

A W A R D
CLOSED CAPTIONING SERVICES
For the Term October 1, 2002 through September 30, 2004

GENERAL CONDITIONS

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

28. CONTRACT TERM

The contract period shall be for 24 months. The initial term of this contract is the period from award execution date, approximately October 1, 2002, or the above-stated term date, whichever is later, through the last day of the month of a 24 consecutive month period.

29. 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.

30. TOLL-FREE TELEPHONE NUMBER

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

31. MBE/WBE COMPLIANCE DECLARATION, HRC FORM 3

See attached Form P-225, Standard Bid Forms, Item 1.

32. AFFIRMATIVE ACTION

Memorandum of the San Francisco Human Rights Commission (HRC) regarding "Information Concerning Affirmative Action Requirements for Suppliers," is attached and made a part hereof as though fully set forth herein. The Questionnaire and Workforce Data form shall be completed and returned with the bid. Failure to furnish this form may result in rejection of bid.

33. MBE/WBE/LBE ORDINANCE

To qualify for a bid discount under the provisions of Administrative Code Chapter 12D.A, an MBE/WBE/LBE must be certified by the Human Rights Commission by the Bid Due date.

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

<http://www.ci.sf.ca.us/sfhumanrights/attachment.htm>

Click on "Certification Application (Schedule A)".

34. CLAIM FOR PREFERENCE

To claim preference under the MBE/WBE/LBE Ordinance, see Bid Questionnaire.

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35. BID PREFERENCE FOR BROKERAGE SERVICES

Pursuant to Section 12D.A.5 of the MBE/WBE/LBE Ordinance, a bid preference will only be awarded to an MBE, WBE or LBE directly responsible for providing materials, equipment, supplies or services to City as required by the bid solicitation. An MBE, WBE or LBE will be deemed to be directly responsible for providing the required commodity or service only if it regularly does business as a manufacturer, or authorized manufacturer's representative, dealer or distributor, stocking distributor, franchisee, licensee, service provider, or has another direct agency relationship with the manufacturer or provider of the solicited commodity or service, and has been so certified by HRC.

An MBE, WBE or 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 disadvantaged business preference program. Such a determination will be subject to audit by HRC.

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

36. MBE/WBE SUBCONTRACTING

A. Subcontracting to MBE/WBEs

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

B. Examples of Good Faith Efforts

"Good Faith Efforts" include but are not limited to the following:

- (1) Identifying and selecting specific products or services that can be subcontracted to certified MBE/WBEs.
- (2) Providing written notice to potential MBE/WBE subcontractors that bidder will be bidding on this contract and will be seeking subcontractors.
- (3) Advertising, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media specified by City, for MBE/WBEs that are interested in participating in the project.
- (4) Following up on initial notices Contractor sent to MBE/WBEs by contacting MBE/WBEs to determine whether they were interested in performing specific parts of the project.
- (5) Providing interested MBE/WBEs with information about the scope of work.

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- (6) Negotiating in good faith with MBE/WBEs, and not unjustifiably rejecting as unsatisfactory proposals prepared by any MBE/WBEs, as determined by City.
- (7) Where applicable, advising and making efforts to assist interested MBE/WBEs in obtaining insurance required by City and the prime contractor.
- (8) Making efforts to obtain MBE/WBE participation that City could reasonably expect would produce a level of participation sufficient to meet City's goals and requirements.

C. Examples of Subcontracting

The following are examples of products or services that could be subcontracted under this contract. The list is not intended to be exhaustive:

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

D. Reports

On a quarterly basis, Contractor will provide Purchasing with a report on MBE/WBE subcontracting under this contract.

The report must include a narrative description of good faith efforts, if any, Contractor has made during the quarter to provide subcontracting opportunities to MBE/WBEs and to meet the percentage goal.

E. HRC Data on MBE/WBEs

Contractor will obtain from HRC a copy of HRC's database of certified and registered MBE/WBEs, and this or other information from HRC, shall be the basis for determining whether an MBE/WBE is certified or registered with City. Contractor will obtain an updated copy of HRC's database at least **quarterly**. Please call HRC at (415) 252-2500.

