

REQUEST FOR PROPOSALS (RFP) 9-0866

Collective Bargaining Consulting Services



ORANGE COUNTY TRANSPORTATION AUTHORITY
550 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
(714) 560-6282

Key RFP Dates

Issue Date:	December 2, 2009
Question Submittal Date:	December 16, 2009
Proposal Submittal Date:	January 4, 2010
Interview Date:	January 12, 2010

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December 2, 2009

**SUBJECT: NOTICE OF REQUEST FOR PROPOSALS
RFP 9-0866: Collective Bargaining Consulting Services**

Gentlemen/Ladies:

The Orange County Transportation Authority invites proposals from qualified consultants to provide negotiation strategies consultations for up to three (3) collective bargaining agreements (CBA's). The budget for this project is \$150,000.00 for two years.

Proposals must be received in the Orange County Transportation Authority's office at or before 2:00 p.m. on January 4, 2010.

Proposals delivered in person or by a means other than the U.S. Postal Service shall be submitted to the following:

**Orange County Transportation Authority
Contracts Administration and Materials Management
600 South Main Street, 4th Floor
Orange, California 92868
Attention: Maria Cruz-Thompson, Buyer**

Proposals delivered using the U.S. Postal Service shall be addressed as follows:

**Orange County Transportation Authority
Contracts Administration and Materials Management
P.O. Box 14184
Orange, California 92863-1584
Attention: Maria Cruz-Thompson, Buyer**

Proposals and amendments to proposals received after the date and time specified above will be returned to the Offerors unopened.

Firms interested in obtaining a copy of this Request For Proposals (RFP) 9-0866 may do so by faxing their request to (714) 560-5792, or e-mail your

request to rfp_ifb_Requests@octa.net or calling (714) 560-5922. Please include the following information:

- Name of Firm
- Address
- Contact Person
- Telephone and Facsimile Number
- Request For Proposal (RFP) 9-0866

All firms interested in doing business with the Authority are required to register their business on-line at CAMM NET, the Authority's interactive website. The website can be found at www.octa.net. From the site menu, click on CAMM NET to register.

To receive all further information regarding this RFP 9-0866, firms must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

Commodities for this solicitation are:

Category(s):

Commodity(s):

Human Resource & Employee
Services

Human Resource Services

Professional Consulting

Human Resource Consulting

The Authority has established January 12, 2010 as the date to conduct interviews. All prospective Offeror's will be asked to keep this date available.

Offerors are encouraged to subcontract with small businesses to the maximum extent possible.

All Offerors will be required to comply with all applicable equal opportunity laws and regulations.

The award of this contract is subject to receipt of federal, state and/or local funds adequate to carry out the provisions of the proposed agreement including the identified Scope of Work.

Sincerely,

A handwritten signature in cursive script that reads "Maria Cruz-Thompson". The signature is fluid and connected, with the first name "Maria" and last name "Cruz-Thompson" clearly distinguishable.

Maria Cruz-Thompson
Buyer
Contracts Administration and Materials Management

SECTION I
INSTRUCTIONS TO OFFERORS

SECTION I. INSTRUCTIONS TO OFFERORS

A. EXAMINATION OF PROPOSAL DOCUMENTS

By submitting a proposal, Offeror represents that it has thoroughly examined and become familiar with the work required under this RFP and that it is capable of performing quality work to achieve the Authority's objectives.

B. ADDENDA

Any Authority changes to the requirements will be made by written addendum to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. The Authority will not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions. Offerors shall acknowledge receipt of addenda in their proposals.

C. AUTHORITY CONTACT

All questions and/or contacts with Authority staff regarding this RFP are to be directed to the following Buyer:

Attn: Maria Cruz-Thompson
Contracts Administration and Materials Management Department
550 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
Phone: (714) 560-5605, Fax: (714) 560-5792

D. CLARIFICATIONS

1. Examination of Documents

Should an Offeror require clarifications of this RFP, the Offeror shall notify the Authority in writing in accordance with Section D.2. below. Should it be found that the point in question is not clearly and fully set forth, the Authority will issue a written addendum clarifying the matter which will be sent to all firms registered on CAMM NET under the commodity codes specified in this RFP.

2. Submitting Requests

- a. All questions, comments, and clarification must be put in writing and must be received by the Authority no later than 2:00 p.m., on December 16, 2009.
- b. Requests for clarifications, questions and comments must be

clearly labeled, "Written Questions". The Authority is not responsible for failure to respond to a request that has not been labeled as such.

- c. Any of the following methods of delivering written questions are acceptable as long as the questions are received no later than the date and time specified above:
- (1) U.S. Mail: Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584.
 - (2) Personal Courier: Contracts Administration and Materials Management Department, 600 South Main Street, 4th Floor, Orange, California 92868.
 - (3) Facsimile: The Authority's fax number is (714) 560-5792.
 - (4) E-Mail: Maria Cruz-Thompson, Buyer e-mail address is mthompson@octa.net.

3. Authority Responses

Responses from the Authority will be posted on CAMM NET, the Authority's interactive website, no later than December 18, 2009. Offerors may download responses from CAMM NET at www.octa.net/cammnet, or request responses be sent via U.S. Mail by e-mailing or faxing the request to rfp_ifb_Requests@octa.net or calling (714) 560-5922.

To receive e-mail notification of Authority responses when they are posted on CAMM NET, firms must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

Commodities for this solicitation are:

Category(s):

Commodity(s):

Human Resource & Employee
Services

Human Resource Services

Professional Consulting

Human Resource Consulting

Inquiries received after December 16, 2009, will not be responded to.

E. SUBMISSION OF PROPOSALS

1. Date and Time

Proposals must be received in the Orange County Transportation Authority's office at or before 2:00 p.m. on January 4, 2010.

Proposals received after the above-specified date and time will be returned to Offerors unopened.

