

File No. 190809

Committee Item No. 6

Board Item No. 13

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date September 18, 2019

Board of Supervisors Meeting

Date September 24, 2019

#### 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 type="checkbox"/>            | <input 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 type="checkbox"/>            | <input 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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|-------------------------------------|-------------------------------------|--------------------------|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Contract Proposal</u> |
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Completed by: Linda Wong Date September 13, 2019

Completed by: Linda Wong Date September 18, 2019

1 [Contract - Bar None Auction - Auctioning Services - \$1,300,000 Anticipated Revenue]

2 **Resolution authorizing the Office of Contract Administration to enter into a contract for**  
3 **auctioning services with Bar None Auction with an anticipated revenue of \$1,300,000**  
4 **for a term of October 1, 2019, through September 30, 2022.**

5  
6 WHEREAS, The Office of Contract Administration issued a request for proposals for  
7 auctioning services in November 2018 and Bar None Auctions was selected as the lowest  
8 price, most responsive and responsible bidder; and

9 WHEREAS, The contract is anticipated to generate \$1.3 million in revenue to the City;  
10 and

11 WHEREAS, Charter, Section 9.118 requires contracts where anticipated revenues  
12 exceed \$1 million to be approved by the Board of Supervisors; now, therefore, be it;

13 RESOLVED, That the Office of Contract Administration is hereby authorized to enter  
14 into a contract with Bar None Auction to provide auctioning services for the City and County of  
15 San Francisco for a term of October 1, 2019, through September 30, 2022; and, be it

16 FURTHER RESOLVED, That within 30 days of the contract being fully executed by all  
17 parties, the Office of Contract Administration shall provide the final contract to the Clerk of the  
18 Board for inclusion into the official file.



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

SIGN AND RETURN THIS PAGE

**68334-A**  
**Auctioning**  
**Services**

Bids will be opened in:

City Hall, Room 430, at 2 p.m., December 7, 2018

Sign and return this page with your proposal. Return other pages as indicated. Do not include sales or excise taxes in bid prices.

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

Name under which business is conducted: \_\_\_\_\_

If you are in the City's Supplier file, enter your supplier number: \_\_\_\_\_

If you are not in the City's Supplier file, enter the following:

Mailing address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Print name: \_\_\_\_\_

Sign here: \_\_\_\_\_

*No Pre-Bid Conference is scheduled for this Contract Proposal.*

Auctioning Services  
For the Term January 1, 2019 through December 31, 2021

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**BID AND CONTRACT CONDITIONS**

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

1. All City suppliers receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments.
2. Electronic payments are processed every business day and are safe and secure.
3. To sign up for electronic payments, visit <https://sfcitypartner.sfgov.org/>.
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: [sfcitypartner@sfgov.org](mailto:sfcitypartner@sfgov.org)

**TERMS RELATED TO BIDDING**

1. **When Bids are Due; Bid Opening Procedures.** Bids must be submitted before the time set for bid opening. Bids will be opened by Purchasing at the hour and place stated on the bid 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. **Articles Furnished.** Articles and services must comply with applicable laws, ordinances and other legal requirements, including (among others) the Cal-OSHA regulations in Title 8 of the Code of Regulations and, for electrical products, Sections 110.2 and 110.3 (B) of the S.F. Electrical Code. In addition, if an electrical item has not been tested by a lab approved by City's Department of Building Inspection (DBI) or Department of Public Works (DPW), Contractor shall notify the requesting department before delivery by writing the department at the "Deliver to" address on the front of the Purchase Order. Approved testing labs are posted on Purchasing's website at <http://www.sfgov.org/oca/>. When a non-tested item is delivered, the department will request approval from DPW. If the department is unable to obtain approval, City reserves the right to cancel the transaction and return the item to Contractor, at no charge to City.
3. **Bidding on Services in the Aggregate.** Bidders may bid separately for any service unless otherwise provided. Bidders may make an offer on one, some or all services, unless otherwise provided.
4. **Prices.** Prices quoted must be fixed except as otherwise specified in this document. Any bid requiring receipt of order in less than 30 days will be unacceptable unless otherwise specified herein.