F. Definition of Certified MBE/WBEs

The City's MBE/WBE/LBE Ordinance describes two categories of MBE/WBEs: certified and registered. A certified MBE/WBE is local, minority or woman-owned, and economically disadvantaged. A registered MBE/WBE is either: local, minority or woman-owned, and not economically disadvantaged; or non-local, minority or woman-owned, and of any business size.

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37. AUDIT AND INSPECTION OF RECORDS

Contractor agrees to maintain and make available to City during business hours accurate books and accounting records relative to its activities under this contract. 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 contract, whether funded in whole or in part under this contract. 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 contract 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 of this contract shall have the same rights conferred upon City by this Article.

38. CONFLICT OF INTEREST

- A. Contractor states that it is familiar with provisions of Section C8.105 of the Charter of the City and County of San Francisco, and Section 87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of any said sections.
- B. No officer, member or employee of City and no member of their governing bodies shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. No Contractor, nor member of Contractor's family shall serve on a City board, committee, or hold any such position which either by rule, practice or action nominates, recommends, supervises Contractor's operations or authorizes funding to Contractor.

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 17, Page 2; or (c) take other appropriate action as Purchasing deems necessary.

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.

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42. PROPRIETARY INFORMATION OF CITY

Contractor understands and agrees that, in the performance of the work or services under this Agreement 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 Agreement, 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 Agreement; (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 Agreement shall constitute a waiver or limitation of any rights which City may have under applicable law.

44. REPORTS BY CONTRACTOR

Each year, 90 days before the anniversary date of this contract, Contractor must furnish a report of the total services ordered under this contract during the preceding 12 months. The report must be in a format acceptable to City and must list by department or location: all services awarded under this contract; total quantity and dollar value of each service ordered, including services for which there were no orders. Contractor must also furnish a separate similar report for the total of all services ordered by City which are not part of this contract.

Contractor shall send the reports to:

Ben Kawamura, Supervising Purchaser
Re: Term Contract No. 77700
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

45. NOTICE TO PARTIES

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

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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

46. SUBCONTRACTING

Contractor is prohibited from subcontracting services under this contract unless such subcontracting is agreed to in writing and executed in the same manner as this contract. 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 is and shall be deemed to be, at all times, an independent contractor and the City will not be liable for any act or acts of Contractor, and nothing herein contained shall be construed as creating the relationship of employer-employee between the parties.

48. SEVERABILITY

If any term or provision of this contract shall be found to be illegal or unenforceable, then, notwithstanding, this contract shall remain in full force and effect and such term or provision shall be deemed stricken.

49. EMERGENCY – PRIORITY 1 SERVICE

In case of an emergency that affects the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service. Contractor will make every good faith effort in attempting to deliver products or services using all modes of transportation available.

Contractor shall provide a 24-hour emergency telephone number of a company representative who is able to receive and process orders for immediate delivery or will-call in the event of an emergency.

In addition, Contractor shall charge fair and competitive prices for items and services ordered during an emergency and not covered under the awarded contract.

50. REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION – IRS FORM W-9

See attached Form P-225, Standard Bid Forms, Item 4.

51. TERM BID – QUANTITIES

This is a term, indefinite quantities, contract. Unless otherwise specified herein, services will be required in quantities and at times as ordered during the period of the contract.

Estimated quantities are approximate only. City reserves the right to purchase any greater or lesser quantity, as the interests of the City may dictate.

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Purchasing reserves the right to make minor purchases of services from other vendors when Purchasing determines that such services are immediately needed or that it is obviously not practical to purchase against the contract.

52. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS

This paragraph applies if the contract exceeds \$50,000 over a 12-month period or less and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal services and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who have discretion to approve and do in fact approve this contract from receiving: (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are defined as: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

A party to any contract awarded under this solicitation must acknowledge that it understands that any public official who approves this contract may not accept campaign contributions, gifts, or future employment from the Contractor except as provided under the Conduct Code. The contractor must agree to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this contract. Upon request, the contractor must further agree to furnish, before the contract is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City will agree to provide, before the contract is entered into, a list of public officials who, under the Conduct Code, approve the contract to the contractor. Failure of any public official to abide by the Conduct Code will not constitute a breach by either the contractor or the City of the contract. Neither party to the contract will have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

53. MINIMUM COMPENSATION ORDINANCE ("MCO")

Background

The Minimum Compensation Ordinance went into effect October 8, 2000. This new law requires some, but not all, organizations that have service contracts with the City or operate at San Francisco International Airport to pay their employees who are working on those City contracts at least \$9 per hour and provide 12 paid days off per year and 10 unpaid days off per year (for a full-time employee working under the City contract). If an employee works less than full time on the City contract, the employer must pay the employee \$9 an hour for the hours worked on the City contract, and the paid and unpaid time off must be proportional to the hours worked on the City contract.

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To qualify for MCO benefits, the employees working on the City contract must work at least 4 hours per week per pay period if they are working within San Francisco city limits or on property owned by the City, or at least 10 hours per week per pay period if they are working elsewhere.

The MCO applies only if you have at least \$25,000 (\$50,000 for non-profit organizations) in cumulative annual business with a City department **and** have more than 20 employees, including employees of any parent, subsidiaries and subcontractors. If you meet these criteria but do not provide MCO benefits for a potential City contract, the City can do business with you only if the contract receives an exemption or a waiver.

Your best source of information about the MCO is the MCO website: <http://sfgov.org/mco>

You will find:

- The text of the ordinance. Section 12P.5 contains new contract language that appears in the City's contracts and purchase orders.
- Information and Help for Contractors
- Information and Help for Contractors at the Airport
- Information and Help for Employees
- FAQs
- Forms
- Contact Information

Contract Provisions

Chapter 12.P of the S.F. Administrative Code is incorporated herein by reference, and Contractor agrees to comply with the MCO in performing this Contract. In addition to any other MCO provisions that may be applicable to Contractor, Contractor agrees to abide by the following terms:

- (a) For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Contract, Contractor shall provide to the Covered Employee no less than the Minimum Compensation.
- (b) Contractor understands and agrees that the failure to comply with the foregoing requirement of the MCO shall constitute a material breach by Contractor of the terms of this Contract. The City, acting through its Contracting Department, shall determine whether such a breach has occurred.
- (c) If, within 30 days after receiving written notice of a breach of this Contract 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, acting through its Department of Purchasing, shall have the right to pursue any rights or remedies available under the terms of this Agreement, Chapter 12.P or other applicable law.
- (d) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice

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proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

- (e) 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.
- (f) Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.
- (g) Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO.
- (h) The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five business days to respond.
- (i) The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Contract. Nothing in this Contract is intended to preclude the City from investigating any report of an alleged violation of the requirements of this Contract relating to the MCO.
- (j) Any Contractor subject to the provisions of this Chapter shall promptly notify the City of any subcontractors performing services covered by this Chapter and shall certify to the City that it has notified the subcontractors of their obligations under this Chapter.
- (k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue all lawful remedies in the event of a breach by Contractor of subsections (a) and (b).
- (l) If Contractor is exempt from the MCO when this Contract is executed because the cumulative amount of contracts with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into a contract or contracts that cause Contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Contract. This obligation arises on the effective date of the contract that causes the cumulative amount of contracts between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

54. REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES

Unless exempt, 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 that same may be

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amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the web at www.ci.sf.ca.us/purchase/HCAO.htm. 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(d) 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(f)(1-5). 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 compliance or anticipated compliance 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 keep itself informed of the current requirements of the HCAO.
- (h) Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

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- (i) 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 five business days to respond.
- (j) City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
- (k) If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

55. EARNED INCOME CREDIT (EIC) FORMS

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

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

56. MODIFICATION OF AGREEMENT

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

City may order changes in the work herein required and may order extra materials and extra work in connection with the performance of the contract and Contractor must comply with such orders except that:

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- A. If changes in services are of such a nature as to increase or decrease the cost of any part of the work, the price fixed in the contract may be increased or decreased by such amount as the Contractor and Purchaser agree upon as the reasonable and proper allowance for the increase or decrease in the cost of work; and,
- B. No order for any alteration, modification, or extra work which will increase or decrease the cost of the services shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by the Purchaser and certified by the Controller pursuant to Section 18 and 19. No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this contract.

