



CONTRACT PROPOSAL (Indefinite Quantity)
 Office of Contract Administration
 Purchasing Division
 City and County of San Francisco
 City Hall, Room 430
 1 Dr. Carlton B. Goodlett Place
 San Francisco, CA 94102-4685

SIGN AND RETURN THIS PAGE

Contract Proposal No. 68280

Bids will be opened in:

City Hall, Room 430, at **2:00 p.m., August 22, 2008, Shuttle Van Service – 1650 Mission Street**

Sign the bid; put it in the envelope, and write the Contract Proposal Number on the outside Shuttle Van Service – 1650 Mission Street building. Sign and return this page. Return other pages as indicated.

Do not include sales or excise taxes in bid prices.

Upon receipt of a Contract Acceptance, the undersigned hereby agrees to furnish all articles or services within the dates specified, in the manner and at the prices stated, in accordance with the advertisement, specifications, proposal, and bid and contract conditions, all of which are made part of the contract proposal, and together, with the executed Contract Acceptance constitute the Contract between the City and the undersigned when authorized by a Purchase Order, City Blanket Purchase Order, or City Blanket Purchase Order Release certified by the Controller. In the event of any conflict between the contractual documents mentioned above, the order of precedence for resolving such conflict shall be: (1) Contract Acceptance; (2) City Blanket Purchase Order; (3) Purchase Order; (4) City Blanket Purchase Order Release.

Name under which business is conducted: _____

Mailing address: _____

City, State, ZIP: _____

Telephone: _____

Fax: _____

E-mail address: _____

Sign here: _____

Name of person signing: _____

IMPORTANT INFORMATION

A Pre-Bid Conference will be held on August 6, 2008, 10:00 A.M., 25 Van Ness Avenue, 3RD Floor, Room 330A, San Francisco, CA 94102.

Each bid must be accompanied by a bid bond, or money order, or a cashier's check, or certified check, in the amount of \$1,000 payable to the City and County of San Francisco to serve as security that, on award, the bidder will enter into a contract with the City. Personal or company checks will be accepted. (See Special Condition 71)

**Shuttle Van Service – 1650 Mission Street
For the Term September 1, 2008 through August 31, 2011**

BID AND CONTRACT CONDITIONS

TERMS RELATED TO BIDDING

1. When Bids are Due; Bid Opening Procedures

Bids must be delivered before time set for bid opening. Bids will be opened by Purchasing at the hour and place stated in the ad in the presence of bidders who attend, and bid prices will be read upon request as time permits. Bidders may inspect the bids after award.

2. Articles Furnished

Articles and services must comply with applicable laws, ordinances and other legal requirements, including (among others) the Cal-OSHA regulations in Title 8 of the Code of Regulations and, for electrical products, Sections 110.2 and 110.3 (B) of the S.F. Electrical Code. In addition, if an electrical item has not been tested by a lab approved by City's Department of Building Inspection (DBI) or Department of Public Works (DPW), Contractor shall notify the requesting department before delivery by writing the department at the "Deliver to" address on the front of the Purchase Order. Approved testing labs are posted on Purchasing's website at <http://www.sfgov.org/oca/>. When a non-tested item is delivered, the department will request approval from DPW. If the department is unable to obtain approval, City reserves the right to cancel the transaction and return the item to Contractor, at no charge to City.

3. Bidding on Separate Services and in the Aggregate

Bidders may bid separately for any service unless otherwise provided. Bidders may make an offer on one, some or all services, unless otherwise provided.

4. Prices

Prices quoted must be fixed except as otherwise specified in this document. Any bid requiring receipt of order in less than 30 days will be unacceptable unless otherwise specified herein.

5. Awards; Rejection of Bids

Purchasing may make awards on one, some or all services in a bid. Purchasing reserves the right to reject any and all bids.

6. Cash Discounts; Terms of Payment

Cash discount (discount for prompt payment) will not be taken into consideration in determining the low bid. However, cash discounts are encouraged and must meet the following conditions:

- A. The discount period will start upon date of completion of all services on any Purchase Order or other authorization certified by Controller, or upon date of receipt of properly prepared invoices covering such services, whichever is later.

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- B. Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing the City's check.

The discount will be deducted from the invoice amount in accordance with the provisions of 6A and 6B-above, unless the bid states the discount is not available. No additional charge shall accrue against City in the event that City does not make payment within any time specified by bidder.

7. Sunshine Ordinance

In accordance with Sec. 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, responses to RFPs and all other records of communications between City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

TERMS RELATED TO THE CONTRACT

8. Contract Interpretation: Choice of Law/Venue; Assignment

Should any questions arise as to the meaning and intent of the contract, the matter shall be referred to Purchasing, who shall decide the true meaning and intent of the contract. This contract shall be deemed to be made in, and shall be construed in accordance with the laws of the State of California; the venue for all claims arising out of this contract shall be in San Francisco. This contract may be assigned only with the written approval of Purchasing.

9. Hold Harmless and Indemnification

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Contract, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Contract, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorney's fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Contract.

10. Failure to Deliver

If Contractor fails to deliver an article or service of the quality, in the manner or within the time called for by this Contract, such article or service may be bought from any source by Purchasing and if a greater price than the contract price be paid, the excess price will be charged to and collected from Contractor or sureties on its bond if bond has been required.

11. Budget and Fiscal Provisions

This Contract is subject to the budget and fiscal provisions of City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Contract will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Contract will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Contract in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Contract.

12. Default; Remedies

On and after any event of default, City shall have the right to exercise its legal and equitable remedies, including without limitation, the right to terminate this Contract or to seek specific performance of all or any part of this Contract. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any event of default. Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Contract or any other

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contract between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such event of default and any liquidated damages due from Contractor pursuant to the terms of this Contract or any other contract.

All remedies provided for in this Contract may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

13. Termination for Convenience

City shall have the option, in its sole discretion, to terminate this Contract, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City.

14. Guaranteed Maximum Costs

- A. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.
- B. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the contract is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City.
- C. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

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- D. Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

15. Taxes

- A. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Contract, or the services delivered pursuant hereto, shall be the obligation of Contractor.
- B. Contractor recognizes and understands that this Contract may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Contract entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:
- (1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;
 - (2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Contract may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Contract. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
 - (3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.
 - (4) Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

16. Use of City Opinion

Contractor shall not quote, paraphrase, or otherwise refer to or use any opinion of City, its officers or agents, regarding Contractor or Contractor’s performance under this Contract without prior written permission of Purchasing.

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17. Nondiscrimination; Penalties

A. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

B. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

C. Nondiscrimination in Benefits

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

D. Condition to Contract

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

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E. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

18. Local Business Enterprise Utilization; Liquidated Damages

A. The LBE Ordinance. Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor’s willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

B. Compliance and Enforcement.

1. Enforcement. If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor’s net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City’s Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the “Director of HRC”) may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor’s LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

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By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

- 2. Subcontracting Goals.** There is no LBE Subcontracting Goal for this contract.

