



City of Tacoma, WA

**LAW ENFORCEMENT SUPPORT AGENCY (LESA)  
REQUEST FOR PROPOSAL  
RAPIDLY-DEPLOYABLE MOBILE WIRELESS VIDEO (RADMO)  
SPECIFICATION NO. LE08-0324F**



City of Tacoma

**REQUEST FOR PROPOSALS**

**Specification No. LE08-0324F  
LAW ENFORCEMENT SUPPORT AGENCY (LESA)**

**RAPIDLY-DEPLOYABLE MOBILE WIRELESS VIDEO (RADMO)**

The City of Tacoma is accepting **SEALED PROPOSALS** for the above solicitation. Submittals will be received and time stamped only at the Purchasing Division, located in the Tacoma Public Utilities Administration Building, at 3628 South 35<sup>th</sup> Street, Tacoma, WA 98409.

Proposals will be received until **11:00 a.m., Pacific Time, Tuesday, July 15, 2008**, at which time they will be recorded and forwarded to a Selection Advisory Committee for evaluation. Proposals are not typically opened and read aloud.

An electronic copy of the complete solicitation documents may be viewed and obtained by accessing the City of Tacoma Purchasing website at: [www.TacomaPurchasing.org](http://www.TacomaPurchasing.org). A list of vendors who registered for this solicitation is also available at the website. After 1:00 p.m. the day of bid opening, the names of vendors submitting proposals are posted to the website for public viewing.

A pre-proposal conference will be held from 9:00 a.m. to 12:00 Noon (Pacific Time) on June 3, 2008, at the Law Enforcement Support Agency Executive Board Conference Room, 955 Tacoma Avenue, Suite 102, Tacoma, WA 98402.

**Project Scope:** The Law Enforcement Support Agency is initiating proposals from qualified entities to review previous project work, review proposed technology, assess status of intellectual property, develop working prototype and pilot, provide a plan for additional funding, and provide a plan for a full commercialization of a rapidly-deployable mobile wireless video system (RADMO).

The following is applicable to Federal Aid Projects:

The City of Tacoma in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

Additional information regarding the specifications may be obtained by contacting Marie Holm, Purchasing Analyst, at 253-502-8139 for general purchasing information.

*Marie Holm*  
for HELEN SMALL  
Purchasing Manager



Meeting sites are accessible to persons with disabilities. Reasonable accommodations for persons with disabilities can be arranged with 48 hours advance notice by calling 253-502-8468.

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## PROPOSAL SUBMITTAL CHECK LIST

This checklist is provided for convenience only and identifies the documents that must be submitted with each proposal. Any proposal received without these documents may be deemed non-responsive and not be considered for award.

For number of copies needed, see **Section E “PROPOSAL FORMAT”**

<b>The following information makes up your submittal package.</b>	
<p>All information in Section L to include:</p> <p>The following information shall be submitted</p> <ol style="list-style-type: none"> <li>1. Cover letter</li> <li>2. Proposal Signature Page—Respondent shall complete and submit.</li> <li>3. Personnel Inventory Form—Respondent shall complete and submit.</li> <li>4. Detailed proposed plan for project and technology review and for product development and financing.</li> <li>5. Experience and Qualifications</li> <li>6. Conflicts of Interest</li> <li>7. Supplemental Information</li> <li>8. Confidentiality Agreement</li> </ol>	
Any other information relevant to the specification requirements	
After award, the following documents will be executed:	
Professional Service Contract	
Certificate of Insurance	

**CITY OF TACOMA  
STANDARD TERMS AND CONDITIONS  
SECTION 1 – SOLICITATION**

THE FOLLOWING TERMS AND CONDITIONS ARE PART OF THIS SPECIFICATION AND ARE BINDING ON ALL RESPONDENTS SUBMITTING RESPONSES TO REQUESTS FOR BIDS, PROPOSALS, QUALIFICATIONS AND INFORMATION.

**1.01 DELIVERY OF SUBMITTALS TO THE CITY'S PURCHASING DIVISION**

Submittal packages must be received by the City's Purchasing Division, Tacoma Public Utilities Building, Main Floor, 3628 South 35<sup>th</sup> Street, Tacoma, WA 98409-3115, prior to the scheduled time and date stated in the solicitation announcement. Each submittal, intact and bound, shall be completely sealed, with the name of the submitting party (hereinafter "Respondent"), the specification number and title clearly marked on the exterior of the package. City offices are not open for special mail or other deliveries on weekends and City holidays.

Submittals may be delivered to the City by mail or in person; however, **the Respondent is solely responsible for timely delivery of its submittal to the Purchasing Division.**

Facsimile (fax) copies of submittals for requests for sealed bids, requests for proposals, requests for qualifications and requests for information will not be accepted at any City fax machine.

Submittals received after the time stated in the solicitation announcement will not be accepted and will be returned, unopened, to the Respondent.

For purposes of determining whether a submittal has been timely received, the City's Purchasing Division may rely on Universal Coordinated Time from the National Bureau of Standards as reported by <http://www.greenwichmeantime.com/>

**1.02 WITHDRAWAL OF SUBMITTALS**

**A. Prior to Submittal Deadline (Bid Opening)**

Submittals may be withdrawn prior to the scheduled submittal deadline by providing written notice to the City's Purchasing Division. The notice may be submitted in person or by mail; however, it must be received by the City's Purchasing Division prior to the submittal deadline.

**B. After Submittal Deadline**

No submittal can be withdrawn after having been opened as set forth in the solicitation announcement, and before the actual award of the contract, unless the award is delayed more than 60 calendar days beyond the date of opening. If a delay of more than 60 calendar days does occur, the Respondent must submit written notice to the purchasing manager that Respondent is withdrawing its submittal.

**1.03 SUBMITTAL IS NON-COLLUSIVE**

The Respondent acknowledges that by its delivery of a submittal to the City in response to this solicitation it represents that the prices in such submittal are neither directly nor indirectly the result of any formal or informal agreement with another Respondent.

**1.04 OPENING AND ACCEPTANCE OF SUBMITTALS**

Submittals, unless previously withdrawn, will be read aloud, irrespective of any irregularities or informalities in such submittal, at the time and place specified in the solicitation announcement.

All submittals must remain open for acceptance by the City for a period of at least 60 calendar days from the date of opening.

**1.05 RIGHT TO REJECT**

The City of Tacoma reserves the right to reject any and all submittals, waive minor deviations or informalities, and if necessary, call for new bids/proposals.

**A. Requests for Proposals (RFP)**

By submitting a proposal in response to a City RFP, the Respondent acknowledges and consents to the following City rights and conditions. The City reserves, holds without limitation, and may exercise, at its

sole discretion, the following rights and conditions with regard to this procurement process:

1. To terminate the procurement process or decide not to award a contract as a result thereof by written notice to the Respondents for any reason whatsoever.
2. To waive any defect, technicality, or any other minor informality or irregularity in any submittal, or any other response from Respondents.
3. To make minor or major changes or alterations to the evaluation, selection and/or performance schedule(s) for any events associated with this procurement process upon notice to the Respondents.
4. To supplement, amend or otherwise modify the RFP specifications, at any time upon prior notice to Respondents, including but not limited to modifications to the description of services and/or products contained in the RFP, by omitting services/products and/or including services/products not currently contemplated therein.
5. To request clarifications, additional information, and/or revised submittals from one or more Respondents.
6. To conduct investigations with respect to the qualifications and experience information for each Respondent included in a submittal and to request additional evidence to support any such information.
7. To eliminate any Respondent that submits an incomplete or inadequate response, or is non-responsive to the requirements of the RFP specifications, or is otherwise deemed to be unqualified during any stage of the procurement process.
8. To select and interview a single finalist or multiple finalists for the purpose of promoting the City's evaluation of submittals provided in response to the RFP specifications. The City may, in its sole and exclusive discretion as to what is in the City's best interest, elect not to conduct interviews of any or all respondents in connection with this RFP process.
9. To discontinue contract negotiations with a selected Respondent and commence such negotiations with another respondent, except as otherwise provided in Chap. 39.80, RCW.
10. To select and enter into a contract with one or more Respondents whose submittal best satisfies the interests of the City and is most responsive, in the sole judgment of the City, to the requirements of the RFP specifications.
11. To take any other action affecting the RFP specifications or the procurement process that is determined to be in the City's best interests.
12. In the event the City receives questions concerning RFP specifications from one or more Respondents prior to the deadline for response, the City reserves the right to provide such questions, and the City's responses, if any, to all Respondents.
13. Neither the City, its officials, staff, agents, employees, representatives, nor consultants will be liable for any claims or damages resulting from any aspect of this procurement process.

#### **1.06 EVALUATION OF SUBMITTALS**

The City of Tacoma reserves the right to award to the lowest and best responsible Respondent(s) delivering a submittal in compliance with the specification documents, provided such submittals are reasonable and are in the best interest of the City to accept. The City may use a number of criteria for determining award, including evaluation factors set forth in Municipal Code Section 1.06.253. Respondents who are inexperienced or who fail to properly perform other contracts may have their submittal rejected for such cause.

##### **A. Evaluation Factors**

In addition to the factors set forth in Municipal Code Section 1.06.253, the following may be used by the City in determining the lowest and best responsible submittal:

1. Compliance with the Specification and with applicable City requirements, including by not limited to, the City's Ethics Code and its Historically Under-utilized Business and Local Employment and Apprenticeship programs.
2. Submittal prices, listed separately if requested, as well as a lump sum total (if the unit price does not compute to the extended total price, the unit price shall govern).
3. Time of delivery and/or completion of performance (delivery date(s) offered).
4. Warranty terms.
5. Quality of performance of previous contracts or services, including safety requirements and past compliance with the City's Ethics Code.
6. Previous and existing compliance with laws and ordinances relating to contracts or services.
7. Sufficiency of financial resources.
8. Quality, availability and adaptability of the supplies or services to the particular use required.
9. Ability to provide future maintenance and service on a timely basis.
10. Location of nearest factory authorized warranty repair facility or parts dealership.
11. Ability, capacity, experience, stability, reputation, integrity, character, judgment, technical qualifications and skill to perform the contract or provide the services required.

All other elements or factors, whether or not specifically provided for in this Specification, which would affect the final cost to, and the benefits to be derived by, the City, may be considered in determining the award of the contract. The final award decision will be based on the best interests of the City.

**B. Consideration of Tax Revenue**

Per Tacoma Municipal Code Section 1.06.259, in determining the lowest and best responsible Respondent for contracts exceeding \$5,000 for supplies, materials or equipment, the City will take into consideration the tax revenue the City would receive from purchasing said item(s) from a supplier(s) located inside the boundaries of the City of Tacoma.

**C. Cash Discount**

Payment discount periods of 20 calendar days or more may be considered in determining the apparent lowest responsible submittal. Discounts will be analyzed in context of their overall cumulative effect.

**1.07 COMPLETION OF CITY FORMS**

All submittals must be completed in ink or typewritten using the forms included with this Specification, and submitted exactly as specified.

City forms requiring signature must be signed in ink by an authorized officer, employee or agent of the Respondent.

Prices must be stated in figures. Corrections shall be initialed in ink by the person signing the submittal. Prices having erasures or interlineations (cross outs) will not be accepted unless initialed in ink by the Respondent.

**1.08 CORRECTION OF AMBIGUITIES AND OBVIOUS ERRORS**

The City reserves the right to correct obvious errors in the Respondent's submittal. In this regard, if the unit price does not compute to the extended total price, the unit price shall govern.

**1.09 CLARIFICATION OF SPECIFICATION**

Questions regarding this Specification and/or any included terms, conditions, forms, plans or drawings are to be submitted in writing to the City staff person identified as the contact for this Specification. All requests for interpretation must be received by the City no later than five business days prior to the opening date. Any interpretation of this Specification will be made by addendum duly issued and posted to the Purchasing website at [www.TacomaPurchasing.org](http://www.TacomaPurchasing.org). Such addendum must be acknowledged in the submittal. The City of Tacoma will not be responsible for any other explanation or interpretation of the specification documents.

**1.10 ALTERATIONS NOT ALLOWED**

Except as otherwise specifically provided in the specification documents, submittals that are incomplete or conditioned in any way, contain erasures, alternatives or items not called for, or not in conformity with law, may be rejected as being non-responsive. Any attempt to condition the submittal by inserting exceptions to the Specification or any conditions, qualifications or additions that vary its terms may result in rejection of the submittal. The City cannot legally accept any submittal containing a material deviation from the Specifications.

**1.11 INSERTION OF MATERIAL CONFLICTING WITH SPECIFICATIONS**

Only material inserted by the Respondent to meet requirements of the specification documents will be considered. Any other material inserted by the Respondent will be disregarded by the City of Tacoma as being non-responsive and may be grounds for rejection of the submittal.

**1.12 FIRM PRICES/ESCALATION**

Except as specifically allowed elsewhere in the specification documents, only firm prices will be accepted.

**1.13 SHIPPING**

Prices must be quoted FOB destination (the place of destination as defined in RCW 62A.2-319, as that statute may hereafter be amended), with freight prepaid and allowed (shipping costs included in unit prices), and risk of loss remaining with Respondent until delivery is tendered.

**1.14 LEGAL HOLIDAYS**

The City of Tacoma observes the following holidays, which shall apply to performance of all contracts awarded from this solicitation:

New Year's Day	January 1
Martin Luther King's Birthday	3rd Monday in January
Washington's Birthday	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veteran's Day	November 11
Thanksgiving Day	4th Thursday of November
Day after Thanksgiving	4th Friday of November
Christmas Day	December 25

When any of these holidays occur on Saturday or Sunday, the preceding Friday or the following Monday, respectively, is a legal holiday for the City of Tacoma.

