



CITY OF VANCOUVER

INVITATION TO TENDER No. PS05038

SUPPLY AND DELIVERY OF A TRACTOR LOADER

Tenders are to be addressed to the Office of the City Clerk, and delivered to the Courier Delivery Drop-Off Office, 1st Floor, Vancouver City Hall, 453 West 12th Avenue, Vancouver, British Columbia, Canada, V5Y 1V4 prior to the Closing Time: 11:00:00 A.M. Vancouver Time (as defined in Note 2 below), May 25, 2005 and opened publicly as soon as reasonably possible thereafter.

NOTES:

1. Tenders are to be in sealed envelopes or packages marked with the Bidder's Name, the ITT Title and Number.
2. The Closing Time will be conclusively deemed to be the time shown on the clock at the Courier Delivery Drop-Off Office for this purpose.
3. DO NOT SUBMIT BY FAX

All queries related to this ITT shall be submitted
in writing to the attention of:

Pam Kemp
Contracting Specialist,
FAX: **604-873-7057** E-MAIL: purchasing@vancouver.ca

**INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
TABLE OF CONTENTS**

PART A - INSTRUCTIONS TO BIDDERS

Pages 4 - 9

- 1.0 Description of Requirement
- 2.0 Contract Term - Intentionally omitted
- 3.0 Pricing
- 4.0 Inquiries and Clarifications
- 5.0 Conduct of the Contract
- 6.0 Inspection of Site - Intentionally omitted
- 7.0 Submission of Tender
- 8.0 Bid and Performance Security
- 9.0 Conflict of Interest
- 10.0 Evaluation of Tenders
- 11.0 Solicitation
- 12.0 Acceptance and Rejection of Tenders
- 13.0 Award of Contract
- 14.0 Quantities
- 15.0 Brand Names
- 16.0 Alternates and/or Variations to Requirements
- 17.0 Environmental Responsibility
- 18.0 Named Sub-contractors
- 19.0 Freedom of Information and Protection of Privacy Act
- 20.0 Confidentiality
- 21.0 Special Conditions

PART B - GENERAL CONDITIONS

Pages 10 - 21

- 1.0 Definitions
- 2.0 Notices
- 3.0 Sub-contractors
- 4.0 Independent Contractor
- 5.0 Assignment
- 6.0 Time of Essence
- 7.0 Laws, Permits and Regulations
- 8.0 Workplace Hazardous Materials Information System ("WHMIS")
- 9.0 Product Standards
- 10.0 Changes in Requirements
- 11.0 Delivery
- 12.0 Quality of Workmanship and Materials
- 13.0 Inspection
- 14.0 Warranty
- 15.0 Protection of Person and Property
- 16.0 Recitification of Damage and Defects
- 17.0 Clean Up - Intentionally omitted
- 18.0 Indemnification
- 19.0 Termination
- 20.0 Insurance Requirements
- 21.0 Workers' Compensation
- 22.0 Character of Workers
- 23.0 Failure of Perform
- 24.0 Dispute Resolution
- 25.0 Payments
- 26.0 Taxes

**INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
TABLE OF CONTENTS**

27.0 Non-resident Withholding Tax

PART C – SPECIAL CONDITIONS

Pages 22 - 23

- 1.0 Additional Evaluation Criteria
- 2.0 Additional Insurance Requirements
- 3.0 Commencement of Warranty Period
- 4.0 Required Documentation
- 5.0 Plant Production Limitations

PART D – REQUIREMENTS

Page 24

- 1.0 Scope of Contract
- 2.0 Requirements
- 3.0 Delivery

PART E – QUOTATION FORM

Pages PF 1 - 5

- 1.0 Compliance
- 2.0 References
- 3.0 Schedule of Quantities and Prices
- 4.0 Sub-contractors
- 5.0 **Tenderer's Declaration**
- 6.0 Acceptance of Tender

APPENDIX 1 – CERTIFICATE OF INSURANCE (1)

APPENDIX 2 – DETAILED EQUIPMENT SPECIFICATIONS AND COMPLIANCE MATRIX (13)

APPENDIX 3 – PRIME CONTRACTOR AGREEMENT (2)

**INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART A – INSTRUCTIONS TO BIDDERS**

NOTE: The definitions set out in Section 1.0 of Part B – General Conditions apply throughout this ITT, including this Part A of this ITT, except where otherwise expressly stipulated or the context otherwise requires.

1.0 Description of Requirement

- 1.1 Tenders are invited for the supply and delivery of a four (4) wheel drive tractor loader, complete with factory rear counterweight, as set out herein for the City of Vancouver.
- 1.2 Immediately upon receipt of this ITT, please advise by facsimile or e-mail whether or not you intend to submit a Tender.

2.0 Contract Term - Intentionally omitted

3.0 Pricing

- 3.1 Pricing shall be held firm for one hundred and five (105) days.
- 3.2 Prices quoted will be exclusive of all taxes, F.O.B. destination to the sites named herein, with all freight, unloading at destination, import duties, brokerage, royalties, handling, overhead, profit and all other costs included.

4.0 Inquiries and Clarifications

- 4.1 It is the responsibility of the Tenderer to thoroughly examine these documents and satisfy itself as to the full requirements of this ITT. Inquiries are to be in written form only, faxed or e-mailed to the contact person shown on the cover page. If required, an addendum will be issued to all Tenderers.

5.0 Conduct of the Contract

- 5.1 The Manager – Materials Management shall have the conduct of the ITT and the Contract.