2. Address

Proposals delivered in person or by a means other than the U.S. Postal Service shall be submitted to the following:

**Orange County Transportation Authority
Contracts Administration and Materials Management (CAMM)
600 South Main Street, 4th Floor
Orange, California 92868
Attention: Maria Cruz-Thompson, Buyer**

Or proposals delivered using the U.S. Postal Services shall be addressed as follows:

**Orange County Transportation Authority
Contracts Administration and Materials Management (CAMM)
P.O. Box 14184
Orange, California 92863-1584
Attention: Maria Cruz-Thompson, Buyer**

Firms must obtain a visitor badge from the receptionist in the lobby of the 600 Building prior to delivering any information to CAMM.

3. Identification of Proposals

Offeror shall submit an **original and 4 copies** of its proposal in a sealed package, addressed as shown above, bearing the Offeror's name and address and clearly marked as follows:

"RFP 9-0866: Collective Bargaining Consulting Services"

4. Acceptance of Proposals

a. The Authority reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.

b. The Authority reserves the right to withdraw or cancel this RFP at

any time without prior notice and the Authority makes no representations that any contract will be awarded to any Offeror responding to this RFP.

- c. The Authority reserves the right to postpone proposal openings for its own convenience.
- d. Proposals received by Authority are public information and must be made available to any person upon request.
- e. Submitted proposals are not to be copyrighted.

F. PRE-CONTRACTUAL EXPENSES

The Authority shall not, in any event, be liable for any pre-contractual expenses incurred by Offeror in the preparation of its proposal. Offeror shall not include any such expenses as part of its proposal.

Pre-contractual expenses are defined as expenses incurred by Offeror in:

- 1. Preparing its proposal in response to this RFP;
- 2. Submitting that proposal to the Authority;
- 3. Negotiating with the Authority any matter related to this proposal; or
- 4. Any other expenses incurred by Offeror prior to date of award, if any, of the Agreement.

G. JOINT OFFERS

Where two or more firms desire to submit a single proposal in response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture. The Authority intends to contract with a single firm and not with multiple firms doing business as a joint venture.

H. TAXES

Offerors' proposals are subject to State and Local sales taxes. However, the Authority is exempt from the payment of Federal Excise and Transportation Taxes.

I. PROTEST PROCEDURES

The Authority has on file a set of written protest procedures applicable to this solicitation that may be obtained by contacting the Buyer responsible for this procurement. Any protests filed by an Offeror in connection with this RFP must be submitted in accordance with the Authority's written procedures.

J. CONTRACT TYPE

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be a time and expense contract specifying fully burdened rates which shall include direct and indirect costs, meals, travel, lodging and profit for services specified in the Scope of Work, included in this RFP as Exhibit A. This is a two year time and expense Agreement.

K. CONFLICT OF INTEREST

All Offerors responding to this Request For Proposals must avoid organizational conflicts of interest which would restrict full and open competition in this procurement. An organizational conflict of interest means that due to other activities, relationships or contracts, an Offeror is unable, or potentially unable to render impartial assistance or advice to the Authority; an Offeror's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or an Offeror has an unfair competitive advantage. Conflict of Interest issues must be fully disclosed in the Offeror's proposal.

L. CODE OF CONDUCT

Consultant agrees to comply with the Authority's Code of Conduct as it relates to Third-Party contracts which is hereby referenced and by this reference is incorporated herein. Consultant agrees to include these requirements in all of its subcontracts.

SECTION II
PROPOSAL CONTENT

SECTION II. PROPOSAL CONTENT**A. PROPOSAL FORMAT AND CONTENT****1. Format**

Proposals should be typed with a standard 12 point font, double-spaced and submitted on 8 1/2" x 11" size paper, using a single method of fastening. Charts and schedules may be included in 11"x17" format. Offers should not include any unnecessarily elaborate or promotional material. Lengthy narrative is discouraged and presentations should be brief and concise. Proposals should not exceed fifty (50) pages in length, excluding any appendices.

2. Letter of Transmittal

The Letter of Transmittal shall be addressed to Maria Cruz-Thompson, Buyer and must, at a minimum, contain the following:

- a. Identification of Offeror that will have contractual responsibility with the Authority. Identification shall include legal name of company, corporate address, telephone and fax number. Include name, title, address, and telephone number of the contract person identified during period of proposal evaluation.
- b. Identification of all proposed subcontractors including legal name of company, contact person's name and address, phone number and fax number; relationship between Offeror and subcontractors, if applicable.
- c. Acknowledgement of receipt of all RFP addenda, if any.
- d. A statement to the effect that the proposal shall remain valid for a period of not less than 120 days from the date of submittal.
- e. Signature of a person authorized to bind Offeror to the terms of the proposal.
- f. Signed statement attesting that all information submitted with the proposal is true and correct.

3. Technical Proposal

a. Qualifications, Related Experience and References of Offeror

This section of the proposal should establish the ability of Offeror to satisfactorily perform the required work by reasons of: experience in performing work of a similar nature; demonstrated competence in the services to be provided; strength and stability of the firm; staffing capability; work load; record of meeting schedules on similar projects; and supportive client references.

Offeror to:

- (1) Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; and number of employees.
- (2) Provide a general description of the firm's financial condition and identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede Offeror's ability to complete the project.
- (3) Describe the firm's experience in performing work in collective bargaining consulting services to that solicited in this RFP, and highlight the participation in such work by the key personnel proposed for assignment to this project. Describe experience in working with the various government agencies identified in this RFP.
- (4) Identify subcontractors by company name, address, contact person, telephone number and project function. Describe Offeror's experience working with each subcontractor.
- (5) Provide as a minimum three (3) references for the projects cited as related experience, and furnish the name, title, address and telephone number of the person(s) at the client organization who is most knowledgeable about the work performed. Offeror may also supply references from other work not cited in this section as related experience.

b. Proposed Staffing and Project Organization

This section of the proposal should establish the method, which will be used by the Offeror to manage the project as well as identify key personnel assigned.

