



**REQUEST FOR PROPOSAL PS07082**

**REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM**

Proposals will be received in the Courier Delivery Drop-off Office, 1<sup>st</sup> Floor, Vancouver City Hall, 453 West 12<sup>th</sup> Avenue, Vancouver, British Columbia, Canada, V5Y 1V4 prior to 3:00:00 P.M. City Hall Clock Time (as defined in Note 2 below) on Tuesday, December 18, 2007 (the “Closing Time”) and registered at 11:00:00 A.M. on Wednesday, December 19, 2007.

**NOTES:**

1. Proposals are to be in sealed envelopes or packages marked with the Proponent’s Name, the RFP Title and Number.
2. The Closing Time will be conclusively deemed to be the time shown on the clock used by the City’s Security Office for this purpose.
3. DO NOT SUBMIT BY FAX.

All queries related to this RFP are to be submitted  
in writing to the attention of:

**Linda Woyce  
Buyer**

**FAX: 604.873.7057 E-MAIL: [purchasing@vancouver.ca](mailto:purchasing@vancouver.ca)**

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**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM**

**TABLE OF CONTENTS**

**PART A - INTRODUCTION**

**Pages 4 - 7**

- 1.0 Overview
- 2.0 Background and Scope
- 3.0 Objectives of the RFP
- 4.0 Insurance
- 5.0 Requirements

**PART B - INSTRUCTIONS TO PROPONENTS**

**Pages 8 - 13**

- 1.0 Administrative Requirements
- 2.0 Conduct of RFP - Inquiries and Clarifications
- 3.0 Contract Requirements - Form of Agreement
- 4.0 Pricing
- 5.0 Consortium Proposals
- 6.0 Submission of Proposal
- 7.0 Format of Proposal
- 8.0 Bid and Performance Security
- 9.0 Conflict of Interest/Solicitation
- 10.0 Opening of Proposals
- 11.0 Evaluation of Proposals
- 12.0 Deviation from Requirements or Conditions
- 13.0 Proposal Approval
- 14.0 Quantities
- 15.0 Brand Names
- 16.0 Alternate Solutions
- 17.0 Environmental Responsibility
- 18.0 Freedom of Information and Protection of Privacy Act
- 19.0 Confidentiality
- 20.0 Advertising
- 21.0 Special Conditions
- 22.0 Non-Resident Withholding Tax
- 23.0 Legal Terms and Conditions

**PART C - SPECIAL CONDITIONS**

**Pages 14 - 15**

- 1.0 Additional Evaluation Criteria
- 2.0 Performance Security - Letter of Credit
- 3.0 Additional Insurance Requirements
- 4.0 Option To Purchase Additional Units
- 5.0 Warranty
- 6.0 Training
- 7.0 Trade-Ins
- 8.0 Regulations

**PART D - PROPOSAL FORM**

**Pages PF1 - PF20**

- 1.0 Required Documents
- 2.0 Compliance
- 3.0 Required Proposal Documents
- 4.0 Proponent's Declaration and Acknowledgment

Proposal Form - Attachment A - Legal Terms and Conditions

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM**

**TABLE OF CONTENTS**

---

**SCHEDULES:**

Schedule A - Requirements  
Schedule B - Pricing  
Schedule C - Deviations and Variations  
Schedule D - Sub-Contractors

**APPENDIX 1 -FORM OF AGREEMENT (17)**

**APPENDIX 2 -CERTIFICATE OF INSURANCE (1)**

**APPENDIX 3 - RESPONSE NOTIFICATION FORM (1)**

**APPENDIX 4 - INFORMATION MEETING ATTENDANCE FORM (1)**

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
PART A - INTRODUCTION**

---

**NOTE:** The definitions set out in Attachment A - Legal Terms and Conditions of the Proposal Form (Part D) and in the Form of Agreement (Appendix 1) apply throughout this RFP, except where otherwise expressly stipulated or the context otherwise requires.

**1.0 Overview**

1.1 This RFP identifies a business opportunity for the successful Proponent to provide the City's Traffic and Electrical Operations Branch (TEOB) with the replacement of four (4) wide band VHF voice voting radio systems which are no longer compliant with Industry Canada bandwidth requirements.

1.2 Qualified and experienced Proponents are invited to submit Proposals and the City will consider Proposals from those Proponents who are able to meet all the Requirements as set out herein. However, the successful Proponent will be the Proponent who offers the best overall value along with a high level of service and "best practice" business solutions.

1.3 A Proponents' information meeting (the "Information Meeting") will be held:

Date: Thursday, November 29, 2007

Time: 10:00 AM PST

Location: City of Vancouver - Purchasing Board Room  
City Square - East Tower  
Office 320 - 555 West 12th Avenue  
Vancouver, BC

This meeting will include an overview of the RFP Requirements; the document and process; and will also enable Proponents to address questions in a communal forum.

1.4 Proponents are encouraged to pre-read this document and submit any questions pertaining to this RFP by e-mail to: [purchasing@vancouver.ca](mailto:purchasing@vancouver.ca). All questions will be answered and posted on the above noted website. Proponents should refer to this site to update themselves on all posted questions and answers.

1.5 All prospective proponents are to pre-register for the Proponents' Information Meeting by submitting an Information Meeting Attendance Form (Appendix 3) by fax to (604) 873-7057 or e-mail to [purchasing@vancouver.ca](mailto:purchasing@vancouver.ca) by 3:00 p.m. on Tuesday, November 27, 2007.

1.6 The City will in good faith attempt to give accurate verbal responses to questions during the Proponents' Information Meeting but proponents are advised that they may only rely on the formal written response/summary which may be issued by the City following the Proponents' Information Meeting. If the City issues a formal written response/summary following the Proponents' Information Meeting it will be posted on the City's website at [www.vancouver.ca/bid/bidopp/openbid.htm](http://www.vancouver.ca/bid/bidopp/openbid.htm).

1.7 Following the Proponents' Information Meeting, all prospective proponents who still intend to submit Proposals are to complete and then submit the Response Notification Form (Appendix 3) by fax to (604) 873-7057 or e-mail to [purchasing@vancouver.ca](mailto:purchasing@vancouver.ca) on or before December 5, 2007.

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
PART A - INTRODUCTION**

---

1.8 Key dates to be noted are:

Event	Dates
Release of RFP	November 21, 2007
Deadline for submission of Information Meeting Attendance Form	November 27, 2007
Proponent's Information Meeting	November 29, 2007
Deadline for submission of Response Notification Form	December 5, 2007
Deadline for Inquiries	December 14, 2007
RFP Closing	December 18, 2007

**2.0 Background and Scope**

**2.1 Background**

The City plans to replace the radio system utilized by its TEOB to make it compliant with the narrow band requirements of Industry Canada. The current and existing system consists of the following components:

Channel 1:     comparator (2) Ericssen  
Receivers (12) various  
Transmitter (1) Motorola MTR2000

Channel 2:     comparator (1) Ericssen  
Receivers (6) various  
Transmitter (1) Motorola MTR2000

Channel 3:     comparator (1) Ericssen  
Receivers (6) various  
Transmitter (1) Motorola MTR2000

Channel 4:     comparator (1) Ericssen  
Receivers (6) various  
Transmitter (1) Motorola MTR2000

Existing mobiles (Motorola CDM1250) are already dual mode conventional and can operate as 30 KHz spacing or 12.5 KHz spacing. The City is seeking a Contractor who can recommend a product that allows a smooth transition from current technology to new technology and provide recommendations on products to provide future capabilities which might be useful. The City is seeking a Contractor who can develop, recommend and support this program on an on-going basis. The replacement of the radio system is to occur as soon as possible.

**REQUEST FOR PROPOSAL PS07082**  
**REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM**  
**PART A - INTRODUCTION**

---

**2.2 Scope**

The successful Proponent(s) shall supply new equipment acceptable to Industry Canada to replace non compliant equipment. All receivers must operate with tone coded squelch. Any new transmitters also need a tone coded squelch. All connections will be done using City owned voice grade circuits or equivalent lease lines and use tone control. All equipment must be certified to be legally used in Canada.

The successful Proponent will be required to include the following components:

- New Equipment to replace the current voting systems, that is compatible with existing conventional mobiles and portables which can be reprogrammed to narrowband mode.
- Connectivity between remote radio sites; the City owns and operates a voice grade carrier network between most of the radio sites, supplemented by voice grade lease lines which are used to connect remote radios with comparators.
- A transition plan to move from wideband to narrowband technology, which minimizes downtime to the current radio users.
- Considerations for future capabilities which may include selective call, trunking or data communications.
- Price quotations for each recommendation to be submitted.

Proponents should provide a complete RFP submission containing all items.

The stated specifications are the minimum requirements the City will accept. However, the City encourages Proponents to offer alternative technology options and other value adding ideas.

**3.0 Objectives of the RFP**

3.1 The objectives of this RFP are to select a Contractor(s) who can provide a recommendation and the replacement of four (4) wide band VHF voice voting radio systems which are no longer compliant with Industry Canada bandwidth requirements for the TEOB and Industry Canada requirements.

3.2 Within the context of the TEOB replacement cycle, the Contractor(s) will ideally enable the TEOB to realize;

- Quality products at maximum value;
- Timely deliveries at lowest cost to the TEOB and to the Contractor;
- Consistent and best pricing for products and services;
- A strong co-operative and proactive relationship with a Contractor who can provide ongoing information and products that reflect both current and future technological advances in VHF voice voting radio systems and Industry Canada requirements.

**REQUEST FOR PROPOSAL PS07082**  
**REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM**  
**PART A - INTRODUCTION**

---

**4.0 Insurance**

- 4.1 Proponents are requested to review and ensure that they fully understand and have the ability to meet the City's insurance requirements as outlined within Section 32.0 of the Form of Agreement in Appendix 1, and Part C - Special Conditions, Section 3.0.

**5.0 Requirements**

- 5.1 In support of the objectives as outlined above, the City has identified detailed requirements within Schedule 'A' of this RFP, which the Proponent should be able to satisfy or exceed.

**REQUEST FOR PROPOSAL PS07082**  
**REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM**  
**PART B - INSTRUCTIONS TO PROPONENTS**

---

**1.0 Administrative Requirements**

- 1.1 On or before the December 5, 2007 deadline, prospective Proponents are to indicate whether or not they will be submitting a Proposal prior to the Closing Time by sending the Response Notification Form (Appendix 3).
- 1.2 It is the sole responsibility of the Proponent to check the City's website at <http://www.vancouver.ca/bid/bidopp/openbid.htm> regularly for amendments, addenda, and questions and answers related to this RFP.
- 1.3 The Proponent is to submit its Proposal in accordance with instructions identified on the cover page and as provided within this Part B.

**2.0 Conduct of RFP - Inquiries and Clarifications**

- 2.1 The City's Manager of Materials Management will have conduct of this RFP, and all communications are to be directed only to the contact person named on the cover page.
- 2.2 It is the responsibility of the Proponent to thoroughly examine these documents and satisfy itself as to the full requirements of this RFP. Inquiries are to be in written form only, faxed to 604-873-7057 or e-mailed to [purchasing@vancouver.ca](mailto:purchasing@vancouver.ca) to the attention of the contact person shown on the cover page before the Closing Time. If required, an addendum will be issued to all registered Proponents and posted on the City's website as noted in item 1.2 above.