19. MacBride Principles – Northern Ireland

Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

20. Tropical Hardwood and Virgin Redwood Ban

Pursuant to § 804(b) of the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, Contractor shall not provide any items to the City in performance of this Contract which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of Contractor to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

21. Resource Conservation

Contractor agrees to comply fully with the provisions of Chapter 5 of the San Francisco Environment Code (“Resource Conservation”), as amended from time to time. Said provisions are incorporated herein by reference.

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22. Submitting False Claims; Monetary Penalties

Any contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall also be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim: (a) Knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval. (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City. (c) Conspires to defraud the City by getting a false claim allowed or paid by the City. (d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City. (e) Is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

23. Liability of City

CITY'S PAYMENT OBLIGATIONS UNDER THIS CONTRACT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR UNDER THIS CONTRACT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, IN NO EVENT SHALL CITY BE LIABLE REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS CONTRACT.

24. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents, or assigns will be deemed a material breach of this Contract.

25. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Contract and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Contract.

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26. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Contract, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

27. Bid Protests

Bid protests for purchases of Services in excess of \$50,000 shall be submitted and responded to in accordance with Regulation 21.3(i) of the San Francisco Administrative Code, Chapter 21.

28. Food Service Waste Reduction Requirements

Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

End Bid and Contract Conditions

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GENERAL CONDITIONS (Continued)

These terms and conditions supplement the City's Bid and Contract Conditions. In the event of a conflict between these conditions and the preceding Bid and Contract Conditions, these conditions shall take precedence.

29. CONTRACT TERM

The contract period shall be for thirty six (36) months. The initial term of this contract is the period from award execution date, approximately September 1 2008 or the above-stated term date, whichever is later, through the last day of the month of a 36 consecutive month period.

30. CONTRACT EXTENSION

This contract may be extended, all or in part, for a period or periods up to one year by mutual agreement in writing. The maximum contract period shall not be more than 5 years.

31. TOLL-FREE TELEPHONE NUMBER

A contractor located outside of the City and County of San Francisco is encouraged to provide free telephone services for placing orders. This requirement can be met by providing a toll-free telephone number or accepting collect calls. The free service may be a consideration in evaluating this bid.

32. COOPERATIVE AGREEMENT

Contractor agrees _____ or does not agree _____ (make a selection by an "X" mark) that during the term of this agreement and any authorized extension, the Director of Purchasing may allow other public agencies or non-profits made up of multiple public agencies to utilize this agreement to obtain some or all of the services and/or commodities to be provided by Contractor under the same terms and conditions as the City, pursuant to a Board of Supervisor Resolution.

33. LEFT BLANK BY AGREEMENT OF THE PARTIES

34. LBE ORDINANCE

To qualify for a bid discount under the provisions of Administrative Code Chapter 14B, an LBE must be certified by the Human Rights Commission by the Bid Due date.

The certification application is available from HRC (415) 252-2500, and on the web at:

www.sfhrc.org

Click on 14B (LBE) Requirements & Forms.
Click on appropriate LBE Certification Application.

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GENERAL CONDITIONS (Continued)

35. CLAIM FOR PREFERENCE

To claim preference under the LBE Ordinance, See Bid Questionnaire attached.

36. BID PREFERENCE FOR BROKERAGE SERVICES

Pursuant to Section 14B.7 of the Administrative Code, a bid preference will only be awarded to an LBE, or an LBE joint venture where the LBE's participation in the joint venture exceeds 35 percent, directly responsible for providing materials, equipment, supplies or services to City as required by the Bid solicitation. An LBE will be deemed to be directly responsible for providing the required commodity or service only if it regularly does business as a manufacturer, or authorized manufacturer's representative, dealer or distributor, stocking distributor, franchisee, licensee, service provider, or has another direct agency relationship with the manufacturer or provider of the solicited commodity or service, and has been so certified by HRC.

An LBE will be considered to be "regularly doing business", as that term is used in the foregoing paragraph, if in the normal course of business, it stocks, warehouses or distributes commodities to businesses or entities other than public entities having a local business preference program. Such a determination will be subject to audit by HRC.

No preference will be given to an LBE engaging in brokerage, referral or temporary employment services not meeting this definition, unless those services are required and specifically requested by the department.

37. CHAPTER 14B REQUIREMENTS

A. LBE Participation

The City strongly encourages bids from qualified LBEs. Pursuant to Chapter 14B, the following rating discount will be in effect for the award of this project for any bidders who are certified by HRC as a LBE, or joint ventures where the joint venture partners are in the same discipline and have the specific levels of participation as identified below. Certification applications may be obtained by calling HRC at (415) 252-2500. The rating discount applies at each phase of the selection process. The application of the rating discount is as follows:

- (1) A 10% discount to an LBE; or a joint venture between or among LBEs; or
- (2) A 5% discount to a joint venture with LBE participation that equals or exceeds 35%, but is under 40%; or
- (3) A 7.5% discount to a joint venture with LBE participation that equals or exceeds 40%; or
- (4) A 10% discount to a certified non-profit entity.

If applying for a rating discount as a joint venture: The LBE must be an active partner in the joint venture and perform work, manage the job and take financial risks in proportion to the required level of participation stated in the bid, and must be responsible for a clearly defined

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GENERAL CONDITIONS (Continued)

portion of the work to be performed and share in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the LBE joint venture's work shall be set forth in detail separately from the work to be performed by the non-LBE joint venture partner. The LBE joint venture's portion of the contract must be assigned a commercially useful function.

B. HRC Forms to be Submitted with Proposal

(1) All proposals submitted must include the following Human Rights Commission (HRC) Forms contained in the HRC Attachment 3:

Form 3 HRC Non-discrimination Affidavit
Form 5 HRC Employment form

These forms are included in Appendix C.

If these forms are not returned with the proposal, the proposal may be determined to be non-responsive and may be rejected.

Submit HRC 12B-101 Form only if the Prime Contractor is not already in compliance with Equal Benefits Requirements. This form is available on the HRC website at:

http://www.sfgov.org/site/sfhumanrights_index.asp?id=4584

(2) Please submit two copies of the above forms with your bid. The forms should be submitted in separate, sealed envelopes addressed to:

Selormey Dzikunu, Contract Compliance Officer
Re: Contract Proposal 68280
Human Rights Commission
c/o Office of Contract Administration
City Hall, Room 430
San Francisco, CA 94102-4685

AND

Mike Ward
Re: Contract Proposal 68280
Office of Contract Administration – Purchasing
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

If you have any questions concerning the HRC Forms, you may call Selormey Dzikunu, Human Rights Commission Contract Compliance Officer at (415) 274-0511

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GENERAL CONDITIONS (Continued)

38. AUDIT AND INSPECTION OF RECORDS

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

39. CONFLICT OF INTEREST

Through its execution of this Contract, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of any said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Contract.

