

INVITATION FOR BIDS
FOR
VOTING MACHINES
CONTRACT NUMBER 05/04/07-867

**TOWN OF ACTON
DON P. JOHNSON
TOWN MANAGER**

**ADVERTISEMENT
NOTICE TO BIDDERS**

The Town of Acton, Massachusetts, will receive sealed bids for:

VOTING MACHINES
CONTRACT #05/04/07-867

at the Acton Town Hall, 472 Main St., Acton, Massachusetts, until 3:00 P.M. local time on May 4, 2007, at which time bids will be publicly opened and read.

Specifications and bidding forms may be obtained from the office of the Town Manager, Town Hall, Acton, Massachusetts, during normal working hours from 8:00 AM to 5:00PM, until the expiration of the time for the filing of bids.

No bidder may withdraw his bid within (30) days after the date designated above for the filing of bids. The Town reserves the right to reject any and all bids, wholly or in part, and to accept any bid or part thereof deemed by it to be in the best interests of the Town.

Town of Acton
Don P. Johnson
Town Manager

**VOTING MACHINES
INVITATION FOR BIDS**

BIDDING REQUIREMENTS

RECEIPT OF BIDS:

All bids shall be sealed, addressed to the Town Manager, Town Hall, 472 Main Street, Acton, Massachusetts, 01720, and marked:

CONTRACT # 05/04/07-867

BID FOR VOTING MACHINES

Bids must be filed at the Office of the Town Manager, Town Hall, 472 Main Street, Acton, Massachusetts, 01720 not later than 3:00 P.M. on May 4, 2007, at which time and place such bids will be opened and read.

No bidder may withdraw his bid within thirty (30) days after the date designated above for the opening of bids. The Town reserves the right to reject any and all bids, wholly or in part, and to accept any bid or part thereof deemed to be in the best interest of the Town.

DESCRIPTION OF CONTRACT:

The contract will require that the successful bidder provide the Town of Acton with VOTING MACHINES in accordance with the contract requirements, specifications, bid form, and other supporting documents set forth in the invitation.

FORM OF BIDS:

All bids must be made on the accompanying bid forms only, and shall state the prices as therein required. The bid form may not be changed in any way. Bid forms improperly signed or otherwise contrary to these instructions will be rejected as informal. Conditional bids will not be accepted.

AWARD OF BIDS:

Bids will be awarded within thirty (30) business days of the bid opening. Vendor is to supply the voting machines and commence training of Town Staff within thirty (30) business days of bid award. Training must be completed within ninety (90) business days of bid award.

GENERAL PROVISIONS AND SPECIFICATIONS

GENERAL PROVISIONS

1. Correspondence Prior or During Bid Period

- A. Any information released by the Town either verbally or in writing prior to the issuance of this IFB shall be deemed preliminary and bind neither the Town nor the Vendor.
- B. The Town will not accept oral supplements, revisions or changes to the responses to this IFB.
- C. The Town Clerk will be the Town's Project Coordinator. All inquiries and communication concerning this IFB must be made in writing to Ms. Eva Taylor, Town Clerk, 472 Main Street, Acton MA 01720.
- D. Vendors must respond in writing to all follow-up questions by the Town concerning their proposal.

2. Contract Award

- A. It is the Town's intent to award the contract within thirty (30) days of the bid opening.
- B. The Town intends to award the contract to one prime Vendor only. The Vendor shall be solely responsible for any separate contractual agreements with its sub-contractor(s), if any are proposed and agreed to in the contract between the Town and the Vendor.
- C. Consultants must agree to honor price quotes through 2007.
- D. Award of the contract is in the sole discretion of the Acton Town Manager or his designee.
- E. The Town reserves the right at any time to accept any proposal in whole or in any part, and to reject any or all proposals.