**3.0 Contract Requirements - Form of Agreement**

- 3.1 The delivery deadlines of the Agreement will be as per timeline set out in Schedule A, Section 5.0.
- 3.2 Where the head office of the successful Proponent is located within the City of Vancouver and/or where the successful Proponent is required to perform any Work at a site located within the City of Vancouver, the successful Proponent is required to have a valid City business license prior to Contract execution.
- 3.3 The successful Proponent will be requested to enter into the Form of Agreement substantially in accordance with Appendix 1. Where the Proponent is proposing modifications to the Form of Agreement, the Proponent should attach a copy of the proposed contract language and indicate in the Proposal Form (Schedule C - Deviations and Variations) which clauses in the attached Form of Agreement and which clauses in the Proponent's form of contract apply to the Proponent's Proposal.
- 3.4 If any of the terms set out in the Form of Agreement are unacceptable to the Proponent, the Proponent should identify such terms and provide suggested alternatives in its Proposal. While the City is not obligated to accept any alternative, all suggested alternatives will be considered during the evaluation process, but may or may not be acceptable to the City.



**REQUEST FOR PROPOSAL PS07082**  
**REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM**  
**PART B - INSTRUCTIONS TO PROPONENTS**

---

**4.0 Pricing**

- 4.1 Prices quoted are to be exclusive of GST and PST.
- 4.2 Pricing shall be held firm for the term of the Contract.
- 4.3 Proponents located in Canada may quote in Canadian funds and where the product is imported from the USA or from other countries, prices may be quoted in the currency of the country from which they are imported. Proponents located outside Canada may quote prices in the currency of their location or the jurisdiction from which the product is being obtained.

**5.0 Consortium Proposals**

- 5.1 The City will consider a Proposal from two or more persons or companies having no formal corporate links who wish to form a joint venture or consortium solely for the purpose of submitting a Proposal in response to this RFP, provided they disclose the names of all members of the joint venture or consortium and all members sign the Proposal Form.
- 5.2 One person or company is to be identified as the “Key Contact Person” on the Proposal Form (Part D), and be prepared to represent the consortium to the City. The Key Contact Person will serve as the primary contact and take overall responsibility for all communications with the City during the Proposal submission, evaluation, and any negotiation process. The City prefers that the refuse body supplier act as the Key Contact Person.
- 5.3 Consortium Proposals should include proposed contract language describing each consortium members’ roles and responsibilities and the proposed legal contract structure.
- 5.4 The City reserves the right to accept the consortium as proposed or choose to contract with individual consortium members separately. Each component of the consortium Proposal should be priced out individually.

**6.0 Submission of Proposal**

- 6.1 Proponents are to **submit four (4) copies of their Proposal**, in three ring binders with each section tabbed and including all accompanying schedules, appendices or addenda in a sealed envelope or package marked with the Proponent’s name, the RFP title and number, prior to the Closing Time set out on the date and to the location shown on the cover page of this RFP.
- 6.2 Only the English language may be used in responding to this RFP.
- 6.3 Proposals received after the Closing Time or in locations other than the address indicated, may or may not be accepted and may or may not be returned. The City may or may not elect to extend the Closing Time.
- 6.4 Amendments to a Proposal are to be submitted in writing in a sealed envelope or package, marked with the Proponent’s name and the RFP title and number.

**REQUEST FOR PROPOSAL PS07082**  
**REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM**  
**PART B - INSTRUCTIONS TO PROPONENTS**

---

- 6.5 Proposals may be withdrawn at any time before or after the Closing Time and are to be withdrawn by written notice delivered to the office of the Purchasing Department, 2<sup>nd</sup> Floor, City Hall, and signed by the authorized signatory for the Proponent.
- 6.6 All costs associated with the preparation and submission of the Proposal, including any costs incurred by the Proponent after the Closing Time, will be borne solely by the Proponent.

**7.0 Format of Proposal**

7.1 Unnecessarily elaborate Proposals, beyond that sufficient to present a complete and effective response, are not required and unless specifically requested, the inclusion of corporate brochures and narratives is discouraged.

7.2 Proponents are to complete all forms included in this RFP attaching any additional appendices that may be required. Proposals are to be arranged as follows:

**Title Page:** The title page will show the RFP title and number, Closing Time and Date, Proponent name, address, telephone number and the name and title of the contact person.

**Table of Contents:** Page numbers are to be indicated.

**Executive Summary:** A short summary of the key features of the Proposal demonstrating the Proponent's understanding of the scope of the Requirements.

**Proponent Profile:** Provide a brief overview and history of the organization including the following:

- Number of employees;
- Year of incorporation;
- Relevant experience; and
- Other details pertinent to the Response.

**Description of Proposed Method:**

Provide sufficient details to address all of the objectives, observations, concerns and operational requirements contained in this RFP, as well as any other information that the Proponent believes would assist the City in coming to a decision.

**Proposal Form:** The Proponent is to complete the Proposal Form and attached Attachment A included in this RFP in accordance with the instructions.

**Schedules:** The Proponent is to complete and provide the information within the respective schedules included in this RFP. If additional space is required to respond to the Requirements as outlined, then additional pages can be attached.

**Alternate Solutions:** Proponents may submit alternative solutions and are to identify same as additional appendices within their Proposal.

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
PART B - INSTRUCTIONS TO PROPONENTS**

---

**8.0 Bid and Performance Security**

- 8.1 No bid security is required, since no irrevocable legally binding offer is required in this RFP.

**9.0 Conflict of Interest/Solicitation**

- 9.1 Proponents are to ensure that any and all conflicts or potential conflicts and any and all collusion, or appearance of collusion is fully and properly disclosed in Section 6.0 of Attachment A of the Proposal Form.
- 9.2 Failure to disclose this information may result in the rejection of the Proposal, the associated entity's Proposal, and/or the immediate cancellation of any Contract should one be concluded in reliance on the information contained in the submitted Proposal.
- 9.3 If any director, officer, employee, agent or other representative of a Proponent makes any representation or solicitation offering a personal benefit of any kind, directly or indirectly, to any officer, employee, agent or elected official of the City with respect to the Proposal, whether before or after the submission of the Proposal, the City will automatically disqualify such Proponent.

**10.0 Opening of Proposals**

- 10.1 The City reserves the right to open all Proposals in a manner and at the time and place determined by the City. Dissemination of Proposal information will be as follows:
- a) Upon opening of the Proposals, the names of each Proponent will be publicly announced.
  - b) Upon completion of Proposal evaluation, the salient features of each Proposal and the recommended Proposal will be summarized and reported on to the City's Council.

**11.0 Evaluation of Proposals**

- 11.1 Proposals will be evaluated by representatives of Traffic and Electrical Operations Branch (TEOB) and Materials Management on the basis of the City's assessment of the overall best value to the City based on quality, service, price and any other relevant criteria set out herein including, but not limited to:
- a) the Proponent's ability to meet the Requirements;
  - b) the Proponent's ability to deliver the Requirements when and where required;
  - c) financial offer;
  - d) the Proponent'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;
  - e) quality of submission; and
  - f) any other criteria set out in the RFP or otherwise reasonably considered relevant.
- 11.2 The City may elect to short list Proponents in stages as deemed necessary. Short-listed Proponents will be asked to provide additional information or details for clarification,

**REQUEST FOR PROPOSAL PS07082**  
**REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM**  
**PART B - INSTRUCTIONS TO PROPONENTS**

---

which may include the Proponent (and any or all Sub-Contractors of the Proponent), attending interviews, making a presentation, performing demonstrations, and/or furnishing additional technical data.

- 11.3 Prior to approval of a Proposal, the City must be satisfied as to the Proponent's financial stability. The Proponent(s) may be asked to provide annual financial reports or a set of financial statements prepared by an accountant and covering the Proponent's last two (2) fiscal years.
- 11.4 Preference may be given to Proposals offering environmentally beneficial products or Equipment.

**12.0 Deviation from Requirements or Conditions**

- 12.1 Any deviation from the Requirements or the conditions specified in this RFP should be clearly stated in the Proponent's Proposal within Schedule C - Deviations and Variations. The City will be the sole judge as to what constitutes an acceptable deviation. If no deviations are indicated in the Proponent's Proposal, the City will assume that the Proponent is proposing full compliance with the Requirements and conditions of this RFP.

**13.0 Proposal Approval**

- 13.1 Proposal approval is contingent on funds being approved and the Proposal being approved by City Council. Only then may the successful Proponent and the City proceed to settle, draft and sign the necessary legal agreement.
- 13.2 The City will notify the successful Proponent in writing that its Proposal has been approved in principle and invite the Proponent to proceed with discussions to settle, draft and sign a legal agreement.
- 13.3 The City is not under any obligation to approve any Proposal and may elect to terminate this RFP at any time.

**14.0 Quantities**

- 14.1 The City intends to purchase four (4) VHF wide band voice voting radio systems to replace the existing systems which are no longer compliant with Industry Canada bandwidth requirements for the TEOB.

**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 Proponent's responsibility to name such a product in its Proposal. Evidence of equality in the form of samples may be requested.

**16.0 Alternate Solutions**

- 16.1 If in addition to proposing equipment which meets the Requirements, the Proponent wishes to offer an alternative, the alternative solution is to be submitted separately as an appendix within the Proposal.

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
PART B - INSTRUCTIONS TO PROPONENTS**

---

**17.0 Environmental Responsibility**

- 17.1 The City is committed to preserving the environment. Proponents are to provide environmentally sensitive products or Equipment wherever possible. Where there is a requirement that the Contractor supplies materials, and where such materials may cause adverse effects, the Proponent is to indicate the nature of the hazard in its Proposal.
- 17.2 The Proponent is 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 Freedom of Information and Protection of Privacy Act**

- 18.1 Proponents should note that the City of Vancouver is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia).

**19.0 Confidentiality**

- 19.1 Proponents should note that upon submitting their Proposal Form, they will be legally bound to certain confidentiality obligations not to disclose any City information without the City's prior written consent (see section 5 of Attachment A to the Proposal Form).
- 19.2 This RFP is the property of the City. Except for the purpose of submitting a Proposal, copies may not be made or distributed without the prior written approval of the City's Manager of Materials Management.

**20.0 Advertising**

- 20.1 The approval of any Proposal and the signing of an Agreement does not permit a Proponent to advertise its relationship with the City, without the City's prior written authorization.

**21.0 Special Conditions**

- 21.1 Proponents should note that if the special conditions of this RFP conflict with Parts A and B of this RFP, the special conditions are intended to govern over Parts A and B.

**22.0 Non-Resident Withholding Tax**

- 22.1 The *Income Tax Act* (Canada) requires that payments to persons who are "non-residents" for Canadian tax purposes, for services rendered in Canada, are subject to a non-resident withholding tax. Exemption from this withholding tax is available in some circumstances. The Proponent/Contractor must make its own inquiries to determine whether or not it qualifies for such, and if so, what steps must be taken to effect such an exemption. Information can be obtained from the Canada Revenue Agency.

