

File No. 1700/0

Committee Item No. 5  
Board Item No. 8

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date February 2, 2017

Board of Supervisors Meeting

Date February 14, 2017

#### Cmte Board

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|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER (Use back side if additional space is needed)

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Completed by: Linda Wong Date January 27, 2017  
Completed by: Linda Wong Date February 6, 2017

1 [Contract Amendment – AdvanTel Networks - \$15,000,000]

2 **Resolution authorizing the Office of Contract Administration to enter into the Fourth**  
3 **Amendment of the contract agreement between the City and County of San Francisco**  
4 **and AdvanTel Networks, to increase the contract limit from \$9,900,000 to \$15,000,000**  
5 **for the period of October 13, 2011, through September 30, 2018.**

6  
7 WHEREAS, The Office of Contract Administration, by competitive bidding, entered  
8 into a Term Contract with AdvanTel Networks for the supply of Avaya phone equipment and  
9 related services; and

10 WHEREAS, The original contract with AdvanTel Networks, Inc. dated October 13,  
11 2011, had a term of three years through September 30, 2014, with options to extend the  
12 term through mutual agreement between the contracting parties; and

13 WHEREAS, The Purchaser approved the First Amendment on September 23, 2014  
14 to extend the contract term by one year; and

15 WHEREAS, The Purchaser approved the Second Amendment on August 24, 2015 to  
16 extend the contract term by one year; and

17 WHEREAS, The Purchaser approved the Third Amendment on September 28, 2016  
18 to extend the contract term by one year; and

19 WHEREAS, The Office of Contract Administration estimates that the money  
20 projected to be spent with AdvanTel Networks could reach the contract's limit in the  
21 reasonably near future; and

22 WHEREAS, Charter, Section 9.118(b) "Contract and Lease Limitations," requires the  
23 Board of Supervisors to approve any contract estimated to exceed \$10,000,000 in  
24 expenditures or amendments exceeding \$500,000 to such contracts; now, therefore, be it  
25

1 RESOLVED, That the Board of Supervisors authorizes the Purchaser and the Director  
2 of the Office of Contract Administration to enter into the Fourth Amendment to the contract  
3 with AdvanTel Networks in substantially the form attached to increase the contract limit from  
4 \$9,900,000 to \$15,000,000; and, be it

5 RESOLVED, That the contract with AdvanTel Networks will not be extended beyond  
6 September 30, 2018; and, be it

7 RESOLVED, That the OCA will issue a competitive bid to establish a new contract for  
8 phone equipment and related services before September 30, 2018; and, be it

9 RESOLVED, That any future term contracts entered into by OCA for phone equipment  
10 and related services must specify the original term, the number of extension options, and the  
11 term of each extension option; and, be it

12 FURTHER RESOLVED, That within thirty (30) days of the Fourth Amendment being  
13 fully executed by all parties, the Office of Contract Administration shall provide the final Fourth  
14 Amendment to the Clerk of the Board for inclusion into the official file.

<p><b>Item 5</b> <b>File 17-0010</b></p>	<p><b>Department:</b> Office of Contract Administration (OCA)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p>	
<ul style="list-style-type: none"> <li>• The proposed resolution would authorize the Office of Contract Administration (OCA) to enter into the fourth amendment to the contract between the City and AdvanTel Networks to (i) increase the contract not-to-exceed amount by \$5,100,000 from \$9,900,000 to \$15,000,000, and (ii) extend the contract by one year from the original end date of September 30, 2017 to a new end date of September 30, 2018, for a total contract term from October 13, 2011 through September 30, 2018.</li> </ul>	
<p style="text-align: center;"><b>Key Points</b></p>	
<ul style="list-style-type: none"> <li>• In October 2011, the OCA entered into a contract with AdvanTel Networks based on a competitive, low-bid process for the supply of Avaya phone equipment and related services. The contract was for \$9,900,000, which was less than the \$10 million threshold established by City Charter Section 9.118(b) requiring Board of Supervisors approval.</li> <li>• The equipment and software purchased from AdvanTel Networks support the City's telephone systems and call center operations.</li> </ul>	
<p style="text-align: center;"><b>Fiscal Impact</b></p>	
<ul style="list-style-type: none"> <li>• The increase in the contract not-to-exceed amount of \$5,100,000, from \$9,900,000 to \$15,000,000 is based on OCA's survey of City departments' expected expenditures in FY 2017-18. From October 2011 through December 2016, City departments expended or encumbered approximately 93 percent or \$9,202,862 of the total contract's not-to-exceed amount of \$9,900,000.</li> </ul>	
<p style="text-align: center;"><b>Policy Consideration</b></p>	
<ul style="list-style-type: none"> <li>• The AdvanTel Networks contract had a term of three years from September 2011 through September 2014 with options to extend the term for up to one year, but did not specify the number of times that the contract could be extended. The proposed resolution would extend the contract through September 2018, a term of seven years. OCA's policy is to rebid any contract beyond seven years. Therefore, OCA plans on rebidding the AdvanTel Networks contract and awarding a new contract by September 30, 2018.</li> </ul>	
<p style="text-align: center;"><b>Recommendations</b></p>	
<ul style="list-style-type: none"> <li>• Amend the proposed resolution to specify that (1) the contract between OCA and AdvanTel Networks will end by September 30, 2018, (2) OCA will issue a competitive bid to select a provider by September 30, 2018 for a new contract for phone equipment and related services, and (3) any future contract entered into by OCA for phone equipment and related services must specify the original term, the number of extension options, and the term of each extension option.</li> <li>• Approve the proposed resolution as amended.</li> </ul>	

**MANDATE STATEMENT**

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

**BACKGROUND**

In October 2011, the Office of Contract Administration (OCA) entered into a contract with AdvanTel Networks based on a competitive, low-bid<sup>1</sup> process for the supply of Avaya phone equipment and related services. The contract was for \$9,900,000, which was less than the \$10 million threshold established by City Charter Section 9.118(b) requiring Board of Supervisors approval. The contract had a term of three years through September 2014 with options to extend the term for up to one year through mutual agreement between the contracting parties, but did not specify the number of times that the contract could be extended (see Policy Consideration section below). OCA has modified the contract three times to extend the contract term through September 30, 2017 with no increase in the contract not-to-exceed amount.

Avaya is a multinational company that specializes in internet, telephone and wireless data communications. The equipment and software purchased from AdvanTel Networks support the City's telephone systems and call center operations.

**DETAILS OF PROPOSED LEGISLATION**

The proposed resolution would authorize the OCA to enter into the fourth amendment to the contract between the City and AdvanTel Networks to (i) increase the contract not-to-exceed amount by \$5,100,000 from \$9,900,000 to \$15,000,000, and (ii) extend the contract by one year from the original end date of September 30, 2017 to a new end date of September 30, 2018, for a total contract term from October 13, 2011 through September 30, 2018.

**FISCAL IMPACT**

The increase in the contract not-to-exceed amount of \$5,100,000, from \$9,900,000 to \$15,000,000 is based on OCA's survey of City departments' expected expenditures in FY 2017-18, as shown in Table 1 below.

<sup>1</sup> According to OCA, AdvanTel Networks won the bid because they offered the lowest pricing for Avaya equipment and commoditized services relative to the other bidders. A low-bid solicitation is structured differently from a Request for Proposals (RFP) process because no scoring criteria is used other than price, and a selection panel is not necessary. A pre-bid conference was held to answer any questions from interested parties.

**Table 1. Projected Department Expenditures in FY 2017-18 for AdvanTel Networks Contract**

<b>Department</b>	<b>Projected Expenditures</b>
Airport	\$2,250,000
Public Utilities Commission	850,000
Human Services Agency	715,000
Department of Public Health	250,000
Child Support Services	175,000
Department of Emergency Management	170,000
Department of Technology	80,000
San Francisco 311	50,000
Department of Public Works	50,000
Health Service System	50,000
Retirement	50,000
San Francisco Police Department	20,000
Mayor's Office	15,000
Municipal Transportation Agency	15,000
City Planning	10,000
Department of Building Inspection	10,000
Human Rights Commission	10,000
Office of Citizen Complaints	10,000
Office of Emergency Services	10,000
Public Defender's Office	10,000
San Francisco Rent Board	10,000
San Francisco Fire Department	10,000
Department on the Status of Women	10,000
City Attorney	5,000
District Attorney	5,000
San Francisco Public Library	5,000
<b>Subtotal</b>	<b>4,845,000</b>
Contingency	255,000
<b>Total Projected Expenditures</b>	<b>\$5,100,000</b>

From October 2011 through December 2016, City departments expended or encumbered approximately 93 percent or \$9,202,862 of the total contract's not-to-exceed amount of \$9,900,000, as shown in Table 2 below. OCA projects expenditures of \$5,797,138 over the remaining 21 months of the contract, resulting in total contract expenditures of approximately \$15,000,000, as shown in Table 2 below.