**1.15 TAXES**

Unless otherwise required in this Specification, applicable federal, state, city and local taxes shall be included in the submittal as indicated below. The total cost to the City, including all applicable taxes, may be the basis for contract award determination. As used herein, the term "taxes" shall include any and all taxes, assessments, fees, charges, interest, penalties, and/or fines imposed by applicable laws and regulations in connection with the procurement of goods and/or services hereunder.

**A. Federal Excise Tax**

The City of Tacoma is exempt from federal excise tax. The City will furnish a Federal Excise Tax Exemption certificate, if required. If the Respondent fails to include any applicable tax in its submittal, then Respondent shall be solely responsible for the payment of said tax.

**B. State and Local Sales Tax**

The City of Tacoma is subject to Washington state sales tax. It is the Respondent's obligation to state the correct sales tax percentage and include the applicable Washington state, city and local sales tax as a separate line item(s) in the submittal.



**C. City of Tacoma Business and Occupation Tax**

It is the Respondent's obligation to include City of Tacoma Business and Occupation tax in the unit and/or lump sum prices submitted; it shall not be shown separately on the submittal.

Per Sub-Title 6A of the City of Tacoma Municipal Code, transactions with the City of Tacoma may be subject to the City's Business and Occupation Tax.

It is the responsibility of the Respondent awarded the contract to register with the City of Tacoma's Tax and License Division, 733 South Market Street, Room 21, Tacoma, WA 98402-3768, telephone 253-591-5252, website <http://www.cityoftacoma.org/Page.aspx?nid=201>.

**D. Any or All Other Taxes**

Any or all other taxes are the responsibility of the Respondent unless otherwise required by law.

**1.16 WASHINGTON BUSINESS LICENSE REQUIREMENT**

All submittals should include a Washington State Business License number in the space provided on the Submittal Signature Page. If the recommended respondent does not have a Washington State Business License at the time of submittal, it must obtain such license and provide proof thereof to the City of Tacoma prior to contract award. Failure to include a Washington State Business License may be grounds for rejection of the submittal. Information regarding Washington State Business Licenses may be obtained at <http://www.dol.wa.gov/businesses.htm>.

**1.17 PROPRIETARY OR CONFIDENTIAL DESIGN INFORMATION**

Washington State Public Disclosure Act (RCW 42.56 et seq.) requires public agencies in Washington to promptly make public records available for inspection and copying unless they fall within the specified exemptions contained in the Act, or are otherwise privileged. Documents submitted under this Specification shall be considered public records and, with limited exceptions, will be made available for inspection and copying by the public.

If the Respondent considers any submittal document to be protected from disclosure under the law, the Respondent shall clearly identify on the page(s) affected such words as "CONFIDENTIAL," "PROPRIETARY" or BUSINESS SECRET." The Respondent shall also submit an index with its submittal identifying the affected page number(s) and location(s) of all such identified material. **Marking the entire submittal as "confidential" or "proprietary" is not acceptable and is grounds to reject such submittal.**

If a request is made for disclosure of such identified documents or portions thereof, the City will determine whether the material is exempt from public disclosure. If, in the City's opinion, the material is subject to disclosure, the City will notify Respondent of the request and impending release and allow the Respondent 10 days to take whatever action it deems necessary to protect its interests. The City will cooperate with any legal action initiated by the Respondent to prevent release; provided that all expense of such action shall be borne solely by the Respondent, including any damages, attorney's fees or costs awarded by reason of having opposed disclosure and Respondent shall indemnify City against same. If the Respondent fails or neglects to take such action within said period, the City will release all materials deemed subject to disclosure. Submission of materials in response to this solicitation shall constitute assent by the Respondent to the foregoing procedure and the Respondent shall have no claim against the City on account of actions taken pursuant to such procedure.

**1.18 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

The City of Tacoma ensures full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin or sex in the provision of benefits and services resulting from its federally assisted programs and activities. Contact Tacoma's Title VI coordinator at 253-591-5828 for additional information.

**1.19 LEGAL DISPUTES**

Respondent agrees and stipulates that in the event any litigation should occur concerning or arising out of this solicitation or any submittal delivered in response hereto, the sole venue of any such legal action shall be the Pierce County Superior Court of the state of Washington and the interpretation of the terms of the solicitation and submittal shall be governed by the laws of the state of Washington.

**1.20 PURCHASE ORDER TERMS AND CONDITIONS**

Terms and conditions of City of Tacoma purchase orders, if issued, shall apply to contracts and awards resulting from this solicitation.

**1.21 RESPONDENT'S REFUSAL TO ENTER INTO CONTRACT**

Any Respondent who refuses to enter into a contract after it has been awarded to the Respondent will be in breach of the agreement to enter the contract, and the Respondent's certified or cashiers check or bid bond, if any, shall be forfeited.

**1.22 AWARD**

The City reserves the right to award contracts for any or all items to one or more respondents in the best interests of the City.

**1.23 FINAL AWARD DETERMINATION**

The Tacoma City Council or Public Utility Board, for awards over \$50,000, shall be the final judge as to which submittal(s) is/are the lowest and best responsible, and best meets the interest of the City of Tacoma to accept. The purchasing manager makes the determination for awards of \$50,000 and less.

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**CITY OF TACOMA  
STANDARD TERMS AND CONDITIONS  
SECTION 2 – SERVICES**

UNLESS OTHERWISE REQUIRED BY THE SPECIFICATION OR AGREED TO IN WRITING, THE FOLLOWING TERMS AND CONDITIONS SHALL GOVERN THE RIGHTS, RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES TO THE CONTRACT.

**2.01 CONTRACTOR**

As used herein, the "Contractor" shall be the Respondent(s) awarded a contract pursuant to this Specification, whether designated as a Respondent, Vendor, Proposer, Bidder, Seller, Merchant, Service Provider or otherwise.

**2.02 ENTIRE AGREEMENT**

This Specification, purchase orders issued by the City pursuant hereto, and the Contractor's submittal, in that order of precedence, shall constitute the "Contract" between the parties. Said documents represent the entire agreement between the parties and supersede any prior oral statements, discussions or understandings between the parties, and/or subsequent contractor invoices. No modification of this Contract shall be effective unless mutually agreed in writing.

**2.03 SERVICES**

The services and/or work contracted for herein exclude public works and improvements as defined in RCW 39.04, as that statute may hereafter be amended.

**2.04 SCOPE OF WORK**

The Contractor agrees to diligently and completely perform the services required by this Contract.

The City shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or amendment hereto. If the changes will result in additional work effort by Contractor the City agrees to reasonably compensate the Contractor for such additional effort up to the maximum amount specified in the Contract or as otherwise provided by Tacoma Municipal Code. Delivery of incidental products will be as designated in this Contract.

**2.05 TIME FOR PERFORMANCE**

All services shall be satisfactorily completed by the termination date contemplated by this Contract, and this Contract shall expire on said date unless mutually extended in writing by the Parties.

**2.06 EXTENSION OF CONTRACT**

This Contract shall be subject to extension by mutual agreement per the same prices, terms and conditions.

**2.07 COMPENSATION**

The City shall compensate the Contractor in accordance with the Contract. Said compensation shall be the total compensation for Contractor's performance hereunder including, but not limited to, all work, services, deliverables, materials, supplies, equipment, subcontractor's fees and all reimbursable travel and miscellaneous or incidental expenses to be incurred by Contractor.

**2.08 INVOICES**

Each invoice shall show City of Tacoma purchase order number, release number if applicable, quantity, unit of measure, item description, unit price and extended price for each line. Line totals shall be summed to give a grand total to which sales tax shall be added, if applicable. Invoices shall be sent in duplicate to:

Accounts Payable  
City of Tacoma  
P. O. Box 1717  
Tacoma Washington 98401-1717

Any terms, provisions or language in Contractor's invoice(s) that conflict with the terms of this Contract shall not apply to this Contract unless expressly accepted in writing by the City.

**2.09 PAYMENT TERMS**

Payment shall be made through the City's ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice. Payment will not be considered late if mailed or electronically disbursed within the time specified. Payment(s) made in accordance with this Contract shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature, and acceptance of payment shall constitute a waiver of all claims submitted by Contractor. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.

Invoices will not be processed for payment, nor will the period of cash discount commence, until all invoiced items are received and satisfactory performance of the Contract has been attained, and a properly completed invoice is received by the City. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized.

**2.10 ADDITIONAL CITY CONTRACTS**

During the term of this Contract, other City of Tacoma Departments/Divisions shall have the right to enter into additional service contracts or issue purchase orders based on the unit prices and/or service rates stated in this Contract. An exception taken specifically to this provision at time of submittal shall not constitute a material deviation in the bidding process.

**2.11 COOPERATIVE PURCHASING**

The Washington State Interlocal Cooperation Act RCW 39.34 provides that other governmental agencies may purchase goods and services based on this Contract in accordance with the terms and prices indicated herein if all parties are agreeable. Each public agency shall formulate a separate contract with the Contractor, incorporating the terms and conditions of this Contract with the City of Tacoma. The City shall incur no liability in connection with such contracts or purchases by other public agencies thereunder. It will be the Contractor's responsibility to inform such public agencies of this Contract. Contractor shall invoice such public agencies as separate entities.

**2.12 WARRANTIES/REPRESENTATIONS**

The Contractor warrants that all services performed pursuant to the Contract shall be generally suitable for the use to which the City intends to use said services as expressed in this Contract. The Contractor represents and warrants that it will diligently and completely perform all services and obligations consistent with customarily accepted good practices and standards of performance applicable to service providers rendering the same or similar type of service and that it will comply with all applicable federal, state and local laws, ordinances, rules and regulations including, but not limited to, the Occupational Safety and Health Administration (OSHA) and the Washington Industrial Safety and Health Act (WISHA). If the Contractor intends to rely on information or data supplied by the City, other City contractor's or other generally reputable sources without independent verification, such intent shall be brought to the attention of the City.

**2.13 TAXES, LICENSES, PERMITS**

Unless otherwise required by applicable law, the tax provisions in Section 1 - Solicitation apply to this Contract. Except for state sales tax, the Contractor acknowledges that it is responsible for the payment of all taxes applicable to this Contract and the Contractor agrees to comply with all applicable laws regarding the reporting of income, maintenance of records and all other requirements and obligations imposed pursuant to applicable law.

The Contractor, at its expense, shall obtain and keep in force any and all necessary licenses and permits. The Contractor shall obtain a business license as required by Tacoma Municipal Code Subtitle 6B.20 and shall pay business and occupation taxes as required by Tacoma Municipal Code Subtitle 6A.30.

If the City is assessed, made liable, or responsible in any manner for taxes contrary to the provisions of this Contract, the Contractor agrees to hold the City harmless from such costs, including attorney's fees. In the event the Contractor fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, other than those taxes the City is required to pay, then the Contractor authorizes the City to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from the Contractor's total compensation.

**2.14 FEDERAL, STATE AND MUNICIPAL LAWS AND REGULATIONS**

All federal, state, municipal and/or local laws and regulations shall be satisfied in the performance of all portions of this Contract. The Contractor shall be solely responsible for all violations of the law from any cause in connection with its performance of work under this Contract.

**2.15 HISTORICALLY UNDER-UTILIZED BUSINESSES (HUB) PROGRAM AND EQUAL OPPORTUNITY**

It is the policy of the City of Tacoma that all citizens be afforded an equal opportunity for full participation in our free enterprise system. In order to implement this policy, the City of Tacoma is committed to ensuring equitable participation of historically under-utilized business enterprises. Contact Tacoma's HUB coordinator at 253-591-5828 for additional information.

**2.16 NON-DISCRIMINATION**

The Contractor agrees to take all steps necessary to comply with all federal, state and City laws and policies regarding non-discrimination and equal employment opportunities. The Contractor shall not discriminate in any employment action because of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, or the presence of any sensory, mental or physical handicap. In the event of non-compliance by the Contractor with any of the non-discrimination provisions of this Contract, the City shall be deemed to have cause to terminate this Contract, in whole or in part.

**2.17 PREVAILING WAGES PAID – IF REQUIRED**

If this Contract involves public works and improvements and/or maintenance of public building(s), federal, state and/or local laws may require the Contractor to pay prevailing wages, and Contractor hereby agrees to pay such applicable prevailing wages. If applicable to this Contract, a Schedule of Prevailing Wage Rates for the locality or localities where this Contract will be performed is attached and made of part of this Contract by this reference. If prevailing wages do apply to this Contract, the Contractor and its subcontractors shall (a) be bound by the provisions of Chapter 39.12 RCW, as amended, relating to prevailing wages and usual fringe benefits, (b) ensure that no worker, laborer or mechanic employed in the performance of any part of this Contract shall be paid less than the prevailing rate of wage specified on that Schedule, and (c) immediately upon award of the Contract, contact the Department of Labor and Industries, Prevailing Wages section, Olympia, Washington, to obtain full information, forms and procedures relating to these matters. Per such procedures, a Statement of Intent to Pay Prevailing Wages must be submitted by the Contractor and its subcontractors to the City, in the manner requested by the City, prior to any payment by the City hereunder, and an Affidavit of Wages Paid must be received or verified by the City prior to final Contract payment.

