

Staff Summary Report



Council Meeting Date: 04/23/2009

Agenda Item Number: _____

SUBJECT: Request approval of a two-year sole source contract with three, one-year renewal options with Physio-Control, Inc. for the purchase of paramedic heart monitor/defibrillators.

DOCUMENT NAME: 20090423fslg06 **PURCHASES (1004-01)**

COMMENTS: (Sole Source #T09-083-01) Total cost for this contract shall not exceed \$125,000 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

LEGAL REVIEW BY: David Park, Assistant City Attorney, 480-350-8907

DEPARTMENT APPROVAL: Cliff Jones, Fire Chief, 480-858-7201

FISCAL NOTE: Sufficient funds have been appropriated in 2370-7511 for the anticipated expenditures in the current fiscal year.

RECOMMENDATION: Approve the contract.

ADDITIONAL INFO: Staff is requesting approval of a two-year contract with Physio-Control, Inc. for paramedic heart monitor/defibrillators. For many years the Fire Department has been standardized on Medtronic Physio Control LifePaks and staff requires that all the units be the same so that regardless of where personnel are assigned and what monitor/defibrillator they have to use, they are always dealing with the same equipment and operating procedures. Medtronic Physio Control LifePaks are not available through distributors and must be bought directly from Physio-Control.

Memorandum

TO: Michael Greene, CPM
Central Services Administrator

FROM: Cliff Jones, Fire Chief
Name of Department Director (Printed) 1/15/09
Date

Fire 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:

Medtronics Physio Control
Name of Supplier

Description of Item(s) to be purchased:

For many years the Fire Department has been standardized on Medtronics Physio Control LifePaks for our paramedic heart monitor/defibrillators. We consider it essential that all our units be the same so that regardless of where our personnel are assigned and what monitor/defibrillator they have to use, they are always dealing with the same equipment and operating procedures. At an emergency incident we do not want our personnel to be faced with the possibility of trying to remember different operating procedures for different monitor/defibrillators.

We presently stock all supplies necessary for the LifePaks at our warehouse. It would require the stocking of a second set of supplies if we were to purchase a different manufactured brand of defibrillator/monitor, an expenditure that we are not budgeted for nor do we have the storage space for.

We are requesting this sole source for two fiscal years and purchases will be dependant upon funding.

Estimated value of purchase: \$125,000 for two fiscal years.

My department contact for this purchase is Debbie Bair at Ext. 7220.

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 or this acquisition.

Department Director's Signature Cliff Jones Date 1-14-09

[Signature]
Central Services Administrator

Roni Goodman
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."

**CITY OF TEMPE
PURCHASE AGREEMENT NO. T09-083-01
HEART MONITORS**

This Purchase Agreement No. T09-083-01 for Heart Monitors ("Agreement") is attached to the Sole Source Agreement Award Notice and made a part thereof, is entered into by the City of Tempe (the "City") and Physio-Control, Inc. ("Contractor").

The parties agree as follows:

1. Product. Contractor shall provide the following:

<i>Part #</i>	<i>Description</i>	<i>Unit Price</i>
99400-003505	LifePak15 Defibrillator/Monitor	\$18,795
41310-002432	LifePak 15 Shipkit	\$0
11150-000015	Internal Modem	\$275
11150-000009	Modem Door Assembly	\$52
11996-000183	MNC-1 Adapter Cable	\$175
11996-000019	DS100A Durasensor	\$205
99407-000002	BSS2, 120VAC	\$1,785
41310-000977	BSS2 Shipkit	\$0
11141-000026	Lifepak NICD Battery	\$268
11260-000030	Basic Carrying Case	\$250
11260-000029	Back Pouch	\$69
11220-000028	Top Pouch	\$46
11998-000063	Removable Acrylic Screen Shield	\$42
60999-000058	LP15 POS Service Agreement 1 year	\$925
UPG12-BLUE	LP15 Bluetooth Communication	\$649

2. Pricing. Pricing is as listed above in 1. Product:

3. Term of Agreement. To begin after award of Agreement on the ^{1st} ~~5th~~ day of ^{May} ~~February~~, 2009 and be effective for a period of two (2) years after award. Any resultant contract may be mutually renewed by the parties in annual increments not to exceed a total of three (3) additional years.