Auctioning Services  
For the Term January 1, 2019 through December 31, 2021

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**BID AND CONTRACT CONDITIONS**

5. **Awards; Rejection of Bids.** Purchasing may make awards on one, some or all services in a bid. Purchasing reserves the right to reject any and all bids.
6. **Cash Discounts; Terms of Payment.** Cash discount (discount for prompt payment) will 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 services on any Purchase Order or other authorization certified by Controller, or upon date of receipt of properly prepared invoices covering such services, whichever is later.
  - Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing the City's check or the date of direct deposit into supplier's bank account.

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.

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

**TERMS RELATED TO THE CONTRACT**

8. **Contract Interpretation: Choice of Law/Venue; Assignment.** Should any questions arise as to the meaning and intent of the contract, the matter shall be referred to Purchasing, who shall decide the true meaning and intent of the contract. This contract shall be deemed to be made in, and shall be construed in accordance with the laws of the State of California; the venue for all claims arising out of this contract shall be in San Francisco. This contract may be assigned only with the written approval of Purchasing.
9. **Hold Harmless and Indemnification.** Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Contract, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or

Auctioning Services  
For the Term January 1, 2019 through December 31, 2021

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**BID AND CONTRACT CONDITIONS**

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

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

**11. Budget and Fiscal Provisions.** This Contract is subject to the budget and fiscal provisions of City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Contract will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Contract will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Contract in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Contract.

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

Auctioning Services  
For the Term January 1, 2019 through December 31, 2021

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BID AND CONTRACT CONDITIONS

13. **Termination for Convenience.** City shall have the option, in its sole discretion, to terminate this Contract, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City.

14. **Guaranteed Maximum Costs.** 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 are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the contract is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City. 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.

15. **Taxes**

A. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Contract, or the services delivered pursuant hereto, shall be the obligation of Contractor.

B. Contractor recognizes and understands that this Contract may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Contract entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Contract may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Contract. Contractor accordingly agrees on behalf of itself and its

Auctioning Services  
For the Term January 1, 2019 through December 31, 2021

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**BID AND CONTRACT CONDITIONS**

permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

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

**17. Nondiscrimination; Penalties**

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

**B. Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code 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. The entire San Francisco Administrative Code is available on the web at a site maintained by American Legal Publishing Corporation.

**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.



Auctioning Services  
For the Term January 1, 2019 through December 31, 2021

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BID AND CONTRACT CONDITIONS

**D. Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division (formerly 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 fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

**18. Local Business Enterprise Utilization; Liquidated Damages**

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

**B. Compliance and Enforcement**

**(1) Enforcement.** If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's 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

Auctioning Services  
For the Term January 1, 2019 through December 31, 2021

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**BID AND CONTRACT CONDITIONS**

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.

**19. MacBride Principles – Northern Ireland.** Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride principles.

**20. 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.

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

**22. 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 a site maintained by American Legal Publishing Corporation. 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.

**23. Liability of City.** CITY’S PAYMENT OBLIGATIONS UNDER THIS CONTRACT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR UNDER THIS CONTRACT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, IN NO EVENT SHALL CITY BE LIABLE REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL

Auctioning Services  
For the Term January 1, 2019 through December 31, 2021

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**BID AND CONTRACT CONDITIONS**

DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS CONTRACT.

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

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

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

27. **Bid Protests.** Bid protests for purchases of Services shall be submitted and responded to in accordance with Regulation 21.3(i) of the San Francisco Administrative Code, Chapter 21.

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

End of Bid and Contract Conditions

Auctioning Services  
For the Term January 1, 2019 through December 31, 2021

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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 shall take precedence.

**29. Contract term.** The contract period shall be for approximately twenty-four (24) months. The initial term of this contract is the period from award execution date, approximately January 1, 2019 or the above-stated term date, whichever is later, through the last day of the month of a twenty-four (24) consecutive month period.

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

**31. Toll-Free Telephone Number.** A contractor located outside of the City and County of San Francisco is encouraged to provide free telephone services for placing orders. This requirement can be met by providing a toll-free telephone number or accepting collect calls.

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

**33. 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://sfgov.org/cmd/>

Click on the "14B Local Business Enterprise Ordinance" tab.

**34. Claim for preference**

If Bidder is claiming LBE preference as a supplier, it must comply with Administrative Code Chapter 14B Rules and Regulations VI D - Criteria for Suppliers (2):

"2) A supplier must have a direct relationship with manufacturers for the materials, equipment, and supplies for which they seek certification, demonstrating that:

a) The supplier has an agreement with the manufacturer authorizing the supplier to distribute their products.

b) The supplier is able to provide a manufacturer's warranty."