40. NON-WAIVER OF RIGHTS

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall in any way affect the right of the party to enforce such provisions thereafter.

41. CONTRACTOR'S DEFAULT

If Contractor fails to fulfill its obligations under this Contract Proposal, whether or not said obligations are specified in this section, Purchasing reserves the right to: (a) terminate this contract at no cost to City; (b) take action in accordance with Section 12 or (c) exercise any other legal or equitable remedy.

42. BANKRUPTCY

In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Contract shall terminate and be of no further force and effect, and any property or rights of such other party, tangible or intangible, shall forthwith be returned to it.

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GENERAL CONDITIONS (Continued)

43. PROPRIETARY INFORMATION OF CITY

Contractor understands and agrees that, in the performance of the work or services under this Contract or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary details, the disclosure of which to third parties will be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the contract, except to the extent that Contractor can demonstrate that: (a) the confidential information at the time of disclosure was part of the public domain by publication or otherwise, except by breach of this contract; (b) the confidential information can be established to have been in possession of Contractor at the time of disclosure and was not acquired directly or indirectly from City under another proprietary information obligation; or (c) the confidential information was received from a third party without any restrictions; provided, however that such information was not obtained by said third party, directly or indirectly, in breach of a proprietary information obligation with City.

44. INCIDENTAL AND CONSEQUENTIAL DAMAGES

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Contract shall constitute a waiver or limitation of any rights which City may have under applicable law.

45. REPORTS BY CONTRACTOR

MULTI-YEAR TERM CONTRACT

Each year, 90 days before each anniversary date of this Contract, Contractor must furnish a report of the total services ordered under this Contract during the preceding twelve months. The report must be in a format acceptable to City and must list by department or location the following: (1) all services awarded under this contract; and (2) total quantity and dollar value of each service ordered, including services for which there were no orders. Contractor must also furnish a separate similar report for the total of all services ordered by City which are not part of this Contract.

Contractor shall send the reports to:

Mike Ward
Re: Term Contract No. 68280
City and County of San Francisco
Office of Contract Administration – Purchasing
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

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GENERAL CONDITIONS (Continued)

46. NOTICE TO PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage paid and registered as follows:

Director of Purchasing
City and County of San Francisco
Office of Contract Administration – Purchasing
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

47. SUBCONTRACTING

Contractor is prohibited from subcontracting services under this Contract unless such subcontracting is agreed to in writing by Purchasing. No party on the basis of this Contract shall in any way contract on behalf of or in the name of the other party of this Contract, and violation of this provision shall confer no rights on any party and any action taken shall be void.

48. INDEPENDENT CONTRACTOR

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Contract. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Contract shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Contract referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Contract.

49. SEVERABILITY

Should the application of any provision of this Contract to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Contract shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall

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GENERAL CONDITIONS (Continued)

be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

50. EMERGENCY – PRIORITY 1 SERVICE

In case of an emergency that affects the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service. Contractor will make every good faith effort in attempting to provide emergency services. Contractor shall provide a 24-hour emergency telephone number of a company representative who is able to receive and act on requests for emergency services. In addition, Contractor shall charge fair and competitive prices for services ordered during an emergency and not covered under the awarded contract.

51. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

- (1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.
- (2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of

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GENERAL CONDITIONS (Continued)

qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

- (3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.
- (4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.
- (5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.
- (6) Set the term of the requirements.
- (7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

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GENERAL CONDITIONS (Continued)

- (8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.
- (9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages

Contractor agrees:

- (1) To be liable to the City for liquidated damages as provided in this section;
- (2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- (3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- (4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other

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GENERAL CONDITIONS (Continued)

damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

- (5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:
- A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and
 - B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

- (6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and
- (7) That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

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GENERAL CONDITIONS (Continued)

52. LEFT BLANK BY THE AGREEMENT OF THE PARTIES

53. MINIMUM COMPENSATION ORDINANCE (“MCO”)

- a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at:

http://www.sfgov.org/site/olse_index.asp?id=27459

A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

- b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. The required wage is posted on the Web at:

http://www.sfgov.org/site/olse_index.asp?id=27459

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

- c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.
- d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.
- e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor.
- f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine

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whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

- g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.
- h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.
- i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

54. REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

- a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

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- b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.
- c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.
- d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.
- e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.
- f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.
- g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.
- h. Contractor shall keep itself informed of the current requirements of the HCAO.
- i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

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GENERAL CONDITIONS (Continued)

- j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.
- k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
- m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

55. EARNED INCOME CREDIT (EIC) FORMS

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

- a. Contractor shall provide the Earned Income Credit (EIC) Form to each Eligible Employee at each of the following times:
 - (1) within 30 days following the date on which the applicable Contract or Contract Modification becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in question);
 - (2) promptly after any Eligible Employee is hired by Contractor; and
 - (3) annually between January 1 and January 31 of each calendar year during the term of the Contract.
- b. Failure to comply with the foregoing requirement shall constitute a material breach by Contractor of the terms of the Contract.
- c. If within 30 days after the Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under the terms of the Contract or under applicable law.

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56. LIMITATIONS ON CONTRIBUTIONS

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

57. PROHIBITION ON POLITICAL ACTIVITY WITH CITY FUNDS

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Contract. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this contract, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this Section.

58. PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Contract unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Administrative Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives

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prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

59. SERVICES PROVIDED BY ATTORNEYS

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

60. CONTRACT PRODUCT / SERVICE QUALITY REPORT

Departments may complete and return to Purchasing these reports at any time during the life of the contract. The purpose of the report is to monitor contractor performance and determine supplier successes or shortcomings. Each report will be sent to the awarded supplier/contractor. They will have an opportunity to respond to the information provided by the department. Quality reports that go unresolved to the satisfaction of the Purchaser may be used as a basis for commencement of partial or complete contract default proceedings.

61. NONDISCLOSURE OF PRIVATE INFORMATION

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, “Nondisclosure of Private Information,” and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

62. GRAFFITI REMOVAL

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City’s property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

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GENERAL CONDITIONS (Continued)

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty-eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.)

Any failure of Contractor to comply with this section of this Contract shall constitute a default of this Contract.

63. MODIFICATION OF CONTRACT

This Contract may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Contract.

End General Conditions

**Shuttle Van Service – 1650 Mission Street
For the Term September 1, 2008 through August 31, 2011**

SPECIAL CONDITIONS (Continued)

64. PURPOSE

The purpose of this contract is to provide qualified shuttle van service to and from the 1650 Mission Street building for the City and County of San Francisco.

