



METROPOLITAN
TRANSPORTATION
COMMISSION

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December 1, 2008

**REQUEST FOR QUALIFICATIONS
For
PROFESSIONAL AUDITING SERVICES**

Dear Consultant:

The Metropolitan Transportation Commission (MTC) invites your firm to submit a Statement of Qualifications (SOQ) to provide assurance, audit and consulting services for MTC, the MTC Service Authority for Freeways and Expressways (MTC SAFE), and Bay Area Toll Authority (BATA). MTC intends to select one or more audit firms to provide assurance, audit and consulting services. These services include but are not limited to closeout audits on completed state grants, preaward and interim audits for selected consultants, and agreed upon procedures and consulting.

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

Statement of Qualifications Due Date

Interested firms must submit an original and six (6) hard copies of their SOQ by 4:00 p.m., on February 6, 2009. ***Statements of Qualifications received after that date and time will not be considered.***

MTC Contact

SOQ and all inquiries relating to this RFQ should be submitted to the Project Manager at the address shown below. For telephone inquiries, call (510) 817-5795. E-mail inquiries may be directed to: esun@mtc.ca.gov.

Eva Sun, Project Manager
MTC
Joseph P. Bort MetroCenter
101 – 8th Street
Oakland, CA 94607-4700

Background

MTC is the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area, established pursuant to California Government Code

Bill Dodd, Chair
Napa County and Cities

Scott Haggerty, Vice Chair
Alameda County

Tom Amuniano
City and County of San Francisco

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

Tom Bates
Cities of Alameda County

Dean J. Chu
Cities of Santa Clara County

Dave Cortese
Association of Bay Area Governments

Dorene M. Giacomini
U.S. Department of Transportation

Federal D. Glover
Contra Costa County

Anne W. Halsted
San Francisco Bay Conservation
and Development Commission

Steve Kinney
Marin County and Cities

Sue Lempert
Cities of San Mateo County

Jake Mackenzie
Sonoma County and Cities

Jon Rubin
San Francisco Mayor's Appointee

Bijan Saripati
State Business, Transportation
and Housing Agency

James P. Sperring
Solano County and Cities

Adrienne J. Tissier
San Mateo County

Amy Worth
Cities of Contra Costa County

Ken Yeager
Santa Clara County

Steve Heminger
Executive Director

Ann Flemer
Deputy Executive Director, Operations

Andrew B. Fremier
Deputy Executive Director,
Bay Area Toll Authority

Theresa W. McMillan
Deputy Executive Director, Policy

Sections 66500 *et seq.* MTC's principal sources of revenue to fund its operations include state grants, a percentage of the sales tax revenues collected in the nine Bay Area Counties under the State Transportation Development Act of 1971 (TDA) and grants from the U.S. Department of Transportation, Office of the Secretary of Transportation (U.S. DOT), including the Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and other federal, state and local agencies.

The MTC SAFE, established pursuant to California Streets and Highway Sections 2550 *et seq.* MTC SAFE, in partnership with California Highway Patrol and California Department of Transportation, oversee the installation and operation of call boxes and provides roadside assistance to motorists on the Bay Area Free ways. Its revenues are derived from a one-dollar vehicle registration fee.

BATA is a public agency created by Senate Bill 226 effective January 1, 1998. Senate Bill 226 amended Streets and Highway Code Section 30950 *et seq.* and transferred to BATA certain California Transportation Commission (CTC) and State of California, Department of Transportation (Caltrans) duties and responsibilities for the disposition of toll revenues collected from toll bridges owned and operated by Caltrans in the San Francisco Bay Area. These responsibilities include administration of the Regional Measure 1 capital improvement program approved by the voters in 1988. In March 2004, the Bay Area voters approved Regional Measure 2 (RM 2) increasing the tolls by one dollar on all seven Caltrans toll bridges effective July 1, 2004. BATA controls the RM2 allocations for various capital and operating funds for congestion relief programs. On July 18, 2005, the California State Legislature approved Assembly Bill (AB) 144 transferring toll bridge administration responsibility from Caltrans to BATA. The legislation also consolidated the seismic retrofit dollar previously administered by Caltrans along with all other toll bridge revenues under BATA's administration.