3. Performance of Services

Under the contract awarded, the Vendor shall agree to the following:

- A. All services of the Vendor shall be performed by qualified personnel. The Vendor shall perform its services in accordance with the highest professional standards of skill, care, and diligence.
- B. The services of each individual team member proposed by the Vendor and accepted by the Town to work on the project shall be required for the entire duration of his/her assignment, unless that individual team member becomes unavailable to the Vendor only for unforeseen circumstances such as the individual's disability, termination of employment by the employee of the underlying employment relationship with the Vendor, military service or death.
- C. Unless clearly stated in the Vendor proposal and incorporated into the contract, none of the services to be provided by the Vendor pursuant to the contract shall

be subcontracted or delegated to any other organization, association, individual, corporation, partnership or other such entity without the prior written consent of the Town.

- D. The Vendor and its personnel shall perform at least 80 percent of all the work under the contract, measured either in value of services rendered or in Vendor time spent on such services.
- E. No member of the project team, including sub-contractors, shall be replaced without the written consent of the Town.
- F. The Town may require the Vendor to relieve any of the Vendor's personnel and sub-contractors from any further work under the contract if in its sole opinion the individual or sub-contractors does not perform at the applicable skill level, as described in the IFB and the Vendor's proposal; the individual does not deliver work which conforms to the performance standards stated in the IFB and the Vendors proposal; or personality conflicts with Town personnel hinder effective progress on the work of the project or assignment for which the individual is responsible.
- G. No subcontract or delegation shall relieve or discharge the Vendor from any obligation or liability under the contract except as specifically set forth in the instrument of consent. The Vendor shall be as fully responsible to the Town for the acts and omissions of its sub-consultants and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly or indirectly employed by it.
- H. Without limiting the foregoing, the Town shall have the right to require the Vendor to cease providing services immediately upon written notice.

4. Time

Under the contract awarded, the Vendor agrees to adhere to the time requirements and schedules included in the contract; to perform its services as expeditiously as is consistent with the standard of professional skill and care required hereby; and to perform its services in coordination with the operations of the Town on this project and with any party engaged by the Town in connection with the project. Also, it shall be the obligation of the Vendor to request any information necessary to be provided by the Town for the performance of the Vendor's services.

5. Vendor's Compensation

Under the contract awarded, the Vendor's compensation shall be made according to the following provisions.

- A. The maximum fee for all Vendor and sub-contractor services and expenses shall not exceed the bid amount. The bid amount shall be all inclusive. In no event shall the Town be liable for additional charges such as interest, penalties, attorney's fees or any other expenses incurred by the Vendor such as travel, telephone, or duplication expenses.
- B. The Vendor shall submit one invoice for services rendered following the delivery of the specified equipment and completion of training. The Vendor's invoice shall include a description of services performed under the task or tasks in such form

and detail and with such supporting data as the Town may reasonably require to show the computational basis for all charges. The Vendor shall keep records pertaining to services performed employing sound bookkeeping practices and in accordance with generally accepted accounting principles.

- C. Payments to the Vendor will be made as expeditiously as possible upon the completion of full project tasks to the satisfaction to the Town.
- D. Payments under the contract will be made only to the Vendor. The Vendor shall be responsible for the compensation of any of its sub-contractors.
- E. The Vendor shall not be compensated for any services not included in the contract scope of work, such as additional work that should have been anticipated by the Vendor in the preparation of its bid, as reasonably determined by the Town Manager, or any services made necessary by the fault or negligence of the Vendor or any of its sub-contractors.
- F. The Town of Acton shall not incur any charges associated with bid preparation, nor will it be obligated to enter into any contract or agreement solely on the basis of this IFB.

6. Reports, Drawings, etc.

Under the contract awarded, the Vendor proposal, and all Vendor reports, drawings, plans and other data and material, including data and material stored on electronic media, furnished to the Town during the course of the project (collectively "Materials") shall become the Town's property and may be used by the Town (or such parties as the Town may designate) thereafter in such manner and for such purposes as the Town (or such parties as the Town may designate) may deem advisable, without further employment of or additional compensation to the Vendor. The Vendor shall not release or disclose to any third party any Materials produced for the Town without obtaining the Town's prior written consent. At no time shall the Vendor release or disclose to any third party any Materials furnished to the Vendor by the Town in connection with the performance of the Vendor's services.