**Table 2. AdvanTel Networks Contract Actual Expenditures and Encumbrances**  
(October 2011 through September 2018)

<b>Contract</b>	<b>Actual Contract Expenditures</b> (October 2011 through December 2016)	<b>Projected Expenditures</b> (January 2017 through September 2018)	<b>Total Actual and Projected Expenditures</b> (October 2011 through September 2018)
AdvanTel Networks	\$9,202,862	\$5,797,138	\$15,000,000

Source: Office of Contract Administration (OCA)

According to OCA, the requested increase of \$5,797,138 in the not-to-exceed amount of the contract is projected to be sufficient for estimated contract expenditures through the end of the contract term in September 2018. All expenditures under the AdvanTel Networks contract are subject to appropriation approval by the Board of Supervisors in the City's annual budgets.

**POLICY CONSIDERATION**

**Contract Extension**

As previously stated, the AdvanTel Networks contract had a term of three years through September 2014 with options to extend the term for up to one year through mutual agreement between the contracting parties, but did not specify the number of times that the contract could be extended. OCA has extended the contract three times through September 2017, and the proposed resolution would extend the contract for the fourth time through September 2018, for a total contract term of seven years from September 2011 to September 2018. According to Ms. Jaci Fong, OCA Director, OCA's policy is to rebid any contract beyond seven years. Therefore, OCA plans on rebidding the AdvanTel Networks contract and awarding a new contract by September 30, 2018.

However, given that the existing contract between OCA and AdvanTel Networks does not specify the number of times that the AdvanTel contract could be extended, the Budget and Legislative Analyst recommends that the proposed resolution be amended to specify that (1) the contract between OCA and AdvanTel Networks will end by September 30, 2018, (2) OCA will issue a competitive bid to select a provider by September 30, 2018 for a new contract for phone equipment and related services, and (3) any future contract entered into by OCA for phone equipment and related services must specify the original term, the number of extension options, and the term of each extension option.

**RECOMMENDATIONS**

1. Amend the proposed resolution to specify that (1) the contract between OCA and AdvanTel Networks will end by September 30, 2018, (2) OCA will issue a competitive bid to select a provider by September 30, 2018 for a new contract for phone equipment and related services, and (3) any future contract entered into by OCA for phone equipment and related services must specify the original term, the number of extension options; and the term of each extension option.
2. Approve the proposed resolution as amended.



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



## Contract Modification 4

Avaya Equipment, Materials, Supplies and Ancillary Services

Dan Ferguson, President and CEO  
 AdvanTel Networks  
 2222 Trade Zone Blvd.  
 San Jose, CA 95131  
 dferguson@advantel.com

Date \_\_\_\_\_, 2017  
 Buyer Name: Shawn Peters  
 Term contract: 77901  
 City Blanket No. BPSF00003814  
 Type: Indefinite quantity  
 Not-to-exceed amount: \$9,900,000.00

The history of this contract and its modifications is as follows:

Modification	Start date	End date	Amount	Other changes
Original contract	10-13-11	09-30-14	\$9,900,000.00	
1	10-01-14	09-30-15	No change	Contract Extension Update contract conditions
2	10-01-15	09-30-16	No change	Contract Extension Update contract conditions
3	10-01-16	09-30-17	No change	Contract Extension Update contract conditions

This Modification 4 changes the contract as follows:

- Not-to-exceed amount is increased to \$15,000,000. Contract prices remain the same.
- Contract is extended from October 1, 2017 through to September 30, 2018.
- Contract conditions are updated as stated on attached Attachment A.

All other terms and conditions remain the same.

Approved by the City:

\_\_\_\_\_  
 Jaci Fong, Director of OCA and Purchaser

\_\_\_\_\_  
 Date

Approved by Contractor:

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

Print name and title:

\_\_\_\_\_  
 Mark Ritchie, President

**51. Reports by Contractor**

Each year, no later than February 15; Contractor shall submit a soft copy report of the total items ordered, by month, under this contract during the preceding calendar year (January 1 – December 31). The report must be in a format acceptable to City and must list by department or location the following: (1) all items awarded under this contract; and (2) total quantity and dollar value of each item ordered, including items for which there were no orders. Contractor must also furnish a separate similar report for the total of all items ordered by City which are not part of this Contract, and any usage reports required prior to the extension of a Contract or Contract Modification. Emailed reports must not be larger than **10MB**.

Contractor shall email reports to:

[Shawn.peeters@sfgov.org](mailto:Shawn.peeters@sfgov.org)

Any report files larger than **10MB** must be submitted in electronic format on CD-ROM or USB drive and mailed to the address shown below with the term contract number and "Annual Vendor Reporting" clearly marked on the envelope/packaging.

Contractor shall mail the reports to:

Shawn Peeters, Sr. Purchaser  
Re: Term Contract No. **77901**  
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

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



## Contract Modification 3

Avaya Equipment, Materials, Supplies and Ancillary Services

Dan Ferguson, President and CEO  
AdvanTel Networks  
2222 Trade Zone Blvd.  
San Jose, CA 95131  
dferguson@advantel.com

Date: September 27, 2016  
Buyer Name: Greg Pustelnik  
Term contract: 77901  
City Blanket No. BPSF00003814  
Type: Indefinite quantity  
Not-to-exceed amount: \$9,900,000.00

The history of this contract and its modifications is as follows:


Modification	Start date	End date	Amount	Other changes
Original contract	10-13-11	09-30-14	\$9,900,000.00	
1	10-01-14	09-30-15	No change	Contract Extension Update contract conditions
2	10-01-15	09-30-16	No change	Contract Extension Update contract conditions

This Modification 3 changes the contract as follows:

- Contract is extended from October 1, 2016 through September 30, 2017. Contract prices remain the same.
- Update contract conditions as stated on attached Attachment A.

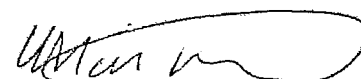
All other terms and conditions remain the same.

Approved by the City:

  
\_\_\_\_\_  
Jaci Fong, Director of OCA and Purchaser

9/28/16  
Date

Approved by Contractor:

  
\_\_\_\_\_  
Signature

9/27/16  
Date

Print name and title:

Mark Ritchie, President

**51. Reports by Contractor**

Each year, no later than February 15; Contractor shall submit a soft copy report of the total items ordered, by month, under this contract during the preceding calendar year (January 1 – December 31). The report must be in a format acceptable to City and must list by department or location the following: (1) all items awarded under this contract; and (2) total quantity and dollar value of each item ordered, including items for which there were no orders. Contractor must also furnish a separate similar report for the total of all items ordered by City which are not part of this Contract, and any usage reports required prior to the extension of a Contract or Contract Modification. Emailed reports must not be larger than **10MB**.

Contractor shall email reports to:

[Greg.Pustelnik@sfgov.org](mailto:Greg.Pustelnik@sfgov.org)

Any report files larger than **10MB** must be submitted in electronic format on CD-ROM or USB drive and mailed to the address shown below with the term contract number and "Annual Vendor Reporting" clearly marked on the envelope/packaging.

Contractor shall mail the reports to:

Greg Pustelnik, Supervising Purchaser  
Re: Term Contract No. **77901**  
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

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



## Contract Modification 2

Avaya Equipment, Materials, Supplies and Ancillary Services

Dan Ferguson, President and CEO  
 AdvanTel Networks  
 2222 Trade Zone Blvd.  
 San Jose, CA 95131  
 dferguson@advantel.com

Date: August 20, 2015  
 Buyer Name: Shawn Peters  
 Term contract: 77901  
 City Blanket No. BPSF00003814  
 Type: Indefinite quantity  
 Not-to-exceed amount: \$9,900,000.00

The history of this contract and its modifications is as follows:

Modification	Start date	End date	Amount	Other changes
Original contract	10-13-11	09-30-14	\$9,900,000.00	
1	10-01-14	09-30-15	No change	Contract Extension Update contract conditions

This Modification 2 changes the contract as follows:

- Contract is extended from October 1, 2015 through September 30, 2016. Contract prices remain the same.
- Update contract conditions as stated on attached Attachment A.

All other terms and conditions remain the same.