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To comply, at the time of the bid, bidders must include proof of the required relationships as an authorized dealer. Failure to provide adequate proof may result in a nonresponsive determination.

**35. 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.

**36. Chapter 14B requirements.**

**A. Subcontracting goals. Not Used.**

**B. LBE Participation.** The City strongly encourages bids from qualified LBEs. Pursuant to Chapter 14B, the following bid discounts will be applied for any bidder who is certified by CMD as an LBE on the bid due date. Certificate applications may be obtained by calling CMD at (415) 581-2310.

- A 10% bid discount shall be applied to Small LBEs and Micro-LBEs bidding as primes.
- A 2% bid discount will be applied to an SBA-LBE, except that the 2% discount shall not be applied at any stage if it would adversely affect a Small LBE or Micro-LBE bidder.

**C. CMD Forms to be Submitted with Proposal. Not Used.**

**37. 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.

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

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

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

41. **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.

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

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

44. **Reports by Contractor:**

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Every four (4) months, Contractor shall submit a soft copy report of the total revenue generated under this contract. The report shall include the date range in a month/date/year format and the total revenue generated within the specified four month period(s). Contractor may also be required to furnish a separate similar report for the total of all services ordered by the City which are not part of this Contract, and any revenue 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) and to Gloria Gill, Purchaser, at [Gloria.Gill@sfgov.org](mailto:Gloria.Gill@sfgov.org).

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

Contractor shall mail the reports to:

OCA Supplier Reporting  
Re: Term Contract No. 68334-A  
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

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

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

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

**47. 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

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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.

48. **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.

49. **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 provide emergency services. Contractor shall provide a 24-hour emergency telephone number of a company representative who is able to receive and act on requests for emergency services. In addition, Contractor shall charge fair and competitive prices for services ordered during an emergency and not covered under the awarded contract.

50. **First Source Hiring Program**

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

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

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal,



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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.

(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 non-duplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

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(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

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

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

**E. Liquidated Damages.** Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other 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

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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.

**51. Minimum Compensation Ordinance ("MCO")**

A. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

B. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross Compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

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C. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

D. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

E. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor.

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

G. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

H. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

I. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

52. Requiring Health Benefits for Covered Employees.

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time

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to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

B. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (A) above.

C. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

D. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

E. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

F. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

G. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

H. Contractor shall keep itself informed of the current requirements of the HCAO.

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I. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

J. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

K. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

L. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

M. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

**53. 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/fco>. 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

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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 53(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.

**54. 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

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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.

**55. 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.

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

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

**58. Contractors Unable to do Business with the City.**

**A. Generally**

Contractors that do not comply with laws set forth in San Francisco's Municipal Codes may be unable to enter into a contract with the City. Some of the laws are included in this Contract Proposal, or in the sample terms and conditions attached.

**B. Companies Headquartered in Certain States**

This Contract is subject to the requirements of Administrative Code Chapter 12X, which prohibits the City from entering into contracts with companies headquartered in states with laws that perpetuate discrimination against LGBT populations or where any or all of the work on the contract will be performed in any of those states. Bidders are hereby advised that Bidders which have their United States headquarters in a state on the Covered State List, as that term is defined



Auctioning Services  
For the Term January 1, 2019 through December 31, 2021

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**GENERAL CONDITIONS**

in Administrative Code Section 12X.3, or where any or all of the work on the contract will be performed in a state on the Covered State List may not enter into contracts with the City. A list of states on the Covered State List is available at the website of the City Administrator.

**59. 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.

**60. Sugar-Sweetened Beverage Prohibition.** Contractor agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

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

**End General Conditions**

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**SPECIAL CONDITIONS**

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

62. **Purpose.** The purpose of this contract is to provide auctioning services to dispose of City-owned surplus items consisting of vehicles, materials and equipment, and to generate revenues for the City and County of San Francisco.

63. **Pre-bid Conference.** Not Used.

Any change or addition to the requirements contained in this Contract Proposal will be executed by written Bid Addendum. It is the responsibility of the bidder to check for any Bid Addendum and or any other items posted, that will be posted on this Contract Proposal's Event page in the Supplier Portal. The Sourcing Event Number is 0000001393

Note that every Addendum will create a new version of the Event. Bidders should monitor the event for new versions. If there is a new version that means that something has been changed or added in the event. If addenda are issued, a signed receipt must be acknowledged by the bidder by including them as part of the bid submission to ensure that all requirements are included in the proposal. Failure to include all addenda may result in your proposal not being considered. The City will assume no responsibility for oral instructions or suggestions.

