

AN ORDINANCE 2011-11-17-0927

**AUTHORIZING THE CITY TO AMEND ORDINANCE 2009-05-07-0346 FOR THE INFORMATION TECHNOLOGY SERVICES DEPARTMENT TO CONTINUE TO USE THE SOLE SOURCE CONTRACT WITH DAILEY & WELLS COMMUNICATIONS, INC. TO PURCHASE 700/800 MHZ RADIO SYSTEM EQUIPMENT, PORTABLE RADIOS, ACCESSORIES AND OTHER RELATED ITEMS AND SERVICES FOR AN ADDITIONAL AMOUNT OF UP TO \$7,500,000.00 THROUGH THE CONTRACT ENDING DATE OF MARCH 31, 2013.**

\* \* \* \* \*

**WHEREAS**, on May 7, 2009, City Council passed and approved Ordinance 2009-05-07-0346 authorized an estimated annual amount of \$2,500,000.00 through March 31, 2013 for public safety grade two-way 700/800 MHZ radio communication equipment for the City of San Antonio and surrounding Bexar County; and

**WHEREAS**, the original sole source contract value was solely based on historical mechanical repair equipment, replacement equipment, and projected budgeted procurements and did not anticipate additional customer requirements for new projects and grants; and

**WHEREAS**, for the contract period ending on March 31, 2013, an additional amount of up to \$7,500,000.00 is needed for cost associated with the radio tower move for the Public Safety Headquarters, as well as additional annual purchases of 700/800 MHZ radio system equipment, portable radios, accessories and other related items; **NOW THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The continued use of the sole source contract approved by Ordinance 2009-05-07-0346 with Dailey Wells Communications, Inc., to purchase 700/800 mhz radio system equipment, portable radios, accessories and other related items and services, for an additional amount of up to \$7,500,000.00, is hereby approved. The Chief Technology Officer or his designee is authorized to execute any documents necessary to carry out the purposes of this ordinance.

**SECTION 2.** Funds are not encumbered by this ordinance. All expenditures will be in accordance with the City's adopted capital and operating budgets approved by City Council. Purchases made by departments are as needed and dependent upon available funds within their adopted budgets..

**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City

Manager or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 4.** This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.

**PASSED AND APPROVED** this 17 day of November, 2011.

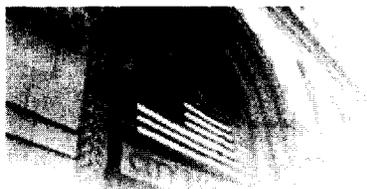
  
M A Y O R  
Julián Castro

**ATTEST:**

  
\_\_\_\_\_  
Leticia M. Vaccaro, City Clerk

**APPROVED AS TO FORM:**

37   
\_\_\_\_\_  
Michael D. Bernard, City Attorney



Request for  
**COUNCIL**  
**ACTION**

City of San Antonio



## Agenda Voting Results - 6

<b>Name:</b>	4, 5, 6, 7, 8, 9, 10, 11A, 11B, 11C, 12B, 13A, 13E, 14A, 14B, 14C, 14D, 14E, 14F, 14G, 14H, 16, 17, 18, 19, 20, 22, 24A, 24B, 24C, 24D, 24E, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37A, 37B, 38A, 38B						
<b>Date:</b>	11/17/2011						
<b>Time:</b>	09:40:58 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the City to amend Ordinance 2009-05-07-0346 for the Information Technology Services Department to continue to use the sole source contract with Dailey & Wells Communications, Inc. to purchase 700/800 MHZ radio system equipment, portable radios, accessories and other related items for an additional amount of up to \$7,500,000.00 through the contract ending date of March 31, 2013. [Ben Gorzell, Chief Financial Officer; Hugh Miller, Chief Technology Officer/Director, Information Technology Services Department]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Rey Saldaña	District 4		x			x	
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				x
Elisa Chan	District 9	x					
Carlton Soules	District 10		x				

AN ORDINANCE 2009-05-07-0346

ACCEPTING THE OFFER FROM DAILEY & WELLS COMMUNICATIONS, INC. TO PROVIDE THE INFORMATION TECHNOLOGY SERVICES DEPARTMENT WITH THE PURCHASE OF 700/800 MHZ PORTABLE RADIOS, ACCESSORIES AND OTHER RELATED ITEMS FOR AN ESTIMATED ANNUAL COST OF \$2,500,000.00.