MTC, MTC SAFE and BATA employ a number of consultants on a short and long term basis. There are provisions within these contracts that require an audit to be made under certain conditions. These audits include and are not limited to: preaward audits, compliance audits for costs incurred, audits for contract compliance before retention is released, closeout audits for state grants, agreed upon procedures and others as required. Some of the funding sources for these contracts involve state and federal funds. Some of these audits are time sensitive such as the preaward audits.

Scope of Work, Schedule, and Budget

Scope of Work:

MTC expects to select one or more consultants to provide assurance and auditing services under this RFQ. Appendix A, Scope of Work, outlines the services to be performed by the selected consultants. If more than one firm is selected, engagements will rotate between the selected firms based on MTC's needs, firm expertise, and staff availability. MTC makes no representation as to a specific rotation plan between firms. Selection of a firm to provide assurance and auditing services does not guarantee a firm will be awarded any projects.

Individual audits will be added to the basic contract by Audit Order and then agreed to by engagement letter. Each audit is expected to be completed by the terms of a specific engagement

letter. The actual number of audits assignments will vary at the discretion of the MTC Project Manager.

Schedule:

MTC intends to enter into contract(s) with each selected firm for initial terms of July 1, 2009 through June 30, 2010. At MTC's sole option, the contract(s) may be renewed for up to four additional one-year terms. .

Budget:

The estimated total budget for the initial term of the contract(s) is three hundred thousand dollars (\$300,000). Additional amounts for future years will be subject to approval of future MTC budgets. All Consultants selected through this RFQ to audit third parties will be paid directly by MTC, MTC SAFE and BATA. Federal funds may be used for one or more contracts; accordingly, Consultants must be willing to accept federal contracting terms and conditions in *Appendices C and D* included in this RFQ.

Proposers' Conference and Requests for Exceptions

A Proposers' Conference will be held on January 20, 2009 at 1:00 PM in the Fishbowl Conference Room, located on the 3rd Floor of the Joseph P. Bort MetroCenter, at 101-8th Street, Oakland,(across from the Lake Merritt BART station). To receive personal notice of any addenda to this RFQ that may be issued, proposers must either attend the Proposers' Conference or submit to the Project Manager a written request for addenda no later than the date established for the Proposers' Conference.

Any written request for clarification of or exceptions to RFQ requirements or MTC's contract language must be received by MTC no later than 4:00 PM, on January 23, 2009 to guarantee response or consideration. Any requests for clarification and exceptions received before the Proposers' Conference will be addressed at the Proposers' Conference or in writing thereafter.

Disadvantaged Business Enterprise Participation

Disadvantaged Business Enterprises (DBEs) and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Consultant should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The bidder/proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

Bidders/Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

Respondents are required to document their activities in the solicitation and selection of subconsultants on *Appendix D-3, Bidders List of Subcontractors (DBE and Non-DBE), Part I*

and II. For the complete DBE participation provisions applicable to this procurement see *Appendix D* of this RFQ.

Minimum Qualifications

To be considered for this project, an audit firm must demonstrate in its SOQ the following minimum qualifications:

- Independence: The firm should provide an affirmative statement that it is independent of MTC, MTC SAFE, and BATA, as defined by generally accepted auditing standards and the standards applicable to financial audits as contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Firm must not be debarred from performing federal audits.
- License to Practice in the State of California: An affirmative statement is required that the firm and all assigned key professional staff are properly registered and licensed to practice in the state of California.
- Experience: An affirmative statement is required, indicating the firm's experience conducting audits of compliance in accordance with generally accepted auditing standards; the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States; and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.
- Firm must have audit experience with government agencies, for whom it has provided similar consultant services to those covered by this RFQ, at least one of whom must be a transportation agency.
- Schedule: The firm should provide an affirmative statement that it will be able to devote the necessary resources to complete the work described in *Appendix A*. The audits may occur at anytime during the year and there may be more than one to complete simultaneously.
- The Proposer must have an office with staffing for the audit located within the nine county of San Francisco Bay Area.

Other Qualifications

In addition to the above minimum qualifications, familiarity with or expertise in the following area is desirable, and will be considered in the evaluation of proposals:

- Recent experience in performing compliance audits as required by the U.S. Office of Management and Budget (OMB) Circular A-133 Compliance Supplement, and certain provisions of the TDA, including Public Utilities Code Section 99245 as enacted and amended by statute.

Form of Statement of Qualification

MTC asks that Consultant develop an SOQ using the following format, with submissions limited to 20 pages in total, excluding resumes and rate information. Consultants are encouraged to print double-sided copies to save paper (if double-sided this would result in a maximum of 10 sheets of paper).

