

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 15-09

For the purpose of selecting Bear Communications, Inc., for the Oregon Convention Center – “Digital Two-Way Radios” and authorizing the Deputy Chief Operating Officer of Metro to execute a contract with Bear Communications, Inc.

WHEREAS, the Oregon Convention Center currently has analog radio channels used to communicate throughout the one million sq. foot site. The FCC recently mandated narrow-banding, which has decreased performance of the existing radio system. The decreased performance is sufficient to determine that the existing analog radio system has reached the end of its useful life, rendering it in need of replacement; and


WHEREAS, Section 7(B) of the Metropolitan Exposition Recreation Commission's (“MERC”) Contracting and Purchasing Rules, requires competitive sealed bids under ORS Chapter 279C for public improvements such as this project; and

WHEREAS, MERC staff has evaluated the bids and Bear Communications, Inc., is the lowest responsive and responsible bidder with a bid amount of one hundred ninety-four thousand, one hundred ten & 67/100 (\$194,110.67)

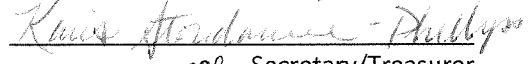
BE IT THEREFORE RESOLVED that the Metropolitan Exposition Recreation Commission:

1. Selects Bear Communications, Inc., as the lowest responsive and responsible bidder in response to the Request for Bids for the Oregon Convention Center – Digital Two-Way Radios.
2. Approves the contract with Bear Communications, Inc., in the form substantially similar to the attached Exhibit A.
3. Authorizes the Deputy Chief Operating Officer of Metro to execute the contract on behalf of MERC.

Passed by the Commission on May 6, 2015.

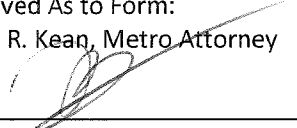


Chair



FOR Secretary/Treasurer

Approved As to Form:
Alison R. Kean, Metro Attorney

By: 

Nathan A. S. Sykes
Deputy Metro Attorney

MERC STAFF REPORT

Agenda Item/Issue: For the purpose of selecting Bear Communications, Inc., the lowest responsible bidder, for the Oregon Convention Center, "Digital Two-way Radios" and authorizing the Deputy Chief Operating Officer of Metro to execute the contract with Bear Communications, Inc.

Resolution No: 15-09

Presented by: Scott Cruickshank

Date: May 6, 2015

Background and Analysis: Two-way radio communication is critical to the success of the Oregon Convention Center operations. Client needs and staffs' daily tasks rely on inter-departmental communications. The OCC currently has six analog radio channels used to communicate throughout the one million sq. foot site. A recent FCC mandate for narrow-banding has increased problems with radio coverage throughout the facility. Staff have taken several steps in attempts to alleviate the issues, but this returned poor results. The narrow-banding's decrease in coverage performance can potentially affect service and safety. Digital two-way radios provide better coverage, more features, improved voice clarity, and longer battery life compared to analog radios.

The scope of this contract will provide the OCC with a new digital two-way radio system, including replacement of all analog radios and old repeaters. The scope will install new cabling from repeaters to network closets in order to provide digital trunking of radio traffic over existing fiber and switches.

The OCC issued the RFB in accordance with MERC's purchasing and contracting rules, and in compliance with Metro Policy and all state (ORS) requirements. The OCC published the RFB in the Daily Journal of Commerce, the El Hispanic Online and the State of Oregon ORPIN website. On April 21, 2015, two bids were received and ranged from \$203,160.67 to \$257,970.90. Staff recommends that Bear Communications, Inc., be considered as the lowest responsive and responsible bidder with the base bid as submitted in the amount of \$203,160.67.

Neither bidder is a certified MWESB or in the FOTA district. Neither bid included subcontractors.

MERC requested pricing for trade-in value of its existing equipment. Bear Communications, Inc., included a trade-in value deduction of \$9,050.00. The OCC has accepted this value and deducted the sum from the base bid amount. This deduction has resulted in the referenced contract amount of \$194,110.67.

Fiscal Impact: This project is budgeted in FY 2014-15 in the amount of \$255,000.00. It is expected that the \$194,110.67 contract amount and other associated costs will remain below the total budgeted amount.

Recommendation: Staff recommends that the Metropolitan Exposition and Recreation Commission, by Resolution No. 15-09, approve the contract award and written contract (attached hereto) with Bear Communications, Inc., for the amount of one hundred ninety-four thousand, one hundred ten & 67/100 (\$194,110.67) for the Oregon Convention Center – Digital Two-Way Radios.

Goods and Supply Contract

MERC Contract No. XXXXXX

For Goods and Supply Contracts over \$50,000

This Contract is entered into between Metro Exposition Recreation Commission (MERC), an appointed commission of Metro, whose address is 600 NE Grand Avenue, Portland, Oregon 97232-2736, and **Bear Communications Inc.** whose address is **7535 NE Ambassador Pl, Suite A, Portland, OR 97220**, hereinafter referred to as the "Contractor".

