

REQUEST FOR PROPOSALS (RFP) 9-0155

Radio Frequency Engineer Consultant



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

Key RFP Dates

Issue Date:	June 11, 2009
Pre-Proposal Conference Date:	June 18, 2009
Question Submittal Date:	June 22, 2009
Proposal Submittal Date:	July 13, 2009
Interview Date:	July 27, 2009

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June 11, 2009

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**SUBJECT: NOTICE OF REQUEST FOR PROPOSALS
RFP9-0155: "Radio Frequency Engineer Consultant"**

Gentlemen/Ladies:

The Orange County Transportation Authority invites proposals from qualified consultants to secure the services of one Radio Frequency Engineer to assist the Authority in managing and maintaining its radio communications systems for a four-year term. The budget for this project is \$60,000 per year.

Proposals must be received in the Orange County Transportation Authority's office at or before 2:00 p.m. on July 13, 2009.

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: Yvette Crowder, 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: Yvette Crowder, 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) 9-0155 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) 9-0155

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 9-0155, 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):

Human Resources & Employment Services

Professional Services

Commodity(s):

Employment Search Services

Outplacement Services - Recruitment

Telecommunications Systems

A pre-proposal conference will be held on June 18, 2009, at 9:00 a.m. at the Authority's Administrative Office, 600 South Main Street, Orange, California, in Conference Room 103/104. All prospective Offerors are encouraged to attend the pre-proposal conference.

The Authority has established July 27, 2009 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,



Yvette Crowder

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 June 18, 2009, at 9:00 a.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.

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. Offerors 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:

Yvette Crowder
Contracts Administration and Materials Management Department
550 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
Phone: 714.560.5616, Fax: 714.560.5792

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 2:00 p.m., on June 22, 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: Yvette Crowder, Contract Administrator e-mail address is ycrowder@octa.net.

3. Authority Responses

Responses from the Authority will be posted on CAMMNet, the Authority's interactive website, no later than June 23, 2009. Offerors may download responses from CAMMNet at www.octa.net/cammnet, or request responses be sent via U.S. Mail by e-mailing or faxing the request to Yvette Crowder, Contract Administrator.

To receive e-mail notification of Authority responses when they are posted on CAMMNet, 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):
Human Resources & Employment Services
Professional Services

Commodity(s):
Employment Search Services
Outplacement Services - Recruitment
Telecommunications Systems

Inquiries received after June 22, 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 July 13, 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: Yvette Crowder, Contract Administrator**

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: Yvette Crowder, 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 an **original and five (5) 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 9-0155: Radio Frequency Engineer Consultant"

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.

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 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.

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 contract specifying firm-fixed hourly rates for services specified in the Scope of Work, included in this RFP as Exhibit A.

L. 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.

M. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Offerors shall ensure that in regard to this RFP, DBE's will be afforded full opportunity to compete for subcontracting work and will not be discriminated against on the grounds of race, color, sex, religion or national origin.

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 Yvette Crowder, 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 contract 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 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 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. 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.
- (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 services 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.
- (4) Include a project organization chart, which clearly delineates communication/reporting relationships among the project staff.
- (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 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 services specified in the Scope of Work.
- (2) Recruitment methods for resources when needed.
- (3) Include a statement indicating ability to begin work with minimum notice.
- (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 Section VI.

4. Cost and Price Proposal

As part of the cost and price proposal, the Offeror shall submit proposed pricing to provide the services described in Section IV, Scope of Work.

The Offeror shall complete the "Price Summary Sheet" form included with this RFP (Section V), and furnish any narrative required to explain the prices quoted in the schedules. As noted earlier in these instructions, this contract will a time and expense contract

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

STATUS OF PAST AND PRESENT CONTRACTS FORM –EXHIBIT A

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.

BUY AMERICA – EXHIBIT B

OFFEROR’S CERTIFICATE OF COMPLIANCE REGARDING “BUY AMERICA” REQUIREMENTS

Pursuant to 49 CFR Part 661, as amended by Section 337 of the Surface Transportation and Uniform Relocation Act of 1987, no federal funds authorized by the Urban Mass Transportation Act of 1964, as amended; 23 USC 103 (e)(4); and Section 14 of the National Capital Transportation Act of 1969 as amended; and which were obligated by the Federal Transit Administration (FTA) after January 6, 1983 shall be obligated by the Authority unless steel and manufacturers’ products used in such articles are produced in the United States.

A consultant providing articles that do not meet the above provision must submit a written request to the Authority, which may be forwarded, to FTA. FTA shall review the request for waiver and FTA may grant such a waiver if FTA determines that:

1. The application of the domestic preference requirements would be inconsistent with the public interest; Materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
2. The inclusion of a domestic item or domestic material will increase the cost of the contract for the item or material by more than 25 percent.

FTA may grant a waiver in the case of the procurement of buses and other rolling stock (including train control, communications and traction power equipment), if the cost of components and subcomponents of such items which are produced in the United States is more than 60 percent for contracts entered into after April 1, 1992 with any supplier or contractor or any successor in interest or assignee which complied with the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982 prior to April 2, 1987.

To determine costs of components or subcomponents for compliance with the Buy America Requirements, the Offeror is referred to the Federal Register, Volume 56, No. 6, Dated January 9, 1991.

In order to demonstrate compliance with the Buy America Requirements, Offeror shall complete the Certificates of Compliance/Noncompliance, Exhibit B, included in this RFP. Failure to complete the appropriate certificate shall render an Offeror non-responsive to this solicitation and will result in the rejection of the bid.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS – EXHIBIT C**Primary Participant and Lower-Tier Participants**

a. Policy

Unless otherwise permitted by law, any person or firm that is debarred, suspended, or voluntarily excluded, as defined in the Federal Transit Administration (FTA) Circular 2015.1, dated April 28, 1989 may not take part in any federally funded transaction, either as a participant or a principal, during the period of debarment, suspension, or voluntary exclusion. Accordingly, the Authority, may not enter into any transaction with such debarred, suspended, or voluntarily excluded persons or firms during such period.

A certification process has been established by 49 CFR Part 29, as a means to ensure that debarred suspended or voluntarily excluded persons or firms do not participate in Federally assisted projects. The inability to provide the required certification will not necessarily result in denial of participation in a covered transaction. A person or firm that is unable to provide a positive certification as required by this solicitation, must submit a complete explanation attached to the certification. FTA will consider the certification and any accompanying explanation in determining whether or not to provide assistance for the project. Failure to furnish a certification or an explanation may disqualify that person or firm from participating in the project.

b. Submission Requirements

Each Offeror shall complete the certification, "Certification of Primary Participant Regarding Debarment, Suspension and other Responsibility Matters," Exhibit C, included in this RFP, for itself and its principals, and submit this certification with its proposal. Failure to do so may result in rejection of the proposal.

If the Offeror plans to use subcontractors on the project, the Offeror, shall have all subcontractors with contracts in excess of \$100,000.00 complete a certification for lower-tier participation and submit the certification with its proposal.

If a prime or subcontractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, immediate written notice shall be provided to the Authority.

RESTRICTIONS ON LOBBYING FORM – EXHIBIT D

As a recipient of federal funds, the Authority is required to certify compliance with the influencing restrictions and efforts of Offeror to influence federal officials regarding specific procurements in excess of \$100,000.00 that must be disclosed pursuant to section 1352, Title 31, U.S. Code.

This RFP includes, under Exhibit D, the following: a certification form entitled "Certification of Restrictions on Lobbying," the Office of Management and Budget (OMB) Standard Form LLL entitled "Disclosure of Lobbying Activities," and a document entitled "Limitation on Payments to Influence Certain Federal Transactions."

The Offeror to this solicitation will be required to complete and submit to the Authority in their proposal, the certification form entitled "Certification of Restrictions on Lobbying" whether or not any lobbying efforts took place. If the Offeror did engage in lobbying activities, then OMB Standard Form LLL "Disclosure of Lobbying Activities" must also be completed and submitted to the Authority.

RACE NEUTRAL DBE SOLICITATION PROVISIONS – EXHIBIT E
DBE RACE-NEUTRAL PARTICIPATION LISTING FORM – EXHIBIT E-2
BIDDERS LIST – EXHIBIT E-3

Offeror shall complete Exhibit E-2 and Exhibit E-3 per the instructions set forth in Section I: "Instructions to Offerors" and Exhibit E: "Race Neutral Solicitation Provisions".

CERTIFICATION OF COMPLIANCE REGARDING ALCOHOL AND DRUG POLICY FORM – EXHIBIT F

The Offeror agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR parts 653 and 654, produce and documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the Authority, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The Offeror agrees further to certify annually its compliance with Parts 653 and 654 before July 1st to the Authority. To certify compliance the Offeror shall use the "Substance Abuse Certifications" in the "Annual list of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Offeror is required to submit Exhibit F, Drug and Alcohol Certification in their proposal, or the proposal may be considered non-responsive and not considered

for further review.