Offeror to:

- (1) Provide education, experience, and applicable professional credentials of project staff proposed in providing the collective bargaining consulting services.
- (2) Furnish brief resumes (not more than two [2] pages each) for the proposed Project Manager and other key personnel.
- (3) Indicate adequacy of labor resources utilizing a table projecting the labor-hour allocation to the project by individual task.
- (4) Identify key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, proposed position for this project, current assignment, level of commitment to that assignment, availability for this assignment and how long each person has been with the firm.
- (5) Include a project organization chart, which clearly delineates communication/reporting relationships among the project staff.
- (6) Include a statement that key personnel will be available to the extent proposed for the duration of the project acknowledging that no person designated as "key" to the project shall be removed or replaced without the prior written concurrence of the Authority.

c. Work Plan

Offeror should provide a narrative, which addresses the Scope of Work, and shows Offeror's understanding of Authority's needs and requirements.

Offeror to:

- (1) Describe the approach to completing the tasks specified in the Scope of Work. The work plan shall be of such detail to demonstrate the Offerors ability to accomplish the requirement of the collective bargaining consulting services and overall schedule.
- (2) Outline sequentially the activities that would be undertaken in completing the tasks and specify who would perform them.
- (3) Furnish a project schedule for completing the tasks in terms of

elapsed weeks from the project commencement date.

- (4) Identify methods that Offeror will use to ensure quality control as well as budget and schedule control for the project.
- (5) Identify any special issues or problems that are likely to be encountered in this project and how the Offeror would propose to address them.
- (6) Offeror is encouraged to propose enhancements or procedural or technical innovations to the Scope of Work that do not materially deviate from the objectives or required content of the project.

d. Exceptions/Deviations

State any exceptions to or deviations from the requirements of this RFP, segregating "technical" exceptions from "contractual" exceptions. Where Offeror wishes to propose alternative approaches to meeting the Authority's technical or contractual requirements, these should be thoroughly explained. If no contractual exceptions are noted, Offeror will be deemed to have accepted the contract requirements as set forth in Exhibit C – Proposed Agreement.

4. Cost and Price Proposal

As part of the cost and price proposal, the Offeror shall submit proposed fully burdened rates to provide the services for work task described in Exhibit A, Scope of Work.

The Offeror shall complete the "Price Summary Sheet" form included with this RFP (Exhibit B), and furnish any narrative required to explain the fully burdened rates quoted in the schedules.

5. Appendices

Information considered by Offeror to be pertinent to this project and which has not been specifically solicited in any of the aforementioned sections may be placed in a separate appendix section. Offerors are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials. Appendices should be relevant and brief.

B. FORMS**1. Status of Past and Present Contracts Form**

Offeror is required to complete and sign the form entitled "Status of Past and Present Contracts" provided in this RFP and submit as part of the proposal. Offeror shall list the status of past and present contracts where the firm has either provided services as a prime contractor or a subcontractor during the past five (5) years and the contract has ended or will end in a termination, settlement, or litigation. A separate form must be completed for each contract. Offeror shall provide an accurate name and telephone number for each contract and indicate the term of the contract and the original contract value. If the contract was terminated, Offeror must list the reason for termination. Offeror must identify and state the status of any litigation, claims or settlement agreements related to any of the contracts. Each form must be signed by the Offeror confirming the information that the information provided is true and accurate. Offeror is required to submit one copy of the completed form(s) as part of its proposals and it should be included in only the original proposal.

SECTION III
EVALUATION AND AWARD

SECTION III. EVALUATION AND AWARD

A. EVALUATION CRITERIA

The Authority will evaluate the offers received based on the following criteria:

- 1. Qualifications of the Firm 35%**
Technical experience in performing work of a closely similar nature; experience working with public agencies; strength and stability of the firm; strength, stability, experience and technical competence of subcontractors; assessment by client references.
- 2. Staffing and Project Organization 25%**
Qualifications of project staff, particularly key personnel and especially the Project Manager; key personnel's level of involvement in performing related work cited in "Qualifications of the Firm" section; logic of project organization; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel.
- 3. Work Plan 25%**
Depth of Offeror's understanding of Authority's requirements and overall quality of work plan; logic, clarity and specificity of work plan; appropriateness of labor distribution among the tasks; ability to meet the project deadline; reasonableness of proposed schedule; utility of suggested technical or procedural innovations.
- 4. Cost and Price 15%**
Reasonableness and competitiveness of proposed fully burdened rates when compared with other offers received; adequacy of data in support of figures quoted.

B. EVALUATION PROCEDURE

An evaluation committee will be appointed to review all proposals received for this RFP. The committee is comprised of Authority staff and may include outside personnel. The committee members will evaluate the written proposals using criteria identified in Section III A. A list of top ranked proposals, firms within a competitive range, will be developed based upon the totals of each committee members' score for each proposal.

During the evaluation period, the Authority may interview some or all of the proposing firms. The Authority has established January 12, 2010, as the date to conduct interviews. All prospective Offerors will be asked to keep this date

available. No other interview dates will be provided, therefore, if an Offeror is unable to attend the interview on this date, its proposal may be eliminated from further discussion. The interview may consist of a short presentation by the Offeror after which the evaluation committee will ask questions related to the firm's proposal and qualifications.

At the conclusion of the proposal evaluations, Offerors remaining within the competitive range may be asked to submit a Best and Final Offer (BAFO). In the BAFO request, the firms may be asked to provide additional information, confirm or clarify issues and submit a final cost/price offer. A deadline for submission will be stipulated.