If the City issues an Addendum after Bidder has submitted their bid, but prior to the Event end date, Bidder must retract their Bid, and resubmit their bid along with the newly issued Addendum.  
Supplier Portal:

<https://sfsupplierportal.sfgov.org/psp/supplier/SUPPLIER/ERP/h/?tab=DEFAULT>

64. **Scope of Services to be Performed.** See Appendix A.

65. **Compliance with Regulations**

A. The purpose of this contract is to provide auctioning services to dispose of City-owned surplus items consisting of vehicles, materials and equipment, and to generate revenues for the City and County of San Francisco.

- (1) Civil Code – Sections 1812.600 through 1812.610;
- (2) Commercial Code – Sections 2301 through 2328 and Sections 6101 through 6111;
- (3) Penal Code – Section 535, and;

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**SPECIAL CONDITIONS**

(4) Vehicle Code – Sections 4450-4467, 11700-11740, and 24000-24018.

B. Contractor shall also comply with all applicable laws and regulations of the local government municipality pertaining to conducting the auction and sale of the surplus items.

C. Contractor shall maintain equipment and facilities used to transport, store and auction items in a safe operating condition, and keep current any and all permits and licenses governing such activities by Federal, State and Local regulatory agencies.

**66. Bidder's / Contractor's / Supplier's Requirements and Qualifications**

**Minimum Qualifications.**

MQ1. In order to receive consideration, bidder must have sufficient knowledge and experience in the services covered by the contract. Bidders must have a minimum of five (5) years of experience in providing services as stated under this contract. Bidder must submit with their bid a minimum of three references of customers requiring similar volume of services as provided in this contract.

MQ2. Surety Bond. See Condition 68 for additional information.

**Additional Bidder's Qualifications and Requirements.**

A. The City may make such investigation, as it deems necessary, prior to the award of this contract to determine the conditions under which work is to be performed. The Purchaser will take into consideration, but not be limited to:

- (1) Bidder's experience
- (2) Location
- (3) Adequacy of facilities and security measures used to store and protect consigned items.
- (4) Sufficient personnel and equipment to properly perform all services called for under the contract.
- (5) Auctioning plan that identifies pre-auction, auction day and post-auction activities including a timeline for the completion of critical tasks, terms and conditions used, procedures for absentee and/or on-line auctioning, etc. in accordance to California Civil Code Section 18.12.607(g).
- (6) Bonds, licenses, and/or permits on file, including but not limited to:
  - (a) Surety bonds – See Special Condition 69

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(b) In accordance with California Vehicle Code, Section 11700-11740, a Department of Motor Vehicles Dealer License for the purpose of transacting sales of used vehicles on a retail or wholesale basis.

B. Contractor must be able to demonstrate to the Purchaser's satisfaction their capabilities, including evidence that they possess adequate facilities and financial resources to fully comply with the requirements of the contract, prior to award and at any time during the contract term or any extension thereof.

C. City reserves the right to inspect Contractor's place of business prior to award or at any time during the contract term or any extension thereof, to aid Purchaser in determining Contractor's capabilities and qualifications.

D. Contractor will be responsible for providing technical support and assistance to the various City Departments. As part of this requirement, Contractor must provide, by phone, personnel with in-depth technical knowledge of the services Contractor is providing under this contract, to answer questions and offer any assistance required by the City personnel, during the City's business hours. (8:00 a.m. – 5:00 p.m.)

E. Contractor shall be responsible for producing the usage reports required under General Condition 44 of this document. Failure to provide the required reports may result in application of the Contractor's Default clause of this Contract.

F. City reserves the right to reject any bid on which the information submitted by Bidder fails to satisfy City and/or Bidder is unable to supply the information and documentation within the period of time requested. Any false statements made by a bidder in their submitted bid or any related communication/clarification may result in the disqualification of their bid from receiving further evaluation and contract award.

G. City reserves the right to terminate this contract if information requested from and submitted by Contractor fails to satisfy City and/or Contractor is unable to provide the information and/or documentation within the period requested.