6.0 Inspection of Site – Intentionally omitted

7.0 Submission of Tender

- 7.1 The response to this ITT with all accompanying schedules, appendices or addenda submitted by the Tenderer will be received up to the closing time on the date and in the place shown on the title page of this ITT (the “Closing Time”). The Tender shall be submitted on the forms provided in a sealed envelope or package, marked with the Tenderer’s name and the ITT title and number.
- 7.2 Tenders received after the Closing Time or in locations other than the address indicated, will not be accepted and will be returned. The City may elect to extend the Closing Time.
- 7.3 The Tenderer shall submit three (3) copies of its Tender on the form provided (Part E – Tender Form) in accordance with the instructions stated herein.
- 7.4 The City’s language used in its procurement documents and the responses thereto, shall be English.

**INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART A – INSTRUCTIONS TO BIDDERS**

- 7.5 The Tenderer must enter its corporate or legal business name on the final page of the Tender Form. The Tender Form must be signed in the place provided by an officer or employee having authority to bind the Tenderer to the terms and conditions of this ITT.
- 7.6 Amendments to a Tender may be submitted if delivered in writing prior to the Closing Time in a sealed envelope or package, marked with the Tenderer's name and the ITT title and number.
- 7.7 Tenders may be withdrawn by written notice only, provided such notice is received at the Purchasing Services office prior to Closing Time.
- 7.8 All costs associated with the preparation and submission of the Tender, including any costs incurred by the Tenderer after the Closing Time, will be borne solely by the Tenderer.
- 7.9 By submitting a Tender, the Tenderer acknowledges and agrees that the liability of the City in connection with the ITT, the conduct or outcome of the ITT, all related processes, decisions and procedures, and any and all duties and obligations in connection with all of the foregoing, is limited in the aggregate to the maximum of \$1,000 (for any and all claims by the Tenderer combined with any and all claims of all other Tenderers and any and all other claimants in connection with the ITT), and that if payment is made by the City into Court (or into trust, for the benefit of all Tenderers and other such claimants, with a law firm reasonably selected for the purpose) of the said sum of \$1,000, then:
- a) that will be sufficient to fully release and discharge the City from all further liability; and
 - b) the Tenderer will, upon the request from time to time of the City, execute and deliver a release (in such form as the requesting party may reasonably prescribe).

8.0 Bid and Performance Security

- 8.1 For Contracts having a value over one hundred thousand dollars (\$100,000), the Tenderer may be required to supply a performance bond in the amount of fifty percent (50%) of the total Contract price and other such sureties that may be set out in Part C – Special Conditions.

9.0 Conflict of Interest

- 9.1 By submitting a Tender, the Tenderer warrants that neither it nor any of its officers or directors, or any employee with authority to bind the Tenderer, has any financial or personal relationship or affiliation with any elected official or employee of the City or their immediate families which might in any way be seen by the City to create a conflict.

10.0 Evaluation of Tenders

- 10.1 Tenders will be evaluated on the basis of the overall best value to City based on quality, service, price and any other criteria set out herein including, but not limited to:
- a) the Tenderer's ability to meet the Requirements, qualifications and competencies set out herein;

**INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART A – INSTRUCTIONS TO BIDDERS**

- b) financial offer including but not limited to prices, operating and maintenance costs, warranty, and any life cycle considerations;
 - c) the Tenderer's business and technical reputation and capabilities; experience and where applicable, the experience of its personnel; financial stability; track record; and references of current and former customers;
 - d) equipment quality, configuration, age and condition; and
 - e) any other criteria set out in the ITT or otherwise reasonably considered relevant.
- 10.2 The City may elect to short list some of the Tenderers and require short listed Tenderers to provide additional information or details, including supplying samples, demonstrations, and/or additional technical literature. Samples of items, when required, must be submitted within the time specified and at no expense to the City. If not destroyed in testing, they will be returned at the Tenderer's request and expense.
- 10.3 Prior to Contract award, the Tenderer must demonstrate financial stability. Should the City so request, the Tenderer is required to provide annual financial reports or a set of financial statements prepared by an accountant and covering the last two (2) fiscal years.
- 10.4 The City may, prior to Contract award, negotiate changes to the scope of the work, the materials, the Specifications or any conditions with any one or more of the Tenderers without having any duty or obligation to advise any other Bidders or to allow them to vary its prices as a result of changes to the scope of work, the materials, the specifications, or any conditions, and the City shall have no liability to any other Tenderer as a result of such negotiations or modifications.
- 10.5 All sub-contractors of the Tenderer will be subject to the same evaluation process. It is the responsibility of the Tenderer to guarantee that all its sub-contractors will comply with all the Requirements and terms and conditions set out therein.
- 10.6 Preference may be given to Tenders offering environmentally beneficial products or services.

11.0 Solicitation

- 11.1 If any director, officer, employee, agent or other representative of a Tenderer makes any representation or solicitation to any officer, employee, agent or elected official of the City with respect to the Tender, whether before or after the submission of the Tender, the City shall be entitled to reject or not accept the Tender.

12.0 Acceptance and Rejection of Tenders

- 12.1 Notwithstanding any other provision in the Tender documents, the City has in its sole discretion, the unfettered right to:
- a) accept any Tender;
 - b) reject any Tender;
 - c) reject all Tenders;
 - d) accept a Tender which is not the lowest Tender;
 - e) accept a Tender that deviates from the Requirements, Specifications or the conditions specified in this Tender;

**INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART A – INSTRUCTIONS TO BIDDERS**

- f) reject a Tender even if it is the only Tender received by the City;
 - g) accept all or any part of a Tender; and
 - h) split the Requirement between one or more Tenderers.
- 12.2 All Tenders shall be irrevocable and remain open for acceptance for at least one hundred and five (105) days after the Closing Time, whether or not another Tender has been accepted.
- 12.3 Any deviations from the Requirements, Specifications or the conditions specified in this ITT, must be clearly stated in the Tender. The City will determine what constitutes an acceptable Tender deviation. If no deviations are indicated in the Tender, the City will be entitled to interpret that the Tenderer offers to perform in full compliance of the Requirements, Specifications and conditions stated herein.
- 12.4 The City may waive any non-compliance with the ITT, the Specifications, or any conditions, including the timing of delivery of anything required by this ITT and may elect to retain for consideration Tenders which are non-conforming, which do not contain the content or form required by the ITT or because they have not complied with the process for submission set out herein.

