

ITEM # 27  
DATE: January 8, 2008

**COUNCIL ACTION FORM**

**SUBJECT: APPROVAL OF CONTRACT FOR CHEMICAL TREATMENT SERVICES  
AND SUPPLIES FOR THE POWER PLANT**

**BACKGROUND:**

This contract is for the chemicals and services (including technical expertise to gather facts, develop alternatives, recommend alternatives, and implement plans) for chemical treatment of the boilers, cooling tower, coal yard, and ash ponds. The chemicals and services provided under this contract are essential for the operation of the Power Plant.

On September 27, 2007, staff received competitive sealed proposals from three firms. The scope of work for this contract includes supplying a range of chemicals to the Power Plant, technical expertise in boiler chemistry and analysis, the ability to train Power Plant staff in maintaining the system, and detailed monitoring and analysis of the boilers to insure they are safeguarded against damage.

The proposals were evaluated by the Electric Services staff, the finalists were interviewed, and a recommendation for award was made based on the scores in the table below.

<b>BIDDERS</b>	<b>AVERAGED SCORE</b>
GE Water & Process Technologies, Omaha, NE	71.4575
ChemTreat, Inc., Urbandale, IA	69.3333
Nalco Company, Naperville, IL	38.8665

On October 23, 2007, the City Council awarded a contract to GE Water & Process Technologies, Omaha, NE, for work on this contract in a maximum amount of \$184,256.34 based on product and services actually used.

After receiving notification of the award, GE Water & Process Technologies declined to sign the contract, citing objections to the contract language in the areas of insurance and liability. Specifically, revisions were proposed to insurance requirements for worker's compensation, and incidental and consequential damages. Following numerous discussions, GE agreed to the City's standard terms for worker's compensation, but will not agree to unlimited incidental and consequential damages.

Staff understands that City Council's direction at its meeting of November 7, 2007, is to explore the cost effectiveness of requiring coverage for all incidental and consequential damages without caps. The changes proposed by GE Water & Process Technologies will eliminate the possibility of this type of coverage in this instance. GE Water & Process Technologies has responded that, with GE being one of the world's largest companies, it would be liable and would be exposed to all payments under such agreement. GE must

seek to safeguard its corporate assets. If GE were a small company or an LLC and an uncapped award was made against GE they would declare bankruptcy and default, but GE would never declare bankruptcy or default.

Staff entered into lengthy negotiations with GE Water & Process Technologies in an attempt to secure terms as directed by City Council. During this timeframe, however, the Power Plant has been uncovered by contract protection and has been buying chemicals on an as-needed basis. GE Water & Process Technologies has sold chemicals to the plant at the proposed prices and has continued to provide technical expertise and evaluation while the senior management at GE Water & Process Technologies in Pennsylvania continued to negotiate these insurance issues with City staff. It should be noted that during this time, there has been no enforceable insurance coverage in place.

Based on those negotiations, GE has proposed the following final terms:

#### **LIMITATION ON LIABILITY**

To the extent permitted by law, the total liability of the Provider for all claims arising out of or relating to the performance or breach of this Agreement or use of any Goods or Services shall not exceed the annual contract value of this Agreement. In no event will either party be liable to the other for lost profits or revenues, cost of capital or replacement or increased operating costs, lost or decreased production, claims of City of Ames' customers for such damages or any similar or comparable damages, or for any incidental, special, consequential or indirect damages of any type or kind, irrespective of whether arising from actual or alleged breach of warranty, indemnification, product liability or strict liability, or any other legal theory.

This limitation shall not apply to any indirect or consequential damages, including the cost incurred by the City of Ames to purchase power, to the extent that such damages arise from the Gross Negligence of Provider. As defined in this contract, the term "Gross Negligence" shall mean a tortious act or omission by Provider, its managerial staff, or supervisory personnel, well in excess of negligence and amounting to an intentional disregard of a grave, known risk, where such disregard constitutes an extreme deviation from even minimal care.

Both the City Attorney and Risk Manager have reviewed the language, and have approved it to be presented to City Council.

#### **ALTERNATIVES:**

1. Approve the contract with GE Water & Process Technologies, Omaha, NE, for boiler and cooling tower treatment services for the period from November 1, 2007, through June 30, 2008, based on unit prices in a maximum amount of \$184,256.34, based on actual products and services used.

3. Rescind the award to GE Water & Process Technologies, Omaha, NE, and instruct staff to re-bid the contract

**MANAGER'S RECOMMENDED ACTION:**

Water treatment services are essential for the generation of the Power Plant. As happens frequently for specialized services required by the utility, there are a limited number of suppliers of those services, and only one or two which are acceptable to the utility. This does not leave the City with much room to negotiate terms.

GE Water & Process Technologies is an established and financially sound company, which has been providing the Power Plant with quality service since November 1, 2007. The risk to the City under this contract is relatively minimal. The service occurs within our facility, and should we be dissatisfied with either the chemicals or the service, the contract terms allow us to terminate the service. We are obligated to pay for only those services and chemicals which we actually receive.

Therefore it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, approving the contract with GE Water & Process Technologies, Omaha, NE, for boiler and cooling tower treatment services, for the period November 1, 2007, through June 30, 2008. The maximum amount of this contract will be \$184,256.34, with the amount paid under this contract being based on actual products and services used.