H. Contractor shall be independent and, as such, the hiring, training, equipping, supervising, directing and discharging of their employees shall be the responsibility of the Contractor. The payment of Federal, State, and local taxes and overtime wages shall also be the responsibility of Contractor.

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

K. Contractor must be able to provide acknowledgement that its employees and subcontractors have successfully completed a large vehicle urban driving safety training program. See Attachment B for Large Driver Safety Training Requirements. Please sign, date and return Attachment B and C to indicate acknowledgement.

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67. City Department's Responsibilities. The Fleet Analyst at the City's Central Shops will be the City's Central Contact Person.
- A. Department(s) shall designate a representative to interface, monitor and maintain adequate records of all transactions under this contract.
  - B. The department representative shall represent the City's Department on all matters related to the administration and use of this contract including but not limited to:
    - i. Affirm that the item is no longer required and that the department has free and clear title for its disposal.
    - ii. Furnish original documents and information to the Contractor and a copy to the designated contract person from Central Shops regarding items such as certificate of ownership, registration card, owner's manual, maintenance records, certifications and permits issued, product specification and a copy of the purchase order.
  - C. Disclose any known material defects, and/or hazardous materials contained within to the Contractor and to the designated contact person at Central Shops.
  - D. Disclose any governing rules and regulations and/or permits required for the removal, transport, use and/or disposal of the item to the Contractor and to the Principal Fleet Analyst of Central Shops.
  - E. Deliver all license plates issued by the Department of Motor Vehicles for turned-in vehicles, trailers and equipment to the designated representative of Central Shops for proper disposal.
  - F. Coordinate and facilitate inspections and removal of the item by the Contractor.
  - G. Consolidate and stage surplus to be picked-up by the Contractor for auctioning at a centrally located and accessible area for loading onto trucks.
  - H. May set minimum bid prices in which the Contractor will be able to accept from bidders.
  - I. May decide to "no award" items if the bid prices (from bidders) are not acceptable to the designated department representative.
  - J. May assign and remove City items from auction. Contractor shall then remove City items from auction without additional charge to City Departments and to the City and County of San Francisco.
  - K. May decide to "no award" items if the bid prices (from bidders) are not acceptable to the designated department representative. Contractor shall then notify bidders of no award and store the items to be auction at the next available date. All items stored by the Contractor shall be at no additional charge.
  - L. Investigate, determine and recommend appropriate remedies to the designed representative at Central Shops for non-compliance by Contractor including but not limited to termination of

Auctioning Services  
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contract, and filing claims against Contractor's surety bonds filed with the California Secretary of State, and/or the Department of Motor Vehicles. Implementation of the recommended actions will be subject to the provisions of Bid and Contract Condition 12, Default; Remedies.

M. The designated representative of Central Shops is responsible for producing a report instructing GSA Accounting where to credit the proceeds.

N. Department(s) shall monitor and document Contractor's performance and furnish Purchaser copies of records, correspondence and all other documentation relevant to Contractor's performance.

**68. Surety Bond.**

A. In accordance with California Civil Code, Section 1812.600, every auctioneer and auctioning company shall maintain a bond in the principal sum of \$20,000 issued by a surety company admitted to do business in California. A copy of the bond shall be filed with the Secretary of State.

B. In accordance with California Vehicle Code, Section 11700-11740, before a dealer license is issued or renewed, the applicant shall procure and file a bond in the amount of \$50,000 with the Department of Motor Vehicles.

**69. Performance Bond. Not Used.**

**70. Fidelity Bond. Not Used.**

**71. 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.

(4) Bailee's Insurance in a form appropriate for the nature of City property in the care, custody, or control of Contractor, on an all-risk form including earthquake and flood for 100% of the replacement value.

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(5) Cargo Insurance in a form appropriate for the nature of City property while in transit, on an all-risk form including earthquake and flood for 100% of the replacement value.

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. Contractor shall provide thirty (30) days' advance written notice to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to:

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.

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**SPECIAL CONDITIONS**

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.

**72. Failure to Execute Contract.** Within ten business days of the receipt of a notice of award, the bidder to whom the contract is awarded shall deliver the required bond documents 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 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.

**73. Price.**

A. Bid prices and bid commission percentages with the exception of items 4, 5, 6, 7, 8, 9 and 10 are to be firm for the duration of the contract.

B. Only the bid prices and bid commission percentages that appear on the City's Contract Proposal Bid Sheet will be considered. No other pages with prices or attached price lists will be considered.