**23.0 Legal Terms and Conditions**

- 23.1 No part of Part A - Introduction, this Part B - Instructions to Proponents nor Part C - Special Conditions will be legally binding on the City or the Proponent. All legal terms and conditions of the process contemplated by this RFP are contained in the Proposal Form (Part D), including without limitation, Attachment A to the Proposal Form

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
PART C - SPECIAL CONDITIONS**

---

**1.0 Additional Evaluation Criteria**

1.1 In addition to the evaluation criteria set out in Part B of this RFP, the following criteria, which are not in any order of importance, will be taken into consideration where applicable during the City's evaluation of the Proposal:

- The Proponent's financial stability;
- Compliance with all City Insurance requirements;
- Local product support and parts availability guarantees;
- Results of reference checks on current and former clients.
- Meet or exceed the City's required technical specifications;
- Meet or exceed the City's required timeline for replacement;
- Meet applicable UL or CSA standards or compliance; and
- Provide warranty approved in-house maintenance training.

**2.0 Performance Security - Letter of Credit**

- 2.1 The Proponents should review the Form of Agreement, Appendix 1, section 46.0 requirements for the Letter of Credit and satisfy themselves that they can comply.
- 2.2 Proponents are to submit a letter from a Canadian Chartered bank, credit union or trust company confirming that such financial institution will issue the Letter of Credit required if an Agreement is signed.

**3.0 Additional Insurance Requirements**

- 3.1 The Proponent is advised to refer to Appendix 1, Form of Agreement, Section 32 for the Insurance Requirements pertaining to this RFP.
- 3.2 A copy of the City's "Certificate of Insurance" is attached for reference as Appendix 2. The successful Proponent will be required to file a completed certificate with the City's Risk and Emergency Management Department showing proof of all insurance requirements described in Section 32 of the Form of Agreement. This certificate must be reviewed and approved by the City's Department of Risk and Emergency Management prior to signing the Contract between the successful Proponent and the City.

**4.0 Option to Purchase Additional Units**

- 4.1 Proponents are to set out options to purchase terms and conditions should the City elect to purchase additional or optional products at a later date.

**5.0 Warranty**

- 5.1 The Contractor will be required to provide either replacement part(s) or a replacement units in order that service is not interrupted for lengthy periods during the warranty period.
- 5.2 The Proponent will detail the warranty period and terms, or extended warranty options applicable to the items supplied. Detail the warranty coverage for any hardware and software items including parts, labour and length of warranty.

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
PART C - SPECIAL CONDITIONS**

---

**6.0 Training**

6.1 A factory authorized instructor will instruct TEOB personnel in the safe operation, maintenance and repair of all VHF voice voting radio systems to the level of being recognized as service technicians authorized to complete maintenance and warranty work at TEOB sites. The training will consist of a minimum of four (4) days instruction delivered on-site at TEOB premises.

**7.0 Trade-Ins**

7.1 Trade-in equipment (see Schedule B, section 2.2) will be made available based on ability to place new units into service. It is anticipated that the units will be removed from service and refitted one at a time.

**8.0 Regulations**

7.1 All product(s) must meet the requirements of all applicable laws, including without limitation the following Regulations and Acts;

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
PART D - PROPOSAL FORM**

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Proponent's Name: \_\_\_\_\_  
"Proponent"

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Key Contact Person: \_\_\_\_\_

E-mail: \_\_\_\_\_ Incorporation Date: \_\_\_\_\_

*Attach additional pages immediately behind this page for Sub-Contractors, if applicable.*

To the City of Vancouver Materials Management Department.

The Proponent, having carefully examined and read the RFP, including the Form of Agreement and its Schedules, now submits the following Proposal:

**1.0 Required Documents**

If the documents listed below do not accompany the Proposal at the time of opening, the Proposal may or may not be put aside and given no further consideration.

Description	Required	Received
Letter from Proponent's Financial Institution for Letter of Credit	Yes	

To be initialled at Proposal Opening:

\_\_\_\_\_  
Manager, Materials Management or designate

\_\_\_\_\_  
Witness



**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
PART D - PROPOSAL FORM**

---

**2.0 Compliance**

By initialling each item, the Proponent acknowledges it has read and understands the Requirements, has submitted the required addenda, has identified deviations or alternatives, and has provided an explanation of where it does not comply with the Requirements. **If additional space is required, detail deviations and/or suggested amendments in Schedule C - Deviations and Variations.**

Section Title	Understand, Will Comply	Does Not Comply	Variations, Alternatives or Explanation for Non-Compliance
<u>Part B</u> Instructions to Proponents			
<u>Part C</u> Special Conditions			
<u>Part D</u> Proposal Form			
<u>Proposal Form - Attachment A</u> Legal Terms and Conditions			
<u>Form of Agreement,</u> <u>Appendix 1</u>			
<u>Certificate of Insurance</u> <u>Appendix 2</u>			
<u>Response Notification Form -</u> <u>Appendix 3</u>			
<u>Information Meeting</u> <u>Attendance Form - Appendix 4</u>			

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
PART D - PROPOSAL FORM**

---

**3.0 Required Proposal Documents**

By initialling each item, the Proponent confirms it has completed and enclosed the Proposal Form and the required Schedules and any required addenda, and has identified any deviations or items of non-compliance providing an explanation of where it does not comply.

Section Title	Submitted	Variations, Alternatives or Explanation for Non-Compliance
<u>The Proposal Form</u>		
<u>Proposal Form, Attachment A, Legal Terms and Conditions</u>		
<u>Schedule A Requirements</u>		
<u>Schedule B Pricing</u>		
<u>Schedule C Deviations and Variations</u>		
<u>Schedule D Sub-Contractors</u>		

**4.0 Proponent's Declaration and Acknowledgment**

4.1 The undersigned Proponent confirms that it has read and agreed to the Legal Terms and Conditions attached as Attachment A and agrees to be bound by the same.

IN WITNESS TO THE ABOVE, the Proponent has executed this Proposal Form and submits same with the attached Schedules:

\_\_\_\_\_

Authorized Signatory for the Proponent
Date

\_\_\_\_\_

Name and Title *(please print)*

**REQUEST FOR PROPOSAL PS07082**  
**REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM**  
**PROPOSAL FORM - ATTACHMENT A - LEGAL TERMS AND CONDITIONS**

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**1.0 LEGAL TERMS AND CONDITIONS OF PROPOSAL PROCESS**

**1.1 Application of These Terms and Conditions**

These legal terms and conditions set out the City's and Proponent's/Sub-Contractors' legal rights and obligations only with respect to this RFP and Proposal process. In no event will the legal terms and conditions of this Attachment A apply to the Contract formed between the City and the Contractor following the signing of the Agreement (if any).

**1.2 Definitions**

In this Attachment A, the following terms have the following meanings:

- (a) "Agreement" or "Contract" means the contract entered into with the successful Proponent/Contractor as contemplated by the Form of Agreement;
- (b) "City" means the City of Vancouver, a municipal corporation continued under the *Vancouver Charter*;
- (c) "Contractor" means the successful Proponent with whom the City enters into a contract in the form of the Form of Agreement;
- (d) "Form of Agreement" means Appendix 1;
- (e) "Proponent" means a legal entity (ies) who has (have) signed and delivered this Proposal Form;
- (f) "Proposal" means a package of documents, consisting of this Proposal Form as well as all Schedules, Appendices, attachments, amendments and other addenda, once completed and submitted to the City by a Proponent;
- (g) "Losses" means in respect of any matter all
  - (i) direct or indirect, as well as;
  - (ii) consequential,claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement whether from a third person or otherwise);
- (h) "Requirements" means the requirements to be met or fulfilled by the Contractor as identified in the RFP;
- (i) "RFP" means the documents issued by the City as Request for Proposal No. PS07082 including all addenda;
- (k) "Sub-Contractors" includes any or all third parties listed in Schedule D of this Proposal Form and any City approved replacements or substitutions therefore; and
- (l) "TEOB" means the City's Traffic and Electrical Operations Branch.

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
PROPOSAL FORM - ATTACHMENT A - LEGAL TERMS AND CONDITIONS**

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**2.0 GENERAL TERMS AND CONDITIONS OF RFP/PROPOSAL PROCESS**

**2.1 No Legal Obligation Assumed by City**

Despite any other term of this Proposal Form (except only (where applicable) Section 4.3 - *Limitation*, Section 4.4 - *Dispute Resolution*, Section 5.2 - *Proponent's Submission Confidential*, and Section 5.5 - *Declaration of Confidentiality*, the City assumes no legal duty or obligation in respect of this RFP or a Proposal unless and until the City enters into a Contract).

**2.2 Legal Rights and Obligations Suspended**

Despite any other term of this Proposal Form (except only (where applicable) Section 5.2 - *Proponent's Submission Confidential*, and Section 5.5 - *Declaration of Confidentiality*), the City and Proponent agree that all of their respective rights and obligations at law and in equity, in contract and in tort, in all matters relating to the RFP and this Proposal process will be absolutely and unconditionally subject to Section 4.0 - *Protection of the City Against Lawsuits*, and the following:

**(a) No Duty**

The City has no legally enforceable duty or obligation to the Proponent unless and until the City signs an Agreement.

**(b) Proponent's Risk**

The Proponent acknowledges that the City is a public body required by law to act in the public interest. Accordingly, in no event does the City owe to the Proponent (as opposed to the public):

- (i) a contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFP or Proposal process; or
- (ii) any contract or tort law duty to preserve the integrity of the RFP or Proposal process,

and the Proponent now waives and releases the City from all such duties and expressly assumes the risk of all Losses arising from participating in the RFP and Proposal process on this basis.

**(c) Proponent's Cost**

The Proponent now assumes and agrees to bear all costs and expenses incurred by the Proponent in preparing its Proposal and participating in the RFP and Proposal process.

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
PROPOSAL FORM - ATTACHMENT A - LEGAL TERMS AND CONDITIONS**

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**3.0 EVALUATION OF PROPOSALS**

**3.1 Compliance/Non-Compliance**

Any Proposal which contains an error, omission or misstatement, which contains qualifying conditions, which does not fully address all of the requirements or expectations of the RFP or, which otherwise fails to conform to the RFP may or may not be rejected by the City at the City's sole discretion.

**3.2 Reservation of Complete Control Over Process**

The City reserves the right to retain complete control over the RFP and Proposal process at all times until the execution and delivery of an Agreement. Accordingly, the City is not legally obligated to review, consider or evaluate the Proposals and need not necessarily review, consider or evaluate the Proposals in accordance with the procedures set out in this RFP and the City reserves the right to continue, interrupt, cease or modify its review, evaluation and negotiation process on any or all Proposals

at any time without further explanation or notification to any of the Proponents subject only to the express legal terms and conditions which bind the City, which terms and conditions are expressly limited to those set out in Section 4.3 - *Limitation*, Section 4.4 - *Dispute Resolution*, Section 5.2 - *Proponent's Submission Confidential*, and Section 5.5 - *Declaration of Confidentiality*.

**3.3 Discussions/Negotiations**

The City may, at any time prior to signing an Agreement, discuss/negotiate changes to the scope of the RFP, or any of the terms or conditions of the RFP with any one or more of the proponents without having any duty or obligation to advise the Proponent or to allow the Proponent to vary its Proposal as a result of discussions or negotiations with other proponents or changes to the RFP, and, without limiting the general scope of Section 4.0 - *Protection of City Against Lawsuits*, and by way of example only, the City will have no liability to the Proponent as a result of such discussions, negotiations or changes.