7. Insurance

Under the contract awarded, the Vendor will be required to certify compliance with Massachusetts Statutes which require every employer to be insured against liability for worker's compensation or to undertake self insurance in accordance with the provisions of the statutes prior to commencement of any work under the contract and throughout the contract period.

8. Indemnification

To the maximum extent permitted by law, the Vendor shall, by execution of a contract with the Town, agree to indemnify, defend with counsel acceptable to the Town and save harmless the Town from all suits, actions, claims, demands, losses, expenses and costs, including attorney's fees, of every kind and description which the Town may incur or suffer resulting from, in connection with, or arising out of any act, error or omission of, or breach of contractual duties to the Town by the Vendor, its agents, servants, employees or sub-consultants. The extent of the foregoing indemnification and hold harmless provisions shall not be limited by any provision of insurance required by the contract and shall survive the termination of the contract.

9. Compliance with Law and Regulations

Under the contract awarded, it is the Vendor's responsibility that the products and all services and other work performed by the Vendor under the contract comply with all applicable federal, state and municipal laws, regulations, codes, and ordinances

10. Termination of Contract

- A. Under the contract awarded, the Town may terminate the contract immediately, by written notice to the Vendor, if the Vendor violates any of the provisions of the contract, or fails to perform or observe any of the terms, covenants or conditions of the contract, or abandons in whole or in part its services, or becomes unable to perform its services, under the contract.
- B. For purposes of this section, it is acknowledged that the Vendor's services under the contract are personal services and may not be assumed by or assigned by a trustee in bankruptcy.
- C. In the event of termination, the Vendor shall promptly deliver to the Town all Materials, including all documents, work papers, drafts, studies, calculations, data, drawings, plans, specifications, and other tangible work product or materials, whether on paper or on electronic media, pertaining to the services performed under the contract to the time of termination, and thereupon the Town shall pay to the Vendor any unpaid and undisputed balance owing for services rendered prior to the date of termination. Any termination of the contract shall not affect or impair the right of the Town to recover damages occasioned by any default of the Vendor or to set off such damages against amounts otherwise owed to the Vendor.

11. Equal Employment Opportunity

In connection with the performance of work under the contract awarded, the Vendor shall not discriminate against any employee, sub-consultant or applicant for employment because of race, color, religion, creed, national origin, ancestry, gender, age or handicap. The Vendor shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Massachusetts Commission Against Discrimination (MCAD), One Ashburton Place, Boston, MA 02108, Tel. (617) 727-3990, setting forth the provisions of the Fair Employment Practices Law of the Commonwealth. The Vendor shall comply with all applicable laws and regulations pertaining to non-discrimination, equal opportunity and affirmative action, including without limitation executive orders and rules and regulations of Federal and State agencies of competent jurisdiction.

12. Certifications by Vendor

By execution of a contract with the Town, the Vendor certifies:

- A. The Vendor has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the contract.
- B. No sub-contractor to the Vendor has given, offered or agreed to give any gift, contribution or offer of employment to the Vendor or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the sub-contractor of a contract by the Vendor.

- C. No person, corporation or other entity, other than a bona fide full time employee of the Vendor, has been retained or hired by the Vendor to solicit for or in any way assist the Vendor in obtaining the contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the contract to the Vendor.

13. Taxes

By execution of a contract with the Town, the Vendor, pursuant to Section 49A of Chapter 62C of the Massachusetts General Laws, certifies under the penalties of perjury that it has, to the best knowledge and belief of the person(s) who signed the contract on the Vendor's behalf, filed all State tax returns and paid all State and local taxes required under law.