A. General Requirements

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 and telephone number 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 for 90 days following its submission.

B. Firm Qualifications and Experience

1. A statement of the firm's history, the number of regular professional employees, the size of the firm's governmental audit staff, and the location of the office from which the work of this engagement is to be performed.
2. A description of the firm's experience with agreed upon procedure engagements including review of project close-out audit, preaward and interim audits, and contract compliance audit.
3. Describe minimum of three (3) examples of the firm's past assignments performed for government agencies, including the name of the client and a contact person (with telephone number).
4. Indicate the percentage of government audits performed by the firm in comparison to the firm's overall revenue.
5. A description of the firm's audit policy.
6. A description of the firm's experience with SAS 70 audits of third-party providers and the type (s) of SAS 70 reports.
7. Familiarity with or expertise in the areas describe in the supplemental qualifications in this RFQ. Please describe in detail:
 - Relevant experience performing compliance audits as required by the U.S. Office of Management (OMB) Circular A-133 *Compliance Supplement*.
 - Experience with provisions of the Transportation Development Act, including Public Utilities Code Section 99245 as enacted and amended by statute.
8. A copy of a report on its most recent external quality control review (peer review), with a statement whether that quality control review includes a review of specific government engagements.
9. Describe any situation for which the firm has recently withdrawn from an audit engagement.

C. Staffing and Personnel

1. Provide a detail statement of the qualifications and relevant experience of the team members that demonstrates that the firm possesses the minimum qualifications described in this RFQ. This section should include the number of the key professional staff to be employed in this engagement on a full –time basis.
2. The resumes of the firm’s principals and individuals designated to work on projects in the areas covered by this RFQ should be attached as an exhibit. If the proposer is a joint venture, the qualifications for each firm comprising the joint venture should be separately identified, and the firm that is to serve as the principal auditor should be noted.
3. A description of the consultant’s hourly rates for those individuals identified under Item 1 above, any anticipated travel costs, and all other charges, if any, that would be passed on to MTC in projects of this nature. Hourly rates should include all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, materials and supplies.

D. Levine Act Statement

A signed California Levine Act statement (*Appendix B*).

E. Signed Federally-Required Certifications

Signed federally-required certifications related to lobbying, debarment, and bidder list of subcontractors (*Appendices D-1, D-2 and D-3*).

Evaluation Factors

The Project Manager, in consultation with the Office of General Counsel, will review the SOQs to determine if the minimum qualifications have been met. The SOQs of those firms that meet minimum qualifications will then be reviewed for responsiveness. Any proposal that does not include enough information to permit evaluators to rate the proposal in any of the evaluation factors listed below will be considered non-responsive. A proposal that fails to include one or more items required in the Proposal Content may be considered complete and generally responsive if evaluation of every factor is possible.

An evaluation panel comprised of the Project Manager and other MTC employees will evaluate the responsive SOQs, based on the following evaluation criteria, in order of relative importance:

1. Qualifications and experience of firm, principals, and key staff in performing audit services similar to those contemplated by this RFQ.
2. Audit experience with government agencies, including transportation agencies.
3. Ability to devote sufficient resources to multiple audits throughout a year.
4. Experience with SAS 70 audits, OMB Circular A – 133 Compliance Supplement audits and TDA audits, if any.

The evaluation panel may develop a firm(s) based on written proposals alone or may develop a “short list” of firms that, in the opinion of the panel, are reasonably likely to be qualified for the project. Short-listed firms may be interviewed by the panel. MTC may contact the references of any and all proposers. The panel will then recommend to MTC’s Executive Director, or his designated representative, a firm(s) to perform the required services. If the Executive Director agrees with the recommendation, he will forward it on to MTC’s Administration Committee for approval.

MTC reserves the right in its sole discretion to decide not to enter into a contract with any firm as a result of this RFQ, the right to accept or reject any and all proposals submitted, to adjust project timetable, to waive minor irregularities in proposals, and to request additional information from the proposers. Any award made will be made to the firm(s) whose proposal is the most advantageous to MTC, based on the evaluation criteria listed above.

Cost will not be a factor in the evaluation. However, MTC reserves the right, after the firm(s) have been ranked, to negotiate hourly rates with the firm(s) as well as to decline to enter into a contract with any firm whose rates and other costs are unreasonable, in MTC’s sole judgment.