**2.18 CONFLICT OF INTEREST**

No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The Contractor shall comply with all federal, state and City conflict of interest laws, statutes and regulations. The Contractor represents that the Contractor presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Contract pertains that would conflict in any manner or degree with the performance of the Contractor's services and obligations hereunder. The Contractor further covenants that, in performance of this Contract, no person having any such interest shall be employed. The Contractor also agrees that its violation of the City's Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of this Contract subjecting the Contract to termination.

**2.19 REPORTS, RIGHT TO AUDIT, PERSONNEL**

**A. Reports**

The Contractor shall, at such times and in such form as the City may reasonably require, furnish the City with periodic status reports pertaining to the services undertaken pursuant to this Contract.

**B. Right to Audit**

Upon City's request, the Contractor shall make available to City all accounts, records and documents related to the scope of work for City's inspection, auditing, or evaluation during normal business hours as

reasonably needed by City to assess performance, compliance and/or quality assurance under this Contract.

**C. Personnel**

If before, during, or after the execution of this Contract, the Contractor has represented or represents to the City that certain personnel would or will be responsible for performing services pursuant to this Contract, then the Contractor is obligated to ensure that said personnel perform said Contract services to the maximum extent permitted by law. This Contract provision shall only be waived by written authorization by the City, and on a case by case basis.

**2.20 TERMINATION AND SUSPENSION**

The City may terminate this Contract at any time, with or without cause, by giving 10 business days written notice to Contractor. In the event of termination, all finished and unfinished work prepared by the Contractor pursuant to this Contract shall be provided to the City. In the event City terminates this Contract due to the City's own reasons and without cause due to the Contractor's actions or omissions, the City shall pay the Contractor the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein.

The City may suspend this Contract, at its sole discretion, upon three business days written notice to the Contractor. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the Contractor's actual expenses and shall be subject to verification. The Contractor shall resume performance of services under this Contract without delay when the suspension period ends.

Termination or suspension of this Contract by City shall not constitute a waiver of any claims or remaining rights the City may have against Contractor relative to performance hereunder.

**2.21 INDEMNIFICATION – HOLD HARMLESS**

The Contractor shall indemnify, defend and hold harmless the City, its officials, officers, agents, employees and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Contract; provided that this provision shall not apply to the extent that damage or injury results from the fault of the City, or its officers, agents, or employees. The term "fault" as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended.

The Contractor specifically assumes potential liability for actions brought by the Contractor's own employees against the City and, solely for the purpose of this indemnification and defense, the Respondent specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

These indemnifications shall survive the termination of this Contract.

A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.

**2.22 INSURANCE**

The Contractor shall maintain all necessary insurance to protect Contractor and the City from losses and claims that may arise out of or result from performance of duties related to the Contract, including Worker's Compensation, automobile public liability and property damage, commercial general liability, professional liability, errors and omissions and others, as specified in the Insurance Requirements attachment.

**2.23 INDEPENDENT CONTRACTOR STATUS**

The Contractor is considered an independent contractor who shall at all times perform his/her duties and responsibilities and carry out all services as an independent contractor and shall never represent or construe his/her status to be that of an agent or employee of the City, nor shall the Contractor be eligible for any employee benefits. No payroll or employment taxes or contributions of any kind shall be withheld or paid by the City with respect to payments to Contractor. The Contractor shall be solely responsible for all said payroll or employment taxes and/or contributions including, but not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. If the City is assessed, made liable or responsible in any manner for such taxes or contributions, the Contractor agrees to indemnify and hold the City harmless from all costs incurred, including attorney fees.

Unless otherwise specified in writing, Contractor shall provide at its sole expense all materials, working space, and other necessities and instruments to perform its duties under this Contract. The Contractor, at its sole expense, shall obtain and keep in force any and all applicable licenses, permits and tax certificates necessary to perform Contract services.

**2.24 NOTICES**

Except for routine operational communications, which may be delivered personally or transmitted by electronic mail or facsimile, all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the Contractor's registered agent and to the applicable City department representative.

**2.25 CITY OWNERSHIP OF WORK/RIGHTS IN DATA/PUBLICATIONS**

To the extent that Contractor creates any work subject to the protections of the Copyright Act (Title 17 U.S.C) in its performance of this Contract, Contractor agrees to the following: The work has been specially ordered and commissioned by the City. Contractor agrees that the work is a "work made for hire" for copyright purposes, with all copyrights in the work owned by City. To the extent that the work does not qualify as a work made for hire under applicable law, and to the extent that the work includes material subject to copyright, Contractor hereby assigns to City, its successors and assigns, all right, title and interest in and to the work, including but not limited to, all copyrights, patent, trade secret and other proprietary rights, and all rights, title and interest in and to any inventions and designs embodied in the work or developed during the course of Contractor's creation of the work.

The Contractor shall be solely responsible for obtaining releases and/or licenses for the reproduction, distribution, creation of derivative works, performance, display, or other use of copyrighted materials. Should the Contractor fail to obtain said releases and/or licenses, the Contractor shall indemnify, defend and hold harmless the City for any claim resulting there from.

**2.26 PUBLIC DISCLOSURE**

This Contract and documents provided to the City by Contractor hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the City may be required, upon request, to disclose this Contract and documents related to it unless an exemption under the Public Records Act or other laws applies.

**2.27 DUTY OF CONFIDENTIALITY**

Contractor acknowledges that unauthorized disclosure of information or documentation concerning the Scope of Work hereunder may cause substantial economic loss or harm to the City. Except for disclosure of information and documents to Contractor's employees, agents, or subcontractors who have a substantial need to know such information in connection with Contractor's performance of obligations under this Contract, the Contractor shall not without prior written authorization by the City allow the release, dissemination, distribution, sharing, or other publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Contract.

**2.28 DISPUTE RESOLUTION**

In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the City's right to terminate authorized by this Contract.

**2.29 GOVERNING LAW AND VENUE**

Washington law shall govern the interpretation of this Contract. The state or federal courts located in Pierce County shall be the venue of any mediation, arbitration or litigation arising out of this Contract.

**2.30 ASSIGNMENT**

The Contractor shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract without the prior written consent of the City.

**2.31 WAIVER**

A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.

**2.32 SEVERABILITY AND SURVIVAL**

If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.

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## **I. GENERAL INFORMATION**

The Pierce County Consortium (consisting of the Tacoma Police Department, the Puyallup Police Puyallup Police Department, the Pierce County Sheriff's Department, and the Law Enforcement Support Agency) is initiating this Stage II Request for Proposal (RFP) to solicit responses from vendors interested in: (a) conducting a comprehensive Project Review and Technology Review of prior research and development conducted under a previous RFP related to providing a rapidly-deployable mobile wireless video system (RADMO) that will be used by law enforcement officers in drug and crime interdiction, as well as provide remote incident situation awareness; (b) providing project oversight and risk management; (c) identifying and procuring additional sources of governmental and/or private funds to develop, manufacture, and produce functional models throughout the consortium; and (d) producing the prototype RADMO and pilot project in a result that will satisfy the return on investment requirements and expectations of the Department of Justice, the Law Enforcement Support Agency, and any potential investment group interested in commercializing the product for use outside the Consortium. Stage I, Request for Proposal LE06-0447F, released on July 11, 2006 has already been concluded).

All proposals received will be evaluated by a LESA Selection Advisory Committee (SAC). Based on the submittals, the SAC may award one or multiple contracts for one or more tasks listed in these specifications. Depending on the qualifications and experience submitted, it may be in the best interest of the City to divide this project and award to one or more Respondents. The City reserves the right to award in the best interest of the City, to waive irregularities, or to not award a contract at all. The City also reserves the right to issue a new Request for Proposal.

### **A. CALENDAR OF EVENTS**

The schedule of events concerning this RFP is as follows:

Publish and issue RFP	May 7, 2008
Receipt of Non-Disclosure Agreement	May 8 - June 2, 2008
.....[Must be received prior to attendance at pre-proposal conference]	
Pre-Proposal Questions	May 23, 2008
Pre-Proposal Conference	June 3, 2008
Response Due Date	July 15, 2008
Proposals evaluated	July 16-July 23, 2008
Contract Negotiations	July 24-August 12, 2008.
Award recommendation	August 13, 2008
LESA Board Approval	August 13, 2008
Work commences	August 15-30, 2008

This is a tentative schedule and may be altered.

## **B. RESPONDENT INQUIRIES TO RFP AND PRE-PROPOSAL CONFERENCE**

Any questions concerning the RFP must be submitted in writing to Marie Holm, via fax, (253-502-8372) or by email ([marie.holm@ci.tacoma.wa.us](mailto:marie.holm@ci.tacoma.wa.us)) by 5:00 p.m. PST, May 23, 2008. The City of Tacoma will not be responsible for unsuccessful electronic submittals. No further questions will be accepted after 5:00 p.m. PST on that day. The questions to the answers submitted will be handed out during the pre-proposal conference on June 3, 2008 as "Addendum No. One" and will also be posted to the Purchasing website at [www.TacomaPurchasing.org](http://www.TacomaPurchasing.org) by end of that day. Additional questions may also be asked at the pre-proposal conference; however, responses may be deferred. Any information posted to the Purchasing website after the pre proposal conference will be issued through another Addendum. It is the Respondent's responsibility to check the Purchasing website.

The City of Tacoma will not be responsible for unsuccessful submittal of questions via fax or email and no further written questions will be accepted after the deadline stated above. The City also reserves the discretion to group similar questions into one single answer or not to respond when the information is confidential

The pre-proposal conference is not mandatory to attend; however all Respondents are **strongly encouraged** to attend and participate in the dialog and information being shared. For those Respondents who can not attend the pre-proposal conference, it is their responsibility to check the Purchasing website for updated information. This information could be necessary in the Respondent's preparation in response to this RFP. Because of the importance of obtaining all the information shared through the question submittal phase as well as the pre proposal conference, all Respondents shall acknowledge receipt of information by marking the addendum section located on the Proposal Signature Sheet. The City reserves all rights to reject any submittals from Respondents who do not acknowledge the addendum(s).

All communications concerning this acquisition should be directed to Marie Holm. Unauthorized contact regarding the RFP with any LESA employees may result in disqualification.

**NOTE: Interested persons/firms will be required to submit an executed confidentiality agreement prepared by LESA in order to access the results of the Stage 1 Research and Development, please see attached form. All forms should be submitted to Marie Holm by end of day on June 2, 2008.**

### **C. RFP Revisions**

In the event it becomes necessary to revise any part of the RFP, an addenda will be issued to all persons/firms who receive the RFP as well as post the notice on the Purchasing website that an addenda has been issued.

### **D. RESPONSIVENESS**

Proposals must provide ninety (90) days for acceptance by City of Tacoma from the due date for receipt of proposals. All proposals will be reviewed by the City to determine compliance with the requirements and instructions specified in this RFP. The Respondent is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive. The City of Tacoma reserves the right, in its sole discretion, to waive irregularities deemed by the City of Tacoma to be immaterial.

### **E. PROPOSAL FORMAT**

Respondents shall submit two (2) originals, four (4) copies and six (6) electronic copies in PDF format on CD or DVD. The response shall be entirely self-contained. For example, links to web pages or other documents not contained in the delivered package are unacceptable. The originals and hardcopies, six (6) paper copies (two originals and four copies) of the proposal are required on standard 8 ½ by 11 inch paper. The order and sections of responses should match those listed in Section L below.

### **F. COSTS TO PREPARE PROPOSAL**

The City of Tacoma is not liable for any costs incurred by the Respondent for the preparation of a proposal submitted in response to this RFP, for conducting any presentations to the City, or any other activities related to responding to this RFP.

### **G. PROPOSALS PROPERTY OF LESA**

All proposals, accompanying documentation and other materials submitted in response to this RFP shall become the property of LESA and will not be returned.

### **H. PROPRIETARY INFORMATION/PUBLIC DISCLOSURE**

To the fullest extent permitted under law, all proposals received shall remain confidential until the evaluation is completed and the vendor is selected and approved. Thereafter proposals shall be deemed public records. **See Standard Terms and Conditions Sections 1.17 and 2.26.**

## **I. INTELLECTUAL PROPERTY**

LESA will own all right, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in any work product created, in progress, produced or completed by or for Respondent under the Contract. Work covered includes but is not limited to inventions, improvements, discoveries, databases, source code, and computer programs. See sample contract attachment.

## **J. CONTRACT OBLIGATION**

The apparent successful Respondent(s) will be expected to enter into a contract[s] with LESA, which is substantially the same as the sample contract or sample professional services with patent protection, and its general terms and conditions, attached.

## **K. POST-EVALUATION**

### **1 Notification of Selection of Apparent Successful Respondents (ASP)**

Respondents whose responses have not been selected for further negotiations or award will be notified via fax or e-mail after an award is made and a contract has been fully executed. Failure to include a fax number or e-mail address may result in no notification.

### **2 Protest Procedures**

Respondents submitting a protest to this procurement shall follow the procedures described herein. All protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to the Respondent under this procurement.

All protests shall be in writing and signed by the protesting party or an authorized agent. The protest shall state all facts and arguments on which the protesting party is relying. All protests shall be addressed to the Purchasing Manager.

Only protests stipulating an issue of fact concerning a matter of bias, discrimination, conflict of interest, or non-compliance with procedures described in the procurement document shall be considered. Protests not based on procedural matters will not be considered.

In the event a protest may affect the interest of any other Respondent, such Respondent(s) will be given an opportunity to submit their views and any relevant information on the protest to the Purchasing Manager.

Upon receipt of a protest, a protest review will be held by the Purchasing Manager to review the procurement process utilized. This is not a review of responses submitted or the evaluation scores received. The review is to ensure that

procedures described in the procurement document were followed, all requirements were met, and all Respondents were treated equally and fairly.

