

REQUEST FOR PROPOSALS (RFP) 9-0667

ENVIRONMENTAL PLANNING SUPPORT



ORANGE COUNTY TRANSPORTATION AUTHORITY

550 South Main Street

P.O. Box 14184

Orange, CA 92863-1584

(714) 560-6282

Key RFP Dates

Issue Date:	August 18, 2009
Pre-Proposal Conference Date:	September 1, 2009
Question Submittal Date:	September 10, 2009
Proposal Submittal Date:	September 22, 2009

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August 18, 2009

**SUBJECT: NOTICE OF REQUEST FOR PROPOSALS
RFP 9-0667: ENVIRONMENTAL PLANNING SUPPORT**

Gentlemen/Ladies:

The Orange County Transportation Authority invites proposals from qualified consultants to provide environmental planning support.

Proposals must be received in the Orange County Transportation Authority's office at or before 2:00 p.m. on September 22, 2009.

Proposals delivered in person or by 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: Sarah L. Strader, Senior Contract Administrator**

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: Sarah L. Strader, Senior Contract Administrator**

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) 9-0667 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) 9-0667

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

To receive all further information regarding this RFP 9-0667, firms must be registered on CAMMNet 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):
Professional Consulting

Commodity(s):
Environmental Consulting
Engineering - Environmental

A pre-proposal conference will be held on September 1, 2009, at 1:30 p.m. at the Authority's Administrative Office, 600 South Main Street, Orange, California, in Conference Room 109. All prospective Offerors are encouraged to attend the pre-proposal conference.

Offerors are asked to submit written statements of technical qualifications and describe in detail their work plan for completing the work specified in the Request for Proposal. **No cost proposal or estimate of work hours is to be included in this phase of the RFP process.**

Certain labor categories under this project are subject to prevailing wages as identified in the State of California Labor Code commencing in Section 1770 et. Seq. It is required that all mechanics and laborers employed or working at the site be paid not less than the basic hourly rates of pay and fringe benefits as shown in the current minimum wage schedules. Offerors must use the current wage schedules applicable at the time the work is in progress.

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

The Offeror 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, reading "Sarah L. Strader". The signature is written in dark ink and is positioned above the printed name and title.

Sarah L. Strader
Senior Contract Administrator
Contracts Administration and Materials Management

SECTION I
INSTRUCTIONS TO OFFERORS

SECTION I. INSTRUCTIONS TO OFFERORS

A. PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held on September 1, 2009, at the Authority's Administrative Office, 600 South Main Street, Orange, California, in Conference Room 109 at 1:30 p.m. All prospective Offerors are strongly encouraged to attend the pre-proposal conference.

B. 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.

C. 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. Offeror's shall acknowledge receipt of addenda in their proposals.

D. AUTHORITY CONTACT

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

Sarah L. Strader, Senior Contract Administrator
Contracts Administration and Materials Management Department
600 South Main Street, P.O. Box 14184
Orange, CA 92863-1584
Phone: 714.560.5633, Fax: 714.560.5792, or E-Mail: sstrader@octa.net

E. 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 E.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 CAMMNet under the commodity codes specified in this RFP.

2. Submitting Requests

- a. All questions, including questions that could not be specifically answered at the pre-proposal conference must be put in writing and must be received by the Authority no later than 5:00 p.m., September 10, 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.
 - (3) Facsimile: The Authority's fax number is (714) 560-5792.
 - (4) E-Mail: Sarah L. Strader, Senior Contract Administrator e-mail address is: sstrader@octa.net.

3. Authority Responses

Responses from the Authority will be posted on CAMM NET, the Authority's interactive website, no later than September 14, 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 Sarah L. Strader, Senior Contract Administrator.

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):

Professional Consulting

Commodity(s):

Environmental Consulting
Engineering - Environmental

Inquiries received after 5:00 p.m. on September 10, 2009, will not be responded to.

F. 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 September 22, 2009.

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: Sarah L. Strader, Senior Contract Administrator**

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: Sarah L. Strader, Senior Contract Administrator**

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 **one original and four 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 9-0667: ENVIRONMENTAL PLANNING SUPPORT"

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 the Authority are public information and must be made available to any person upon request.
- e. Submitted proposals are not to be copyrighted.

G. 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.

H. JOINT OFFERS

Where two or more Offerors 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.