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** **35%**
 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** **20%**
 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** **20%**
 Reasonableness of the total price and competitiveness of this amount 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 June 15, 2009, 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 to determine the proposal considered to be the most competitive to the Authority for consideration and selection. The Authority may negotiate contract terms 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 CAMMNET 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.

SECTION IV
SCOPE OF WORK

SECTION IV - SCOPE OF WORK

RF Engineer Consultant Services

1. Background

The Orange County Transportation Authority (Authority) is a multi-modal transportation agency serving Orange County. We keep Orange County moving with countywide bus and paratransit services, Metrolink commuter rail service, the 91 Express Lanes toll facility, freeway, street and road improvement projects, motorist aid services, and by regulating taxi operations.

The Authority operates two radio communication systems in the dispatch function for its fixed route and paratransit bus services.

2. Objective

The objective of this solicitation, and subsequent agreement, is to secure the services of one RF Engineer (Consultant) to assist the Authority in managing and maintaining its radio communications systems.

This person will act as a consultant and interface with a variety of Authority staff. Staff shall include members of the communication systems' user and maintenance/support groups. On occasion and as directed, the Consultant shall act on the Authority's behalf in engagements with the FCC, the County of Orange, and various contractors and equipment suppliers.

The Authority's subject radio communication systems are primarily used to provide communications between the operators of transit vehicles and dispatchers. The Authority's intent is to manage and maintain the systems by utilizing a combination of in-house and contracted resources. The Consultant will be expected to have a broad radio communications background, with particular expertise and experience in the systems within this scope.

3. Description of Radio Communications Systems

The subject radio communication systems are two independent systems, the larger more complex being the Integrated Transportation Communication System (ITCS) serving the Authority's fixed route operation, and a conventional system serving the Authority's ACCESS paratransit operation, each having their own mobile fleet, dispatching operation and associated infrastructure. Both systems' fixed end RF equipment is located at a variety of sites provided by the County of Orange, this equipment being interconnected by the County's microwave system and connectivity provided to Authority dispatching locations via microwave and phone lines.

Integrated Transportation Communication System (ITCS)

The ITCS system is a digital Land Mobile/Computer Aided Dispatch communication system designed for Public Transit providing both data and voice communications for the Authority. The infrastructure comprises an 800 MHz Time Division Multiple Access (TDMA), integrated voice/data trunked radio system. The system uses the M/A-COM Opensky I radio infrastructure comprising of 6-channel (time-slot) sites located on Santiago and Sierra and secondary 2-channel (time-slot) sites at San Clemente, Moorehead and Catalina Island. The data communication and computer aided dispatcher system is provided by Orbital TMS using its Unix based SmartTrak system.

The ITCS system serves a fixed route transit bus fleet of approximately 600 mobiles, centralized dispatching, and offers features such as digitized voice, data, GPS, CAD/AVL, on-board integration to the fare collection system, and on-board integration with an Automated Passenger Counting (APC) operating on a sub-fleet. The APC utilizes a Wi-Fi LAN at each operations site for data transfer rather than the 800 MHz system.

3.1. Community Transportation Service (CTS) Voice Communication System

The CTS system consists of a 7-site, 5-channel conventional radio system operating at 500 MHz. The system provides voice communication for a fleet of approximately 350 mobiles, being centrally dispatched. This fleet serves the Authority's ACCESS operation providing paratransit service supplemental to the fixed route operation.

The CTS fleet's communication functionality is supplemented by an on-board mobile data system (MDT), such that scheduling and status is provided via MDT communication to OCTA's central automated scheduling system for paratransit services, a Trapeze Software solution. MDT communication is facilitated by a commercial cellular service and not via the 500 MHz radio system.

4. Role, Organization and Reporting Relationship

The Consultant's role shall be to supplement the Authority's in-house team responsible for maintaining the previously defined radio communications systems.

The Authority's Information Systems Department is responsible for the maintenance and support of the fixed end RF and computing infrastructure of both radio systems. The Authority's Maintenance Department is responsible for the maintenance and support of the mobile equipment.

The Consultant shall report to the Information Systems Department management.

The Consultant is expected to supplement both in-house groups, fixed end infrastructure and mobile, particularly the RF communications element, on a part time / as requested basis. The Authority anticipates a continuous effort required on a week-to-week basis, as many of the duties are routine. In addition, workload will

fluctuate dependent upon the nature of problems encountered as they occur, or dependent on established communications projects.

5. Requirements / Qualifications of Consultant

The following list represents minimum requirements and qualifications necessary of the Consultant:

- Located locally to insure on-call / on-site timely response (25 mile radius)
- Requires on-site availability during normal business hours
- Require 24/7 pager availability and on-site response after normal business hours in an emergency situation
- RF credentials, FCC licensed, engineering degree and familiarity / working relationship with County of Orange Communication to act as an effective liaison
- Knowledge and experience with the Authority's suite of systems, particularly the ITCS and 500 MHz, to include Authority sites, County sites and interconnection of sites to include dispatching locations. Example equipment to include but not be limited to: M/A-COM Opensky radio equipment and systems; Orbital TMS SmartTrack equipment and systems; Orbacom TDM 150 (both CRT and non-CRT configurations); Motorola Centracom II Plus; Harris Farinon Microwave DMV 10-12T; Intraplex TDM-160 Multiplex; and Siemens 9004B-24 Channel Bank.
- Use of applicable test instrumentation, meters, scopes, spectrum analyzers, etc.

6. Representative Responsibilities

The following list represents typical tasks and responsibilities assumed within the role of the Consultant:

- Technical liaison between the Authority and County, FCC, contractors / suppliers and internal customer groups
- Technical / engineering level RF advisor
- System & sub-system level diagnosis, repair and/or coordination & oversight of repair by others
- Verification that work performed by others meets or exceeds Authority standards for completeness, accuracy, and quality such that the radio systems are maintained at highest levels of readiness and performance
- System analysis, report writing and development of specifications, procedures, Preventative Maintenance programs and determining material requirements, to include schedule coordination and Quality Assurance oversight of PM services provided by third party contractors
- Assist in areas of administration, to include, inventory management, data analysis, review of systems operability / status reports, trend analysis and FCC licenses for the purpose of assuring that Authority radios systems are maintained at highest levels of readiness and performance

In addition to the routine listed above, the following projects may occur during the time frame of this scope, assuming further assistance being required:

- A project to upgrade and expand ITCS across both fleets, eliminating the 500MHz system, the upgrade to include ACS' OrbCAD-XP, new AMDTs, and Opensky II radio technology
- Assessment of and action plan for the impact to the Authority resulting from rebanding / reconfiguration and cell site plan of 800 MHz frequencies
- Assist with communications studies conducted for the Authority by others, such as system loading analysis, coverage analysis and ongoing assessment of the ITCS system

7. Agreement Terms

Business hours will be defined as a 10-hour period that will include non-holiday Monday through Friday from 7:00am to 5:00pm for the Pacific Time Zone.

The Consultant shall conduct themselves in a professional manner at all times and adhere to the Authority's dress and grooming, electronic mail and internet usage, personal conduct, and smoking policies.

The firm providing the Consultant shall specify holidays when service is not available until the next business day.

The hourly rate proposed shall cover both regular hours and overtime hours worked when worked, and it shall be the same for services during business hours and non-business hours.

There is no provision for holiday, vacation, sick or other type of leave pay under this scope. Payment is strictly based on hours of service rendered by the Consultant.

It will be up to the Consultant and Information Systems manager to whom the Consultant reports to identify the means of monthly activity reporting. Some form of monthly activity report will be required of the Consultant.

SECTION V

COST AND PRICE FORMS

SECTION V - PRICE SUMMARY SHEET
REQUEST FOR PROPOSALS (RFP) 9-0155

Enter below the proposed price for services described in the Scope of Work, Section IV. Prices shall include direct costs, indirect costs, and profits. The Authority's intention is to award a time and expense price contract.

Radio Frequency Engineer

1st Year Hourly Rates	2nd Year Hourly Rates	3rd Year Hourly Rates	4th Year Hourly Rates

1. I acknowledge receipt of RFP 9-0155 and Addenda No.(s) _____
2. This offer shall remain firm for _____ days from the date of proposal
 (Minimum 120)

COMPANY NAME _____

ADDRESS _____

TELEPHONE _____

SIGNATURE OF PERSON
 AUTHORIZED TO BIND OFFEROR _____

SIGNATURE'S NAME AND TITLE _____

DATE SIGNED _____

SECTION VI
PROPOSED AGREEMENT

1 **AGREEMENT NO. C-9-0155**

2 **BETWEEN**

3 **ORANGE COUNTY TRANSPORTATION AUTHORITY**

4 **AND**

5 _____
6 **THIS AGREEMENT** is effective as of this ____ day of _____, 2009, by
7 and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184,
8 Orange, CA 92863-1584, a public corporation of the state of California (hereinafter referred to as
9 "AUTHORITY"), , (hereinafter referred to as "CONSULTANT").