C. Bid price to include all costs chargeable to City. Contractor will assume all costs including personnel salaries, transportation and any other expense for the training of his/her employees. No charges to City shall be made for permits and licenses, advertising, carrying costs, no-sale fees, site visits and/or resolving disputes related to the sale of City-owned surplus.

D. Bid prices for Section A items shall be in the form of commission fees, as a percentage of the gross selling price of item or lot, and the extended commission amount shall be the gross proceeds multiplied by commission percentage. Auction entry fees may not be applied to the sale of any City-owned surplus. A buyer's premiums of not more than 15% may be applied and charged to the buyer at the conclusion of the sale of any City-owned surplus.

D. Bid prices for Section B items shall be in US dollars for specific charges associated with the transport of City-owned surplus to the auctioneer's facility, and the extended price shall be the estimated



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annual quantity multiplied by the price per vehicle or load. Bid prices for Items 4 and 5 shall be per vehicle. Bid prices for Items 6, 7, 8, 9 and 10 shall be per load. All bid prices for this section shall include the actual distance traveled between transporter's origination, pick-up site, and Contractor's facility and back; waiting time after arrival at the scheduled time and location for picking up; and the time spent loading and unloading items.

E. Bid prices for Section C items shall be in US dollars for specific charges associated with the sale of City-owned vehicles to be auctioned, and the extended price shall be the estimated annual quantity multiplied by the price per vehicle or hour. Bid prices for Items 11, 12, and 13 shall be per vehicle requiring safety inspection and smog certification, removal of all City and County of San Francisco markings, including logos and decals, and verification of vehicle identification number (VIN) and application for duplicate Certificate of Ownership, respectively. Bid price for Item 14 shall be per hour rate (and include the cost of any minor vehicle parts) for actual time spent making minor repairs to vehicles to comply with safety and smog requirements, and as approved in advance by the City Department(s). No charges to City are to be made for training. All costs to City shall be included in prices entered on Bid Sheets. No overtime will be paid unless same has been approved in advance by City Department(s).

74. **Price Adjustment.** For any subsequent extensions, prices for items 4, 5, 6, 7, 8, 9 and 10 may be increased or decreased commencing on or after January 1, 2019 (or contract anniversary date) and each one (1) year period thereafter. Such adjustments shall be a percentage increase or decrease of the prices for the previous period. Said percentage shall be equal to the percentage increase or decrease for private industry workers in Transportation and material moving occupations for the 12 months ending the previous Quarter 4 as published by the U.S. Department of Labor, Bureau of Labor Statistics in the Employment Cost Index (See Attachment J). Such adjustments shall commence 30 days after notification and submission of satisfactory documentation and agreement of the Purchaser. It shall be Contractor's responsibility to request and to provide documentation satisfactory to the Purchaser to support any increases.

For more detail regarding the U.S. Department of Labor, Bureau of Labor Statistics and the Employment Cost Index, please visit:

<http://www.bls.gov/ncs/ect/data.htm>

75. **Bid Price Evaluation.** To determine the apparent low bidder, bid price will be evaluated and computed into one single total (aggregate), the Grand Total Extended Amount. Evaluated bid price will be based on the extended bid commission amounts and extended price of Items 1 through 14. Except as otherwise noted on the Bid Sheets, bid prices will be evaluated for each service in Section A based on the bid commission percentage multiplied by the estimated gross proceeds, and in Sections B and C on the bid price multiplied by the estimated annual quantities, with the total extended amount less any applicable LBE preference (see General Conditions 33 through 36). Purchasing will attempt to evaluate this contract proposal within thirty (30) days after receipt of bid(s). If Purchasing requires additional evaluation time, all bidders will be notified in writing of the new expected award date.

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**SPECIAL CONDITIONS**

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 bidder's qualifications
- Any other factors deemed pertinent

The Purchaser reserves the right to make adjustments within the aggregate, award separate services or in an aggregate of several or all services if it is in the best interest to City to do so.

77. **Awarded Services.** If, during the term of the contract, a contract service is determined to be unacceptable for a particular department, and such is documented by Purchasing, it is understood and agreed that the service will be canceled and removed from the contract without penalty to City. City's sole obligation to Contractor is payment for services performed prior to the cancellation date. City shall give Contractor ten days' notice prior to any cancellation. City will contract for the required service from any source and in the manner as determined by Purchasing. Contractor must notify Purchasing by certified mail, 30 days in advance of any changes in the services required in the contract. Any changes made without the approval of Purchasing will constitute default and result in City invoking General Condition 12.