MTC reserves the right to accept or reject any and all SOQs s submitted, to waive minor irregularities in SOQs, and to request additional information from the Consultants. MTC reserves the right to award one or more contracts at the time the panel is approved. Placement on the panel will not necessarily result in award of a contract.

Consultant Selection Timetable

January 20, 2009 1:00 – 2:30	Proposers’ Conference at Fishbowl Conference Room, MetroCenter 101 8 th St, Oakland
4:00 PM, on January 23, 2009	Deadline for Request for Clarification / Exceptions
4:00 PM, on January 30, 2009	Deadline for Protest RFQ Provisions (See Below)
Friday, February 6, 2009; 4:00 p.m.	Closing date and time for receipt of statements of qualifications at MTC
Week of February 23, 2009	Oral interviews, if held, MetroCenter, 3 rd Floor, Staff Conference Room
March 10, 2009	Administration Committee approval
March 31, 2009 (approximate)	Execution of Contracts

Selection Disputes

A firm may object to a provision of the RFQ on the grounds that it is unduly restrictive, arbitrary or biased, 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 MTC Project Manager a written explanation of the basis for the protest:

- 1) No later than five (5) working days prior to the date SOQs are due, for objections to RFQ provisions; or
- 2) No later than three (3) working days after the date on which contract award is authorized by the MTC Administration Committee or the date the proposer is notified that it was not selected, whichever is later, for objections to Consultant selection.

Protests must clearly and specifically describe the basis for the protest in sufficient detail for the MTC review officer to recommend a resolution to the MTC Executive Director. Except with regards to the initial determination of non-responsiveness, the evaluation record shall remain confidential until the MTC Administration Committee authorizes award.

The MTC Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Authorization to award a contract to a particular firm by MTC's Administration Committee 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 Executive Director.

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

General Conditions

MTC will not reimburse any consultant for costs related to preparing and submitting an SOQ.

Materials submitted by respondents are subject to public inspection under the California Public Records Act (Government Code §§ 6250 *et seq.*), after the Administration Committee authorizes award.

MTC reserves the right in its sole discretion not to enter into any contract as a result of this RFQ.

A synopsis of MTC contract provisions is enclosed for your reference as *Appendix C*. If the consultant wishes to propose change to any standard MTC contract provision, the provision and the proposed alternative language must be specified and received by MTC by the deadline set out above for receipt of exceptions and modifications to RFQ requirements. If no such change is requested by the specified deadline, the consultant will be deemed to accept MTC's MTC's standard contract provisions. Federally-required contract provisions are included in *Appendix D*.

The selected Consultants will be required to maintain insurance coverage, during the term of the contract, at the level describe in *Appendix C*. Each policy or policies shall include MTC as an additional insured and an endorsement providing that such insurance is primary insurance and no insurance of MTC will be called on to contribute to a loss. Selected firms may be asked to include particular transit operators for which they provide work as additional insured.

Request to change MTC's insurance requirements must be brought to MTC's attention no later than the date specified above for request of exceptions and modifications to RFQ

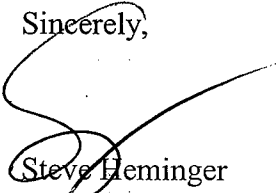
Request to change MTC's insurance requirements must be brought to MTC's attention no later than the date specified above for request of exceptions and modifications to RFQ requirements. If such objections are not brought to MTC's attention by such due date, compliance with the insurance requirements will be assumed.

Authority to Commit MTC

Based on the recommendation of the selection panel, the Executive Director of MTC will recommend a consultant(s) to the MTC Administration Committee, which will commit to the expenditure of funds in connection with this RFQ.

We appreciate your interest in this RFQ and look forward to receiving your statements of qualifications.

Sincerely,



Steve Heminger
Executive Director

SH:ES: DA

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APPENDIX A

SCOPE OF WORK

The services to be performed by the selected firm(s) shall consist of services requested by the MTC Project Manager, or a designated representative including, but not limited to, the following:

1. General

The selected firm(s) will be asked to provide a variety of assurance and auditing services. Such services include, but are not limited to, closeout audits on completed state grants, compliance audits for costs incurred, preaward audits for selected consultants, interim audits for various consultants, and agreed upon procedures.

