



METROPOLITAN
TRANSPORTATION
COMMISSION

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Adrienne J. Tissier, Chair
San Mateo County

August 3, 2012

Amy Rein Worth, Vice Chair
Cities of Contra Costa County

REQUEST FOR QUALIFICATIONS
Language Plan Assistance

Tom Azumbrado
U.S. Department of Housing
and Urban Development

Dear Consultant:

Tom Bates
Cities of Alameda County

The Metropolitan Transportation Commission (MTC) invites your firm to submit a Statement of Qualifications (SOQ) to assist with the analysis and outreach related to factors 2, 3, and 4 of MTC's Language Assistance Plan (LAP).

David Campos
City and County of San Francisco

Dave Cortese
Santa Clara County

This letter together with its enclosures comprises the RFQ for this project. Responses to the RFQ should be submitted in accordance with the instructions set forth in this RFQ.

Bill Dodd
Napa County and Cities

Dorene M. Giacopini
U.S. Department of Transportation

I. Statement of Qualifications Due Date

Federal D. Glover
Contra Costa County

Interested firms must submit an original and five (5) hard copies and an electronic pdf copy of their SOQ by 4:00 p.m., Friday, August 31, 2012. ***SOQ received after that date and time will not be considered.*** Submission of an electronic copy only will not satisfy submission requirements.

Mark Green
Association of Bay Area Governments

Scott Haggerty
Alameda County

II. MTC Contact

Anne W. Halsted
San Francisco Bay Conservation
and Development Commission

SOQ and all inquiries relating to this RFQ shall be submitted to the Project Manager at the address shown below. For telephone inquiries call (510) 817-5897. E-mail inquiries may be addressed to drodri@mtc.ca.gov.

Steve Kinsey
Marin County and Cities

Sam Liccardo
Cities of Santa Clara County

Jake Mackenzie
Sonoma County and Cities

Kevin Mullin
Cities of San Mateo County

Bijan Sartipi
State Business, Transportation
and Housing Agency

Denise Rodrigues, Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 8th Street,
Oakland, CA 94607-4700

James P. Spering
Solano County and Cities

III. Notice of Addenda and Requests for Exceptions

Scott Wiener
San Francisco Mayor's Appointee

Any addenda to this RFQ that may be issued by MTC will be posted at <http://procurements.mtc.ca.gov/>. It is each interested firm's responsibility to check for addenda to this RFQ and comply with new or revised requirements that may be stated therein.

Steve Heminger
Executive Director

Ann Flemer
Deputy Executive Director, Policy

Andrew B. Fremier
Deputy Executive Director, Operations

Requests for clarification or exception to RFQ provisions must be received no later than 4:00 p.m., Friday, August 17, 2012 to guarantee consideration.

IV. Background

MTC is the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area, established pursuant to California Government Code Sections 66500 *et seq.* MTC functions as both the regional transportation planning agency (RTPA) – a state designation – and for federal purposes, as the region’s metropolitan planning organization (MPO) and designated recipient for certain federal grant funds.

Executive Order 13166 requires federal agencies to implement measures to ensure that people who speak limited English have meaningful access to federally conducted and federally funded programs and activities, consistent with Title VI of the Civil Rights Act of 1964. Both the U.S. Department of Transportation and the Federal Transit Administration have implemented guidance or directives in furtherance of Executive Order 13166.

On September 22, 2010, MTC adopted a *Plan for Special Language Services to Limited English Proficient (LEP) Populations*, available online at http://www.mtc.ca.gov/get_involved/lep.htm.

In September 2011, the Federal Transit Administration (FTA) conducted an on-site Title VI compliance review of MTC. The Title VI Compliance Review focused on MTC’s compliance with the General Reporting Requirements and the Program-Specific Requirements. FTA’s formal report on the review findings was received by MTC on April 12, 2012. The report is posted along with this RFQ on the MTC website at <http://procurements.mtc.ca.gov/>.