Approved by the City:

SPT

FOR Jaci Fong, Director of OCA and Purchaser

8/24/15  
Date

Approved by Contractor:

Daniel L. Ferguson  
Signature

9-4-15  
Date

Print name and title:

DANIEL L. FERGUSON

Replace Electronic payment with:

**Getting paid for goods and/or services from the City:**

Beginning January 2012, all City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through Paymode-X, the City's third party service that provides Automated Clearing House (ACH) payments.

1. Electronic payments are processed every business day and are safe and secure.
2. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).
4. The following information is required to sign up:
  - a. The enroller must be their company's authorized financial representative.
  - b. The company's legal name, main telephone number and all physical and remittance addresses used by the company
  - c. The company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor)
  - d. The company's bank account information, including routing and account numbers

If you have questions, please email: [ACH.Support@sfgov.org](mailto:ACH.Support@sfgov.org)

**51. Reports by Contractor**

Each year, no later than February 15; Contractor shall submit a soft copy report of the total items ordered, by month, under this contract during the preceding calendar year (January 1 – December 31). The report must be in a format acceptable to City and must list by department or location the following: (1) all items awarded under this contract; and (2) total quantity and dollar value of each item ordered, including items for which there were no orders. Contractor must also furnish a separate similar report for the total of all items ordered by City which are not part of this Contract, and any usage reports required prior to the extension of a Contract or Contract Modification. Emailed reports must not be larger than **10MB**.

Contractor shall email reports to:

[Shawn.peeters@sfgov.org](mailto:Shawn.peeters@sfgov.org)

Any report files larger than **10MB** must be submitted in electronic format on CD-ROM or USB drive and mailed to the address shown below with the term contract number and "Annual Vendor Reporting" clearly marked on the envelope/packaging.

Contractor shall mail the reports to:

Shawn Peeters, Sr. Purchaser  
Re: Term Contract No. **77901**  
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

**66. Not Used (Graffiti Removal)**

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



# Contract Modification 1

Avaya Equipment, Materials, Supplies and Ancillary Services

Dan Ferguson, President and CEO  
 AdvanTel Networks  
 2222 Trade Zone Blvd.  
 San Jose, CA 95131  
 dferguson@advantel.com

Date: September 22, 2014  
 Buyer Name: Shawn Peeters  
 Term Contract: 77901  
 City Blanket No. BPSF00003814  
 Type: Indefinite quantity  
 Not-to-exceed amount: \$9,900,000.00

The history of this contract is as follows:

Modification	Start date	End date	Amount	Other changes
Original contract	10-13-11	09-30-14	\$9,900,000.00	

This Modification 1 changes the contract as follows:

- Contract is extended from October 1, 2014 through September 30, 2015. Contract prices remain the same.
- Update contract conditions as stated on attached Attachment A.

All other terms and conditions remain the same.

Approved by the City: *Jaci Fong* Date: 9/23/14  
 FUR Jaci Fong, Director of OCA and Purchaser  
 Approved by Contractor: *Daniel L. Ferguson* Date: 9-29-14  
 Signature  
 Name and title: DANIEL L. FERGUSON, PRESIDENT & CEO

Bid and Contract Condition No. 25 is hereby deleted in its entirety and replaced with the following:

**25. 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 Contract Monitoring Division (CMD) or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of CMD") 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 CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the CMD 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 CMD or the Controller upon request.

The following General Conditions are hereby replaced in their entirety:

**41. LBE Ordinance**

To qualify for a bid discount under the provisions of Administrative Code Chapter 14B, an LBE must be certified by the Contracts Monitoring Division (formerly 'Human Rights Commission') by the Bid Due date. The certification application is available from CMD (415) 581-2310, and on the web. CMD's home page is:

<http://sfagsa.org/index.aspx?page=6130>

Click on the "LBE Certification" tab.

**43. LBE bid discount; brokerage services**

Pursuant to Section 14B.7 of the Administrative Code, a bid discount will only be awarded to an LBE directly responsible for providing materials, equipment, supplies or services to the 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 the Contracts Monitoring Division. 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 CMD. 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.

**44. LBE Subcontracting**

**A. Subcontracting to LBEs.** Bidder is encouraged to make good faith efforts to award subcontracts to City and County of San Francisco-certified LBEs. This can be achieved through subcontracting, sub-consulting or supply opportunities. With the bid, the bidder is encouraged to provide a description of the type of good faith efforts the bidder estimates it may make under the contract.

**B. Examples of Good Faith Efforts.** "Good Faith Efforts" include but are not limited to the following:

- (1) Identifying and selecting specific products or services which can be subcontracted to certified LBEs.
- (2) Providing written notice to potential LBE subcontractors that Bidder will be bidding on this Contract and will be seeking subcontractors.
- (3) Advertising in one or more daily or weekly newspapers, trade association publications, trade oriented publications, trade journals, or other media specified by the City, for LBEs that are interested in participating in the project.
- (4) Following up on initial notices the Contractor sent to LBEs by contacting the LBEs to determine whether they were interested in performing specific parts of the project.
- (5) Providing interested LBEs with information about the scope of work.
- (6) Negotiating in good faith with the LBEs, and not unjustifiably rejecting as unsatisfactory proposals prepared by any LBEs, as determined by the City.
- (7) Where applicable, advising and making efforts to assist interested LBEs in obtaining insurance required by the City and the prime contractor.
- (8) Making efforts to obtain LBE participation that the City could reasonably expect would produce a level of participation sufficient to meet the City's goals and requirements.

**C. Examples of Subcontracting.** The following are examples of products which could be subcontracted under this Contract. The list is not intended to be exhaustive:

- (1) the products or services which the vendor in turn sells to the City, or components of those products; (see Page 1 of the bid sheet);
- (2) packing containers and materials used to ship the City's order;
- (3) services of the carrier who delivers the City's orders;
- (4) Pro rata share of LBE spending which is part of the vendor's general and administrative expenses, if the vendor can show that the pro rata share can be reasonably allocated to this contract.

D. **Reports.** On a quarterly (January 1 – March 31, April 1 – June 30, July 1 – September 30, October 1 – December 31) basis, the Contractor will provide Purchasing with reports on LBE subcontracting under this Contract. The report must include a narrative description of the good faith efforts, if any, the Contractor has made during the quarter to provide subcontracting opportunities to LBEs and to meet the percentage goal.

E. **CMD Data on LBEs.** Contractor will obtain from CMD a copy of CMD's database of LBEs, and this or other information from CMD, shall be the basis for determining whether a LBE is confirmed with CMD. Contractor will obtain an updated copy of CMD's database at least quarterly. Please call CMD at (415) 581-2310.

#### 51. Reports by Contractor

Each year, no later than February 15, Contractor shall submit a soft copy report of the total items ordered, by month, under this contract during the preceding calendar year (January 1 – December 31). The report must be in a format acceptable to City and must list by department or location the following: (1) all items awarded under this contract; and (2) total quantity and dollar value of each item ordered, including items for which there were no orders. Contractor must also furnish a separate similar report for the total of all items ordered by City which are not part of this Contract, and any usage reports required prior to the extension of a Contract or Contract Modification. Emailed reports must not be larger than 10MB.

Contractor shall email reports to:

[OCAVendor.Reports@sfgov.org](mailto:OCAVendor.Reports@sfgov.org)

Any report files larger than 10MB must be submitted in electronic format on CD-ROM or USB drive and mailed to the address shown below with the term contract number and "Annual Vendor Reporting" clearly marked on the envelope/packaging.

Contractor shall mail the reports to:

OCA Vendor Reporting  
Re: Term Contract No. 77901  
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 following General Condition No. 60, **Consideration of Criminal History in Hiring and Employment Decisions** has been added in its entirety:

#### 60. Consideration of Criminal History in Hiring and Employment Decisions

A. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/ftc>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

B. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, and shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement.

C. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, 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.

D. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

E. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 60(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

F. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

G. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

H. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

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



# CONTRACT AWARD

Indefinite Quantity

AdvanTel Networks  
111 Pine Street  
San Francisco, CA 94111  
Attn: Ted Callagy

Date: September 30, 2011  
Buyer's Name: Patrick Rice  
Term Contract: 77901  
Type: Indefinite  
Not-to-exceed amount: \$9,900,000

The City and County of San Francisco does hereby accept your offer to furnish the articles indicated below. Such Articles are to be delivered in the manner and the form and at the times and prices set forth in the above numbered Contract Proposal, but only after receipt of order properly certified by the Controller of the City and County of San Francisco.

For furnishing and delivering Avaya Equipment, Materials, Supplies and Ancillary Services.