\* \* \* \* \*

WHEREAS, an offer was submitted by Dailey & Wells Communications, Inc. to provide 700/800 MHZ portable radios, accessories and other related items for use primarily by the ITSD, Police, Fire, Airport Police, and Park Police Departments for a cost of approximately \$2,500,000.00; and

WHEREAS, the Texas Local Government Code indicates that competitive bidding is not required under section 252.022(a)(2) which provides for a procurement necessary to protect the public health or safety; NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

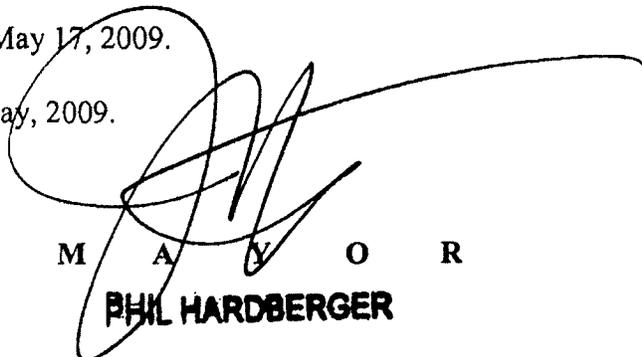
SECTION 1. The offer submitted by Dailey & Wells Communications, Inc. to provide the City with 700/800 MHZ portable radios, accessories and other related items for a cost of \$2,500,000.00 is hereby accepted, subject to and contingent upon the deposit of all required bonds, performance deposits, insurance certificates and endorsements. Attached hereto and incorporated herein for all purposes as Exhibit I is the offer and bid tabulation sheet.

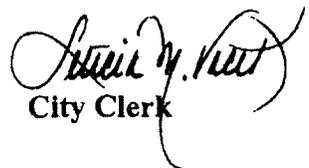
SECTION 2. Funding for this ordinance will be identified when work orders are issued from the potential funding sources. All expenditures will comply with Operating Budgets for current and future fiscal years.

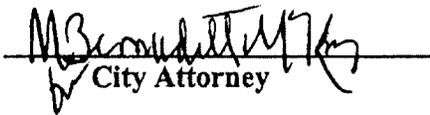
SECTION 3. Payment not to exceed the limitations of the budgeted amount is authorized and should be encumbered with a purchase order.

SECTION 4. This ordinance shall take effect May 17, 2009.

PASSED AND APPROVED this 7th day of May, 2009.

  
M A Y O R  
PHIL HARDBERGER

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
City Attorney

CITY OF SAN ANTONIO
PURCHASING AND GENERAL SERVICES DEPARTMENT

Issued By: WF
RFO NO.: A1100-09-WF

Date Issued: February 10, 2009

REQUEST FOR OFFERS

FOR

700/800 MHZ PORTABLE RADIOS AND ACCESSORIES

PLEASE REVIEW THE TERMS AND CONDITIONS FOR THIS REQUEST AND
PROVIDE YOUR OFFER NO LATER THAN 10:00 A.M., FEBRUARY 13, 2009.

The City of San Antonio Purchasing and General Services Department is willing to assist any vendor(s) in the interpretation
of provisions or explanation of how forms are to be completed. Assistance can be received by visiting the Purchasing and
General Services Office in the City Hall Annex, 131 W. Nueva, or by calling (210) 207-7260.

It is the policy of the City of San Antonio to involve qualified Small, Minority, Woman-owned, and local business in
construction, procurement, professional services, and leases and concessions contracting. The City of San Antonio has
established the following minority business enterprise (MBE), woman business enterprise (WBE), African-American
business enterprise (AABE), and small business enterprise (SBE) utilization goals:

MBE Goal: 15% WBE Goal: 10%
AABE Goal: 3% SBE Goal: 50%

This invitation includes these forms:

Request for Offer
Terms and Conditions of RFO

Specifications and General Requirements
Price Schedule

The undersigned, by his/her signature, represents that he/she is authorized to bind the offer or to fully comply with the
Specifications and General Requirements for the amount(s) shown on the accompanying offers sheet(s). By signing below,
you have read the entire document and agreed to the terms therein.