10 **WITNESSETH:**

11 **WHEREAS**, AUTHORITY requires assistance from CONSULTANT to provide the services of
12 one Radio Frequency Engineer to assist the Authority in managing and maintaining its radio
13 communications systems; and

14 **WHEREAS**, said work cannot be performed by the regular employees of AUTHORITY; and

15 **WHEREAS**, CONSULTANT has represented that it has the requisite personnel and experience,
16 and is capable of performing such services; and

17 **WHEREAS**, CONSULTANT wishes to perform these services;

18 **NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and CONSULTANT
19 as follows:

20 **ARTICLE 1. COMPLETE AGREEMENT**

21 A. This Agreement, including all exhibits and documents incorporated herein and made
22 applicable by reference, constitutes the complete and exclusive statement of the terms and conditions
23 of the agreement between AUTHORITY and CONSULTANT and it supersedes all prior
24 representations, understandings and communications. The invalidity in whole or in part of any term or
25 condition of this Agreement shall not affect the validity of other terms or conditions.

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

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

7 **ARTICLE 2. AUTHORITY DESIGNEE**

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

10 **ARTICLE 3. SCOPE OF WORK**

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

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

17 **Names** **Functions**

18
19
20 C. No person named in paragraph B of this Article, or his/her successor approved by
21 AUTHORITY, shall be removed or replaced by CONSULTANT, nor shall his/her agreed-upon function
22 or level of commitment hereunder be changed, without the prior written consent of AUTHORITY.
23 Should the services of any key person become no longer available to CONSULTANT, the resume and
24 qualifications of the proposed replacement shall be submitted to AUTHORITY for approval as soon as
25 possible, but in no event later than seven (7) calendar days prior to the departure of the incumbent key
26 person, unless CONSULTANT is not provided with such notice by the departing employee.

1 AUTHORITY shall respond to CONSULTANT within seven (7) calendar days following receipt of these
2 qualifications concerning acceptance of the candidate for replacement.

3 **ARTICLE 4. TERM OF AGREEMENT**

4 This Agreement shall commence upon the effective date of this Agreement, and shall continue
5 in full force and effect through, unless earlier terminated or extended as provided in this Agreement.

6 **ARTICLE 5. PAYMENT**

7 A. For CONSULTANT's full and complete performance of its obligations under this Agreement
8 and subject to the maximum cumulative payment obligation provisions set forth in Article 7,
9 AUTHORITY shall pay CONSULTANT on a time and expense price basis in accordance with the
10 following provisions.

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

<u>Description</u>	<u>Year One</u>	<u>Year Two</u>	<u>Year Three</u>	<u>Year Four</u>
Radio Frequency Engineer				

17 C. Timesheets shall be completed at the end of each work-week by CONSULTANT and must
18 be approved and signed by the AUTHORITY's hiring Manager. CONSULTANT may request payment
19 by invoicing on a monthly basis in duplicate to AUTHORITY's Accounts Payable office. Each invoice
20 shall be accompanied by a progress report specifying the work, which has been performed.
21 CONSULTANT shall also furnish such other information as may be requested by AUTHORITY to
22 substantiate the validity of an invoice.

23 D. Each invoice shall be accompanied by the progress report specified in paragraph C of this
24 Article. AUTHORITY shall remit payment within thirty (30) calendar days of the receipt and approval of
25 each invoice. Each invoice shall include the following information:

- 1. Agreement No. C-9-0155;

- 1 2. Labor (staff name, hours charged, hourly billing rate, current charges and cumulative
- 2 charges) performed during the billing period;
- 3 3. Work for which payment is requested;
- 4 4. The time period covered by the invoice;
- 5 5. Total monthly invoice;
- 6 6. Monthly Progress Report;
- 7 7. Certification signed by the CONSULTANT or his/her designated alternate that a)
- 8 The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The
- 9 backup information included with the invoice is true, complete and correct in all material respects; c) All
- 10 payments due and owing to subcontractors and suppliers have been made; d) Timely payments will be
- 11 made to subcontractors and suppliers from the proceeds of the payments covered by the certification
- 12 and; e) The invoice does not include any amount which CONSULTANT intends to withhold or retain
- 13 from a subcontractor or supplier unless so identified on the invoice.
- 14 8. Any other information as agreed or requested by AUTHORITY to substantiate the
- 15 validity of an invoice.

16 **ARTICLE 6. PROMPT PAYMENT CLAUSE**

17 A. CONSULTANT agrees to pay each subcontractor for the satisfactory work performed under

18 this Agreement, no later than ten (10) calendar days from the receipt of each payment CONSULTANT

19 receives from AUTHORITY. CONSULTANT agrees further to return retainage payments to each

20 subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed.

21 AUTHORITY reserves the right to request the appropriate documentation from CONSULTANT showing

22 payment has been made to the subcontractors. Any delay or postponement of payment from the above

23 referenced time frames may occur only for good cause following written approval by AUTHORITY.

24 B. Failure to comply with this provision or delay in payment without prior written approval from

25 AUTHORITY will constitute noncompliance, which may result in appropriate administrative sanctions,

26 including, but not limited to a penalty of two percent (2%) of the invoice amount due per month for every

1 month that payment is not made.

2 C. These prompt payment provisions must be incorporated in all subcontract agreements
3 issued by CONSULTANT under this Agreement.

4 **ARTICLE 7. MAXIMUM OBLIGATION**

5 Notwithstanding any provisions of this Agreement to the contrary, AUTHORITY and
6 CONSULTANT mutually agree that AUTHORITY's maximum cumulative payment obligation (including
7 obligation for CONSULTANT's profit) shall be Two Hundred Forty Thousand Dollars (\$240,000.00)
8 which shall include all amounts payable to CONSULTANT for its subcontracts, leases, materials and
9 costs arising from, or due to termination of, this Agreement.

10 **ARTICLE 8. NOTICES**

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

15 To CONSULTANT:

To AUTHORITY:

Orange County Transportation Authority

550 South Main Street

P.O. Box 14184

Orange, CA 92863-1584

20 ATTENTION:

ATTENTION: Yvette Crowder

Contract Administrator

(714) 560 - 5616

23 **ARTICLE 9. INDEPENDENT CONTRACTOR**

24 CONSULTANT's relationship to AUTHORITY in the performance of this Agreement is that of an
25 independent contractor. CONSULTANT's personnel performing services under this Agreement shall at
26 all times be under CONSULTANT's exclusive direction and control and shall be employees of

1 CONSULTANT and not employees of AUTHORITY. CONSULTANT shall pay all wages, salaries and
2 other amounts due its employees in connection with this Agreement and shall be responsible for all
3 reports and obligations respecting them, such as social security, income tax withholding, unemployment
4 compensation, workers' compensation and similar matters.

5 **ARTICLE 10. INSURANCE**

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

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

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

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

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

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

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

25 C. CONSULTANT shall include on the face of the Certificate of Insurance the Agreement
26 Number C-9-0155; and, the Contract Administrator's Name, Yvette Crowder.

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

4 **ARTICLE 11. ORDER OF PRECEDENCE**

5 Conflicting provisions hereof, if any, shall prevail in the following descending order of
6 precedence: (1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 9-
7 0155, (3) CONSULTANT's proposal dated ; and (4) all other documents, if any, cited herein or
8 incorporated by reference.

9 **ARTICLE 12. CHANGES**

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

18 **ARTICLE 13. DISPUTES**

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

24 B. The provisions of this Article shall not be pleaded in any suit involving a question of fact
25 arising under this Agreement as limiting judicial review of any such decision to cases where fraud by
26 such official or his representative or board is alleged, provided, however, that any such decision shall

1 be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous
2 as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any
3 appeal proceeding under this Article, CONSULTANT shall be afforded an opportunity to be heard and
4 to offer evidence in support of its appeal.

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

11 **ARTICLE 14. TERMINATION**

12 A. AUTHORITY may terminate this Agreement for its convenience at any time, in whole or
13 part, by giving CONSULTANT written notice thereof. Upon termination, AUTHORITY shall pay
14 CONSULTANT its allowable costs incurred to date of that portion terminated. Said termination shall be
15 construed in accordance with the provisions of CFR Title 48, Chapter 1, Part 49, of the Federal
16 Acquisition Regulation (FAR) and specific subparts and other provisions thereof applicable to
17 termination for convenience. If AUTHORITY sees fit to terminate this Agreement for convenience, said
18 notice shall be given to CONSULTANT in accordance with the provisions of the FAR referenced above
19 and Article 8, herein. Upon receipt of said notification, CONSULTANT agrees to comply with all
20 applicable provisions of the FAR pertaining to termination for convenience.

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

1 limited to, reprourement costs of the same or similar services defaulted by CONSULTANT under this
2 Agreement. Such termination shall comply with CFR Title 48, Chapter 1, Part 49, of the FAR.