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SPECIAL CONDITIONS

57. PURPOSE

The purpose of this contract is to provide Closed Captioning Services for CityWatch Cable 26, San Francisco's Government Cable Television Channel. CityWatch provides real time captioning of various board and commission meetings of the City and County of San Francisco. The services to be provided are described below.

58. PRE-BID CONFERENCE

A Pre-bid Conference will be held as follows:

DATE: July 12, 2002, (Friday)
TIME: 10:00 AM
PLACE: Office of Contract Administration
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

All prospective bidders are strongly encouraged to attend the Pre-Bid Conference. .

Questions concerning this Contract Proposal may be submitted in writing prior to the Pre-bid Conference and will be answered there. Questions should be directed to:

Ben Kawamura, Supervising Purchaser
Office of Contract Administration – Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

Telephone: (415) 554-6963
FAX: (415) 554-4807
e-mail: Ben.Kawamura@sfgov.org

Please reference Contract Proposal No. 77700 in your FAX or e-mail transmissions.

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

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SPECIAL CONDITIONS (Continued)

59. SCOPE OF SERVICES TO BE PERFORMED

The Department of Telecommunications and Information Services (DTIS) and the Disability Council of the City and County of San Francisco are requesting bids for real-time captioning of City board and commission meetings that are broadcast on CityWatch Channel 26, San Francisco's government cable television channel. Most meetings are closed captioned, but the contractor must be able to provide open captions upon request. Due to space limitations at the CityWatch facility, the captioning must be performed off-site.

A. User Departments

CityWatch currently captions approximately twenty-six (26) hours of live meetings each week. These meetings take place during daytime and evening hours. The meetings of the following boards and commissions are currently regularly scheduled to be captioned.

1. Board of Supervisors - Full Board meeting
2. Board of Supervisors - Finance Committee
3. Board of Supervisors - Public Works Committee
4. Board of Supervisors - Neighborhood Services Committee
5. Board of Supervisors - Transportation Committee
6. Board of Supervisors - Health and Human Services Committee
7. Board of Supervisors - Rules and Audits Committee
8. Board of Supervisors - Budget Committee
9. City Planning Commission
10. Transportation Authority
11. Taxicab Commission
12. Telecommunications Commission
13. Disability Council
14. LAFCo

B. Scheduling

Most meetings are regularly scheduled and take place on a weekly or monthly schedule. The City will try to provide the vendor with at least two (2) days advanced notice of schedule changes, however, there may be occasional scheduling changes that will need to be made upon shorter notice.

The City reserves the right to add additional meetings, or cancel meetings as necessary.

C. Equipment

The City currently owns two (2) Link Electronics PDR-885 VBI Caption Data Processor Units. Compatibility with this equipment will be considered an advantage unless the contractor can demonstrate that there is a technical or operational advantage to using another type of equipment. Due to space limitation, the captioning must be performed off-site.

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CLOSED CAPTIONING SERVICES
For The Term October 1, 2002 Through September 30, 2004

SPECIAL CONDITIONS (Continued)

D. Testing Requirements

Potential contractors will be required to perform a test of their equipment at the CityWatch facility to demonstrate their ability to perform off-site captioning. Potential contractors will be evaluated both for the accuracy of the captions, as well as for the technical quality of the equipment to be provided. For "live" real-time captioning, the City requires that a qualified real-time captioner/court reporter must have an accuracy rate of at least 96%, which is the standard set by the National Shorthand Reporters Association. It is expected that the encoding hardware will not create any visible degradation to the video signal.

E. Technical Support

Contractor must be willing to provide a technical support person who will meet with DTIS clients and a DTIS representative in case of new applications, modifications to existing applications, or any problems relating to said applications.