Protests shall not be accepted prior to selection of the apparent successful Respondent[s]. Protests shall be received within two (2) business days from the date of the notification of the ASP. The Administrator or her/his delegate will then consider all the information available to her/him and render a written decision within five (5) business days of receipt of the protest, unless additional time is required. If additional time is required, the protesting party will be notified of the delay. No contracts will be entered into until such written decision is issued.

## **L. PROPOSAL CONTENT TO BE SUBMITTED**

The following information shall be submitted

- 1 Cover letter
- 2 Proposal Signature Page— Respondent shall complete and submit.
- 3 Personnel Inventory Form—Respondent shall complete and submit.
- 4 Provide a proposed timeline, and budget (limited to 15 letter size pages) for all deliverables listed in Section II Project Background, Item G. The deliverables set forth in this RFP should not be considered a complete list of all required elements. It is expected vendors will articulate how their response meets the deliverables set forth in this RFP.
- 5 Experience and Qualifications
  - a) History  
Provide a brief description and history of your firm's organization; anticipated utilization of available resources for this project and a listing of relevant products and technologies your firm has successfully developed and brought to market. Include an organizational chart depicting a breakdown of employee positions by department or functional role within your organization.
  - b) Qualifications  
Provide information that highlights your firm's particular abilities to successfully complete the services and how it will structure, develop, and manage the project.
  - c) Experience  
Describe your firm's experience and a comprehensive listing of key personnel and professional staff that will be assigned to this project.
  - d) Assignment of Professional Staff  
Only sufficient staff that is trained, assigned, monitored, and supervised shall be provided for this project. The Respondent shall state the names of individuals and provide the resumes of any personnel who will complete all tasks and activities (i.e., Industrial Design; Mechanical Engineering; Electrical Engineering; Software Engineering and Test; FPGA development; Manufacturing; Manufacturing Engineering; Tooling; etc.); Resumes should include education, experience, significant accomplishments, and any other information pertaining to the project.

In addition, please describe job experience and training in similar projects for the past five (5) years, including specific tasks accomplished by each proposed team member, and include the total months the team member worked on each engagement.

#### References

- e) Provide at least three (3) client references for projects of similar size and complexity. References should be from credible industry and United States Government customers. Information should include, at a minimum:
- Company name
  - Contact name
  - Contact's title
  - Mailing address
  - Fax Number
  - Telephone number
  - E-mail address
  - Description of services provided

#### 6 Conflicts of Interest

The Respondent shall document any conflict(s) of interest due to other clients, contracts, or property interest. Include a sworn statement certifying that no member of ownership, management, or staff has vested interest in any aspect of this project.

- a) Provide a statement that no assistance in preparing the response was received from any current or former employee of LESA whose duties relate(s) to this RFP, unless such assistance was provided by a LESA employee in his or her official public capacity and that neither such employee or any member of his or her immediate family has any financial interest in the outcome of this RFP.
- b) State if the Respondent or any employee of the Respondent is related by blood or marriage to a LESA employee. If there are such relationships, list the names and relationships of such parties. Include the position and responsibilities within the vendor's organization of such vendor employees.
- c) State whether any of the individuals to perform work on the contract is a current LESA employee or a former LESA employee.

## 7 Supplemental Information

Include any supplemental information the Respondent or thinks will be valuable to LESA in evaluating the qualifications of the Respondent and its individual personnel to provide the services and/or goods described in this RFP.

### a) Financial Information

(1) Status of Firm —if a corporation, list the state and date of incorporation.

(2) If other than a corporation, list all general partners, joint ventures, persons or entities with an interest of ten percent (10%) or more in the Firm , indicating the title, if any, and the percentage of the interest of each.

### (3) Financial Statements

Provide five (5) years of audited financial statements and the most recent Dun & Bradstreet report.

### (4) Failure to Complete Prior Projects

Disclose whether the Firm (or any general partner or joint venture of the Firm) has ever failed to complete a similar project, within the past two (2) years. If so, list the date of commencement of the project and the entity for which the project was to be performed, and explain why the project was not completed.

### b) Litigation

State the case number and party names of all litigation the Respondent has been named in that has been filed since January 1, 2001. The Respondent may omit any employment-related cases. It is not sufficient to state that litigation has no effect on this procurement. FAILURE TO DISCLOSE will result in disqualification of the Respondent and, if applicable, may be grounds for termination of any contract entered with the Respondent.

### c) Payment Schedule

Provide a payment schedule for the project, complete with deliverables, associated costs, and an estimated schedule for the project.

## 8. Confidentiality Agreement Form

### **M. AWARD CRITERIA**

It is the intent to award one or multiple contracts for one or more tasks listed in these specifications. It may be in the best interest of the City to divide this project and award to one or more Respondents. The selection will be based on those items listed in Section L. The Respondent[s] who can comply with the provisions and specifications herein, and provided such proposal is reasonable and is in the best interests of the City to accept will be offered an award.

The City, however, reserves the right to reject any and all proposals, waive minor deviations or informalities, not award a contract or issue a subsequent RFP.

## **N. ADDITIONAL INFORMATION FOR RFP EVALUATION PROCEDURES**

### **1 Request for Clarification**

As part of the evaluation process, and at the discretion of the Selection Advisory Committee (SAC), Respondents may be asked to clarify specific points in their proposal[s]; however, under no circumstances will the Respondent be allowed to make changes to the proposal[s].

### **2 Interviews**

The SAC may request an interview with the Respondents that score the highest. The SAC may also request interviews with the individuals proposed by that Respondent as project manager, project team members, or others. If a Respondent or individual declines the request for an interview for any reason, the Respondent may be eliminated from further consideration.

### **3 Site inspection**

The Selection Advisory Committee [SAC] may conduct on-site visits to evaluate the Respondent's capacity to perform the contract. Respondents shall agree, to provide the SAC reasonable access to relevant portions of its work sites. Individuals designated by the RFP Coordinator may make such site inspections at the SAC's expense.

### **4 Working System Presentations**

As part of the proposal evaluation process, the SAC may require that Respondents provide for an on-site presentation that demonstrates an actual working system designed and implemented by the Respondent. If the SAC elects to do so, a Respondent would be required to coordinate one or more visits to locations where the SAC's representatives could experience a hands-on demonstration of a working system that the Offeror completed and that is substantially similar to the system requested in this RFP.

A presentation of this type would involve a demonstration of the system itself, a demonstration of the delivery systems, and interviews with users, managers, and technicians at all levels of the system.

Travel and other costs associated with the Respondent's personnel would be at the expense of the Respondent. Travel and other costs associated with the SAC's personnel would be at the expense of the SAC.

The SAC reserves the right to accept or decline site visit locations and schedules.



## O. SELECTION PROCESS AND EVALUATION CRITERIA

Responses to this RFP will be evaluated and ranked by a Selection Advisory Committee comprised of LESA personnel. This evaluation and rank process will be based on criteria listed below. The relative weight is intended as a general indication as to which criteria is most important to the City and a general guide to the employees who will be involved in the evaluation process. The City reserves the right to give each criterion such weight as it deems appropriate.

### Cost of Proposal

1/3

The evaluation process is not designed to simply award the contract to the lowest cost proposal, but rather is intended to help with the selection process to choose the best combination of attributes, including price, based on the evaluation factors. Priority will be given regarding extensibility of deployment.

### Understanding of Project

1/3

Proposals will be scored for understanding of the project by evaluating whether the Offeror demonstrated a thorough understanding of the project through the quality and viability of the submitted proposal. Other criteria considered in this area will be whether the Offeror has grasped pertinent issues, identified potential problem areas, understands the deliverables, and understands and accepts LESA's terms, conditions, and schedule requirements.

### Experience and Qualifications

1/3

Proposals will be scored for experience and qualifications by evaluating the long-term viability and experience of the company and the individuals proposed for the project. This includes proposed subcontractors and other partnered entities and their proposed project personnel.

The company profile and past similar experience will be scored for applicability to this project, as will the resumes and past similar experience of the proposed project team. Company and team member references will be checked in addition to past contract performance.

LESA reserves the right to reject any subcontractor proposed by the Respondent.

## **II. PROJECT BACKGROUND**

This project is funded by a federal Department Of Justice COPS Technology grant, and the Respondent will be subject to grant approval and all applicable federal regulations.

### **A. PROJECT FOCUS**

As demands for law enforcement services increase, this RADMO system will work as a force multiplier, crime deterrent, and will significantly enhance the ability to respond to community requests for special focus crime prevention. The emphasis will be on enabling patrol officers, deputies, and special operations teams to quickly set up a surveillance system that can be observed remotely, as needed. These images will be viewable from designated monitoring stations and have flexibility to support multiple agencies. This will provide more accurate detection, intervention, investigation, and prosecution of criminal activity. Officers will be equipped with mobile video equipment. The images captured can be transmitted to the officer's laptop and/or a command center, as well as shared by other officers involved with the event. Monitoring could be done from a tactical van, via handheld devices, and/or a precinct or headquarters, allowing for viewing from a distance, thereby increasing officer safety.

**It is outside the scope of this RFP to implement a mesh network that covers the entire Pierce County region or in-car video; however, LESA intends to implement technology that provides for rapid deployment of tactical video surveillance and expect to use communications technologies to provide access to images.**

Stage I of the RADMO project resulted in information, identification of potential technologies, and intellectual property pertaining to the design, cost, and performance of a RADMO System. The Consortium elected to end research and development associated with the Stage I RFP.

The Consortium desires an innovative system using cutting-edge technology to meet the specifications. It is expected that prior research has identified desired features, components, and technology that can be developed to provide a solution.

Respondents will be expected to review previous project work, review proposed technology, assess status of intellectual property, develop working prototype and pilot, and provide plan for full commercialization of a rapidly-deployable mobile wireless video system (RADMO).

Interested Respondents will be required to submit an executed non-disclosure and non-compete agreement prepared by LESA in order to access the results of the Stage I research and development. See Section B for more information.

## **B. SPECIFIC SCENARIOS TO BE ADDRESSED INCLUDE:**

A citizen observes drug trafficking, but by the time law enforcement is notified and can respond, the offenders are gone. Mobile video will enable remote surveillance of designated areas, allowing officers to observe and respond much more quickly.

Business parks have been the target of criminal activity. The community has requested more patrol to act as a deterrent. Since resources are limited, officers can strategically place cameras around the area and continue patrolling their current assignment, but be able to observe late night activity and respond as needed.

Construction sites often have equipment and materials stolen in the night. Placing a mobile wireless video camera at a work site will allow an officer to respond immediately as thefts are occurring.

Domestic violence offenders often return to threaten victims, but leave before officers can respond. Having a mobile wireless video unit available will give citizens an opportunity to allow surveillance of their locations, if desired, and provide immediate notification and timely intervention by law enforcement.

Major incident responses often tax the resources of emergency or first responders. For example, at 4:30 a.m. a container off-loaded from a ship explodes. The first units to respond are overcome by a chemical odor. Several individuals are reported dead at, or near, the scene. A video surveillance team responds by installing four (4) mobile wireless cameras around the site at safe locations. The cameras capture video in a low/no ambient light environment using Light Amplification, frame integration, and/or infrared technologies. Visible light camera technologies are employed when sufficient ambient light is available. Full color video capture technologies will be used when appropriate.

## **C. AGENCY DEFINITIONS**

The Law Enforcement Support Agency (LESA) is an inter-local government agency jointly funded by Pierce County and the City of Tacoma. Its purpose is to provide communications, information technology, and records management services to the Pierce County Sheriff's Department (PCSD) and the Tacoma Police Department (TPD), eliminating redundancy, improving access and communications, and gain economies of scale. In addition to TPD and PCSD, LESA also provides law enforcement support to several cities and towns in the region. It also provides information to many county and city departments such as the Pierce County prosecutor, county and city municipal courts, jail, and assigned counsel (public defender). Services provided include data processing, records and reports management and distribution, computer-aided dispatch, and emergency (911) communications.

## **D. EXISTING TECHNICAL ENVIRONMENT**

Consortium members currently use IBM-compatible laptops and desktop PCs. These are configured with Microsoft Windows operating systems with a minimum of 128MBs of RAM. Mobile officers are currently using Sprint, Cingular, or Verizon wireless services and associated air cards. Remote connectivity is facilitated using NetMotion or Cisco VPN technologies. Some devices also have support for broadband communications.

- Databases - Microsoft SQL Server
- Authentication – Active Directory, Radius
- Application – Microsoft IIS and .NET
- Cisco network routers and switches
- BlueArc Titan NAS disk
- Firewalls
- Microsoft Office
- Adobe Acrobat Reader 6.0
- Anti-virus software
- Ethernet network to desktops
- Mobile wireless vendors currently providing service to law enforcement mobile laptops include Cingular, Sprint, and Verizon. 802.11 technologies are not ubiquitously available.

## **E. SOURCE CODE**

LESA will own the source code for all customized software that has been developed for this project as well as all other intellectual property arising under this project as defined by the contract[s]. All source code delivered under this project must be fully documented.

## **F. FUNCTIONAL AREAS**

### 1. Functional Area

There are five (5) functional areas that LESA expects of the RADMO system and which should be considered in providing a response to the deliverables sought in this RFP. These functional areas are intended to focus RFP responses and allow LESA to better evaluate individual proposals. The functional areas contain commentary garnered from Consortium Focus Groups.