13.0 Award of Contract

- 13.1 Award of a Contract is contingent on funds being approved and the contract award being made by City Council, if applicable.
- 13.2 The City will notify the successful Tenderer(s) in writing that it has been awarded the Contract.
- 13.3 The purchase order terms and conditions will apply unless otherwise agreed in writing by the City.
- 13.4 The Tender, the ITT and such other documents including all amendments or addenda, shall form the basis for the Contract between the Contractor and the City. In the event of a conflict between any of the Contract Documents, the following documents will take precedence and govern over each other in the following order of priority from highest to lowest:
- a) The City's purchase order including the standard purchase order terms and conditions (which may be downloaded from www.city.vancouver.bc.ca/bid/);
 - b) Any mutually agreed to amendments between the Tenderer and the City;
 - c) The Tender; and
 - d) The ITT and any subsequent addenda.
- 13.5 Where the head office of the successful Tenderer is located within the City of Vancouver and/or where the successful Tenderer is required to perform any work at a site located within the City of Vancouver, the successful Tenderer is required to have a valid City of Vancouver business license prior to Contract execution.
- 13.6 The City is not under any obligation to award a Contract and may elect to terminate this ITT at anytime.

**INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART A – INSTRUCTIONS TO BIDDERS**

14.0 Quantities

- 14.1 The quantities stated herein are the City's best estimates of its requirements and should not be relied on. Actual quantities may vary.

15.0 Brand Names

- 15.1 Unless otherwise stated, if, and wherever, the Specifications state a brand name, make, name of manufacturer, trade name, or vendor catalogue number, it is for the purpose of establishing a grade or quality of material only. It is not intended to rule out competition from equal brands or makes. If, however, a product other than that specified is offered, it is the Tenderer's responsibility to name such a product in its Tender. Evidence of equality in the form of samples may be requested.

16.0 Alternates and/or Variations to Requirements

- 16.1 Except where stated otherwise herein, the Requirements describe what is considered necessary to meet the performance requirements of the City and Tenderers should bid in accordance with such Requirements, or if the Tenderer cannot meet the Requirements, the Tenderer may offer an alternative which they believe to be the equivalent.
- 16.2 Tenderers shall clearly indicate any variances from the City's Requirements or conditions no matter how slight. The attachment of descriptive literature from which variations may be gleaned will not be considered as a sufficient statement of variations.
- 16.3 If in addition to bidding on goods and/or services that meet the Requirements, the Tenderer wishes to offer an alternative, the alternative Tender shall be submitted separately in the same format as the initial Tender.
- 16.4 The City is not obligated to accept any alternatives.
- 16.5 The City will determine what constitutes allowable variations.

17.0 Environmental Responsibility

- 17.1 The City is committed to preserving the environment. Tenderers shall provide environmentally sensitive products or services wherever possible. Where there is a requirement that the Contractor supplies materials, and where such materials may cause adverse effects, the Tenderer shall indicate the nature of the hazard in its Tender.
- 17.2 The Tenderer agrees to advise the City of any known alternatives or substitutes for such materials that would mitigate the effects of any adverse conditions on the environment.

18.0 Named Sub-contractors

- 18.1 The Tenderer agrees that the sub-contractors shown in its Tender are the sub-contractors that it proposes to use to carry out the Service. The Tenderer agrees to engage the listed sub-contractors and no others in its stead without prior written authorization of the City.

**INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART A – INSTRUCTIONS TO BIDDERS**

19.0 Freedom of Information and Protection of Privacy Act

19.1 The City is subject to the Province of British Columbia Freedom of Information and Protection of Privacy Act.

20.0 Confidentiality

20.1 Information about the City obtained by Tenderers must not be disclosed unless prior written authorization is obtained from the City.

20.2 The Contractor agrees that this obligation of confidentiality will survive the termination of the Contract between the Contractor and the City.

21.0 Special Conditions

21.1 Where Special Conditions are attached herein and there is a conflict, the Special Conditions shall take precedence over the Instructions to Tenderers and General Conditions set out in this ITT.

**INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART B – GENERAL CONDITIONS**

1.0 Definitions

The following words and terms, unless the context otherwise, shall have the meanings set out below. Words including the singular number include the plural and vice versa.

“Act of God” means a cataclysmic phenomenon of nature, including earthquake, flood or cyclone. Rain, snow, wind, high water or any other natural phenomenon, which might reasonably have been anticipated from historical records of the general locality of the City, shall be deemed not to be acts of God;

“City” means the municipal corporation, generally known as the City of Vancouver, as described under the Vancouver Charter;

“City’s Designated Representatives” means the City’s employees or representatives who are authorized in writing to deal with the Contractor on behalf of the City in connection with the goods and services or to make decisions in connection with the Contract;

“Closing Time” means the closing date, time, and place as set out on the title page of this Quotation;

“Contract” means the agreement formed between the City and the Contractor as evidenced by the purchase order issued to the Contractor by the City;

“Contract Documents” means the purchase order, the Contractor’s Tender, the ITT and such other documents as listed in the contract, including all amendments or addenda agreed between the parties;

“Contractor” means the successful Tenderer individual, partnership, corporation or combination thereof, including joint venturers who or which executes the resulting Contract;