The FTA’s review requires MTC to expand on its adopted language assistance plan and directs MTC to conduct further analysis related to Factors 2, 3, and 4 of the current plan, which are based on the U.S. Department of Transportation’s LEP guidance (posted along with this RFQ on the MTC website at <http://procurements.mtc.ca.gov/>.)

V. Scope of Work and Budget

Appendix A, Scope of Work, describes work to be performed under this RFQ.

The contract payment terms will be lump sum (firm fixed price) with payment made on the basis of receipt by MTC of satisfactory deliverables. A budget of fifty five thousand dollars (\$55,000) is currently available for Tasks 1 through 4.

All work to be assigned for optional Task 5, listed in *Appendix A, Scope of Work* of this RFQ will be initiated by task order. Payment for task orders may be fixed-price deliverables based on time and materials, based on the hourly rates included in the Consultant’s SOQ. The task order process and a sample task order form are attached hereto as *Appendix B, Task Order Process* and *Appendix B-1, Sample Task Order*.

The term of this contract will extend from September 2012 through June 30, 2013. At MTC’s option, this contract may be extended for additional work related to Language Plan assistance as outlined in *Appendix A*.

Appendices included in this RFQ include:

- *Appendix A, Scope of Work*
- *Appendix B, Task Order Process*
- *Appendix B-1, Sample Task Order*
- *Appendix C, California Levine Act Statement*
- *Appendix D, MTC's Standard Consultant Agreement*
- *Appendix D-1, Insurance Requirements*

VI. Form of Statement of Qualification

MTC requests that the SOQ follow the following format. Proposers are encouraged to print double-sided copies to save paper.

1. A transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm. The transmittal letter should refer to this RFQ by title and date and should include the name, telephone number and email of a contact person and a statement that the SOQ is a firm offer to enter into a contract with MTC according to the terms of this RFQ.
2. A firm profile and summary of the firm's qualifications in relation to *Appendix A, Scope of Work*. The summary should include a brief history of the firm's experience in providing language assistance to government or other entities, particularly transportation agencies.
3. Descriptions of any assignments relevant to performing the Scope of Work listed in *Appendix A*. The description should include the following:
 - Client agency
 - General description of work performed
 - Names of the staff proposed for this project who worked on the project and their roles
 - A summary of outcomes and achievements
4. Resumes of proposed personnel that should include: a description of relevant experience, proposed role, length of work experience, and areas of expertise.
5. References who can attest to key staff's experience in performing work substantially similar to the services covered by this RFQ for which the firm is submitting an SOQ. References should include contact information and the name of the project or projects done by the consultant for that client.
6. A signed California Levine Act statement (*Appendix C*).
7. Provide a breakdown of the expected expenditures of funds for each task described in *Appendix A, Scope of Work*. The budget should include, but is not limited to, a task budget and a line item budget with billing rates.

The task budget should present a breakdown of hours and expenses by task and deliverable for

the project. It should identify or refer to key personnel or job descriptions in relation to each task to provide a full explanation of the resources committed to the project.

The line item budget should present a breakdown of costs by category, including hourly rates for key personnel and job classifications, and costs for computing resources (if needed), a description of all costs and expenses that would be passed along to MTC, a statement that the rates indicated shall be firm through June 30, 2013, and a description of the basis on which hourly rates will escalate, with a “not to exceed” cap. A line item budget should also be submitted for proposed subconsultants with contracts estimated to exceed \$25,000.

VII. Evaluation Factors

SOQs will be evaluated based on the following criteria, in relative order of importance:

- Individual and team expertise and experience providing similar consulting services.
- Resource allocation and depth of resources, including the capability to complete the project in the time period allotted.
- Cost effectiveness, reasonableness and appropriateness of preliminary task budget.
- Written and oral communication skills, based on proposal and interview, if held.

Following the evaluation, the panel may elect to recommend award to a particular proposer or develop a “short list” of proposers with a reasonable likelihood of being awarded the Contract for interviews. References may be checked for one or more of such short-listed proposers prior to final evaluation.

Following interviews of the short-listed firms (if held), the evaluation panel will conduct the final evaluation, based on the written proposals and oral interviews. The MTC Project Manager will then recommend a Consultant to the Executive Director.