65. PRE-BID CONFERENCE

A Pre-bid Conference will be held as follows:

Location: City and County of San Francisco
25 Van Ness Avenue, 3rd Floor, Room 330A
San Francisco, CA 94102

Date and Time: August 6, 2008, 10:00 A.M.

Although not mandatory, attendance is strongly urged for all prospective bidders on this contract.

NOTE: Please bring a copy of this contract proposal to the Pre-bid Conference.

It is requested that bidder's questions concerning this Contract Proposal be submitted by mail or FAX at least 72 hours prior to the date and time of the Pre-bid Conference and directed to:

Mike Ward
Contract Proposal No. **68280**
City and County of San Francisco
Office of Contract Administration – Purchasing
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

The Pre-bid Conference will begin at the time specified, and company representatives are urged to arrive on time. Topics already covered will not be repeated for the benefit of late arrivals. Failure to attend the Pre-bid Conference shall not excuse the successful bidder from any obligations of the contract. Any change or addition to the requirements contained in this Contract Proposal as a result of the Pre-bid Conference will be executed by written Change Notice.

66. SCOPE OF SERVICES TO BE PERFORMED (See Appendix A)

67. QUESTIONS, PROTESTS

Any questions or objections concerning the requirements in this contract proposal must be submitted, in writing, and received by the Office of Contract Administration – Purchasing no less than five working days prior to the bid opening date and time. Bidders who fail to do so will waive all further rights to protest, based on these specifications and conditions.

**Shuttle Van Service – 1650 Mission Street
For the Term September 1, 2008 through August 31, 2011**

SPECIAL CONDITIONS (Continued)

68. COMPLIANCE WITH REGULATIONS (See Scope of Service – Appendix A)

69. BIDDER'S QUALIFICATIONS

- A. The City may make such investigation, as it deems necessary, prior to the award of this contract to determine the conditions under which work is to be performed. The Purchaser will take into consideration, but not be limited to:
- (1) Bidder's experience
 - (2) Location
 - (3) Adequacy of equipment (vans)
 - (4) Sufficient personnel and equipment to properly perform all services called for under the contract.
- B. In order to receive consideration, bidder must have sufficient knowledge and experience in the services covered by the contract. Bidders must have a minimum of three years experience in providing services as stated under this contract. Bidder must submit with their bid a minimum of three references of customers requiring similar volume of services as provided in this contract.
- C. Contractor must be able to demonstrate to the Purchaser's satisfaction their capabilities, including evidence that they possess adequate facilities and financial resources to fully comply with the requirements of the contract, prior to award and at any time during the contract term or any extension thereof.
- D. City reserves the right to inspect Contractor's place of business prior to award or at any time during the contract term or any extension thereof, to aid Purchaser in determining Contractor's capabilities and qualifications.
- E. Contractor will be responsible for providing technical support and assistance to the Real Estate Division. As part of this requirement, Contractor must provide, by phone, personnel with in-depth technical knowledge of the services Contractor is providing under this contract, to answer questions and offer any assistance required by the Real Estate Division personnel, during the business hours. (8:00 a.m. – 5:00 p.m.)
- F. Contractor shall be responsible for producing the usage reports required under General Condition 44 of this document. Failure to provide the required reports may result in application of the Contractor's Default clause of this Contract.
- G. City reserves the right to reject any bid on which the information submitted by Bidder fails to satisfy City and/or Bidder is unable to supply the information and documentation within the period of time requested.
- H. City reserves the right to terminate this contract if information requested from and submitted by Contractor fails to satisfy City and/or Contractor is unable to provide the information and/or documentation within the period requested.
- I. Contractor shall be independent and, as such, the hiring, training, equipping, supervising, directing and discharging of their employees shall be the responsibility of the Contractor. The payment of Federal, State, and local taxes and overtime wages shall also be the responsibility of Contractor.

**Shuttle Van Service – 1650 Mission Street
For the Term September 1, 2008 through August 31, 2011**

SPECIAL CONDITIONS (Continued)

- J. Contractor shall be responsible for the handling of all City and County of San Francisco furnished documents and materials in a safe manner including loss or damage incurred during transport, handling or delivery.

70. CITY DEPARTMENT'S RESPONSIBILITIES

Real Estate Division shall designate a representative to interface, monitor and maintain adequate records of all transactions under this contract.

- A. Real Estate Division will be responsible for monitoring and maintaining adequate records of all shuttle van service under this contract.
- B. Maintain a document record of all incident reports.
- C. Notify Purchaser in writing of any performance problems.
- D. Document changes in shuttle van service.
- E. Review and evaluate quarterly reports from contractor.
- F. Verify and document driver license, training, and criminal records.
- G. Provide Purchaser advanced written notification of any recommended modifications to the contract, including contract extension.

71. BID SECURITY

Each bid must be accompanied by a bid bond, or money order, or a cashier's check or certified check, in the amount of \$1,000.00 payable to the City and County of San Francisco, to guarantee the filing of Insurance Certificates, and proper execution of the contract. **Personal or company checks will not be accepted.** Any proposal submitted without the proper bid security shall be determined to be non-responsive and result in the rejection of the bid.

After the successful bidder has furnished the required documents or the City has rejected proposals, all bid proposal securities, except those which may have been forfeited, will be returned to the respective bidders whose proposals they accompanied.

72. LEFT BLANK BY THE AGREEMENT OF BOTH PARTIES

73. LEFT BLANK BY THE AGREEMENT OF BOTH PARTIES

74. INSURANCE

Prior to award, the successful bidder or bidders will be required to furnish evidence of insurance as follows:

**Shuttle Van Service – 1650 Mission Street
For the Term September 1, 2008 through August 31, 2011**

SPECIAL CONDITIONS (Continued)

- a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:
- (1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
 - (2) Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
 - (3) Commercial Automobile Liability Insurance with limits not less than \$5,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:
- (1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
 - (2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
 - (3) The Policy must include a Waiver of Subrogation.
 - (4) The Policy is Severability of Interest or Cross Liability (separation of insureds).
- c. All policies shall provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:
- Director
Office of Contract Administration – Purchasing
City and County of San Francisco
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685
- d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that,

**Shuttle Van Service – 1650 Mission Street
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SPECIAL CONDITIONS (Continued)

should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

- e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- g. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.
- h. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.
- i. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

75. FAILURE TO EXECUTE CONTRACT

- A. Within ten days of the receipt of a notice of award, the bidder to whom the contract is awarded shall deliver the specified insurance certificates to City.
- B. If the bidder fails or refuses to furnish the required insurance within ten days after receiving notice from Purchasing, Purchasing may, at its option, determine that this bidder has abandoned its bid. Thereupon the tentative award of said contract to this bidder shall be canceled and City shall notify the bidder's surety and collect on the bidder's bond (or the check accompanying its bid shall be deposited with the Treasurer of the City and County of San Francisco for collection) and the proceeds thereof shall be retained by City as partial liquidated damages for failure of such bidder to properly file the bonds and insurance herein required. The foregoing in no way limits the damages which are recoverable by City whether or not defined elsewhere in the contract documents.

