

## Staff Summary Report

---

**Council Meeting Date:** 09-11-2008

**Agenda Item Number:** 37

**SUBJECT:** Request to award a one-year, limited source contract to Williams & Associates for lobbyist services.

**DOCUMENT NAME:** 20080911fslg04     **PURCHASES (1004-01)**

**SUPPORTING DOCS:** Yes

**COMMENTS:** (Limited Source #T09-034-01) Total cost for this contract shall not exceed \$102,000 during the contract period.

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

**REVIEWED BY:** Michael Greene, CPM, Central Services Administrator, 480-350-8505  
Amber Wakeman, Government Relations Director, 480-350-8824  
Shelley Hearn, Community Relations Manager, 480-350-8906

**LEGAL REVIEW AS  
TO CONTRACT FORM**

**ONLY:** David Park, Assistant City Attorney, 480-350-8907

**FISCAL NOTE:** Sufficient funds have been appropriated in 1216-6672.

**RECOMMENDATION:** Award the contract.

**ADDITIONAL INFO:** Williams & Associates works with the Government Relations Office to research and lobby issues that impact the City of Tempe at the State Legislature. The City benefits from Williams and Associates advocating on our behalf. They are knowledgeable of City matters and provide consistent representation. Staff recommends award of the contract.

City procurement ordinance specifically exempts lobbyist services from competitive bidding requirements.



**Memorandum**

TO: Michael Greene, CPM  
Central Services Administrator

FROM: Shelley Hearn July 29, 2008  
Name of Department Director (Printed) Date

Community Relations  
Department Name

**SUBJECT: Limited Source Determination**

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

Williams & Associates  
Name of Professional Services Provider

Description of Professional Service(s) to be provided:

Williams & Associates works with the Government Relations Director to research and lobby issues that impact the City of Tempe at the State Legislature. The City of Tempe benefits from Williams & Associates' unique ability to specifically represent government clients. They are knowledgeable of City matters and provide consistent representation. This type of contract is exempt from competitive bidding per City ordinance. Staff recommends award of the contract.

Estimated value of purchase: \$ 102,000.00

My department contact for this purchase is Amber Wakeman at  
Ext. 8824

My Limited Source determination is based upon extensive research conducted by my department as to possible providers for this services 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 or this acquisition.

Department Director's Signature *Shelley Hearn* Date 7/29/08

*[Signature]*  
Central Services Administrator

*[Signature]*  
Procurement Officer

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

“If the manager of the using department determines in writing that the nature of the service presents such limited competition that a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the City, will otherwise impair the City’s financial interests or will substantially impede the City’s administrative functions or the delivery of services to the public; or if only one provider has the experience and capability to successfully perform the contract; or if the need was not known in sufficient time to allow for competitive procurement and time is of the essence. The manager of the using department shall be responsible for making a limited source determination, prepare and sign a written limited source justification for not seeking competition and transmit the justification to the procurement office with a requisition for the procurement.”

“Unless the manager of the using department makes a limited source determination, the procurement office shall issue competitive solicitations for professional services.”

“Professional and personal service contracts and contracts for computer software requiring formal city council approvals shall be reviewed by the City Risk Management Division and City Attorney’s office before signing.”

## Purchase Agreement #T09-034-01

This Agreement is attached to the Limited Source Agreement Award Notice and made a part thereof and is entered into by the City of Tempe (the "City") and Williams & Associates ("Contractor").

The parties agree as follows:

1. **Scope of Work**

Contractor shall provide the following lobbyist services in a professional manner to the City as identified below and incorporated by reference:

*Contractor shall work closely with our Government Relations Director or designee to ensure that the City's interests are protected at the state legislature. Specifically, the Contractor will work on legislative matters as approved by the City Council and the City's state legislative agenda. Such topics may include, but are not limited to: local control, revenue sharing, tax incentives, unfunded mandates, eminent domain and education.*

2. **Performance Evaluation**

At the end of the contract term the City will complete a performance evaluation to evaluate the services provided by the Contractor to the City. A copy of the performance evaluation to be used is attached as Exhibit A.

3. **Pricing**

Pricing is \$8,500 per month.

4. **Term of Agreement**

To begin after award of agreement on September 1, 2008 and be effective for a period of twelve (12) months after award.

5. **Agreement Termination**

At any time prior to the delivery of the product or service, this agreement may be terminated without default by either party by providing a written thirty (30) day notice of termination to the other party.