2. Kick-Off Meeting

The selected firm(s) will meet with MTC staff to discuss the engagement. The initial kick-off meeting will be held to discuss coordination and timing of each various audits within the engagement. Each audit will require a fully executed engagement letter authorized by MTC before proceeding with audit activities.

3. Request for Audit

The MTC Project Manager assigned to the specific audit will initiate the request for an audit for a particular consultant or grant. The selected firm(s) shall provide MTC a draft engagement letter along with a not to exceed quote for each audit.

4. Detailed Audit Plan

Based on the information from the engagement letter and information from the MTC Project Manager or staff, the selected firm(s) will provide a detailed work plan for each audit and present it to the MTC Project Manager or staff.

5. On-Site Audit Work

The selected firm(s) and MTC Project Manager shall decide on where to perform the audit. The audit may be performed at the MTC offices or at the firm offices. The MTC Project Manager for the specific audit will be available to assist with information or answer questions.

6. Draft Audit Report

After fieldwork is completed and in consultation with the MTC Project Manager, the firm will prepare a draft audit report. All supplementary schedules should be included.

7. Exit Conference

The firm shall meet with the MTC Project Manager for the specific audit to summarize the results of the on-site work and to review significant findings. In addition, the firm shall discuss the draft and answer questions.

8. Final copies of the Report

After the MTC Project Manager reviews and approves the report, the firm will draft the final copy of the report.

APPENDIX B

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 Ammiano
Tom Azumbrado
Tom Bates
Dave Cortese
Dean J. Chu
Bill Dodd

Dorene M. Giacomini
Federal D. Glover
Scott Haggerty
Anne W. Halsted
Steve Kinsey
Sue Lempert
Jake Mackenzie

Jon Rubin
Bijan Sartipi
James P. Spering
Adrienne J. Tissier
Amy Worth
Ken Yeager

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 C

SYNOPSIS OF PROVISIONS IN MTC'S STANDARD CONSULTANT AGREEMENT

The selected consultant will be required to sign MTC's standard consultant agreement, a copy of which standard agreement may be obtained from the Project Manager for this RFQ. In order to provide bidders with an understanding of some of Agency's standard contract provisions, the following is a synopsis of the major requirements in our standard agreement for professional services. **THE ACTUAL LANGUAGE OF THE STANDARD CONSULTANT AGREEMENT SUPERSEDES THIS SYNOPSIS.**

Termination: MTC may, at any time, terminate the Agreement upon written notice to Consultant. Upon termination, MTC will reimburse the Consultant for its costs for incomplete deliverables up to the date of termination. Upon payment, MTC will be under no further obligation to the Consultant. If the Consultant fails to perform as specified in the agreement, MTC may terminate the agreement for default by written notice following a period of cure, and the Consultant is then entitled only to compensation for costs incurred for work products acceptable to MTC, less the costs to MTC of rebidding.

Insurance Requirement: The Consultant must obtain and maintain at its own expense the following types of insurance placed with insurers with a Best's rating of A-X or better, for the duration of this agreement:

(1) Worker's Compensation Insurance in the amount required by the applicable laws, and Employer's Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per occurrence, 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 endorsement in favor of MTC. Such Workers Compensation & Employers Liability may be waived, if and only for as long as contractor is a sole proprietor with no employees;

(2) Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of Consultant and Consultants officers, agents, employee 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 applying separately to this project, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Expense for Indemnitee's defense costs shall be outside of policy limits and such policy shall be issued on a Duty to Defend Primary Occurrence Form. The Commercial General Liability Insurance policy shall contain an endorsement to include MTC, its Commissioners, officers, representatives, agents and employees as additional insureds and to specify that such insurance is primary and that no MTC insurance will be called on to contribute to a loss.;

(3) Business Automobile Insurance for all automobiles owned, used or maintained by Consultant and Consultants officers, agents and employees, including but not limited to owned, leased, non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence;

(4) Umbrella insurance in the amount of \$1,000,000 providing excess limits over Employers Liability, Automobile Liability, and Commercial General Liability Insurance; and

(5) Errors & Omissions or Professional Liability Insurance (if applicable) in an amount no less than \$1,000,000. If such policy is written on a "Claims-Made" (rather than an "occurrence") basis, Consultant agrees to maintain continuous coverage in effect from the date of the commencement of services to at least five (5) years beyond the termination or completion of

services or for five (5) years or until satisfaction of any statute of limitations. The policy shall provide coverage for all work performed by the Consultant and any work performed or conducted by any subconsultant working for or performing services on behalf of the Consultant. No contract or agreement between the Consultant and any subconsultant shall relieve the Consultant of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by the Consultant and any subconsultant working on behalf of the Consultant on the project; and

(6) Property Insurance. [if such exposure exists and/or at MTC request or direction] Consultant at Consultant's expense shall obtain a policy or policies of insurance covering loss or damage, including loss of use, to any and all MTC real, personal and intellectual property, notwithstanding such property being in the care, custody or control of the Consultant, in an amount equal to the full replacement value thereof, as same may exist from time to time.

