




MEMORANDUM

TO: Mayor and City Council

CC: Eric Holmes, City Manager; and
Natasha Ramras, Chief Financial Officer

FROM: Jonathan Young, City Attorney 

DATE: October 3, 2022

SUBJECT: Sole Source – Conducted Energy Weapons

The Vancouver Police Department (VPD) has submitted a sole source justification form requesting to procure conducted energy weapons (CEWs) (e.g., tasers) without engaging in competitive solicitation. (Attachment A – Sole Source Form.) The Vancouver City Attorney's Office was asked to review and advise on the legality of approving such an acquisition under the circumstances presented. For the reasons set forth below, the Vancouver City Attorney's Office advises that the City Council may waive competitive solicitation for the CEWs needed by the Vancouver Police Department and authorize procurement of Taser X7 units by way of direct negotiated sale from Axon Enterprises Inc. (Axon).

Facts Presented:

CEW Needs: The Vancouver Police Department currently equips its sworn peace officers with Taser X26 CEW's manufactured by Axon. Taser model X26 has been used since approximately 2004. The technology offered by the X26 is becoming antiquated by modern law enforcement standards and many of the units deployed within VPD are approaching the end of their useful life. VPD was planning to take steps to replace the X26 in the upcoming year. As part of its evaluation process, VPD has identified that newer CEW models provide improved functionality. Specifically: (1) probes deployed by newer CEW models have improved penetration which means heavier clothing is less likely to thwart an attempted deployment; (2) more than one set of probes can be deployed before needing to reload a newer CEW; and (3) some current models allow users to display an 'arc' of electricity as a visual / auditory warning without removing the probe cartridge, to aid in gaining voluntary compliance.

Cameras: Separate and distinct from VPD's needs relative to upgraded CEWs, the City has been actively evaluating potential vendors for a police camera program. One potential camera vendor was selected for testing and evaluation (T&E) in the fall of 2021. The T&E phase with the first preferred vendor in the fall of 2021 proved that platform did not meet the City's needs. A fresh competitive selection process was commenced in the spring of 2022, resulting in the selection of a preferred vendor (Axon) that was determined to meet the City's program needs. The competitive evaluation process resulting in Axon's selection was robust and utilized an evaluation team comprised of key stakeholders including members of the City's Information Technology Department, Police Records, City Law, VPD Patrol and Office of the Chief, and members of the community.

Opportunity: Through the course of camera program negotiations with Axon, various concessions have been requested by each side. City Staff have identified an opportunity to leverage its procurement of cameras from Axon to secure upgraded CEWs that are uniquely compatible with the selected Axon cameras (Taser X7 units) at a greatly reduced price. If approved, the upgraded Taser X7 units would enhance both community safety as well as police transparency by (1) providing officers with increased functionality over the current Taser X26 in each of the ways specified above (improved probe penetration, ability for multiple probe deployments, ability to display visual warning 'arc' without removing cartridge), thereby increasing the likelihood that officers can resolve violent encounters without the need for more severe modalities of force; and (2) providing officers a means for hands-free remote activation of their police body cameras vis-à-vis Bluetooth technology. The City estimates that it can achieve savings of approximately \$2,000 per sworn officer by leveraging the purchase of Taser X7 units and associated equipment from Axon in tandem with the purchase of police cameras – rather than acquiring this CEW equipment as a standalone procurement effort.

Surrounding Market Conditions: Upon identification of the Axon Taser X7 as a potential replacement for the Taser X26, City Staff undertook a review of the surrounding CEW market to evaluate the availability of alternate solutions. Review of the surrounding CEW market revealed only one other vendor with a probe-deployed CEW: PhaZZer, LLC. The City's Procurement Team contacted a regional sales representative for PhaZZer inquiring whether its unit would provide the same functionality and compatibility with Axon body cameras as Taser X7 units. The City's Procurement Team received no response to its inquiries to PhaZZer, LLC.

Additionally, correspondence between the City's Information Technology Department and a regional services manager for Axon provides:

"No other manufacturer of CEWs can activate an Axon Body Worn camera." (Attachment B - Correspondence from Kirk Henderson, Axon.)

Based on the facts set forth above, it is clear that through the exercise of reasonable diligence, City Staff has been unable to identify any other vendor that supplies a product with the same functionality as the Taser X7.

Legal Authority:

Washington State Law, RCW 39.04.280(1) provides that the competitive bidding requirements of a municipality may be waived for reasons that include:

- (a) Purchases that are clearly and legitimately limited to a single source of supply; and
- (b) Purchases that involve special market conditions.