I. 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.

J. PROTEST PROCEDURES

The Authority has on file a set of written protest procedures applicable to this solicitation that may be obtained by contacting the Contract Administrator

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.

K. CONTRACT TYPE

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be a time and expense price contract specifying hourly rates for effort specified in the Scope of Work included in this RFP as Section V.

L. PREVAILING WAGES

Certain labor categories under this project are subject to prevailing wages as identified in the State of California Labor Code commencing in Section 1770 et. seq. The proposer to whom a contract for the work is awarded by the Authority shall comply with the provision of the California Labor Code, including, without limitation, the obligation to pay the general prevailing rates of wages in the locality in which the work is to be performed in accordance with, without limitation, Sections 1773.1, 1774, 1775 and 1776 of the California Labor Code governing employment of apprentices. Copies of the prevailing rates of per diem wages are on file at the Authority's principal office at 550 S. Main Street, Orange, CAA 92868 and are available to any interested party on request.

M. 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.

SECTION II
PROPOSAL CONTENT

SECTION II. PROPOSAL CONTENT AND FORMS**A. PROPOSAL FORMAT AND CONTENT****1. Presentation**

Proposals shall be typed, with 12 pt 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" x 17" 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 Sarah L. Strader, Senior Contract Administrator, 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 contact person identified during period of proposal evaluation.
- b. Identification of all proposed subcontractors including legal name of company, whether the firm is a Disadvantaged Business Enterprise (DBE), contact persons name and address, phone number and fax number. Relationship between Offeror and subcontractors, if applicable.
- c. Acknowledgment 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 180 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 the same or similar nature; Demonstrated experience working with local agencies and cities directly involved in this project; strength and stability of the Offeror; staffing capability; work load; record of meeting schedules on similar projects; and supportive client references. Equal weighting will be given to firms for past experience performing work of a similar nature whether with the Authority or elsewhere.

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; number of employees.
- (2) Provide a general description of the firm's financial condition, 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 of a similar nature to that solicited in this RFP, and highlight the participation in such work by the key personnel proposed for assignment to this project.
- (4) Describe experience in working with the various government agencies that may have jurisdiction over the approval of the work specified in this RFP. Please include specialized experience and professional competence in areas directly related to this RFP.
- (5) Provide a list of past joint work by the Offeror and each subcontractor, if applicable. The list should clearly identify the project and provide a summary of the roles and responsibilities of each party.
- (6) Provide as a minimum of three (3) references should be provided. 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 that 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. Include applicable professional credentials of "key" project staff.
- (2) Furnish brief resumes (not more than two [2] pages each) for the proposed Project Manager and other key personnel.
- (3) 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, and proposed position for this project, current assignment, and level of commitment to that assignment, availability for this assignment and how long each person has been with the firm.
- (4) Include a project organization chart that clearly delineates communication/reporting relationships among the project staff, including subconsultants.
- (5) 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 shall provide a narrative that addresses the Scope of Work and shows Offeror's understanding of Authority's needs and requirements.

Offeror to:

- (1) Describe the approach and work plan for completing the effort specified in the Scope of Work. The work plan shall be of such detail to demonstrate the Offeror's ability to accomplish the project objectives and overall schedule.
- (2) Specify who in the firm will perform the effort and provide a labor resource allocation chart.
- (3) Identify methods that Offeror will use to ensure quality control as well as budget and schedule control for the project.
- (4) Identify any special issues or problems that are likely to be encountered during this project and how the Offeror would propose to address them.

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 Section IV. Proposed Agreement.

4. **Cost and Price Proposal**

Offerors are asked to submit only the technical qualifications as requested in this RFP. **No cost proposal or work hours are to be included in this phase of the RFP process.** Upon completion of the initial evaluations and interviews, if conducted, the highest ranked Offeror will be asked to submit a detailed cost proposal and negotiations will commence based on both the cost and technical proposals.

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. **FORM**

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 25%**
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 40%**
Qualifications of project staff, particularly "key personnel", especially the Project Manager, including their relevant past experience. Key personnel's level of involvement in performing related work cited in "Qualifications of the Firm" section; adequacy of labor commitment; references from past projects; logic of project organization; concurrence in the restrictions on changes in key personnel.
- 3. Work Plan 35%**
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.