Coverage shall be secured for the life of the project, within the definition, "All Risk," or "Special Form," and shall include coverage for installation and testing of any equipment that is to be installed or become part of any real property. If such insurance coverage has a deductible clause, the Consultant shall be also liable for the deductible. Certificates of insurance verifying the coverages and the required endorsements and signed by an authorized representative of the insurer must be delivered to MTC prior to issuance of any payment under the Agreement by MTC.

Independent Contractor: Consultant is an independent contractor and has no authority to contract or enter into any other agreement in the name of MTC. Consultant shall be fully responsible for all matters relating to payment of its employees including compliance with taxes.

Indemnification: Consultant agrees to defend, indemnify and hold MTC harmless from all claims, damages, liability, and expenses resulting from any negligent or otherwise wrongful act or omission of Consultant in connection with the agreement. Consultant agrees to defend any and all claims, lawsuits or other legal proceedings brought against MTC arising out of such negligent or wrongful acts or omissions. The Consultant shall pay the full cost of the defense and any resulting judgments.

Data Furnished by MTC: 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 the Consultant by MTC for use by the Consultant in the performance of its services under this Agreement shall remain the property of MTC and shall be returned to MTC at the completion or termination of this Agreement. No license to such MTC Data, outside of the Scope of Work of the Project, is conferred or implied by the Consultant's use or possession of such MTC Data. Any updates, revisions, additions or enhancements to such MTC Data made by the Consultant in the context of the Project shall be the property of MTC.

Ownership of Work Product: All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials ("Work Product") written or produced by the Consultant under this Agreement and provided to MTC as a deliverable shall be the property of MTC. Consultant will be required to assign all rights in copyright to such Work Product to MTC.

Personnel and Level of Effort: Personnel assigned to this Project and the estimated number of hours to be supplied by each will be specified in an attachment to the Agreement. No substitution

of personnel or substantial decrease of hours will be allowed without prior written approval of MTC.

Subcontracts: No subcontracting of any or all of the services to be provided by Consultant shall be allowed without prior written approval of MTC. MTC is under no obligation to any subcontractors.

Consultant's Records: Consultant shall keep complete and accurate books, records, accounts and any and all work products, materials, and other data relevant to its performance under this Agreement. All such records shall be available to MTC for inspection and auditing purposes. The records shall be retained by Consultant for a period of not less than four (4) years following the fiscal year of the last expenditure under this Agreement.

Prohibited Interest: No member, officer or employee of MTC can have any interest in this agreement or its proceeds and Consultant may not have any interest which conflicts with its performance under this Agreement.

Governing Law. The Agreement shall be governed by the laws of the State of California.

APPENDIX D DEPARTMENT OF TRANSPORTATION REQUIREMENTS

1. Equal Employment Opportunity. Consultant shall not, on the grounds of race, color, sex, age, religion, national origin, ancestry, physical handicap, medical condition, or marital status either discriminate or permit discrimination against any employee or applicant for employment in any manner prohibited by Federal, State or local laws. In the event of Consultant non-compliance, MTC may cancel, terminate or suspend the Agreement in whole or in part. Consultant may also be declared ineligible for further contracts with MTC.

Consultant and its subcontractors shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant and its subcontractors shall post in conspicuous places, available to all employees and applicants for employment, a notice setting forth these provisions.

2. Disadvantaged Business Enterprise (DBE) and Small Business Enterprise Policy.

2.1. Disadvantaged Business Enterprise (DBE) Participation

A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.