**Shuttle Van Service – 1650 Mission Street
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SPECIAL CONDITIONS (Continued)

76. PRICE

Bid prices are to be firm for the duration of the contract except as described in Section 77, Price Adjustment. Only the bid prices that appear on City's Contract Proposal Bid Sheets will be considered. No other pages with prices or attached price lists and/or catalog prices will be considered. Bid price to include all costs chargeable to City. Contractor will assume all costs including personnel salaries, transportation and any other expense for the training of his/her employees. No charges to City are to be made for training. All costs to City shall be included in prices entered on Bid Sheets. No overtime will be paid unless same has been approved in advance by the Real Estate Division.

77. PRICE ADJUSTMENT

See Appendix "A" Scope of Work Article I for Price Adjustment.

78. BID PRICE EVALUATION

Bid price will be evaluated strictly on Item 1 only. Prices on Items 2 and 3 will not be considered in bid price evaluation. Bid discount will be applied to eligible LBE. (See General Conditions 34 through 35.)

Purchasing will attempt to evaluate this contract proposal within thirty (30) days after receipt of bid(s). If Purchasing requires additional evaluation time, all bidders will be notified in writing of the new expected award date.

79. AWARD

- A. Award will be made to the lowest responsive and responsible bidder as noted on the Bid Sheet, and Article 78.
- B. In determining the award, Purchasing will take into consideration, but will not be limited to:
 - 1. Price (evaluated)
 - 2. Satisfactory review of bidder's qualifications
 - 3. Any other factors deemed pertinent

80. AWARDED SERVICES

- a. If, during the term of the contract, a contract service is determined to be unacceptable for a particular department, and such is documented by Purchasing, it is understood and agreed that the service will be canceled and removed from the contract without penalty to City. City's sole obligation to Contractor is payment for services performed prior to the cancellation date. City shall give Contractor ten days notice prior to any cancellation. City will contract for the required service from any source and in the manner as determined by Purchasing.

**Shuttle Van Service – 1650 Mission Street
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SPECIAL CONDITIONS (Continued)

- b. Contractor must notify Purchasing by certified mail, 30 days in advance of any changes in the services required in the contract. Any changes made without the approval of Purchasing will constitute default and result in City invoking General Condition 12.

81. ADDITIONAL SERVICES

- a. If, in the satisfaction of governmental interests, it is necessary to purchase additional services from Contractor, additional services may be added to this contract by mutual agreement of the parties.
- b. Aggregated cost of all services added to the contract during the contract term shall not exceed 20% of the total estimated value (cost) of the original contract.
- c. All requests to add additional services to the contract must be submitted by City departments in writing to the Office of Contract Administration – Purchasing (Purchasing). All requests must include complete scope of work, estimated quantities for the remainder of the contract period and a price quotation provided by Contractor, for each service.
- d. All additional services added to the contract shall be approved through issuance of a contract modification, executed and signed by Purchasing and Contractor.
- e. In the event the aggregated cost of the contract increases by more than 20% of the total estimated value of the original contract, or the increase totals more than \$50,000, the amount over 20%, or \$50,000, shall be bid in accordance with Standard Purchasing Procedures. The resulting bid award shall be added to the contract through a contract modification (same Contractor) or the issuance of a new contract (new Contractor) and include Contractor's name and information, complete item description, delivery information and pricing information.
- f. The contract term for the additional services added to the contract after the initial award shall be the remaining term of the existing contract and any extension thereof.

82. DISPLACED WORKER PROTECTION ACT

If contract is for more than \$25,000 and for at least a 3-month term, employees must work at least 15 hours per week.

Contractors are hereby notified of the requirements to comply with the Displaced Worker Protection Act (DWPA, Article 33C of the San Francisco Police Code). The DWPA applies to any contract (services contract) to be performed with the City and County of San Francisco (City), entered into between City and any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association or other entity with 25 or more employees. Employee for the purpose of the DWPA includes any service employee of the contractor or its subcontractor(s) who works at least 15 hours per week and whose primary place of employment is in the City but does not include: 1) managerial, supervisory or confidential employees as defined

**Shuttle Van Service – 1650 Mission Street
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SPECIAL CONDITIONS (Continued)

by the Fair Labor Standards Act; or 2) employees who do not possess or have not maintained a required occupational license.

For contracts subject to the DWPA, the contractor is under the following obligations:

Transition Employment Period

- A. Where the contracting City department has given notice that a service contract has been terminated or ended, or where a service contractor has given notice of such termination, upon giving or receiving such notice, as the case may be, the terminated or ending contractor shall, within ten days thereafter, provide to the successor contractor, the name, date of hire, and employment occupation classification of each employee employed at the site or sites covered by the prospective contractor at the time of contract termination (employment information). This provision shall also apply to the subcontractors of the terminated contractor.

If the terminated contractor does not know the identity of the successor contractor, if any, by the time of the contract termination notice, the terminated contractor shall obtain such information from the contracting City department at such time. Where a subcontractor of a service contractor has been terminated prior to the termination of the service contract, the terminated subcontractor shall be deemed a terminated contractor for purposes of the DWPA.

- B. A successor contractor shall retain, for a 90-day transition employment period, employees who have been employed by the terminated contractor or its subcontractors, if any, for the preceding eight months or longer at the site or sites covered by the contract.
- C. If at any time a successor contractor determines that fewer employees are required to perform the new service contract than were required by the terminated contractor (and subcontractors, if any), the successor contractor shall retain employees by seniority within job classifications.
- D. During such 90-day period, the successor contractor (or subcontractor, where applicable) shall maintain a preferential hiring list of eligible covered employees not retained by the successor contractor (or subcontractor) from which the successor contractor (or subcontractor) shall hire additional employees.
- E. Except as provided in subsection C of this section, during such 90-day period, the successor contractor (or subcontractor, where applicable) shall not discharge without cause an employee retained pursuant to the DWPA. Cause for this purpose shall include, but not be limited to, the employee's conduct while in the employ of the terminated contractor or subcontractor that contributed to any decision to terminate the contract or subcontract for fraud or poor performance, excluding permissible union-related activity.
- F. At the end of such 90-day period, a successor public sector contractor (or subcontractor, where applicable) shall perform a written performance evaluation for each employee retained pursuant to the DWPA. If the employee's performance during such 90-day period is satisfactory, the successor public sector contractor (or subcontractor) shall offer the employee

**Shuttle Van Service – 1650 Mission Street
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SPECIAL CONDITIONS (Continued)

continued employment under the terms and conditions established by the public sector successor contractor (or subcontractor) or as required by law.

