



## STAFF REPORT ACTION REQUIRED

### Sole Source Contract for the Supply and Installation of Election Results Transmission Equipment Replacement

<b>Date:</b>	September 2, 2009
<b>To:</b>	Government Management Committee
<b>From:</b>	City Clerk Director of Purchasing and Materials Management
<b>Wards:</b>	All
<b>Reference Number:</b>	

#### **SUMMARY**

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This report requests authority to enter into a sole source agreement with Election Systems & Software (ES&S) for the replacement of the wireless transmission equipment in the City's 1,850 optical scan vote counting equipment.

Given the specialized nature and proprietary rights of the vote counting equipment, it is necessary for ES&S, the developer and manufacturer of the vote counting equipment, to install the new transmission equipment. The wireless technology used over the last three general municipal elections (2000, 2003, and 2006) is no longer supported by any wireless provider, and replacement technology must be purchased in order to maintain the current level of service.

The City Clerk will take advantage of a \$413,678.99 net of GST (\$375,000.00 U.S.) credit with ES&S, reducing the cash outlay for the purchase of the wireless transmission equipment to \$344,688.36 (\$312,460.00 U.S.) net of GST.

#### **RECOMMENDATIONS**

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**The City Clerk and the Director of Purchasing and Materials Management recommend:**

1. Council authorize the City Clerk to enter into a Sole Source agreement, in a form satisfactory to the City Solicitor, with Election Systems & Software (ES&S) for the supply and installation of Election Results Transmission Equipment from the

date of award to December 31, 2009 in the amount of \$814,915.09 (\$687,460.00 US) net of GST.

## **Financial Impact**

The total potential contract value is \$793,476.94 (\$719,286.85 U.S.) including all applicable taxes and charges. The total potential contract value is \$758,367.35 net of GST (\$687,460.00 U.S.).

In addition, the City Clerk took advantage of a \$413,678.99 net of GST (\$US375,000.00) credit with ES&S negotiated as partial payment in the rental of 1,500 of the City's optical scan vote counting equipment back to ES&S for its use in the November, 2008 US election. By taking advantage of the credit, the cash outlay related to the purchase of the wireless transmission equipment is reduced to \$344,688.36 (\$312,460.00 U.S.) net of GST.

*(Note - 1 CAD = 0.9065 USD – Bank of Canada –September 1st, 2009)*

Funding is available in the 2009 City Clerk's Office Capital Budget in account CGV038 (Election Results Transmission Equipment).

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

On March 2, 3 and 4, 1999, Council approved the 1999-2003 Capital Works Program which included \$13.05 million for the acquisition of a vote counting system, with a wireless transmission modem component.

On June 9, 10 and 11, 1999, Council approved the use of vote counting equipment, and on September 28 and 29, 1999, granted the City Clerk the authority to enter into a contract with Election Systems and Software Inc. (ES&S), the successful proponent in the Request for Proposal No. 3412-99-01464 for an Optical Scan Voting System and Touch Screen Voting System. Included in the contract was the acquisition of 1,850 optical scan vote counting units, with an installed wireless modem for the transmission of election night results.

On December 10, 2008, Council approved the 2009 - 2013 Capital Budget and Plan, which included the wireless Transmission Equipment Replacement business case.

1999 - 2003 Capital Works program for Clerk's (Item M):

<http://www.toronto.ca/legdocs/1999/agendas/council/cc/cc990302/sp3rpt/cl001.htm>

Voting and Vote-Counting System - Municipal Elections:

<http://www.toronto.ca/legdocs/1999/agendas/council/cc/cc990609/cs6rpt/cl025.htm>

Request for Proposal for the Acquisition of 2,000 Optical Scan Vote Tabulators and 100 Touch Screen Voting Units:

<http://www.toronto.ca/legdocs/1999/agendas/council/cc/cc990928/adm5rpt/cl001.htm>

2009 – 2013 Capital Budget and Plan:

<http://www.toronto.ca/legdocs/mmis/2008/cc/decisions/2008-12-10-cc28-dd.pdf>

## **ISSUE BACKGROUND**

The February 1, 2000 agreement, as amended by an agreement dated August 31, 2006, signed between the City and ES&S, provides that the City shall only permit ES&S (or its' authorized representatives) to provide maintenance and repairs to the City's existing vote counting equipment and specifically reserves ES&S' proprietary rights in the hardware and ES&S software. As the new wireless modems will be installed in the proprietary hardware and to avoid violating warranties, guarantees and contracts the City is contractually bound to utilize ES& S' services.

## **COMMENTS**

The City of Toronto is a leader in the field of election administration, partly due to our ability to quickly and accurately report election results. In each of the last three general elections, ninety percent of all election results had been received by 9:00 p.m. The public, media and candidates have become accustomed to this high level of service.

In order to maintain our current service level, the wireless transmission component of the vote counting equipment needs to be replaced. The wireless technology used over the last three general municipal elections (2000, 2003, and 2006) is no longer supported by any wireless provider, and replacement technology must be purchased in order to maintain the current level of service.

In early 2009, once the Capital Budget and Plan was approved, the City Clerk began initial discussions with ES&S over the appropriate hardware retrofits to the existing vote counting equipment as well as software upgrades to facilitate the sending, receiving and accumulation of election night results data.

In accordance with the agreements between the City and ES&S, the City shall only permit ES&S to provide maintenance and repairs to the City's existing vote counting equipment. The agreement also identifies ES&S' proprietary rights in the hardware and software. Therefore, the City is contractually bound to use ES&S to install the new wireless modems.

The City of Toronto is the only Canadian municipality that is currently using the ES&S wireless modem option to send in election results. A comparison of the component pricing shows ES&S pricing to be very competitive. Although it is not possible to compare the development, configuration and installation costs, Elections and Registry

Services are satisfied that the prices being offered by ES&S are fair and reasonable and representative of the work to be provided.

The wireless modem solution proposed by ES&S has been certified on the Rogers Wireless network, the City's service provider. ES&S will ensure that the transmission equipment purchased meets the required specifications in order to operate properly with ES&S' proprietary software and hardware systems.

In accordance with the City's Purchasing policies, the City Clerk requires a non-competitive procurement process due to the following conditions:

- The installation services are only available from ES&S by reason of the existence of exclusive rights: proprietary electronic components are used in the equipment and proprietary licenced software is required to operate any non-proprietary wireless modem module hardware;
- ES&S is required to install the equipment in order to avoid violating warranties, guarantees and contracts;
- There is a need for hardware compatibility with the goods and services previously acquired from ES&S; and;
- There are no reasonable alternatives, substitutes or accommodations available to appropriately install, maintain, test, certify and service the wireless transmission component in the vote counting equipment.

Therefore, as required under the Toronto Municipal Code 195-9B, the City Clerk is requesting a contract in the amount of \$758,367.35 (\$687,460.00 US) net of GST with Elections Systems & Software (ES&S) for the installation, certification and servicing of the wireless transmission equipment into the City's 1,850 units of optical scan vote counting equipment.

In addition, the City Clerk will take advantage of a \$413,678.99 net of GST (\$375,000.00 U.S.) credit with ES&S negotiated as partial payment in the rental of 1,500 of the City's optical scan vote counting equipment back to ES&S for its use in the November, 2008 US election. By taking advantage of the credit, the cash outlay related to the purchase of the wireless transmission equipment is reduced to \$333,688.36 (\$312,460.00 U.S.) net of GST.

## CONTACTS

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## SIGNATURES

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Daphne Gaby Donaldson  
Acting City Clerk

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Lou Pagano, P.Eng.  
Director  
Purchasing and Materials Management