C. AWARD

The Authority will evaluate the proposals received and will award to the proposal considered to be the most competitive. The Authority may also negotiate contract terms with the selected Offeror prior to award, and expressly reserves the right to negotiate with several Offerors simultaneously and, thereafter, to award a contract to the Offeror offering the most favorable terms to the Authority.

The Authority reserves the right to award its total requirements to one Offeror or to apportion those requirements among several Offerors as the Authority may deem to be in its best interest. In addition, negotiations may or may not be conducted with Offerors; therefore, the proposal submitted should contain Offeror's most favorable terms and conditions, since the selection and award may be made without discussion with any Offeror.

D. NOTIFICATION OF AWARD AND DEBRIEFING

Offerors who submit a proposal in response to this RFP shall be notified via CAMM NET of the contract award. Such notification shall be made within three (3) days of the date the contract is awarded.

Offerors who were not awarded the contract may obtain a debriefing concerning the strengths and weaknesses of their proposal. Unsuccessful Offerors, who wish to be debriefed, must request the debriefing in writing or electronic mail and the Authority must receive it within three (3) days of notification of the contract award.

EXHIBIT A
SCOPE OF WORK

SCOPE OF WORK

Collective Bargaining Consulting Services

Background

The Orange County Transportation Authority (OCTA) is a state-mandated, countywide transportation agency. OCTA was formed in 1991 to develop and implement transportation programs designed to reduce traffic congestion and improve air quality. As one agency, OCTA provides Orange County with a single point of accountability and a greater voice for local residents for all transportation issues. OCTA offers extensive bus and paratransit service, Metrolink commuter rail service, the 91 Express Lanes Toll road, motorist services, and freeway, street and road improvement projects. OCTA employs approximately 2,000 full and part-time employees. Approximately three quarters of the OCTA workforce are union represented. Collective bargaining is expected to commence before year-end for the first of three collective bargaining agreements. OCTA's Executive Director of Human Resources and Organizational Development will be the lead negotiator for the management negotiation team during the upcoming collective bargaining agreement negotiations.

Project Overview

OCTA is soliciting proposals from qualified service providers to provide negotiation strategies consultations for up to three (3) collective bargaining agreements (CBAs). The CBAs will be negotiated consecutively. The qualified service provider will be an individual or group with a background in law, experience utilizing interest based bargaining, and experience negotiating collective bargaining agreements in the public sector on behalf of a public employer.

Current CBA Status

OCTA has three (3) CBAs with two unions: Teamsters Local 952 and Transportation Communications Union (TCU).

The Coach Operator Collective Bargaining Agreement with Teamsters Local 952 covers approximately 1,100 Coach Operators and is effective from 5/1/07 through 4/30/10. It is the desire of OCTA to commence negotiations immediately.

The Maintenance Collective Bargaining Agreement with Teamsters Local 952 covers approximately 250 Maintenance employees and is effective from 10/1/07 through 9/30/10. It is the desire of OCTA to commence negotiations as early as possible, following the completion of the Coach Operator CBA.

The Facilities Maintenance and Parts Department Collective Bargaining Agreement with Transportation Communications International Union (TCU) covers approximately 50 employees and is effective from 4/1/08 through 3/31/11.

Proposed Objectives

Consultant shall:

- Advise and consult with the OCTA lead negotiator as needed
- Assist with the development of bargaining strategies to address OCTA specific challenges, interests and needs
- Ensure understanding of OCTA management goals to be achieved during labor negotiations for Coach Operator, Maintenance and TCU contracts
- Work with OCTA management to identify interests and needs

Tasks

Tasks will be required on an as-needed basis and may include any or all of the following.

1. Provide consultation and labor negotiation strategies for up to three (3) collective bargaining agreements (Coach Operator, Maintenance, and TCU)
2. Provide labor negotiations mentoring/coaching to the Executive Director of Human Resources and Organizational Development
3. Review relevant documents
4. Conduct or participate in strategy sessions with OCTA management representatives and/or negotiating team
5. Prepare and/or analyze proposals and counter-proposals
6. Review estimates of the costs of implementation of CBAs
7. Assist during any impasse process, including the development and presentation of OCTA's position at any mediations or fact finding hearings.

Project Management

Executive Director, Human Resources and Organizational Development, and Manager, Labor and Employee Relations will be the OCTA's main contacts and will be responsible for the management of this project. Executive Director, Human Resources and Organizational Development is also the sponsor of this project.

EXHIBIT B
COST AND PRICE FORMS

PRICE SUMMARY SHEET

REQUEST FOR PROPOSALS (RFP) 9-0866

Collective Bargaining Consulting Services

Enter below the proposed fully burdened rates for work described in the Exhibit A entitled "Scope of Work." Fully burdened rates shall include direct costs, indirect costs, meals, travel, lodging and profits. The Authority's intention is to award a time and expense contract. Please denote the basis on which the prices are quoted.

February 1, 2010 through January 31, 2012

<u>NAME</u>	<u>FUNCTION</u>	<u>HOURLY RATES</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____

Annual increase _____ %

-
1. I acknowledge receipt of RFP 9-0866 and Addenda No.(s) _____
2. This offer shall remain firm for _____ days from the date of proposal
(Minimum 120)

COMPANY NAME _____

ADDRESS _____

TELEPHONE _____

EMAIL ADDRESS _____

SIGNATURE OF PERSON
AUTHORIZED TO BIND OFFEROR _____

SIGNATURE'S NAME AND TITLE _____

DATE SIGNED _____

EXHIBIT C
PROPOSED AGREEMENT

performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of AUTHORITY's right to such performance or to future performance of such terms or conditions and CONSULTANT's obligation in respect thereto shall continue in full force and effect. Changes to any portion of this Agreement shall not be binding upon AUTHORITY except when specifically confirmed in writing by an authorized representative of AUTHORITY by way of a written amendment to this Agreement and issued in accordance with the provisions of this Agreement.