3 **ARTICLE 15. INDEMNIFICATION**

4 CONSULTANT shall indemnify, defend and hold harmless AUTHORITY, its officers, directors,
5 employees and agents from and against any and all claims (including attorneys' fees and reasonable
6 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage
7 to or loss of use of property caused by the negligent acts, omissions or willful misconduct by
8 CONSULTANT, its officers, directors, employees, agents, subcontractors or suppliers in connection
9 with or arising out of the performance of this Agreement.

10 **ARTICLE 16. ASSIGNMENTS AND SUBCONTRACTS**

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

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

22 **Subcontractor Name/Addresses**

Subcontractor Amounts

23 .00

24 **ARTICLE 17. AUDIT AND INSPECTION OF RECORDS**

25 CONSULTANT shall provide AUTHORITY, the U.S. Department of Transportation (DOT), the
26 Comptroller General of the United States, or other agents of AUTHORITY, such access to

1 CONSULTANT's accounting books, records, payroll documents and facilities of the CONSULTANT
2 which are directly pertinent to this Agreement for the purposes of examining, auditing and inspecting all
3 accounting books, records, work data, documents and activities related hereto. CONSULTANT shall
4 maintain such books, records, data and documents in accordance with generally accepted accounting
5 principles and shall clearly identify and make such items readily accessible to such parties during
6 CONSULTANT's performance hereunder and for a period of four (4) years from the date of final
7 payment by AUTHORITY. AUTHORITY's right to audit books and records directly related to this
8 Agreement shall also extend to all first-tier subcontractors identified in Article 16 of this Agreement.
9 CONSULTANT shall permit any of the foregoing parties to reproduce documents by any means
10 whatsoever or to copy excerpts and transcriptions as reasonably necessary.

11 **ARTICLE 18. CONFLICT OF INTEREST**

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

22 **ARTICLE 19. FEDERAL, STATE AND LOCAL LAWS**

23 CONSULTANT warrants that in the performance of this Agreement, it shall comply with all
24 applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and
25 regulations promulgated thereunder.
26

/

1 **ARTICLE 20. EQUAL EMPLOYMENT OPPORTUNITY**

2 In connection with its performance under this Agreement, CONSULTANT shall not discriminate
3 against any employee or applicant for employment because of race, religion, color, sex, age or national
4 origin. CONSULTANT shall take affirmative action to ensure that applicants are employed, and that
5 employees are treated during their employment, without regard to their race, religion, color, sex, age or
6 national origin. Such actions shall include, but not be limited to, the following: employment, upgrading,
7 demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other
8 forms of compensation; and selection for training, including apprenticeship.

9 **ARTICLE 21. CIVIL RIGHTS ASSURANCE**

10 During the performance of this Agreement, CONSULTANT, for itself, its assignees and
11 successors in interest agree as follows:

12 A. Compliance with Regulations: CONSULTANT shall comply with the Regulations relative to
13 nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter,
14 “DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time,
15 (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a
16 part of this Agreement.

17 B. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the
18 Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and
19 retention of subcontractors, including procurements of materials and leases of equipment. The
20 CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by
21 Section 21.5 of the Regulations, including employment practices when the Agreement covers a
22 program set forth in Appendix B of the Regulations.

23 C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all
24 solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be
25 performed under a subcontract, including procurements of materials or leases of equipment, each
26 potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT’s

1 obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of
2 race, color, or national origin.

3 D. Information and Reports: CONSULTANT shall provide all information and reports required
4 by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records,
5 accounts, other sources of information, and its facilities as may be determined by the AUTHORITY to
6 be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any
7 information required of a CONSULTANT is in the exclusive possession of another who fails or refuses
8 to furnish this information the CONSULTANT shall so certify to the AUTHORITY as appropriate, and
9 shall set forth what efforts it has made to obtain the information.

10 E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with
11 nondiscrimination provisions of this Agreement, the AUTHORITY shall impose Agreement sanctions as
12 it may determine to be appropriate, including, but not limited to:

13 1. Withholding of payments to the CONSULTANT under the Agreement until the
14 CONSULTANT complies; and/or

15 2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

16 F. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (A)
17 through (F) in every subcontract, including procurements of materials and leases of equipment, unless
18 exempt by the Regulations, or directives issued pursuant thereto. The CONSULTANT shall take such
19 action with respect to any subcontract or procurement as the AUTHORITY may direct as a means of
20 enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event
21 a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier
22 as a result of such direction, the CONSULTANT may request the AUTHORITY to enter into such
23 litigation to protect the interests of the AUTHORITY, and, in addition, the CONSULTANT may request
24 the United States to enter into such litigation to protect the interests of the United States.

25 /

26 /

ARTICLE 22. DISADVANTAGED BUSINESS ENTERPRISES

Race-Neutral DBE Participation

[INTERNAL NOTE: USE THE FOLLOWING LANGUAGE IF CONSULTANT HAS PROPOSED TO UTILIZE DBES IN THE PERFORMANCE OF THE CONTRACT.]

At the time of contract execution, the CONSULTANT committed to utilize DBE(s) in the performance of this DOT-assisted contract, and further agrees to ensure that DBE subcontractors listed on the **“DBE Race-Neutral Participation Listing” (Exhibit D-2)** perform work and/or supply materials in accordance with original commitments, unless otherwise directed and/or approved by the Authority prior to the CONSULTANT effectuating any changes to its race-neutral DBE participation commitment(s) (Refer to Subsection H: *“Performance of DBE Subcontractors”*).

[INTERNAL NOTE: USE THE FOLLOWING LANGUAGE IF CONSULTANT HAS NOT PROPOSED TO UTILIZE DBES IN THE PERFORMANCE OF THE CONTRACT.]

At the time of contract execution, the CONSULTANT did not commit to utilize DBE(s) in the performance of this DOT-assisted contract. However, in the event DBE(s) are utilized in the performance of this contract, the CONSULTANT shall comply with reporting requirements delineated under Section E: *“Race-Neutral DBE Submission and Ongoing Reporting Requirements (Post-Award)”*.

A. In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), the Orange County Transportation Authority (AUTHORITY) has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Programs”. The project is subject to these stipulated regulations. In order to ensure that the Authority achieves its overall DBE Program goals and objectives, the Authority encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these Regulations, it is also the policy of the Authority to:

1. Fulfill the spirit and intent of the Federal DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBEs have equitable access to participate in all of Authority’s DOT-assisted contracting opportunities.
2. Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.
3. Ensure non-discrimination in the award and administration of AUTHORITY’s DOT-

1 assisted contracts.

2 4. Create a level playing field on which DBEs can compete fairly for DOT-assisted
3 contracts.

4 5. Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted
5 to participate as DBEs.

6 6. Help remove barriers to the participation of DBEs in DOT-assisted contracts.

7 7. Assist in the development of firms that can compete successfully in the marketplace
8 outside the DBE Program.

9 B. CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex
10 in the award and performance of subcontracts. Any terms used in this section that are defined in 49
11 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations. In
12 the event of any conflicts or inconsistencies between the Regulations and the Authority's DBE Program
13 with respect to DOT-assisted contracts, the Regulations shall prevail.

14 C. AUTHORITY's New Race-Neutral DBE Policy Implementation Directives: Pursuant to
15 recently released Race-Neutral DBE policy directives issued by the U.S. DOT in response to the
16 Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State*
17 *Department of Transportation*, the Authority has implemented a wholly Race-Neutral DBE Program.
18 A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms.
19 Therefore, under a Race-Neutral DBE Program, AUTHORITY does not establish numeric race-
20 conscious DBE participation goals on its DOT-assisted contracts. CONSULTANT shall not be
21 required to achieve a specific level of DBE participation as a condition of contract compliance in the
22 performance of this DOT-assisted contract. However, CONSULTANT shall adhere to race-neutral
23 DBE participation commitment(s) made at the time of contract award.

24 D. Definitions: The following definitions apply to the terms as used in these provisions:

25 1. "Disadvantaged Business Enterprise (DBE)" means a small business concern: (a) which
26 is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in

1 the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or
2 more socially and economically disadvantaged individuals; and (b) whose management and daily
3 business operations are controlled by one or more of the socially and economically disadvantaged
4 individuals who own it.

5 2. "Small Business Concern" means a small business as defined pursuant to Section 3 of
6 the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small
7 business concern shall not include any concern or group of concerns controlled by the same socially
8 and economically disadvantaged individual or individuals which has annual average gross receipts in
9 excess of \$19.57 million over the previous three fiscal years.