MTC reserves the right not to convene interviews and to make an award on the basis of written proposals alone. Further, MTC reserves the right to accept or reject any and all submitted proposals, to waive minor irregularities, and to request additional information from the proposers at any stage of the evaluation.

VIII. Consultant Selection Timetable

4:00 p.m., Friday, August 17, 2012	Closing date and time for requests for clarifications/ exceptions
No later than three (3) business days prior to the date SOQs are due	Closing date and time for objections to RFQ provisions
4:00 p.m., Friday, August 31, 2012	Closing date and time for receipt of Statements of Qualifications
Week of September 10, 2012	Oral interviews, if necessary

Week of September 17, 2012

Recommendation of Consultant to MTC's
Executive Director

Week of September 17, 2012

Execution of Contract

IX. Selection Disputes

A firm may object to a provision of the RFQ on the grounds that it is arbitrary, biased, or unduly restrictive, or to the selection of a particular Consultant on the grounds that MTC procedures, the provisions of the RFQ or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied by submitting to the Project Manager a written explanation of the basis for the protest:

- No later than three (3) working days prior to the date SOQs are due, for objections to RFQ provisions; or
- No later than three (3) working days after the date the firm is notified that it was found to be non-responsive; or
- No later than three (3) working days after the date on which the contract is authorized by the MTC Executive Director or the date the firm is notified that it was not selected, whichever is later, for objections to Consultant selection.

Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the MTC Executive Director authorizes award.

The MTC Section Director responsible for the procurement will respond to the protest in writing, based on the recommendation of a staff review officer. Authorization to award a contract to a particular Consultant shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the MTC Section Director.

Should the Proposer wish to appeal the decision of the MTC Section Director it may file a written appeal with the MTC Executive Director, no less than three (3) working days after receipt of the written response from the Section Director. The Executive Director's decision will be the final agency decision.

X. Organization Conflicts of Interest

Consultant shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under the agreement resulting from this and other MTC solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Project. Whenever MTC is awarding a contract that involves the rendering of advice, it will consider whether there exists the potential for bias, because of other activities, relationships or contracts of the Consultant, and if so, whether any potential bias can be mitigated acceptably by MTC and the Consultant.

Consultant shall not engage the services of any subcontractor or independent contractor on any work related to this Agreement if the subcontractor or independent contractor, or any employee of the subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

XI. General Conditions

MTC will not reimburse any firm for costs related to preparing and submitting an SOQ. MTC reserves the right in its sole discretion not to enter into any contract as a result of this RFQ.

All materials submitted by proposers are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt.

A MTC's standard contract provisions are enclosed for your reference as *Appendix D*. If a firm wishes to propose a change to any standard MTC contract provision, the provision and the proposed alternative language must be submitted by the deadline specified above for requests for exception. If no such change is requested, the firm will be deemed to accept MTC's standard contract provisions based on its submission of an SOQ.

The selected firms will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix D-1*. By submitting an SOQ, a firm agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix D-1*, Insurance Requirements within five (5) days of MTC's notice to a firm that it is prepared to enter into a contract with the firm. Requests to change MTC's insurance requirements must be brought to MTC's attention no later than the date for requesting exceptions to RFQ provisions. If such objections are not brought to MTC's attention by that deadline, compliance with the insurance requirements will be assumed.

XII. Authority to Commit MTC

Based on the recommendation of the selection panel, the Executive Director of MTC will authorize staff to enter into a contract with the recommended firm and has the authority to commit to the expenditure of funds in connection with this RFQ.

We appreciate your interest in this RFQ and look forward to receiving your SOQ.

Sincerely,



Andrew B. Fremier
Deputy Executive Director, Operations

AF: DR

APPENDIX A SCOPE OF WORK

The Metropolitan Transportation Commission (MTC) requires a Consultant to assist with the expansion of its Limited English Proficient (LEP) population analysis, and update its Plan for Special Language Services. All work will be performed as directed by the MTC Project Manager. The following scope of work describes the tasks the Consultant will be asked to complete.