ARTICLE 2. AUTHORITY DESIGNEE

The Chief Executive Officer of AUTHORITY, or designee, shall have the authority to act for and exercise any of the rights of AUTHORITY as set forth in this Agreement.

ARTICLE 3. SCOPE OF WORK

A. CONSULTANT shall perform the work necessary to complete in a manner satisfactory to AUTHORITY the services set forth in Exhibit A, entitled "Scope of Work," attached to and, by this reference, incorporated in and made a part of this Agreement. All services shall be provided at the times and places designated by AUTHORITY.

B. CONSULTANT shall provide the personnel listed below to perform the above-specified services, which persons are hereby designated as key personnel under this Agreement.

<u>Names</u>	<u>Functions</u>
_____	_____
_____	_____
_____	_____
_____	_____

C. No person named in paragraph B of this Article, or his/her successor approved by AUTHORITY, shall be removed or replaced by CONSULTANT, nor shall his/her agreed-upon function or level of commitment hereunder be changed, without the prior written consent of AUTHORITY. Should the services of any key person become no longer available to CONSULTANT, the resume and qualifications of the proposed replacement shall be submitted to AUTHORITY for approval as soon as

possible, but in no event later than seven (7) calendar days prior to the departure of the incumbent key person, unless CONSULTANT is not provided with such notice by the departing employee. AUTHORITY shall respond to CONSULTANT within seven (7) calendar days following receipt of these qualifications concerning acceptance of the candidate for replacement.

ARTICLE 4. TERM OF AGREEMENT

A. This Agreement shall commence upon execution by both parties, and shall continue in full force and effect through January 31, 2012, unless earlier terminated or extended as provided in this Agreement.

ARTICLE 5. PAYMENT

A. For CONSULTANT's full and complete performance of its obligations under this Agreement, AUTHORITY shall pay CONSULTANT on a time and expense basis in accordance with the provisions of this Article and subject to the maximum cumulative payment obligation specified in Article 6 of this Agreement.

B. For each full hour of labor satisfactorily performed by CONSULTANT's personnel under this Agreement, AUTHORITY shall pay CONSULTANT at the hourly labor rates as specified below. These rates shall remain fixed for the entire term of this Agreement and are acknowledged to include CONSULTANT's direct labor costs, indirect costs and profit.

Function

Fully Burdened Hourly Rate

C. AUTHORITY shall reimburse CONSULTANT for the exact amount of the expenses, which are directly incurred by its personnel, excluding travel expenses and meal expenses which shall be included in the hourly labor rates specified in paragraph B, in the performance of work under this Agreement.

D. CONSULTANT shall invoice AUTHORITY on a monthly basis for payments corresponding to the work actually completed by CONSULTANT. Hours of work completed shall be documented in a monthly report prepared by CONSULTANT, which shall accompany each invoice submitted by

CONSULTANT. CONSULTANT shall also furnish such other information as may be requested by AUTHORITY to substantiate the validity of an invoice. At its sole discretion, AUTHORITY may decline to make full payment for any work listed in paragraph B of this Article until such time as CONSULTANT has documented to AUTHORITY's satisfaction, that CONSULTANT has fully completed all work required under the task. AUTHORITY's payment in full for any work completed shall not constitute AUTHORITY's final acceptance of CONSULTANT's work.

E. Invoices shall be submitted by CONSULTANT on a monthly basis and shall be submitted in duplicate to AUTHORITY's Accounts Payable office. Each invoice shall be accompanied by the monthly progress report specified in paragraph D of this Article. AUTHORITY shall remit payment within thirty (30) calendar days of the receipt and approval of each invoice. Each invoice shall include the following information:

1. Agreement No. C-9-0866;
2. Work for which payment is being requested;
3. Labor (staff name, hours charged, hourly billing rate, current charges and cumulative charges) performed during the billing period;
4. Total monthly invoice (including project-to-date cumulative invoice amount);
5. Monthly Report; and
6. Certification signed by the CONSULTANT or his/her designated alternate that a) The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The invoice is a true, complete and correct statement of reimbursable costs; c) The backup information included with the invoice is true, complete and correct in all material respects; d) All payments due and owing to subcontractors and suppliers have been made; e) Timely payments will be made to subcontractors and suppliers from the proceeds of the payments covered by the certification and; f) The invoice does not include any amount which CONSULTANT intends to withhold or retain from a subcontractor or supplier unless so identified on the invoice.
7. Any other information as agreed or requested by AUTHORITY to substantiate the

validity of an invoice.

ARTICLE 6. MAXIMUM OBLIGATION

Notwithstanding any provisions of this Agreement to the contrary, AUTHORITY and CONSULTANT mutually agree that AUTHORITY's maximum cumulative payment obligation (including obligation for CONSULTANT's profit) shall be One Hundred Fifty Thousand Dollars (\$150,000.00) which shall include all amounts payable to CONSULTANT for its subcontracts, leases, materials and costs arising from, or due to termination of, this Agreement.

ARTICLE 7. NOTICES

All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of said notices in person or by depositing said notices in the U.S. mail, registered or certified mail, returned receipt requested, postage prepaid and addressed as follows:

To CONSULTANT:

To AUTHORITY:

Orange County Transportation Authority
550 South Main Street
P.O. Box 14184
Orange, CA 92863-1584

ATTENTION: _____

ATTENTION: Maria Cruz-Thompson

() - _____

(714) 560 – 5605, mthompson@octa.net

ARTICLE 8. INDEPENDENT CONTRACTOR

CONSULTANT's relationship to AUTHORITY in the performance of this Agreement is that of an independent contractor. CONSULTANT's personnel performing services under this Agreement shall at all times be under CONSULTANT's exclusive direction and control and shall be employees of CONSULTANT and not employees of AUTHORITY. CONSULTANT shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment

compensation, workers' compensation and similar matters.