Firm Name: Dailey & Wells Communications, Inc. Telephone Number: (210) 893-6500

Address: 3440 E. Houston St. City, State, and Zip Code: Sam Antonio, TX 78219

Signature of Person Authorized to Sign Offer: [Handwritten Signature] Signer's Name: Haidar Haidari (Please Print or Type)

Please complete the following:

Email Address: CJ@dwcomm.com

Please check the following blanks which apply to your company:

Ownership of firm (51% or more): Please complete the following:

Non-minority Hispanic African-American X Other Minority (specify) Japanese- American
Female Owned Handicapped Owned Small Business (less than \$1 million annual receipts or 100 employees)
Indicate Status: Partnership X Corporation Sole Proprietorship Other (specify)

Tax Identification Number: 74-1873279

FOR CITY USE ONLY

AWARD

Items Accepted: Ordinance No: Date: Amount:

Approved: \_\_\_\_\_

## STANDARD CONTRACT TERMS AND CONDITIONS

### READ CAREFULLY

#### 1. GENERAL CONDITIONS

Vendors are required to submit their offer upon the following expressed conditions:

- a. Vendors shall thoroughly examine the drawings, specifications, schedule(s), instructions and all other contract documents.
- b. Vendors shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of material and equipment as required by the solicitation conditions. No plea of ignorance by the vendor of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the vendor to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the City or the compensation to the vendor.
- c. Vendors are advised that all City contracts are subject to all legal requirements provided for in the City Charter and/or applicable City Ordinances, state and federal statutes. Any offer, after being opened, becomes subject to the Open Information Act, Government Code Chapter 552, therefore Vendors must clearly indicate any portion of the submitted offer that the vendor claims is not subject to public inspection under the Open Information Act.
- d. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall benefit financially, directly or indirectly, in the sale to the City of any materials, supplies or services, except on behalf of the City as an officer or employee. This prohibition extends to the City Public Service Board, San Antonio Water System, and all City boards and commissions other than those which are purely advisory. In this instance a City employee is defined as any employee of the City who is required to file a financial involvement report pursuant to the City's ethics ordinance.

#### 2. PREPARATION OF OFFERS

Offers will be prepared in accordance with the following:

- a. All information required by the request shall be furnished or the offer may be rejected. The vendor shall print or type name and manually sign the request for quote.
- b. Where there is a discrepancy between the unit price and the extended price, the unit price shall prevail.
- c. Any offer that is considered for award on an "all or none" basis must include a price quote for all units or line items. Any offer that is considered for award by each unit or line item must include a price for each unit or line item for which the vendor wishes to be considered. Any ambiguity in the offer as a result of omission, error, unintelligible or illegible wording shall be construed in the favor of the City.
- d. Alternate offers may be allowed at the sole discretion of the City.

- e. Vendors will neither include federal taxes nor State of Texas limited sales excise and use taxes in quoted prices since the City of San Antonio is exempt from payment of such taxes. An exemption certificate will be signed by City where applicable upon request by vendor.

**3. DESCRIPTION OF SUPPLIES**

Any catalog or manufacturer's reference used in describing an item is merely descriptive, and not restrictive, unless otherwise noted, and is used only to indicate type and quality of material. Each offer must clearly identify the proposed product, the quantity of the product, model, and type, as applicable. Prorata adjustments to packaging and pricing may be allowed at the sole discretion of the City.

**4. ASSURANCE OF COMPLIANCE - EQUAL EMPLOYMENT OPPORTUNITY AND SMALL AND/OR MINORITY BUSINESS ADVOCACY REQUIREMENTS**

It is the policy of the City of San Antonio that Small and/or Minority Business Enterprises shall have the maximum practicable opportunity to participate in the performance of public contracts. Vendor agrees that if this offer is accepted, he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation. In addition, vendor agrees, by submittal of this offer, that he/she will abide by all applicable terms and provisions of this Nondiscrimination Clause and the Small Business Advocacy Clause. These clauses are available in the City's Department of Economic and Employment Development and the City Clerk's Office.