For the term October 1, 2011 through September 30, 2014

Items: 1 and 2

Payment Terms: Net 30

Acknowledge receipt and acceptance of this Contract Award in the space below. Return to Purchaser, 1 Dr. Carlton B. Goodlett Place, Room 430, San Francisco, CA, 94102-4685. DUPLICATE COPY IS FOR YOUR FILES.

PR

  
As the duly appointed Purchaser  
of the City and County of San Francisco  
Date: 9/30/11

RECEIPT OF THE ABOVE IS HEREBY ACKNOWLEDGED:

Contractor AdvanTel Networks  
By Ted Callagy Account Manager  
Signature Title  
Print Name Ted Callagy  
Date 10-5-11

**A W A R D**

**Avaya Equipment, Materials, Supplies and Ancillary Services**  
For the Term October 1, 2011 Through September 30, 2014

**COMPANY INFORMATION**

**WARNING**

Do not use any term contracts to purchase goods and/or services when using Federal, State or Special Funds. Term contracts may contain provisions that conflict with Federal or State provisions.

City departments must contact their assigned City Attorney for applicable provisions, procedures and relevant fund requirements.

Name of Company: AdvanTel Networks  
Address: 111 Pine Street, Suite 1715  
City, State, Zip: San Francisco, CA 94111  
Contact: Ted Callagy  
Telephone Number: (415) 762-4932  
Fax Number: (415) 762-4922  
24-Hour Emergency Number: (800) 377-4911  
Email: tcallagy@advantel.com  
Payment Terms: Net 30  
Federal Tax I.D. Number: 77-0052168  
Vendor Number: 50451  
CBPO Number: BPSF00003814

**A W A R D**  
**Avaya Equipment, Materials, Supplies and Ancillary Services**  
 For the Term October 1, 2011 Through September 30, 2014

**AWARD SHEET**

The purpose of this contract is to obtain a percentage discount for all items on the Avaya GSA Schedule #GS-35F-0156V, which for the purposes of this contract will be referred to as discounted GSA pricing. For all items not included in Avaya GSA Schedule #GS-35F-0156V, the purpose of this contract is to obtain a percentage discount off Avaya National Price List ("NPL") in addition to the Equivalent GSA Pricing ("EGP"). EGP is based on the percentage discounts from the front market list prices for the Material Price Group (MPG) codes from the Avaya National Price List ("NPL").

Avaya's GSA pricing schedule can be viewed at: <http://www.avayagov.com/GSAITSchedule--Price--List/>

**Item 1**

**22.0%** . Bid percentage discount off Sections A, C, D and E of Avaya GSA Schedule #GS-35F-0156V. Bid discount to be firm from the award date through the entire term of the contract and any extensions thereof. Bidders may only bid a single percentage discount for Item 1. Only the City Contract Proposal Bid Sheets will be considered. No other pages with prices, attached price list or catalog prices will be considered.

**Please complete the following examples using your percentage discount and the corresponding price: *(Please note that the awarded bidder will be required to quote, invoice and supply quarterly reports in this same format.)***

Avaya Part Number	Item Description	Avaya GSA Schedule Price	Bidder's Percentage Discount	Bidder's Price
107481582	TELSET TTY UNIPHONE 1140	\$235.04	22.00%	\$183.33
700407810	S8300C SERVER	\$1,309.82	22.00%	\$1,021.66

**Item 2**

**Various** For items not included in Avaya GSA Schedule #GS-35F-0156V, bid percentage discount(s) off in addition to the EGP for items not included in Avaya GSA Schedule #GS-35F-0156V. Bid discount to be firm from the award date through the entire term of the contract and any extensions thereof. Please enter this percentage discount in Column B in the table below. If bidders propose various percentage discounts in Column B, enter "Various". If bidders propose various percentage discounts in Column B, only a single percentage discount may be proposed for each MPG code. Only the City Contract Proposal Bid Sheets will be considered. No other pages with prices, attached price list or catalog prices will be considered.

Indicate the total percentage discount to MPG codes from the Avaya NPL in Column C by using the following formula: EGP (A) + Bidder's Percentage Discount off in Addition to the EGP (B) = Total Percentage Discount to MPG Code from Avaya NPL (C).

**For example:** If a vendor bids a percentage discount of 5% off in addition to the EGP in Column A for MPG Code U2 in Group A1, which is 38% off the Avaya NPL, a total percentage discount of 43% would be entered in Column C.

**A W A R D**  
**Avaya Equipment, Materials, Supplies and Ancillary Services**  
 For the Term October 1, 2011 Through September 30, 2014

**NOTE: AWARD WILL BE MADE IN THE AGGREGATE. ALL PAGES OF PRICE SHEETS MUST BE FILLED OUT.**

Group	Avaya Material Price Group (MPG) Code	Avaya MPG Description	A EGP	B Bidder's Percentage Discount in Addition to the EGP	C Total Percentage Discount to MPG Code from Avaya NPL
<b>ADJUSTED AVAYA NATIONAL PRICE LIST (NPL) FOR EQUIVALENT GSA PRICING (EGP)</b>					
A1	A1	CM Common Hardware	38%	17%	55%
	A1	Agile Communications Environment (ACE)	38%	17%	55%
	U2	Modular Messaging HW (former MPG AM)	38%	17%	55%
	U3	Modular Messaging SW (former MPG AM)	38%	17%	55%
	DA	CM Software	38%	17%	55%
	DU	CM5 Software & EC500 SW	38%	17%	55%
	DR	CM R Server	38%	17%	55%
	DT	DCP Terminals	38%	17%	55%
	I6	Intuity Audix HW (former MPG IA)	38%	17%	55%
	I7	Intuity Audix SW (former MPG IA)	38%	17%	55%
	IA	Intuity Audix - Other	38%	17%	55%
	IB	ECAD - Intuity Interchange	38%	17%	55%
	IE	IP Endpoints	38%	17%	55%
	TI	IP Endpoints	38%	17%	55%
	LC	Value Edition IP Phones	38%	17%	55%
	IL	ECAD - Intuity Lodging	38%	17%	55%
	IM	Internet Messaging	38%	17%	55%
	IS	IP Common	38%	17%	55%
	IT	IP SoftConsole	38%	17%	55%
	OR	ECAD - Octel 250/350	38%	17%	55%
	OS	ECAD - Octel 200/300	38%	17%	55%
	OZ	Operator Console	38%	17%	55%
	PH	DNS Campus/ITS/WAN	38%	17%	55%
	PM	WAN EDGE solutions	38%	17%	55%
	PN	Access Sol	38%	17%	55%
	PU	Access Point	38%	17%	55%
	W1	Converged Conferencing HW (formerly MPG SV)	38%	17%	55%
	W2	Converged Conferencing SW (formerly MPG SV)	38%	17%	55%
UM	Unified Messaging	38%	17%	55%	
UC	ECAD - Unified Communication	38%	17%	55%	

**A W A R D**  
**Avaya Equipment, Materials, Supplies and Ancillary Services**  
For the Term October 1, 2011 Through September 30, 2014

			A	B	C
Group	Avaya Material Price Group (MPG) Code	Avaya MPG Description	EGP	Bidder's Percentage Discount in Addition to the EGP	Total Percentage Discount to MPG Code from Avaya NPL
B1	CR	ECAD - Call Center	23%	21%	44%
	CL	CC Reporting	23%	21%	44%
	NL	CC Express	23%	21%	44%
	EM	ECAD - Self-Service	23%	21%	44%
	IQ	IP Office	23%	21%	44%
	IU	IP Office - Sets	23%	21%	44%
	IV	IP Office - Small Office Edition	23%	21%	44%
	IP	IP DECT	23%	21%	44%
	IY	Dist Enterprise HW	23%	21%	44%
	IZ	Dist Enterprise SW	23%	21%	44%
	NH	ECAD - Call Center CTI	23%	21%	44%
	PD	Specialty Adjuncts	23%	21%	44%
	PO	VP Net	23%	21%	44%
	PP	Cajun Workgroup	23%	21%	44%
	PR	Extreme	23%	21%	44%
	QP	OEM - Nice	23%	21%	44%
	QR	Quick Edition	23%	21%	44%
	QS	eContact	23%	21%	44%
	QW	OEM - Witness	23%	21%	44%
	RF	TransTalk Wireless	23%	21%	44%
	RX	OEM - Verint	23%	21%	44%
	SP	SpectraLink Wireless	23%	21%	44%
	UT	Ubiquity SIP A/S	23%	21%	44%
	XA	Partner Sets - Large	23%	21%	44%
XC	Wireless Small	23%	21%	44%	
XG	Pocket Phone	23%	21%	44%	
XJ	Merlin 4400 Sets	23%	21%	44%	
XK	Magix Switch	23%	21%	44%	
XT	PARTNER ACS Switch	23%	21%	44%	
XT	Partner	23%	21%	44%	
B2	DB	Integrated Management	28%	16%	44%
	DP	CM CSI Server	33%	15%	48%
	DS	CM SI Server	33%	15%	48%
	IG	CM S8500, S87xx and S88xx Server & Gateways	34%	21%	55%
	IH	CM S8300 Server & Gateways	34%	21%	55%