60. BIDDER'S/CONTRACTOR'S QUALIFICATIONS AND REQUIREMENTS

- A. City may make such investigations as it deems necessary to verify Bidder's qualifications; therefore, Bidder shall be prepared to furnish within seven business days from the date they are requested to do so, information and documentation requested by Purchaser, including but not limited to: network of manufacturing, services and supplies, lines of credit with financial institutions, number of employees, and business references.
- B. City reserves the right to reject any bid on which the information submitted by Bidder fails to satisfy the City and/or Bidder is unable to supply the information and documentation within the period of time requested.
- C. City reserves the right to inspect Bidder's place of business to aid Purchaser in determining Bidder's capabilities and qualifications.
- D. City may require Contractor to provide within seven business days from the date they are requested to do so, during the term of the contract, information and documentation requested by Purchaser, including but not limited to: network of manufacturing, services and supplies, lines of credit with financial institutions, numbers of employees, business references and any other information to determine Contractor's fitness to supply the contract requirements. Failure to supply information or documentation requested within the seven-day period, may result in Contractor being declared in default of the contract.
- E. Contractor must be capable of producing the usage reports required under Section No. 44 of this contract.
- F. Bidder/Contractor must be able to provide an accuracy rate of 96% for real-time captioning, which is the standard set the National Shorthand Reporters Association.
- G. Bidder 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.
- H. City reserves the right to inspect Contractor's place of business during the term contract to aid Purchaser in determining Contractor's continuing ability to satisfy the terms and conditions of the contract.

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For The Term October 1, 2002 Through September 30, 2004

SPECIAL CONDITIONS (Continued)

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

61. CITY DEPARTMENT RESPONSIBILITIES

- A. Monitor and document Contractor's performance and furnish Purchaser copies of records, correspondence and all other documentation relevant to Contractor's performance.
- B. Establish quality control measures as applicable to Department's operation and report, through documentation, to Purchaser any unsatisfactory performance by Contractor.
- C. Verify Contractor's invoices and ensure that payment terms reflect any applicable cash discount for payment within 30 days when stated in the contract.
- D. Show any applicable cash discount for payment within 30 days on all ordering and payment documents issued for purchases under the contract, otherwise Purchasing and Controller will return such documents unapproved.
- D. Process invoices in a timely manner so as to benefit City from any cash discount offered for prompt payment.

62. PRICE

- A. Prices must be firm for the two year term of the contract. Contractor may be request an increase once a year in accordance with Special Condition 63.
- B. Bid prices are to include all costs chargeable to City. Contractor will assume all costs including personnel salaries, transportation and any other expense for the training of his/her employees. No charges to City are to be made for training. All costs to City shall be included in prices entered on the Bid Sheet.
- C. Only prices that appear on the contract proposal Bid Sheet will be considered. No other pages with prices or attached price list/schedule will be considered.

63. PRICE ADJUSTMENT

- A. This is a 24-month contract. All prices shall not be increased for the first 24 months of the contract term.
- B. Prices may be increased effective on the anniversary date of the commencement of the contract, and after the first 24 months have elapsed.
- C. Price adjustment shall be based upon Contractor's direct costs.
- D. Contractor must submit with their request for an increase in prices proper and complete documentation verifying such increase. Contractor must submit proper and complete documentation with their request for any increase within 30 days of the anniversary date of the commencement of the contract.

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SPECIAL CONDITIONS (Continued)

- E. Contractor must pass on to City any and all decreases sustained by Contractor. Contractor must provide said decreases within 15 days of obtaining any decreases. Price decreases will be applied at any time during the contract term and any extensions thereof.
- F. This price adjustment clause shall apply to any extensions of the contract term; however, any price increase shall be limited to a maximum 5% for each 12-month period.

64. BID EVALUATION

Bid prices will be evaluated as follows:

- A. Except as otherwise noted on the Bid Sheet, unit prices will be multiplied by the Estimated Annual Usage, where applicable, for line items 1 through 5 to arrive at a Total Extended Price. Applicable payment terms (see General Condition No. 12) and any applicable MBE/WBE/LBE preference will be applied to the Total Extended Price to arrive at an evaluated total price.