Consultant shall conduct its analysis in accordance with Federal Transit Administration (FTA) Title VI Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines to Federal Transit Recipients" and the FTA Office of Civil Rights, "implementing the Department of Transportation's Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons-A Handbook for Public Transportation Providers" both of which are posted online with this RFQ at <http://procurements.mtc.ca.gov/>.

Task 1 Project Kick Off/ Plan for Conducting Analysis

Consultant shall review all of the analyses performed by MTC for its *Plan for Special Language Services to Limited English Proficient Populations* (available at http://www.mtc.ca.gov/get_involved/lep.htm), and any relevant historical and/or current data related to LEPs provided by MTC.

Consultant shall then meet with the MTC Project Manager and other relevant MTC staff to discuss and agree upon a broad strategic approach for conducting the analysis. Two one-to-two hour meetings are envisioned. During these meetings, Consultant and MTC staff shall finalize the work plan for conducting Tasks 2, 3, and 4 below. After these meetings, Consultant shall develop a plan to conduct analysis.

Deliverable 1.1	Draft Plan for Conducting LEP Analysis for Factors 2, 3 and 4
Deliverable 1.2	Final Plan for Conducting LEP Analysis for Factors 2, 3, and 4

Task 2 Analysis for Factor 2: Frequency with Which LEP Individuals Come into Contact with MTC Programs, Activities, and Services

Consultant shall work with MTC staff, regional Community Based Organizations (CBOs), and LEP persons to determine the frequency of contact LEPs have with MTC's programs, activities, and services.

Deliverable #2.1:	Draft Factor 2 Analysis
Deliverable #2.2:	Final Factor 2 Analysis

Task 3 Analysis for Factor 3: Importance of MTC Program, Activities and Services to LEP Persons

Consultant shall identify what applicable MTC programs or activities would have serious consequences to individuals if language barriers prevent a person from benefiting from the activity. Consultant shall also determine the impact on LEP populations of delays in the provision of LEP services.

Consultant shall interview MTC staff, LEP persons, and regional CBOs that serve LEP communities to determine the importance of the types of service MTC provides to LEP populations.

Deliverable #3.1: Draft Factor 3 Analysis
Deliverable #3.2: Final Factor 3 Analysis

Task 4 Analysis for Factor 4: Resources Available to MTC and Costs

Consultant shall estimate the financial cost to MTC of providing language assistance. The estimate shall include the number of MTC staff and percentage of MTC staff time that is associated with providing language assistance.

Based on Consultant's analysis of demographic data and contact with CBOs and LEP persons in earlier Tasks, Consultant shall determine what information, including vital documents, may need to be translated into additional languages, what additional oral or written language services should be provided, or what existing language assistance needs to be made available on a more widespread basis. In such cases, Consultant shall create a list of specific measures that are needed to provide meaningful access to its programs and activities.

To the extent practicable, Consultant will consider an appropriate level of MTC's capitol and/or operating budget that should be devoted to additional language assistance expenses, if needed. Consultant shall estimate the cost of providing new or additional measures by getting price quotes from MTC's translation and interpreting contractor or by consulting with transit agencies or other appropriate organizations in the region that have implemented the assistance measures in question.

MTC may be able to utilize language assistance products that have been developed and paid for by local, regional, or state government agencies. MTC also has bilingual staff that could provide language assistance on an ad hoc or regular basis. Consultant shall inventory these resources and take them into consideration as part of the assessment of total resources available to MTC.

Consultant shall identify other potential cost saving measures, such as telephonic and video conferencing interpretation services, translating vital documents posted on web sites, pooling resources and standardizing documents to reduce translation needs, centralizing interpreter and translator services to achieve economies of scale.

Deliverable #4.1: Draft Factor 4 Analysis
Deliverable #4.2: Final Factor 4 Analysis

Task 5 **Revise MTCs *Plan for Special Language Services to Limited English Proficient Populations* (Optional)**

If agreed to as a Task Order, Consultant will use the additional analysis performed under Tasks 2, 3 and 4 to revise the MTC *Plan for Special Language Services to Limited English Proficient Populations*. Specific revisions will be based on the analysis gathered in Tasks 2, 3 and 4 above.