Waiver of the municipality's competitive bidding requirements may be approved by an action of the legislative body or, if delegated by the legislative body of the municipality, pursuant to such delegated authority. (RCW 39.04.280(2)). The Vancouver City Council has delegated authority to waive competitive solicitation for purchases of less than three hundred thousand dollars meeting certain criteria to the Director of Financial Management Services. However, in circumstances where waiver of the competitive process would involve the purchase of equipment at a cost greater than three hundred thousand dollars, approval of the City Council is required.

Analysis and Recommendation:

For the reasons set forth below, the Vancouver City Attorney's Office advises that the Vancouver City Council may waive competitive solicitation for the CEW needed by VPD and authorize procurement of Taser X7 units by way of direct negotiated sale from Axon pursuant to the Sole Source Justification Form presented.

The aggregate estimated value of all Taser X7 units and associated equipment that VPD seeks to procure is approximately \$550,000. (Sole Source Justification Form, p.1). At this price point, Washington State law and the Vancouver Municipal Code allow the City Council, as the governing body of the municipality, to waive competitive solicitation processes in instances where purchases would be from a supplier that clearly and legitimately constitutes a

sole source of supply, or alternatively, for purchases that involve special market conditions. (RCW 39.04.280(1)). While only one of the exceptions set forth in RCW 39.04.280(1) needs to be present for City Council to waive competitive solicitation, both elements "(a)" and "(b)" appear to be satisfied under the facts presented.

First, City Staff have exercised reasonable diligence in attempting to identify an alternate vendor of CEWs that: (1) offer improved probe penetration when compared to the Taser X26, (2) allow deployment of more than one set of probes before reloading, (3) allow peace officers to display an 'arc' or other visible / audible warning before deployment without removing the probe cartridge, and (4) interface with the police department's soon-to-be-implemented Axon camera system for hands-free camera activation. Efforts to identify any manufacturer of such a product, besides Axon, have been unsuccessful.

Second, negotiations with Axon for the VPD camera program have revealed that leveraging the purchase of Taser X7 units and associated equipment in tandem with the City's police camera platform can result in an approximate savings of \$2,000 per officer. In addition to the sole source scenario outlined above, these savings appear to represent 'special market conditions' and additional grounds supporting waiver of the competitive solicitation process for ECWs.

We hope you find this information to be of assistance.

Attachments:

- A. Sole Source Justification by Vancouver Police
- B. Correspondence between representatives of City of Vancouver and Axon.

Attachment A

Sole Source Justification by Vancouver Police



SOLE SOURCE JUSTIFICATION Purchases Above \$5,000

A sole source is defined as: A purchase that is clearly and legitimately limited to a single source or supply. <ul style="list-style-type: none"> A. If there is a way to draft the specifications so that more than one respondent will reply, it is not a sole source. B. The use of sole source purchases shall be limited only to specific instances which are totally justified to satisfy compatibility or technical performance needs. Immediately following award of a sole source contract, the contract (PO or paper contract) and the factual basis for the sole source procurement (this Sole Source Justification Form) must be recorded and open to public inspection (RCW 39.04.280(2)(a)).	
I REQUEST THAT THE REFERENCED PURCHASE BE DECLARED A SOLE SOURCE PURCHASE.	
Department: Police	Requestor: Assistant Chief Troy Price
Proposed supplier name and address: Axon 17800 N 85th St, Scottsdale, AZ 85255	Contract # (if applicable):
Estimated cost of goods or services for this request: \$551,870.19* (*Includes training and warranty)	Total Amount Spent to Date (if applicable): \$
This is a sole source purchase because (Check all that apply): <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Sole Source – No other items are known to exist which perform the same function. <input checked="" type="checkbox"/> Special Design – Item is specific design to fit in with an existing installation. <input type="checkbox"/> Consultant – Providing professional or technical expertise of a unique nature or location availability. <input checked="" type="checkbox"/> Proprietary – Item is held under exclusive title, trademark or copyright <input type="checkbox"/> Warranty Service – The vendor is the sole provider of factory authorized warranty service. <input checked="" type="checkbox"/> Established Standard – The vendor is the sole provider of goods and services for which the City has established a standard. <input type="checkbox"/> Used Item – The vendor/distributor is a holder of a used item that would represent good value and is advantageous to the City (attach information on market price, availability, etc). 	
Describe the proposed goods or services.	Taser 7 conducted energy weapon
What are the specific <u>necessary</u> features that this supplier provides that are not available from other suppliers?	The Vancouver Police Department currently deploys the Axon Taser X26 conducted energy weapon(CEW). In consultation with the VPD Training Department, the Office of the Chief has determined that safety and transparency demands on modern police agencies require that the Taser X26 units be replaced with an CEW that, at a minimum, has the following technical abilities: (1) ability to promote voluntary compliance by demonstrating an ‘arc’ without impairing functionality; (2) ability to deploy two sets of probes before reloading; and (3) ability to remotely activate the department’s body cameras (without touching the cameras) via Bluetooth or similar technology. The Taser X7 is the only known product on the CEW market meeting these technical requirements.
Discuss how similar goods or services are <u>unable</u> to meet the required objective.	No other vendor manufactures a CEW product that meets the technical needs of the Vancouver Police Department described above. The functional needs described above are necessary for the safety of both peace officers and the community we serve, and are also vital to promoting the department’s commitment to transparency.