14. Conflict of Interest

By execution of a contract with the Town, the Vendor acknowledges that the Town is a municipality for the purposes of Chapter 268A of the Massachusetts General Laws (the Massachusetts conflict of interest statute), and agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with obligations of the Vendor based on said statute.

15. Miscellaneous Contract Provisions

The contract awarded will contain the following miscellaneous provisions.

- A. Successors and Assigns: Subject to the following paragraph below, the Town and the Vendor each bind itself, its partners, successors, assigns, and legal representative to the other party.
- B. Assignment by Vendor: The Vendor shall not assign, sublet or transfer any of its obligations, responsibilities, rights or interests (including, without limitation, its right to receive any moneys due) under the contract without written consent of the Town. Any assignment, subletting, or transfer by the Vendor in violation of this paragraph shall be void and without force and effect.
- C. Entire Contract: The contract between the Town and the Vendor shall represent the entire and integrated agreement between the Town and the Vendor with respect to the services to be performed and products to be delivered under the contract, and shall supersede all prior negotiations, representations or agreements, either written or oral. This Request for Proposals and the Vendor proposal may be incorporated into the contract either in whole or by reference. The contract may be amended only by written instrument signed by both the Town and the Vendor.
- D. Confidentiality: The Vendor shall not, without the Town's prior written consent, release or disclose any information relating to the project to anyone except as necessary to perform its duties hereunder.
- E. Certifications: The Vendor shall, from time to time, make such certifications and statements to the Town as the Town shall reasonably request, and in such form as the Town shall reasonably request, provided that the Vendor determines that such certifications are true and correct based upon services performed by the Vendor under the contract. Vendor must also provide written documentation that

the Voting Machines offered are approved for use In the Commonwealth of Massachusetts by the Secretary of the Commonwealth

- F. Additional Services: If the Town requests the Vendor to perform additional services beyond the contract scope of services, the Vendor shall perform such additional services only upon obtaining written authorization from the Town including written agreement as to the method and amount of compensation for such additional services.
- G. Amendments: Any changes will be made only by written mutual agreement between the Town and the Vendor; the contract shall be amended accordingly.
- H. Disputes: All claims, disputes and other matters in question between the Town and the Vendor arising out of or relating to the contract or the breach thereof shall be submitted for resolution to a court of competent jurisdiction in Suffolk or Middlesex County, Massachusetts, unless otherwise agreed by the parties. No such action shall be brought, however, until the completion of all services under the contract or its earlier termination as provided in the contract, the parties agreeing to negotiate in good faith any claims, disputes or other matters in question during the term of the contract before resorting to litigation.
- I. Limited Liability: No officer, director, member, employee, or other principal, agent or representative (whether disclosed or undisclosed) of the Town, nor any participant with the Town, shall be personally liable to the Vendor under the contract, for the Town's payment obligations or otherwise, the Vendor agreeing under the contract to look solely to the assets of the Town for the satisfaction of any liability of the Town under the contract. In no event shall the Town ever be liable to the Vendor for indirect, incidental, or consequential damages.
- J. Governing Law: The contract shall be governed by the law of the Commonwealth of Massachusetts.
- K. No Waiver: The Town's review, approval, acceptance or payment for services under the contract shall not operate as a waiver of any rights under the contract and the Vendor shall be and remain liable to the Town for all damages incurred by the Town as the result of the Vendor's failure to perform in conformance with the terms and conditions of the contract. The rights and remedies of the Town provided for under the contract are in addition to any other rights or remedies provided by law. The Town may assert a right to recover damages by any appropriate means, including but not limited to set-off, suit, withholding, recoupment, or counter-claim either during or after performance of the contract.
- L. Interpretation: If any provision of the contract shall to any extent be held invalid or unenforceable, the remainder of the contract shall not be deemed affected thereby. Paragraph headings in the contract are included for reference purposes only and in no way define, limit or describe the scope or intent of any of the provisions of the contract.