65. AWARD

Award will be made to the lowest responsive and responsible Bidder in the aggregate.

In determining the Award, Purchasing will take into consideration, but will not be limited to:

- A. Price (evaluated)
- B. Satisfactory review of Bidder's technical qualifications, equipment and accuracy
- C. Any other factors deemed pertinent

Purchaser reserves the right to make Award to other than the low bidder, if the low bidder does not meet the City's technical requirements.

66. AWARDED ITEMS

- A. If, during the term of the contract, contract service is determined to be unacceptable for a particular department, and such is documented by the Purchasing Division, 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 cancellation date. City shall give Contractor ten days notice prior to any cancellation. City will purchase the required service from any source and in the manner as determined by Purchasing.
- B. Contractor must notify Purchasing by certified mail, 30 days in advance of any changes in the services required in the contract. Any changes made without the approval of Purchasing will constitute default and will result in invoking General Condition 40.

67. ORDERING

- A. Services to be furnished under this contract shall be ordered by issuance of a Direct Purchase Order by the City departments during the effective period of the contract.

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SPECIAL CONDITIONS (Continued)

- B. All invoices for payments shall show the Direct Purchase Order Release Number, against the Citywide Blanket Purchase Order assigned by Purchaser, to include the complete description of services and contract pricing.

68. BILLING

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

69. TERMS OF PAYMENT

- A. Bidder may offer any discount for payment of services made within 30 days of receipt of invoice. However, for the purpose of this bid proposal, the maximum discount that will be applied for bid evaluation purposes will be a 2% limit,
- B. Bidders may offer any discount for payment within 30 days of completion of delivery and receipt of properly executed invoice. However, the maximum discount that will be applied for bid evaluation purposes will be 2%; i.e. 2% 30 days, Net 31. Any discount over the 2% limit will be taken as a trade discount and will be deducted from the invoice amount without regard to payment date. (This paragraph supplements §13G on Page 2.)

70. PAYMENT

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

71. TERMINATION

In the event Contractor fails to perform any of its obligations under this Agreement, this Agreement may be terminated and all of Contractor's rights hereunder ended. Termination shall be effective after ten days written notice to Contractor. No new work will be undertaken after the date of receipt of any notice of termination, or five days after the date of the notice, whichever is earlier. In the event of such termination, Contractor shall be paid for its services under this Agreement, up to the date of termination, that have been performed to the satisfaction of City.

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SPECIAL CONDITIONS (Continued)

Upon termination of this Agreement, Contractor will submit an invoice to City for an amount which represents the value of services actually performed prior to the effective date of termination for which Contractor has not previously been compensated, except that in no event will the compensation paid for the month in which termination occurs be greater than the scheduled monthly fee multiplied by a fraction, the numerator of which will be the days in the month elapsed prior to the termination and the denominator of which shall be 31. Upon approval and payment of this invoice by City, City shall be under no further obligation to Contractor monetarily or otherwise.

72. BID SECURITY

Each bid must be accompanied by a bid bond, or money order, or a cashier's check or certified check, in the amount of \$1,000 payable to the City and County of San Francisco, to guarantee the filing of Performance Bond and Insurance Certificates, and proper execution of the contract.

Personal or company checks will not be accepted.

Failure to submit the bid security will result in the rejection of the bid and bidder declared as non-responsive.

73. INSURANCE

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

- A. Contractor will maintain and keep in force, during the full term of the contract, insurance in the following amounts and coverage:
1. Workers' Compensation, with Employers' Liability limits not less than \$1,000,000 each accident.
 2. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Contractual Liability, Independent Contractor, Broad Form Property Damages, Personal Injury, Products and Completed Operations.
 3. Commercial Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Owned and Non-owned and Hired Auto Coverages, as applicable.
- B. Commercial General Liability and Commercial Automobile Liability Insurance policies shall be endorsed to provide the following:
1. Name as ADDITIONAL INSURED, the City and County of San Francisco, its Officers, Agents, and Employees.
 2. That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- C. ALL POLICIES SHALL BE ENDORSED TO PROVIDE:

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CLOSED CAPTIONING SERVICES
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SPECIAL CONDITIONS (Continued)