C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

2.2. Performance of DBE Contractors and other DBE Subcontractors/Suppliers

A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material,

and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

3. Title VI of Civil Rights Act of 1964. Consultant agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and its implementing regulations in 49 CFR Part 21.
4. Debarment. In contracts over \$25,000, Consultant is required to certify, prior to executing a contract, that neither it nor its principals have been debarred from certain federal transactions by any Federal agency and to require any subcontractors with subcontracts over \$25,000 to provide a similar certification. (A copy of the required certification is included with this Appendix.)
5. Audit and Inspection of Records. Consultant shall permit the authorized representatives of DOT, Federal Transit Administration (FTA) or the Federal Highway Administration (FHWA, and the Comptroller General of the United States to inspect and audit all data and records of the Consultant relating to its performance under this Agreement from the date of this Agreement until three (3) years after the close out of the federal grant from which this Agreement is financed, or four (4) years after the fiscal year of the expenditure, whichever is longer. This requirement must be passed along to subcontractors, excluding purchase orders not exceeding \$25,000.
6. Subcontractors
 - a. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the MTC and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to the MTC for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Consultant. The Consultant's obligation to pay its subcontractors is an independent obligation from the MTC's obligation to make payments to the Consultant.

- b. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
 - c. Consultant shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Consultant by the MTC.
 - d. Any substitution of subcontractors must be approved in writing by MTC in advance of assigning work to a substitute subcontractor.
7. Federal Grant Requirements. Those laws, statutes, ordinances, rules, regulations and procedural requirements which are imposed on MTC as a recipient of federal funds are imposed on Consultant, including compliance with 49 CFR Part 18, FTA Circular 4220.1D and the current FTA Master Agreement, a copy of which is available through MTC.
8. Identification of Documents. All reports and other documents completed as part of this Agreement shall carry the following notation on the front cover or title page:
- The preparation of this report has been financed in part by grants from the Federal Transit Administration, U.S. Department of Transportation. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation.
9. Rights in Data. The Federal Government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) the copyright in any work developed under this Agreement; and (b) any rights of copyright to which MTC or Consultant purchases ownership under this Agreement.
10. State Energy Conservation Plan. Consultant shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321 *et seq.*).
11. Clean Air and Water Pollution Act. Consultant agrees to comply with the applicable requirements of all standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7501 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
12. Restrictions on Lobbying. In agreements over \$100,000, Consultant is required to execute a certificate indicating that no federal funds will be used to lobby federal officials and to disclose lobbying activities financed with non-federal funds. (Certificate attached.)

**Appendix D-1, CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND
OTHER RESPONSIBILITY MATTERS**

(Third Party Contracts and Subcontracts over \$25,000)

Instructions for Certification:

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, MTC may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to MTC if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact MTC for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by MTC.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The

knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, MTC may pursue available remedies including suspension and/or debarment.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION
Lower Tier Covered Transaction**

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its “principals” [as defined at 49 CFR Section 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Date

(signature of authorized official)

(type/print name and title)

Appendix D-2, CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____ hereby certify on behalf of _____ that:
(name and title of grantee official) (name of grantee)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 2008.

By

(signature of authorized official)

(title of authorized official)

APPENDIX D-3-BIDDER'S LIST OF SUBCONTRACTORS (DBE and NON-DBE)

PART I

The bidder shall list all subcontractors (both DBE and non-DBE) in accordance with Section 2-1.054 of the Standard Specifications and per Title 49, Section 26.11 of the Code of Federal Regulations. This listing is required in addition to listing DBE Subcontractors elsewhere in the proposal. **Photocopy this form for additional firms.**

Firm Name/Address/ City, State, ZIP	Phone/ Fax	Annual Gross Receipts	Description of Portion of Work to be Performed	Local Agency Use Only (Certified DBE?)
<i>Name</i>	<i>Phone</i>	" < \$1 million		" YES
		" < \$5 million		" NO
<i>Address</i>		" < \$10 million		<i>If YES list DBE #:</i>
	<i>Fax</i>	" < \$15 million		
<i>City State ZIP</i>		" > \$15 million		<i>Age of Firm (Yrs.)</i>
<i>Name</i>	<i>Phone</i>	" < \$1 million		" YES
		" < \$5 million		" NO
<i>Address</i>		" < \$10 million		<i>If YES list DBE #:</i>
	<i>Fax</i>	" < \$15 million		
<i>City State ZIP</i>		" > \$15 million		<i>Age of Firm (Yrs.)</i>
<i>Name</i>	<i>Phone</i>	" < \$1 million		" YES
		" < \$5 million		" NO
<i>Address</i>		" < \$10 million		<i>If YES list DBE #:</i>
	<i>Fax</i>	" < \$15 million		
<i>City State ZIP</i>		" > \$15 million		<i>Age of Firm (Yrs.)</i>
<i>Name</i>	<i>Phone</i>	" < \$1 million		" YES
		" < \$5 million		" NO
<i>Address</i>		" < \$10 million		<i>If YES list DBE #:</i>
	<i>Fax</i>	" < \$15 million		
<i>City State ZIP</i>		" > \$15 million		<i>Age of Firm (Yrs.)</i>