**5. SAMPLES, DEMONSTRATIONS AND TESTING**

At the City's request and direction, vendor shall provide product samples and/or testing of items offered to ensure compliance with specifications. Samples, demonstrations and/or testing may be requested prior to award of the contract, upon delivery and/or at any point during the term of resulting contract. After notification, samples, demonstrations and/or testing must be provided within ten days. Failure to provide samples prior to award of contract will disqualify vendor from consideration. All samples (including return thereof), demonstrations and/or testing shall be at the expense of the vendor. Samples will be returned upon request; otherwise, samples will become property of the City of San Antonio, ten days after award of the contract.

**6. REJECTION OF OFFERS**

- a. The City may reject an offer if:
  - 1) The vendor misstates or conceals any material fact in the proposed offer; or
  - 2) The offer does not strictly conform to law or the requirements of the request;
  - 3) The offer is conditional, except that the vendor may qualify the offer for acceptance by the City on an "All or None" basis or a "Low Item" basis. An "All or None" basis offer must include all items upon which offers are invited.
- b. In the event that a vendor is or subsequently becomes delinquent in the payment of his, her or its City taxes, including state and local sales taxes, such fact shall constitute grounds for rejection of the offer, or if awarded the contract, for cancellation of the contract. However, the City reserves the right to deduct any delinquent taxes from payments that the City may owe to the delinquent vendor as a result of such contract.
- c. The City may, however, reject any offer whenever it is deemed in the best interest of the City to do so, and may reject any part of an offer unless the offer has been qualified as provided in Par. 6 (a) 3 above. The City at its sole

discretion may also waive any minor informalities or irregularities in any offer, to include failure to submit sufficient documentation, failure to submit literature or similar attachments, or business affiliation information.

**7. CLARIFICATION TO SPECIFICATIONS**

- a. If any person contemplating submitting a quote for this contract is in doubt as to the true meaning of the specifications, other related documents, or any part thereof, he/she may submit to the City Director of Purchasing and General Services on or before seven calendar days prior to scheduled opening, a request for clarification. All such requests for information shall be made in writing and the person submitting the request will be responsible for its prompt delivery. Any interpretation of the offer, if made, will be made only by Addendum duly issued. A copy of such Addendum will be mailed or delivered to each person receiving solicitations. The City will not be responsible for any other explanation or interpretation of the proposed offer made or given prior to the award of the contract. Any objections to the specifications and requirements as set forth in this request must be filed in writing with the Director of Purchasing and General Services on or before seven calendar days prior to the scheduled opening.
- b. The City reserves the right to request clarification to assist in evaluating the vendor's response when the vendor response is unclear with respect to product pricing, packaging or other factors. The information provided is not intended to change the quote response in any fashion and such information must be provided within two days from request.

**8. AWARD OF CONTRACT**

- a. The City reserves the right to accept any item or group of items on this quote, unless the vendor qualifies his/her offer by specific limitations. Re Par. 6 (a) 3 above.
- b. A written award of acceptance (manifested by a City Ordinance) and appropriation mailed or otherwise furnished to the successful vendor results in a binding contract without further action by either party.
- c. The City of San Antonio reserves the right to utilize previous purchases as a basis for evaluation of offers when future usages are unable to be determined.
- d. Although the information furnished to Vendors specified the approximate quantities needed, based on the best available information where a contract is let on a unit price basis, payment shall be based on the actual quantities supplied. The City reserves the right to delete items, prior to the awarding of the contract, and purchase said items by other means; or after the awarding of the contract, to increase or decrease the quantities in accordance with § 252.048 of the Texas Local Government Code. No changes shall be made without written notification of the City.

**9. CONTRACT TERMINATION**

**TERMINATION-BREACH:**

- a. Should vendor fail to fulfill in a timely and proper manner, as determined solely by the Director of Purchasing and General Services, its obligations under this contract, or violate any of the terms of this contract, the City shall have the right to immediately terminate the contract. Notice of termination shall be provided in writing to the contractor, effective upon the date set forth in the notice. Such termination shall not relieve the vendor of any liability to the City for damages sustained by virtue of any breach by the vendor.