**4.0 PROTECTION OF CITY AGAINST LAWSUITS**

**4.1 Release**

Except only and to the extent that the City is in breach of Section 5.2 - *Proponent's Submission Confidential*, or Section 5.5 - *Declaration of Confidentiality*, the Proponent now releases the City from all liability for any Losses in respect of:

- (a) any alleged (or judicially imposed) breach by the City of the RFP (it being acknowledged and agreed that to the best of the parties' knowledge, the City has no obligation or duty under the RFP or Proposal process which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially));
- (b) any unintentional tort of the City occurring in the course of conducting this RFP and Proposal process;

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
PROPOSAL FORM - ATTACHMENT A - LEGAL TERMS AND CONDITIONS**

---

- (c) the Proponent preparing and submitting its Proposal;
- (d) the City accepting or rejecting its Proposal or any other submission;
- (e) the manner in which the City:
  - (i) reviews, considers, evaluates or negotiates any Proposal,
  - (ii) deals with or fails to deal with any Proposal or Proposals, or
  - (iii) decides to enter into an Agreement or not enter into any Agreement;
- (f) the proponent(s), if any, with whom the City enters an Agreement.

**4.2 Indemnity**

Except only and to the extent that the City breaches Section - 5.2 - *Proponent's Submission Confidential* or Section 5.5 - *Declaration of Confidentiality*, the Proponent now indemnifies and will protect and save the City harmless from and against all Losses, in respect of any claim or threatened claim by the Proponent or any of its Sub-Contractors or agents alleging or pleading

- (a) any alleged (or judicially imposed) breach by the City or its officials or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFP or Proposal process which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially)),
- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting this RFP or Proposal process, or
- (c) liability on any other basis related to this RFP or the Proposal process.

**4.3 Limitation**

In the event that, with respect to anything relating to this RFP or Proposal process (except only and to the extent that the City breaches Section 4.3 - *Limitation*, Section 4.4 - *Dispute Resolution*, Section 5.2 - *Proponent's Submission Confidential*, or Section 5.5 - *Declaration of Confidentiality*), the City or its officials, officers, agents or employees are found to have breached any duty or obligation of any kind to the Proponent or its Sub-Contractors or agents whether at law or in equity or in contract or in tort, or are found liable to the Proponent or its Sub-Contractors or agents on any basis or legal principle of any kind, the City's liability is limited to a maximum of \$100, despite any other term or agreement to the contrary.

**4.4 Dispute Resolution**

Any dispute relating in any manner to this RFP or the Proposal process (except only and to the extent that the City breaches Section 4.3 - *Limitation*, Section 4.4 - *Dispute Resolution*, Section 5.2 - *Proponent's Submission Confidential*, or Section 5.5 - *Declaration of Confidentiality*, and also excepting any disputes arising between the City and any Proponent with whom the City has entered an Agreement), will be resolved by arbitration in accordance with the *Commercial Arbitration Act* (British Columbia) amended as follows:

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
PROPOSAL FORM - ATTACHMENT A - LEGAL TERMS AND CONDITIONS**

---

- (a) The arbitrator will be selected by the City's Manager - Materials Management.
- (b) This Section 4.0 - *Protection of the City from Lawsuits* will:
  - (i) bind the City, Proponent and the arbitrator; and
  - (ii) survive any and all awards made by the arbitrator.
- (c) The Proponent will bear all costs of the arbitration.

**5.0 ACCESS/OWNERSHIP OF PROPOSAL INFORMATION**

**5.1 Proposal Documents Remain/Proposal Becomes - City's Property**

- (a) All RFP packages and addenda provided to the Proponent by the City remain the property of the City and must be returned to the City upon request.
- (b) The documentation containing the Proposal, once submitted to the City, becomes the property of the City, and the City is under no obligation to return the Proposal.

**5.2 Proponent's Submission Confidential**

Subject to the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) and the City's full right to publicly disclose any and all aspects of the Proposal in the course of publicly reporting to Vancouver City Council on the Proposal results or announcing the results of the Proposals to the Proponent, the City will treat all material and information expressly submitted by the Proponent (and the City's evaluation of it) in confidence in substantially the same manner as it treats its own confidential material and information.

The Proponent now irrevocably waives all rights it may have by statute, at law or in equity, to obtain any records produced or kept by the City in evaluating its Proposal (and any other submissions) and now agrees that under no circumstances will it make any application to the City for disclosure of any records pertaining to the receipt, evaluation or selection of its Proposal (or any other submissions) including, without limitation, records relating only to the Proponent.

**5.3 All City Data/Information is Confidential**

The Proponent will not divulge or disclose to any third parties any information concerning the affairs of the City which may be communicated to the Proponent at any time (whether before or after the closing date and time of this RFP process). Recognizing the need for confidentiality of the City's data, files and other confidential information, the Proponent will not use, exploit or divulge or disclose to third parties any confidential or proprietary information of the City of which the Proponent may gain knowledge in connection with or in the course of discussions or negotiations with the City.

All material and information that has or will come into the Proponent's possession or knowledge in connection with this Proposal process is confidential and may not be disclosed or utilized in any way except in accordance with the Instructions to Proponents and this Proposal Form.

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
PROPOSAL FORM - ATTACHMENT A - LEGAL TERMS AND CONDITIONS**

---

**5.4 Disclosure Requires Prior Consent**

The Proponent may not divulge any information respecting the Proposal process to any third party without the prior written consent of the City, which consent may be arbitrarily withheld unless it is information which the City has already made public or has been required to disclose pursuant to the *Freedom of Information and Protection of Privacy Act* (British Columbia).

**5.5 Declaration of Confidentiality**

The Proponent now declares and agrees that, except for the information disclosed by the City in the course of publicly reporting to Vancouver City Council or any public proposal opening:

- (a) the information supplied by the Proponent in response to the RFP is expressly provided in strict confidence;
- (b) any records made of the evaluation of this Proposal and all other submissions will be the property of, and private to, the City and will not be disclosed to the Proponent nor anyone else;
- (c) the disclosure of the information in items (a) and (b) above to anyone outside of the City's staff would reveal the Proponent's trade secrets or proprietary commercial information concerning its private business affairs; and
- (d) the disclosure of the information in items (a) and (b) above, could reasonably be expected to harm the Proponent's competitive position, harm the City's ability to engage in competitive procurement of goods and equipment, and result in undue financial loss to the Proponent and/or the City.

**6.0 DECLARATION - NO CONFLICT OF INTEREST / NO COLLUSION**

**6.1 Declaration as to Conflict of Interest**

The Proponent now confirms and warrants that there is no officer, director, shareholder, partner or employee or other person related to the Proponent's or Sub-Contractor's organizations (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is:

- (a) an elected official or employee of the City; or
- (b) related to or has any business or family relationship with any elected official or employee of the City, such that there would be any conflict of interest or any appearance of conflict of interest in the evaluation or consideration of this Proposal by the City, except as set out below:

***[The Proponent is conclusively deemed to have declared "none" unless the Proponent deletes this note and describes any or all relationships which might give rise to a conflict of interest or an appearance of a conflict of interest].***



**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
PROPOSAL FORM - ATTACHMENT A - LEGAL TERMS AND CONDITIONS**

---

**6.2 Declaration as to Collusion**

The Proponent now confirms and warrants that

- (a) the Proponent has no affiliation, whether legal or financial, with any other entity which is in the business of providing the same type of goods or equipment which are the subject of this RFP; and
- (b) the Proponent is not competing within this RFP process with any entity which it is legally or financially associated or affiliated, except as set out below:

*[The Proponent is conclusively deemed to have declared “none” unless the Proponent deletes this note and describes any and all affiliations or relationships which might give rise to collusion or an appearance of collusion].*

**7.0 SURVIVAL/LEGAL EFFECT OF PROPOSAL CONTRACT**

All of the terms of this Attachment A to this Proposal Form which by their nature require performance or fulfilment following the conclusion of the Proposal process will survive such process and will remain legally enforceable by and against the Proponent and the City.

As evidence of the Proponent’s intent to be legally bound by this Attachment A, the Proponent has executed and delivered this Attachment A as an integral part of this Proposal Form in the manner and space set out above.

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
SCHEDULE A - REQUIREMENTS**

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This Schedule identifies the Requirements to which the City is seeking a solution or a response. Proponents are to address, but are not limited in their response to, the respective issue(s). Proponents may submit their solution or response on a separate sheet. However, the same number sequence is to be used.

**1.0 PROPONENT INFORMATION**

Key determinants of how well the successful Proponent will be able to meet the Requirements include the Proponent's profile, experience, key personnel who will be servicing the City, and references. All are important factors on which the Proponent will be evaluated. Proponents are to address, at a minimum, the following elements.

**1.1 Company Profile**

Provide a brief company history with emphasis placed on local information.

**1.2 Client List**

Attach a published client list and include any letters of recommendation that may be appropriate to these units.

**1.3 Key Personnel**

Identify key personnel to be assigned to this Contract, setting out their names, responsibilities and relevant experience.

**1.4 Training**

Training is a requirement of this contract. Describe training plan.

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
SCHEDULE A - REQUIREMENTS**

---

**2.0 References**

The Proponent is to provide at least three references for similar goods and/or equipment it has supplied to customers, by completing the table below. The Proponent may, at its own discretion, expand on the number of references and information that it deems necessary to support its Proposal. By submitting a Proposal, the Proponent consents to City contacting these references, and consents to the City also contacting any other organization for the purposes of evaluating the Proponent's company and Proposal.

<b>Name and Address of Company Providing Reference</b>	<b>Contact Name &amp; Telephone Number</b>	<b>Brief Description of Equipment Provided by Proponent</b>

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
SCHEDULE A - REQUIREMENTS**

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**3.0 Requirements**

In support of the factors as outlined within this RFP, the City has identified key desirable requirements which the Proponent should, but not be limited to addressing within its Proposal. Should there be insufficient space to address the respective elements, the Proponent may respond on a separate sheet, using the same sequence as included herein.

<p style="text-align: center;"><b>Item 1</b> <b>VHF Voice Voting Radio System</b>  <i>(Proponent's do not write in this section)</i></p>	Make:
	Model No.
	Year:
	Proponent to indicate whether they meet or exceed requirements. Explain in detail.
<p><b><u>General</u></b></p> <p>Compatible with existing conventional radios operating in narrow band mode, as referenced in Part A - Introduction, Section 2.1</p>	
<p>Compatible for use with the City's voice grade carrier network which is equivalent to voice grade leased lines.</p>	
<p>Operates with tone coded squelch.</p>	
<p>Can operate using existing comparators. If not, comparators will need to be included in the price schedule.</p>	
<p>Can operate using existing transmitters. If not, transmitters will need to be included in the price schedule.</p>	
<p>Transition plan to move from wideband to narrowband technology which minimizes downtime for the users.</p>	

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
SCHEDULE A - REQUIREMENTS**

<p><b>Item 1</b> <b>VHF Voice Voting Radio System</b> <i>(Proponent's do not write in this section)</i></p>	<p><b>Make:</b></p> <hr/> <p><b>Model No.</b></p> <hr/> <p><b>Year:</b></p> <hr/> <p><b>Proponent to indicate whether they meet or exceed requirements. Explain in detail.</b></p>
<p>Does the equipment provide Selective Call?</p>	
<p>Trunked Operation capabilities.</p>	
<p>Data capabilities</p>	
<p>Other special capabilities</p>	

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
SCHEDULE A - REQUIREMENTS**

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**4.0 Warranty**

- 4.1 The City requires the Proponent to provide details (including parts, labor, travel allowance and length of warranty) regarding the warranty, period and terms, or extended warranty options offered.