TERM OF CONTRACT

The term of this Contract shall be for the period commencing **May 11, 2015**, through and including **July 31, 2018**, unless terminated or extended as provided in this Contract.

CONTRACT SUM AND TERMS OF PAYMENT

MERC shall compensate the Contractor for goods supplied as described in Attachment A. MERC shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in Attachment A in an amount not to exceed **One Hundred, Ninety-Four Thousand, One Hundred, Ten and 67/100ths Dollars (\$194,110.67)**. Payment shall be on a unit price only for those goods received in an acceptable condition to MERC. Contractor's billing invoices shall include the MERC contract number, Contractor name, remittance address, invoice date, invoice number, invoice amount, tax amount (if applicable), and an itemized statement of items purchased. Contractor's billing invoices shall be sent to metroaccountspayable@oregonmetro.gov. The MERC contract number and contractor name shall be referenced in the email subject line. MERC requests that contractors submit billing invoices for services within 10 business days of performance. Payment shall be made by MERC on a Net 30 day basis upon approval of Contractor invoice.

ATTACHMENT A - Unit Pricing of Goods

Attachment A shall describe the goods purchased under this agreement. Contractor understands and expressly agrees that not all items in Attachment A will be needed. MERC shall have complete discretion to select only those goods needed at the time.

ATTACHMENT B - Delivery and Service Requirements

Delivery shall be to MERC at the designated point f.o.b. as set forth in Attachment B or at MERC docks if no designated point is expressly listed in Attachment B, which is incorporated by this reference as if set forth in full. MERC shall have the right to reject any and all goods or services upon inspection. All other service requirements, including time and place of delivery shall be in accordance with Attachment B.

Intergovernmental Cooperative Agreement— Pursuant to ORS 279A and the Metro public contract code, MERC participates in an Intergovernmental Cooperative Purchasing program by which other public agencies shall have the ability to purchase the goods and services under the terms and conditions of this awarded contract. Any such purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor's obligation to MERC under this agreement. Any estimated purchase volumes listed herein do not include volumes for other public agencies, and MERC makes no guarantee as to their participation in any purchase. Any Contractor may decline to extend the prices and terms of this solicitation to any or all other public agencies upon execution of this contract. Unless the Contractor specifically declines to participate in the program by marking the box below, the Contractor agrees to participate in the Intergovernmental Cooperative Purchasing program. **Contractor declines to participate in the Intergovernmental Cooperative Purchasing program as indicated by the following initials _____.**

ALL TERMS ON THE REVERSE SIDE OF THIS DOCUMENT AND OTHER PROCUREMENT DOCUMENTS ARE HEREBY INCORPORATED AS A PART OF THIS AGREEMENT.

CONTRACTOR

METRO EXPOSITION RECREATION COMMISSION

By _____

By _____

Print Name _____

Print Name _____

Date _____

Date _____

Goods and Supply Contract

MERC Contract No. XXXXXX

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I: ATTACHMENT A

CONTRACTOR shall deliver to MERC the goods described attached hereto as Attachment A (Unit Pricing of Goods). All goods shall be of excellent quality.

ARTICLE II: ATTACHMENT B

Title to materials purchased hereunder shall pass to MERC f.o.b. at the designated point in Attachment B (Delivery and Service Requirements), or if not provided for, at the designated MERC docks.

ARTICLE III: LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for its performance and assumes full responsibility for all liability for bodily injury or physical damage to persons or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless METRO, its elected officials, officers, employees and agents, from any and all claims, demands, damages, actions, losses and expenses arising out of or in any way connected with its performance of this Contract. CONTRACTOR is solely responsible for paying CONTRACTOR's subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and MERC. CONTRACTOR is responsible for the acts and omissions of its' agents, employees, subcontractors and/or representatives and for all claims.

ARTICLE IV: TERMINATION

MERC may terminate this Contract upon giving CONTRACTOR seven (7) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for goods received prior to the date of termination. MERC shall not be liable for any indirect or consequential, or any other damages whatsoever. Termination by MERC shall not waive any claim or remedies it may have against CONTRACTOR.

ARTICLE V: INSURANCE

CONTRACTOR shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents: 1) The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations. Contractor's coverage will be primary as respects Metro; 2) Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000 per occurrence; 3) Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$500,000 per accident or disease; and 4) If required by the Scope of Work, Professional Liability Insurance, with limits of not less than \$1,000,000 per occurrence, covering personal injury and property damage arising from errors, omissions or malpractice.

Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSURED on Commercial General Liability and Automobile policies. CONTRACTOR shall provide to MERC 30 days notice of any material change or policy cancellation. CONTRACTOR shall provide MERC with a Certificate of Insurance complying with this article upon return of the CONTRACTOR signed agreement to MERC. Certificate of Insurance shall identify the MERC contract number. CONTRACTOR shall not be required to provide the liability insurance described in this Article only if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work.

ARTICLE VI: PUBLIC CONTRACTS

All applicable provisions of ORS Chapters 187 and 279A & B, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement, including, but not limited to, ORS 279B.220 to 279B.235.

ARTICLE VII: MODIFICATIONS

MERC may approve changes and modifications to the original contract, including deletions of work, order of additional materials, and additional services reasonably related to the original work scope. Contractor may propose changes in the work that Contractor believes are necessary, will result in higher quality work, improve safety, decrease the amount of the contract, or otherwise result in a better or more efficient work product. If such changes are approved by MERC, they shall be executed by written contract amendment signed by both parties. Such changes shall not relieve Contractor of any obligation or warranty under the contract. No oral statements by either party shall modify or affect the terms of the contract.

ARTICLE VIII: QUALITY OF GOODS

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of excellent quality. All workers and subcontractors shall be skilled in their trades. CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by MERC, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of MERC.

In addition to any express warranties provided by the CONTRACTOR, all implied warranties covered by ORS Chapter 72 shall apply to any goods provided under this contract, and are hereby expressly not disclaimed.

Goods and Supply Contract

MERC Contract No. XXXXXX

ARTICLE IX: SAFETY

If services of any nature are to be performed in connection with the providing goods pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits. All applicable MSD sheets shall accompany the goods.

ARTICLE X: RIGHT TO WITHHOLD PAYMENTS

MERC shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in MERC's sole opinion, to protect MERC against any loss, damage or claim which may result from CONTRACTOR's performance or failure to perform under this agreement or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors.

ARTICLE XI: COMPLIANCE

CONTRACTOR shall comply with federal, state and local laws, statutes and ordinances relative to the execution of the work. This requirement includes, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

ARTICLE XII: INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any bidding documents including, but not limited to, the Advertisement for Bids, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated to reference. Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written oral. This Contract may be amended only by written instrument signed by both MERC and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XIII: SITUS

The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

ARTICLE XV: ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from the Contract without prior written consent from MERC, consent shall not be unreasonably withheld.

ARTICLE XV: OWNERSHIP OF DOCUMENTS AND MAINTENANCE OF RECORDS

All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by CONTRACTOR pursuant to this agreement are the property of Metro and it is agreed by the parties hereto that such documents are works made for hire. CONTRACTOR does hereby convey, transfer and grant to Metro all rights of reproduction and the copyright to all such documents.

- A. Contractor and subcontractors shall maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, Contractor and subcontractors shall maintain any other records necessary to clearly document:
1. The performance of the contractor, including but not limited to the contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the contractor or subcontractor under the terms of the contract or subcontract;
 2. Any claims arising from or relating to the performance of the contractor or subcontractor under a public contract;
 3. Any cost and pricing data relating to the contract; and
 4. Payments made to all suppliers and subcontractors.
- B. Contractor and subcontractors shall maintain records for the longer period of (a.) six years from the date of final completion of the contract to which the records relate or (b.) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.
- C. Contractor and subcontractors shall make records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, the Contractor or subcontractor agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to Metro for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.

Goods and Supply Contract

MERC Contract No. XXXXXX

D. Contractor and subcontractors authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of Contractor or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of section E.

E. Contractor and subcontractors agree to disclose the records requested by Metro and agree to the admission of such records as evidence in any proceeding between Metro and the Contractor or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

F. Contractor and subcontractors agree that in the event such records disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the Contractor or subcontractor shall pay all costs incurred by Metro in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due from Metro.

G. Failure of the Contractor or subcontractor to keep or disclose records as required by this document or any solicitation document may result in disqualification as a bidder or proposer for future Metro contracts as provided in ORS 279B.130 and Metro Code Section 2.04.070(c), or may result in a finding that the Contractor or subcontractor is not a responsible bidder or proposer as provided in ORS 27B9.110 and Metro Code Section 2.04.052.

ARTICLE XVII: SEVERABILITY

The parties agree that any provision of this Contract that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The parties further agree that this Contract shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of them and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Contract. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid and enforceable shall be automatically added to this Contract in lieu of the illegal, invalid, or unenforceable provision. Any failure by MERC to enforce a provision of the Contract is not to be construed as a waiver by MERC of this right to do so.

ARTICLE XVII: COUNTERPARTS

This Contract may be executed in counterparts or multiples, any one of which will have the full force of an original.