B. EVALUATION PROCEDURE

An evaluation committee will be appointed to review all proposals for this RFP. The evaluation committee is comprised of Authority staff and may include outside personnel. The committee members will evaluate the written proposals. Each member of the evaluation committee will then evaluate each proposal using the criteria identified in Section III. A. to arrive at a "proposal score" for each proposal. Based on the proposal scores, a list of Offeror's within a competitive range will be developed based upon the totals of each committee member's score for each proposal.

At the conclusion of the evaluation process, the evaluation committee will rank proposals and award to the highest ranked firm.

C. AWARD

In conjunction with its action of selecting a firm, staff will request a cost proposal from the selected Offeror and to negotiate a contract price and other terms and conditions. If no satisfactory agreement can be reached, negotiations will begin with the next highest-ranked Offeror until a satisfactory agreement has been achieved. The selected Offeror may be asked to submit a Best and Final Offer (BAFO). In the BAFO request, the Offeror may be asked to provide additional information, confirm or clarify issues and submit a final cost/price offer. A deadline for submission of the BAFO will be stipulated.

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 CAMNET regarding the Offeror who was awarded the contract. Such notification shall be made within three (3) days of contract award.

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 it must be received by the Authority within three (3) days of notification of the award of contract.

SECTION IV
PROPOSED AGREEMENT

B. AUTHORITY's failure to insist in any one or more instances upon CONSULTANT's 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.

Names

Functions

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

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

6 **ARTICLE 4. TERM OF AGREEMENT**

7 This Agreement shall commence upon execution by both parties, and shall continue in full force
8 and effect through October 31, 2011, unless earlier terminated or extended as provided in this
9 Agreement.

10 **ARTICLE 5. PAYMENT**

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

15 B. For each full hour of labor satisfactorily performed by CONSULTANT's personnel under this
16 Agreement, AUTHORITY shall pay CONSULTANT at the hourly rates specified in Exhibit B, "Schedule
17 I – Hourly Rate Schedule", and "Schedule II – Other Direct Costs Schedule" which is attached to, by this
18 referenced incorporated in, and made part of this Agreement and are acknowledged to include
19 CONSULTANT's direct labor costs, indirect costs, and profit. Furthermore, AUTHORITY shall
20 reimburse CONSULTANT for the actual costs of the expenses shown in Exhibit B, which are directly
21 incurred by its personnel in the performance of work under this Agreement.

22 C. CONSULTANT shall invoice AUTHORITY on a monthly basis for payments corresponding
23 to the hours actually completed by CONSULTANT. Hours completed shall be documented in a monthly
24 progress report prepared by CONSULTANT, which shall accompany each invoice submitted by
25 CONSULTANT. CONSULTANT shall also furnish such other information as may be requested by
26 AUTHORITY to substantiate the validity of an invoice. At its sole discretion, AUTHORITY may decline

1 to make full payment as noted in paragraph B of this Article until such time as CONSULTANT has
2 documented to AUTHORITY's satisfaction, that CONSULTANT has fully completed all work required.

3 D. As partial security against CONSULTANT's failure to satisfactorily fulfill all of its obligations
4 under this Agreement, AUTHORITY shall retain ten percent (10%) of the amount of each invoice
5 submitted for payment by CONSULTANT. All retained funds shall be released by AUTHORITY and
6 shall be paid to CONSULTANT within sixty (60) calendar days of payment of final invoice, unless
7 AUTHORITY elects to audit CONSULTANT's records in accordance with Article 16 of this Agreement.
8 If AUTHORITY elects to audit, retained funds shall be paid to CONSULTANT within thirty (30) calendar
9 days of completion of such audit in an amount reflecting any adjustment required by such audit.

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

- 15 1. Agreement No. C-9-0667;
- 16 2. Labor (staff name, actual hours expended, hourly billing rate, current charges and
17 cumulative charges) performed during the billing period;
- 18 3. Expenses (actual expenses incurred as well as back-up documentation that
19 supports the expenses) incurred during the billing period;
- 20 4. The time period covered by the invoice;
- 21 5. Monthly Progress Report;
- 22 6. Total monthly invoice (including project-to-date cumulative invoice amount) and
23 retention;
- 24 7. Certification signed by the CONSULTANT or his/her designated alternate that a) The
25 invoice is a true, complete and correct statement of reimbursable costs and progress; b) The invoice is
26 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.