TERMS AND CONDITIONS

4. Modification. No modification of this Agreement shall bind City unless City agrees to such modification in writing.
5. Price Adjustment. The City Procurement Office will review fully documented requests for price increases after the Agreement has been in effect for one (1) year. The requested price increase must be based upon a cost increase that was clearly unpredictable at the time of the Agreement and can be shown to directly affect the price of the item concerned. The City Procurement Office will

determine whether the requested price increase, or an alternative option, is in the best interest of the City. Advanced thirty (30) day written notification by Contractor is required for any price changes. All price adjustments will be effective on the first day of the month following approval or acceptance by the City Procurement Office. After the City approves a price increase the Contractor shall not be eligible to receive an additional increase until one (1) year from the date of the last approved price increase.

6. Deliveries and Packing. The quantity of goods indicated on the face hereof must not be exceeded without written approval of City. Contractor shall ship and deliver goods and render services hereunder on the date or dates specified on the face thereof, unless prior written approval of any change in such date or dates is given by City. No charge will be paid by City for packing, boxing, or cartage, unless previously approved by City. Loss of or damage to any goods shall be borne by Contractor. Each package of goods shipped must contain an invoice stating shipper's name, contents of package, and the Purchase Order number on the face thereof.
7. Title and Risk of Loss. The title and risk of loss of materials and/or goods shall not pass to City until City actually receives the materials and/or goods at the point of delivery.
8. Invoices. A separate invoice shall be issued for each shipment. No invoice shall be issued prior to shipment of goods and no payment will be made prior to receipt of goods or completion of services and correct invoice. Payment due dates, including discount periods, will be computed from date of receipt of goods or completion of services or date of receipt of correct invoice, whichever is later. Unless freight and other charges are itemized, any discount provided will be taken on full amount of invoice. The City's obligation is payable solely from funds appropriated for the purpose of acquiring the goods referred to in this Purchase Order. Payment shall be subject to the provisions of Title 35 of Arizona Revised Statutes. City's obligation is payable solely from funds appropriated for the purpose of acquiring the materials and/or goods stated herein. All invoices issued in reference to this Agreement shall identify and reference the Purchase Order number.
9. Inspection. All materials and/or goods are subject to final inspection and acceptance by City. Materials or goods failing to meet the requirements of this Agreement shall be at Contractor's risk and may be returned to Contractor, at Contractor's sole expense.
10. No Replacement of Defective Tender. Every tender of materials and/or goods shall fully comply with the provisions herein. If a tender is made that does not fully conform, it shall constitute a breach of this Agreement and Contractor shall not have the right to substitute a conforming tender.