- G. Contractors must include a provision in all subcontracts requiring subcontractors to comply with the obligations imposed by the DWPA.

Enforcement

- A. An employee who has been discharged in violation of the DWPA by a successor contractor or its subcontractor may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, against the successor contractor and, where applicable, its subcontractor, and may be awarded back pay, including the value of benefits, for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:
1. The average regular rate of pay received by the employee during the last three years of the employee's employment in the same occupation classification; or
 2. The final regular rate received by the employee.
- B. If the employee is the prevailing party in any such legal action, the Court shall award reasonable attorney's fees and costs as part of the costs recoverable.

Successor's Prior Employees

A successor contractor or subcontractor may replace an employee retained pursuant to the DWPA with a person employed by the contractor or subcontractor continuously for eight months prior to the commencement of the successor service contract or subcontract in a capacity similar to that proposed under the successor service contract or subcontract, but only if the existing employee of the successor contractor or subcontractor would otherwise be laid off work as a result of the award of the successor contract.

83. LEFT BLANK BY THE AGREEMENT OF BOTH PARTIES

84. ORDERING

- a. Services to be furnished under this Contract shall be ordered by issuance of a Direct Purchase Order through a release from the appropriate Citywide Blanket Purchase Order by City departments during the effective period of the contract.
- b. All invoices for payments shall show the Direct Purchase Order Release Number against the Citywide Blanket Purchase Order assigned by Purchaser to include the complete description of services and contract pricing.

**Shuttle Van Service – 1650 Mission Street
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SPECIAL CONDITIONS (Continued)

85. BILLING

All invoices must show the Contract Number, Citywide Blanket Purchase Order Number, contract item number, complete description of services performed, contract payment terms and contract price. City, on services covered by this contract, will honor no minimum service order charges. Contractor must accept and process, without any extra charges, orders for any service as requested by City. Failure to submit invoices with all the required information, or invoices that contain inaccurate information will not be processed for payment. All discount periods will begin only when City receives a properly completed invoice containing all the required information. Note: Invoices must be submitted in triplicate.

86. PAYMENT

In accordance with the prices quoted in the successful bid and subject to any applicable discount provision contained in said bid, City agrees to pay for all services at said rate. City shall make payments to Contractor in arrears, for services actually performed, throughout the term of the contract. Invoices submitted by Contractor must be in a form acceptable to Purchasing and Controller. All amounts paid by City to Contractor shall be subject to audit by City.

87. NOT USED BY THE AGREEMENT OF BOTH PARTIES

88. CHANGE OF CONTRACTOR

Should this contract necessitate a change in contractor, both contractors shall work to a systematic change in collaboration with each City department as required. The newly awarded contractor shall assume the responsibility to supply all services under this Contract only after receiving confirmation from City that they have provided all Bond and Insurance requirements. Both contractors shall enter into an Assignment and Assumption Agreement.

89. NOT USED BY THE AGREEMENT OF BOTH PARTIES

90. ENTIRE AGREEMENT

This contract sets forth the entire Contract between the parties, and supersedes all other oral or written provisions.

91. BID SUBMITTAL INSTRUCTIONS

Bids **must** be received at the Office of Contract Administration – Purchasing, City Hall, Room 430, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102, by the time and date indicated on Page 1 of the Contract Proposal. Bids transmitted by FAX or any type of electronic mail will not be accepted.

Bidders are to return the required documents, which include:

**Shuttle Van Service – 1650 Mission Street
For the Term September 1, 2008 through August 31, 2011**

SPECIAL CONDITIONS (Continued)

- A. Page 1 of the Contract Proposal completed and signed
- B. Bid Sheet
- C. **All** questionnaires and forms, completed and signed (See “Standard Bid Forms, P-225” attached to this Contract Proposal.)
- D. Bid Security
- E. HRC forms per Article 37B.
- F. Bidders shall mail bid in an envelope clearly marked with the bid number and due date in the lower left corner.

Bids must be submitted on the enclosed Bid Sheet(s). Prices should be clearly written by typewriter or pen and ink.

To receive full consideration, your bid should be unqualified and unconditional.

For more information, call:

Mike Ward
Purchasing
(415) 554-9870

End Special Conditions

**SHUTTLE VAN SERVICE – 1650 MISSION STREET
For the Term September 1, 2008 through August 31, 2011**

REQUIRED INFORMATION OF ALL BIDDERS

BID QUESTIONNAIRE

1. Are you bidding as specified? Yes _____ No _____
2. Have you included the required Bid Security with your bid? Yes _____ No _____
(See Special Condition 71.)
3. California Business License Number: _____
Expiration Date: _____
4. Are you claiming an LBE preference on this bid per provisions of Chapter 14B? Yes _____ No _____
If Yes, see General Condition 34 and check appropriate response:
_____ We are currently certified. HRC has issued us Certification No. _____ .
_____ We submitted HRC LBE Certification Application to the HRC on _____ .
_____ (date)
_____ We are attaching HRC LBE Certification Application to this bid.
5. Have you completed and returned the required Declarations? Yes _____ No _____
(See attached "Standard Bid Forms, P-225".)
6. Have you submitted with your bid all the required documents? Yes _____ No _____
(See Special Condition 91.)
- A. Page 1 of the Contract Proposal Yes _____ No _____
- B. Bid Sheet(s) for services being bid Yes _____ No _____
- C. All questionnaires and forms Yes _____ No _____
- D. Bid Security Yes _____ No _____
- E. HRC forms per Article 37B Yes _____ No _____
- F. Bidders shall mail bid in envelope clearly marked with the bid number and due date in the lower left corner Yes _____ No _____

**SHUTTLE VAN SERVICE – 1650 MISSION STREET
For the Term September 1, 2008 through August 31, 2011**

REQUIRED INFORMATION OF ALL BIDDERS

COMPANY INFORMATION

Name of Firm: _____
Address: _____
Phone No.: _____ Fax No.: _____
Toll-Free Phone No.: _____
E-mail Address: _____
Contact: _____ Title: _____
(Print or Type)
Signature: _____ Date: _____
Federal I.D. Number: _____
Payment Terms: _____ % 30 days, Net 31
Person preparing bid: _____
Local Representative: _____
(if other than person preparing bid)
Address: _____
Phone No.: _____ Fax No.: _____

(1) Where is the location of your facility from which you intend to store the shuttle vans?

Address: _____

(2) What are your daily business hours of operation, Monday through Friday?
_____ a.m. to _____ p.m.