ARTICLE XVIII: DELIVERY OF NOTICES

Any notice, request, demand, instruction, or any other communications to be given to any party hereunder shall be in writing, sent by registered or certified mail or fax as follows:

To Contractor: Bear Communications Inc.
7535 NE Ambassador PI, Suite A
Portland, OR 97220
503-232-5601 fax

To Metro: Metro Procurement Services
600 NE Grand Ave
Portland, Oregon 97232
503-797-1791 fax

With Copy to: Bill Stratton
777 NE Martin Luther King JR Blvd
Portland, OR 97232
503.731.7806 fax

Goods and Supply Contract

MERC Contract No. XXXXXX

ATTACHMENT A Unit Pricing of Goods

Attachment A described the goods purchased under this agreement. It is expressly understood that not all items in Schedule A will be needed. MERC shall have complete discretion to select only those goods and amounts needed at the time.

Item No.	Number of Units	Description of Item	Unit (figures)	Price	Total Amount (figures)
A: Equipment					
1	6	Motorola UHF 1-100 watt repeater with linked capacity plus trunked ready – Part #MTR3000		\$7,260.00	\$43,560.00
2	1	Motorola GW3-TRBO network management software package – Part #L3619/PC hardware not included (OCC will provide PC)		\$9,136.85	\$9,136.85
3	170	Motorola UHF handheld radio with display with Impres 2150MAH-LI-ION battery – Part #XPR3500		\$522.28	\$88,787.60
4	30	Motorola UHF slim line handheld radio – Part #SL7550		\$666.17	\$19,985.10
5	50	Motorola remote speaker microphone – Part #PMMN4071		\$62.31	\$3,115.50
6	50	Motorola Impres smart battery – Part #PMNN4409		\$56.95	\$2,847.50
7	50	Motorola belt clip – Part #PMLN4651		\$9.53	\$476.50
8	4	Motorola Smart Impres six unit non display battery charger – Part #WPLN4212		\$343.79	\$1,375.16
9	4	Motorola Smart Impres six unit desktop charger with capacity readout display – Part #WPLN4219		\$434.64	\$1,738.56
10	2	Combiner Package		\$13,220.70	\$26,441.40

Goods and Supply Contract

MERC Contract No. XXXXXX

11	2	Antenna Solution	\$738.25	\$1,476.50
12	2	Rack Mount Enclosures	Included	Included
B: Labor				
	Number of hours	Type of labor	\$ / hour	Total labor \$ required for all items listed under A: Equipment
13	40	Installation	\$100.00	\$4,000.00
14	0	Programming Labor	\$0	\$0
15	4	Testing Labor	\$55.00	\$220.00

Alternate Bid Pricing					
Item No.	Number of Units	Description of Item	Unit (figures)	Price	Total Amount (figures)
Equipment					
1	1	Motorola UHF Digital Repeater with linked capacity plus option – Part # XPR8400	\$4,990.00		\$4,990.00
2	1	Motorola UHF handheld radio with display with linked capacity plus capability – Part # XPR7550	\$651.20		\$651.20

Goods and Supply Contract

MERC Contract No. XXXXXX

Escalation Clause, if applicable: Contractor may request an increase in price after the third year of the contract. The increase must be based on indices or market factors and must be approved by the Contract Manager. Any increase of prices and rates shall be at the impetus of the Contractor and shall be made at least 60 (sixty) days prior to the end of the contract year.

Unit pricing: Unit pricing may increase with the express written approval of MERC.

Trade-In value				
Item No.	Number of Units	Description of Item	Unit Price (figures)	Total Amount (figures)
16	49	Motorola HT 1250	\$52.92	\$2,593.08
17	16	Motorola HT 750	\$52.93	\$846.88
18	52	CP 200	\$52.93	\$2,752.36
19	54	PR400	\$52.92	\$2,857.68

Goods and Supply Contract

MERC Contract No. XXXXXX

ATTACHMENT B Delivery and Service Requirements

Delivery Dates: June 12, 2015

Delivery Time: 5:00 PM Pacific Standard Time

Delivery Location: Oregon Convention Center

Requirements include:

Six channel linked capacity plus trunking solution to be located in 2 predetermined locations within the Oregon Convention Center (OCC). OCC technical staff will provide the network conductivity, rack mount UPS, 120 VAC to each location. Contractor will provide a single transmit/receive antenna solution, combiner package for 3 frequencies, repeaters, and rack enclosures to house the equipment. Bid must include additional costs if any to modify or replace existing FCC licenses to meet linked capacity plus operation.

It is the intent of the OCC to receive a trade-in value for all existing analog Motorola radios. Any manufacturer incentives or trade-ins available at the time of purchase must be disclosed in bid. Bid will include installation, programming, and testing of all radios and repeaters. 100% proven signal coverage will be required prior to acceptance. Other than standard factory warranty contractor must submit any recommended additional recurring costs for hardware and software support.