10 3. "Socially and Economically Disadvantaged Individuals" means those individuals who are
11 citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans,
12 Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women
13 and any other minorities or individuals found to be disadvantaged by the Small Business Administration
14 pursuant to Section 8(a) of the Small Business Act, or by the Authority pursuant to 49 CFR part 26.65.
15 Members of the following groups are presumed to be socially and economically disadvantaged:

- 16 a. "Black Americans," which includes persons having origins in any of the Black racial
17 groups of Africa;
- 18 b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban,
19 Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- 20 c. "Native Americans," which includes persons who are American Indians, Eskimos,
21 Aleuts, or Native Hawaiians;
- 22 d. "Asian-Pacific Americans," which includes persons whose origins are from Japan,
23 China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust
24 Territories of the Pacific, and the Northern Marianas;
- 25 e. "Asian-Indian Americans," which includes persons whose origins are from India,
26 Pakistan, and Bangladesh; and

1 f. Women, regardless of ethnicity or race.

2 4. "Owned and Controlled" means a business: (a) which is at least 51 percent owned by
3 one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned
4 business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically
5 Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled
6 by one or more such individuals.

7 5. "Manufacturer" means a firm that operates or maintains a factory or establishment that
8 produces on the premises the materials or supplies obtained by the CONSULTANT.

9 6. "Regular Dealer" means a firm that owns, operates or maintains a store, warehouse, or
10 other establishment in which the materials or supplies required for the performance of the contract are
11 bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must
12 engage in, as its principal business, and in its own name, the purchase and sale of the product in
13 question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products
14 need not keep such products in stock if it owns or operates distribution equipment.

15 7. "Other Socially and Economically Disadvantaged Individuals" means those individuals
16 who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-
17 case basis, are determined by Small Business Administration or AUTHORITY to meet the social and
18 economic disadvantage criteria described below.

19 a. Social Disadvantage: The individual's social disadvantage must stem from his/her
20 color, national origin, gender, physical handicap, long-term residence in an environment isolated from
21 the mainstream of American society, or other similar cause beyond the individual's control.

22 i. The individual must demonstrate that he/she has personally suffered social
23 disadvantage.

24 ii. The individual's social disadvantage must be rooted in treatment, which he/she
25 has experienced in American society, not in other countries.

26 iii The individual's social disadvantage must be chronic, longstanding and

1 substantial, not fleeting or insignificant.

2 iv. The individual's social disadvantage must have negatively affected his/her
3 entry into and/or advancement in the business world.

4 v. A determination of social disadvantage must be made before proceeding to
5 make a determination of economic disadvantage.

6 b. Economic Disadvantage

7 i. The individual's ability to compete in the free enterprise system has been
8 impaired due to diminished capital and credit opportunities, as compared to others in the same line of
9 business and competitive market area that are not socially disadvantaged.

10 ii. The following criteria will be considered when determining the degree of
11 diminished credit and capital opportunities of a person claiming social and economic disadvantage:

12 With respect to the individual:

- 13 • availability of financing
- 14 • bonding capability
- 15 • availability of outside equity capital
- 16 • available markets

17 With respect to the individual and the business concern:

- 18 • personal and business assets
- 19 • personal and business net worth
- 20 • personal and business income and profits

21 E. Race-Neutral DBE Submission and Ongoing Reporting Requirements (Post-Award)

22 CONSULTANT shall complete and submit the following DBE exhibits (forms) at the times specified:

23 “Monthly Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification” (Form
24 103) (Exhibit **INTERNAL NOTE: INSERT FORM NUMBER**). If CONSULTANT is a DBE firm and/or
25 has proposed to utilize DBE firms, CONSULTANT will be required to complete and submit a Form
26 103 to AUTHORITY by the 10th of each month until completion of the contract to facilitate reporting

1 of race-neutral DBE participation, following the first month of contract activity. CONSULTANT shall
2 report the total dollar value paid to DBEs for the applicable reporting period. CONSULTANT shall
3 also report the DBE's scope of work and the total subcontract value of commitment for each DBE
4 reported. CONSULTANT is advised not to report the participation of DBEs toward CONSULTANT's
5 race-neutral DBE attainment until the amount being counted has been paid to the DBE. Upon
6 completion of the contract, CONSULTANT will be required to prepare and submit to the Authority a
7 "Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification" (Form 103)
8 (Exhibit **INTERNAL NOTE: INSERT FORM NUMBER**) clearly marked "Final" to facilitate reporting
9 and capturing actual DBE race-neutral attainments. CONSULTANT shall complete and submit a
10 Final Form 103 whether or not DBEs were utilized in the performance of the contract.

11 F. DBE Eligibility and Commercially Useful Function Standards : A DBE must be a small
12 business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant
13 regulations promulgated pursuant thereto. A DBE may participate as a prime contractor, subcontractor,
14 joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking
15 company. A DBE joint venture partner must be responsible for specific contract items of work, or clearly
16 defined portions thereof. Responsibility means actually performing, managing and supervising the work
17 with its own forces. The DBE joint venture partner must share in the capital contribution, control,
18 management, risks and profits of the joint venture commensurate with its ownership interest. A DBE
19 must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be
20 responsible for the execution of a distinct element of the work and must carry out its responsibility by
21 actually performing, managing and supervising the work). A DBE should perform at least thirty percent
22 (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially
23 useful function. DBEs must be certified by the California Unified Certification Program (CUCP). Listings
24 of DBEs certified by the CUCP are available from the following sources: The CUCP web site, which can
25 be accessed at <http://www.californiaucp.com>; or the Caltrans "Civil Rights" web site at
26 <http://www.dot.ca.gov/hq/bep>. The CUCP DBE Directory, which may be obtained from the Department

1 of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive,
2 Sacramento, California 95815; Telephone: (916) 445-3520.

3 G. DBE Crediting Provisions : When a DBE is proposed to participate in the contract, either
4 as a prime CONSULTANT or Subcontractor, only the value of the work proposed to be performed by
5 the DBE with its own forces may be counted towards race-neutral DBE participation. If CONSULTANT
6 is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be
7 counted. If a DBE intends to subcontract part of the work of its subcontract to a lower tier
8 Subcontractor, the value of the subcontracted work may be counted toward race-neutral DBE
9 participation only if the DBE Subcontractor is a certified DBE and actually performs the work with their
10 own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime
11 Contractor's race-neutral DBE attainment. CONSULTANT is to calculate and credit participation by
12 eligible DBE vendors of equipment, materials, and suppliers toward race-neutral DBE attainment, as
13 follows: Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the
14 Contract, obtained from a regular dealer; or One hundred percent (100%) of expenditure(s) for
15 equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.
16 The following types of fees or commissions paid to DBE Subcontractors, Brokers, and Packagers may
17 be credited toward the prime CONSULTANT's race-neutral DBE attainment, provided that the fee or
18 commission is reasonable, and not excessive, as compared with fees or commissions customarily
19 allowed for similar work, including: Fees and commissions charged for providing bona fide professional
20 or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies
21 required in the performance of the Contract; Fees charged for delivery of material and supplies
22 (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery
23 service is not also the manufacturer of, or a regular dealer in, the material and supplies; Fees and
24 commissions charged for providing any insurance specifically required in the performance of the
25 Contract. CONSULTANT may count the participation of DBE trucking companies toward race-neutral
26 DBE attainment, as follows: The DBE must be responsible for the management and supervision of the

1 entire trucking operation for which it is responsible on a particular contract. The DBE must itself own
2 and operate at least one fully licensed, insured, and operational truck used on the Contract. The DBE
3 receives credit for the total value of the transportation services it provides on the contract using trucks it
4 owns, insures, and operates using drivers it employs. The DBE may lease trucks from another DBE
5 firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another
6 DBE receives credit for the total value of the transportation services the lessee DBE provides on the
7 contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE
8 who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a
9 result of the lease arrangement. The DBE does not receive credit for the total value of the
10 transportation services provided by the lessee, since these services are not provided by a DBE. For
11 purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over
12 the truck. This does not preclude the leased truck from working for others during the term of the lease
13 with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased
14 truck. Leased trucks must display the name and identification number of the DBE. If CONSULTANT
15 listed a non-certified DBE 1st tier subcontractor to perform work on this contract, and the non-certified
16 DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower
17 tier DBE certified Subcontractor or Vendor, the value of work performed by the lower tier DBE firm's
18 own forces can be counted toward race-neutral DBE participation on the contract.

19 H. Performance of DBE Subcontractors: DBE subcontractors listed by CONSULTANT in its
20 "DBE Race-Neutral Participation Listing" (Exhibit D-2) submitted at the time of proposal submittal shall
21 perform the work and supply the materials for which they are listed, unless the CONSULTANT has
22 received prior written authorization from the Authority to perform the work with other forces or to obtain
23 the materials from other sources. CONSULTANT shall provide written notification to the AUTHORITY in
24 a timely manner of any changes to its anticipated DBE participation. This notice should be provided
25 prior to the commencement of that portion of the work.