(3) What is the telephone and Fax numbers for placing orders?

Telephone: () _____
Toll-Free Phone No.: () _____
Fax Number: () _____

(4) What is your 24-hour emergency telephone number, per General Condition 49?
Telephone: _____

**SHUTTLE VAN SERVICE – 1650 MISSION STREET
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REQUIRED INFORMATION OF ALL BIDDERS

REFERENCES

All bidders, including current Contractor, must provide references of at least three organizations of the approximate size and volume of comparable businesses now being serviced by bidder. Additional references may be requested.

- | | | | |
|----|--|-------------------------|---------------------------|
| 1. | <u>Name of Company</u>

<u>Address</u>

Number of Years Providing Service _____ | <u>Contact</u>
_____ | <u>Phone No.</u>
_____ |
| 2. | <u>Name of Company</u>

<u>Address</u>

Number of Years Providing Service _____ | <u>Contact</u>
_____ | <u>Phone No.</u>
_____ |
| 3. | <u>Name of Company</u>

<u>Address</u>

Number of Years Providing Service _____ | <u>Contact</u>
_____ | <u>Phone No.</u>
_____ |

Successful bidder may be required to submit a **letter of reference** from each reference listed within five days of notification. Failure to do so may result in rejection of bid.

End Required Information of All Bidders

**Shuttle Van Service – 1650 Mission Street
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APPENDIX A

**Shuttle Van Service for 1650 Mission Street
Scope of Service**

A. Minimum Qualifications

1. Three (3) years continuous experience as an operator of a commercial shuttle van service within the San Francisco Bay Area.
2. Possession of a license issued by the California Public Utilities Commission as a Passenger Stage Corporation.
3. All van drivers must possess a valid California Commercial Driver's License with a passenger vehicle endorsement.

Any bid that does not demonstrate that the bidder meets these minimum requirements by the deadline for submittal of bids will be considered non-responsive and will not be eligible for award of the contract.

B. Term

The contract shall have an original term of three (3) years. In addition, the City shall have two (2) options to extend the term for a period of one (1) year each, which the City may exercise in its sole, absolute discretion. The total term may not exceed five (5) years without the approval of the Board of Supervisors.

C. Equipment

Contractor shall provide, at minimum, a 21-seat minibus with driver. The equipment shall be clean and sanitary and shall be maintained in good, safe working order at all times and under all conditions.

Driver shall carry a cell phone provided by the Contractor while performing his/her duties under the contract.

D. Services

Shuttle service for the City tenant occupants of 1650 Mission Street is to be provided Monday through Friday on the following schedule, except for the City's legal holidays as listed below in Section E.

Hours of operation:

- A.M. Shift – 0610H to 0845H (2 hours, 35 minutes per day)
- P.M. Shift – 1530H to 1815H (2 hours, 45 minutes per day)

**Shuttle Van Service – 1650 Mission Street
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APPENDIX A

Daily Schedule:

Leave 1st & Mission	Leave Civic Center BART	Arrive 1650 Mission
	6:18 a.m.	6:23 a.m.
6:33 a.m.		6:43 a.m.
	6:53 a.m.	6:58 a.m.
7:13 a.m.	7:23 a.m.	7:28 a.m.
7:43 a.m.	7:53 a.m.	7:58 a.m.
8:13 a.m.	8:23 a.m.	8:28 a.m.
Leave 1650 Mission	Arrive Civic Center BART	Arrive 1st & Mission
3:40 p.m.	3:45 p.m.	3:55 p.m.
4:10 p.m.	4:15 p.m.	
4:25 p.m.	4:30 p.m.	
4:45 p.m.	4:50 p.m.	5:00 p.m.
5:15 p.m.	5:25 p.m.	5:35 p.m.
6:05 p.m.	6:10 p.m.	

Contractor shall only employ drivers who have related experience, are fully licensed and qualified, and who are safe, neat, clean and courteous drivers. Contractor shall supply copies of California Department of Motor Vehicles driver records available through the Employer Pull Notice Program for any personnel utilized as drivers for this contract.

Drivers shall wear a uniform or other insignia, such as a nametag or sewn-on patch, identifying the Contractor. The vehicle shall have a sign, lettering, or logo identifying the Contractor.

E. Holiday Schedule

City offices are closed for business on the following holidays.

New Years Day	January 1
Martin Luther King Day	Third Monday in January
President’s Day	Third Monday in February
Memorial Day	Fourth Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veterans Day	Second Monday in November
Thanksgiving Day and Day after	Fourth Thursday and Friday in November
Christmas Day	December 25

**Shuttle Van Service – 1650 Mission Street
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APPENDIX A

F. Timeliness and Excusable Delay

Except for delays caused by fire, natural disaster, governmental authorities or road construction (excusable delays), Contractor shall promptly pick up and deliver City's tenants in accordance with the schedule above. If Contractor is late by 20 minutes for any scheduled run or fails to complete the round trip within 60 minutes and if the delay is not an excusable delay, Contractor shall reimburse riders affected by the delay in the form of reimbursement for documented taxi or bus fare or other transportation costs. City shall provide Contractor with notice of such losses within 30 days from the date of the occurrence and shall also provide proper proof thereof. In the event of mechanical breakdown, Contractor may provide a different piece of equipment in order to satisfy its obligations.

G. Inexcusable Delay

Contractor shall not be entitled to payment for inexcusable delay, which is defined as any delay not covered in Section E above whereby Contractor fails to meet its schedule for 60 consecutive minutes.

H. Insurance

Pursuant to General Order #101-E issued by the Public Utilities Commission of the State of California, Contractor shall procure and maintain throughout the term of the contract commercial general liability insurance and automobile liability insurance with an insurance carrier licensed in the State of California, each in amount of not less than five million dollars (\$5,000,000) for each occurrence.

Contractor shall procure and maintain throughout the term of the contract, Workers' Compensation insurance, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury or illness.

I. Price Adjustments

A general price increase in the first three years will be limited only changes in the Minimum Compensation Ordinance (MCO) labor rate. For any subsequent extensions, the prices may be increased or decreased commencing on or after 2011 and each calendar year thereafter. Such adjustments shall be a percentage increase or decrease of the prices for the previous twelve (12) month period. Such adjustments shall commence 30 days after notification and submission of satisfactory documentation and agreement of the Purchaser. It shall be Contractor's responsibility to request and to provide documentation satisfactory to the Purchaser to support any increases. Any price increase shall be limited to a maximum of 5% for each 12-month period unless approved by the Purchaser. The new adjusted price should include the applicable MCO labor rate and applicable overhead rate increases.