**TERMINATION-NOTICE:**

- b. The City may terminate this contract without cause. The City shall be required to give the vendor notice ten days prior to the date of termination of the contract without cause.

**TERMINATION-FUNDING:**

- c. City retains the right to terminate this contract at the expiration of each of City's budget periods. This contract is conditioned on a best efforts attempt by City to obtain and appropriate funds for payment of any debt due by City herein.

**10. DELIVERY OF GOODS/SERVICES**

- a. All materials are to be delivered F.O.B., City of San Antonio's designated facility.
- b. Delivery dates pertaining to this request must be clearly stated in the quote form where required and include weekends and holidays. Failure to comply with this requirement may be a cause for disqualification of the offer. Unless otherwise specified, delivery at the earliest date is required. The vendor will clearly state in the offer the time required for delivery upon receipt of contract or purchase order. Proposed delivery time must be specific and such phrases "as required", "as soon as possible" or "prompt" may result in disqualification of the offer.
- c. Upon award of a contract, the vendor is obligated to deliver the goods to the destination specified in the Request for Offer or the Purchase Order and bears the risk of loss until delivery. If this Request for Offer or Purchase Order does not contain delivery instructions, Vendors shall request instructions in writing from the Director of Purchasing and General Services. If the delivery instructions contained in the Request for Offer allocate delivery costs and risks in a manner contrary to this section, the provisions of this Request for Offer shall prevail.
- d. When delivery is not met as provided for in the contract, the Purchasing and General Services Department reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the vendor, in addition to any other damages, direct or consequential, incurred by the City as a result thereof. In addition, failure of the vendor to meet the contract delivery dates will be cause for removal of the vendor from the City's list of eligible Vendors as determined by the Purchasing and General Services Department.

**11. PERFORMANCE DEPOSIT**

- a. The following provisions shall apply only when a performance deposit is specified as required in this Request for Offer.
- b. The successful vendor must furnish the City of San Antonio with a performance deposit in the amount set forth in the Request for Offer. This deposit is not to be submitted with the offer, but must be presented to the Purchasing and General Services Department within ten days from request.
- c. The City of San Antonio will not enter into a contract or issue a purchase order until the successful vendor has complied with the performance deposit provisions.
- d. The performance deposit shall be in the form of a performance bond (in a form acceptable to the City Attorney), cashier's check, certified check upon a state or national bank or trust company, or a check on such bank or trust company signed by a duly authorized officer thereof (checks to be drawn payable to the City of San Antonio), or a Certificate of Deposit from such bank or trust company assigned to the City of San Antonio, or an irrevocable letter of credit from a state or national bank or trust company.

- e. The performance deposit of the successful vendor shall be returned by the City upon completion of the contract and final acceptance of all items in accordance with conditions thereof.
- f. Failure of successful vendor to perform any of the services required by this contract within ten days of receipt of written demand for performance from City, or failure of vendor to correct or replace defective goods or products within ten days from receipt of written demand therefore, shall constitute a total breach of this contract and shall cause this contract to terminate immediately upon the expiration of the ten day period. In the event of such termination, the performance deposit shall be retained by the City of San Antonio as liquidated damages, based upon mutual agreement and understanding between vendor and City at the time this Request for Offer is solicited, submitted and accepted, that the City of San Antonio is a governmental agency engaged in public projects, and that the measurement of damages, which might result from a breach of the terms and specifications herein is difficult or impossible to determine. However, the Director of Purchasing and General Services with the concurrence of the City Manager may return all or part of the performance deposit to the vendor if the Director determines, in the Director's sole discretion, that the failure to perform the conditions of this contract was the result of acts or events over which the vendor had no control. The determination shall then be final and binding on all parties.

## 12. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by both parties hereto that the City is contracting with the successful vendor as an independent contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the successful vendor under this contract and that the successful vendor has no authority to bind the City.

## 13. REQUEST FOR INFORMATION

Any party who wishes to be provided documents relating to this procurement shall make a request in writing. Pursuant to state law, the City may assess a fee in order to recoup the cost related to providing the requested information.