**AWARD**  
**Avaya Equipment, Materials, Supplies and Ancillary Services**  
For the Term October 1, 2011 Through September 30, 2014

			A	B	C
Group	Avaya Material Price Group (MPG) Code	Avaya MPG Description	EGP	Bidder's Percentage Discount in Addition to the EGP	Total Percentage Discount to MPG Code from Avaya NPL
	JJ	Juniper Joint Development	33%	15%	48%
	M1	Mid-Market Applications	33%	15%	48%
	QM	CM S8400 Server & Gateways	34%	23%	57%
C1	DL	ECAD - Proactive Contact OEM	18%	14%	32%
	P2	Proactive Contact HW	9%	21%	30%
	P3	Proactive Contact SW	9%	21%	30%
	DX	Audix	18%	14%	32%
	HT	High Density Trunk Gateways	18%	23%	41%
	JU	Juniper	18%	22%	40%
	PA	ECAD - CentreVu	18%	14%	32%
	PI	Cajun Advanced Solutions	18%	30%	48%
	PI	Access Control	38%	10%	48%
	PI	Ethernet Switching (ERS)	38%	10%	48%
	PI	Unified Branch - Advanced Gateway and Secure Routers	38%	10%	48%
	PI	Unified Management	38%	10%	48%
	PI	Virtual Services Platform	37%	12%	49%
	PI	Wireless LAN	20%	28%	48%
	PJ	Cajun Client Solutions	18%	30%	48%
	PS	Wireless Infrastructure	18%	14%	32%
	QO	ECAD - Reporting	18%	14%	32%
	QQ	ECAD - Contact Center	23%	24%	47%
	XR	Peripheral Equipment	18%	30%	48%
		(a)	Avaya on Demand (Global Mgd Svcs)	18%	14%
D1	DE	Customer Svc Editions	5%	23%	28%
	EB	CEBP Software (Cust Enabled Bus Processes)	5%	23%	28%
	PC	Paradyne Ftrs/Optns	5%	27%	32%
	PL	Adv. Network Solutions	5%	27%	32%
	PQ	Cajun View	5%	27%	32%
	PY	Partner - Small Office Edition	5%	39%	44%
	RB	Polycom Viewstation, Web Products	5%	27%	32%
	RC	Polycom peripherals, Pictoretel	5%	27%	32%
	RJ	Voice Portal products	18%	14%	32%
		(a)	BCSI and Project Related Svcs	9%	0%
G1	RK	OEM - Other HW/SW including Data Access-Paradyne and Sourced	5%	16%	21%

**A W A R D**  
**Avaya Equipment, Materials, Supplies and Ancillary Services**  
 For the Term October 1, 2011 Through September 30, 2014

Group	Avaya Material Price Group (MPG) Code	Avaya MPG Description	A EGP	B Bidder's Percentage Discount in Addition to the EGP	C Total Percentage Discount to MPG Code from Avaya NPL
E1	(a)	Oursourcing	5%	0%	5%

The following category is non-discountable. All items in the following category will be offered to the City and County of San Francisco with no mark up to the prices listed in Avaya's NPL.

<b>Non-discountable</b>	(a)	Non-Discountable Services	0%	0%	0%
	DC	CM Custom Software	0%	0%	0%
	TR	Training	0%	0%	0%
	WX	Wireless Resale	0%	0%	0%
	ZC	ECAD - Non-Discountable	0%	0%	0%
	ZN	Non-Discountable	0%	0%	0%
	ZO	OEM - Custom Solutions	0%	0%	0%
	ZZ	Misc. Equipment	0%	0%	0%
ZS	SMBS Non-Discountable	0%	0%	0%	

- \* \* \* \* \*
- 1. Bidder / Contractor must be either the manufacturer (Avaya) or an Avaya Platinum Certified Business Partner.**
  - 2. All parts must be new Avaya parts – no used or re-manufactured parts are acceptable.**
- \* \* \* \* \*

**A W A R D**

**Avaya Equipment, Materials, Supplies and Ancillary Services**

For the Term October 1, 2011 Through September 30, 2014

**BID AND CONTRACT CONDITIONS**

**Electronic payment.** The City and County of San Francisco (City) uses Bank of America's PayMode-X system to pay invoices **electronically and not by check** whenever possible. The City makes PayMode-X payments every business day, **but prints and mails paper checks only one day a week**. So the City encourages you – and it is greatly to your benefit – to enroll in PayMode-X now.

There is no cost to you to enroll in PayMode-X, and you get the same information electronically from PayMode-X that you would get on the City's check stub.

For more information, please visit the Controller's website at:

<http://sfcontroller.org/index.aspx?page=85>

If you have questions, please call:

Steve W. Lee, Controller's Office (415) 554-7591

\*

**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 on the first page of this bid 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. Alternates.** When the name of a manufacturer, brand or make, with or without model number, is used in describing any item in this document, bids for similar articles will be considered unless otherwise stated. Purchasing shall be the sole judge as to whether such alternate articles are acceptable. Unless bidder states to the contrary, articles offered will be assumed to be the specific articles named in this document. If not offering the specific article named, bidder should enclose with its bid full information, specifications and descriptive data on items offered. Purchasing reserves the right to permit deviations from the specifications if any article offered is substantially in accord with Purchasing's specifications and is deemed by Purchasing to be of as good quality and as fully satisfactory for its intended use, Bidder is responsible for identifying any deviations from Purchasing's specifications.

**3. 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.

**A W A R D**

**Avaya Equipment, Materials, Supplies and Ancillary Services**  
For the Term October 1, 2011 Through September 30, 2014

**BID AND CONTRACT CONDITIONS**

4. **Place of Manufacture.** No article furnished shall have been made in prison or by convict labor, except, for articles purchased for use by City's detention facilities.
5. **Condition of Article.** Articles offered and furnished must be new and previously unused, and of manufacturer's latest model, unless otherwise specified herein.
6. **Samples.** Articles offered as equal to "City sample" must fully conform thereto; "City samples" may be inspected at the place designated by Purchasing. Samples must be furnished as required in this document. Those submitted by successful bidders may be retained for testing or checked against deliveries, in which case allowance will be made to Contractor. Each sample shall be plainly marked in a durable manner with the name of the bidder, the contract proposal number, and the item number. Submitted sample will be deemed to be exactly what bidder proposes to furnish unless otherwise clearly indicated by the bidder in writing with the submittal of the sample. Sufficiency of sample will be determined by Purchasing. Do not enclose sample with bid, and do not wrap bid in package with sample.
7. **FOB Point.** F.O.B. destination in San Francisco, freight prepaid and allowed.
8. **Price List Discounts.** When bids are based on prices from a catalog or price list, bidder shall furnish copies of the catalog or price list as required herein. Contractor shall furnish additional lists as required. Bids will be considered for price lists offered other than specified provided the alternate price list can be readily compared on an overall basis with the specified price list. Bidder's price list discounts must remain firm during the term of the contract.
9. **Bidding on Separate Items and in the Aggregate.** Bidders may bid separately for any item unless otherwise provided. Bidders may make an offer on one, some or all items, unless otherwise provided.
10. **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.
11. **Awards; Rejection of Bids.** Purchasing may make awards on one, some or all items in a bid. Purchasing reserves the right to reject any and all bids.
12. **Cash Discounts; Terms of Payment (Commodities and Equipment only).** Cash discount (discount for prompt payment) will be taken into consideration in determining the low bid under the following conditions:
  - Discount period must be at least 30 days. Example: "1%, 30 days. Net 31."
  - The maximum cash payment discount that will be considered when determining the lowest bid will be 2%.
  - The discount period will start upon date of completion or delivery of all items on any Purchase Order or other authorization certified by Controller, or upon date of receipt of properly prepared invoices covering such deliveries, whichever is later.