“F.O.B.” means all costs of freight, insurance, brokerage, customs and duties and all other cost of delivery will be borne by the Contractor and that ownership and title to all goods, materials, and equipment are transferred to the City when same are delivered by the Contractor to the City and the risk of goods, materials and equipment transfers to the City only at such time as same are received and accepted by the City at the site named as F.O.B.;

“GST” means the goods and services tax administered under the Excise Tax Act (Canada) and any successor tax or levy therefor in force from time-to-time;

“ITT” means this invitation to Tender including, but not limited to: Part A – Instructions to Tenderers; Part B – General Conditions; Part C – Special Conditions; Part D – Requirements; Part E – Tender Form; Appendix 1 – Certificate of Insurance; any additional attachments listed in the Table of Contents; and any amendments, addenda, and/or clarifications pertaining to this ITT that may be issued prior to the Closing Date;

“PST” means British Columbia provincial sales tax and any successor tax or levies therefor in force from time-to-time;

Requirements or Services” means all of the Specifications, requirements and services set out in Part D and elsewhere in the ITT that describes the general requirements that the service, goods, materials, equipment and services must meet and the Contractor must provide;

“Requirements” means all of the requirements set out in the ITT that describes the service that the goods, materials, equipment and services must meet and the Contractor must provide;

INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART B – GENERAL CONDITIONS

“Security Clearance” means the security clearance required of the City from time to time for personnel being allowed access to any City Work Site;

“Specifications” means that part of the ITT consisting of general requirements and technical descriptions of the goods, materials, equipment, standards and workmanship.

“Tender” means the Tenderer’s offer made on the Tender form set out on Part E of this ITT with all appendices or addenda submitted by the Tenderer in response to the ITT;

“Tenderer” means the individual, partnership, corporation or combination thereof, including joint venturers, who or which sign the Tender form set out in Part E of this ITT;

“Work” means all the labour, materials, equipment, supplies, services and other items necessary for the execution, completion and fulfilment of the Requirements;

“Work Site” means the site where the Services are being performed.

2.0 Notices

2.1 Any notice required to be given in regards to the Contract(s) shall be given in writing and served personally or mailed by registered mail addressed to the City, Attention Manager – Materials Management and to the Contractor at the address set forth in its Tender.

3.0 Sub-contractors

3.1 All sub-contractors are the responsibility of the Contractor.

3.2 The Contractor shall be held as fully responsible to the City for the acts and omissions of its sub-contractors and of persons directly or indirectly employed by the Contractor, as for the acts and omissions of persons directly employed by it.

3.3 The Contractor agrees to ensure performance by every sub-contractor with the terms and requirements of the Contract Documents.

3.4 The term “sub-contractor” as used in this ITT, includes all suppliers to the Contractor.

4.0 Independent Contractor

4.1 The Contractor, its sub-contractors, the officers, directors, shareholders, partners, personnel, affiliates and agents of the Contractor and its sub-contractors are not, nor are they to be deemed to be, partners, appointees, employees or agents of the City.

5.0 Assignment

5.1 Subject to The Contractor shall not assign, sublet or let out as task work any part of the Work, and shall not assign any interest herein or any right to payment hereunder without first having had and obtained the consent in writing of the City; which consent the City may elect to withhold. If the City should consent to any such assignment, subletting or letting out as task work of all or any part of the Work, the Contractor shall in no way be relieved from its responsibility for the fulfilment of the Work, but shall continue to be responsible for the same in the same manner as if all the Work had been performed by the Contractor.

**INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART B – GENERAL CONDITIONS**

6.0 Time of the Essence

6.1 For all requests made by the City pursuant to the Contract, time is of the essence. The acceptance of a late performance, with or without objections or reservations by the City, shall not waive the right to claim damages for such breach nor constitute a waiver of the requirement of timely performance of any obligation remaining to be performed.

7.0 Laws, Permits and Regulations

7.1 The laws of British Columbia shall govern the Contract.

7.2 All provisions of the International Sale of Goods Act are specifically excluded from application of this Contract.

7.3 In carrying out its obligations hereunder, the Contractor shall familiarize itself and comply with all applicable laws, bylaws, regulations, ordinances, codes, specifications and requirements of all regulatory authorities, and shall obtain all necessary licenses, permits and registrations as may be required by law.

8.0 Workplace Hazardous Materials Information System (“WHMIS”)

8.1 The Contractor shall provide appropriate labels and material safety data sheets for WHMIS regulated products. No product containing asbestos shall be supplied at any time without written authorization.

9.0 Product Standards

9.1 All electrical items shall comply with the relevant sections, latest editions, of versions the Canadian Standards Association (CSA) standard C22.1, Canadian Electrical Code (CEC), Electrical Safety Branch - BC Amendments to CEC Regulations and Bulletins, the City's Electrical Bylaw, and the National Building Code.

10.0 Changes in Requirements

10.1 The City, without invalidating the Contract, may make changes to the Contract by altering, adding to or deducting from the Requirements. Subject to mutual agreement, the Contractor shall proceed with the amended Requirements, and the amended Requirements shall be executed under the provisions of the Contract.

10.2 The Contractor shall not make any changes from the terms of the Contract unless it shall first have received the written consent of the City, and no claims for additional compensation shall be valid unless the change was so ordered.

11.0 Delivery

11.1 Deliveries must be made between 8:00 a.m. and 3:00 p.m. Monday to Friday, excluding statutory holidays, unless other arrangements have been agreed in writing. A material safety data sheet (“MSDS”) must accompany all shipments containing products regulated under WHMIS legislation.

12.0 Quality of Workmanship and Materials

12.1 The Contractor shall perform the services with the degree of care, skill and diligence normally applied in the performance of services of a similar nature and in accordance

**INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART B – GENERAL CONDITIONS**

with sound current professional practices and conforming to the requirements set out in the ITT.