ARTICLE 9. INSURANCE

A. CONSULTANT shall procure and maintain insurance coverage during the entire term of this Agreement. Coverage shall be full coverage and not subject to self-insurance provisions. CONSULTANT shall provide the following insurance coverage:

1. Commercial General Liability, to include Products/Completed Operations, Independent Contractors', Contractual Liability, and Personal Injury Liability, and Property Damage with a minimum limit of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

2. Automobile Liability Insurance to include owned, hired and non-owned autos with a combined single limit of \$1,000,000.00 each accident;

3. Workers' Compensation with limits as required by the State of California including a waiver of subrogation in favor of AUTHORITY, its officers, directors, employees or agents;

4. Employers' Liability with minimum limits of \$1,000,000.00; and

5. Professional Liability with minimum limits of \$1,000,000.00 per claim.

B. Proof of such coverage, in the form of an insurance company issued policy endorsement and a broker-issued insurance certificate, must be received by AUTHORITY prior to commencement of any work. Proof of insurance coverage must be received by AUTHORITY within ten (10) calendar days from the effective date of this Agreement with the AUTHORITY, its officers, directors, employees and agents designated as additional insured on the general and automobile liability. Such insurance shall be primary and non-contributive to any insurance or self-insurance maintained by the AUTHORITY.

C. CONSULTANT shall include on the face of the Certificate of Insurance the Agreement Number C-9-0866; and, the Buyer's Name, Maria Cruz-Thompson.

D. CONSULTANT shall also include in each subcontract the stipulation that subcontractors shall maintain insurance coverage in the amounts required from CONSULTANT as provided in this Agreement.

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ARTICLE 10. ORDER OF PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 9-0866; (3) CONSULTANT's proposal dated _____; (4) all other documents, if any, cited herein or incorporated by reference.

ARTICLE 11. CHANGES

By written notice or order, AUTHORITY may, from time to time, order work suspension and/or make changes in the general scope of this Agreement, including, but not limited to, the services furnished to AUTHORITY by CONSULTANT as described in the Scope of Work. If any such work suspension or change causes an increase or decrease in the price of this Agreement, or in the time required for its performance, CONSULTANT shall promptly notify AUTHORITY thereof and assert its claim for adjustment within ten (10) calendar days after the change or work suspension is ordered, and an equitable adjustment shall be negotiated. However, nothing in this clause shall excuse CONSULTANT from proceeding immediately with the agreement as changed.

ARTICLE 12. DISPUTES

A. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by AUTHORITY's Director, Contracts Administration and Materials Management (Camm), who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONSULTANT. The decision of the Director, Camm, shall be final and conclusive.

B. The provisions of this Article shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Article, CONSULTANT shall be afforded an opportunity to be heard and

1 to offer evidence in support of its appeal.

2 C. Pending final decision of a dispute hereunder, CONSULTANT shall proceed diligently with
3 the performance of this Agreement and in accordance with the decision of AUTHORITY's Director,
4 CAMM. This Disputes clause does not preclude consideration of questions of law in connection with
5 decisions provided for above. Nothing in this Agreement, however, shall be construed as making final
6 the decision of any AUTHORITY official or representative on a question of law, which questions shall be
7 settled in accordance with the laws of the state of California.

8 **ARTICLE 13. TERMINATION**

9 A. AUTHORITY may terminate this Agreement for its convenience at any time, in whole or
10 part, by giving CONSULTANT written notice thereof. Upon said notice, AUTHORITY shall pay
11 CONSULTANT its allowable costs incurred to date of termination and those allowable costs determined
12 by AUTHORITY to be reasonably necessary to effect such termination. Thereafter, CONSULTANT
13 shall have no further claims against AUTHORITY under this Agreement.

14 B. AUTHORITY may terminate this Agreement for CONSULTANT's default if a federal or state
15 proceeding for the relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT
16 makes an assignment for the benefit of creditors, or if CONSULTANT breaches any term(s) or violates
17 any provision(s) of this Agreement and does not cure such breach or violation within ten (10) calendar
18 days after written notice thereof by AUTHORITY. CONSULTANT shall be liable for all reasonable costs
19 incurred by AUTHORITY as a result of such default including, but not limited to, reprourement costs of
20 the same or similar services defaulted by CONSULTANT under this Agreement.

21 **ARTICLE 14. INDEMNIFICATION**

22 CONSULTANT shall indemnify, defend and hold harmless AUTHORITY, its officers, directors,
23 employees and agents from and against any and all claims (including attorneys' fees and reasonable
24 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage
25 to or loss of use of property caused by the negligent acts, omissions or willful misconduct by
26 CONSULTANT, its officers, directors, employees, agents, subcontractors or suppliers in connection

with or arising out of the performance of this Agreement.

ARTICLE 15. ASSIGNMENTS AND SUBCONTRACTS

A. Neither this Agreement nor any interest herein nor claim hereunder may be assigned by CONSULTANT either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by CONSULTANT, without the prior written consent of AUTHORITY. Consent by AUTHORITY shall not be deemed to relieve CONSULTANT of its obligations to comply fully with all terms and conditions of this Agreement.

B. AUTHORITY hereby consents to CONSULTANT's subcontracting portions of the Scope of Work to the parties identified below for the functions described in CONSULTANT's proposal. CONSULTANT shall include in the subcontract agreement the stipulation that CONSULTANT, not AUTHORITY, is solely responsible for payment to the subcontractor for the amounts owing and that the subcontractor shall have no claim, and shall take no action, against AUTHORITY, its officers, directors, employees or sureties for nonpayment by CONSULTANT.