**A W A R D**

**Avaya Equipment, Materials, Supplies and Ancillary Services**  
For the Term October 1, 2011 Through September 30, 2014

**BID AND CONTRACT CONDITIONS**

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

Whether or not the discount is taken into consideration in determining the low bid, it will be deducted from the invoice amount in accordance with the provisions above, unless otherwise provided by bidder. No additional charge shall accrue against City in the event that City does not make payment within any time specified by bidder.

**13. 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**

**14. Inspection.** All articles supplied shall be subject to inspection and rejection by Purchasing or any department official responsible for inspection.

**15. 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.

**16. 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, the use of Contractor's 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. 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

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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 patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequences 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.

**17. 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.

**18. 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 the 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.

**19. 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 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.

**20. Termination for Convenience.** City shall have the option, in its sole discretion, to terminate this Agreement, 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.

**21. Guaranteed Maximum Costs.** 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. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers

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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 agreement 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. 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. 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.

**22. Taxes.** 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. 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:

a. 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.

b. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extensions, 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 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.

c. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events 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.

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d. 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.

**23. 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.

**24. 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.

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



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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.

**25. 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. 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. 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.

**26. MacBride Principles – Northern Ireland.** 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.

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**27. Tropical Hardwood and Virgin Redwood Ban.** 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.

**28. 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

**29. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (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; or (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.

**30. 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.

**31. 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.

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**32. 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.

**33. 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.

**34. Bid Protests.** Bid protests for purchases of Commodities in excess of \$50,000 shall be submitted and responded to in accordance with Rules and Regulations 21.3(i) pertaining to the San Francisco Administrative Code, Chapter 21.

**35. Food Service Waste Reduction Requirements.** Effective June 1, 2007, 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 OF BID AND CONTRACT CONDITIONS**

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**GENERAL CONDITIONS**

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 take precedence.

**36. Contract Term.** The contract period shall be for thirty-six (36) months. The term of this contract is the period from award execution date, approximately October 1, 2011, or the above stated term date whichever is later, through the last day of the month of a thirty-six (36) consecutive month period.

**37. 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.

**38. Toll-Free Telephone Number.** A contractor located outside 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 will be a consideration in evaluating this bid.

**39. Cooperative Agreement.** Contractor agrees  X  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.

**40. Not used**

**41. LBE Ordinance** To qualify for a bid discount under the provisions of Admin. 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. HRC's home page is:

[www.sf-hrc.org](http://www.sf-hrc.org)

Click on the "LBE Certification" tab.

**42. Claim for Preference** To claim preference under the LBE Ordinance, see Bid Questionnaire attached.

**43. LBE bid discount; brokerage services**

Pursuant to Section 14B.7 of the Administrative Code, a bid discount will only be awarded to an LBE 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

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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.

**44. LBE Subcontracting**

**a. Subcontracting to LBEs.** Bidder is encouraged to make good faith efforts to award subcontracts to City and County of San Francisco-certified LBEs. This can be achieved through subcontracting, sub-consulting or supply opportunities. With the bid, the bidder is encouraged to provide a description of the type of good faith efforts the bidder estimates it may make under the contract.

**b. Examples of Good Faith Efforts.** "Good Faith Efforts" include but are not limited to the following:

- (1) Identifying and selecting specific products or services which can be subcontracted to certified LBEs.
- (2) Providing written notice to potential LBE subcontractors that Bidder will be bidding on this Contract and will be seeking subcontractors.
- (3) Advertising in one or more daily or weekly newspapers, trade association publications, trade oriented publications, trade journals, or other media specified by the City, for LBEs that are interested in participating in the project.
- (4) Following up on initial notices the Contractor sent to LBEs by contacting the LBEs to determine whether they were interested in performing specific parts of the project.
- (5) Providing interested LBEs with information about the scope of work.
- (6) Negotiating in good faith with the LBEs, and not unjustifiably rejecting as unsatisfactory proposals prepared by any LBEs, as determined by the City.
- (7) Where applicable, advising and making efforts to assist interested LBEs in obtaining insurance required by the City and the prime contractor.
- (8) Making efforts to obtain LBE participation that the City could reasonably expect would produce a level of participation sufficient to meet the City's goals and requirements.

**c. Examples of Subcontracting.** The following are examples of products which could be subcontracted under this Contract. The list is not intended to be exhaustive:

- (1) the products or services which the vendor in turn sells to the City, or components of those products; (see Page 1 of the bid sheet);

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**GENERAL CONDITIONS (Continued)**

- (2) packing containers and materials used to ship the City's order;
- (3) services of the carrier who delivers the City's orders;
- (4) Pro rata share of LBE spending which is part of the vendor's general and administrative expenses, if the vendor can show that the pro rata share can be reasonably allocated to this contract.

**d. Reports.** On a quarterly (January 1 – March 31, April 1 – June 30, July 1 – September 30, October 1 – December 31) basis, the Contractor will provide Purchasing with reports on LBE subcontracting under this Contract. The report must include a narrative description of the good faith efforts, if any, the Contractor has made during the quarter to provide subcontracting opportunities to LBEs and to meet the percentage goal.

**e. HRC Data on LBEs.** Contractor will obtain from HRC a copy of HRC's database of LBEs, and this or other information from HRC, shall be the basis for determining whether a LBE is confirmed with HRC. Contractor will obtain an updated copy of HRC's database at least **quarterly**. Please call HRC at (415) 252-2500.

**45. 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.

**46. 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 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.

**47. Non-Waiver of Rights.** The omission by either party at anytime 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.

**48. 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 the City; (b) take action in accordance with Sections 17 and 19, or (c) exercise any other legal or equitable remedy.

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**GENERAL CONDITIONS (Continued)**

**49. 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.

**50. 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 Agreement shall constitute a waiver or limitation of any rights which City may have under applicable law.

**51. Reports by Contractor**

**Multi-Year Term Contract**

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

Contractor shall send the reports via email to:

Patrick Rice, Senior Purchaser  
email : [patrick.rice@sfgov.org](mailto:patrick.rice@sfgov.org)  
Please reference Contract Proposal No. 77901

**52. 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 Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4685

**53. Subcontracting.** Contractor is prohibited from subcontracting the direct supply of commodities 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

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contract, and violation of this provision shall confer no rights on any party and any action taken shall be void.

**54. 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.

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

**56. Emergency - Priority 1 Service.** In case of an emergency that affects any part of 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 deliver products using all modes of transportation available. Contractor shall provide a 24-hour emergency telephone number of a company representative who is able to receive and process orders for immediate delivery or will call in the event of an emergency. In addition, the Contractor shall charge fair and competitive prices for items and services ordered during an emergency and not covered under the awarded contract.

**57. Not used**

**58. Term Bid – Quantities.** This is a term, indefinite quantities contract. Unless otherwise specified herein, deliveries will be required in quantities and at times as ordered during the period of the contract. Estimated quantities are approximate only. City, in its sole discretion, may purchase any greater or lesser quantity. Purchasing may make minor purchases of items requested in City's advertisement for bids or contractor's bid from other vendors when Purchasing determines, in its sole discretion, that the City has an immediate need for such items or that it is not practical to purchase against this contract.

**59. First Source Hiring Program**



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**GENERAL CONDITIONS (Continued)**

**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 may be 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 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.

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**GENERAL CONDITIONS (Continued)**

(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.

(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

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**GENERAL CONDITIONS (Continued)**

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 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

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.

**60. Not Used (Earned Income Credit Forms).**

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**GENERAL CONDITIONS (Continued)**

**61. 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.

**62. 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.

**63. Preservative-Treated Wood Containing Arsenic.** Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement 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 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 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.

**64. Not used**

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**GENERAL CONDITIONS (Continued)**

**65. Protection 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.

**66. 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.

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.

**67. Modification of Agreement.** This Agreement 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 Agreement.

**END OF GENERAL CONDITIONS**

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**SPECIAL CONDITIONS**

**68. Purpose.** The purpose of this contract is to obtain a percentage discount for all items on the Avaya GSA Schedule #GS-35F-0156V, which for the purposes of this contract will be referred to as discounted GSA pricing. For all items not included in Avaya GSA Schedule #GS-35F-0156V, the purpose of this contract is to obtain a percentage discount off Avaya National Price List ("NPL") in addition to the Equivalent GSA Pricing ("EGP"). EGP is based on the percentage discounts from the **front market** list prices for the Material Price Group (MPG) codes from the Avaya National Price List ("NPL").

**69. Pre-Bid Conference.** A Pre-bid Conference will be held as follows:

**Location:** City Hall, Room 431-A  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4685

**Date and Time:** August 10, 2011 at 2:00 p.m.

Though not mandatory, attendance at the conference is strongly urged for all prospective bidders on this contract.