6. **Default Provisions**

This agreement is critical to the City and 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 deferred by any interval of time. Default shall be for acting or failing to act as in any of the following:

1. The Contractor provides material that does not meet the specifications of the agreement;
2. The Contractor fails to adequately perform the services set forth in the specifications of the agreement;
3. The Contractor fails to complete the work required or furnish the materials required within the time stipulated in the agreement;
4. 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:

1. Cancel any agreement;
2. Reserve all rights or claims to damage for breach of any covenants of the agreement;

3. 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 actual expense of testing will be borne by the Contractor;
4. 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:
  - A. Deduction from an unpaid balance;
  - B. Collection against the bid and/or performance bond, or;
  - C. Any combination of the above or any other remedies as provided by law.

7. **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.

8. **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, his agents, representatives, employees, Subcontractors, or sub-Subcontractors. For bidders with self-insurance, proof of self insurance with minimum limits expressed below must be submitted on proper forms for evaluation prior to award of agreement.

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. 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-insured 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 Contractor, 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. Workers' 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. Professional Liability**

The Contractor retained by the City to provide the consulting services required by the Contract will maintain Professional Liability insurance covering errors and omissions arising out of the services performed by the Contractor or any person employed by him with a limit of not less than \$1,000,000 all claims, or 10% of the agreed upon services, whichever is larger. In the event the insurance policy is written on a "Claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Services as evidenced by annual Certificates of Insurance.

### **D. 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 himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations set forth therein.

**9. 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 30 days are offered as a discount.

**10. Indemnification**

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officer, officials, and employees 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. Contractor's duty to hold harmless and indemnify the City, its agents, officers, officials and employees 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 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.

**11. 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 weapon's permit. In addition to agreement cancellation anyone carrying a firearm or explosive device will be subject to police and legal action.

**12. Whole Agreement**

This Agreement 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.

**13. Ownership of Documents**

All work products (electronically or manually generated) including but not limited to plans, specifications, cost estimates, tracings, studies, design analyses, original Mylar drawings, computer aided drafting and design (CADD) file diskettes which reflect all final drawings, and other related products which are prepared in the performance of this Agreement are the property of the City and are to be delivered to the City before the final payment is made to the Contractor. The City shall retain ownership of these original drawing, however, if approved in writing by the City, the Contractor may retain the original drawings and supply the City with reproducible Mylar.

**14. 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.

**15. 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, Contractor, or agent of any other party to this Agreement.

**16. Arbitration**

Notice is provided of Sections 12-1518 and 12-133, Arizona Revised Statutes.

**17. Dispute Resolution**

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

18. **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 \_\_\_\_\_, 2007.

CITY OF TEMPE

By \_\_\_\_\_  
Mayor

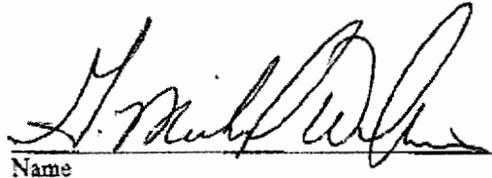
ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

CONTRACTOR

  
Name

PRESIDENT  
Title

**PERFORMANCE EVALUATION**  
**State Contract Lobbyist**

**Consultant's Name:** \_\_\_\_\_ **Contract #:** \_\_\_\_\_  
**Date:** \_\_\_\_\_ **Evaluation period:** \_\_\_\_\_

**PERFORMANCE LEVEL ASSESSMENT CRITERIA**

<p><b>N = Needs Improvement</b> Does not perform at an acceptable level to meet the position standards.</p>	<p><b>S = Satisfactory</b> Consistently meets the position standards; performance is fully acceptable.</p>	<p><b>E = Exceptional</b> Routinely exceeds the acceptable standards by demonstrating outstanding performance and knowledge.</p>	<p><b>N/A = Not Applicable</b> Does not work with consultant in this manner</p>
---	--	--	---