<u>Subcontractor Name/Addresses</u>	<u>Functions</u>
_____	_____
_____	_____

ARTICLE 16. AUDIT AND INSPECTION OF RECORDS

CONSULTANT shall provide AUTHORITY, or other agents of AUTHORITY, such access to CONSULTANT's accounting books, records, payroll documents and facilities, as AUTHORITY deems necessary. CONSULTANT shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during CONSULTANT's performance hereunder and for a period of four (4) years from the date of final payment by AUTHORITY. AUTHORITY's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors identified in Article 15 of this Agreement. Consultant shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

ARTICLE 17. CONFLICT OF INTEREST

CONSULTANT agrees to avoid organizational conflicts of interest. An organizational conflict of interest means that due to other activities, relationships or contracts, the CONSULTANT is unable, or potentially unable to render impartial assistance or advice to the Authority; CONSULTANT's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or the CONSULTANT has an unfair competitive advantage. CONSULTANT is obligated to fully disclose to the AUTHORITY in writing Conflict of Interest issues as soon as they are known to the CONSULTANT. All disclosures must be submitted in writing to AUTHORITY pursuant to the Notice provision herein. This disclosure requirement is for the entire term of this Agreement.

ARTICLE 18. CODE OF CONDUCT

CONSULTANT agrees to comply with the AUTHORITY's Code of Conduct as it relates to Third-Party contracts which is hereby referenced and by this reference is incorporated herein. CONSULTANT agrees to include these requirements in all of its subcontracts.

ARTICLE 19. FEDERAL, STATE AND LOCAL LAWS

CONSULTANT warrants that in the performance of this Agreement, it shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder.

ARTICLE 20. EQUAL EMPLOYMENT OPPORTUNITY

In connection with its performance under this Agreement, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. CONSULTANT 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, age or national origin. Such actions 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.

ARTICLE 21. PROHIBITED INTERESTS

CONSULTANT covenants that, for the term of this Agreement, no director, member, officer or employee of AUTHORITY during his/her tenure in office or for one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE 22. OWNERSHIP OF REPORTS AND DOCUMENTS

A. The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the property of AUTHORITY. Copies may be made for CONSULTANT's records but shall not be furnished to others without written authorization from AUTHORITY. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by AUTHORITY.

B. All ideas, memoranda, specifications, plans, manufacturing, procedures, drawings, descriptions, and all other written information submitted to CONSULTANT in connection with the performance of this Agreement shall not, without prior written approval of AUTHORITY, be used for any purposes other than the performance under this Agreement, nor be disclosed to an entity not connected with the performance of the project. CONSULTANT shall comply with AUTHORITY's policies regarding such material. Nothing furnished to CONSULTANT, which is otherwise known to CONSULTANT or is or becomes generally known to the related industry shall be deemed confidential. CONSULTANT shall not use AUTHORITY's name, photographs of the project, or any other publicity pertaining to the project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without the express written consent of AUTHORITY.

C. No copies, sketches, computer graphics or graphs, including graphic artwork, are to be released by CONSULTANT to any other person or agency except after prior written approval by AUTHORITY, except as necessary for the performance of services under this Agreement. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be handled only by AUTHORITY unless otherwise agreed to by CONSULTANT and AUTHORITY.

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ARTICLE 23. PATENT AND COPYRIGHT INFRINGEMENT

A. In lieu of any other warranty by AUTHORITY or CONSULTANT against patent or copyright infringement, statutory or otherwise, it is agreed that CONSULTANT shall defend at its expense any claim or suit against AUTHORITY on account of any allegation that any item furnished under this Agreement or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently existing U. S. letters patent or copyright and CONSULTANT shall pay all costs and damages finally awarded in any such suit or claim, provided that CONSULTANT is promptly notified in writing of the suit or claim and given authority, information and assistance at CONSULTANT's expense for the defense of same. However, CONSULTANT will not indemnify AUTHORITY if the suit or claim results from: (1) AUTHORITY's alteration of a deliverable, such that said deliverable in its altered form infringes upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by CONSULTANT when such use in combination infringes upon an existing U.S. letters patent or copyright.

B. CONSULTANT shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof. CONSULTANT shall not be obligated to indemnify AUTHORITY under any settlement made without CONSULTANT's consent or in the event AUTHORITY fails to cooperate fully in the defense of any suit or claim, provided, however, that said defense shall be at CONSULTANT's expense. If the use or sale of said item is enjoined as a result of such suit or claim, CONSULTANT, at no expense to AUTHORITY, shall obtain for AUTHORITY the right to use and sell said item, or shall substitute an equivalent item acceptable to AUTHORITY and extend this patent and copyright indemnity thereto.

ARTICLE 24. FINISHED AND PRELIMINARY DATA

A. All of CONSULTANT's finished technical data, including but not limited to illustrations, photographs, tapes, software, software design documents, including without limitation source code, binary code, all media, technical documentation and user documentation, photoprints and other graphic information required to be furnished under this Agreement, shall be AUTHORITY's property upon

1 payment and shall be furnished with unlimited rights and, as such, shall be free from proprietary
2 restriction except as elsewhere authorized in this Agreement. CONSULTANT further agrees that it
3 shall have no interest or claim to such finished, AUTHORITY-owned, technical data; furthermore, said
4 data is subject to the provisions of the Freedom of Information Act, 5 USC 552.

5 B. It is expressly understood that any title to preliminary technical data is not passed to
6 AUTHORITY but is retained by CONSULTANT. Preliminary data includes roughs, visualizations,
7 software design documents, layouts and comprehensives prepared by CONSULTANT solely for the
8 purpose of demonstrating an idea or message for AUTHORITY's acceptance before approval is given
9 for preparation of finished artwork. Preliminary data title and right thereto shall be made available to
10 AUTHORITY if CONSULTANT causes AUTHORITY to exercise Article 11, and a price shall be
11 negotiated for all preliminary data.

