



**RFQ – 2008 / 01
Fiscal Services**

Contract Amount:	Up to \$150,000 per year, renewable to FY 2011/12.
Anticipated Contract Period:	July 1, 2008 – June 30, 2009; renewable annually up to FY 2011/12
Non-Mandatory Bidders Conference:	March 26, 2008
Letter of Intent Due:	April 11, 2008
Proposal Due Date:	April 30, 2008
Contact Person:	Ingrid Mezquita, Sr. Program Officer, 415-437-4649

Proposal due date for submission of application is April 30, 2008 at 5:00 p.m.

All applications received after 5:00 p.m. will be considered late and will **not** be accepted. No electronic or faxed submissions will be accepted.

Applicants are responsible for checking for updates, corrections, clarifications and other changes to this RFQ at www.first5sf.org.

Mail or Hand-deliver one (1) original and nine (9) copies of the application to:

First 5 San Francisco
1390 Market Street, Suite 318
San Francisco, CA 94102
Attn: Ingrid Mezquita

ESTIMATED TIMELINE	
RFQ Issued	March 11, 2008
Bidders' Conference	March 26, 2008
Letter of Intent Due	April 11, 2008
Proposals Due	April 30, 2008
Anticipated Notice of Recommendation for Funding	May 19, 2008
Tentative Commission Approval	June 4, 2008
Anticipated Contract Start	July 1, 2008

Purpose of this RFQ

The purpose of this solicitation is to secure fiscal services for First 5 San Francisco's Preschool for All initiative. The successful bidder will enter into negotiations for a one-year contract with annual renewal at the discretion of First 5 San Francisco.

Background

In November 1998, California voters passed Proposition 10, the California Children and Families Act, to help make sure that our youngest children receive the best possible start. The proposition increased the tax on tobacco products to fund local health care and early care and education programs that promote early child development, targeting children-from prenatal to age five-and their families. First 5 San Francisco is the public entity responsible for receiving and disbursing San Francisco's Proposition 10 funds. Currently, First 5 San Francisco receives approximately \$7.5 million per year in Proposition 10 revenues, with which it makes grants to both public and private entities. Funds are intended to promote, support and improve early childhood development, health and parental support through coordinated resources and programs.

In March 2004, San Francisco voters passed Proposition H, a Charter Amendment, declaring, *"It shall be the policy of the City and County of San Francisco to provide all four-year-old children who are City residents the opportunity to attend preschool, and it shall be the goal of the people in adopting this measure to do so no later than September 1, 2009."* First 5 San Francisco was designated as the agency to implement the Preschool For All initiative. This initiative provides free high quality half-day preschool for all San Francisco's four-year-olds, regardless of income. As of January 1, 2008, 1,700 children were enrolled at 79 participating Preschool for All sites.

First 5 San Francisco has a staff of fifteen and is governed by a nine-member Commission, which includes experts in the fields of health, children's services and early care and education, some of whom represent city agencies and the Board of Supervisors. Additional information can be found on our website: [wwwfirst5sf.org](http://www.first5sf.org)

Project Objectives

The overall objective of this RFQ is to identify an agency to provide reimbursements to participating Preschool for All agencies and to support First 5 San Francisco's Preschool for All program activities. The Fiscal Services Provider will be an important partner in the continued implementation of the Preschool for All initiative.

Funding

First 5 San Francisco has allocated up to \$150,000 per year starting FY 2008/09 for providing Fiscal Services. In addition, the grantee shall be entitled to an advance payment of up to 25% of the annual child enrollment reimbursement (approximately \$5.4 million in FY 08/09) for the purpose of disbursing payments to PFA providers. The grant is renewable annually through FY 2011/12. Grant renewal and award amounts are subject to First 5 San Francisco staff review, annual negotiation of grant award and scope of work, and continued availability of funds.

First 5 San Francisco reserves the right to negotiate the terms and conditions of the award, including the amount of the contract award. The initial contract period will be twelve months from the date of award. These funds may not supplant existing federal, state, or local revenue sources.