8. 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 _____ Dollars (\$0.00) 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: Sarah L. Strader

Senior Contract Administrator

(714) 560 – 5633; E-mail: sstrader@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-9-0667; and, Sarah L. Strader, Senior Contract AdministratorSenior Contract Administrator.

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.

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 9-0667; (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.

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

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

14 **ARTICLE 13. TERMINATION**

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

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

ARTICLE 14. INDEMNIFICATION

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

Subcontractor Name/Addresses

Subcontractor Amounts

.00

.00

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. 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 19. 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 20. 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 21. 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.

ARTICLE 22. 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 23. 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

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

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

13 **ARTICLE 24. ALCOHOL AND DRUG POLICY**

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

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

20 **ARTICLE 25. FORCE MAJEURE**

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

1 and is not due to the fault or negligence of the party not performing.

2 This Agreement shall be made effective upon execution by both parties.

3 **IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. C-9-0667 to be
4 executed on the date first above written.

5 **CONSULTANT**

ORANGE COUNTY TRANSPORTATION AUTHORITY

6 By _____

By _____

7 Virginia Abadessa
8 Director, Contracts Administration and Materials
9 Management

10 APPROVED AS TO FORM:

11 By _____

12 Kennard R. Smart, Jr.
13 General Counsel



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 contractor 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* contractors 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 contractors 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 consultants who are on the grantee's payroll are covered. Similar workers, who are not on the grantee's payroll, but on the payroll of contractors 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.

SECTION V
SCOPE OF WORK

Strategic Planning Environmental Planning Support Scope of Work

Project Description

The Orange County Transportation Authority (OCTA) is soliciting proposals through this procurement to retain a Environmental Planning Support team to provide professional environmental reviews of environmental documents associated with OCTA capital improvement projects, including, but not limited to the Renewed Measure M freeway program, Renewed Measure M environmental mitigation program, and Metrolink/rail and transit service expansion projects.

Essential duties for the Consultant include, but are not limited to, reviewing and commenting on California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) environmental documents; monitoring the progress of project/study activities as they relate to the environmental process; representing OCTA, and responding to environmental inquiries at meetings of other public and professional groups; coordinating with other OCTA divisions, researching matters that are germane to the environmental process; and establishing and maintaining effective working relationships to ensure the effective coordination of activities with internal departments and external agencies.

The Consultant shall provide assistance to OCTA on planning/engineering efforts underway. When requested by the OCTA Project Manager, the Consultant shall commit at least 25 percent of his/her time to the activities listed above on a monthly basis. Consultant will have abilities, knowledge, and skills for thorough environmental analysis of transportation projects including biology, cultural resources, land use, and air quality as well as an in-depth understanding of transportation issues in Orange County.

OCTA seeks a Consultant with demonstrated ability to:

- Understand various types of environmental documents and planning agreements as they relate to CEQA and NEPA;
- In-depth understanding of OCTA, Caltrans, FHWA, FTA, and FRA agency and environmental policies and procedures;
- Work objectively and develop a consensus on controversial and complex interagency projects;
- Identify and engage stakeholders, integrate public input with technical analysis, and facilitate the development of consensus among diverse interests;
- Work effectively with local, state, and federal transportation and resource agencies; and
- Understand and make recommendations on potential resolutions to environmental issues.

In addition, the ideal Consultant shall have a demonstrated understanding and knowledge of:

- Caltrans and federal project development process;
- Environmental evaluation appropriate all stages of the project development process;
- Regulatory guidelines that drive transportation policies; and

Representative duties of the Consultant shall include:

- Actively managing environmental review of various types of documentation;
- Actively working with consultant teams and public outreach firms in an inclusive public outreach process;
- Giving presentations on the project to advisory groups, elected officials, supporting committees, and Board;
- Attending team meetings at OCTA and Caltrans offices to review project progress as well as resolve key issues and potential problems;
- Taking appropriate action to ensure timely and integrated production of all work tasks; and
- Preparing monthly progress reports describing overall progress of the work, discuss significant issues, and present proposed next steps as appropriate.

Overall, OCTA envisions the Consultant will be an extension of staff during their tenure to facilitate in the successful environmental review of planning/engineering efforts.

SECTION VI

FORMS

STATUS OF PAST AND PRESENT CONTRACTS

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 Exhibit "Status of Past and Present Contracts," I am affirming that all of the information provided is true and accurate.

Name _____ Date _____
 Title _____