12 **ARTICLE 25. ALCOHOL AND DRUG POLICY**

13 A. CONSULTANT agrees to establish and implement an alcohol and drug program that
14 complies with 41 U.S.C. sections 701-707, (the Drug Free Workplace Act of 1988), which is attached to
15 this Agreement as Exhibit X. CONSULTANT agrees to produce any documentation necessary to
16 establish its compliance with sections 701-707.

17 B. Failure to comply with this Article may result in nonpayment or termination of this
18 Agreement.

19 **ARTICLE 26. FORCE MAJEURE**

20 Either party shall be excused from performing its obligations under this Agreement during the
21 time and to the extent that it is prevented from performing by an unforeseeable cause beyond its
22 control, including but not limited to: any incidence of fire, flood; acts of God; commandeering of material,
23 products, plants or facilities by the federal, state or local government; national fuel shortage; or a
24 material act or omission by the other party; when satisfactory evidence of such cause is presented to
25 the other party, and provided further that such nonperformance is unforeseeable, beyond the control
26 and is not due to the fault or negligence of the party not performing.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-9-0866 to be executed on the date first above written.

ORANGE COUNTY TRANSPORTATION AUTHORITY

Carolina Coppolo
Manager
Contracts Administration and Materials Management

By _____

Kennard R. Smart, Jr.
General Counsel

EXHIBIT D

FORMS

Status of Past and Present Contracts Form

On the form provided below, Offeror shall list the status of past and present contracts where the firm has either provided services as a prime contractor or a subcontractor during the past five (5) years in which the contract has ended or will end in a termination, settlement or in legal action. A separate form must be completed for each contract. Offeror shall provide an accurate contact name and telephone number for each contract and indicate the term of the contract and the original contract value.

If the contract was terminated, list the reason for termination. Offeror must also identify and state the status of any litigation, claims or settlement agreements related to any of the identified contracts. Each form must be signed by an officer of the Offeror confirming that the information provided is true and accurate.

Project city/agency/other:	
Contact name:	Phone:
Project award date:	Original Contract Value:
Term of Contract:	
1) Status of contract:	
2) Identify claims/litigation or settlements associated with the contract:	

By signing this Form entitled "Status of Past and Present Contracts," I am affirming that all of the information provided is true and accurate.

Name _____
Title _____

Date _____



DRUG-FREE WORKPLACE ACT OF 1988

THE FEDERAL LAW

This law, enacted November 1988, with subsequent modification in 1994 by the Federal Acquisition Streamlining Act, (*raising the Bidder amount from \$25,000 to \$100,000*), requires compliance by all organizations contracting with any U. S. Federal agency in the amount of \$100,000 or more that does not involve the acquisition of commercial goods via a procurement contract or purchase order, and is performed in whole in the United States. It also requires that *all* organizations receiving federal grants, regardless of amount granted, maintain a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988. The Law further requires that all *individual* Bidders and grant recipients, regardless of dollar amount/value of the contract or grant, comply with the Law.

Certification that this requirement is being met must be done in the following manner:

By publishing a statement informing all covered employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the covered workplace, and what actions will be taken against employees in the event of violations of such statement.

By providing **ALL** covered employees with a copy of the above-described statement, including the information that as a condition of employment on the Federal contract or grant, the employee must abide by the terms and conditions of the policy statement.

For Federal Bidders this encompasses employees involved in the performance of the contract. For Federal grantees all employees must come under this requirement as the act includes all "direct charge" employees (those whose services are directly & explicitly paid for by grant funds), and "indirect charge" employees (members of grantee's organization who perform support or overhead functions related to the grant and for which the Federal Government pays its share of expenses under the grant program).

Among "indirect charge" employees, those whose impact or involvement is insignificant to the performance of the grant are exempted from coverage. Any other person, who is on the grantee's payroll and works in any activity under the grant, even if not paid from grant funds, is also considered to be an employee. Temporary personnel and Bidders who are on the grantee's payroll are covered. Similar workers, who are not on the grantee's payroll, but on the payroll of Bidders working for the grantee, are not covered even if physical place of employment is in the grantee's workplace.

By establishing a continuing, drug-free awareness program to inform employees of the dangers of drug abuse; the company's drug-free workplace policy; the penalties for drug abuse violations occurring in the workplace; the availability of any drug counseling, rehabilitation, and/or employee assistance plans offered through the employer.

By requiring each employee directly involved in the work of the contract or grant to notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not less than five (5) calendar days after such conviction.

By notifying the Federal agency with which the employer has the contract or grant of any such conviction within ten (10) days after being notified by an employee or any other person with knowledge of a conviction.

By requiring the imposition of sanctions or remedial measures, including termination, for an employee convicted of a drug abuse violation in the workplace. These sanctions may be participation in a drug rehabilitation program if so stated in the company policy.

By continuing to make a "good-faith" effort to comply with all of the requirements as set forth in the Drug-Free Workplace Act.

All employers covered by the law are subject to suspension of payments, termination of the contract or grant, suspension or debarment if the head of the contracting or granting organization determines that the employer has made any type of false certification to the contracting or grant office, has not fulfilled the requirements of the law, or has excessive drug violation convictions in the workplace. Penalties may also be imposed upon those employing a number of individuals convicted of criminal drug offenses as this demonstrates a lack of good faith effort to provide a drug-free workplace. The contract or grant officer may determine the number on a case-by-case basis. Employers who are debarred are ineligible for other Federal contracts or grants for up to five (5) years. Compliance may be audited by the Federal agency administering the contract or grant.

The Drug-free Workplace Act does not require employers to establish an employee assistance program (EAP) or to implement drug testing as a part of the program.

Source: Federal Registers April 11, 1988 & May 25, 1990 & the Federal Acquisition Streamlining Act of 1994 (FASA).