Scope of Services

Preschool for All (PFA) sites are selected through an annual application process which includes a site visit from First 5 San Francisco staff. Once a preschool site is recommended to participate in PFA, the participating agency signs a Memorandum of Understanding (MOU) with First 5 San Francisco to implement PFA. Once the MOU is signed, the PFA preschool site signs a Fiscal Agreement with the Fiscal Services Provider detailing the child reimbursement amount they will receive. Child reimbursement is calculated for every 4-year-old San Francisco resident based on the following:

- Education level of the lead teacher classroom teacher;
- Number of 4-year-old children in the classroom;
- Identifying the type and amount of child-care subsidy for 4-year-old in the classroom.

The Fiscal Services Provider will calculate the reimbursement due for each PFA child and remit payment to the PFA preschool site for all participating children. After the Funding Agreement is signed, the PFA preschool site receives 25% of the total child reimbursement for the year.

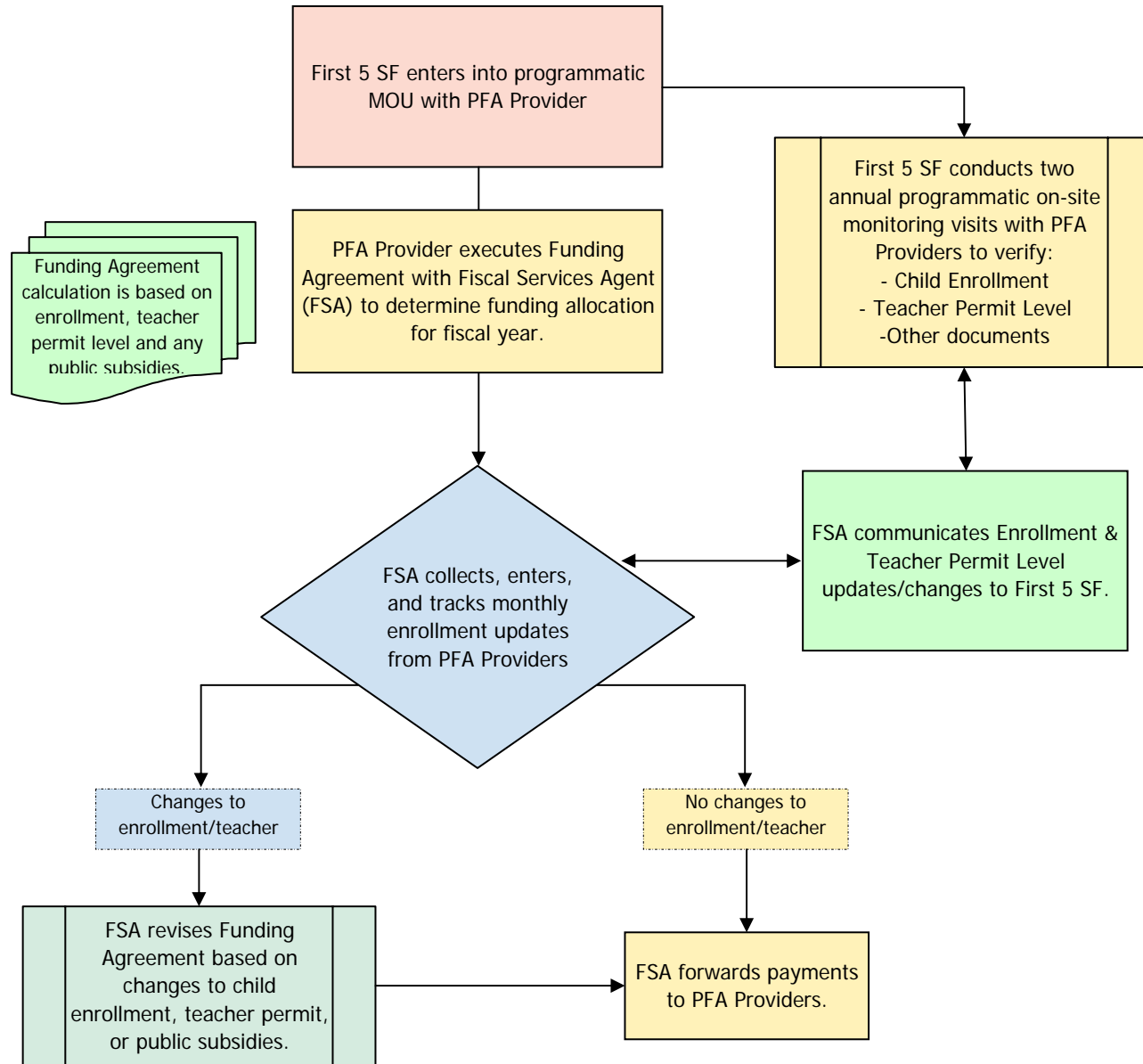
On a monthly basis, the PFA preschool sites are required to submit child enrollment updates and on a quarterly basis they submit teacher education updates. Verification of child and teacher information occurs twice a year during monitoring visits by First 5 San Francisco staff and the necessary reconciliation occurs upon completion of the verification process. If there are changes to child enrollment, teacher education level, or child-care subsidies, a revised Funding Agreement would need to be developed by the Fiscal Services Provider and the appropriate modifications made to the child reimbursement amount. (See **Figure 1**).