26 I. Additional DBE Subcontractors: In the event CONSULTANT identifies additional DBE

1 subcontractors or suppliers not previously identified by CONSULTANT for race-neutral DBE
2 participation under the contract, CONSULTANT shall notify the Authority by submitting Exhibit
3 **[INSERT FORM REF. NO.]**: “Request for Additional DBE Firm” to enable CONSULTANT to capture
4 all race-neutral DBE participation. CONSULTANT shall also submit, for each DBE identified after
5 contract execution, a written confirmation from the DBE acknowledging that it is participating in the
6 contract for a specified value, including the corresponding scope of work (a subcontract agreement
7 can serve in lieu of the written confirmation).

8 J. DBE Certification Status: If a listed DBE subcontractor is decertified during the life of
9 the project, the decertified subcontractor shall notify CONSULTANT in writing with the date of
10 decertification. If a non-DBE subcontractor becomes a certified DBE during the life of the project,
11 the DBE subcontractor shall notify CONSULTANT in writing with the date of certification.
12 CONSULTANT shall furnish the written documentation to AUTHORITY in a timely manner.

13 K. CONSULTANT’s Assurance Clause Regarding Non-Discrimination: In compliance
14 with State and Federal anti-discrimination laws, CONSULTANT shall affirm that they will not exclude
15 or discriminate on the basis of race, color, national origin, or sex in consideration of contract award
16 opportunities. Further, CONSULTANT shall affirm that they will consider, and utilize subcontractors
17 and vendors, in a manner consistent with non-discrimination objectives.

18 **ARTICLE 23. PROHIBITED INTERESTS**

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

22 B. No member of or delegate to, the Congress of the United States shall have any interest,
23 direct or indirect, in this Agreement or to the benefits thereof.

24 **ARTICLE 24. OWNERSHIP OF REPORTS AND DOCUMENTS**

25 A. The originals of all letters, documents, reports and other products and data produced under
26 this Agreement shall be delivered to, and become the property of AUTHORITY. Copies may be made

1 for CONSULTANT's records but shall not be furnished to others without written authorization from
2 AUTHORITY. Such deliverables shall be deemed works made for hire and all rights in copyright therein
3 shall be retained by AUTHORITY.

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

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

19 **ARTICLE 25. PATENT AND COPYRIGHT INFRINGEMENT**

20 A. In lieu of any other warranty by AUTHORITY or CONSULTANT against patent or copyright
21 infringement, statutory or otherwise, it is agreed that CONSULTANT shall defend at its expense any
22 claim or suit against AUTHORITY on account of any allegation that any item furnished under this
23 Agreement or the normal use or sale thereof arising out of the performance of this Agreement, infringes
24 upon any presently existing U. S. letters patent or copyright and CONSULTANT shall pay all costs and
25 damages finally awarded in any such suit or claim, provided that CONSULTANT is promptly notified in
26 writing of the suit or claim and given authority, information and assistance at CONSULTANT's expense

1 for the defense of same. However, CONSULTANT will not indemnify AUTHORITY if the suit or claim
2 results from: (1) AUTHORITY's alteration of a deliverable, such that said deliverable in its altered form
3 infringes upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in
4 combination with other material not provided by CONSULTANT when such use in combination infringes
5 upon an existing U.S. letters patent or copyright.

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

14 **ARTICLE 26. FINISHED AND PRELIMINARY DATA**

15 A. All of CONSULTANT's finished technical data, including but not limited to illustrations,
16 photographs, tapes, software, software design documents, including without limitation source code,
17 binary code, all media, technical documentation and user documentation, photoprints and other graphic
18 information required to be furnished under this Agreement, shall be AUTHORITY's property upon
19 payment and shall be furnished with unlimited rights and, as such, shall be free from proprietary
20 restriction except as elsewhere authorized in this Agreement. CONSULTANT further agrees that it
21 shall have no interest or claim to such finished, AUTHORITY-owned, technical data; furthermore, said
22 data is subject to the provisions of the Freedom of Information Act, 5 USC 552.

23 B. It is expressly understood that any title to preliminary technical data is not passed to
24 AUTHORITY but is retained by CONSULTANT. Preliminary data includes roughs, visualizations,
25 software design documents, layouts and comprehensives prepared by CONSULTANT solely for the
26 purpose of demonstrating an idea or message for AUTHORITY's acceptance before approval is given

1 for preparation of finished artwork. Preliminary data title and right thereto shall be made available to
2 AUTHORITY if CONSULTANT causes AUTHORITY to exercise Article 12, and a price shall be
3 negotiated for all preliminary data.

4 **ARTICLE 27. FORCE MAJEURE**

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

12 **ARTICLE 28. 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 XXX, and produce any documentation necessary to establish its compliance
16 with sections 701-707.

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

19 **ARTICLE 29. PRIVACY ACT**

20 CONSULTANT shall comply with, and assures the compliance of its employees with, the
21 information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a.
22 Among other things, CONSULTANT agrees to obtain the express consent of the Federal Government
23 before the CONSULTANT or its employees operate a system of records on behalf of the Federal
24 Government. CONSULTANT understands that the requirements of the Privacy Act, including the civil
25 and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to
26 comply with the terms of the Privacy Act may result in termination of the underlying Agreement.

1 **ARTICLE 30. INCORPORATION OF FTA TERMS**

2 All contractual provisions required by Department of Transportation (DOT), whether or not
3 expressly set forth in this document, as set forth in Federal Transit Administration (FTA) Circular
4 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein
5 notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other
6 provisions contained in this Agreement. CONSULTANT shall not perform any act, fail to perform any
7 act, or refuse to comply with any requests, which would cause AUTHORITY to be in violation of the
8 FTA terms and conditions.

9 **ARTICLE 31. FEDERAL CHANGES**

10 CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures
11 and directives, including without limitation those listed directly or by reference in the agreement
12 between the AUTHORITY and FTA , as they may be amended or promulgated from time to time during
13 this Agreement. CONSULTANT's failure to comply shall constitute a material breach of contract.

14 **ARTICLE 32. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES**

15 AUTHORITY and CONSULTANT acknowledge and agree that, notwithstanding any
16 concurrence by the Federal Government in or approval of the solicitation or award of the underlying
17 Agreement, absent the express written consent by the Federal Government, the Federal Government is
18 not a party to this Agreement and shall not be subject to any obligations or liabilities to the
19 AUTHORITY, CONSULTANT, or any other party (whether or not a party to this Agreement) pertaining
20 to any matter resulting from the underlying Agreement. CONSULTANT agrees to include these
21 requirements in all of its subcontracts.

22 **ARTICLE 33. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND**
23 **RELATED ACTS**

24 A. CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act
25 of 1986, as amended, 31 U.S.C. §§3801 et seq. and U.S. DOT regulations, "Program Fraud Civil
26 Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Accordingly, by signing this

1 Agreement, CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has
2 made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement of the FTA
3 assisted project for which this Agreement's work is being performed. CONSULTANT also
4 acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement,
5 submission, or certification, the Federal Government reserves the right to impose penalties of the
6 Program Fraud Civil Remedies Act of 1986 on the CONSULTANT to the extent the Federal
7 Government deems appropriate.

8 B. CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious,
9 or fraudulent claim, statement, submission, or certification to the Federal Government under an
10 agreement connected with a project that is financed in whole or part with Federal assistance awarded
11 by FTA under the authority of 49 U.S.C. §5307 et seq., the Government reserves the right to impose
12 the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n) (1) et seq. on the CONSULTANT, to the
13 extent the Federal Government deems appropriate. CONSULTANT agrees to include this requirement
14 in all of its subcontracts.

15 **ARTICLE 34. RECYCLED PRODUCTS**

16 CONSULTANT shall comply with all the requirements of Section 6002 of the Resource
17 Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the
18 regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the
19 procurement of the items designated in subpart B of 40 CFR Part 247. CONSULTANT agrees to
20 include this requirement in all of its subcontracts.

21 **ARTICLE 35. ENERGY CONSERVATION REQUIREMENTS**

22 CONSULTANT shall comply with mandatory standards and policies relating to energy
23 efficiency, which are contained in the state energy conservation plan issued in compliance with the
24 Energy Policy Conservation Act.

25 **ARTICLE 36. CLEAN AIR**

26 CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant

1 to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. CONSULTANT shall report each violation
2 to AUTHORITY, who will in turn, report each violation as required to assure notification to FTA and the
3 appropriate EPA Regional Office. CONSULTANT agrees to include this requirement in all of its
4 subcontracts.

5 **ARTICLE 37. CLEAN WATER REQUIREMENTS**

6 CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant
7 to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. CONSULTANT shall
8 report each violation to AUTHORITY and understands and agrees that the AUTHORITY who will in
9 turn, report each violation as required to assure notification to FTA and appropriate EPA Regional
10 Office. CONSULTANT agrees to include this requirement in all of its subcontracts.

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

12 **IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. C-9-0155 to be
13 executed on the date first above written.