**5.0 Delivery**

- 5.1 The City requires the Proponent to provide delivery of VHF Voice Voting Radio System four (4) weeks after the issuance of a purchase order. Describe the Proponents ability to meet this Requirement.

**6.0 Value Added Services**

- 6.1 Describe any additional benefits (ie. local dealer support, parts warehouse, etc) to this process other than those described in Section 1.0. Unless otherwise specified, etc. it will be assumed there will be no additional charge for these units.

**7.0 Training**

- 7.1 Describe the Proponent's ability to provide instruction to TEOB maintenance personnel to the level of being recognized as service technicians authorized to complete maintenance and warranty work.

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
SCHEDULE B - PRICING**

**1.0 INSTRUCTIONS**

- 1.1 Prices are to be quoted the TEOB's facility at 701 National Avenue, Vancouver, BC, V6A 4L3, including freight, unloading at destination, import duties, brokerage, royalties, handling, overhead, profit and all other costs.
- 1.2 GST and Provincial Sales Taxes are to be excluded.
- 1.3 Proponents located in Canada may quote either in Canadian funds or the currency of the jurisdiction from which they are supplying the product. All prices must clearly denote the applicable currency
- 1.4 The pricing is to be all inclusive, incorporating all terms, conditions and Requirements and Services set out in the RFP. Prices are to be broken down to allow for analysis (e.g. units, components, options, warranty, training, etc.) of the cost by the City.

**2.0 SCHEDULE OF QUANTITIES AND PRICES**

**2.1 Estimated Requirements**

Item	Estimated Quantities 2007	Description	Unit Price	Total
1	4	<b><u>VHF VOICE VOTING RADIO SYSTEM</u></b>  Make: _____  Model Year and No.: _____	\$ _____	\$ _____
Do not include GST or PST in above pricing.				

**2.2 Trade-Ins**

- (a) Proponents may offer trade-in allowance for the surplus equipment as indicated in the pricing schedule below. However, this is not a mandatory requirement of this RFP. The City reserves the right to dispose of the surplus equipment by other methods including, but limited to, public auction, surplus offer or a combination of methods that will result in the best value to the City. Inspection of these units can be arranged through Phil Wong, Traffic and Electrical Operations, 604-871-6686.

**REQUEST FOR PROPOSAL PS07082**  
**REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM**  
**SCHEDULE B - PRICING**

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- (b) Inspection prior to submitting an offer is the responsibility of the prospective buyer.
- (c) The City of Vancouver reserves the right to reject any or all offers or to negotiate partial sales, pricing or terms and conditions with any prospective buyer(s) without the duty to inform other prospective buyers.
- (d) The City reserves the right to withdraw the equipment from sale at any time.
- (e) The successful buyer will be responsible for the provision of insurance to protect the City's interests and WCB (Worker's Compensation) coverage for their workers and any subcontractors while working on City property. The successful buyer will also ensure compliance with occupational health, safety, and environmental regulations, for the protection of their workers, City staff in the surrounding areas, and City property.
- (f) The successful buyer releases the City from any or all liability for personal injury, death, property loss, damage or destruction, or economic loss resulting from the successful buyer's entry onto City premises and/or removal of the equipment or subsequent use or operation of the equipment or any items associated with it. The successful buyer also agrees to save the City harmless from any or all claims arising from such events.
- (g) A deposit is not required with any offers submitted.
- (h) Payment will be made within five (5) working days of written acceptance of the offer by the City. Certified cheque, money order, electronic funds transfer, or bank draft that is recognized in Canada is acceptable payment methods.
- (i) The Provincial Sales Tax (7%) will be charged unless an exemption certificate is provided or the successful buyer is able to comply with regulations for an out of province sale. Federal Goods and Services Tax is not payable.
- (j) The City will not be liable for loss, damage, or destruction from any cause whatsoever of the equipment sold, but should any equipment be lost or destroyed during the period allowed for removal and prior to actual removal thereof, the City will refund to the successful buyer any monies paid as the price of, or on account of, the equipment so lost or destroyed.
- (k) The successful buyer will not assign or transfer its contract without the written consent of the City.
- (l) In the event that the buyer selected (in this paragraph, the "defaulting buyer") fails to remove the equipment within the time specified in the agreed upon work schedule, the City may, without prejudice to any other remedies, cancel the contract and resell the equipment at such price and on such terms as the City may deem advisable and hold the defaulting buyer responsible for any loss including all expenses incurred by the City through the default, but without any obligation on the part of the City to account to the successful buyer for the proceeds of such resale. The City will be entitled to retain any amount paid on the account of the equipment until the amount of any such resale (including the expenses referred to) has been ascertained.



**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
SCHEDULE B - PRICING**

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The following items will be available as the TEOB is refit with new equipment.

<b>Model No.</b>	<b>Item</b>	<b>Qty.</b>	<b>TRADE IN</b>	<b>Unit Price Offered</b>	<b>Extended Total</b>
ER-64-A	1	21	Ericsson GE Receiver	\$ _____	\$ _____
Spectra-TAC	2	11	Motorola Spectra-TAC receiver	\$ _____	\$ _____
Unknown	3	5	Ericsson Comparators	\$ _____	\$ _____
<b>Do not include GST or PST in above prices.</b>					

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
SCHEDULE C - DEVIATIONS AND VARIATIONS**

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Proponents are to use this Schedule to detail any deviations and/or variations from the terms and conditions set out in this RFP and if applicable, detail proposed amendments.

Where a Proponent is proposing the use of contract language/clauses other than set out in the Form of Agreement, such clauses are to be attached to this Schedule C. The City will assume such clauses are in addition to those in the Form of Agreement unless otherwise indicated by the Proponent.

**REQUEST FOR PROPOSAL PS07082  
REPLACEMENT OF VHF VOICE VOTING RADIO SYSTEM  
SCHEDULE D - SUB-CONTRACTORS**

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The Sub-Contractors shown below are the Sub-Contractors that the Proponent proposes to use to carry out the Requirements. The City expects that the Proponent will engage the listed Sub-Contractors and no others in their stead, without prior written authorization of the City. (For contractual requirements, Proponents should note Sections 16.0 and 17.0 of the Form of Agreement.)

If no Sub-Contractors will be used, indicate "Not Applicable".

Company Name, Address	Contact Name and Telephone Number	Area of Responsibility

THIS VHF Voice Voting Radio System Supply Agreement dated \_\_\_\_\_, 2007

BETWEEN:

**THE CITY OF VANCOUVER**, a municipal corporation continued under the Vancouver Charter and having an office at 453 West 12th Avenue, Vancouver, British Columbia V5Y 1V4

(the "City")

AND:

(the "Contractor")

BACKGROUND:

- A. Pursuant to a Request for Proposals, No. PS 07082 (including all its addenda, amendments and supplements, the "RFP") the City invited proposals from qualified Proponents for The Supply and Delivery of Replacement of VHF Voice Voting Radio System that meet the Requirements (as defined below) set out in the RFP;
- B. In response to the RFP, the Contractor submitted a Proposal (as defined below) proposing to perform the Requirements on the terms and conditions of the RFP as supplemented by the Contractor's Proposal;
- C. The City has agreed to retain the Contractor for the performance of the Requirements on the terms as set out in this Agreement and the RFP, as supplemented by the Contractor's Proposal and the Contractor has agreed to perform the Requirements on those same terms.

THE CITY AND THE CONTRACTOR NOW AGREE as follows:

#### 1.0 Definitions

The following words and terms, unless the context otherwise requires, have the meanings set out below:

"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, will be deemed not to be Acts of God;

"Agreement" or "Contract" means the agreement between the City and the Contractor as set out in the Contract Documents;

"City" means the municipal corporation, generally known as the City of Vancouver, as described under the *Vancouver Charter*, and "City of Vancouver" means the geographic location;

"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 to be supplied pursuant to, or to make decisions in connection with, the Agreement;

- “Closing Time” means the closing date, time and place as set out on the title page of this RFP;
- “Contract Documents” means the FOA documents listed in Section 2, including all amendments or addenda agreed between the parties;
- “Contract Price” has the meaning set out in Section 8.0 - *Price*;
- “Contractor” means the entity defined as such on the front page of this Agreement;
- “CSA” means Canadian Standard Association;
- “Effective Date” means the date on which this Agreement takes legal force and effect and is the date set out on the first page of this FOA;
- “FOA” means this VHF Voice Voting Radio System Supply Agreement including all addenda, each as amended and supplemented from time to time;
- “F.O.B.” means that all goods to be transported and delivered by the Contractor to the City will be so transferred and delivered at no risk or cost (other than the Contract Price) to the City with the intent and effect that until the goods are delivered, inspected and accepted in writing under this Agreement, all freight, brokerage, customs, insurance, handling, shipping, risk or loss or damage, and all other costs and risks will be borne by the Contractor.
- “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;
- “OH&S” means Occupational Health and Safety;
- “Product” means \_\_\_\_\_ ;
- “Proposal” means the proposal submitted in response to the RFP by the Contractor;
- “Proponent” means the individual, partnership, corporation or combination thereof, including joint venturers, who or which sign the Proposal form set out in Part D of the RFP;
- “PST” means provincial sales tax administered under the *Social Services Act* (British Columbia) and any successor tax or levies therefor in force from time-to-time;
- “Requirements” means all of the requirements set out in Schedule A, and elsewhere in the RFP that describes the general and specific requirements that the goods, materials, equipment and services must meet and the Contractor must provide;
- “RFP” is defined in Recital A;
- “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 RFP consisting of general requirements and technical descriptions of the goods, materials, equipment, standards and workmanship;
- “Sub-Contractor” means all sub-contractors, suppliers and agents of the Contractor;
- “TEOB” means Traffic and Electrical Operations Branch;
- “Unavoidable Delay” has the meaning set out in Section 12.0 - *Unavoidable Delay*;

“Unit” means any one unit of the Product, namely VHF Voice Voting Radio System.

“WCB” means Worker’s Compensation Board (BC);

“WCB Legislation” means the *Worker’s Compensation Act* (British Columbia) and all regulations enacted pursuant to the *Workers Compensation Act* (British Columbia), all as amended and re-enacted from time to time;

“WHMIS Legislation” are the laws governing the information that must be provided on labels of packaging containing hazardous materials;

“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 any site(s) owned or occupied by the City where the Requirements are to be performed.

## 2.0 Contract Documents

2.1 The terms and conditions of the Contract Documents listed below, whether or not actually attached to this FOA will govern the terms of this Agreement. The Contract Documents are complementary, and what is called for by any one will be as binding as if called for by all. In the event of any inconsistency or conflict between any of the terms and conditions within the Contract Documents, the provisions of the Contract Documents will take precedence and govern in the following priority:

- (a) this FOA;
- (b) Part C of the RFP- Special Conditions, ( Pertinent Sections ):
- (c) any Addenda to the RFP issued by the City;
- (d) the Contractor’s Proposal;
- (e) those parts of the RFP not referenced above.