In order to continue PFA implementation, the successful bidder shall have necessary systems in place to implement monthly financial services and to make payments, as requested, for program goods and services. The bidder shall also have an electronic data and reporting system that provides individual information for expenditures paid out.

The services to be performed by the contractor are as follows:

- **Funding Agreements:** the bidder will enter into Fiscal Agreements with each preschool site approved by First 5 San Francisco. The Fiscal Agreement will detail the number of children enrolled per classroom, Lead Teacher's Child Development Permit and the number, type and amount of publicly subsidized and PFA-funded children. These agreements will need to be revised, as necessary, based on changes to child enrollment or teaching staff or staff qualifications.
- **Child Reimbursement:** the bidder will calculate child reimbursement amounts based on a reimbursement formula using information provided in the Fiscal Agreement.
- **Verification of Teacher Qualifications and Child Enrollment:** The bidder will be responsible for obtaining child enrollment information, child subsidy information and Lead Teacher permit level from each of the participating PFA preschool site. Any changes to

Figure 1 Preschool for All Program Fiscal Services



enrollment or teacher qualifications shall be communicated to First 5 San Francisco on a monthly basis and will be reflected on the specific agency's revised Funding Agreement.

- **Payments:** The bidder will calculate child reimbursement amounts, disburse payments to eligible providers and reconcile payments. The bidder will be expected to track and reconcile payments on a quarterly basis, for preschool centers and monthly for family child care providers. The annual child enrollment reimbursement is estimated at \$3.6 million for 2008/2009 with an expected 30% increase per year. The bidder will also make additional payments for program goods and services, as needed. The number of payments/transactions may vary; however, an average of 40 transactions per month is anticipated.
- **Reconciliation:** the bidder will be responsible for the reconciliation of provider payments between the Fiscal Agreement and the verified child and teacher information throughout the fiscal year.
- **Data Collection and Management:** The bidder will be responsible for gathering provider, program participant and financial data and reporting to First 5 San Francisco as needed. Bidder will be responsible for entering child and teacher level data on the First 5 San Francisco data collection system from participating PFA preschool sites.
- **Evaluation:** The bidder will participate in the PFA evaluation efforts including data collection.

Desired Qualifications

The bidder must demonstrate the capacity and capability to provide Fiscal Services. First 5 San Francisco is interested in agencies with the following qualifications:

- Expertise in fiscal and financial services.
- Experience disbursing multiple payments to community based organizations.
- Expertise in developing guidance about allowable costs and procedures for following up and implementing appropriate policies.
- Capacity to maintain financial integrity and its financial management capability.
- Ability to comply with applicable city and county ordinances.
- Expertise in utilizing acceptable accounting software that allows for accrual reporting of all costs within the time lines established and the allocation of overhead/indirect costs.
- Ability to establish and operate cash management directives to include monthly bank reconciliation.
- Ability to follow all applicable federal, state legislation and regulations, including tax form collection and reporting.