## 14. PATENTS/COPYRIGHTS

The successful vendor agrees to indemnify and hold the City harmless from any claim involving patent infringement or copyrights on goods supplied.

## 15. INDEMNITY

**BIDDER covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to BIDDER'S activities under this contract, including any acts or omissions of BIDDER, any agent, officer, director, representative, employee, consultant or subcontractor of BIDDER, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT BIDDER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY**

**UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. BIDDER shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or BIDDER known to BIDDER related to or arising out of BIDDER's activities under this contract, and shall see to the investigation and defense of such claim or demand at BIDDER's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving BIDDER of any of its obligations under this paragraph.

**16. INSURANCE**

If required, specific insurance provisions will be included in specifications. An original, certified copy of an insurance certificate must be submitted within ten days from request. The vendor will be required to maintain, at all times during performance of the contract, the insurance detailed in specifications. Failure to provide this document may result in rejection of offer. (ATTACHMENT B)

**17. ACCEPTANCE BY CITY**

The City shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by vendor. The City at its option may reject all or any portion of such goods or services which do not, in City's sole discretion, comply in every respect with all terms and conditions of the contract. The City may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If the City elects to accept nonconforming goods and services, the City, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate the City for the nonconformity. Any acceptance by the City, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services.

**18. WARRANTY**

The supplies or services furnished under this contract shall be covered by the most favorable commercial warranties given to any customer for same or similar supplies or services.

**19. CHANGE ORDERS**

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders will be made in writing by the City of San Antonio Purchasing and General Services Department.

**20. ASSIGNMENT**

The successful vendor shall not sell, assign, transfer or convey this contract in whole or in part, without the prior written consent of the City of San Antonio Purchasing and General Services Department. Any such assignment or transfer shall not release vendor from all contractual obligations.

**21. QUESTIONS**

Questions regarding interpretation of this request should be directed to the Purchasing and General Services Department at (210) 207-7260 and referenced by request name and number indicated on page one. You may contact William Flint, Senior Procurement Specialist, at (210) 207-4285 or via email [William.Flint@sanantonio.gov](mailto:William.Flint@sanantonio.gov).

**22. SOLE SOURCE EXEMPTION**

Local Government Code chapter §252.022 allows an exemption from competitive bidding for purchases considered to be "Sole Source" or a purchase for good or service available from one vendor only. By accepting the terms and conditions of this request, vendor acknowledges and makes claim to be a sole provider of requested products or services.

**Vendor must provide a statement form describing the proprietary nature of the good or service as well as a statement that no other like good or service is available. This statement shall be submitted, along with the offer, on company letterhead and be signed by an authorized representative of the company. (ATTACHMENT A)**

## **SPECIFICATIONS AND GENERAL REQUIREMENTS**

**SCOPE:** The City of San Antonio is requesting offers to furnish 700/800 MHz Portable Radios and Accessories used by Fire and Police departments' emergency personnel. These devices will provide monitoring and transmitting of radio communications.

**PERIOD OF CONTRACT:** Contract shall be for the period beginning April 1, 2009 and terminating March 31, 2010.

At the City's option, this Contract may be renewed under the same terms and conditions for three (3) additional one (1) year periods. Renewals shall be in writing and signed by the City's Director of Purchasing & General Services or her designee, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding therefore.

Notwithstanding the foregoing, the City reserves the right to extend the term of the contract in thirty (30) day increments, not to exceed ninety (90) days total with written notice to the contractor(s); provided, that the City shall give the contractor(s) a preliminary written notice of its intent to extend at least ten (10) days before the contract expires. The preliminary notice does not commit the City to an extension.

### **FUNDING OUT CLAUSE:**

In the event that through no action initiated by the City of San Antonio, the City's legislative body does not appropriate funds for the continuation of this Agreement for any fiscal year after the first fiscal year and has no funds to do so from other sources, this Agreement may be terminated. To effect this termination, the City of San Antonio shall, 30 days prior to the beginning of the fiscal year for which funds are not appropriated, send the successful vendor written notice stating that the City of San Antonio failed to appropriate funds.