## 3.0 Notices

Any notice required to be given under this Agreement will be given in writing and delivered or mailed by registered mail addressed to the City at the address on the first page of this FOA, to the attention of \_\_\_\_\_; and to the Contractor at the address set out in its Proposal.

## 4.0 Conduct of this Agreement

The ( name of individual or entity ) and the Manager of Materials Management and ( Name of person, title, and entity ) will have the conduct of the Agreement for the City. The Contractor’s representative is identified in Section 40.

## 5.0 Requirements

5.1 The Contractor will supply the City with the Requirements and anything and everything else necessary for or incidental to the Requirements including supplying all labour, training, supervision, management, overhead, materials, supplies, and all other things necessary for or incidental to the Requirements and will perform the Work with care, skill, due diligence and efficiency.

- 5.2 The Requirements have been prepared by the City to describe in general terms the criteria that the Work must satisfy. However, if there is any discrepancy in the description of the Requirements or any omission of criteria which would be detrimental to the benefits intended to be provided to the City by the Requirements, the Contractor will rectify such a discrepancy or omission to the satisfaction of the City without further compensation.

## 6.0 Delivery

- 6.1 The Contractor will deliver the product(s) F.O.B. Vancouver Traffic and Electrical Operations, National Works Yards, 701 National Avenue, Vancouver B.C., V6A 4L3, attention to Phil Wong, between the hours of 8:30am - 3:00pm Monday to Friday excluding statutory holidays.

Deliveries will be made by the Contractor, at its sole risk and expense to the exact location within the City's worksite, office, or other place as designated by the TEOB, unless other arrangements have been agreed to in writing.

- 6.2 A material safety data sheet ("MSDS") must accompany all shipments containing products regulated under WHMIS Legislation.

## 7.0 Quality of Workmanship and Materials

- 7.1 The Contractor will perform the Requirements with the degree of care, skill and diligence normally applied in the performance of services of a similar nature and in accordance with sound current professional practices and conforming to the Requirements set out in the Contract Documents.

- 7.2 Materials, goods and equipment supplied will be the products of suppliers or manufacturers of established reputation engaged in the supply or manufacture of such materials or equipment.

- 7.3 Materials are to be applied in accordance with the manufacturer's direction and will use the techniques and applications best suited for the type of material being used.

## 8.0 Price

- 8.1 The Requirements will be provided in accordance with the pricing set out in Schedule B of the Proposal.

- 8.2 All pricing will remain fixed for the duration of this Agreement, except where amended pursuant to Section 12.0 - Unavoidable Delay, Section 14.0 - Changes in Requirements or Section 15.0 - Disputes as to Requirements.

## 9.0 Inspection, Approval and Payment

- 9.1 Under no circumstances will the City be obligated to pay for any items until after delivery, inspections and approval/acceptance of same.

## 10.0 Term/Non-Exclusivity

- 10.1 The term of this Agreement starts on the Effective Date and expires on the Contractor's fulfillment of all warranty and other obligations under this Agreement, unless sooner cancelled or extended pursuant to this Agreement.

- 10.2 Where the parties continue to deal with each other following an expiry date, this Agreement will be deemed to be renewed for an additional one year period. However, during each additional one year period, this Agreement may be cancelled by the City without cause on at least 30 days' prior written notice, or by the Contractor on at least 60 days, prior written notice.
- 10.3 Despite any other term of this Agreement, the RFP or the Proposal, nothing in this Agreement is intended to grant the Contractor any rights of exclusivity or any other right to be the sole supplier to the City of the Requirements, to supply a specified or minimum quantity of the Requirements to the City or any other similar right, except as expressly set forth in this Agreement, and the Contractor now acknowledges and agrees to same.

#### 11.0 Cancellation of Contract

- 11.1 The Contractor may not cancel this Agreement without cause. The City may only cancel this Agreement without cause if the City gives notice of cancellation at least sixty (60) days prior to its effective date. As of the effective date of such a notice of cancellation, the Contract will be cancelled as to all or those specified products and the parties will have no further obligations to each other in respect to same except that the City will remain liable to pay for those products already ordered and supplied prior to the effective date of the cancellation, and except for those obligations which by their nature are intended to survive the expiry or sooner cancellation of this Agreement, including, but not limited to all subsisting warranties or any items supplied.

#### 12.0 Unavoidable Delay

- 12.1 Subject to Section 12.2, except for the performance of obligations to pay money, time periods for the City and the Contractor's performance under the Agreement will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay. For the purposes of this section, an "Unavoidable Delay" means any circumstances beyond the reasonable control of the party trying to perform (such as, for example, strikes/lockouts in the case of the City only, acts of God, war or other strife or governmental action including any plant production limitation referred to in Section 13.0 below) but expressly excludes any and all delays caused by the Contractor's lack of financial resources or insolvency, strikes, lockouts or labour affiliations of the Contractor's employees or Sub-Contractors' employees, or governmental action taken in the enforcement of law specifically against the Contractor.
- 12.2 Despite Section 12.1, nothing in this Section 12.0 will release the Contractor from the obligation to pay the City concessions or rebates, if applicable, for work interrupted or delayed by an Unavoidable Delay.
- 12.3 Despite Section 12.1, whether or not the cause is an "Unavoidable Delay", the Contractor will reimburse the City for all of the City's reasonable out-of-pocket costs of maintaining the City's existing equipment where same is incurred due to a delay in delivery of the Product.

#### 13.0 Plant Production Limitations

- 13.1 If any Unit ordered under the Agreement cannot be manufactured because of plant production limitations, the City reserves the right to either;



- (a) Purchase the current replacement Units at a revised price; which revised price will reflect only the direct change in price paid by the Contractor to a third party manufacturer and no other direct or indirect costs or charges;
  - (b) Partially or wholly cancel the Agreement without liability on ten (10) days written notice.
- 13.2 The revised price will be based on a percentage adjustment based on (i) the published manufacturer's retail/list price at the time of the RFP and (ii) the first published manufacturer's retail/list prices for the next model year.
- 13.3 The Contractor will immediately notify the Manager of Materials Management in writing if such a production situation occurs, and will submit with the letter of notification comparative manufacturer's retail lists supporting the proposed revision(s).
- 13.4 If the City and the Contractor cannot agree on the revised price, the Contractor will be paid the original price and will remain obligated to deliver the Unit(s) and the determination of the revised price will be referred to arbitration pursuant to the *Commercial Arbitration Act* (British Columbia).

#### 14.0 Changes in Requirements

- 14.1 The City may, by giving written notice to the Contractor, request amendments to the Requirements. Upon receipt of such notice, the Contractor will, as soon as practicable and in no event later than 20 days after receipt of such notice, inform the City's Manager of Materials Management of any adjustments to the Agreement Price, either increasing or decreasing the Contract Price, that would be necessitated by such change in the Requirements, or alternatively, will notify the City's Manager of Materials Management that no adjustment is necessary. If adjustments to the Contract Price are necessary and the City's Manager of Materials Management confirms in writing that such adjustments are acceptable to it, the Requirements and the Agreement Price will then be deemed to be amended as agreed by the City's Manager of Materials Management. If the City determines that such adjustments, or no adjustments, to the Agreement Price are unacceptable and the City's Manager of Materials Management and the Contractor are unable to agree on an acceptable price, the City's Manager of Materials Management will be entitled to refer such issue to arbitration (pursuant to Section 36.0 - *Dispute Resolution*) to determine the price for such amendments to the Requirements or it may elect either to proceed with this Contract without the proposed change or it may elect to cancel this Contract, on ten (10) days prior written notice without further liability, or recourse, except to pay the Contractor for all work duly performed and Product supplied to the City prior to the effective date of cancellation.

#### 15.0 Disputes as to Requirements

- 15.1 All orders or instructions with respect to the Requirements issued by the (Dept or entity) or the Manager of Materials Management to the Contractor will be obeyed, performed and complied with by the Contractor promptly, efficiently and to the satisfaction of the (Dept or entity). However, if the Contractor is of the opinion that such orders or instructions are not authorized under the provisions of this Agreement or involve a change in the Requirements, it must promptly notify the City in writing before proceeding to carry them out and, in any event, within 2 days of the receipt of such orders or instructions. The giving of such notice to and receipt by the City will not constitute an acknowledgement by the City as to the validity of the Contractor's claim, and the City now reserves all rights to contest or dispute the Contractor's claim. If the Contractor does not so notify the City within the time so limited, it will not be entitled to later claim that the orders or instructions were not so authorized or

involved a change in the Requirements. In any event, the giving of such notice to the City will not relieve the Contractor of its obligation to carry out and to obey such orders or instructions.

#### **16.0 Sub-Contractors**

- 16.1 All Sub-Contractors are the responsibility of the Contractor.
- 16.2 The Contractor will 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 Sub-Contractor, as for the acts and omissions of itself and of persons directly employed by the Contractor.
- 16.3 Nothing contained in this Agreement will create any contractual relationship between the Sub-Contractors and the City.
- 16.4 The Contractor agrees to ensure strict compliance by every Sub-Contractor with the terms and requirements of this Agreement.

#### **17.0 Named Sub-Contractors**

- 17.1 The Contractor confirms that the Sub-Contractors shown in its Proposal are the only Sub-Contractors that it will use to carry out the Requirements. The Contractor will engage only the listed Sub-Contractors and no others in their stead without prior written authorization of the City, which authorization may be arbitrarily withheld.

#### **18.0 Independent Contractor**

- 18.1 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 of Vancouver.

#### **19.0 Assignment**

- 19.1 The Contractor, and its appointed Sub-Contractors, may not assign, sublet or let out as task work any part of the Work, and will not assign any interest or any right to payment under this Agreement without first having had and obtained the consent in writing of the City; which consent the City may arbitrarily elect to withhold. If the City consents to any such assignment, subletting or letting out as task work of all or any part of the Work, the Contractor will in no way be relieved from its responsibility for the fulfilment of the Work, but will continue to be responsible for the same in the same manner as if all the Work had been performed by the Contractor.

#### **20.0 Time of the Essence**

- 20.1 For all obligations of the Contractor pursuant to this Agreement, time is of the essence. The acceptance of a late performance, with or without objections or reservations by the City, will not waive the City's right to claim damages for such breach nor constitute a waiver of the City of the requirement of timely performance of any obligation remaining to be performed.

#### **21.0 Compliance with Laws, Permits and Regulations**

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

**22.0 Inspection**

- 22.1 All Products will be subject to inspection and test and must meet the approval of the City as set out in the Requirements.
- 22.2 In the event that the Product or any portion of the Product does not comply with the Requirements of this Agreement or the Contractor's warranty (expressed or implied), the City will have the right either to reject the Product or to require correction and the Contractor will reimburse the City any costs incurred as a result of the non-compliant Product.
- 22.3 Acceptance or rejection of the Product must be made as promptly as practical, but failure to inspect and accept or reject the Product will not relieve the Contractor from responsibility for such Work that is not in accordance with the Requirements.
- 22.4 The City will be the final judge of the Product in respect of both quality and quantity and its decisions of all questions in dispute will be final. Materials, goods or equipment not accepted will be returned to the Contractor at the Contractor's expense.
- 22.5 Under no circumstances will the City be deemed to have accepted the Product by virtue of a partial or full payment for them.