<p>What steps have you taken to verify that these features are not available elsewhere?</p> <p><input type="checkbox"/> Other brands/manufacturers were examined. Provide a list of phone numbers and names and explain why these did not meet the requirements:</p> <p><input type="checkbox"/> Other vendors were contacted but did not meet the requirements. Provide a list of companies and phone numbers and why they did not meet the requirements:</p> <p><input checked="" type="checkbox"/> Other, please explain: Email communications between the City's I.T. Technical Services Manager and Axon's Professional Services Manager have confirmed that the Axon cameras being deployed to VPD officers are only compatible with, and capable of being remotely activated by, Axon brand CEWs. (See emails of 07/29/2022 between Katherine Nye and Kirk Henderson, attached.) The City's Procurement Team has also invited the only other known manufacturer of probe-deployed CEWs, PhaZZer, to respond with any information concerning their ability to interface with Axon Cameras. As of the date of this submission, over a week has past with no response to emails from the City's procurement team.</p>	
<p>Can your requirements be modified so that competitive products or services may be used? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If yes, please explain modifications and potential costs:</p>	
<p>Is this a one-time procurement?</p> <p><input type="checkbox"/> No* <input checked="" type="checkbox"/> Yes</p>	<p>*If on-going sole source procurement is <u>required</u>, include or attach an estimate that shows total annualized expenditure for each year.</p>

PRICE REASONABLENESS (Check all that apply and attach back-up documentation)

I determined that the price is fair and reasonable because:

- ☐ I compared the proposed price to prices I previously paid for the same or similar goods and/or services. See PO # . Specify price:
- ☐ I compared the proposed price to current published catalog, price lists, or market prices as documented in the attachments and the proposed price is similar or less. **Attach relevant documentation.**
- ☐ I compared the proposed price to rough yardsticks, such as dollars per pound, per horsepower, or other units of measure and did not discover significant inconsistencies that warrant additional pricing inquiry.
- ☒ Based on my knowledge of the market, my experience of prior similar proposals, or knowledge imparted by technical experts.
- ☐ The price is set by law or regulations.
- ☐ Market research reveals that same or similar goods or services are available for a similar price.
- ☒ Other: **The Taser X7 prices currently offered by Axon to the City of Vancouver have been compared to Axon contracts with other municipal agencies. Review of these price proposals has determined that the current pricing offered to the City of Vancouver is lower than could be obtained through piggy-backing off other municipal contracts.**

STATEMENT OF NEED AND CERTIFICATION:

My department's recommendation for sole source is based upon an objective review of the good/service being required and appears to be in the best interest of the City. I know of no conflict of interest on my part or personal involvement in any way with this request. No gratuities, favor, or compromising action have taken place. Neither has my personal familiarity with particular brands, types of equipment, materials or firms been a deciding influence on my request to sole source this purchase when there are other known vendors to exist.

AC

#1234

9/1/2022

Signature (Requestor)

Date

Department/Division Manager

Based upon the above, I authorize the sole source acquisition of the goods or services specified.

AC

#1234

9/1/2022

Signature

Date

Procurement Department Review

Based upon the above, I have reviewed this request and I ☐ support/☐ deny this request.

Signature

Date

FMS Department Director Signature

Based upon the above, I authorize the sole source acquisition of the goods or services specified.

Signature

Date

***NOTE: This Sole Source Justification is valid for two (2) years from the noted date; a new justification form is needed for additional time, as new vendors may have entered the marketplace.**

Procurement Use Only

Supplier Contract Number:

Staff Report # (if applicable):

Effective Date:

End Date:

Attachment B

Correspondence between representatives of City of Vancouver and Axon.

From: Kirk Henderson <khenderson@axon.com>
Sent: Wednesday, July 27, 2022 4:25 PM
To: Nye, Katherine <Katherine.Nye@cityofvancouver.us>
Subject: Axon CEW - Taser

CAUTION: This email originated from outside of the City of Vancouver. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Katherine,

Axon manufactures Conducted Energy Weapons (CEWs) under the brand name of Taser. Axon Body Worn cameras can be automatically activated via a Bluetooth signal when an officer activates (deploys) an Axon Taser (CEW). No other manufacturer of CEWs can activate an Axon Body Worn camera.

Respectfully,

Kirk Henderson
Professional Services Manager
Axon
847-366-8354

Axon Tech Support is available 24/7 at 1-800-978-2737, option 4