Non – Mandatory BIDDERS' CONFERENCE

A Non Mandatory bidders' conference will be held on March 26, 2008 at 9:00 a.m., at the First 5 San Francisco office, 1390 Market Street, Suite 318, San Francisco. The purpose of the bidders' conference is to review the program scope with applicants and answer any questions about the RFQ process. The meeting will give participants the opportunity to seek clarification from Commission staff. Applicants are strongly encouraged to attend.

Non-Mandatory Letter of Intent

First 5 San Francisco requests that applicants submit a Non-Mandatory Letter of Intent on letterhead by April 11, 2008 to the First 5 San Francisco office. A letter of intent is not mandatory. The number of Letters of Intent greatly assists staff in planning the proposal review process.

Review of Proposals

The proposals will be scored using the following scale:

Qualifications & Experience	40 points
Proposed Activities and Timeline	30 points
Budget & Budget Narrative	30 points

The staff funding recommendation to the Commission is final. If a grant agreement acceptable to both parties cannot be negotiated with the recommended applicant, First 5 San Francisco may recommend funding an alternate proposal.

PROPOSAL CONTENTS & INSTRUCTIONS

Proposal Content

Interested parties should submit one (1) original and nine (9) copies of the proposal. The proposal must include the following components in the order outlined below:

1. Coversheet

Complete the information requested in the Coversheet. The contact information provided will be used by the Commission to communicate with applicants. (Attachment 1)

2. Qualifications and Experience (no more than 6 pages)

Describe the qualifications, expertise and experience that will contribute to your successful conceptualization and implementation of fiscal services. Please address the following:

- Describe credentials and certifications for personnel that will provide fiscal services, note their project responsibilities, qualifications and contributions to past projects.
- Describe your expertise and experience disbursing funds to multiple community organizations and qualifications as described in the desired qualification section above.
- Describe ability, organizational capacity and track record to financially administer publicly-funded grants. Include a list of references for current fiscal agent services. Identify the primary contact person (Director) with whom First 5 San Francisco will communicate. Provide the qualifications and resumes of the Director and other key staff members. We anticipate that at a minimum, the Director or key staff will have an extensive background and experience in fiscal management.
- Indicate the plan to develop internal controls that will be used by the applicant to maintain fiscal integrity to provide fiscal services.

- Describe the plan to develop a financial reporting and cash management system for PFA fiscal service activities. Also, describe financial reporting and cash management capabilities. You may wish to reference specific past projects to demonstrate your qualifications.
- Describe the ability to maintain cash flow sufficient to pay the monthly and quarterly child enrollment and all non-child enrollment reimbursements for program goods and services within 15 days of receiving the duly authorized request from First 5 San Francisco.

3. Proposed Activities and Timeline (no more than 2 pages)

Provide a statement of the bidder's analysis of the RFQ requirements including a proposed scope of work as described in the RFQ Scope of Services section. Include a set timeframe for disbursing payments to providers in an efficient and timely manner.

4. Budget & Budget Narrative (no more than 2 pages)

Use Attachment 2 to create a line item budget for full year of operation.

For each, provide a budget and budget narrative. Create a line item project budget showing the amount and purpose of requested funds. Provide a narrative for any item in the budget whose purpose may not be obvious or immediately clear. Attach the budget narrative after the budget form. A final budget will be negotiated with the selected partner.

5. Required Attachments

- A. Resumes/Position Descriptions – Include resumes and job descriptions of key staff who will be involved in the contract. These documents should provide sufficient detail to permit Commission staff to assess how their experience will contribute to the project's objectives.
- B. Attachment 2 - Budget and Narrative

Attachments to the Original Proposal copy

- A. IRS form 501(c) 3, if applicable
- B. Form 990, if applicable
- C. Most recent Financial Statement (audited)
- D. Agency Global Budget
- E. References from current Fiscal Agent clients
- F. Job Descriptions and Resumes of Key Staff Members

Submission Instructions

Proposal Format

All proposals must:

- Be typed, with a minimum of one-inch margins on each page;
- Use no less than 12-point font;

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- Be double spaced;
- Have the page number and program name listed at the bottom of each page; and
- Be within the stated page limits for each section.