14 **CONSULTANT**

ORANGE COUNTY TRANSPORTATION AUTHORITY

15 By _____

By _____

16 Carolina Coppolo
17 Manager, Contracts and Procurement

18 APPROVED AS TO FORM:

19 By _____

20 Kennard R. Smart, Jr.
21 General Counsel

SECTION VII

FORMS

EXHIBIT A
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

EXHIBIT B

OFFEROR'S CERTIFICATE OF COMPLIANCE
REGARDING
"BUY AMERICA" REQUIREMENTS (SECTION 165(a))
FOR
STEEL, IRON, OR MANUFACTURED PRODUCTS

The _____
Firm name/principal

hereby certifies that it will comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1987 and the applicable regulations in 49 CFR Part 661.

Signature

Title

Date

EXHIBIT B

OFFEROR'S CERTIFICATE OF NONCOMPLIANCE
REGARDING
"BUY AMERICA" REQUIREMENTS (SECTION 165(a))
FOR
STEEL, IRON, OR MANUFACTURED PRODUCTS

The _____
Firm name/principal

hereby certifies that it cannot comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1987 but it may qualify for an exception to the requirement pursuant to Section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act and Regulations in 49 CFR Part 661.7.

Signature

Title

Date

EXHIBIT C

**CERTIFICATION OF PRIMARY PARTICIPANT
REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS**

The _____
Firm name/principal

certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local), with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this bid had one or more public transactions (federal, state or local) terminated for cause or default.

If unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.

THE PRIMARY PARTICIPANT _____
Firm name/principal

CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

EXHIBIT C

**CERTIFICATION OF LOWER-TIER PARTICIPANTS
REGARDING
DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND
VOLUNTARY EXCLUSION**

The _____
Firm name/principal

certifies, by submission of this bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

If unable to certify to any of the statements in this certification, such participant shall attach an explanation to this bid.

The _____
Firm name/principal

CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

EXHIBIT D

**CERTIFICATION OF
RESTRICTIONS ON LOBBYING**

I, _____, hereby certify on behalf (name of offeror) of
_____ that:
(Firm name)

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

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

Executed this _____ day of _____, 200_

By _____
(Signature of authorized official)

(Title of authorized official)

EXHIBIT D

CERTIFICATION
LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN
FEDERAL TRANSACTIONS

- A. DEFINITIONS
- B. AUTHORITY, AS USED IN THIS CLAUSE, MEANS THE ORANGE COUNTY TRANSPORTATION AUTHORITY, ACTING ON BEHALF OF THE ORANGE COUNTY TRANSIT DISTRICT.
1. Covered Federal action, as used in this clause, means any of the following Federal actions:
The awarding of any Federal contract.
 - a. The making of any Federal grant.
 - b. The making of any Federal loan.
 - c. The entering into of any cooperative agreement.
 - d. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 2. Indian tribe and tribal organization, as used in this clause, have the meaning provided in Section 4 of the Indian self-determination and Education Assistance Act (25 U.S.C. 4508) and include Alaskan Natives.
 3. Influencing or attempting to influence, as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
 4. Local government, as used in this clause, means a unit of government in a State and, if chartered, established, or other were recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.
 5. Officer or employee of an agency, as used in this clause, includes the following individuals who are employed by an agency:
 - (1) An individual who is appointed to a position in the Government under title 5, United States code, including a position under a temporary appointment.

- (2) A member of the uniformed services, as defined in the subsection 101(3), Title 37, United States Code.
 - (3) A special Government employee, as defined in Section 202, Title 18, United States Code.
 - (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2.
- 6. Person, as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
 - 7. Reasonable compensation, as used in this clause, means with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
 - 8. Reasonable payment, as used in this clause means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
 - 9. Recipient, as used in this clause, includes the CONSULTANT and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
 - 10. Regularly employed, as used in this clause, means, with respect to an officer or employee of a person requesting or receiving by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.
 - 11. State, as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State regional or interstate entity having governmental duties and powers.

C. PROHIBITIONS

1. Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or, the modification of any Federal contract, grant, loan, or cooperative agreement.
2. The Act also requires consultant to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan or cooperative agreement.
3. The prohibitions of the Act do not apply under the following conditions:
 - a. Agency and legislative liaison by own employees.
 - (1) The prohibition on the use of appropriated funds, in subparagraph B.1. of this clause, does not apply in the case of payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
 - (2) For purposes of paragraph B.3.a.(1) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
 - (3) The following agency and legislative liaison activities are permitted any time where they are not related to a specific solicitation for any covered Federal action:

Discussing with an agency (including individual demonstrations) the qualities and characteristics of

the person's products or services, conditions or terms of sale, and service capabilities.

Technical discussions and other activities regarding the application of adaptation of the person's products or services for an agency's use.

- (4) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507, and subsequent amendments.

- (5) Only those services expressly authorized by paragraph B.3.a.(1) of this clause are permitted under this clause.

b. Professional and technical services

- (1) The prohibition on the use of appropriated funds, in subparagraph B.1. of this clause, does not apply in the case of:

A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as condition for receiving that Federal action.

Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal, or application or that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include contractors and trade associations.

- (2) For purposes of paragraph B.3.a.(1) of this clause, professional and technical services shall be limited to advise and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission, or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.

- (3) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (4) Only those services expressly authorized by paragraph B.3.a.(1) and (2) of this clause are permitted under this clause.
- (5) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

c. Disclosure

- (1) The consultant who requests or receives from an agency a Federal contract shall file with that agency a disclosure form OMB standard form LLL, Disclosure of Lobbying Activities, (Attachment to the bid package) if such person has made or had agreed to made any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph B.1. of this clause, if paid for with appropriated funds.
- (2) The consultant shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph II.A. of this clause. An event that materially affects the accuracy of the information reported includes:

A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

- (3) The consultant shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
- (4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime CONSULTANT. The prime CONSULTANT shall submit all disclosures to the District at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding CONSULTANT.

d. Agreement

The consultant agrees not to make any payment prohibited by this clause.

e. Penalties

- (1) Any person who makes an expenditure prohibited under paragraph a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (2) Consultants may relay without liability on the representation made by their subcontractors in the certification and disclosure forms.

f. Cost Allowability:

Nothing in this clause is to be interpreted to make allowable or reasonable any costs, which will otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provisions.

INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

This DISCLOSURE FORMS SHALL BE COMPLETED BY the reporting entity, whether Subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address city, state, and zip code of the prime Federal recipient. Include Congressional District.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency, name if known. For example, Department of Transportation, United State Coast Guard.
7. Enter the Federal program name for description of the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g. Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a.). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box (es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Management and Budget Paperwork Reduction Project (0348-0446), Washington, D.C. 20503.

EXHIBIT D

DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction

EXHIBIT E

RACE NEUTRAL SOLICITATION PROVISION
POLICY GUIDANCE AND IMPLEMENTATION

**REQUEST FOR PROPOSALS (RFP) DBE LANGUAGE MODIFICATIONS
EFFECTIVE FEBRUARY 1, 2007**

EXHIBIT E
RACE-NEUTRAL DBE SOLICITATION PROVISIONS
FOR
DOT-ASSISTED CONSTRUCTION CONTRACTS

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION PROVISIONS

A. DBE Policy and Applicability

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), the Orange County Transportation Authority (Authority) has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs".

This DOT-assisted project is subject to these stipulated regulations. In order to ensure that the Authority achieves its overall DBE Program goals and objectives, the Authority encourages the participation of small businesses, including DBEs as defined in 49 CFR 26, in the performance of contracts financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these Regulations, it is also the policy of the Authority to:

- Fulfill the spirit and intent of the Federal DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBEs have equitable access to participate in all of Authority's DOT-assisted contracting opportunities.
- Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.
- Ensure non-discrimination in the award and administration of Authority's DOT-assisted contracts.
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
- Help remove barriers to the participation of DBEs in DOT-assisted contracts.

- Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

Bidders shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

Any terms used in this section that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and the Authority's DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail.

B. Authority's New Race-Neutral DBE Policy Implementation Directives

Pursuant to recently released Race-Neutral DBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation*, **the Authority has implemented a wholly Race-Neutral DBE Program.**

A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. A Race-Neutral Program utilizes measures that can assist a wide variety of small businesses including DBEs, such as arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime Contractors to subcontract portions of work that they might, otherwise, perform with their own forces). However, under a Race-Neutral DBE Program, the Authority may no longer advertise DOT-assisted contracts containing numeric race-conscious goals or require a Bidder to utilize DBEs as a condition of award. Race-neutral DBE participation includes any time a DBE obtains a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE goal.

C. Definitions

The following definitions apply to the terms as used in these provisions:

- i. ***"Disadvantaged Business Enterprise (DBE)"*** means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

- ii. **"Small Business Concern"** means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$19.57 million over the previous three fiscal years.

- iii. **"Socially and Economically Disadvantaged Individuals"** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the Authority pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:
 - a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - c. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;
 - e. "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and
 - f. Women, regardless of ethnicity or race.

- iv. **"Owned and Controlled"** means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.