### **STANDARD REQUIREMENTS:**

1. Prospective bidders must prove beyond any doubt to the City Purchasing and General Services Director that they are duly qualified, capable, bondable, etc. to fulfill and abide by the specifications herein listed.
2. When contractor cannot abide by terms and conditions in fulfilling the contract, contractor must supply service or supplies from other sources at the contract price. If contractor delays in the above, the City reserves the right to purchase on the open market and charge contractor the difference between contract price and the purchase price.
3. **REVISION OF MANUFACTURER'S PRICE LIST(S):** The bid will be based on manufacturer's latest dated price list(s). Said price list(s) must denote the manufacturer, latest effective date and price schedule. It is agreed that any published price list(s) may be superseded or replaced during the contract period only if such list(s) is published by the manufacturer for industry wide use. (NOTE: Discounts accepted as part of this bid are not subject to revision.)

A written notice stipulating in detail the changes of a price list(s) must be furnished to and approved by the City before revisions go into effect.

All subject price lists should be submitted with this bid and shall become a part hereof. However, if in the opinion of the City Purchasing Manager, it is impractical for bidder to include published price lists as part of this bid and to furnish any price lists and/or written changes as required herein, bidder shall permit the Purchasing Manager or his/her authorized representatives to inspect the pertinent published price lists and/or written changes in the office of the bidder or at any other location approved by the Purchasing Manager. However, if the City Purchasing Manager approves said price list(s) other than the manufacturer's price list(s), said price list(s) must denote the company name, effective date and price schedule. It is agreed that any price list provided other than the manufacturer's may NOT be superseded or replaced during the contract period.

4. The City's Request for Offer (RFO) will govern over any other agreement associated with this contract.
5. The quantities stated are estimates only and are in no way binding upon the City of San Antonio. Estimated quantities will be used for the purpose of evaluation. The City may increase or decrease quantities as needed.

**INTELLECTUAL PROPERTY:**

If selected, Respondent agrees to abide by the following regarding intellectual property rights:

Respondent shall pay all royalties and licensing fees. Respondent shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Respondent has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Respondent will immediately:

Either:

- a. obtain, at Respondent's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
- b. alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
- c. reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

Respondent further agrees to:

- a. assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,

b. assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

- Respondent is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Respondent agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,
- that the Software or the equipment is used by the City in the form, state, or condition as delivered by Respondent or as modified without the permission of Respondent, so long as such modification is not the source of the infringement claim,
- that the liability claimed shall not have arisen out of the City's negligent act or omission, and
- that the City promptly provide Respondent with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Respondent assumes responsibility under this section.

**PRICE SCHEDULE**

ITEM	DESCRIPTION	ESTIMATED ANNUAL QTY	UNIT PRICE	EXTENDED PRICE
1	P7200 Radio Configured for Police	200 each	\$4,608.76	\$ 921,752.00
2	P7200 Radio Configured for Fire	300 each	\$4,601.26	\$ 1,380,378.00

The above pricing is for evaluation purposes only to determine estimated annual contract value.

**M/A COM: Submit catalog with RFO.**

Catalog Title/Number: M/A-COM Wireless Systems Products & Services Catalog

Date of Issue: December 2008

Percent Discount Offered:            (See the enclosed list)            %

Column on which discount is based:            E/C (Equipment Class Code)           

Delivery will be made within 30 calendar days after receipt of order.

**ATTACHMENT A**

**SOLE SOURCE DOCUMENTATION**

**Vendor must provide a statement form describing the proprietary nature of the good or service as well as a statement that no other like good or service is available. This statement shall be submitted, along with the offer, on company letterhead and be signed by an authorized representative of the company.**

**ATTACHMENT B**

**INSURANCE**

- A. Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's *Purchasing and General Services Department*, which shall be clearly labeled "700/800 MHZ PORTABLE RADIOS AND ACCESSORIES" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's *Purchasing and General Services Department*. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
  
- B. The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.
  