## 2. Functional Area 1 – Video Capture

An officer will place a video surveillance device at an area of interest as defined in the five (5) scenarios listed above (see section 1.2). Different cameras may be used in different scenarios. This video may be used in three (3) different ways:

1. Tactical surveillance only - Mandatory
2. Stored for later reviewing - Mandatory
3. Stored for evidentiary purposes - Preferred

It is expected that officers deploying video capture devices will be able to select resolution and image capture rates commensurate with mission requirements.

It is preferred that the device have the ability to capture video in high, medium, and low ambient light conditions. Additionally, it is preferred the device will be able to employ Light Amplification, frame integration, or infrared technologies to acquire video in extremely low light or no light conditions.

It is envisioned that an officer will be able to select a video capture device appropriate for the mission at hand; therefore, it is not necessary that one video capture device be able to accommodate all light conditions.

The acquired video may be used as evidence. It is important to be able to “certify” the video as being authentic for this purpose. Evidentiary video would be stored and chain-of-custody maintained. Should sufficient transmission bandwidth be available (see Functional Area 2) this video could be sent directly to the node described in Functional Area 3.

## 3. Functional Area 2 – Video Backhaul

Once tactical video is acquired, it must be delivered to a user. The video could be sent directly to a nearby user, transmitted to other officers involved in the incident, made available to all officers on duty, transmitted to a central node for further processing and distribution to appropriate users, and/or a combination of any of these.

## 4. Functional Area 3 – Video Storage and Processing

The user base for video information could include patrol officers, detectives, tactical units, supervisors, managers, and other officials. This functional area must deal with acquiring, processing, and storing of the video, and managing its distribution to approved users. This implies some level of security, compartmentalization, access authority, chain-of-custody, and preparation for distribution to location-based end users. LESA is expecting to use existing disk storage. It is not expected that archival disk space be included in this RFP. It is expected that intermediate storage be provided for in this RFP.

## 5. Functional Area 4 – Video Distribution

The video storage and processing capability described in Functional Area 3 could house video from a large number of concurrent events. It is conceivable that customers from anywhere in the Consortium’s area of responsibility could be viewing concurrent video feeds at a variety of privacy levels.

## 6. Functional Area 5 – System Security

It is preferred that the video distribution system be protected in accordance with Federal Information Processing Standard 140-2, or the latest version of that standard; however, data must be protected with a minimum of 128-bit encryption at all times.

## **G. DELIVERABLES**

- 1 Complete a comprehensive Project Review including:
  - a) Software specifications articulated to date
  - b) Hardware specifications articulated to date
  - c) Operational functionality articulated to date
  - d) Security Requirements articulated to date
  - e) Past project management assessment and proposed plan for project completion
  
- 2 Complete a comprehensive Technology Review including:
  - a) The status of all technologies that are anticipated to be included in the RADMO System
  - b) Determine LESA's access to all necessary and complementary technologies
  
- 3 Complete an intellectual property assessment including:
  - a) Current status of the intellectual property and patent submittals
  - b) Plan to add claims or otherwise enhance the value of the existing intellectual property
  
- 4 Manage and Complete Technology Development to include:
  - a) A comprehensive listing of specifications for development based on previous Stage I efforts and findings from Stage II efforts
  - b) A technology development plan
  - c) Completing a detailed description of the RADMO System to include all system components (to be sourced as well as developed)
  - d) A systems integration plan
  - e) Projected manufacturing, sourcing and acquisition costs
  - f) Identifying and providing a review of competing and complementary technologies;
  - g) Identifying and documenting parallel development efforts;
  - h) Develop prototype and 15 devices for test per specifications in 3.4.1
  - i) Provide project oversight and risk management throughout the development process
  - j) Provide product test plan

- 5 Deployment of product to include:
  - a) Complete a product deployment plan
  - b) Provide product list of software and hardware
  - c) Deliver and install equipment and software as needed
  - d) Document and train technical support staff and operations staff on system use
  - e) Conduct and participate in initial and extended pilots with 15 officers and support staff
  - f) Respond to LESA's evaluation of pilot
  
- 6 Provide Product Development plan to include:
  - a) Identifying manufacturing resources
  - b) A Technology support plan
  - c) Cost targets and desired price points
  - d) A detailed listing of additional markets and environments where the technology may be employed
  - e) Identifying and procuring any additional sources of governmental and/or private funds necessary to fully develop and manufacture RADMO for LESA while satisfying the return on investment requirements and expectations of the Department of Justice, the Law Enforcement Support Agency, and any potential investment group interested in commercializing the product for use outside the consortium.
  - f) Full development of RADMO for LESA
  - g) Commercialization of RADMO outside of LESA

## **H. EXPECTED PROJECT SCHEDULE**

- 1 RFP awarded and contract(s) executed
- 2 Complete a comprehensive Project Review
- 3 Complete a comprehensive Technology Review
- 4** Complete an intellectual property assessment
- 5 Manage and Complete Develop Technology
- 6 Deploy prototype and pilot
- 7 Provide a product deployment plan
- 8 Provide Product Development plan
- 9 Full development of RADMO for LESA
- 10 Commercialization of RADMO outside of LESA

## **APPENDIX A**

Proposal Signature Page

Personnel Inventory Form

Certificate of Insurance Requirements

Confidentiality Agreement Form

Sample Professional Services Contract



**PROPOSAL SIGNATURE PAGE**

**LAW ENFORCEMENT SUPPORT AGENCY (LESA)**

All proposals must be in ink or typewritten and must be executed by a duly authorized officer or representative of the bidding/proposing entity. If the bidder is a subsidiary or doing business on behalf of another entity, so state, and provide the firm name under which business is hereby transacted.

Proposals must be sent to the Tacoma Public Utilities Purchasing Office, 3628 S 35<sup>th</sup> St, Tacoma, WA 98409.

**See Request for Proposals**

**PROPOSAL FOR SPECIFICATION NO. LE08-0324F**

**RAPIDLY-DEPLOYABLE MOBILE WIRELESS VIDEO (RADMO)**

The undersigned Respondent hereby agrees to execute the proposed contract and furnish all materials, labor, tools, equipment and all other facilities and services in accordance with these specifications.

The Respondent agrees, by submitting a proposal under these specifications, that, in the event, any litigation should arise concerning the submission of proposals or the award of contract under this specification, or Request for Proposals, the venue of such action or litigation shall be in the Superior Court of the State of Washington, in and for the County of Pierce.

**Non-Collusion Affidavit**

The undersigned Respondent, being first duly sworn, on oath, hereby certifies that this proposal is genuine and not a sham or collusive proposal, or made in the interests or on behalf of any person or entity not herein named; and bidder/Respondent has not directly or indirectly induced or solicited any contractor or supplier on the above work to put in a sham bid/proposal or any person or entity to refrain from submitting a proposal; and that Respondent has not, in any manner, sought by collusion to secure to itself an advantage over any other contractor(s) or person(s).

\_\_\_\_\_  
Respondent's Registered Name

\_\_\_\_\_  
Signature of Person Authorized to Enter into Contracts for Respondent

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Area Code) Telephone Number / Fax Number

\_\_\_\_\_  
State Business License Number

\_\_\_\_\_  
E.I.No. / Federal Social Security Number Used on Quarterly Federal Tax Return, U.S. Treasury Dept. Form 941

\_\_\_\_\_  
State Contractor's License Number  
(See Ch. 18.27, R. C. W.)

Signed and sworn before me on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_,

County of \_\_\_\_\_,

My commission expires: \_\_\_\_\_.

↑ Place Notary Stamp or Seal Here ↑

***THIS PAGE MUST BE SIGNED, NOTARIZED, AND RETURNED WITH BID***

Addendum No. 1 \_\_\_\_\_ Addendum No. 2 \_\_\_\_\_

Addendum No. 3 \_\_\_\_\_ Addendum No. 4 \_\_\_\_\_



**City of Tacoma**  
**Finance Department**  
**HUB and LEAP Office**  
 747 Market Street, Room 132  
 Tacoma, WA 98402  
 Telephone (253) 591-5825  
 Fax (253) 591-5757

## PERSONNEL INVENTORY FORM

The Personnel Inventory Form (PIF) is a required form, please submit with bid documents. This form should be completed and signed by a responsible official of the company.

Company Name \_\_\_\_\_ Date \_\_\_\_\_

Street Address/City/State/Zip \_\_\_\_\_

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

Job Categories (Specify)	Total Employees		Non Minority		Total Minorities		Black		Asian		American Indian		Hispanic	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F
1. Officials & Managers														
2.														
3.														
4.														
5.														
6.														
7.														
8.														
9.														
10.														
<b>TOTALS</b>														

Signature of Responsible Official \_\_\_\_\_

Print or Type Name of Responsible Official \_\_\_\_\_

Comments:

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## **INSTRUCTIONS FOR COMPLETING PERSONNEL INVENTORY FORM**

1. "Heading" the company name and address should reflect the unit actually doing business with the City of Tacoma. If this address is different from that of the Equal Employment Opportunity Officer that administers the EEO programs of the company, the Equal Employment Opportunity Officer's address should be noted in the "Comments" section at the bottom of the form. "Telephone" should contain the area code, telephone number and extension (if any) for the Equal Employment Officer or the responsible official.
2. "Job Categories" at the extreme left hand column of the form specifying "Job Categories" lists "Officials & Managers." You are to list in addition to Officials & Managers any appropriate job titles such as Sales Workers, Office/Clerical, Professionals, Technical, etc., as they apply to your own company.
3. The "M" and "F" headings at the top of each column refer to "Male" and "Female."
4. The "Total Employees" column should list the total number of male employees under "M" and the total female number of female employees under "F" for each job category listed. They should be listed in a similar manner in the "Total" category at the bottom of the form. The "Total Employees" column should include all those employees listed under "Non-Minority" and "Total Minorities." "Non-Minority" should include all employees not listed in the minority columns.
5. "Total Minorities" should include all employees listed under the "Black," "Asian," "American Indian," and "Hispanic" columns. These columns should include only employees who are members of that particular minority group. Designation and definitions of ethnic/national origin status follow the instructions and definitions of the Federal EEO-1 Form of the U. S. Equal Employment Opportunity Commission.
6. "Totals" this line should reflect the total of all lines in each of the above columns.
7. The signature of your company's designated responsible official or similar official responsible for equal employment opportunity must appear in the designated space at the bottom of the form. Please PRINT OR TYPE the person's name on the top line across from the signature. This is required since some signatures are difficult to read.
8. "Comments" this section is to be used as needed for explanations to under utilization rate or lack of turnover, proposed expansion or reduction of staff or any other pertinent information you believe will help clarify or explain the data presented on the form. If you need additional space, please explain on a separate sheet of paper.
9. If you need assistance or have any questions regarding the completion of this form, please call the City of Tacoma HUB and LEAP Office at (253) 591-5825.



## INSURANCE CERTIFICATE REQUIREMENTS

Please furnish the Purchasing Office with a Certificate of Insurance with the following liability limits based on the contract amount:

<u>CONTRACT AMOUNT</u>	<u>LIABILITY LIMITS</u>
\$ 25,000 and Under	\$ 500,000 Combined Single Limit
\$500,000 and Under	\$1,000,000 Per Occurrence / \$2,000,000 Aggregate
Over \$500,000	\$5,000,000 Total Coverage

- A. Umbrella excess liability may be used to reach the limits stated above. Coverage must include:
1. Comprehensive General Liability
  2. Automobile Liability - Hired and Non-Owned
  3. Contractual Coverage
  4. Broad Form Property Damage
  5. Underground Explosion and Collapse Hazard (if necessary by the nature of the work)
  6. Any additional coverage specifically required by the City's specification
- B. The following general requirements apply:
1. Insurance carrier must be authorized to do business in the State of Washington.
  2. Coverage must include personal injury, protective and employer liability.
  3. Contractor must provide with the certificate evidence of the amount of any deductible or self-insured retention under the policy.
  4. It is the contractor's responsibility to keep an up-to-date Certificate of Insurance on file with the City throughout the contract.
  5. Contractor's insurance must be primary and non-contributory over any insurance the City may maintain, that is, any such City insurance shall be excess to limits stated in the certificate.
- C. The following statements are required on the Certificate of Insurance:
1. *"The City of Tacoma is named as an additional insured"* ("as respects a specific contract" or "for any and all work performed with the City" may be included in this statement).
  2. *"This insurance is primary and non-contributory over any insurance or self-insurance the City may have"* ("as respects a specific contract" or "for any and all work performed with the City" may be included in this statement).
  3. *"Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the Certificate Holder named."* Language such as, "endeavor to" mail and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" is not acceptable and must be crossed out. **See example below.**

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS The below listed certificated holder is added as an additional insured as respects any and all work performed with the City (or as respects project _____). This insurance is primary over any insurance or self-insurance the City may have for any and all work performed with the City (or as respects project _____).
--

CERTIFICATE HOLDER	ADDITIONAL INSURED; INSURER LETTER : _____	CANCELLATION
CITY OF TACOMA PO BOX 11007 TACOMA WA 98411-0007		<del>"Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the company, its agents or representatives."</del>

**SAMPLE**  
**SOFTWARE AND EQUIPMENT DEVELOPMENT AGREEMENT**  
**(THIS CONTRACT IS ONLY A SAMPLE AND SUBJECT TO REVISIONS)**

This Software and Equipment Development Agreement (the "Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 2008 (the "Effective Date"), by and between:

The Law Enforcement Support Agency, having administrative offices located at 955 Tacoma Avenue, Tacoma, WA 98402 (hereinafter, "LESA") and Vendor Systems, Inc. a Washington corporation with its principal place of business located at " \_\_\_\_\_ " (hereinafter, "Vendor").