SPECIFICATIONS:

GENERAL SPECIFICATIONS:

Provide seven (7) optical scan voting machines with ballot boxes and related hardware and software. Provide one (1) central accumulation system with related software.

Provide installation and set up of unit plus minimum of six (6) hours of initial training for election workers. Provide field support and response for one year as part of bid price. Provide full, 100% warranty for two years of all supplied equipment and software. All supplied equipment must be accompanied by a certification from the Secretary of the Commonwealth that the equipment has been approved for use in all State and Federal elections.

DETAILED SPECIFICATIONS:

MINIMUM VENDOR REQUIREMENTS
Any items not met will result in disqualification

1. The equipment must be approved for use in the Commonwealth of Massachusetts by the Secretary of State.
2. The bid must state the total purchase price, including delivery, training and installation costs, annual maintenance costs and all other services specified herein.
3. Equipment must be new, not refurbished, and must be vendor's most current product. Proposal must include at least the following: optical scanner(s), ballot box, storage and carrying case, built in battery backup, internal modem programmable memory card, Massachusetts ballot cancellation device and two year parts and labor warranty.
4. Vendor must provide the following:
 - a. -Guaranteed time of three hours to replace/repair failed machine or memory card/pack onsite during an election. Vendor must provide plan of service.
 - b. -No Cost for shipping, pickup and/or delivery.
 - c. -A minimum of six (6) hours training for election personnel.
 - d. -Guarantee parts availability for at least ten (10) years.
 - e. -Guarantee complete inside delivery to the Town Clerk's office within thirty (30) days of receipt of notice.
 - f. -A full list of all Massachusetts customers using the proposed product.
5. All items in this IFB must be specifically addressed. Failure to do so will result in disqualification of the bidder.

Specifications for Optical Scan Vote Tabulating Equipment

The following minimum requirements must be met:

1. The source document shall be a paper ballot
2. The ballot tabulation unit must be an optically scanned, precinct-based unit that is voter initiated.
3. The tabulator must be of a compact, portable design that is sufficiently light enough in weight (under 25 lbs.) to be easily transported and secured to the ballot box at the polling places by poll workers.
4. The precinct tabulator must plug into a standard electrical outlet. It must contain an internal battery capable of maintaining uninterrupted usage during a power failure, or when power is disengaged from the unit.
5. The precinct tabulator must be capable of printing the date and time it was activated on the morning of Election Day, and the date and time the precinct report was printed following the close of the polls.
6. The voting system must include with its precinct tabulator, a ballot box that shall have three compartments:
 - (1) A compartment for emergency voting,
 - (2) A compartment for write-in and sorted blank ballots, and
 - (3) A compartment for fully marked and counted ballots.
7. The precinct tabulator must be capable of printing a "zero report" prior to the commencement of voting.
8. The precinct tabulator must be capable of accepting and processing ballots in any of four orientations.
9. The precinct tabulator must contain a public counter that clearly displays and indicates the number of ballots cast.
10. The precinct tabulator must have a read path that can be cleared of all jammed or misfed ballots by a poll worker on Election Day without removing the cover and/or exposing the electronics of the tabulator.
11. The precinct tabulator must clearly indicate to the voter/poll worker whether a jammed or misfed ballot has been processed.
12. The precinct tabulator must be capable of printing an alphanumeric precinct report containing at a minimum: (1) the number of ballots cast (cards counted), (2) the number of ballots with write-ins, (3) the office title, (4) candidates' names, (5) vote totals for each candidate, and (6) percentage of votes cast for that race for each candidate.