The draft revised *Plan for Special Language Services to Limited English Proficient Populations* will be released for public comment. The Consultant will then revise *Plan for Special Language Services to Limited English Proficient Populations* as necessary, based on public input.

Consultant shall develop a formal plan for MTC to use as a guide to update the *Plan for Special Language Services to Limited English Proficient Populations* in the future.

Deliverable #5.1:	Draft <i>Revised Plan for Special Language Services to Limited English Proficient Populations</i>
Deliverable #5.2:	Final <i>Revised Plan for Special Language Services to Limited English Proficient Populations</i>
Deliverable #5.3:	Formal Mechanism to update the <i>Revised Plan for Special Language Services to Limited English Proficient Populations</i>

APPENDIX B TASK ORDER PROCESS

Task Orders will be numbered sequentially and by Fiscal Year (FY). For example, the first Task Order signed by the parties will be Task Order #1/13. Amendments will be numbered #1/13-1, 1/13-2, etc. The period of performance shall be as set forth in the individual Task Order.

The process for developing, signing and tracking task orders is summarized as follows:

Step 1 – The MTC Project Manager (PM), or designee, prepares a draft Task Order to issue to CONSULTANT. The PM may solicit feedback from CONSULTANT to facilitate drafting the Task Order.

Step 2* – CONSULTANT prepares a proposal in response to the draft Task Order. The proposal should follow the Task Order Form format specified herein Appendix B-1.

Step 3* – The MTC PM reviews CONSULTANT's proposal to determine if it meets the objectives of the draft Task Order, and if CONSULTANT's proposed costs are reasonable. The PM may solicit early feedback from the MTC Director of Administrative and Technical Services at this time, if necessary. Any changes to the draft Task Order deemed appropriate by MTC shall be incorporated in a draft Final Task Order.

Step 4* – The MTC PM forwards the draft Final Task Order to the MTC Contract Administrator for review and approval.

Step 5* – Once approved, the MTC PM forwards two copies of the Task Order to the MTC Director of Administrative and Technical Services for review and approval.

Step 6* – The MTC Director of Administrative and Technical Services signs both copies of a Final Task Order to signify approval and returns them to the MTC PM.

Step 7 – The MTC PM sends both copies of the signed Final Task Order to CONSULTANT, who signs both copies and returns one to the MTC PM.

Step 8 – The MTC PM sends one copy of the fully executed Task Order to the MTC Task Lead who initiates work, and sends another copy to MTC Accounting to encumber funds against the Task Order. The MTC PM keeps the original fully-executed Task Order for the official project record.

Step 9 – The MTC PM is responsible for overseeing the successful conclusion of the Task Order, and will manage the progress of the work, track invoices against the Task Order budget, and track milestone completion against the Task Order schedule.

Step 10 – Once the MTC PM determines the Task Order is complete, the MTC PM will send written notification to CONSULTANT that the Task Order is complete and that all associated invoices are due to MTC within 30 days. Any balance of budget is made available to spend on future task orders at the MTC PM's discretion.

Step 11 – The MTC PM will annually assess the need for a Contract audit.

**The MTC Project Manager may revise the Task Order and/or CONSULTANT may be asked to revise the proposal based on feedback received during Steps 2 through 6.*

**APPENDIX B-1,
Sample Task Order**

1. Task Order No. (include FY)	Example: 1-13; 2-13
2. Title of Task:	
3. MTC Task Lead (if different from MTC Project Manager):	
4. Description of work:	<i>Summarize key task expectations.</i> For more information, see attached <u>Task Order Budget and Schedule</u> and <u>Detailed Description of Work (attached)</u> .
5. Original Maximum Payment:	
6. Amended Maximum Payment:	Include each amendment to maximum payment, by amendment number, for particular fiscal year.
7. Completion Date:	Date Schedule attached.
8. Payment terms:	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Deliverables

8. Payment Terms
A. Time and Materials

	<u>Name/Position</u>	<i>Est. Hrs</i>	<i>Hrly Rate</i>	<i>Total Cost*</i>
1.				\$1
2.				\$1
	Total:			\$2.00

*Due upon satisfactory completion as determined by the MTC Project Manager.