**23.0 Packaging**

- 23.1 The Product will be adequately packaged to protect from damage during handling, shipment, and storage.

**24.0 Product Return Policy**

- 24.1 The Contractor will institute a policy and procedure which facilitates the prompt return and credit to the City's account of defective or non-compliant Product.
- 24.2 The Contractor must fully inspect all Products before shipment to the City and upon request, provide the City with full access to the Contractor's inspection records, process, and place of inspection.

**25.0 Non- Exclusivity - Alternative Sourcing**

- 25.1 The Contractor acknowledges that this Agreement is neither an exclusive supplier contract nor a guaranteed quantity contract, other than as expressly agreed in this Agreement. The City is not obligated to purchase any Product nor any minimum quantity of Product, other than as expressly agreed in this Agreement, regardless of the estimates and anticipated demand amounts set out in the RFP.
- 25.2 The City reserves the right to purchase products of the same type as those required to be provided under this Agreement from other sources whether or not it deems that the Product offered by the Contractor does not meet the quality standards; or are deemed to be inferior or unacceptable for use; or that the Contractor cannot supply as specified.

**26.0 Warranty**

- 26.1 The Contractor warrants that for at least 1 year from the City's first use of the Product, that the Product supplied and Work performed by the Contractor to/for the City will be in full conformity with the Requirements as well as samples, if any, and if

so, then this is a sale by sample as well as by description within the meaning of the *Sale of Goods Act* (British Columbia).

- 26.2 The Contractor further warrants that for at least 1 year from the City's first use of the Product, the Product will be of merchantable quality, and fit for the intended use and will perform according to the Requirements.
- 26.3 Equipment and materials used in the Product must be new, free and clear of all liens, charges and encumbrances, the latest model, and delivered complete with all necessary accessories for operation.
- 26.4 The warranty set out in Sections 26.1 - 26.2 above will include all parts and labour delivered and performed at the location of delivery of the Product to the City, and is the minimum warranty. The Contractor is bound by such additional warranties (if any) set out in the Contractor's Proposal.
- 26.5 The Contractor warrants that its employees and Sub-Contractors have the qualifications, experience, knowledge, skills and abilities necessary for the fulfilment of this Agreement.
- 26.6 The Contractor now warrants that all claims and representations made by the Proponent with respect to third party products and services have been fully authorized by that third party.
- 26.7 The warranty period is to commence at the time the City puts each of the Units into service, or three months after acceptance of each Unit, whichever is sooner.
- 26.8 The City will notify the Contractor the date that each Unit goes into service.
- 26.9 The warranty is to be in the name of the City of Vancouver, 250 West 70<sup>th</sup> Avenue, Vancouver, BC, V5X 2X1.

#### **27.0 Protection of Person and Property**

- 27.1 The Contractor will use due care that no persons are injured, no property damaged or lost, and no rights are infringed in the performance of the Work, and the Contractor will 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 Work or caused in any other manner by the Contractor, or its employees or Sub-Contractors.
- 27.2 The Contractor will effectively warn and protect the public and other personnel from any danger as a result of the Work being done.

#### **28.0 Rectification of Damage and Defects**

- 28.1 The Contractor will 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 will then pay to the City the costs of repairing the loss or damage promptly 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.

**29.0 Clean Up**

29.1 The Contractor will at all times conduct the Work in an orderly and reasonably tidy manner, and will at suitable intervals remove any accumulation of rubbish or refuse materials. At no time will any person employed by the Contractor or by any of its Sub-Contractors discard any litter or garbage on or adjacent to the Work Site, except into a suitable container.

**30.0 Passage of Title and Risk**

30.1 Despite any other term of this Agreement, (a) risk of loss or damage to the Product and Work performed will remain with the Contractor until the receipt and written approval of the Product and/or Work performed is rendered by the City, and (b) title to the Product will pass to the City upon safe delivery to the City's Work Site (but will revert in the Contractor upon the City's delivery of written notice of rejection of the Product).

**31.0 Indemnification**

31.1 The Contractor will 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 any manner based upon, occasioned by or attributable to:

- (a) any injury, including death, property loss or damage arising from any (i) defect in the Product, or (ii) act or omission of the Contractor, its employees, officers, volunteers, Sub-Contractors, or any other persons for whom the Contractor has assumed responsibility in the performance or purported performance of the Work, or (iii) any breach of this Agreement.
- (b) 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* (British Columbia), or to any attachment for debt, garnishee process or otherwise; or
- (c) the Contractor's failure to pay all royalties and license fees or on account of suits or claims of infringement by the Contractor, its Sub-Contractors, or the Products or Work of trademarks, patents, copyright, or any other infringement of third party intellectual property rights.

**32.0 Insurance Requirements**

32.1 Without limiting any of its obligations or liabilities under the Agreement, the Contractor and its Sub-Contractors will obtain and continuously carry during the term of this Agreement at their own expense and cost, the following insurance coverages with minimum limits of not less than those shown in the respective items set out below.

- (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 and agents against claims for damages, personal injury including death, bodily injury and property damage which may arise under this Agreement.

The policy of insurance must:

- (i) have a limit of not less than \$5,000,000 per occurrence inclusive for personal injury, death, bodily injury or property damage (including loss

- of use), and in the aggregate with respect to products and completed operations;
- (ii) have a deductible that will not exceed \$5,000 per occurrence;
  - (ii) be on an occurrence form;
  - (iv) add the City and its officials, officers, employees and agents as additional insureds;
  - (v) contain a cross-liability or severability of interest clause;
  - (vi) 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) Third Party Legal Liability Insurance on all vehicles owned and/or operated by the Contractor in connection with this Agreement, in an amount not less than \$2,000,000 per occurrence.
- (c) Insurance covering all risks of physical loss or damage to the Product and all components thereof in an amount of not less than the amount from time-to-time that has been paid by the City or is due to be paid by the City on account of the Contract Price, and which shall include a waiver of subrogation against all undelivered Product and parts and a deductible of no more than \$5,000 for each and every claim and which insurance shall terminate on safe delivery to and acceptance by the City of the Product.
- 32.3 All insurance policies will be in a form and in amounts satisfactory from time-to-time and with insurers acceptable to the City's Director of Risk and Emergency Management and will provide the City's Director of Risk and Emergency Management with 60 days' prior written notice of material change in coverage, lapse or cancellation (except cancellation for non-payment of premiums, in which case applicable statutory provisions will apply). Notice must identify the Agreement title, number, policy holder and scope of work.
- 32.4 The Contractor and each of its Sub-Contractors will provide at its own cost any additional insurance which it is required by law to provide or which it considers necessary.
- 32.5 Neither the providing of insurance by the Contractor in accordance with this Agreement, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the Contractor from any other provisions of this Agreement with respect to liability of the Contractor or otherwise.
- 32.6 The insurance coverage will be primary insurance as respects the City. Any insurance or self-insurance maintained by or on behalf of the City, its officers, officials, employees or agents will be excess of the Contractor's insurance and will not contribute with it.
- 32.7 Prior to the Effective Date, the Contractor will 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 will identify the Agreement title, number, policyholder and scope of work and must not contain any qualifications or disclaimers other than such as maybe acceptable to the City. Proof of insurance, in the form of a Certificate of Insurance or certified copies of

all insurance policies will be made available to the City's Director of Risk and Emergency Management at any time during the term of this Agreement immediately upon request.

- 32.8 The Contractor will provide in its agreements with its Sub-Contractors clauses in the same form as in this Agreement. Upon request, the Contractor will deposit with the City's Director of Risk and Emergency Management detailed certificates of insurance for the policies it has obtained from its Sub-Contractors and a copy of the applicable insurance clauses from its sub-contract agreements.

### 33.0 Workers' Compensation

- 33.1 Prior to commencing any Work on a Work 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 Work Site secured in accordance with WCB Legislation and ensuring the safety of the public at all times during the performance of the Work.

- 33.2 The Contractor is now appointed and now accepts appointments as the Prime Contractor for the purpose of this Agreement, to the extent applicable, if any, and as such, has the responsibility to:

- (a) Ensure the Work is done in a safe manner that complies with all WCB Legislation requirements;
- (b) Direct and coordinate the work activities related to the health and safety of all the Contractor's Sub-Contractors and any other workers in the workplace and immediately give all notices required as a result of this appointment; and
- (c) Obtain from the City written information on hazards and conditions and the methods to address the hazards and conditions and circulate this information, as applicable.

- 33.3 Prior to starting any Work at a Work Site the Contractor must:

- (a) Have its own safety program and have written safe work procedures specific to the work being performed available at the Work Site; and
- (b) Ensure the safety program meets all of the requirements of WCB Legislation.

- 33.4 The Contractor will:

- (a) Advise the City of any accidents or incidents at the workplace that must be reported to the WCB; and
- (b) Inform all persons working under this Agreement on the workplace of the health and safety requirements at the workplace.

- 33.5 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) WCB Legislation;
- (b) the Contractor's safety program; and
- (c) all Work Site safety requirements.

**34.0 Character of Workers**

- 34.1 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) Wilful, 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.
- 34.2 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.

**35.0 City's Right to Remedy**

- 35.1 Should the Contractor neglect to execute the Work properly or fail to perform any provision of this Agreement, 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.

**36.0 Dispute Resolution**

- 36.1 All claims, disputes or issues in dispute between the City and the Contractor will be decided by mediation or arbitration, if the parties agree, or failing agreement, in a Court of competent jurisdiction within British Columbia and be governed by the laws of British Columbia.
- 36.2 In the event that (a) the parties agree to arbitration pursuant to the above, or (b) a matter is referred to arbitration by City's Manager of Materials Management pursuant to Section 14.1, the arbitration will:
- (a) take place in the Lower Mainland, British Columbia and be governed by the laws of British Columbia;
  - (b) be conducted pursuant to the *Commercial Arbitration Act* (British Columbia); and
  - (c) be governed by the rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator or arbitrators will be agreed upon by the parties, and failing agreement by the parties, will be appointed by a court of competent jurisdiction with the Province of British Columbia.
- 36.3 The procedure set out in this section is not meant to preclude or discourage informal resolution of disagreements between the City and the Contractor.
- 36.4 All provisions of the *International Sale of Goods Act* (British Columbia) are specifically excluded from application to this Agreement.



**37.0 Cancellation**

- 37.1 The City may, by written notice to the Contractor, cancel the whole or any part of this Agreement in any one of the following circumstances:
- (a) Pursuant to Section 11.0;
  - (b) If the Contractor fails to make delivery of the Product or to perform the Work within the time specified, or fails to perform any other provisions, terms or conditions of this Agreement within the time specified, or within a reasonable time if no time is specified;
  - (c) If the Contractor performs any act or does anything which causes the City to incur any legal liability whatsoever;
  - (d) If the Contractor fails to meet the safety requirements of this Agreement;
  - (e) If 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 this Agreement;
  - (f) If 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; or
  - (g) If the Contractor breaches any other term of this Agreement.
- 37.2 Upon cancellation of this Agreement, the City will have no obligation to the Contractor except to pay for such Product or Work properly delivered or performed prior to the date of the cancellation of this Agreement.
- 37.3 Upon cancellation of this Agreement in whole or in part, the City may procure similar goods and/or services and the Contractor will be liable to the City for any excess costs for such similar goods and/or services. The Contractor will not be liable for any excess costs where the cancellation is effected pursuant to Section 11.0.