Distribution: 1) Original - Local Agency File

BIDDER'S LIST OF SUBCONTRACTORS (DBE and NON-DBE) - PART II

The bidder shall list all subcontractors who provided a quote or bid but were not selected to participate as a subcontractor on this project. This is required for compliance with Title 49, Section 26 of the Code of Federal Regulations. Photocopy this form for additional firms.

Firm Name/Address/ City, State, ZIP	Phone/ Fax	Annual Gross Receipts	Description of Portion of Work to be Performed	Local Agency Use Only (Certified DBE?)
<i>Name</i>	<i>Phone</i>	" < \$1 million		" YES
		" < \$5 million		" NO
		" < \$10 million		<i>If YES list DBE #:</i>
<i>Address</i>	<i>Fax</i>	" < \$15 million		
		<i>City State ZIP</i>	" > \$15 million	
<i>Name</i>	<i>Phone</i>	" < \$1 million		" YES
		" < \$5 million		" NO
		" < \$10 million		<i>If YES list DBE #:</i>
<i>Address</i>	<i>Fax</i>	" < \$15 million		
		<i>City State ZIP</i>	" > \$15 million	
<i>Name</i>	<i>Phone</i>	" < \$1 million		" YES
		" < \$5 million		" NO
		" < \$10 million		<i>If YES list DBE #:</i>
<i>Address</i>	<i>Fax</i>	" < \$15 million		
		<i>City State ZIP</i>	" > \$15 million	
<i>Name</i>	<i>Phone</i>	" < \$1 million		" YES
		" < \$5 million		" NO
		" < \$10 million		<i>If YES list DBE #:</i>
<i>Address</i>	<i>Fax</i>	" < \$15 million		
		<i>City State ZIP</i>	" > \$15 million	

Distribution: 1) Original - Local Agency File

Appendix E, LOCAL AGENCY PROPOSER/BIDDER DBE (CONSULTANT CONTRACTS) INFORMATION

This information shall be provided by the successful Proposer/Bidder with the award document.				
Preliminary Engr.		Studies	Environmental Document	Prelim Design
Final Design Right of Way		Right of Way Engineering	Right of Way Utility Relocation	
Construction		Construction Engineering	Construction Management	
AGENCY: MTC LOCATION: 101 EIGHTH ST, OAKLAND, CA 94607				
PROJECT DESCRIPTION: Assurance and auditing services				
CONTRACT NUMBER: _____				
FEDERAL-AID PROJECT NUMBER: _____				
TOTAL CONTRACT AMOUNT: \$ _____				
FEDERAL SHARE (For local agency to complete): \$ _____				
PROPOSAL/BID DATE: _____				
PROPOSER'S/BIDDER'S NAME: _____				
CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OR SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED ²	DBE Cert. No. AND EXPIRATION DATE	NAME OF DBEs ¹ (Must be certified on the date bids are opened - include DBE address and phone number)	DOLLAR AMOUNT DBE
IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Copies of the DBE quotes are helpful. Names of the First-Tier DBE Subcontractors and their respective item(s) of work listed above should be consistent with the names and items of work in the "List of Subcontractors" submitted with your bid pursuant to the Subcontractors Listing Law and the Special Provisions. 1. Enter DBE prime and subcontractors certification number. Prime contractors shall indicate all work to be performed by DBEs including work performed by its own DBE forces. 2. If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE.			Total Claimed Participation	\$
				%
Signature of Proposer/Bidder _____ Date _____ (Area Code) Tel. No. _____ Person to Contact _____ (Please Type or Print)				

CT Bidder - DBE Information (Rev 4/28/06)

Distribution: (1) Copy - Fax immediately to the Caltrans District Local Assistance Engineer (DLAE) upon award.
 (2) Copy - Include in award package to Caltrans District Local Assistance
 (3) Original – Local agency files

All forms available in Word upon request.