B. Deliverables-based.

	<u>Deliverable</u>	<i>Total Cost*</i>
1.		\$1
2.		\$1
	Total:	\$2.00

*Due upon satisfactory completion as determined by the MTC Project Manager.

METROPOLITAN TRANSPORTATION
COMMISSION

COMPANY NAME

Director of Administrative and Technical
Services
Date: _____

Signator Name, Title
Date: _____

Task Order Schedule

<u>Deliverable/Milestone</u>		<u>Due Date</u>
		Date

Detailed Description of Work

Task Order #: Title

1. Description of subtask 1.
Deliverable – deliverable name
2. Description of subtask 2.
Deliverable – deliverable name
3. Description of subtask 3.
Deliverable – deliverable name
4. Etc.

**APPENDIX C
CALIFORNIA LEVINE ACT STATEMENT**

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer, or received by the officer on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

MTC’s commissioners include:

Tom Azumbrado
Tom Bates
Mark Green
Sam Liccardo
Jake Mackenzie
Bill Dodd
David Campos

Dorene M. Giacomini
Federal D. Glover
Scott Haggerty
Anne W. Halsted
Steve Kinsey
Kevin Mullin

Scott Weiner
Bijan Sartipi
James P. Spering
Adrienne J. Tissier
Amy Rein Worth
Dave Cortese

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any MTC commissioner in the 12 months preceding the date of the issuance of this request for qualifications?

YES NO

If yes, please identify the commissioner: _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any MTC commissioners in the three months following the award of the contract?

YES NO

If yes, please identify the commissioner: _____

Answering yes to either of the two questions above does not preclude MTC from awarding a contract to your firm. It does, however, preclude the identified commissioner(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

APPENDIX D

MTC STANDARD CONSULTANT AGREEMENT

_____, 2012

Name
Address
City, State, Zip Code + Four

RE: Professional Services Agreement

Dear insert name:

This letter is our agreement for the performance of professional services in connection with Language Plan Assistance (“the Agreement”).

It is agreed that insert name of firm (also referred to as “Consultant”) will perform all the services specified in Attachment A, Scope of Work.

Work will be performed under the direction of Denise Rodrigues or a designated representative (herein "Project Manager") who will approve a work plan prior to your beginning work.

Consultant will be paid in accordance with Attachment B, Project Payment Schedule. This sum includes payment for taxes, insurance, and fringe benefits, as well as indirect costs, overhead and profit allowance, materials and supplies. Total compensation for all services will not exceed _____ **spell out amount** dollars (\$XX).

Consultant’s services will be billed upon satisfactory completion of the deliverables described in Attachment A, in the amounts specified in Attachment B, and payment will be made within thirty (30) days of receipt of an acceptable invoice, approved by Project Manager, describing the work performed, the hours worked by task, the payment requested, and the total amount previously paid under the Agreement. All invoices must be made in writing and delivered or mailed to MTC as follows:

contract in the name of MTC, and Consultant will be responsible for its own acts and those of its agents and employees.

Consultant shall indemnify and hold harmless MTC, its commissioners, directors, officers, agents, and employees from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith), to the extent caused by any negligent or otherwise wrongful act or omission of Consultant, its officers, agents, employees and subcontractors, or any of them, under or in connection with this Agreement; and Consultant agrees at its own cost, expense and risk to defend any and all such claims, actions, suits, or other legal proceedings brought or instituted against MTC, its commissioners, directors, officers, agents, and employees, or any of them, arising out of such negligent or otherwise wrongful act or omission, and to pay and satisfy any resulting judgments.