12.2 Materials, goods and equipment shall be the products of suppliers or manufacturers of established reputation engaged in the supply or manufacture of such materials or equipment.

12.3 Materials are to be applied in accordance with the manufacturer's directions and shall use the techniques and applications best suited for the type of material being used.

13.0 Inspection

13.1 All goods, materials and/or services are subject to inspection and approval upon delivery. The City has the right to refuse acceptance of goods that are not in accordance with the Specifications, Requirements or the Contractors' warranty (expressed or implied).

13.2 Acceptance or rejection of the goods, materials and/or services shall be made as promptly as practical, but failure to inspect and accept or reject the goods, materials and/or services shall not relieve the Contractor from responsibility for such goods, materials and/or services that are not in accordance with the Contract.

13.3 The City shall be the final judge of all goods, materials and/or services in respect of both quality and quantity and its decisions of all questions in dispute with regard thereto will be final. Materials, goods or equipment not accepted will be returned to the Contractor at the Contractor's expense.

13.4 The City will not be deemed to have accepted the goods, materials and/or services by virtue of a partial or full payment for them.

14.0 Warranty

14.1 The Contractor warrants that the goods, materials and/or services supplied by the Contractor to the City will be in full conformity with the Specifications as well as samples, if any, then this is a sale by sample as well as by description within the meaning of the Sale of Goods Act (BC).

14.2 The Contractor further warrants that the goods are of merchantable quality, and fit for the intended use and will perform according to the requirements set out in the ITT.

14.3 Equipment and materials shall be new, free and clear of all liens, charges and encumbrances, the latest model, and shall be complete with all necessary accessories for operation. All equipment and materials shall be at the risk of the Contractor until delivered to and accepted by the City.

14.4 At a minimum, a one (1) year parts and labour warranty shall be provided on all goods and/or services provided under the Contract.

14.5 The Contractor warrants that its employees have the qualifications, experience, knowledge, skills and abilities necessary for the fulfillment of the Contracts.

15.0 Protection of Person and Property

15.1 The Contractor shall use due care that no persons are injured, no property damaged or lost, and no rights are infringed in the performance of the Requirements, and the

**INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART B – GENERAL CONDITIONS**

Contractor shall be solely responsible for all loss, damages, costs and expenses in respect of any injury to persons, damage of property, or infringement of the rights of others incurred in the performance of the Requirements or caused in any other manner whatsoever by the Contractor, or its employees.

- 15.2 The Contractor shall effectively warn and protect the public and other personnel from any danger as a result of the Requirements being done.

16.0 Rectification of Damage and Defects

- 16.1 The Contractor shall rectify any loss or damage for which, in the opinion of the City the Contractor is responsible, at no charge to the City and to the satisfaction of the City. Alternatively, the City may repair the loss or damage and the Contractor shall pay to the City the costs of repairing the loss or damage forthwith upon demand from the City. Where, in the opinion of the City, it is not practical or desirable to repair the loss or damage, the City may estimate the cost of the loss or damage and deduct such estimated amount from the amount owing to the Contractor hereunder.

17.0 Clean Up – Intentionally omitted

18.0 Indemnification

- 18.1 The Contractor shall indemnify, hold and save harmless the City from and against all claims, losses, damages, costs, actions and other proceedings made, sustained, brought or prosecuted in a manner based upon, occasioned by or attributable to any injury, including death, property damage, infringement or damage arising from any act or omission of the Contractor, its employees, officers, volunteers, servants, sub-contractors, or agents or persons from whom the Contractor has assumed responsibility in the performance or purported performance.
- 18.2 The Contractor shall indemnify the City from and against any and all liability or expenses by way of legal costs or otherwise in respect of any claim which may be made for a lien or charge at law or in equity or to any claim or liability under the Builders Lien Act, or to any attachment for debt, garnishee process or otherwise.
- 18.3 The Contractor shall pay all royalties and license fees and shall save the City harmless from loss on account of suits or claims of infringement of patents in the performance of the Requirements.
- 18.4 The Contractor shall assume the defense of, and indemnify and hold harmless the City and its officers, employees and agents, from and against all claims relating to materials furnished and to inventions, copyrights, trade marks, or patents and rights thereto used by the Contractor in the execution of the Contract and in subsequent use and/or operation by the City.

19.0 Termination

- 19.1 The City will advise the Contractor by written notice of its intent to terminate the whole or any part of the Contract in any one of the following circumstances:
- a) If the Contractor fails to make delivery of the goods and/or services within the time specified, or fails to perform any other provisions, terms or conditions of the Contract within the time specified, or within a reasonable time if no time is specified;

**INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART B – GENERAL CONDITIONS**

- b) In the event that the Contractor performs any act or does anything by which the City shall incur any liability whatsoever;
 - c) Any failure of the Contractor to meet the safety requirements of the Contract;
 - d) In the event that any creditor of the Contractor causes a writ of execution or similar writ or court order to be served upon the City requiring the City to pay any portion due to the Contractor under the Contracts; or
 - e) In the event that the Contractor is adjudged bankrupt or if it makes a general assignment for the benefit of creditors or if it becomes insolvent or if it should take the benefit of any Act that may be in force for bankrupt or insolvent debtors.
- 19.2 Upon termination of the Contract, the City shall have no obligation to the Contractor except for such goods and/or services as have been supplied up to the date of the termination of the Contract(s).
- 19.3 Upon termination of the Contract(s) in whole or in part, the City may procure similar goods and/or services and the Contractor shall be liable to the City for any excess costs for such similar goods and/or services. The Contractor shall not be liable for any excess costs if failure to perform arises by reason of strikes, lockouts, Acts of God or acts of the City. The City will not be liable where delivery sites are not available due to strikes, lockouts or Acts of God.