11. Gratuities. This Agreement may be terminated by City if it is determined that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor to any agent or representative of the City, with a view toward securing an order or favorable treatment concerning the awarding or amending, or the making of determinations with respect to this Agreement. In the event the Agreement is terminated under this provision, City is entitled to withhold from and/or recover from Contractor, the amount of gratuity.
12. Warranty. Contractor expressly warrants that all materials and/or goods delivered under the Contract shall be merchantable and free from defects in material and workmanship, and of the quality, size and dimensions specified herein. Contractor additionally expressly warrants that all workmanship shall be finest and first-class, and all services will be performed in a good and workmanlike manner. Contractor's warranties shall survive inspection, acceptance and/or payment by the City. Contractor agrees to make good by replacement and/or repair, at its sole expense, any defects in materials or workmanship which may appear during the period ending on a date twelve (12) months after acceptance by the City, unless otherwise specified herein. Should Contractor fail to perform said replacement and/or repair to City's satisfaction within a reasonable period of time, City may correct or replace said defective or nonconforming materials and recover the costs thereof from Contractor. This warranty shall not operate to reduce the statute of limitations period for breach of contract actions or otherwise, or reduce or eliminate any legal or equitable remedy.
13. Battery Warranty. Contractor express warrants batteries will, at a minimum, hold a twenty-four (24) hour charge and batteries will have a useful life of two (2) years.
14. No Assignment. No right, interest or duty pursuant to this Agreement may be assigned by Contractor without the prior written permission of City.
15. Legal Compliance. Contractor agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work, products, goods, facilities and services pursuant to the Agreement, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Contractor acknowledges that a breach of this warranty is a material breach of this Agreement and Contractor is subject to penalties for violation(s) of this provision, including termination of this Agreement. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Agreement to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Contractor. Contractor hereby agrees to indemnify, defend and

hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof. Additionally, in accordance with A.R.S. 35-397, the Contractor hereby certifies that it does not have scrutinized business operations in Iran or Sudan.

16. Equal Opportunity. City is an equal opportunity, affirmative action employer. Contractor hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, national origin, physical or mental disability, age, sex or veteran status. Contractor covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity.
17. 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 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 contract. 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 from, caused by any acts, errors, mistakes, omissions, work, services, or professional services in the performance of this contract by Contractor or any employee of the Contractor or any other person (not the City) for whose 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. This provision shall survive the term of this Contract.
18. Liens. All goods or services delivered and labor performed under this Agreement shall be free of all liens, and if City requests, a formal release of liens shall be delivered to City.
19. Conflict of Interest. Contractor agrees to promptly disclose any and all financial and/or economic interest that may constitute a conflict of interest. Should Contractor gain any financial or economic interest in the subject project during

the term of this Agreement, such interest constitutes grounds for termination of the Agreement by the City in its sole discretion. This Agreement is subject to cancellation pursuant to A.R.S. §38-311.

20. 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.
21. Dispute Resolution. If a dispute arises under this Agreement, the parties agree to exhaust all applicable administrative remedies pursuant to Arizona law. In the event of any legal action or proceeding arising out of this Contract, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs incurred in such legal action or proceeding, and such fees and costs shall be included in any judgment rendered as determined by the Court. In addition, if any person should institute a claim or action against the Contractor in which City is made a party defendant, Contractor shall indemnify, defend and hold City harmless for, from and against all liability by reason thereof, including reasonable attorney's fees and all costs incurred by City in such action.
22. Relationship of Parties. Contractor is an independent contractor. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.
23. Licenses. Contractor shall maintain, in current status, all federal, state and local licenses and permits required for the operation of the business conducted, as well as the materials, goods and/or services contemplated herein.
24. Infringement of Patent or Copyright. Contractor agrees to save, keep, hold harmless and fully indemnify the City from any and all damages, costs and expenses arising at any time out of or relating to infringement of the patent right, copyright, intellectual property right or trademark of any person or persons in consequences of use by the City, or by any of its officers, agents, employees, from and against Contractor-supplied materials and goods. This covenant is irrevocable and shall survive the term of this Agreement.
25. 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 and shall remain the property of the City and are to be delivered to the City before the final payment is made to the Consultant. The City shall retain ownership of all work

products, however, if approved in writing by the City, the Consultant may retain the original drawings and supply the City with reproducible mylar copies.

26. Default Provisions.

26.1. City reserves the right to immediately terminate the whole or any part of this Agreement due to Contractor's failure to carry out any obligation, term, or condition of the Agreement. The occurrence of any or more of the following events shall constitute a default and a breach of this Agreement:

26.1.1. Contractor fails to provide materials and/or goods that conform to any specifications of the Agreement;

26.1.2. Contractor fails to adequately perform the services set forth in the Agreement;

26.1.3. Contractor fails to complete services required, furnish materials and/or goods within the time specified or fails to make progress required by the Agreement; or

26.1.4. Contractor gives the City reason to believe that Contractor will not or cannot perform to the requirements of the Agreement.