It is requested that bidder's questions concerning this Contract Proposal be submitted in writing via email at least 72 hours prior to the date and time of the Pre-bid Conference and directed to:

Patrick Rice, Senior Purchaser  
email : [patrick.rice@sfgov.org](mailto:patrick.rice@sfgov.org)  
Please reference Contract Proposal No. 77901

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. Written Change Notice will execute any change or addition to the requirements contained in this Contract Proposal, as a result of the Pre-bid Conference. It is the responsibility of the bidder to check for any change notice, which will be posted on the City's Bid and Contracts website:

<http://mission.sfgov.org/OCABidPublication>

**70. Specifications**

The City and County of San Francisco ("City") makes purchases worth approximately \$3.0 million, on a yearly basis, of Avaya equipment, materials, supplies and ancillary services. Approximately 70% of the annual amount is for equipment and 30% is for services.

The Avaya GSA pricing schedule can be viewed at the following website:

<http://www.avayagov.com/GSAITSchedule--Price--List/>

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**SPECIAL CONDITIONS (Continued)**

**71. Bidder's/Contractors Qualifications and Requirements**

a. Bidders must be either the manufacturer (Avaya) or Avaya Platinum Certified Business Partners that are certified to sell the Avaya enterprise communication class of products and related ancillary services. This includes (but is not limited to): Definity replacement parts, Communication Manager Media Servers and Gateways, Call Center, Modular Messaging and IP and SIP endpoints. If the Bidder/Contractor is not the manufacturer, the Bidder/Contractor should submit with their bid a letter from Avaya verifying that they are an Avaya Platinum Certified Business Partner and are authorized to sell all products and services mentioned above.

b. In order to receive consideration, Bidder/Contractor ("Contractor") must have in-depth technical knowledge and experience in the products covered by the contract.

c. Contractor must have and maintain, throughout the contract term, and any extension thereof, stocking levels of 10% on all products and articles required by the City. Failure to maintain adequate stock may result in the Purchaser invoking the Contractor's Default clause (General Condition No. 47) of the contract.

d. Contractor will be responsible for providing technical support and assistance to the City through Contractor's own personnel, equipment and facilities as well as through manufacturer's technical representatives. As part of this technical support and assistance, the Contractor must provide personnel with in-depth technical knowledge of the products the Contractor is providing under this contract, to answer questions and offer any assistance required by City personnel, during City business hours (8:00 A.M. – 5:00 P.M.).

e. Contractor must maintain stock as specified in other sections of this contract and adequate facilities to allow for immediate pick-up of "will-call" orders placed by the departments.

f. Contractor must have a storage warehouse, distribution facility, parking area and will-call counter for department pick-ups located within 50 miles of San Francisco or provide same-day delivery service at no additional cost to the City.

g. Contractor's warehouse facility shall comply with Title III of the Americans with Disabilities Act Regulations (including Title 3 Accessibility Guidelines), and Title 24, State of California Building Code (California Accessibility Regulations) regarding handicapped persons' accessibility.

h. The City may require Contractor to provide within seven (7) working business days from the date they are requested to do so, information and documentation requested by Purchaser, including but not limited to: sources of supply, distribution, dealership or agency agreements and authorizations from manufacturer's they claim to represent, lines of credit with financial institutions from manufacturers they claim to represent, lines of credit with financial institutions or suppliers, numbers of employees, trade references and any other information to determine the Contractor's fitness to supply the contract requirements.

**Avaya Equipment, Materials, Supplies and Ancillary Services**  
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**SPECIAL CONDITIONS (Continued)**

- i. The City reserves the right to reject any bid on which information submitted by Bidder fails to satisfy the City and/or Bidder is unable to supply information and documentation within the period of time requested.
- j. The City reserves the right to inspect Contractor's place of business, including Contractor's existing stock prior to award or during the contract term, to aid Purchaser in determining Contractor's ability to satisfy the terms and conditions of the contract.
- k. Contractor must maintain normal business hours, for example, 8:00 A.M. to 5:00 P.M., Monday through Friday throughout the term of the contract, and be open at all times during that period.
- l. Contractor must be capable of producing usage reports required under General Condition No. 51 of this contract.
- m. Contractor must provide Avaya certified technicians that are capable of providing product consultation, installation and configuration services as required by City departments. Prior to award, the successful bidder may be requested to provide a list of Avaya certified technicians currently employed by the bidder/contractor. The list should include the names, job titles, contact information and all applicable Avaya technical certifications for each technician.

**72. Delivery**

Contractor must comply with the following delivery requirements. Failure to comply with all requirements may result in termination of contract in accordance with Contractor's Default clause of the contract.

- a. Deliveries must be made F.O.B. Destination to all City Departments located in the City and County of San Francisco and elsewhere, including Alameda, San Mateo and Tuolumne Counties.
- b. Delivery of all items under this contract must be made within five (5) working days from the date the order was placed by the City department and received by the Contractor.
- c. No substitutions will be allowed. Contractor must deliver the exact order placed by the ordering department.
- d. Contractor may occasionally be required to deliver prior to the maximum five (5) working days delivery period. City departments will require pick-up service at Contractor's place of business. Contractor must maintain sufficient inventory to supply the requirements of City departments for items contained in this contract.
- e. Emergency deliveries shall be delivered by best means possible, at no additional cost to the City. Contractor shall notify the department of the estimated time of delivery.



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**SPECIAL CONDITIONS (Continued)**

f. Contractor shall notify the ordering department immediately, if unable to deliver the items and quantity ordered. Contractor must notify and obtain approval from the ordering department prior to delivery of any back-ordered item. Ordering department may reject back-ordered items.

g. All deliveries must include a packing slip that includes the following information:

- Complete description including manufacturer's name and number.
- Quantity ordered.
- Contract and contract item numbers.
- Back ordered items and amount back-ordered.
- Date back-ordered items will be delivered.

h. In the event that back-ordered items are delayed in excess of five (5) working days, the City reserves the right to reject partial shipment or cancel the item ordered from the Contractor.

**73. Price.**

a. Item 1: Bid percentage discount off Sections A, C, D and E of Avaya GSA Schedule #GS-35F-0156V. Bid discount to be firm from the award date through the entire term of the contract and any extensions thereof. Bidders may only bid a single percentage discount for Item 1. Only the City Contract Proposal Bid Sheets will be considered. No other pages with prices, attached price list or catalog prices will be considered.

b. Item 2: For items not included in Avaya GSA Schedule #GS-35F-0156V, bid percentage discount(s) off in addition to the EGP for items not included in Avaya GSA Schedule #GS-35F-0156V. Bid discount to be firm from the award date through the entire term of the contract and any extensions thereof. Please enter this percentage discount in Column B in the table below. If bidders propose various percentage discounts in Column B, enter "Various". If bidders propose various percentage discounts in Column B, only a single percentage discount may be proposed for each MPG code. Only the City Contract Proposal Bid Sheets will be considered. No other pages with prices, attached price list or catalog prices will be considered.

Indicate the total percentage discount to MPG codes from the Avaya NPL in Column C by using the following formula:  $EGP (A) + Bidder's \text{ Percentage Discount off in Addition to the EGP } (B) = \text{Total Percentage Discount to MPG Code from Avaya NPL } (C)$ .

c. In the event of the expiration of Avaya GSA Schedule #GS-35F-0156V, the pricing offered to the City will be based on the most recently published Avaya GSA price schedule and this pricing will be made available to the City for the term of this contract and any extensions thereof.

d. In the event of the expiration of Avaya National Price List ("NPL"), the pricing offered to the City will be based on the most recently published Avaya National Price List ("NPL") and this pricing will be made available to the City for the term of this contract and any extensions thereof.

**74. Bid Evaluation.** For evaluation purposes only, a dollar amount of \$1,500,000.00 will be assigned to Item 1 and a dollar amount of \$1,500,000.00 will be assigned to Item 2. Bid Prices will be evaluated

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**SPECIAL CONDITIONS (Continued)**

for each item based on this dollar amount times the bid percentage proposed less applicable discount payment terms offered (see Bid and Contract Condition 12), less any applicable LBE preference (see General Conditions 41 through 44) and applicable sales tax adjustment (see Special Condition 75). Purchasing will attempt to evaluate this contract proposal within thirty (30) days after receipt of bids(s). If Purchasing requires additional evaluation time, all bidders will be notified in writing of the new expected award date.

**75. Adjustment of Bid Price for Sales Tax.** In accordance with Administrative Code Chapter 21.32, for bid purposes, Purchasing will reduce your bid based on any sales tax revenue the City would receive from this purchase.