Commencing on the date of the award of the contract, a price increase or decrease related to the cost of motor fuel shall be granted no more often than once in a six month period and every six (6) months thereafter for the term of this Agreement, including any extensions, based on changes to the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI-U) San Francisco, Oakland, San Jose Area Motor Fuel Index. Request for a Fuel Cost Adjustment must be made in writing. The index can be located at www.data.bls.gov/cpi.

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For purposes of this price adjustment, the City will assume the cost of fuel to be 10% of the total bid price. The City is establishing this as a constant and will use this factor for all bidders. The percent change in the index will then be applied to 10% of the bid price.

EXAMPLE: For illustration only

CPI for current period	303.504
Less CPI for previous period	258.004
Equals index point change	45.500
Divided by previous period CPI	258.004
Equals	0.176
Result multiplied by 100	0.176 x 100
Equals percent change	17.6%
Current monthly contract price	\$6,000.00
10% of Contract price	\$600.00
Allowable increase 17.6% x 600	\$105.60
Adjusted price	\$6,105.60

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APPENDIX B

**CALCULATION OF CHARGES
(BID SHEET)**

- 1) Monthly Fee (Total Charges for all services
specified in the Scope of Service
stated in Appendix A) \$ _____ x 12 = \$ _____
- *2) Overtime
Hourly Rate \$ _____
- *3) Additional Service
Hourly Rate \$ _____

*Items 2 and 3 will not be considered in the Bid Evaluation.

Bidder Name: _____

Payment Terms: _____ % 30 days, Net 31

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APPENDIX C

Required HRC forms to be submitted with your Bid (attached):

- Form 3 HRC Non-Discrimination
- Form 5 HRC Employment Form Affidavit



FORM 3: HRC NON-DISCRIMINATION AFFIDAVIT

1. I will ensure that my firm complies fully with the provisions of Chapter 14B of the San Francisco Administrative Code and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
2. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the Human Rights Commission shall be payable to the City and County of San Francisco upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on contract with the City and County of San Francisco.
3. I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

Signature of Owner/Authorized Representative: _____

Owner/Authorized Representative (Print) _____

Name of Firm (Print) _____

Title and Position _____

Address, City and Zip _____

Federal Employer Identification Number (FEIN): _____

Date: _____



FORM 5: HRC EMPLOYMENT FORM

This form is submitted with the proposal.

1. Indicate personnel designated to work on this project for the entire project team (prime contractor, subcontractors, and vendors).

The employees listed should include all those listed in other sections of the proposal.

NAME OF FIRM	NAME OF EMPLOYEE	PROJECT ROLE	RACE	SEX

Indicate the number of disadvantaged individuals that will be hired as on -the-job-trainees by the entire project team.

a. Estimated Project Fee: \$ _____

b. HRC on-the-job training goal: _____

c. Number of on-the-job-trainees that will be hired by the project team _____

d. If Less than HRC goal, explain: _____

e. Length of training: _____ If less than 12 months, explain _____

Sign below.

Owner/Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone

Date

Standard Bid Forms

Before the City can award any contract to a vendor, that vendor must file four standard City forms (items 1-3 on the chart). Because many vendors have already completed these forms, and because some informational forms are rarely revised, the City has not included them in the bid package. Instead, this document describes the forms, where to find them on the Internet (see bottom of page 2), and where to file them. If a vendor cannot get the documents off the Internet, the vendor should call 415.554.6248 or e-mail to Purchasing (purchasing@sfgov.org) and Purchasing can fax, mail or e-mail them to vendor.

If vendor has already filled out items 1-3 (See note under item 3.) on the chart, the vendor should not do so again unless the vendor's answers have changed. To find out which of those forms have been submitted, the vendor should call the Vendor File Support at 415.554.6702.

If a vendor would like to apply to be certified as a local business enterprise, it must submit item 4. To find out about item 4 and certification, the vendor should call Human Rights Commission (HRC) at 415.252.2500.

Item	Form Name and Internet Location	Form Number	Description	Return the Form to; For more information
1.	Request for Taxpayer Identification Number and Certification http://www.sfgov.org/oca/purchasing/forms.htm	W-9	The City needs the vendor's taxpayer ID number on this form. If a vendor has already done business with the City, this form is not necessary.	Office of Contract Admin. City Hall, Room 430 San Francisco, CA 94102 415.554.6743
2.	Business Tax Declaration http://www.sfgov.org/oca/purchasing/forms.htm	P-25	All vendors must sign this form to determine if they must register with the Tax Collector, even if not located in San Francisco. All businesses that qualify as "conducting business in San Francisco" must register with the Tax Collector.	Office of Contract Admin. City Hall, Room 430 San Francisco, CA 94102 415.554.6718
3.	S.F. Administration Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits http://www.sfgov.org/oca/purchasing/forms.htm -- in Vendor Profile Application	HRC-12B-101	Vendors tell the City if their personnel policies meet the City's requirements for nondiscrimination against protected classes of people, and in the provision of benefits between employees with spouses and employees with domestic partners. Form submission is not complete if it does not include the additional documentation asked for on the form. Other forms may be required depending on the vendor's answers on this form. (Note: Contract-to-Contract Compliance status vendor must fill out this form each time contracting with the City.)	Human Rights Comm. 25 Van Ness, Suite 800 San Francisco, CA 94102 415.252.2500

Item	Form Name and Internet Location	Form Number	Description	Return the Form to; For more information
4.	HRC LBE Certification Application http://www.sfgov.org/oca/purchasing/forms.htm -- in Vendor Profile Application		Local businesses complete this form to be certified by HRC LBEs. Certified LBEs receive a bid discount pursuant to Chapter 14B when bidding on City contracts. To receive the bid discount, you must already be certified by HRC before the bid opening.	Human Rights Comm. 25 Van Ness, Suite 800 San Francisco, CA 94102 415.252.2500
5.	Insurance Requirements http://www.sfgov.org/oca/purchasing/add-forms.htm	P-607	Contains general information about insurance requirements applicable to some City bids. Shows the types of insurance and coverage amounts the City may require of the successful bidder, but check the bid package for specific requirements.	It may be required from the successful bidder.
6.	Payment (Labor and Material) Bond http://www.sfgov.org/oca/purchasing/add-forms.htm		If the bid package requires a Payment (Labor and Material) Bond from the awarded vendor, discuss this form with your insurance carrier.	It may be required from the successful bidder.
7.	Performance Bond http://www.sfgov.org/oca/purchasing/add-forms.htm		If the bid package requires a Performance Bond from the awarded vendor, discuss this form with your insurance carrier.	It may be required from the successful bidder.

Where the forms are on the Internet

Office of Contract Administration: Homepage: <http://sfgov.org/oca/>
Purchasing forms: <http://sfgov.org/oca/purchasing/forms.htm>
Human Rights Commission: Homepage: www.sfhrc.org
(Search for HRC forms under this website.)