Thirty days advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the following address:

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

- D. Before commencement of the term of this contract, certificates of insurance and copies of Additional Insured policy endorsements, in form and with insurers acceptable to City, evidencing all required insurance, shall be furnished to City, with complete copies of policies upon request.
- 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 contract and without lapse, for a period of three years beyond the contract expiration, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the contract, 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 and 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 limits specified above.
- G. Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- H. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

74. FAILURE TO EXECUTE CONTRACT

- A. Within ten days of the receipt of a notice of award, the bidder to whom the contract is awarded shall deliver the specified insurance certificates to City.
- B. If the bidder fails or refuses to furnish the required 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.

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CLOSED CAPTIONING SERVICES
For The Term October 1, 2002 Through September 30, 2004

SPECIAL CONDITIONS (Continued)

75. FORCE MAJEURE

Contractor's failure to perform any term or condition of the contract as a result of force majeure conditions such as wars, natural disasters (earthquakes, hurricanes, floods), wars, riots or other major unpredictable conditions outside the control of the Contractor.

76. ADDITIONAL NEW ITEMS

- A. Additional services may be added to this contract by mutual agreement of the parties.
- B. Aggregated cost of all services added to the contract during the contract term shall not exceed 20% of the total estimated value (cost) of the original contract.
- C. All requests to add additional services to the contract must be submitted by City departments in writing to the Office of Contract Administration, Purchasing Division. All requests must include complete specifications, estimated quantities for the remainder of the contract period and a price quotation provided by Contractor, for each service.
- D. All additional services added to the contract shall be approved through issuance of a contract modification.
- E. In the event the aggregated cost of the contract would be increased by more than 20% of the total estimated value of the original contract, all additional services in excess of the 20% limit will be bid in accordance with previous Purchasing Rules and Regulations.

The resulting bid award shall be added to the contract through a contract modification and include Contractor's name and information, complete service description, delivery information and pricing information.
- F. The contract term for the additional services added to the contract after the initial award shall be the remaining term of the existing contract and any extension thereof.

77. CHANGE OF CONTRACTOR

Should this contract necessitate a change in contractor, Contractor shall work in collaboration with the 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 Insurance requirements.

78. QUESTIONS / PROTESTS

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

79. ENTIRE AGREEMENT

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

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CLOSED CAPTIONING SERVICES
For The Term October 1, 2002 Through September 30, 2004

SPECIAL CONDITIONS (Continued)

80. BID SUBMITTAL INSTRUCTIONS

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

Bidders are to return the following documents:

- A. Page 1 of the Contract Proposal completed and signed
- B. Bid Sheets for items being bid
- C. **All** questionnaires and forms, completed and signed (See "Standard Bid Forms" attached to this Contract Proposal.)
- D. Bid Security (See Special Condition 72)

Bids must be submitted on the enclosed Bid Sheets. Prices should be clearly written by typewriter or pen and ink.

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

For more information, call:

Ben Kawamura
Supervising Purchaser
(415) 554.6963
e-mail: Ben.Kawamura@sfgov.org

End of Special Conditions

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AWARD SHEET

Item No.	Description	Price Per Unit
1.	Captioning Cost per hour	\$ <u>123.00</u> per hour
2.	Cost for Additional Equipment	No Charge
3.	Installation and/or set-up charges	No Charge
4.	Cost for Standby Captioner	\$ <u>75.00</u> per hour
5.	Minimum charge for short meetings	\$ <u>120.00</u> per hour

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COMPANY INFORMATION

NAME OF FIRM: Rapidtext, Inc.

ADDRESS: 1801 Dove Street, #101

CITY, STATE, ZIP: Newport Beach, CA 92660

TELEPHONE NUMBER: (949) 399-9200

FAX NUMBER: (949) 399-9216

CONTACT: Glory Johnson

24-HOUR EMERGENCY NUMBER: (949) 399-9200

FEDERAL TAX I.D. NUMBER: 33-0886091

PAYMENT TERMS: 2%-30 Days, Net 31

CBPO NUMBER: BPSF00001912