26.1.5. Contractor fails to perform any other term or condition of this Agreement and fails to cure such non-performance within ten (10) days after written notice from the City

26.2. In the event of default, City shall be entitled to remedy said default using any and all rights and remedies at law or in equity, in its discretion, including but not limited to, bringing a suit or proceeding to enforce the provisions of this Agreement, collection against surety or performance bond, or otherwise.

27. Termination. This Agreement may be terminated at City's discretion by providing a thirty (30) day written notice of termination to Contractor.

28. 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. For Contractors with self-insurance, proof of self-insurance with minimum limits set forth herein must be submitted on proper forms for evaluation prior to award of Agreement.

No Agreement Award Notice or Purchase Order shall be issued to Contractor until receipt of all required insurance documents by the City Procurement Office, meeting all requirements specified herein. In addition, prior to any renewal of Agreement, all required insurance must be in force and on file with the City Procurement Office. Contractor must submit proof of required insurance within ten (10) calendar days after award to the City Procurement Office. Failure to comply shall result in termination of this Agreement or the award may be rescinded and another vendor selected.

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

28.1.1. 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.

28.1.2. 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.

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

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

28.2. 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.

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

28.3.1. Commercial General Liability and Automobile Liability Coverage:

- a. City, its officials, employees, and volunteers shall 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.

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

28.3.2. 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.

28.3.3. 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 Contractor, reduced in coverage or in limits, except upon City's express approval thereof. Any proposed change in coverage shall be to the City for approval thirty (30) days prior to the effective date of such change by certified mail return receipt requested.

28.4. Other Insurance Requirements:

28.4.1. Contractor shall prior to commencement of services, furnish the City with certificates of insurance, in form and with insurers acceptable to the City clearly evidencing all insurance required in this Agreement and confirming that such insurance shall not be canceled, allowed to expire or be materially reduced in coverage except upon approval by the City, and in accord with stated insurance requirements of this Agreement. City is and 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 a waiver of City's right to insist on strict fulfillment of Contractor's obligations under this Agreement.

- 28.4.2. Provide certified copies of endorsements and policies, if requested by the City, in lieu of or in addition to certificates of insurance.
 - 28.4.3. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of the Agreement term.
 - 28.4.4. Maintain such insurance from the time services commence until full completion. 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. City may at its sole discretion, terminate this Agreement effective on the date of such lapse of insurance.
 - 28.4.5. 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.
 - 28.4.6. Maintain such coverage continuously throughout the term of this Agreement and without lapse for a period of two (2) 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.
- 28.5. 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 Contractor.
- 28.6. Safety. 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. Contractor's failure to thoroughly familiarize itself with the aforementioned safety

provisions shall not relieve it from compliance with the obligations set forth therein.

29. Contractor's Records. Contractor agrees to retain all books, accounts, reports, files and other records relating to this Agreement pursuant to A.R.S. § 35-214. Contractor shall make said records available at all reasonable times for inspection and audit by the City during the term of this Agreement and for a period of five (5) years after the completion of this Agreement.
30. Unauthorized Firearms and Explosives. No person conducting business on City property is permitted to carry a firearm or explosive of any type. Contractor shall comply with this requirement at all times. Failure to comply with this requirement shall result in termination of the Agreement. This requirement also applies to persons who maintain a concealed weapon's permit. In addition to termination, violators and Contractor shall be subject to legal and criminal penalties.
31. Entire Agreement. This Agreement represents the parties' entire 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, this the _____ day of _____, 2009.

CITY OF TEMPE

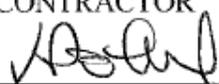
By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CONTRACTOR


Contractor Signature

Proposals Analyst
Title