78. **Additional Services. Not Used.**

79. **Displaced Worker Protection Act. Not Used.**

80. **Prop J Approval. Not Used.**

81. **Ordering.** All services requested of the Contractor shall originate from the requesting City Departments.

82. **Billing. Not Used.**

83. **Payment.**

A. In accordance with California Civil Code Section 1812.607(i) the City shall receive payment within 30 calendar days after the auction date for the net proceeds owed from each auction. Payment, in the form of a company check, shall be made payable to the City and County of San Francisco, and delivered to the following address:

City and County of San Francisco  
Central Shops, 555 Selby Street  
San Francisco, CA 94124

Each payment shall be accompanied by the following:

Auctioning Services  
For the Term January 1, 2019 through December 31, 2021

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- (1) Accounting of Sales: For each payment, the Contractor shall provide a report detailing the financial aspects of the auction including auctioneer's lot numbers, City's asset numbers, item descriptions, sold prices, commission amounts, allowed charges, net prices, subtotals, and gross and net proceeds. A copy of the report(s) shall also be emailed to the purchaser at [gloria.gill@sfmta.com](mailto:gloria.gill@sfmta.com).
- (2) Items not sold and held over to the next auction shall be listed as such.
- (3) Bill of Sale/Lot Sale Report: For each payment, the Contractor shall provide copies of the bill of sale or lot sale report for each item/lot sold detailing; lot information – auction date, lot number, description/yr./make/model, City's asset number, serial number/VIN, odometer reading and sale price; buyer information – bidder number, name, address and telephone number, and, for DMV titled lots, registered owner information – owner name, address and telephone number.

B. All amounts paid to the City shall be subject to audit by City.

84. Multiple Awards. Not Used.

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

86. Environment Code Chapter 5, Resource Conservation Ordinance. Not Used.

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

88. Questions. Any questions, objections, or clarifications concerning the scope of specifications or requirements in this bid proposal must be submitted in writing, and emailed to Gloria Gill ([gloria.gill@sfmta.com](mailto:gloria.gill@sfmta.com)) 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.

89. Bid Submittal Instructions. Bids must be submitted before the due time, electronically uploaded into the City's PeopleSoft bidding portal located at:

<https://sfsupplierportal.sfgov.org/psp/supplier/SUPPLIER/ERP/h/?tab=DEFAULT>

Bids transmitted by FAX or any type of electronic mail will not be accepted.

Postmarks will not be considered in judging the timeliness of submissions.

This bid opportunity has Sourcing Event ID No. 0000001393 OCA TC 68334-A: Auctioning Services.

Auctioning Services  
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SPECIAL CONDITIONS

- A. All Bidders are required to enter .01 in all PeopleSoft Line Items in order for the program to accept your bid electronically.
- B. All Bidders must also complete and submit Attachment A, Bid Sheet, with bid commission percentages, bid price per vehicle or bid price per vehicle or hour for all items specified in the Bid Sheet to be considered responsive. Failure to bid on all items (Item #1 through #12) in all Sections (A through C) will result in bidder to be deemed non-responsive and bid removed from consideration.
- C. Upload all required Bid documents via the Supplier Portal:
  - I. Page 1 of the Contract Proposal completed and signed.
  - II. Response to Contract Proposal General Condition 32 "Cooperative Agreement."
  - III. Response to Contract Proposal General Condition 58 "Contractors Unable to do Business with the City." See Attachment F, Bid Questionnaire, Question #10.
  - IV. Any other certifications, licenses, permits and registrations required to conduct auctions and to operate an auctioning facility (See Special Conditions 65 and 66
  - V. Copies of dealer's license – See Special Condition 66.A(6)(b)
  - VI. Auctioning plan that identifies pre-auction, auction day and post-auction activities including a timeline for the completion of critical tasks, terms and conditions used, procedures for absentee and/or on-line auctioning, etc. – See Special Condition 67.A(5)
  - VII. Bidder's auctioneer and dealer surety bonds (See Special Condition 69)
  - VIII. Attachment A, Bid Sheet **must be kept in excel format**
  - IX. Attachment B, Safety Training Requirements
  - X. Attachment C, Safety Training Acknowledgement
  - XI. Attachments F, Required Information of All Bidders, Bid Questionnaire
  - XII. Attachment G, Required Information of All Bidders, Company Information
  - XIII. Attachment H, Required Information of All Bidders, Release of Liability Form completed and signed
  - XV. Attachment I, Required Information of All Bidders, References. Bidders to provide three (3) viable reference
  - XVI. Written summary and attached examples of bidder's outreach program used to notify interested bidders of auction dates and items including but not limited to mailing/contact lists, advertisements, brochures, website address, etc. in accordance to California Commercial Code Section 6108(a)(3)
  - XVII. All questionnaires and forms, completed and signed, including signed bid addenda (if applicable).