13. Precinct tabulators must be interchangeable with each other and must employ a removable memory device that contains an internal backup battery to preserve and protect election data and vote totals in the event of a power failure and/or total system failure.
14. The precinct tabulator must have an intrinsic internal capability to perform self-diagnostics that will identify and pinpoint any unit malfunctions.
15. The precinct tabulator must be capable of accepting ballots when offices and candidates are arranged either vertically (portrait) or horizontally (landscape).
16. The precinct tabulator must contain an internal modem and an RS232 interface that permits transmission of precinct level results via common carrier telephone lines to a host computer. The software must also accommodate such transmission of results for the purpose of accumulating jurisdiction-wide totals.
17. The precinct tabulator must be capable of processing multiple precincts on a single memory device, as well as multiple ballot styles.
18. The precinct tabulators must be capable of producing multiple copies of precinct results that may be verified against pre-election voter registration printouts, all of which has a system-generated time and date shown printed on them.
19. The precinct tabulator must be capable of producing a comprehensive printed audit report of all election functions performed on the system during the period of use. The audit report must be compiled in the background and printed on demand.
20. The precinct tabulator must accommodate up to 99 ballot styles (i.e.splits) per precinct.
21. The ballot card must be capable of listing offices and candidates in up to four (4) columns on the front and back of a single ballot card.
22. The memory device must contain security features to prevent accessibility to poll workers, and must be usable after each election.
23. The precinct tabulator must be equipped with a 24 character or more Liquid Crystal Display (LCD) message panel for the purpose of communicating information to assist poll workers and voters.
24. The software must permit a computer-generated ballot layout/design document.
25. The precinct tabulator must be UL approved and display the UL seal.
26. The precinct tabulator must have the ability to read and process ballots that are marked by the voter with normal pens or pencils, and not require the use of special marking devices. Must work with the AutoMARK Ballot marking Systems.

DELIVERY:

Machines must be delivered to the Office of the Town Clerk, Acton Town Hall, 472 Main Street, Acton, within thirty (30) days of the award of bid. Delivery will only be accepted between the hours of 8:00 AM and 4:00 PM, Monday through Friday. The vendor must notify the Town Clerk’s office at 978-264-9615 twenty-four hours prior to delivery. It is the responsibility of the vendor to deliver the machines to the inside of the Town Hall, unpack, assemble, and set them up. .

INSPECTION AND ACCEPTANCE OF EQUIPMENT:

The delivered equipment must be inspected and tested, all documentation provided, and all training completed to the satisfaction of the Town Manager or his representative prior to consideration of any invoice.

TERMS OF PAYMENT:

The Town of Acton will pay an approved invoice within thirty days of the delivery of equipment and completion of training.

RULE FOR AWARD

This contract will be awarded to the responsible and responsive bidder who offers the lowest price for supplying the voting machines, installation, and training as a “package price”.

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

Signature of individual submitting bid or proposal

Name of business

Date

TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature of individual submitting bid or proposal

Name of business

Date

BID FORM

The undersigned, as bidder, has carefully examined the invitation for bids, including the contract specifications and other supporting documents; that the bidder proposes and agrees to enter into a written contract with the Town to provide the service or item in the invitation in accordance with the contract requirements, specifications and other conditions set forth and within the time prescribed, except as otherwise specifically provided by the terms of this bid.

The undersigned hereby proposes to furnish VOTING MACHINES to the Town of Acton in accordance with the contract specifications at the prices shown on the attached price list.

PRICE IN FIGURES: _____

PRICE IN WORDS: _____

DELIVERY DATE: _____

VENDOR: _____

ADDRESS: _____

TELEPHONE: _____

SIGNATURE: _____

CONTRACT

(VENDOR)

The vendor promises the Town of Acton that it will provide:

VOTING MACHINES

in accordance with the invitation for bids, including the contract requirements, specifications, and other supporting documents incorporated therein, attached hereto and made a part hereof in accordance with its bid dated: _____, also attached hereto and made a part thereof.

The Town of Acton, hereunto duly authorized, promises to pay the Contractor for such service or item in accordance with said invitation to bid.

WITNESS our hands and seals this _____ day of _____
2007

TOWN OF ACTON

BY _____

Don P. Johnson,
Town Manager

BY _____

Vendor