**76. Award.** Award will be made to the lowest priced, most responsive and responsible bidder in the aggregate as noted on the bid sheets. In determining the award, Purchasing will take into consideration, but will not be limited to:

- Price (evaluated)
- Satisfactory review of bidders' qualifications.
- Any other factors deemed pertinent

**77. Awarded Items.**

a. All products delivered under this contract must be new and obtained by the Contractor directly from Avaya. If it is determined that new product is no longer available, remanufactured product will only be accepted upon prior written notification from Contractor and with written acceptance from the City's Department of Technology or the San Francisco International Airport. Written confirmation from Avaya may be required. Remanufactured Avaya product will only be accepted if it includes the full manufacturer's warranty, and is eligible for inclusion on the City's maintenance contract without additional costs to the City for product certification. The City will not accept gray market product. Gray market products are defined as products that are not intended for sale or resale in the United States, products that are provided by unauthorized dealers or products that lack Avaya certification.

b. If during the term of the contract, a contract item is determined to be unacceptable for a particular use, and such is documented by a City Department and as determined by Purchasing, it is understood and agreed that the item will be canceled and removed from the contract without penalty to the City. The City's sole obligation to the vendor is payment of deliveries made prior to the cancellation date. City shall give the vendor ten days' notice prior to any cancellation. The City will purchase the required replacement item from any source and in the manner as determined by Purchasing. If a contracted item has been discontinued by the manufacturer or is deemed temporarily unavailable, it will be the responsibility of the Contractor to search the marketplace and find an acceptable equal substitute in the time required for delivery and at the contract price. Contractor must notify Purchasing by certified mail, 30 days in advance of any changes in the description of article, brand, product code or packaging. Any changes made without the approval of Purchasing will constitute default and result in the City invoking General Condition No. 19.

**78. Ordering.** Items to be furnished under this contract shall be ordered through a release from the appropriate Citywide Blanket Purchase Order by City departments during the effective period of the

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**SPECIAL CONDITIONS (Continued)**

contract. All invoices for payments shall show the Citywide Blanket Purchase Order number, complete description of item, quantity and contract price.

**79. Payment.** The City agrees to pay for all products in accordance with the prices quoted in the successful bid and subject to any applicable discount provisions contained in said bid. Payments shall be made by the City to Contractor in arrears, for **completed orders**, throughout the term of the contract. There will be a 30-day acceptance period before the awarded bidder invoices the city for all equipment and services received by the City. The 30-day acceptance period will begin once all line items listed in the agreed scope of work (SOW) have been successfully deployed, tested and accepted, and both the City and the awarded bidder agree to sign off on the SOW. Invoices submitted by the Contractor must be in a form acceptable to Purchasing and Controller. All amounts paid by the City to the Contractor shall be subject to the audit by the City.

**80. Additional Items.** If, in the satisfaction of governmental interests it is necessary to purchase additional items from Contractor, additional items may be added to this contract by mutual agreement of the parties. The aggregated cost of all additional items added to the contract, during the contract term, shall not exceed twenty percent (20%) of the total estimated value (cost) of the original contract. All requests to add additional items to the contract must be submitted by City Departments in writing to the Purchasing Division. All requests must include complete specifications, estimated quantities for the remainder of the contract period and a price quotation provided by the contractor, for each service. All additional items or services added to the contract shall be approved through issuance of a contract modification. 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 service description, delivery information and pricing information.

**81. Not Used (Environment Code Chapter 5, Resource Conservation Ordinance)**

**82. Bid Security** Each bid must be accompanied by an original 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 Performance Bond and 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.

**83. Not Used (Performance Bond)**

**84. Fidelity Bond** Contractor shall maintain throughout the term of this contract, at no expense to City, a blanket fidelity bond or a Blanket Crime Policy (Employee Dishonesty Coverage) covering all officers and employees in an amount not less than \$50,000 with any deductible not to exceed \$5,000 and including City as additional obligee or loss payee as its interest may appear.

**Avaya Equipment, Materials, Supplies and Ancillary Services**  
For the Term October 1, 2011 Through September 30, 2014

**SPECIAL CONDITIONS (Continued)**

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

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 \$1,000,000 each occurrence, \$2,000,000 aggregate for bodily injury, property damage, contractual liability, personal injury, products and completed operations.

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 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 be endorsed to provide:

(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.

c. Contractor hereby agrees to waive Workers' Compensation subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to:

**Avaya Equipment, Materials, Supplies and Ancillary Services**  
For the Term October 1, 2011 Through September 30, 2014

**SPECIAL CONDITIONS (Continued)**

Director, 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

e. 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, 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.

f. 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.

g. 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.

h. 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.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

j. 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.

**86. Failure to Execute Contract** Within ten days of the receipt of a notice of award, the bidder to whom the contract is awarded shall deliver the performance bond and/or specified insurance certificates to City. If the bidder fails or refuses to furnish the required bond and/or 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

**Avaya Equipment, Materials, Supplies and Ancillary Services**  
For the Term October 1, 2011 Through September 30, 2014

**SPECIAL CONDITIONS (Continued)**

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.

**87. Not Used (Sweatfree Procurement)**

**88. Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.

**89. Questions.** Any questions or clarifications concerning the requirements in this bid proposal must be submitted, in writing via email to: [patrick.rice@sfgov.org](mailto:patrick.rice@sfgov.org), and received by OCA no less than five business 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

**90. Bid Submittal Instructions.** Bids **must** be received at Central Purchasing, City Hall, Room 430, indicated on Page 1 of the Contract Proposal. Bids transmitted by fax or any type of electronic mail will not be accepted.

**Return all required documents, which include:**

- Page 1 of the Contract Proposal completed and signed.
- Bid Sheets for items being bid on only.
- Specifications on alternate items bid.
- All questionnaires and forms including completed and signed, bid addendum or change notice receipts, if applicable.
- Bid Security, if required.
- Bidders shall mail bid in an envelope clearly marked with the bid number and due date (lower left corner).

**Bids must be made on the enclosed bid sheets.**

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

FOR MORE INFORMATION, please contact:

Patrick Rice, Senior Purchaser  
e-mail : [patrick.rice@sfgov.org](mailto:patrick.rice@sfgov.org)  
Please reference Contract Proposal No. 77901

**END OF SPECIAL CONDITIONS**

City and County of San Francisco

Office of Contract Administration



Edwin M. Lee  
Mayor

Jaci Fong  
Director and Purchaser

Purchasing

RECEIVED  
OFFICE OF CONTRACT ADMINISTRATION  
SAN FRANCISCO  
2016 DEC 30 AM 11:58  
BY AK

Date: December 30, 2016  
To: Angela Calvillo, Clerk of the Board  
From: Jaci Fong, Purchaser and Director *JF*  
Subject: Resolution approving a contract amendment in relation to the supply of Avaya phone equipment

The Office of Contract Administration ("OCA") is submitting the enclosed resolution that will authorize OCA to execute an amendment to a term contract that is heavily utilized by the City to procure Avaya phone equipment and related ancillary services.

The current contract with AdvanTel has a not-to-exceed threshold of \$9.9 Million. Pursuant to Charter Section 9.118(b), it is OCA's intention to adjust the NTE to \$15 Million to accommodate anticipated purchasing needs in 2017 and 2018.

If you have any questions, please contact Rob Henning (415-554-6212) or Shawn Peeters (415-554-7030). Thank you for your consideration.

**FORM SFEC-126:  
NOTIFICATION OF CONTRACT APPROVAL  
(S.F. Campaign and Governmental Conduct Code § 1.126)**

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): San Francisco Board of Supervisors	City elective office(s) held: San Francisco Board of Supervisors

<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: AdvanTel Networks	
<p><i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i></p> <p>(1) Mark Ritchie, Richard Gardella, Joseph Twohy, Roger McGibbon, Tom Vignau.                  (2) Tom Vignau, CEO; David Black, CFO, Nelson Martinez, VP Operations.                  (3) Roger McGibbon.                  (4) Avaya.                  (5) None.</p>	
Contractor address: 2222 Trade Zone Blvd., San Jose, CA 95131	
Date that contract was approved:	Amount of contract: \$15,000,000 (Fourth Amendment)
Describe the nature of the contract that was approved: Avaya Telecommunications Equipment	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves San Francisco Board of Supervisors  
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer: Clerk of the Board, Angela Calvillo	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

\_\_\_\_\_  
Signature of City Elective Officer (if submitted by City elective officer)

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

\_\_\_\_\_  
Date Signed