- C. A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Broad Form General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> <li>a. Premises operations</li> <li>b. Independent Contractors</li> <li>c. Products/completed operations</li> <li>d. Personal Injury</li> <li>e. Contractual Liability</li> </ul>	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate & Products Completed Operations Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

- D. The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn: Purchasing & General Services Department  
*A1100-09-WF\_700/800MHZ PORTABLE RADIOS AND ACCESSORIES*  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- E. Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
  - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
  - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
  - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- F. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- G. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- H. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.
- I. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- J. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.
- K. Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

**IMPORTANT MAILING OR FAX INSTRUCTIONS:**

**MAIL TO:** CITY OF SAN ANTONIO  
PURCHASING AND GENERAL SERVICES DEPARTMENT  
ATTN: WILLIAM FLINT  
P.O. BOX 839966  
SAN ANTONIO, TX 78283-3966

**PHYSICAL ADDRESS:** PURCHASING AND GENERAL SERVICES DEPARTMENT  
ATTN: WILLIAM FLINT  
RIVERVIEW TOWERS  
111 SOLEDAD, SUITE 1100  
SAN ANTONIO, TEXAS 78205

**MARK ENVELOPE:** "REQUEST FOR OFFER FOR 700/800 MHZ PORTABLE RADIOS AND  
ACCESSORIES"  
REQUEST TO BE OPENED 10:00 A.M., FEBRUARY 13, 2009.  
REQUEST NO.: A1100-09-WF

**COPY MAYBE  
FAXED TO:**

William Flint  
Senior Procurement Specialist  
Fax # 210-207-7814

**REMARKS:**



# CITY OF SAN ANTONIO

P.O. Box 839966  
SAN ANTONIO, TEXAS 78283-3966

## ADDENDUM I

**SUBJECT:** Request for Request for Offer, A1100-09 WF, 700/800 MHZ Portable Radios and Accessories, scheduled to open February 13, 2009; date of issue February 10, 2009.

**FROM:** Norbert Dziuk, Interim Purchasing & Contract Administrator

**DATE:** February 17, 2009

This notice shall serve as Addendum No. I to the above-referenced Request for Offer and shall become part of the original Proposal package and must be returned with proposal on or before the due date.

THE ABOVE MENTIONED REQUEST FOR COMPETITIVE SEALED PROPOSAL IS HEREBY AMENDED AS FOLLOWS:

### CHANGE IN SCOPE:

#### Delete:

**SCOPE:** The City of San Antonio is requesting offers to furnish 700/800 MHz Portable Radios and Accessories used by Fire and Police departments' emergency personnel. These devices will provide monitoring and transmitting of radio communications.

#### Replace with:

**SCOPE:** The City of San Antonio is soliciting offer to furnish Portable 700/800MHZ Radios and Accessories used by emergency related employees such as Police and Fire Personnel and other city departments.

### CHANGE IN OPENING DATE:

The Opening Date has been extended to 10:00 A.M., WEDNESDAY, FEBRUARY 18, 2009.

**\*\*THIS ADDENDUM MUST BE SIGNED AND RETURNED WITH THE BID PACKAGE\*\***

Norbert Dziuk  
Interim Purchasing & Contract Administrator  
Purchasing & General Services Department

Date 2/17/09

Company Name DAILEY WELLS COMMUNICATIONS

Address 2440 E. HOUSTON ST

City/State/Zip Code SAN ANTONIO TX 78219

Signature

**City of San Antonio Bid Tabulation**

Opened: February 18, 2009 For: 700/800 MHZ Portable Radios and Accessories A1100-09		Dailey & Wells Communications, Inc. 3440 E. Houston St. San Antonio, TX 78219 210-893-6500
<b>Item</b>	<b>Description</b>	
1	700/800 MHZ Portable Radios and Accessories Catalog Name: Date of Issue: Column which Discount is based: C (Model) N (Option) P (Parts) S (Software Services) V (Vendor Option) VC (Vendor Model) Y (Special Code) 77 (Special Products) Delivery time in days after receipt of order:	M/A-COM Wireless Systems Products & Services 12/01/08 Equipment Class Code 25% 25% 25% 10% 10% 20% 0% 10% 30 days
<b>Estimated Annual Award</b>		<b>\$2,500,000.00</b>