**38.0 Payments**

- 38.1 The Contractor will be paid net 30 days from receipt of invoice and acceptance of the Work, whichever is the later, unless alternate payment terms have been agreed to between the Contractor and the City.

**39.0 Taxes**

- 39.1 Unless otherwise provided herein, the City will pay the GST and PST on the Contract Price to the Contractor, provided that any increase or decrease in such GST and PST will proportionately increase or decrease the amount due under this Agreement.
- 39.2 Prices agreed upon are to be exclusive of GST and PST, with all costs relating to freight, handling, import duties, brokerage, royalties, handling, overhead, profit and any and all other costs included as negotiated within this Agreement.
- 39.3 Invoices must separately show the appropriate amounts for GST and PST.

**40.0 Contract Management and Representation**

- 40.1 The Contractor and the City will comply with and implement the transition plan and protocol for the management of this Agreement as set out in (*\_\_Insert Plan Document Reference\_\_*).
- 40.2 The Contractor's Contact Person will be \_\_\_\_\_, who will make decisions to ensure that the Agreement implementation and day-to-day operation are as specified in (*\_\_Insert Plan Document Reference\_\_*). and will serve as a point of contact for the City.
- 40.3 The Contractor's overall performance and the quality of its work will be determined by the City. Performance will be judged on such factors as service levels including timelines of performance, Product quality, dependability, and such other issues that the City determines are key performance indicators. Where the Contractor's performance or personnel does not meet the experience, knowledge, skills and abilities necessary for the fulfilment of this Agreement, (*\_ name of person, title and entity \_*) or the Manager of Materials Management will provide the Contractor with reasonable written particulars of same, so as to afford the Contractor a reasonable opportunity to improve and correct performance.
- 40.4 Nothing in this Section 40.0 modifies or limits the City's legal rights and remedies under section 36.0 and at law or in equity.

**41.0 Set-off**

- 41.1 The City may at its option, withhold and set-off against any amount owing to the Contractor (whether under this Agreement or otherwise) the amount of any damages suffered or claims made or to be made by the City as a result of any other claim it may have against the Contractor, whether such claim is at law or in equity or tort or on any other basis.

**42.0 Joint Venture or Partnership**

- 42.1 If a joint venture or partnership, the Contractor represents and warrants that all members of the joint venture or partnership are as indicated on the execution page of this Agreement and have duly executed same. The obligations and liabilities of the members of a joint venture or partnership executing this Agreement as the Contractor will be joint and several.

**43.0 Entire Agreement**

- 43.1 This Agreement constitutes the entire agreement between the parties and supersedes all previous communications, representations and agreements whether verbal or written between the parties with respect to their subject matter. The Contractor now acknowledges that it is not relying on any representations of the City as to the performance of the Requirements, except as expressly stated in the RFP, subject always to Sections 10.0 - Non Exclusivity.

**44.0 Failure to Enforce**

- 44.1 Any failure by the City to enforce or require the strict keeping and performance of any of the terms and conditions contained in this Agreement will not constitute a waiver of such terms and conditions, and will not affect or impair such terms and conditions in any way or the City's right at any time to avail itself of such remedies as the City may have for any breach or breaches of such terms and conditions.

**45.0 Successors and Assigns**

- 45.1 This Agreement will benefit and bind each party and its successors and permitted assigns.

**46.0 Letter of Credit**

- 46.1 Concurrently with entering into this Agreement, the Contractor will deliver to the City, a clean, unconditional irrevocable demand letter of credit payable in the amount of \$75,000 (hereinafter called the "Letter of Credit") issued in favour of the City by a Schedule I Canadian chartered bank or Schedule II Canadian chartered bank and on terms satisfactory to the City's Director of Legal Services.
- 46.2 The Letter of Credit must contain an automatic extension clause for the term of this Agreement and may be drawn on by the City to reimburse the City for any losses or damages suffered by the City as the result of the Contractor's breach of this Agreement.
- 46.3 Upon successful performance of the Contractor's obligations under this Agreement for the Initial Warranty Period, the City will return the Letter of Credit.
- 46.4 The "Initial Warranty Period" means the period of time starting on the Effective Date and expiring 1 year after the last Unit is put into service.

**47.0 Non- Disclosure/Promotion of Relationship With City**

- 47.1 The Contractor must not disclose or promote its relationship with the City in any verbal or written (including electronic and internet-based) communication or other method or manner whatsoever (each a "Communication" and collectively, "Communications") without the express prior written consent of the City (except it may disclose, but not promote, such relationship if, but then only to the extent that, such may be necessary for the Contractor to perform the Contractor obligations under the terms of the Contract). The Contractor undertakes not to use "VANOC", "Vancouver 2010", "City of Vancouver", "Vancouver Public Library", "Vancouver Park Board", "Vancouver Board of Parks and Recreation", "Vancouver Police Board", "Vancouver Fire & Rescue Services", or any variation, logo or emblem of any thereof, or the official emblem, logo or mascot of the 2010 Games in any Communications of for any other purpose whatsoever, including without limitation promotion or publicity, without the express prior written consent of the City. For greater certainty, the Contractor undertakes not to disclose or promote its relationship with the City in any Communication as a basis to create an association, express or implied, between the Service Provider and the "City of Vancouver", "Vancouver Public Library", "Vancouver Park Board", "Vancouver Board of Parks and Recreation", "Vancouver Police Board", "Vancouver Fire & Rescue Services", the IOC, the Olympics or the Olympic Movement.

AS EVIDENCE OF THE CITY'S AND CONTRACTOR'S agreement to be legally bound by the terms of this Agreement, the City and Contractor have signed and delivered this Agreement effective as the Effective Date.

**CITY OF VANCOUVER**

Per: \_\_\_\_\_  
Name:  
Title:

**[CONTRACTOR]**

Per: \_\_\_\_\_  
Name:  
Title:

Sample



CERTIFICATE OF EXISTING INSURANCE TO BE COMPLETED AND SUBMITTED ALONG WITH PROPOSAL/TENDER

Section 2 through 8 – to be completed by the Insurer or its Authorized Representative

1. THIS CERTIFICATE IS ISSUED TO: City of Vancouver, 453 W 12th Avenue, Vancouver, BC, V5Y 1V4
And certifies that the insurance policy (policies) as listed herein has been issued to the Named Insured and is in full force and effect as of the effective date of the agreement described below.

NAMED INSURED (must be the same name as the proponent/bidder and is either an individual or a legally incorporated company)

BUSINESS TRADE NAME or DBA DOING BUSINESS AS

BUSINESS ADDRESS

DESCRIPTION OF OPERATION

3. PROPERTY INSURANCE (All Risks Coverage including Earthquake and Flood)
INSURER
TYPE OF COVERAGE
POLICY NUMBER
POLICY PERIOD From to
Insured Values (Replacement Cost) -
Building and Tenants Improvement \$
Contents and Equipment \$
Deductible Per Loss \$

4. COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)
Including the following extensions:
Personal Injury
Property Damage including Loss of Use
Products and Completed Operations
Cross Liability or Severability of Interest
Employees as Additional Insureds
Blanket Contractual Liability
Non-Owned Auto Liability
INSURER
POLICY NUMBER
POLICY PERIOD From to
Limits of Liability (Bodily Injury and Property Damage Inclusive) -
Per Occurrence \$
Aggregate \$
All Risk Tenant's Legal Liability \$
Deductible Per Occurrence \$

5. AUTOMOBILE LIABILITY INSURANCE for operation of owned and/or leased vehicles
INSURER
POLICY NUMBER
POLICY PERIOD From to
Limits of Liability -
Combined Single Limit \$
If vehicles are insured by ICBC, complete and provide Form APV-47.

6. UMBRELLA OR EXCESS LIABILITY INSURANCE
INSURER
POLICY NUMBER
POLICY PERIOD From to
Limits of Liability (Bodily Injury and Property Damage Inclusive) -
Per Occurrence \$
Aggregate \$
Self-Insured Retention \$

7. PROFESSIONAL LIABILITY INSURANCE
INSURER
POLICY NUMBER
POLICY PERIOD From to
Limits of Liability
Per Occurrence/Claim \$
Aggregate \$
Deductible Per Occurrence/Claim \$

If the policy is in a "Claims Made Form", please specify the applicable Retroactive Date:

8. OTHER INSURANCE
TYPE OF INSURANCE
INSURER
POLICY NUMBER
POLICY PERIOD From to
Limits of Liability
Per Occurrence \$
Aggregate \$
Deductible Per Loss \$
TYPE OF INSURANCE
INSURER
POLICY NUMBER
POLICY PERIOD From to
Limits of Liability
Per Occurrence \$
Aggregate \$
Deductible Per Loss \$

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

Dated

PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER



**CORPORATE SERVICES GROUP**  
**Materials Management**  
**Purchasing Services**

**Request for Proposal**  
**No. PS07082**  
**Replacement of VHF Voice Voting Radio System**

To acknowledge your intent to submit a proposal, and to ensure that you receive the required information, please submit this form to the person identified below before close of business day on or before the closing day, Wednesday, December 5, 2007

Megs Gatus  
 Administrative Assistant  
 City of Vancouver  
 Fax: (604) 873-7057  
 Email: purchasing@vancouver.ca

**Your details:**

Proponent's Name: \_\_\_\_\_  
 "Proponent"

Address: \_\_\_\_\_  
 \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Key Contact Person: \_\_\_\_\_

E-mail: \_\_\_\_\_ Incorporation Date: \_\_\_\_\_

Our company **WILL**  / **WILL NOT**  submit a proposal for  
 "RFP No. PS07082- Replacement of VHF Voice Voting Radio System"  
 by the closing date of day **TUESDAY, December 18, 2007 at 3:00 P.M.**

\_\_\_\_\_  
 Authorized Signatory and Name of Company (Please print)

\_\_\_\_\_  
 E-mail Address (Please print)

\_\_\_\_\_  
 Date



CORPORATE SERVICES GROUP
Materials Management
Purchasing Services

Request for Proposal
No. PS07082
Replacement of VHF Voice Voting Radio System

To acknowledge your intent to attend the Proponents' Informational Meeting being held as per Part A Introduction, Section (1.3), and to ensure that you receive the required information, please submit this form to the person identified below before close of business day, Tuesday, November 27, 2007.

Megs Gatus
Administrative Assistant
City of Vancouver
Fax: (604) 873-7057
Email: purchasing@vancouver.ca

Your details:

Proponent's Name: \_\_\_\_\_
"Proponent"

Address: \_\_\_\_\_
\_\_\_\_\_

Telephone \_\_\_\_\_ Fax: \_\_\_\_\_

Key Contact Person: \_\_\_\_\_

E-mail: \_\_\_\_\_ Incorporation Date: \_\_\_\_\_

Our company WILL [ ] / WILL NOT [ ] attend the informational meeting for
"PS007082 - Replacement of VHF Voice Voting Radio System"

Authorized Signatory and Name of Company (Please print)

E-mail Address (Please print)

Date