

March 13, 2013

INVITATION TO TENDER (“ITT”) NO. PS20120999  
CONTRACTOR FOR CONSTRUCTION AT THE E-COMM DATA CENTRE

ADDENDUM No. 1

1. RE: SECOND SITE VISIT FOR INTERESTED CONTRACTORS

*Please See Attached Form:*



**Purchasing Services**

**Invitation to Tender No. PS20120999 Contractor for Construction at the E-Comm Data Centre**

To acknowledge your intent to attend the Second Information Meeting and Site Visit being held on **Monday, March 18, 2013 at 1:00 PM at E-Comm, located at 3301 East Pender Street, Vancouver** and to ensure that you receive the required information please submit this form to the person identified below before 12:30 pm, Friday, March 15, 2013.

If you have not done so at the previous Information Meeting and Site Visit please also fill out the attached Non-Disclosure Agreement attached and submit it to Jim Lowood at the address below. **PLEASE NOTE THAT THIS SUBMITTAL FORM AND THE NON-DISCLOSURE FORM FOR NEW ATTENDEES WILL ONLY BE ACCEPTED IF THEY ARE SENT TOGETHER.**

Jim Lowood, SCMP  
Fax: 604-873-7057  
Email: [purchasing@vancouver.ca](mailto:purchasing@vancouver.ca)

**Your details:**

**Tenderer's Name:**

\_\_\_\_\_  
"Tenderer"

**Address:**

**Telephone:**

\_\_\_\_\_  
**Fax:** \_\_\_\_\_

**Key Contact Person:**

**E-mail:**

\_\_\_\_\_  
**Incorporation Date:** \_\_\_\_\_

## Non-Disclosure Agreement (Sensitive Material)

WHEREAS, in response to the City's Invitation to Tender ("ITT") #PS20120999 entitled "Contractor for Construction at the E-Comm Data Centre" (the "ITT"), the City shall disclose to the Tenderer, certain Sensitive Material of the City for the sole purpose of considering, evaluating, and responding to the ITT (the "Purpose") and on the terms and subject to the conditions contained in this Agreement.

NOW THEREFORE, in consideration of the mutual premises and covenants herein, the receipt and sufficiency of which is hereby acknowledged, the City and the Tenderer hereby agree as follows:

### 1.0 Definitions

- 1.1 "Affiliate" means an affiliate as defined in the Business Corporations Act (British Columbia), as may be amended.
- 1.2 "Agreement" means this Non-Disclosure Agreement.
- 1.3 "City" means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter, and includes, but is not limited to, the Vancouver Police Board, the City's Board of Parks and Recreation, the Vancouver Fire and Rescue Service, and the Vancouver Library Board;
- 1.4 "Tenderer's Recipient" means any person who is a member of the Tenderer's ITT response team, whether such member is an employee, Sub-Contractor or agent of the Tenderer, or any employee or agent of such person.
- 1.5 "Sensitive Material" means all information, in any form or medium, known or used by City or an Affiliate of the City which is not known to the general public, including, but not limited to, the know-how, trade secrets, strategic plans, technical information, product information, supplier information, customer information, financial information, marketing information and information as to business opportunities, methods and strategies and research and development of the City and its Affiliates. If and to the extent any Sensitive Material is included in any report, assessment, diagram, memorandum or other document or copied or reproduced in any other form or medium, such report, assessment, diagram, memorandum, document or Sensitive Material in such other form or medium will be deemed to be Sensitive Material.

### 2.0 Title

- 2.1 All right, title and interest in and to Sensitive Material will be and remain vested in the City. Nothing in this Agreement obliges the City to disclose Sensitive Material to the Tenderer or grants the Tenderer any license or right of any kind with respect to Sensitive Material, except the limited right to use such information solely for the purpose of responding to the ITT.

### 3.0 *Tenderer's Obligations*

- 3.1 The Tenderer will use Sensitive Material only as strictly required for the purpose of responding to the ITT and for no other purpose than to respond to the ITT and only in the manner and upon the terms specified in this Agreement.
- 3.2 The Tenderer will deal in utmost good faith with the City in its use of the Sensitive Material provided by the City.
- 3.3 The Tenderer will hold and keep, and will ensure that all of the Tenderer's Recipients will hold and keep, the Sensitive Material in confidence and in trust for the City, using at least the same degree of care, but no less than a reasonable degree of care, as the Tenderer uses to protect its own similar confidential information of like importance, and will,
- (a) prevent any access, reproduction, disclosure or use of the Sensitive Material not expressly authorized herein,
  - (b) disclose the Sensitive Material only to those of the Tenderer's Recipients who have a definable need to know such information for the purpose of submitting to the ITT and who are informed of the confidential nature of such information and only to the extent strictly necessary in order to carry out the purpose of submitting to the ITT, provided that such Tenderer's Recipients are bound by a confidentiality agreement with the Tenderer no less restrictive than this Agreement, and in the event the employment or appointment of any such person is terminated, the Tenderer agrees to use its best efforts to recover any of the Sensitive Material in such person's custody or control. The Tenderer will be responsible for all damages arising from any disclosure of all or part of the Sensitive Material or any act in contravention of this Agreement by a person to whom such Sensitive Material was given by the Tenderer as if the disclosure were made or the act performed directly by the Tenderer,
  - (c) not, and will ensure that each of the Tenderer's Recipients will not, copy or reproduce any of the Sensitive Material, except as strictly necessary in order to carry out the Authorized purpose of responding to the ITT, and
  - (d) promptly notify the City in writing of any unauthorized copying, reproduction, use or disclosure of the Sensitive Material of which the Tenderer is or becomes aware, and such notice will include a detailed description of the circumstances of the copying, reproduction, use or disclosure and the parties involved.