Staple or clasp each copy of the proposal set (narrative plus attachments) in the upper left-hand corner. It is not necessary to bind or use or a 3-ring binder.

Proposals can be mailed or hand delivered but regardless of the postmark date must be received by the Commission by **5:00 p.m., on April 30, 2008.**

Mail or hand-deliver one original and nine copies of the proposal to:

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First 5 San Francisco
1390 Market Street, Suite 318
San Francisco, CA 94102
Attn: Ingrid Mezquita

MISCELLANEOUS INFORMATION

Failure to meet the following requirements will eliminate the applicant from consideration:

- If awarded a grant, the applicant must be certified as a City-approved vendor and compliant with the City's insurance requirements within 45 days of award notice or First 5 San Francisco reserves the right to revoke the grant award.
- Applicant must follow all guidelines (formatting, page limitations, required attachments, etc.) detailed in the **Proposal Contents and Instructions section of this RFQ.**

Other Requirements

Below is a partial list of significant requirements that will be part of each funded contractor's contract.

1. Contractor must be a City-approved vendor.
2. Contractor must comply with the monitoring and evaluation requirements. These requirements will be detailed in the contracting process
3. Contractor must have current insurance coverage (workers compensation, general liability, fidelity bond and automobile, if applicable).

Applicants that are not yet City-approved vendors should begin the certification process as soon as possible, in order to ensure that they are able to meet this requirement if awarded a grant. The City's Office of Contract Administration offers all of the necessary forms on its website, which can be found at www.sfgov.org/oca/purchasing/forms.htm. Subcontractors are not required to be City-approved vendors; only the lead organization must be.

The City and County of San Francisco requires all agencies receiving grant funding to comply with a number of regulatory and legal requirements. Some of these requirements are described below.

Criminal Screening Requirement

The City and County of San Francisco requires that all contractors and subcontractors comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) for any person who applies for a paid or volunteer position with the organization, or any subcontractor, in which the individual would have supervisory or disciplinary authority over a minor under his or her care.

If the contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach (separately and collectively known as "Recreational Site"), the organization shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3).

If the organization, or any of its subcontractor, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then the contractor or its subcontractor must comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. The contractor shall provide, or make its subcontractors provide, First 5 San Francisco with a copy of any such notice at the same time that it provides notice to any parent or guardian.

The contractor must expressly require all of its subcontractors with supervisory or disciplinary authority over a minor to comply with this requirement as a condition of its contract with the subcontractor.

Other requirements of agencies receiving grant funds include:

- The contractor must comply with the Domestic Partners or Equal Benefits Ordinance. For further information regarding compliance, respondents are encouraged to consult the Human Rights Commission at (415) 252-2500.
- The contractor must comply with the first source hiring program including developing agreements with the City to consider hiring economically disadvantaged individuals for entry-level positions.
- The contractor must comply with the Sunshine Ordinance. In accordance with San Francisco Administrative Code section 67.24(e), contracts, contractors' bids, responses to requests for proposals 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 organizations net worth or other proprietary financial data submitted for qualification for a

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contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided that is covered by this paragraph will be made available to the public upon request.

- The contractor must comply with a provision of the Sunshine Ordinance that affects non-profits with at least \$250,000 in City funding and at least one applicable contract. The ordinance requires the non-profit to hold at least 2 open board meetings, to allow public access to financial records, and to promote community representation on their Board of Directors or equivalent, and to describe in its RFP response all complaints regarding compliance with the Sunshine Ordinance in the last two years, and the resolutions of these complaints.
- The contractor must comply with the San Francisco Children and Families Commission Tobacco-Free Policy – Attachment 3.