**RECITALS**

LESA is a governmental entity formed by inter-local agreement between the City of Tacoma and Pierce County as provided for under Washington law. LESA provides communications, information technology, and records management services to the Pierce County Sheriff's Department, the Tacoma Police Department, and many other local jurisdictions within Pierce County.

Vendor is capable of and willing to review previous project work, review proposed technology, assess status of intellectual property, develop working prototype and pilot, and provide plan for full commercialization of a rapidly-deployable mobile wireless video system (RADMO).

LESA has obtained a grant from the United States Government to fund the development of a rapidly-deployable mobile wireless video system (hereinafter, "System") and has issued a Request for Proposals, Specification No. LE07-0932F, which is attached hereto as Exhibit A, soliciting proposals for development of the System.

Vendor response to the Request for Proposals is attached hereto as Exhibit B.

LESA wishes to engage Vendor to complete all deliverables listed in Exhibit A and B.

The parties acknowledge that LESA is entering into this Agreement in order to receive measurable deliverables from Vendor in accordance with the time schedule, requirements, and price identified herein.

In consideration of the mutual promises and obligations in this Agreement, the parties agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

**1.1 "Acceptance Criteria"** shall mean the mutually agreed to standards that will be used to determine whether Deliverables have been delivered according to Exhibit A and B and the terms of this Agreement.

**1.2 "Custom Software"** shall mean the unique or specialized computer programs, together with the Program Materials and Source Code used or developed in connection with this project, which are created by Vendor in the performance of the Services

hereunder. Custom Software shall include all computer programs, Program Materials and Source Code delivered hereunder, unless specifically excluded as part of the Preexisting Technology as defined in paragraph 1.6.

**1.3 “Deliverable”** shall mean any and all of Section 3 of Exhibit A and B.

**1.4 “Equipment”** shall mean all equipment, including hardware and firmware, to be acquired or developed by Vendor for LESA for the System pursuant to this Agreement.

**1.5 “Milestone Delivery Schedule”** shall mean the schedule for the delivery of Deliverables as part of milestones set forth in Exhibit C.

**1.6 “Preexisting Technology”** shall mean the work product including, but not limited to; hardware, firmware, tools, templates, expertise, processes, documents, source code, and/or other artifacts, that Vendor designed and/or developed prior to and independently from its engagement under this Agreement and which will be used to assist with the development of or incorporated into the Equipment, Software, Program Materials, Source Code and other Deliverables.

**1.7 “Program Materials”** shall mean all written or otherwise recorded materials used in the development or implementation of the System including, but not limited to, test data, test scripts, diagrams, documentation, schematics, data file listings, input and output formats, and user instructions and training materials.

**1.8 “Project”** shall mean completion of all deliverables listed in Section 3 of Exhibit A and B and acceptance of the Deliverables pursuant to this Agreement.

**1.9 “Project Completion Date”** shall mean the date upon which all of the following have been completed (i) all Deliverables have been timely and completely delivered and (ii) all such Deliverables have been accepted by LESA.

**1.10 “Specifications”** shall mean the functionality, features, and performance levels of the System, including the Equipment and Custom Software.

**1.11 “Services”** shall mean the analysis, design, construction, development, testing, delivery, installation and project management services to be provided by Vendor that are necessary to fully, completely and timely develop and deliver the System to LESA such that the System performs in accordance with the Requirements and Architecture as well as any Services provided for pursuant to any Change Order under paragraph 2.5.

**1.12 “Software”** shall mean the Preexisting Technology and the Custom Software that are to be, respectively, licensed to or owned by LESA under the terms and conditions of this Agreement.

**1.13 “Source Code”** shall mean the most current version of all Software in the language format as prepared and written by the programmer(s) who developed the programs and any computer instructions, notes, input and output formats, test data, test scripts, diagrams, data file listings and other documentation associated with the development of the programs.

**1.14 “System”** shall mean the rapidly-deployable mobile wireless video system to be developed by Vendor pursuant to this Agreement.

**1.15 “LESA Affiliates”** shall mean any law enforcement, public safety, or emergency management group or department of the City of Tacoma or Pierce County, or any group or department that is in a contractual relationship, now or in the future, to receive services from LESA.

**1.16 “Refactored Software”** shall mean any change to a computer program included within the Preexisting Technology that: (i) improves its readability or understanding, simplifies its structure and design or removes dead code without changing its results and does not add new functionality; (ii) or any bug fix that does not add new functionality; and (iii) is made for the sole purpose of making the computer program easier for human maintenance in the future. For purposes of this Agreement, Refactored Software shall be treated as Preexisting Technology.

## **ARTICLE 2 PROJECT SCOPE & PROCESS**

### **2.1 Scope of Services**

Vendor shall timely and completely perform the Services and provide the Deliverables pursuant to Exhibit A and B.

### **2.2 Project Organization**

#### **2.2.1 Project Team**

Each party shall provide the personnel from their respective organizations that satisfy the roles, responsibilities, skill set requirements, and time commitments described in Exhibit E (the “Project Team”); provided, however, that, LESA is not bound by the specific staffing assignments set forth in Exhibit E and shall have the right to make changes to the composition of its portion of the Project Team without the prior approval of Vendor. Changes to availability of staff designated as Key Personnel by Vendor will require a Change Order that may require scope, schedule or budget changes. In the event of any such changes by LESA, LESA shall promptly notify Vendor of the change and the name and title of the substitute personnel.

Vendor shall not make any changes to the composition of its portion of the Project Team as set forth in Exhibit E without LESA’s prior written approval, which may be withheld in LESA’s sole discretion. In the event of any proposed changes by Vendor, Vendor shall provide a written explanation to LESA for the proposed change along with the name(s), title(s) and experience of the proposed substitute personnel. Any such proposed substitute personnel shall have skills and experience equal to or in excess of the personnel to be replaced.

Except for specific Key Personnel, LESA shall have the right to require Vendor to remove specific personnel from the Project Team and replace such personnel with substitute personnel of comparable or greater skills and experience upon written notice to Vendor of LESA’s desire for such removal and substitution. Specific Key Personnel of Vendor are defined as \_\_\_\_\_

## **2.3 Project Reporting and Records**

### **2.3.1 Status Reports**

Vendor shall submit written Project status reports to the LESA Project Manager at the end of every second week, unless mutually agreed otherwise.

### **2.3.2 Records**

Vendor shall maintain accurate records, reports, and logs of all matters and activities that relate to the Services, Equipment, Software, Program Materials, Source Code, Project, and Deliverables for inspection by LESA at anytime during the term of this Agreement. All such documents shall be the property of LESA and shall be owned by LESA and considered Confidential Information of LESA as defined in paragraph 6.5.

## **2.4 Duties of LESA**

2.4.1 LESA agrees to provide the data, information, equipment, workspace, LESA deliverables, and personnel specifically identified in each deliverable. Failure of LESA to meet commitments defined in each applicable deliverable will require a Change Order that may require scope, schedule, or budget changes.

2.4.2 Unless a specific response time is otherwise required in the applicable deliverable, LESA shall use reasonable efforts to provide required information and make decisions in a reasonably expeditious and timely manner.

## **2.5 Change Order Process**

If LESA or Vendor desires to change, modify or supplement the Services or Deliverables to be provided under this Agreement, the requesting party shall request such changes, modifications or supplemental actions pursuant to a Change Order in the form attached hereto as D and incorporated herein for all purposes (the "Change Order"). In order for such Change Order to become effective and prior to any work being performed under a Change Order, Vendor and LESA must mutually agree in writing to the changes or modifications to the Services as set forth in the applicable Change Order (e.g. schedule, budget, Scope of Work, Deliverables, Milestone Delivery Schedule or Acceptance Criteria). In the event the parties agree to the new terms and conditions of the Change Order, the parties shall each execute the Change Order reflecting such agreement.

In the event that the parties do not agree on a specific Change Order, each party shall bear its respective costs relating to the negotiations unless otherwise agreed, and the progress of such efforts and discussions shall not obligate either party to the other; provided, however, Vendor shall be obligated to undertake any Change Order requested by LESA that is reasonably necessary for the System to be developed and perform in accordance with the Requirements and Architecture.

Subject to the limitations above, no Change Order shall become effective unless authorized in writing by Kelly Bochenski on behalf of LESA and by \_\_\_\_\_ on behalf of Vendor.

## **2.6 Deliverable Acceptance Process**

Vendor will deliver each completed Deliverable on or before the applicable due date set forth in the applicable deliverable. Upon delivery and completion of all Deliverables a



Certificate of Completion as per Exhibit F, LESA shall have a reasonable period to accept the Deliverable.

### **2.7 Final Acceptance**

Upon acceptance by LESA of the final Deliverable, to wit; Project completion, all retainage shall be paid to Vendor in accordance with the payment processes set out herein in Article 3.

### **2.8 Training**

Vendor shall provide training and technical support to LESA's and LESA affiliates' operating and training personnel to enable such personnel to properly use the System, including the Equipment, Software, Program Materials and Source Code. Such training shall occur at the location specified by LESA. Specific training activities and their Acceptance Criteria will be defined as part of applicable Milestone Development Plans and administered according to a mutually agreed upon rate. Vendor provided training will be delivered training using a "train the trainer" philosophy. Vendor will provide at a LESA provided location and at their expense classes with maximum of attendees.

## **ARTICLE 3 FEES / COMPENSATION**

### **3.1 Performance Payments**

In consideration of Vendor's provision of Services and delivery of Deliverables, LESA shall pay the amounts described in the applicable Deliverable to Vendor. Upon completion of each deliverable 50% of the invoiced amount will be paid to the vendor. 35% will be paid when LESA has accepted and approved the completion of the deliverable. 15% will be retained until project completion.

### **3.2 Final Payment**

Final payment constituting the entire unpaid amount required under each Deliverable, if any, shall be made to Vendor within thirty (30) days of the Project Completion Date.

### **3.3 Expense Reimbursement**

Other than as defined herein, LESA shall not reimburse Vendor for any expenses incurred in connection with Vendor's performance of the Services, unless such expenses are related to a special request made by LESA, and Vendor obtains LESA's written approval prior to incurring such expense.

### **3.4 Payment Process**

Payment shall be made through LESA'S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.

## **ARTICLE 4 WARRANTIES AND INDEMNIFICATION**

#### **4.1 Staff Skill Level**

4.1.1 Vendor warrants that Vendor shall perform the Services in a professional manner, using standards of care generally accepted in the industry. Vendor shall provide Project team members in sufficient number and in a timely fashion to perform the Services according to the terms of this Agreement and to meet or exceed the timelines and delivery schedules in each applicable Deliverable. Vendor represents and warrants that its employees, agents and representatives assigned to the Project shall at all times possess the skill, aptitude and experience required to perform the Services described in each applicable Deliverable to the standards generally accepted in the industry.

4.1.2 Vendor shall provide Project Team resumes to LESA in advance of assigning such Project Team member to Project. LESA shall have the right to pre-approve assignment of each original and replacement Project Team member proposed by Vendor. As provided in paragraph 2.2.1, Vendor may not remove, replace or otherwise reassign any Project Team member approved by LESA without the advance written approval of LESA.

4.1.3 In the event of the assignment of an unqualified Project Team member or transition of any Project Team member assigned by Vendor, Vendor acknowledges and agrees that it shall promptly remove such Project Team member from said Project Deliverable and that LESA shall incur no cost for the replacement of such Project Team member. Further, Vendor shall bear all cost to train and educate the new Project Team member to become a productive contributor to the Project Team and the time spent by Vendor and the new Project Team member in becoming a productive member of the Project Team shall not be billed to LESA. Further, any hours spent by any unqualified Project Team member on the Project shall also be excluded from billing to LESA.

#### **4.2 Warranty**

##### **4.2.1 Workmanship**

Vendor warrants that the Services to be performed by Vendor shall be performed in a professional and workmanlike manner to standards generally accepted in the industry. Vendor further warrants that the System shall materially operate within LESA's operating environment in accordance with the Deliverables.

##### **4.2.2 Disaster Prevention / Recovery**

To prevent disaster, Vendor shall take all reasonable precautions to back-up all Project data, Deliverables, Software, Program Materials and Source Code.

#### **4.3 Special Intellectual Property and Product Warranty**

4.3.1 Vendor warrants that all Equipment, Software, Program Materials and Source Code provided by Vendor as part of Deliverable G 4 and G5 shall operate in accordance with the form, content, performance and functionality specified in each applicable Deliverable G4 and G5. If, at any time within one (1) year after the Project Completion Date (the "Warranty Period"), LESA discovers that a Deliverable or the Equipment, Custom Software, Program Materials and/or Source Code do not comply with this Warranty or is otherwise defective or malfunctions, Vendor shall, at no cost to LESA and in a prompt, timely manner, make such Deliverable, Equipment, Custom Software, Program Materials or Source Code conform and comply with this Warranty.

4.3.2 Vendor makes the following additional representations and warranties:

4.3.2.1 Each Deliverable, the Equipment, Software, Program Materials, Source Code and any other work product provided by Vendor in performing the Services are and shall be upon delivery and during the Warranty Period:

- (a) free from significant programming errors and from defects in materials and workmanship;
- (b) conform to the performance capabilities, characteristics, and other descriptions and standards applicable thereto as set forth in DeliverableG4 and G5;
- (c) conform to generally accepted industry standards for similar equipment and software;
- (d) free from all third party rights and claims, including any claims with respect to copyrights, trade secrets, patent rights, trademarks and all other proprietary interests therein;
- (e) free and clear of any and all agreements, liens, adverse claims, encumbrances and interests of any third party; and
- (f) not infringe upon, violate or misappropriate any patent, copyright, trade secret, trademark, contract or other right or interest of any third party.