The insurance requirements specified in this section shall cover Consultant's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Consultant authorizes to work under this Agreement (hereinafter referred to as "Agents.") Consultant shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

Consultant is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, Consultant shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling Consultant's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event Consultant or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that Consultant's insurance be primary without right of contribution from MTC. Prior to beginning work under this contract, Consultant shall provide MTC with satisfactory evidence of compliance with the insurance requirements listed below:

- 1) Workers' Compensation Insurance with Statutory limits, and Employer's Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of Consultant's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers Compensation & Employers Liability may be waived, if and only for as long as Consultant is a sole proprietor or a corporation with stock 100% owned by officers with no employees.
- 2) Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of Consultant and Consultant's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC.

MTC and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Consultant's operations.

- 3) Business Automobile Insurance for all automobiles owned (if any), used or maintained by Consultant and Consultant's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.
- 4) Umbrella Insurance in the amount of \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.
- 5) Errors and Omissions Professional Liability. Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim.

The policy shall provide coverage for all work performed by Consultant and any work performed or conducted by any subcontractor/consultant working for or performing

services on behalf of the Consultant. No contract or agreement between Consultant and any subcontractor/consultant shall relieve Consultant of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by Consultant and any subcontractor/consultant working on behalf of Consultant on the project.

- 6) Property Insurance. Property Insurance covering Consultant's own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.

MTC, and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Consultant's operations.

All policies will be issued by insurers acceptable to MTC, generally with a Best's Rating of A-VIII or better.

Consultant's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.

Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that MTC seeks coverage as an additional insured under any Consultant insurance policy that contains a deductible or self-insured retention, Consultant shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Consultant, subconsultant, subcontractor, or any of their employees, officers or directors, even if Consultant or subconsultant is not a named defendant in the lawsuit.

If any insurance specified above is written on a “Claims-Made” (rather than an “occurrence”) basis, then in addition to the coverage requirements above, Consultant shall:

1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
2. Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Consultant shall purchase “extended reporting” coverage for a minimum of three (3) years after completion of the work.

All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of Consultant’s personnel, subcontractors, and equipment have been removed from MTC’s property, and the work or services have been formally accepted.

Consultant must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

Prior to commencement of any work hereunder, Consultant shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant hereto, including, but not limited to, liability assumed pursuant to the Indemnification section of this Agreement.

All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials (“MTC Data”) made available to Consultant by MTC for use by Consultant in the performance of its services under the Agreement shall remain the property of MTC and shall be returned to MTC at the completion or termination of the Agreement. No license to such MTC Data, outside of the Scope of Work of the Project, is conferred or implied by your use or possession of such MTC Data. Any updates,

revisions, additions or enhancements to such MTC Data made by Consultant in the context of the Project shall be the property of MTC and subject to the provisions of the following paragraph.

All drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture and any other documents, materials, data and products (“Work Products”) prepared or assembled and furnished to MTC by Consultant or its subconsultants pursuant to the Agreement shall be the property of MTC upon payment by MTC of all amounts due CONSULTANT for such Work Products, and copies shall be delivered to MTC promptly upon completion of the work or upon an earlier termination of the Agreement. Consultant hereby assigns to MTC ownership of all right, title and interest in and to such Work Products, including ownership of the entire copyright in the Work Product. Consultant also agrees to execute all papers necessary for MTC to perfect its ownership of the entire copyright in the Work Product. Consultant shall be responsible for the preservation of any and all such Work Products prior to transmittal to MTC, and shall replace any such Work Products as are lost, destroyed, or damaged while in its possession without additional cost to MTC.

Consultant agrees to retain all documents, working papers, records, accounts and other materials relating to its performance under the Agreement for four years following the fiscal year of the last expenditure under the Agreement, and MTC may inspect and audit such records during that period of time.

Consultant shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC; a firm or person’s objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement. Consultant shall not engage the services of any subconsultant or independent contractor on any work related to this Agreement if the subconsultant or independent contractor, or any employee of the subconsultant or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement. If at any time during the term of this Agreement, Consultant becomes aware of an organizational conflict of interest in connection with the work performed hereunder, Consultant shall immediately provide MTC with written notice of the facts and circumstances giving rise to this organizational conflict of interest.