Reservations of Rights by First 5 San Francisco

- Issuance of this RFQ does not constitute a commitment by First 5 San Francisco to award a contract. First 5 San Francisco reserves the right to reject any or all proposals received in response to this RFQ, or to cancel this RFQ if it is in the best interest of the funding agencies to do so.
- Actual award of funding is dependent on a successful grant negotiation. During the grant negotiation, First 5 San Francisco may seek modifications to the proposed activities and budget. If a grant agreement cannot be completed within a reasonable time frame, determined by First 5 San Francisco, First 5 San Francisco may terminate negotiations and pursue an agreement with a different applicant.
- Applicants submitting a proposal agree that by submitting a proposal they authorize First 5 San Francisco to verify any or all information contained in the proposal.
- First 5 San Francisco's decision to award a grant to an organization that proposes to use subcontractors to perform the work funded by the grant does not waive First 5 San Francisco's right to approve or disapprove the subcontractors selected.
- First 5 San Francisco reserves the right, after grant award, to amend the resulting contract as needed throughout the term of the contract to best meet the needs of all parties.
- The applicant will comply with all requirements of the City and County of San Francisco and the Funding Agencies.

Allowable Grant Costs

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First 5 San Francisco awards are cost reimbursement grants for expenditures described in pre-approved budgets. Except for advances of funds, agencies must incur expenses in pursuit of grant activities prior to reimbursement by First 5 San Francisco.

- Requested funding must be used to implement the types of activities described in the Scope of Work.
- This grant shall be used only to supplement, enhance, or augment existing levels of service or create new services. Funds may be used to continue First 5 San Francisco funded programming.
- The funds shall only be used for services to children 0 -5 years old, their families or caregivers, or expecting parents.

Unallowable Grant Costs

- Administrative costs may not exceed an amount equal to 15% of the total grant amount.
- No grant funds shall be used to supplant state or local general fund money for any purpose. In other words, this funding cannot replace other federal, state, or local funds currently used or already planned and committed for expansion activities, nor may grant funds be used to replace existing program revenues.
- Funds cannot be used for activities outside the Scope of Work.
- Funds cannot be used for capital expenditures.
- Funds cannot be used for reimbursement of accruals of employee paid time off (e.g., vacation and sick time accruals)

PROPOSAL COVER SHEET

Please use this form for your front cover.

SAN FRANCISCO CHILDREN AND FAMILIES COMMISSION

RFQ 2008 / 01

Preschool for All Fiscal Agent Function and Services

FY 2008/2009

Complete the Proposal Cover Sheet
This will serve as the front cover of your proposal.
An official authorized to bind the entity must sign it.

Name of Agency/Organization:	
Agency Address	Telephone Number
Program Contact/Title	Telephone Number
Alternate Contact/Title	Telephone Number
	FAX Number
Amount of Grant Application Request:	
Name of Agency Director	
Signature of Agency Director	
Name of the President of the Board of Directors	
Signature of President of the Board of Directors	

Application Deadline:
April 30, 2008, 5:00 p.m.

First 5 San Francisco
San Francisco Children and Families Commission
1390 Market Street, Suite 318
San Francisco, CA 94102

Attachment 2 – BUDGET INSTRUCTIONS and BUDGET REQUEST FORM

Use Attachment 2 to create a line item budget for a full year of operation.

Please provide the amount being requested from the funding agencies in the amount requested column. If there is other funding being leveraged for a budget line, report that amount in the “Funding from other Sources – Cash” column. If there are other resources being leveraged for a budget line, report the value of those resources in the “Funding from other Sources – In-Kind” column. Provide a total of the resources committed to the project in the “Total” column.

Except for advances of funds, this contract will be cost-reimbursable, meaning it is based on actual expenditures. Grantees are required to maintain documentation of all program expenses billed to the activities funded through this RFP, and you will be asked to produce receipts, cancelled checks and supporting documents during the fiscal site visit.