4.3.3 The foregoing shall not apply to non-compliance arising from: (i) changes or modifications made by LESA or a third party (other than changes made or approved by Vendor in writing) to the operating system or environment which affects a Deliverable; (ii) any alterations of, modifications to, or additions to a Deliverable performed at LESA's direction by parties other than Vendor unless such changes are approved by Vendor in writing; (iii) use of a Deliverable other than in accordance with Specifications; (iv) operation of a Deliverable outside of the applicable environment and specifications; or (v) use of a Deliverable on equipment or systems other than equipment or systems for which such Deliverable was designed and authorized in accordance with Specifications.

#### **4.4 Indemnification**

Vendor shall indemnify, defend, and hold LESA harmless from and against all claims, suits, demands, actions and proceedings, judgments, penalties, damages, losses or liabilities, costs and expenses (including reasonable attorneys' fees and costs), (collectively, "Damages") arising out of any breach of Vendor's warranties, breach of paragraph 6.5, or any provision of this Agreement. Vendor specifically assumes potential liability for actions brought by Vendor's own employees against LESA and, solely for the purpose of this indemnification and defense, Vendor specifically waives any immunity under the state industrial insurance law, Title 51 RCW. SECURE-EYE RECOGNIZES THAT THIS WAIVER WAS SPECIFICALLY ENTERED INTO AND WAS THE SUBJECT OF MUTUAL NEGOTIATION. Vendor will pay the costs, damages and fees, including reasonable attorneys' fees, finally awarded in any suit or proceeding.

If any intellectual property claim which the Vendor is obligated to defend has occurred, or in the Vendor's or LESA's reasonable opinion is likely to occur, Vendor shall at its reasonable discretion either procure for LESA the right to continue using the Deliverable or Software or to replace or modify the Deliverable or Software so that it becomes non-infringing, but remains substantively unchanged in all material respects to the extent reasonably practicable. With respect to any claims falling within the scope of the foregoing indemnification such claims shall be conditioned upon: (a) LESA promptly notifying Vendor in writing of any claim, suit, action or proceeding that could result in liabilities for which indemnification under this Section 4 might be sought, (b) Vendor having sole control over the investigation, defense and settlement of any such claim, suit, action or proceeding including the right to select counsel, (c) LESA fully cooperating with Vendor and its legal representatives in the investigation and defense of any such claim, suit, action or proceeding, and (d) LESA not making any admission or entering any settlement or agreement with any person or party who is in any manner related to such claim, suit, action or proceeding without the prior written consent of Vendor.

#### **4.5 General Disclaimer**

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT AND FOR LIABILITY PURSUANT TO THE INDEMNITY PROVISION IN PARAGRAPH 4.4, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUES, AND LOSS OF PROFITS. THIS LIMITATION SHALL APPLY TO ANY CLAIM OR CAUSE OF ACTION WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY, OR BREACH OF WARRANTY, BUT SHALL NOT APPLY IF SUCH DAMAGES ARE THE RESULT OF THE OTHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. EACH PARTY HEREBY WAIVES ANY CLAIM THAT THESE EXCLUSIONS DEPRIVE SUCH PARTY OF AN ADEQUATE REMEDY.

## **ARTICLE 5 INTELLECTUAL PROPERTY**

### **5.1 Ownership**

#### **5.1.1 Vendor Preexisting Technology**

Vendor is the sole and exclusive owner of the Preexisting Technology and associated Source Code, including all copyrights, patent rights, trade secrets, and other intellectual property rights therein.

#### **5.1.2 Ownership by LESA**

The parties intend that all property rights, tangible or intangible, in and to the Equipment, Custom Software, Program Materials, Source Code and other Deliverables, including, but not limited to, all copyrights, patent rights, trade secrets, and other intellectual property rights therein, but excluding the Preexisting Technology (collectively, the "LESA Owned Materials"), shall be solely and exclusively owned by LESA.

To the extent subject to copyright protection and permitted by the U.S. Copyright Act, 17 USC §§101, et sec., the LESA Owned Materials shall be considered a work-made-for-hire and all ownership of copyright in the LESA Owned Materials shall vest in LESA at the time of initial payment.

To the extent necessary for LESA's complete ownership of all property rights embodied in the LESA Owned Materials (i.e., to the extent the LESA Owned Materials cannot legally be considered a "work-made-for-hire"), Vendor hereby sells, assigns, grants, transfers, sets over, and delivers all of its right, title and interest in and to the LESA Owned Materials to LESA its heirs, successors, and assigns, and the right to secure patent rights, copyright and all other intellectual property rights therein and thereto throughout the world, and to have and to hold such patent rights, copyright and all rights whatsoever of whatever nature therein in perpetuity. Vendor further waives for itself and its heirs, successors and assigns, any right it may have now or in the future to terminate any assignment of the copyright, patent rights or other intellectual property rights in the LESA Owned Materials and waives any right it may have now or in the future to revoke this assignment at any time during the term of the copyright or the term of any patent or patents.

Vendor hereby agrees that at the request of LESA it shall deliver to LESA an assignment of patent rights, trade secrets, copyright, and all other intellectual property rights or other instrument of authorization relating to the LESA Owned Materials in the form and to the extent required by LESA, and agrees that it will cooperate with LESA to the fullest extent necessary in the filing of any application by LESA to register any copyright or obtain any patent rights in the LESA Owned Materials. Such cooperation shall include, but not be limited to, signing any such application if requested to do so by LESA. If Vendor 's unavailability or any other factor prevents LESA from pursuing or applying for any application for any United States or foreign registrations or applications covering the Inventions and related intellectual property rights assigned to LESA, then Vendor irrevocably designates and appoints LESA as Vendor 's agent and attorney in fact. Accordingly, LESA may act for and in Vendor 's behalf and stead to execute and file any applications and to do all other lawfully permitted acts to further the prosecution and issuance of the registrations and applications with the same legal force and effect as if executed by Vendor.

## **5.2 Intellectual Property Licenses**

### **5.2.1 Grant of License to LESA for Preexisting Technology**

LESA understands and agrees that during the course of the Services, Vendor will use all or portions of the Preexisting Technology as an underlying basis for development of the LESA Owned Materials. The parties agree that the Preexisting Technology is owned by Vendor and is not being assigned to LESA under the Agreement.

Vendor hereby grants to LESA and its affiliated agencies a fully paid-up, non-exclusive, worldwide, sublicensable, irrevocable, royalty-free, perpetual license under the Preexisting Technology, including all copyrights, patent rights, trade secrets, and other intellectual property rights therein, for the sole purpose of using, modifying, enhancing and updating the Equipment, Custom Software, Program Materials and Source Code and other Deliverables. This license shall extend and apply to any enhancements, improvements, changes, alterations, amendments and updates to the Preexisting

Software which are subsequently developed by Vendor and provided to LESA. All property rights, either tangible or intangible, to any enhancements, improvements, changes, alterations, amendments and updates to the Preexisting Technology developed by LESA shall be owned by LESA. **[COMPENSATION ARRANGEMENT SUBJECT TO FURTHER DISCUSSION]**

#### 5.2.2 Grant of License to Vendor

LESA hereby grants to Vendor, subject to the negotiation of a definitive agreement, a non-exclusive, worldwide, sublicensable, irrevocable, royalty-bearing license under the LESA Owned Materials for the sole purpose of use, copy and create derivative works from ("re-use") the Deliverables in the preparation of other works for itself or other parties. This license shall extend and apply to any enhancements, improvements, changes, alterations, amendments and updates to the LESA Owned Materials which are subsequently solely developed by and solely owned by LESA and provided to Vendor.

**[COMPENSATION ARRANGEMENT SUBJECT TO FURTHER DISCUSSION]**

### 5.3 Government Rights

Vendor understands and agrees that the Project is being funded by the U.S. Government pursuant to a Community Oriented Policing Services ("COPS") grant, Grant # 2005CKWX0465, from the U.S. Department of Justice and, as a result of this funding, the U.S. Government may have certain rights to intellectual property developed under the Agreement. Without in any way limiting the foregoing, certain provisions of the Bayh-Dole Act (35 U.S.C 200 et seq.) and its implementing regulations and certain federal regulations applicable to copyrights, including 28 C.F.R. § 66.34, may apply to intellectual property rights developed under the Agreement. The Agreement is explicitly made subject to the rights of the U.S. Government under any applicable law, rule or regulation.

## ARTICLE 6 GENERAL

### 6.1 Term

This Agreement shall be effective as of the Effective Date and shall remain in effect through the expiration of the Warranty Period, unless extended or sooner terminated in accordance with the terms of this Agreement.

### 6.2 Termination and Suspension

#### 6.2.1 With Notice and Opportunity to Cure

This Agreement may be terminated by the non-defaulting party in the event a party fails to comply with any material term or condition of this Agreement, provided that the non-defaulting party has provided the defaulting party written notice specifying the nature of such default and the defaulting party fails to cure such default within thirty (30) days after receipt of written notice.

#### 6.2.2 Without Prior Notice

Subject to any cure period provided to Vendor under this Agreement, LESA may terminate this Agreement without prior notice upon the occurrence of any of the following events:

6.2.2.1 In the event that (i) Vendor is unable to deliver the Deliverables, (ii) Vendor fails to perform its obligations under this Agreement, (iii) proceedings in bankruptcy or insolvency are instituted by or against Vendor, (iv) a receiver or assignee is appointed for the benefit of Vendor's creditors, or (v) a substantial portion of Vendor's assets are the object of attachment, sequestration or other type of comparable proceeding, and in the case of (iii), (iv) or (v), such proceeding is not vacated or terminated within sixty (60) days after its commencement or institution (the events in (i) through (v) are individually and collectively, "Vendor Default"), Vendor's rights in and to this Agreement and the license granted hereunder shall be protected pursuant to Section 365(n) of the U.S. Bankruptcy Code and LESA shall have a license to use and otherwise exploit such materials pursuant to paragraphs 5.2.1 provided that, with respect to the Preexisting Technology, the minimum compensation set forth in paragraph 5.2.1 has been paid by LESA to Vendor, without further payment of any fees. In such an event, LESA shall also have the right to terminate Vendor's obligations to provide Services and LESA's obligations to make payments under Article 3.

6.2.2.2 LESA may terminate this Agreement at any time for any reason or for no reason by providing ten (10) days written notice to Vendor. In such an event, LESA shall pay Vendor a Final Payment equal to the following:

a. the payment due for each accepted Deliverable; and

b. \$X per hour for actual time spent working on Deliverables yet to be accepted, through the date of Vendor's receipt of notice from LESA (the "Discontinuation Fee"). Vendor shall provide supporting documentation of time spent upon submission of its invoice for such Discontinuation Fee. LESA must approve such invoice before LESA is obligated to make any payments hereunder. LESA's approval of such invoice shall not be unreasonably withheld.

### 6.2.3 Suspension

LESA may suspend this Agreement, at its sole discretion, upon one (1) week's advance written notice Vendor. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the Vendor's reasonable expenses, and shall be subject to verification. Vendor shall resume its performance under this Agreement without delay when the suspension period ends.

## **6.3 Effect of Termination / Survival**

In the event of termination or expiration of this Agreement, LESA and its assignees shall retain the right to use according to the terms of Section 5.2 to the Preexisting Technology and all other Deliverables and work products generated to date, including but not limited to all custom and object code developed, all design documents, all system configurations, all work plans, all Custom Software, Program Materials and Source Code (all of which other than the Preexisting Technology are owned exclusively by LESA pursuant to paragraph 5.1). Additionally, if requested by LESA, Vendor agrees to provide reasonable training and knowledge transfer services to educate the replacing Project team regarding the Project for which it will be paid on a time and materials basis in accordance with the applicable published hourly rates for Vendor personnel. This

provision will not require Vendor to disclose to the replacing project team any confidential or proprietary information, trade secrets, or other information about the Vendor's methodology or other protected and confidential methods of operation of Vendor's business, however, Vendor shall be required to release and transfer as directed by LESA all of LESA's Confidential Information as defined in paragraph 6.5.

In the event of termination of this Agreement, Article 1, paragraphs 2.3.2, 4.1, 4.2, 4.3, 4.4, 4.5, 5.1, 5.2, 5.3, 6.2, 6.3, 6.5, 6.9, 6.10, 6.11, and 6.12 shall survive the termination of this Agreement and remain in full force and effect.

#### **6.4 Independent Contractors**

LESA and Vendor are, and at all times during this Agreement, shall remain, independent contractors in relation to each other and are in no way partners or joint venturers. Neither party shall represent itself to others as being anything but an independent contractor. Neither party nor their employees or other representatives are authorized to make any representations or any commitment on the other party's behalf unless previously authorized by such party in writing. Neither party shall have the authority to bind the other party.

#### **6.5 Confidential Information**

In addition to the non-disclosure agreement executed during the RFP process, during the Term of this Agreement and from then on, each party will hold in strictest reasonable confidence, and not directly or indirectly use, disclose, transfer, sell, license, publish, reproduce or otherwise or reveal, any Confidential Information of the other party without the other party's prior written permission. Any Confidential Information acquired by either party from the other party is and remains the property of the other party. Each party will secure and protect the other's Confidential Information in a manner sufficient to prevent such disclosure, and will take appropriate action by instruction or agreement with its employees, or other agents who are permitted access to the Confidential Information to satisfy its obligations under this Section. For purposes of this Section, "Confidential Information" includes information of any kind whatsoever that either party may reasonably regard as confidential information, including without limitation technical, business, marketing, and financial information however embodied. The Confidential Information of LESA shall include all aspects of the Deliverables, Custom Software, Program Materials and Source Code as well as any other materials developed for and/or delivered to LESA by Vendor pursuant to this Agreement.