Consultant's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, MTC becomes aware of an organizational conflict of interest in connection with Consultant's performance of the work hereunder, MTC shall similarly notify Consultant. In the event a conflict is presented, whether disclosed by Consultant or discovered by MTC, MTC will consider the conflict presented and any alternatives proposed and meet with Consultant to determine an appropriate course of action. MTC's determination as to the manner in which to address the conflict shall be final.

Any amendment of the Agreement must be in writing, specifically identified as an amendment to the Agreement, and signed by both Consultant and the Executive Director of MTC, or his designated representative. The Project Manager is not a designated representative, for purposes of approving an amendment.

Consultant will not assign or subcontract any part of the Agreement without the prior written consent of MTC, and any attempt to do so will be void and unenforceable.

If you agree, please sign both copies of this letter in the space provided below and return one to us. The other copy is for your files.

Very truly yours,

Steve Heminger
Executive Director

SH: DR

<J:\CONTRACT\Procurements\Misc Professional Svcs\RFQs\LEP Assistance\RFQ LEP Assistance.doc>

Accepted and Agreed to this _____ day
of [Month](#), [2012](#).

[insert name and, if known, title](#)

ATTACHMENT A

SCOPE OF WORK

ATTACHMENT B

PROJECT PAYMENT SCHEDULE

<u>Task #</u>	<u>Deliverable (Deliverable #)</u>	<u>Completion Date</u>	<u>Amount Due</u>
1.	This (#1a)		
	That (#1b)		
2.	This (#2a)		
	That (#2b)		

**APPENDIX D-1
INSURANCE REQUIREMENTS**

Minimum Insurance Coverages. Consultant shall, at its own expense, obtain and maintain in effect at all times the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement, placed with insurers with a Best’s rating of A-VIII or better.

Yes (√)	Please certify by checking the box below that required coverages will be provided within five (5) days of MTC’s notice to firm that it wishes to contract with the firm.
—	<u>Workers' Compensation Insurance</u> with Statutory limits, and Employer’s Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of Consultant’s employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers Compensation & Employers Liability may be waived, if and only for as long as Consultant is a sole proprietor or a corporation with stock 100% owned by officers with no employees.
—	<u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of Consultant and Consultant’s officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC. MTC and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Consultant’s operations.
—	<u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by Consultant and Consultant’s officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.
—	<u>Umbrella Insurance</u> in the amount of \$1,000,000 providing excess limits over Employer’s Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.
—	<u>Errors and Omissions Professional Liability.</u> Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim. The policy shall provide coverage for all work performed by Consultant and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the Consultant. No contract or agreement between Consultant and any subcontractor/consultant shall relieve Consultant of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by Consultant and any subcontractor/consultant working on behalf of Consultant on the project.

Property Insurance. Property Insurance covering Consultant's own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.

MTC, and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Consultant's operations.

All policies will be issued by insurers acceptable to MTC, generally with a Best's Rating of A-VIII or better.

Consultant's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.

Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that MTC seeks coverage as an additional insured under any Consultant insurance policy that contains a deductible or self-insured retention, Consultant shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Consultant, subconsultant, subcontractor, or any of their employees, officers or directors, even if Consultant or subconsultant is not a named defendant in the lawsuit.

If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Consultant shall:

1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
2. Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Consultant shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of Consultant's personnel, subcontractors, and equipment have been removed from MTC's property, and the work or services have been formally accepted.

Consultant must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

Prior to commencement of any work hereunder, Consultant shall deliver to MTC Certificates of

Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant hereto, including, but not limited to, liability assumed pursuant to the Indemnification section of this Agreement.

By signing below you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within five (5) days of MTC’s notice to firm that it wishes to contract with the firm.

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

NOTE: If you were unable to check “Yes” for any of the required minimum insurance coverages listed above, a request for exception to the appropriate insurance requirement(s) must be brought to MTC’s attention no later than the date for protesting RFQ provisions. If such objections are not brought to MTC’s attention consistent with the protest provisions of this RFQ, compliance with the insurance requirements will be assumed.