20.0 Insurance Requirements

- 20.1 Without limiting any of its obligations or liabilities under the Contract, the Contractor and its sub-contractors shall obtain and continuously carry during the term of the Contract at their own expense and cost, the following insurance coverage with minimum limits of not less than those shown in the respective items set out below.
- 20.2 All insurance policies shall be in a form and in amounts satisfactory from time-to-time and with insurers acceptable to the City's Director of Risk Management and shall provide the City with sixty (60) days prior written notice of material change, lapse or cancellation. Notice must identify the Contract title, number, policyholder, and scope of work.
- 20.3 The Contractor and each of its sub-contractors shall provide at its own cost any additional insurance which it is required by law to provide or which it considers necessary.
- 20.4 Neither the providing of insurance by the Contractor in accordance with the requirements hereof, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing shall be held to relieve the Contractor from any other provisions of the Contract Documents with respect to liability of the Contractor or otherwise.
- 20.5 The insurance coverage shall be primary insurance as respects the City. Any insurance or self-insurance maintained by or on behalf of the City, its officers, officials, employees, servants or agents shall be excess of this insurance and shall not contribute with it.
- 20.6 Prior to commencement of this Contract, the Contractor shall provide the City with evidence of all required insurance to be taken out in the form of the attached Certificate of Insurance supported by a certified copy(s) of the policy(s). The Certificate of Insurance shall identify the Contract title, number, policyholder and scope of work and shall not contain any disclaimer whatsoever. At all times thereafter, during the term of this agreement, the Contractor shall covenant and agree to comply with all its insurance

**INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART B – GENERAL CONDITIONS**

obligations described herein. Proof of insurance, in the form of a certificate of insurance or certified copies of all insurance policies shall be made available to Risk and Emergency Management at any time during the term of the Contract upon request.

20.7 The Contractor shall provide in its agreements with its sub-contractors clauses in the same form as those found herein. Upon request, the Contractor shall deposit with the City's Director of Risk Management detailed certificate of insurance for the policies it has obtained from its sub-contractors and a copy of the insurance clauses so provided in the said agreements.

20.8 The Contractor shall obtain and maintain in full force and effect during the term of the Contract, insurance not less than that set out below and provide proof of such insurance provided by a company duly registered and authorized to conduct insurance business in the Province of British Columbia.

a) Commercial General Liability insurance in sufficient amounts and description to protect the Contractor, its sub-contractors, the City and its respective officers, officials, employees, servants and agents against claims for damages, personal injury including death, bodily injury and property damage which may arise under this Contract.

The limit of commercial general liability insurance shall be not less than five million dollars (\$5,000,000) per occurrence inclusive for personal injury, death, bodily injury or property damage and in the aggregate with respect to products and complete operations.

The policy of insurance shall:

- i. be on an occurrence form;
- ii. add the City and its officials, officers, employees and agents as additional insureds;
- iii. contain a cross-liability or severability of interest clause;
- iv. extend to cover non-owned automobile, contingent employer's liability, blanket contractual liability, contractor's protective liability, broad form property damage, broad form completed operations and operations of attached machinery.

b) The Contractor shall ensure that vehicles owned and/or operated by the Contractor in connection with the Contract maintain Third Party Legal Liability Insurance in an amount not less than five million dollars (\$5,000,000) per occurrence. The deductible per occurrence shall not exceed two thousand five hundred dollars (\$2,500).

21.0 Workers' Compensation Board Compliance

21.1 Prior to commencing any services on the City's site, the Contractor must provide evidence that it is in good standing with the Workers' Compensation Board of British Columbia ("WCB"). The Contractor is responsible for having the site secured in accordance with WCB safety regulations and ensure that no danger shall befall the public at any time during the performance of the Services.

(a) **Payment of WCB Assessments** - The Contractor agrees that it shall at its own expense procure and carry or cause to be procured and carried and paid for, full

**INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART B – GENERAL CONDITIONS**

Workers' Compensation Board coverage for itself and all workers, employees, servants and others engaged in or upon any work or service which is the subject of this Contract. The Contractor agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such Worker's Compensation Board coverage against any monies owing by the City to the Contractor. The City shall have the right to withhold payment under this Contract until the Worker's Compensation Board premiums, assessments or penalties in respect of work done or service performed in fulfilling this Contract had been paid in full.

- (b) **Designation of Contractor as Prime Contractor** - The City now designates the Contractor as the Prime Contractor, and the Contractor now acknowledges and agrees to its designation as the Prime Contractor, for the purposes of the WCB OH&S Regulation.

- (c) **Prime Contractor's Obligations** - Without in any way limiting the Contractor's obligations under the WCB OH&S Regulation, and by way of example only, the Contractor will:
 - (i) appoint and provide a qualified coordinator for the purpose of ensuring the coordination of health and safety activities for the Site,
 - (ii) provide and receive and respond to all information required to be given, received or relayed by the Contractor (both as an employer and as the Prime Contractor) pursuant to the WCB OH&S Regulation, and
 - (iii) within **five (5) Business Days** of the City delivering the Notice of Award to the Contractor, sign and deliver to the City, the "Prime Contractor Agreement" in the form attached.

- (d) **General WCB Obligations** - In addition to, and not in lieu of, the Contractor's obligations as the Prime Contractor, the Contractor will have a safety program acceptable to the Workers' Compensation Board and will ensure that all City and Workers' Compensation Board safety policies, rules and regulations are observed during performance of this Contract, not only by the Contractor but by all Subcontractors, workers, material suppliers and others engaged in the performance of this Contract.

- (e) **Notice of Project** - Prior to commencement of construction, the Contractor will:
 - (i) complete and file a "Notice of Project" with the Workers' Compensation Board in compliance with Section 20.2 of the WCB OH&S Regulation,
 - (ii) post the Notice of Project at the Site, and
 - (iii) will provide a copy of the Notice of Project to the City and confirm in writing that the Notice of Project has been posted at the Site.