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

For more information, e-mail

Purchaser Gloria Gill  
Email: gloria.gill@sfgov.org

End of Special Conditions

## Standard Bid Forms

Before the City can award a contract to any supplier, that supplier must register as a City vendor. Because many Contractors have already completed the necessary registration forms, and because some informational forms are rarely revised, the City has not included them in the bid package. Information and training videos in connection with vendor registration can be found online at <https://sfcitypartner.sfgov.org/>.

Additional information can be found at the following websites:

- Local Business Enterprise certification: <http://sfgov.org/cmd/14b-local-business-enterprise-ordinance>
- S.F. Administrative Code Chapters 12B and 12C Declaration: Nondiscrimination in Contracts and Benefits: <http://sfgov.org/cmd/12b-equal-benefits-program>
- Office of Contract Administration: <http://sfgov.org/oca/>
- Supplier Portal, visit our SF City Partner website at: <https://sfcitypartner.sfgov.org/>

If you experience any issues please email [sfcitypartnersupport@sfgov.org](mailto:sfcitypartnersupport@sfgov.org) or call the Supplier Support Desk at 415-944-2442, Ext 1. during normal business hours from 9am to 5pm.



OFFICE OF THE  
CITY ADMINISTRATOR



London N. Breed, Mayor  
Naomi M. Kelly, City Administrator

MEMORANDUM

To: Clerk of the Board of Supervisors

From: Bill Barnes  
Senior Advisor, Office of the City Administrator

Re: Legislative Introduction  
Auctions—Bar None Auction

CC: Alaric Degrafinried  
Purchaser and Director, Office of Contract Administration

Date: July 22, 2019

Attached, please find a resolution authorizing the Office of Contract Administration to enter into a contract with Bar None Auction to provide auctioning services for the City and County of San Francisco.

Please contact Shawn Peeters of the Office of Contract Administration at 415-554-7030 or [Shawn.Peeters@sfgov.org](mailto:Shawn.Peeters@sfgov.org) with questions about this contract.

We respectfully request the contract be placed on the next available calendar of the Budget and Finance Sub-Committee.

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BOARD OF SUPERVISORS  
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BY \_\_\_\_\_ AK

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

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

<b>Contractor Information</b> <i>(Please print clearly)</i>
Name of Contractor: Bar None Auction

*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.*

1) Joshua Seidel – President  
 2) Shaunette Stepney – Senior Accountant  
 3) Joshua Seidel – 100% Ownership  
 4) Action Towing & Auto Towing  
 5) No political committee sponsored or controlled by contractor

Contractor address: 4751 Power Inn Road, Bldg. A Sacramento, CA 95826

Date that contract was approved:	Amount of contract: \$ 1,300,000 over 2 years
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Describe the nature of the contract that was approved:  
 This is a revenue generating contract with an initial two-year term, with options to add additional years upon mutual agreement of the parties for a maximum contract term of 5 years. The revenues of the initial two-year term is anticipated to be approximately \$1.3 million. Therefore, pursuant to Section 9.118 of the San Francisco Charter, OCA is seeking Board of Supervisors approval for this contract because the anticipated revenues are in excess of one million dollars.

Comments:  
 The purpose of this contract is to provide auction services to dispose of city vehicles, SFMTA buses and other City-owned assets that are determined to be surplus or cannot or serve no useful value to the City. It is anticipated that this contract will be used primarily by Central Shops and SFMTA.

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 the form sits

Print Name of Board

<b>Filer Information</b> <i>(Please print clearly)</i>	
Name of filer: Angela Calvillo, Clerk of Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

\_\_\_\_\_  
 Signature of the 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