**CORE COMPETENCIES**

N=Needs Improvement, S=Satisfactory, E=Exceptional

	N	S	E	N/A
<p><b>COMMUNICATION - ORAL:</b></p> <ul style="list-style-type: none"> <li>• Responds to requests for information in a timely manner to Government Relations Director and Council.</li> <li>• Effectively communicates complex State issues in a succinct and precise manner with Government Relations Director, Council and State Legislators.</li> <li>• Makes clear and persuasive oral presentations on state legislation and takes action on legislative issues that may affect Tempe.</li> <li>• Keeps Government Relations Director and Council informed about pertinent state issues.</li> <li>• Listens and clarifies information.</li> </ul>				
<p><b>COMMUNICATION - WRITTEN:</b></p> <ul style="list-style-type: none"> <li>• Clearly articulates facts in writing.</li> <li>• Produces grammatically correct written reports in a clear, concise, organized format.</li> <li>• Specific reports include weekly and monthly status reports outlining all activities on behalf of Tempe, an annual performance report summarizing accomplishments and activities relating to Tempe's State Legislative Program and other interests.</li> </ul>				
<p><b>STATE LEGISLATIVE PROGRAM DEVELOPMENT:</b></p> <ul style="list-style-type: none"> <li>• Confers with Government Relations Director to develop a State Legislative Program. Legislative program is approved by Council.</li> <li>• Consultant is able to identify legislative issues that could affect Tempe in the next legislative session.</li> </ul>				
<p><b>ADVICE AND ADVOCACY:</b></p> <ul style="list-style-type: none"> <li>• Reviews State legislation under consideration.</li> <li>• Proactively advises the Government Relations Director of items that could have a bearing on the City's State Legislative Program, policies or other interest areas.</li> <li>• Recommends and executes approved strategies for advocacy of the City's position on legislative issues, including contact with State legislators, other staff of the State legislature or other officials and key interest groups.</li> <li>• Performs appropriate liaison and follow-up work on behalf of the City as necessary.</li> <li>• Notifies Government Relations Director of any conflict of interest with other clients' legislative priorities.</li> <li>• Reviews, comments and provides follow-up work on City sponsored legislation.</li> </ul>				
<p><b>SUPPORT CITY OFFICIALS AT STATE LEVEL:</b></p> <ul style="list-style-type: none"> <li>• Arranges appointments for Government Relations Director and Council to facilitate the efficient and effective performance of City business while meeting at the State Capitol.</li> <li>• Prepares itineraries for State Capitol visits, briefing materials and/or conducts briefings prior to meetings with members of the State legislature.</li> </ul>				
<p><b>CONSULTANT'S STAFF SUPPORT &amp; QUALIFICATIONS:</b></p> <ul style="list-style-type: none"> <li>• Consultant and consultant's staff has the appropriate education, experience and technological skills to support the City's interests on a frequent and daily basis.</li> </ul>				

Consultant's Name: \_\_\_\_\_ Date: \_\_\_\_\_

<b>CORE BEHAVIORS</b>				
<b>N=Needs Improvement, S=Satisfactory, E=Exceptional</b>	<b>N</b>	<b>S</b>	<b>E</b>	<b>N/A</b>
<b>ACCOUNTABILITY:</b> <ul style="list-style-type: none"> <li>• Accepts personal responsibility for the quality and effectiveness of his/her work.</li> <li>• Acknowledges and corrects mistakes.</li> <li>• Promotes the State Legislative Program of the City.</li> </ul>				
<b>GOAL ORIENTED:</b> <ul style="list-style-type: none"> <li>• Understands State Legislative Program and sets precise goals based on the City's legislative program.</li> <li>• Receives input from the Government Relations Director on performance and makes ongoing adjustments and efforts to improve.</li> <li>• Fulfills expectations of Government Relations Director and Council.</li> </ul>				
<b>INITIATIVE / SELF-MANAGEMENT:</b> <ul style="list-style-type: none"> <li>• Deals effectively with pressure; maintains focus, intensity and remains optimistic and persistent, even under adversity.</li> <li>• Accepts constructive feedback from Government Relations Director and Council.</li> <li>• Approaches new situations with a positive attitude.</li> <li>• Offers honest and complete assessments of State legislative issues that affect the City and provides a well-balanced view of potential problems before they occur.</li> </ul>				
<b>RESPECT:</b> <ul style="list-style-type: none"> <li>• Maintains respectful and cooperative working relationship with Government Relations Director and Council.</li> <li>• Maintains regular communication and reports demonstrate that State legislative goals and priorities are being met.</li> </ul>				
<b>INTEGRITY AND HONESTY:</b> <ul style="list-style-type: none"> <li>• Demonstrates a sense of responsibility and commitment to the City of Tempe.</li> <li>• Inspires mutual trust and confidence of Government Relations Director and Council.</li> <li>• Behaves in a fair and ethical manner toward others and fosters superior ethical standards.</li> <li>• Is aware that he/she is working on behalf of the City of Tempe at the State Capitol and takes care with respect to the City's reputation.</li> </ul>				
<b>LEADERSHIP:</b> <ul style="list-style-type: none"> <li>• Demonstrates to Government Relations Director and Council through regular communication and written progress reports that he/she is meeting the goals of the City.</li> </ul>				

Consultant's Name: \_\_\_\_\_ Date: \_\_\_\_\_

**OVERALL PERFORMANCE RATING**

Considering all performance factors, rate the consultant's overall performance.

N=Needs Improvement, S=Satisfactory, E=Exceptional	N	S	E
Overall Performance Rating			

**Comments: (Optional):**

---

---

---

---

---

---

**This assessment accurately represents a consensus view of the level of confidence held in this consultant's overall performance:**

\_\_\_\_\_  
**Government Relations Director's Signature**

\_\_\_\_\_  
**Date**