- (f) **Initial Proof of WCB Registration/Good Standing** - Within **five (5) Business Days** of the City delivering the Notice of Award to the Contractor, the Contractor will provide the City with the Contractor's and all Sub-Contractor's Workers' Compensation Board registration numbers.

- (g) **Subsequent Proof of WCB Registration/Good Standing** – Within **five (5) Business Days** of the City delivering the Notice of Award to the Contractor, and concurrently with making any application for payment under this Contract, the Contractor will provide the City with written confirmation that the Contractor and all Sub-Contractors are registered in good standing with the Workers'

INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART B – GENERAL CONDITIONS

Compensation Board and that all assessments have been paid to date of the Notice of Award or date of application for payment, as applicable.

- (h) **Pre-Contract Hazard Assessment** - The Contractor may or may not have received, as part of the Contract Documents, a "Pre-Contract Hazard Assessment" prepared by or for the City pursuant to the City's statutory obligations under the WCB OH&S Regulation (Section 119 of the WCA) as an "owner of a workplace". Despite the City's statutory obligations, the Prime Contractor now acknowledges and agrees that the Contractor may not rely on the "Pre-Contract Hazard Assessment" and now agrees to assume by the terms of this Contract full responsibility for carrying out the City's obligations under Section 119 of the WCA, including without limitation and by way of example only, conducting all due diligence inquiries of all applicable City staff and departments in order to ascertain what, if any, information is known or has been recorded by City staff about the Site that is necessary to identify and eliminate or control hazards to the health or safety of persons at the Site. The City now agrees to make all reasonable efforts to assist the Contractor in obtaining timely access to City staff and City records for this purpose. Within **five (5) Business Days** of the City delivering the Notice of Award to the Contractor, the Contractor will start conducting such due diligence inquiries and must complete and deliver written confirmation of the completion of such inquiries to the City Engineer prior to the City being obligated to issue the Notice to Proceed.
- (i) **Special Indemnity Against WCB Non-Compliance** - The Contractor will indemnify the City and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to
- (i) unpaid Workers' Compensation Board assessments of the Contractor or any other employer for whom the Contractor is responsible under this Contract,
 - (ii) the acts or omissions of any person engaged directly or indirectly by the Contractor in the performance of this Contract, or for whom the Contractor is liable pursuant to the Contractor's obligations as the Prime Contractor, and which acts or omissions are or are alleged by the Workers' Compensation Board to constitute a breach of the WCB OH&S Regulation or other failure to observe safety rules, regulations and practices of Workers' Compensation Board, including any and all fines and penalties levied by the Workers' Compensation Board, or
 - (iii) any breach of the Contractor's obligations under this General Condition.

21.2 The Contractor shall be deemed the Prime Contractor for the purpose of the Contract(s) and as such, has the responsibility to:

- a) Ensure work is done in a safe manner that complies with all the regulatory requirements;
- b) Direct and coordinate the work activities related to the health and safety of all contractors and any other workers in the workplace and immediately give notice;
- c) Have a supervisor with the necessary skills, qualifications and experience readily available at the workplace to coordinate the health and safety activities of the workers;

INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART B – GENERAL CONDITIONS

- d) Obtain from the City written information on hazards and conditions and the methods to address the hazards and conditions and will circulate this information; and
- e) Ensure first aid facilities are provided and maintained on the workplace in accordance with Part 33 of the WCB OHS Regulation.

21.3 Prior to starting any work at the workplace the Contractor must:

- a) Have its own safety program and with written safe work procedures specific to the work being performed available at the Work Site; and
- b) Ensure the safety program meets the requirements of Part 3 of the Workers' Compensation Act and Part 3 of the WCB OHS Regulation.

21.4 The Contractor shall:

- a) Ensure there is a supervisor at the workplace who has the necessary skills and experience to run the Contractor's Safety Program;
- b) Provide occupational first aid services;
- c) Provide occupational health and safety records and documentation to the City or Prime Contractor;
- d) Have toolbox safety meetings at least weekly and formal safety meetings monthly, with minutes forwarded to the City;
- e) At the start of the Services, provide in writing, the names of all supervisors;
- f) Immediately inform the City or the Prime Contractor of any changes;
- g) Ensure that an Occupational Health and Safety (OH&S) Committee is formed for the workplace if required by the Workers' Compensation Amendment Act, and that the activities of the OH&S Committee meet the requirements of the Workers' Compensation Act;
- h) Advise the City or the Prime Contractor, of any accidents or incidents at the workplace that must be reported to the Workers' Compensation Board; and
- i) Inform all persons working on the workplace of the health and safety requirements at the workplace.

21.5 At all times the Contractor will ensure that its workers and sub-contractors, and all other workers coming onto the workplace will comply with:

- a) the Workers' Compensation Act, and the WCB OHS Regulation;
- b) the Contractor's safety program; and
- c) all Work Site safety requirements.

22.0 Character of Workers

22.1 On the written request of the City, the Contractor will remove any employee, Sub-Contractor or agent for any reason including but not limited to the following:

- a) Intoxication;
- b) Use of foul, profane, vulgar or obscene language or gestures;
- c) Solicitation of gratuities or tips from any person for services performed under this Agreement;
- d) Willful, negligent or reckless action in disregard of safety or sanitary requirements or regulations; or
- e) Any action which may constitute a public nuisance or disorderly conduct.

INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART B – GENERAL CONDITIONS

22.2 The Contractor will immediately comply with each such request and will then provide the City with all requested documentation verifying that the employee, Sub-Contractor or agent has been removed from further involvement with this Agreement.