### 4.0 *Exceptions to Confidentiality Obligations*

- 4.1 This Agreement imposes no obligation upon the Tenderer with respect to the City's Sensitive Material received hereunder that:
- (a) the Tenderer can promptly demonstrate with documentary evidence was already legitimately known to the Tenderer without a duty of confidentiality prior to the disclosure thereof by the City,
  - (b) is lawfully received by the Tenderer from a third party, other than a supplier introduced to the Tenderer by the City, without a duty of confidentiality,

- (c) has become general public knowledge through no act or fault on the part of the Tenderer or the Tenderer's Recipients, or
- (d) the Tenderer can promptly demonstrate with documentary evidence was independently developed by or for the Tenderer without the use of any Sensitive Material.

#### 5.0 *Legal Requirement to Disclose*

- 5.1 If the Tenderer or any of the Tenderer's Recipients is or becomes legally required to disclose any Security Sensitive Material to a government body or court of law, the Tenderer agrees, to the extent permissible by law, to give, and will ensure that the Tenderer's Recipients give, the City sufficient advance notice to enable the City the opportunity to contest the disclosure or obtain a protective order.

#### 6.0 *Warranty Disclaimer*

- 6.1 All Sensitive Material is provided on an "as is" basis, and all representations and warranties, express or implied, including as to its accuracy or completeness, fitness for purpose, merchantability, and non-infringement, are hereby disclaimed.

#### 7.0 *Injunctive Relief*

- 7.1 The Tenderer acknowledges and agrees with the City that
- (a) the secrecy of the Sensitive Material is of the utmost importance to the City, and the Sensitive Material is of a sensitive and confidential nature such that monetary damages alone may be inadequate to protect the City's interests against any actual or threatened breach of this Agreement
  - (b) the covenants and conditions of this Agreement are reasonable and necessary for the protection of the City's business and security and all defences to the strict enforcement thereof by the City are hereby waived by the Tenderer to the fullest extent permitted by law, and
  - (c) a violation of any of the provisions of this Agreement will result in immediate and irreparable damage to the City, and so the City will, in addition to any other rights to relief, be entitled to the remedies of specific performance and injunctive or other equitable relief in respect of any actual or threatened breach of this Agreement, without proof of actual damages or the inadequacy of monetary damages.

#### 8.0 *General*

- 8.1 Upon the request at any time of the City, the Tenderer will promptly **destroy** all Sensitive Material and any copies or reproductions thereof in the Tenderer's possession or under its control or in the possession or under the control of any of the Tenderer's Recipients, and will certify in writing such destruction or return of all Sensitive

Material. If compliance with the foregoing would violate any applicable law or regulation, then such information may be retained provided that it is not used for any purpose other than to evidence the Tenderer's compliance with such law or regulation, and such retained information must be maintained in confidence as set forth in this Agreement.

- 8.2 Neither party has an obligation under this Agreement to enter into any other business relationship with the other party.
- 8.3 The Tenderer will not, without the written consent of the City, disclose to any third party either the fact that discussions or negotiations are taking place concerning the Transactions or any of the terms, conditions or other facts with respect to the Transactions including the status thereof or the subject matter of this Agreement, provided, however, that nothing herein will prevent the Tenderer from making such disclosure
- (a) on a confidential basis to any of the Tenderer's Recipients to the extent such person needs to know such information strictly for the purpose of responding to the ITT, or
  - (b) in order to comply with the requirements of applicable securities or other laws.
- 8.4 No waiver, addition to or amendment of this Agreement will be effective unless made in writing signed by authorized signatories of the parties and expressly stated to be a waiver, addition to or amendment of this Agreement. This Agreement states the entire agreement between the parties as to its subject matter and merges and supersedes all previous communications with respect to their obligations hereunder, and the provisions hereof will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
- 8.5 This Agreement will be governed by and interpreted and construed in accordance with the laws prevailing in the Province of British Columbia and the Tenderer irrevocably attorns to the exclusive jurisdiction of the courts of British Columbia and all courts having appellate jurisdiction thereover in relation to the interpretation and enforcement of this Agreement.
- 8.6 If the Tenderer agrees to the terms and conditions of this Agreement the Tenderer is required to sign this Agreement below before viewing Sensitive Material and commencing on the Information Meeting and Site Visit.

Signed by:

\_\_\_\_\_  
  
\_\_\_\_\_

[Print name in full with title]

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[Print Tenderer's company name in full]

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Date

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NAME OF VENDOR

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SIGNATURE OF AUTHORIZED SIGNATORY

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DATE

Please submit this Addendum 1, replacing the current form, with the Invitation to Tender No. PS20120999.

If you have already submitted your Tender, this addendum shall be submitted to the Purchasing Services Office, City of Vancouver, 453 West 12<sup>th</sup> Avenue, Vancouver, British Columbia, Canada, V5Y 1V4, (Courier Delivery and Drop off is at the Information Desk, Main Floor Rotunda of the same address), in an envelope clearly marked "Addendum No. 1 to Invitation to Tender No. PS20120999: Contractor for Construction at the E-Comm Data Centre" before the closing time of 3:00:00 p.m. on Tuesday, March 26, 2013.

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**NAME OF VENDOR**

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**SIGNATURE OF AUTHORIZED SIGNATORY**

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**DATE**