activities.

   ii. The Contractor's insurance coverage shall be primary as respects the City, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute to it.

   iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or volunteers.

   iv. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

b. Compensation and Employers Liability Coverage

   The insurer shall agree to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from work performed by the Contractor for the City.

c. All Coverages

   Each insurance policy required by this Agreement shall be endorsed to state the coverage shall not be suspended, voided, and/or canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

Other Insurance Requirements: Contractor shall:

a. Prior to commencement of services, furnish the City with certificates of insurance, in form and with insurers acceptable to the City which shall clearly evidence all insurance required in this Agreement and provide that such insurance shall not be canceled, allowed to expire or be materially reduced in coverage except on 30 days prior written notice to and approval by the City, and in accord with stated insurance requirements of this bid solicitation. City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed waiver of City's right to insist on, strict fulfillment of Contractor's obligations under this Agreement.

b. Provide certified copies of endorsements and policies if requested by the City in lieu of or in addition to certificates of insurance.

c. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.

d. Maintain such insurance from the time services commence until services are completed. Should any required insurance lapse during the Agreement term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, City may at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

e. Place such insurance with insurers and agents licensed and authorized to do business in Arizona and having a "Best's" rating of no less than A-VII.

f. Maintain such coverage continuously throughout the term of this Agreement and without lapse for a period of two years beyond the Agreement expiration, should any of the required insurance be provided under a claims-made form, to the extent that should occurrences during the Agreement term give rise to the claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. Such extension of coverage shall be evidenced by annual certificates of insurance.

Subcontractors and Sub-Subcontractors
Contractor shall include all subcontractors and sub-subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor and sub-subcontractor. All coverage for subcontractors and sub-subcontractors shall be subject to all of the requirements stated herein for the Contractor.

Safety
The Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve it from compliance with the obligations set forth therein.

11. **Performance Standards:** Equipment shall operate in accordance with the performance criteria specified in the Contractor's literature, including the manufacturer's published specifications applicable to the machine involved. Each machine is expected to be available for productive use, as provided in the procurement documents. Penalties and/or bonuses applicable to machine and system performance (down time and up time) shall be calculated as may be provided in the procurement documents.

12. **Payments - After Acceptance of Delivery:** Payment in full shall be made to the successful Contractor within thirty (30) days after receipt and acceptance of delivery by the City. Unless terms other than net thirty (30) days are offered as a discount.

13. **Indemnification:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officers, officials, employees and volunteers from and against all claims, damages, losses and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the negligent acts, errors, mistakes, omissions, work, services, or professional services of the Contractor, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services the Contractor may be legally liable in the performance of this Agreement. The Contractor's duty to hold harmless and indemnify the City, its agents, officers, officials, employees and volunteers shall arise in connection with any claim for damage, loss or expenses that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting there from, caused by any negligent acts, errors, mistakes, omissions, work, services, or professional services in the performance of this Agreement by the Contractor, or any employee of the Contractor, or any other person (not the City) for whose negligent acts, errors, mistakes, omissions, work, or services the Contractor may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph.

14. **Unauthorized Firearms & Explosives:** No person conducting business on City property is to carry a firearm or explosive of any type. Any City bidder, Contractor or Subcontractor is to honor this requirement at all times and failure to honor this requirement will result in agreement cancellation. This requirement also applies to persons who maintain a concealed weapons permit. In addition to agreement cancellation anyone carrying a firearm or explosive device will be subject to police and legal action.

15. **Whole Agreement:** This Agreement (including Exhibits A and B) represents the parties' whole Agreement. There are no other promises, terms, conditions or obligations, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written.

16. **Construction:** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

17. **Nondiscrimination:** The parties agree to comply with all applicable state and federal laws, rules, regulation and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action.

18. **Conflict of Interest:** This Agreement is subject to Section 38-511, Arizona Revised Statutes. This agreement may be canceled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City is an employee, consultant, or agent of any other party to this Agreement.

19. **Arbitration:** Notice is provided of Sections 12-1518 and 12-133. Arizona Revised Statutes.

20. **Dispute Resolution:** If a dispute arises under this Agreement, the parties agree to exhaust all applicable administrative remedies provided for under Arizona Law.

21. **Contractor's Records:** To the extent required by Section 35-214, Arizona Revised Statutes, Contractor agrees to retain all records relating to this Agreement. Contractor agrees to make those records available at all reasonable times for inspection and audit by the Auditor of the City of Tempe during the term of this Agreement and for a period of five (5) years after the completion of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, this the _____ day of _____, 2008.

CITY OF TEMPE

By_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

UNITED FIRE EQUIPMENT COMPANY

David Crowley
Name

Sales Agent
Title

United Fire Equipment
Name of Company