23.0 Failure to Perform

23.1 Should the Contractor neglect to execute the Requirement properly or fail to perform any provision of the Contract, the City may, without prejudice to any other right or remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment due to the Contractor.

23.2 If the Contractor fails to perform any provision of the Contract due to reasons of strike, lockout or other work stoppages, the City may upon ten (10) days written notice to the Contractor terminate the Contract without prejudice to any other right or remedy the City may have.

24.0 Dispute Resolution

24.1 All claims, disputes or issues in dispute between the City and the Contractor shall be decided by mediation or arbitration, if the parties agree, or failing agreement, in a Court of competent jurisdiction within the Province of British Columbia and be governed by the laws of British Columbia.

24.2 In the event that the parties agree to arbitration pursuant to the above, the arbitration shall be governed by the rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator or arbitrators shall be agreed upon by the parties, and failing agreement by the parties, shall be appointed by a court of competent jurisdiction with the Province of British Columbia.

24.3 In the event that the parties agree to arbitration, the arbitration shall take place in the Lower Mainland, British Columbia and be governed by the laws of British Columbia.

24.4 The procedure set out in this section is not meant to preclude or discourage informal resolution of disagreements between the City and the Contractor.

25.0 Payments

25.1 The Contractor shall be paid net 30 days from receipt of invoice and acceptance of the goods and or services, whichever is the later, unless alternate payment terms have been agreed to between the Contractor and the City.

25.2 The Contractor may be required to accept payment by purchasing card (MasterCard). Preference may be given to a Bidder who has or is willing to expand their system to provide Level III reporting detail.

26.0 Taxes

26.1 Unless otherwise provided herein, the Contractor shall pay all sales or excise taxes in force during the term of the Contract, provided that any increase or decrease in such taxes shall increase or decrease the amount due under the Contract(s).

26.2 Invoices shall show the appropriate amounts for GST and PST.

**INVITATION TO TENDER NO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART B – GENERAL CONDITIONS**

27.0 Non-resident Withholding Tax

- 27.1 Regulation 105(1) of the Canadian Income Tax Act requires that payments to non-residents for any services performed in Canada are subject to a Non-resident Withholding Tax of 15%. Exemption from this withholding tax is available in some circumstances, but the Contractor must apply directly to the Canada Customs and Revenue Agency (CCRA) at least 30 days before commencing services.

**INVITATION TO TENDERNO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART C – SPECIAL CONDITIONS**

1.0 Additional Evaluation Criteria

- 1.1 In addition to the evaluation criteria set out in Part A of this ITT, the following criteria, which are not in any order of importance, will be taken into consideration during the City's evaluation of the Tender:
- Availability of parts;
 - Training;
 - Delivery;
 - Fastest travelling speed.

2.0 Additional Insurance Requirements

- 2.1 In addition to the insurance set out in the General Conditions, the Contractor shall provide the following insurance in accordance with the terms set out in the General Conditions:
- a) Insurance covering all risks of physical loss or damage to the equipment and all components thereof in an amount of not less than the full Contract price and which shall include a waiver of subrogation against all unissued parts and a deductible of no more than five thousand dollars (\$5,000) for each and every claim and which insurance shall terminate on safe delivery to and acceptance by the City of the equipment at the site.

3.0 Commencement of Warranty Period

- 3.1 The warranty period shall commence at the time the City puts the equipment (the "Unit") into service, or three months after acceptance of the Unit, whichever is sooner.
- 3.2 The City will notify the Contractor the date that the Unit goes into service.
- 3.3 The warranty should be made out to the City of Vancouver, 250 West 70th Avenue, Vancouver, BC, V5X 2X1.

4.0 Required Documentation

- 4.1 The following documentation shall accompany each Unit at time of delivery. Failure to include all or some of the listed documents will delay the City's acceptance of the Unit:
- a) Copy of the City's invoice;
 - b) British Columbia Motor Vehicle Branch form APV/9T - transfer tax form/statement of vehicle origin or equivalent document from originating jurisdiction;
 - c) Customs documentation, if applicable;
 - d) Owner service policy and warranty;
 - e) Warranty documents for installed accessories;
 - f) Line sheet for each type of vehicle.
- 4.2 The City of Vancouver address shown on the documentation should read the same as the delivery address set out on the purchase order.

**INVITATION TO TENDERNO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART C – SPECIAL CONDITIONS**

5.0 Plant Production Limitations

- 5.1 If any Unit ordered under the Contract cannot be manufactured because of plant production limitations, the City reserves the right to purchase the current replacement model at a revised price.
- 5.2 The revised price shall be based on a percentage adjustment based on (i) the published manufacturer's retail/list prices at the time of the Tender and (ii) the first published manufacturer's retail/list prices for the next model year.
- 5.3 The Contractor shall notify the Manager of Materials Management in writing if such a production situation occurs, and shall submit with the letter of notification, comparative manufacturer's retail lists supporting the proposed revision(s).

**INVITATION TO TENDERNO. PS05038
SUPPLY AND DELIVERY OF A TRACTOR LOADER
PART D – REQUIREMENTS**

1.0 Scope of Contract

- 1.1 The City of Vancouver requires one (1) only heavy duty 4WD tractor loader, complete with a factory rear counterweight for the City of Vancouver Park Board to operate in the general parks and service yards.

2.0 Requirements

- 2.1 Detailed specifications are set out in Part E – Tender Form. Tenders shall clearly indicate any deviations from the equipment specifications set out herein.

3.0 Delivery

- 3.1 Delivery is required on or before June 30, 2005
3.2 Units shall be delivered to:

City of Vancouver,
Equipment Services,
250 West 70th Ave.,
Vancouver, B.C.
V5X 2X1

Attention: Gerry Papove