Confidential Information does not include information that: (i) is or becomes publicly available through no act or omission of the party receiving the information ("Receiving Party"); (ii) is rightfully received by the Receiving Party from a third party without restriction on disclosure; (iii) is independently developed by or for the Receiving Party without reference to, or use of, the other's Confidential Information; (iv) is previously rightfully known to the Receiving Party, or (v) is disclosed pursuant to law or in response to an order of a court of competent jurisdiction or government authority, for purposes of this Agreement shall not be considered Confidential Information.

#### **6.6 Force Majeure**

Neither party shall be liable for failure to fulfill its obligations under this Agreement if that failure is, directly or indirectly, caused by conditions beyond the reasonable control of



such party, including without limitation, acts of God, fire, flood, earthquake, strike, or other natural disasters (each a “Force Majeure Event”). Any such non-performance shall not constitute a breach of this Agreement unless such non-performance ultimately results in Vendor’s inability to provide Deliverables, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing such performance. If such period of non-performance extends for more than 60 days, the performing party may terminate this Agreement by providing written notice to the non-performing party.

**6.7 Insurance**

Vendor will maintain for the duration of the Project and the Warranty Period the following insurance coverage: (i) Workers’ Compensation and employer’s liability-statutory limits; (ii) Comprehensive General Liability-\$1,000,000 single limit combined for personal injury, property damage; (iii) Automobile public liability and property damage-\$1,000,000 single limit combined for bodily injury and property damage. Certificates of the above insurance coverage shall be delivered to LESA by Vendor’s insurance carrier or agent certifying that the above insurance coverage are in effect and will not be cancelled or materially changed without thirty (30) days written notice given to LESA. The comprehensive general liability policy shall include an endorsement naming LESA as an additional insured and stating that coverage under such policy is primary over and non-contributory with any insurance LESA may maintain.

**6.8 Severability**

If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be modified to the extent reasonably necessary to make it valid and enforceable and to the extent of any remaining invalidity or unenforceability, the remaining provisions of this Agreement will remain in full force and effect.

**6.9 Entire Understanding**

This Agreement, all Deliverables mutually agreed to after execution of this Agreement by the parties, any Change Orders mutually agreed to after the execution of this Agreement by the parties, and the following documents represent the entire understanding between the parties with respect to the Services to be performed by Vendor for the Project and supersedes and replaces all prior understandings and all other agreements, oral and written, between the parties relating to the subject matter hereof. This Agreement cannot be modified except in writing and signed by both parties.

<u>Document Title</u>	<u>Exhibit</u>
Request for Proposals	A
Proposal	B
Milestone Delivery Schedule	C
Change Order Form	D
Project Team	E
Certificate of Completion	F

**6.10 Governing Law**

This Agreement shall be governed by and interpreted in accordance with the laws of the state of Washington excluding conflict of law principles thereof. Pierce County, Washington shall be the venue for any arbitration proceeding arising from this Agreement. For any lawsuit arising from this Agreement, venue shall be in a court of

competent jurisdiction in Pierce County, Washington and each party hereby consents to the jurisdiction and venue of such courts for such purposes.

**6.11 Binding Arbitration**

Any dispute or controversy between the parties under this Agreement which cannot be resolved by good faith negotiation between the parties over a period of at least thirty (30) days shall be resolved by binding arbitration in accordance with the rules and procedures set forth in RCW Chapter 7.04A. Unless otherwise agreed to by the parties, arbitration shall be before one (1) arbitrator selected by mutual agreement of the parties. In the event the parties cannot agree on an arbitrator, then the parties shall allow either JAMS or AAA to choose and appoint an arbitrator. Each party shall bear its own costs incurred in connection with such arbitration and the fees, expenses and costs of the arbitrator and the arbitration proceeding not incurred solely by one party shall be equally divided between the parties. The arbitral award shall be binding and conclusive on both parties and may be enforced in any court of competent jurisdiction.

**6.12 Waiver**

No waiver by a party of any breach by the other party of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provisions hereof. No such waiver shall be effective unless in writing and then only to the extent expressly set forth in writing.

**6.13 Enforceability**

The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement.

**6.14 Assignment**

Neither this Agreement nor any rights or obligations hereunder may be assigned or delegated by Vendor without the prior written consent of LESA.

**6.15 Successors**

All rights and obligations arising out of this Agreement shall inure to the benefit of, and be binding upon and enforceable by the parties and their respective successors and permitted assigns.

**6.16 Notices**

All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if hand delivered, mailed first class mail, postage prepaid, sent by prepaid telegram (or telex or other facsimile transmission) or sent by trackable express overnight courier service:

If to Vendor, to:

Vendor

If to LESA, to:

Law Enforcement Support Agency  
Director  
955 Tacoma Ave, Suite 102

Tacoma, WA 98371  
Telephone: 253-798-4029  
Fax : 253-798-7874

with a copy to:

Richard Black  
Black Lowe & Graham  
701 Fifth Avenue, Suite 4800  
Seattle, WA 98104  
Telephone: 206.381.3300  
Fax: 206.381.3301

or to such other address as any such party may have designated by like notice forwarded to the other party hereto. Notice shall be effective upon receipt.

**6.17 Agreement Controls**

In the event that there are any inconsistencies or conflicts between the terms of this Agreement and an Exhibit, Deliverable, Change Order or other attachment hereto, the terms of this Agreement shall in all instances take precedence and be controlling.

**6.18 Nondiscrimination**

Vendor agrees to take all steps necessary to comply with all federal, state, and City of Tacoma laws regarding non-discrimination and equal employment opportunities. In the event of non-compliance by Vendor with any of the non-discrimination provisions of this Agreement, LESA shall be deemed to have cause to terminate this Agreement, in whole or in part.

**6.19 Conflict of Interest**

No officer, employee or agent of LESA, nor any member of the immediate family of any such officer, employee or agent as defined by City of Tacoma ordinance, shall have any personal financial interest, direct or indirect, in this Agreement, either in fact or in appearance. Vendor shall comply with all federal, state, and City of Tacoma conflict of interest laws, statutes and regulations. Vendor represents that it presently has no interest and shall not acquire any interest, direct or indirect, in the Project to which this Contract pertains which would conflict in any manner or degree with the performance of Vendor's services and obligations hereunder. Vendor further covenants that, in performance of this Agreement, no person having any such interest shall be employed. Vendor also agrees that its violation of LESA'S Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a material breach of this Agreement subjecting the Agreement to termination.

**6.20 Compliance with Applicable Law**

Vendor and LESA shall comply with all applicable federal, state and local laws, ordinances, rules and regulations in the performance of this Agreement.

**6.21 Licenses and Permits**

Vendor, at its expense, shall obtain and keep in force any and all necessary licenses and permits.

**Signature**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

Document Title

**Vendor**

By:

\_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
President  
Title

\_\_\_\_\_  
Date

**Law Enforcement Support Agency**

By:

\_\_\_\_\_

\_\_\_\_\_  
Thomas R. Orr  
Name

\_\_\_\_\_  
Director  
Title

\_\_\_\_\_  
Date

Approved as to form

\_\_\_\_\_  
Assistant City Attorney/LESA Legal Advisor

**EXHIBIT A**

**Request for Proposals**

**EXHIBIT B**

**Proposal**

**EXHIBIT C**

**Milestone Delivery Schedule**

<b>Milestone</b>	<b>Descriptive Name</b>	<b>Planned Completion</b>	<b>Payment Amount</b>

**EXHIBIT D**

**Change Order Form**

**To be developed by LESA and Vendor**



**EXHIBIT E**

**Project Team**

**Vendor Staffing**

Vendor Project Team

<b>Staff Member</b>	<b>Role(s)</b>	<b>Responsibilities</b>
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**LESA Staffing**

LESA Key Personnel

<b>Staff Member</b>	<b>Key Role(s)</b>	<b>Responsibilities</b>
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LESA Project Team

<b>Role</b>	<b>Resources</b>	<b>Responsibilities</b>
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**EXHIBIT F**

**Certificate of Completion**

This Certificate of Completion is given in accordance with that certain Software and Equipment Development Agreement (the "Agreement") enter into as of \_\_\_\_\_, 2008, by and between the Law Enforcement Support Agency ("LESA") and Vendor Systems, Inc. ("Vendor"). Capitalized terms used herein shall have the same meaning as assigned those terms in the Agreement unless the context requires otherwise.

Contractor hereby certifies and warrants that the Deliverables, Equipment, Software, Program Materials and Source Code completed pursuant to Deliverable \_\_\_\_ have been completed properly (as that term is defined in the Agreement) per Client at the location(s) identified below and that such Equipment, Deliverables, Software, Program Materials and Source Code shall perform in accordance with the Requirements and Architecture.

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

Installation Date: \_\_\_\_\_.

Deadline for Acceptance Deadline Extension: \_\_\_\_\_

Acceptance Deadline: \_\_\_\_\_

Vendor Systems, Inc.

By \_\_\_\_\_  
Its \_\_\_\_\_

## CONFIDENTIALITY AGREEMENT

This agreement is entered into between the Law Enforcement Support Agency with offices at 955 Tacoma Avenue, Tacoma, WA 98402 hereinafter "LESA" and \_\_\_\_\_, hereinafter "Proposer,"

Purpose.

LESA anticipates sharing confidential, copyrighted and patented information for examination by Proposer, and Proposer has requested said information subject to the terms and conditions expressed herein:

Proposer acknowledges that he will gain access to and may gain possession of Confidential Information (as defined below) of LESA. Proposer agrees to keep all confidential information strictly confidential and not to use Confidential Information for any purpose or disclose Confidential Information to any person or entity except as expressly authorized by and for the benefit of LESA.

1. **Definition of Confidential Information.** 'Confidential Information' Shall mean any proprietary information of LESA, including, but not limited to, any technical information relating to software architecture, design or source or object code, hardware, technology, products, machines, programs, process developments, formulae, methods, techniques, know-how, data and improvements hardware or software architecture, design or code, any research and development information Including but not limited to any plans or projections, any customer lists, advertiser lists, supplier lists, customer sales analyses, price lists and any other non-public information concerning LESA's business.

2. **Obligation to Protect Confidential Information.** Proposer will hold in confidence any Confidential Information of LESA, not disclose any such Confidential Information to third parties, and not copy or use such Confidential Information other than to satisfy the aforementioned Purpose. Proposer will treat all Confidential Information of LESA with the same degree of care as it accords to its own Confidential Information, and no less than reasonable care. Proposer will only disclose Confidential Information of LESA to those of its employees who have a need to know and have previously agreed to keep it confidential. If Proposer is legally required to disclose any Confidential Information, it will use its best efforts to limit disclosure and to obtain confidential treatment or a protective order and allow to the fullest extent possible LESA to participate in the proceeding. If Proposer is nonetheless, in the reasonable written opinion of counsel, compelled to disclose any Confidential Information, Proposer may disclose such Confidential Information solely to the extent necessary to comply with the legal requirement but only after first providing 10 working/business days advance written notice to LESA.

3. **Limitations.** The foregoing obligations will not apply to any Confidential Information which:

- (i) Proposer can demonstrate was in its rightful possession free of any obligation of confidence prior to its first receipt from the other;
- (ii) Is publicly known through no fault of Proposer;
- (iii) Information disclosed publicly in published materials or
- (iv) Information generally known in the industry.

4. **Term.** This term of this Agreement will continue for one (1) year from the date of this Agreement, unless extended or terminated earlier by mutual written agreement. However, the obligations of Sections 2 and 5 will survive any expiration or termination of this Agreement. Nothing in this Agreement requires either party to negotiate or proceed with any contemplated transaction or agreement.

5. **Return of Information.** At the time that Proposer's examination of LESA confidential information ends or at any other time so requested, Proposer agrees to turn over to LESA all property of LESA and all Confidential Information in any form. Proposer will not keep any copies of such materials. Proposer's entering into this Agreement does not constitute a breach of any contract, agreement or understanding, and Proposer is free to execute this Agreement.

6. **Assignment.** Neither party will assign this Agreement except that either party may assign this Agreement to any successor corporation or to an affiliate.

7. **Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law provisions. Jurisdiction and venue will lie in the State of Washington, King County, for all causes of action arising under this Agreement

8. **Export Control.** The parties acknowledge that Confidential Information may be subject to US export control laws and regulations, and that each party has the responsibility to obtain export licenses, or other export authority as may be required before exporting such information to foreign countries or providing access to foreign nationals.

9. **Severability.** Should any provisions of this Agreement be held by a court of law to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired thereby.

10. **Injunctive Relief.** A breach of this Agreement will result in irreparable and continuing damage to the other party for which there will be no adequate remedy at law, and the non-breaching party will be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).

11. **Waiver.** The waiver by either party of a breach of any provision of this Agreement will not operate or be construed as a waiver of any other or subsequent breach.

12. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information. This Agreement may only be changed by mutual agreement of authorized representatives of the parties in writing.

13. **Notices.** Any notice required or permitted by this Agreement will be in writing.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed in duplicate to be effective as of the later date of signature below (“Effective Date”).

Agreed and Accepted:

LESA

Proposer

By \_\_\_\_\_

\_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_