A. Personnel: List the position titles, percentage full-time equivalent (FTE, e.g., 100% for 1FTE, 50% for .5FTE) for the entire program personnel, and the hourly pay rate for all staff members. Listing the hourly pay rate is particularly important because all funded programs should be in compliance with San Francisco’s Minimum Compensation Ordinance. The text of the Minimum Compensation Ordinance can be found online at <http://www.sfgov.org/oca/lwlh.htm>.

B. Fringe Benefits/Taxes: While you are not required to show calculations for fringe benefits and taxes related to each employee on the budget form, you are required to show these calculations as part of the budget narrative.

C. Professionals/Consultants: This category should include payments made to individuals who provide special services in order to help you operate your program, but who are not employees, such as consultants, trainers or evaluators. Outside consultants that are paid to provide staff development services should also be included here. Please follow the instructions provided on Form F for this section and show all calculations.

D. Subcontractors: This refers to subcontractors who provide services to your target population to help enhance your program. Subcontractors are usually other nonprofit, community-based organizations. The total listed here should only reflect the subcontractor’s program expenses; the subcontractor’s administrative expenses should be listed on a separate line in the Administrative Expenses portion of the budget spreadsheet.

E. Program Materials and Supplies: List all materials and supplies used by your program. This includes paper and pencils, books, arts and crafts supplies and recreational equipment, for example. This category should also include reproduction costs for program materials. Please show all calculations.

F. Other Program Expenses: This category is for items that do not fit into any of the above categories. For example, costs for criminal screening and fingerprinting can be shown here. Other examples include youth stipends, field trips, special events, mileage, MUNI fast passes, bus rentals, graduation ceremonies and food for participants.

Please break out your program's other expenses, and do not include a line item titled "Other Program Expenses" with a lump sum amount.

G. Administrative or Indirect Costs: The total indirect cost allocation to a grant may not exceed 15% of total the total grant budget.

Administrative Costs may include: audit, insurance, administrative postage and reproduction, copier lease, administrative rent and utilities, pagers, landline and cell phone bills, janitorial services, and a portion of salaries and benefits for administrative staff (e.g. executive director, bookkeeper, MIS staff and receptionist).

The grantee must have a cost allocation plan that shows the percentages used to allocate Administrative Costs to the grant budget. Acceptable methods include allocating costs by number of FTEs working on the program or square footage used by program staff, or another methodology approved by Commission staff. The grantee must be prepared to present and explain the cost allocation plan during grant budget negotiations.

Exceptions to the policy will be considered on a case-by-case basis, and will require approval of Commission staff and the Fiscal Committee.

Attachment 3

**SAN FRANCISCO CHILDREN AND FAMILIES COMMISSION
TOBACCO – FREE POLICY**

Section 1. Definitions.

As used in this Policy the term:

“City” shall mean the City and County of San Francisco.

“Commission” shall mean the San Francisco Children and Families Commission.

“Contract” shall mean an agreement for grants to be provided, or for goods or services to be purchased out of the San Francisco Children and Families Trust Fund under the control of the Commission and does not include property grants, agreements entered into pursuant to settlement of legal proceedings, or contracts for a cumulative amount of \$5,000 or less per vendor in each fiscal year.

“Contractor” means any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract all or part of the funding of which comes from the San Francisco Children and Families Trust Fund.

“Director” shall mean the Executive Director of the San Francisco Children and Families Commission.

“Subcontract” shall mean an agreement to provide goods and/or services, including construction, labor, materials or equipment, to a contractor, if such goods or services are procured or used in the fulfillment of the contractor's obligations arising from a contract subject to this Policy.

“Subcontractor” means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a subcontract with a contractor. Such term shall include any person or entity who enters into an agreement with any subcontractor for the performance of 10 percent or more of any subcontract.

Section 3. Tobacco-Free Policy

(a) Policy: Every contract awarded by the Commission shall incorporate by reference and require contractor to comply with the provisions of this section. In addition, all contractors must include or incorporate by reference in all subcontracts and require subcontractors to comply with the requirements of this Policy; failure to do so shall constitute a material breach of contract.

In the performance of a contract, the contractor or subcontractor shall agree as follows:

(1) Smoke-Free Workplaces

The Contractor shall prohibit smoking in its offices, automobiles or at Contractor-sponsored events located in the City and County of San Francisco.

(2) Tobacco Hazards Education and Smoking Cessation Referrals

The Contractor shall make available to clients, employees and community members educational materials, provided by the Commission, on the health hazards of tobacco.

The Contractor shall make available to clients, employees and community members, at the Contractor's offices and service delivery and event sites, information provided by the Commission, regarding smoking cessation services.

(3) Divestment

The Contractor shall divest from any investment in companies that, at the time the Contractor responds to a solicitation of bids from the Commission, derive more than 15 percent of their revenues from tobacco products.

(4) Disclosure of Tobacco Industry Funding

The Contractor shall report annually to the Commission the receipt of any moneys from a person, persons, firm, partnership, corporation, or combination thereof that derives more than 15 percent of its revenue from the production or sales of tobacco products. The report shall include the name of the entity, the amount received, the percentage of the agency's total budget the amount represents, the purpose of the contribution, and any efforts made to obtain alternative funding.

(b) Penalties: Whenever the Director determines that a person or entity under contract with the Commission has violated any provision of the Tobacco-Free Policy described in section, the Director shall have the authority to impose such sanctions or take such other actions as are designed to ensure compliance with the provisions of this Policy which shall include, but are not limited to:

(A) Suspension or termination of a contract;

(B) Ordering the withholding of funds due the contractor under any contract with the Commission;

(C) Disqualification of a bidder or contractor from eligibility for providing commodities or services to the Commission for a period not to exceed five years, with a right to review and reconsideration by the Commission after two years upon a showing of corrective action indicating violations are not likely to reoccur.

All contracts shall provide that in the event any contractor fails to comply in good faith with any of the provisions of this Article the contractor shall be liable for liquidated damages in an amount up to five percent of the contractor's net profit under the contract, or ten percent of the total amount of the contract dollars whichever is greater. All

contracts shall also contain a provision whereby the contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the Commission upon demand and may be set off against any monies due to the contractor from any contract with the Commission.

Section Four. Waivers and Exceptions

(a) Sole source.

The Director may waive the requirements of this Policy whenever the Director finds that the needed goods or services are available only from a sole source and the prospective contractor is not otherwise currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements.

(b) No qualified bidders who comply and service/project is essential to City/residents.

After taking all reasonable measures to find an entity that complies with the Policy, the Director may waive any or all of the requirements of this Policy for any contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the Commission as of the date of the enactment of this Policy where the Director determines that there are no qualified responsive bidders or prospective contractors who could be certified by the Commission as being in compliance with the requirements of this Policy and that the contract is for goods, a service or a project that is essential to the City or City residents.

(c) Bulk purchasing arrangements through federal, state, regional or City entities.

The Director may waive the requirements of this Policy where the Director determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State, regional or City entities that actually reduce the Commission's purchasing costs would be in the best interest of the Commission.

(d) Contract serves public benefit.

The Director may waive the requirements of this Policy where the Director determines that the benefit of the contract to the public and the Commission's ability to carry out its charge pursuant to state and local law outweigh the harm in the contractor's noncompliance with the Policy.

(e) Contractor is a public entity.

This Policy shall not apply where the prospective contractor is a public entity or City Commission and the Director finds that the proposed contract is necessary to serve a substantial public interest.

(f) Requirements violate public agency grant and good faith attempt has been

made to change conditions of grant.

This Policy shall not apply where the Director finds that the requirements of this Policy would violate or be inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, provided that the Director has made a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to authorize application of this Policy.

(g) Retirement and Pension Plans

This Policy shall not apply to a contractor or subcontractor's investment of funds where the funds are held in trust for the benefit of employees or third parties.

(h) Federal or State law

This Policy shall be construed and applied so as not to conflict with applicable federal or State laws, rules or regulations.

Section 5. Effective Date

This policy shall apply to all contracts entered into on or after July 1, 2001.