- v. **"Manufacturer"** means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.
- vi. **"Regular Dealer"** means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
- vii. **"Other Socially and Economically Disadvantaged Individuals"** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or the Authority to meet the social and economic disadvantage criteria described below.
 - a. Social Disadvantage
 - 1) The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.
 - 2) The individual must demonstrate that he/she has personally suffered social disadvantage.
 - 3) The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.
 - 4) The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.
 - 5) The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.
 - 6) A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.
 - b. Economic Disadvantage
 - 1) The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as

compared to others in the same line of business and competitive market area that are not socially disadvantaged.

- 2) The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

- availability of financing
- bonding capability
- availability of outside equity capital
- available markets

With respect to the individual and the business concern:

- personal and business assets
- personal and business net worth
- personal and business income and profits

D. DBE Bid Submission Requirements

1. ***“DBE Race-Neutral Participation Listing”***

If the Bidder is a DBE or intends to utilize DBE subcontractors and/or purchase goods or services from DBE vendors or DBE suppliers in the performance of this contract, the Bidder shall provide the following information for every DBE firm who will be proposed and/or listed to participate to facilitate capturing race-neutral DBE participation under this contract:

- a. The complete name and address of each DBE who will participate in the contract;
- b. A description of the work that each DBE will perform or provide;
- c. The dollar amount of the work to be performed or provided by the DBE;
- d. Valid DBE Certification eligibility status, in conformance with 49 CFR, Part 26;
- e. The Bidder shall also submit, for each DBE to perform under this contract, a written confirmation from the DBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

The “DBE Race-Neutral Participation Listing” information must be submitted in a sealed envelope, and should be included with the bid submittal; however, in the event that the referenced Exhibit is not included, the Exhibit shall be submitted to the Authority no later than 48 hours following bid opening for the Bidder to be deemed responsive.

In the event that the Bidder is not a DBE and/or does not intend to utilize DBEs in the performance of this contract, the Bidder shall indicate “None” under the column entitled “DBE Firm Name” of the “DBE Race-Neutral Participation Listing” and submit accordingly.

The “DBE Race-Neutral Participation Listing” form content will not be considered in evaluating the bid or determining award of any contract.

2. ***“Bidders List”***

The U.S. Department of Transportation (DOT) requires the Authority to create and maintain a “Bidders List” containing information about all firms (DBE and non-DBE) that bid, propose or quote on the Authority’s DOT-assisted contracts, in accordance with 49 CFR Part 26.11, for use in the Authority’s overall annual DBE goal-setting process. Therefore, the Bidder shall provide the requested information for every firm who submitted a bid, proposal or quote, including the primary Bidder, whether successful or unsuccessful in their attempt to obtain a contract:

- a. Firm name;
- b. Firm address;
- c. Firm’s status as a DBE or non-DBE;

- d. Age of the firm;
- e. Type of services provided by the firm; and
- f. Range of annual gross receipts for the last year.

The “Bidders List” information must be submitted and should be included with the bid submittal; however, in the event that the referenced Exhibit is not included, the Exhibit shall be submitted to the Authority no later than 48 hours following bid opening for the Bidder to be deemed responsive.

The “Bidders List” content will not be considered in evaluating the bid or determining award of any contract.

E. DBE Certification

The Authority requires all DBEs listed by Bidder for participation to be certified as eligible DBEs at the time of bid submission. Only participation by DBEs certified under the DOT regulations published under 49 CFR Part 26 may be credited towards race-neutral DBE participation. It is the responsibility of the Bidder to verify the DBE certification status of all listed DBEs.

The Authority is a Certifying Member Agency of the California Unified Certification Program (UCP). The Authority will accept DBE certification from other certifying member agencies of the UCP, which certify the eligibility of DBEs in accordance with 49 CFR Part 26.81. A listing of California UCP certifying member agencies is available from the UCP website, which can be accessed at <http://www.californiaucp.com>.

F. DBE Eligibility and Commercially Useful Function Standards

- i. A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
- ii. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company.
- iii. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- iv. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work). A DBE should perform at least thirty

percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.

- v. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 - a. The CUCP web site, which can be accessed at <http://www.californiaucp.com>; or the Caltrans "Civil Rights" web site at <http://www.dot.ca.gov/hq/bep>.
 - b. The CUCP DBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815; Telephone: (916) 445-3520.

G. DBE Crediting Provisions

- i. When a DBE is proposed to participate in the contract, either as a prime Contractor or Subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards race-neutral DBE participation. If the Contractor is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted.
- ii. If a DBE intends to subcontract part of the work of its subcontract to a lower tier Subcontractor, the value of the subcontracted work may be counted toward race-neutral DBE participation only if the DBE Subcontractor is a certified DBE and actually performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Contractor's race-neutral DBE attainment.
- iii. Contractor is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows:
 - a. Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or
 - b. One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.
- iv. The following types of fees or commissions paid to DBE Subcontractors, Brokers, and Packagers may be credited toward the prime Contractor's race-neutral DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:

- a. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;
 - b. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
 - c. Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.
- v. Contractor may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows:
- a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
 - b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - f. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- vi. If the Contractor listed a non-certified DBE 1st tier Subcontractor to perform work on this contract, and the non-certified DBE subcontractor

subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subcontractor or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward race-neutral DBE participation on the contract.

H. DBE "Frauds" and "Fronts"

Only legitimate DBEs are eligible to participate as DBEs in DOT-assisted contracts. Therefore, Bidders are hereby cautioned against knowingly and willfully using "fronts". The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse or mismanagement of Federal funds should be immediately reported to the Office of Inspector General, U.S. Department of Transportation at the toll-free hotline: (800) 424-9071; or to the following field office: FTA Special Agent-in-Charge, 210 Mission Street, Room 2210, San Francisco, CA 94105-1839; Telephone: (415) 744-3133; Fax: (415) 744-2726.

DBE RACE-NEUTRAL PARTICIPATION LISTING EXHIBIT E-2

Bidder/Offeror shall complete and submit **Exhibit E-2: “DBE Race-Neutral Participation Listing”** in a **sealed envelope** with the bid/proposal, but no later than 48 hours following bid opening or proposal due date and timeline. (NOTE: In the event of no race-neutral DBE participation, Bidder/Offeror shall mark “None” under the column entitled “DBE Firm Name”.) The Bidder/Offeror shall refer to the programs **“DBE Crediting Provisions”** for guidelines relative to DBE participation crediting. (Additional sheets may be duplicated as necessary.)

The DBE information and content provided under Exhibit E-2: “DBE Race-Neutral Participation Listing” will not be considered in evaluating the bid/proposal or determining award of any contract.

DBE Firm Name*:	DBE Certification No. and Expiration Date:	Provide Complete Description of Work to be Performed: _____ _____ _____ _____		
Business Address:		Check <input type="checkbox"/> Appropriate <input type="checkbox"/> Box Describing		
Contact Person:		Subcontract or (100%)	Supplier (60%)	
Telephone:	Fax:	Regular Dealer (60%)	Broker	
License No., Classification and Expiration:		Manufacturer (100%)	Trucker	
Subcontract Amount:		Subcontractor/Supplier Activity:		

*DBE certification letter must be attached for each listed DBE firm. DBEs must be certified on the date bids/proposals are opened.

DBE Firm Name*:	DBE Certification No. and Expiration Date:	Provide Complete Description of Work to be Performed: _____ _____ _____ _____
Business Address:	Check <input type="checkbox"/> Appropriate <input type="checkbox"/> Box Describing	
Contact Person:	Subcontract or (100%)	Supplier (60%)
Telephone:	Fax:	Regular Dealer (60%)
License No., Classification and Expiration:	Manufacturer (100%)	Trucker
Subcontract Amount:	Subcontractor/Supplier Activity:	

*DBE certification letter must be attached for each listed DBE firm. DBEs must be certified on the date bids/proposals are opened.

DBE Firm Name*:	DBE Certification No. and Expiration Date:	Provide Complete Description of Work to be Performed: _____ _____ _____ _____
Business Address:	Check <input type="checkbox"/> Appropriate <input type="checkbox"/> Box Describing	
Contact Person:	Subcontract or (100%)	Supplier (60%)
Telephone:	Fax:	Regular Dealer (60%)
License No., Classification and Expiration:	Manufacturer (100%)	Trucker

Subcontract Amount:	Subcontractor/Supplier Activity:
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*DBE certification letter must be attached for each listed DBE firm. DBEs must be certified on the date bids/proposals are opened.

Bidder/Offeror:	
Business Address:	
Contact Name:	Title:
Phone: ()	Fax: ()

Total Contract Amount:	\$		
DBE Race-Neutral Participation Value (% of Total Contract Value): <i>(NOTE: Mark "NONE" if no DBEs will be utilized.)</i>	%	DBE Race-Neutral Participation Dollar (\$ Value): <i>(NOTE: Mark "NONE" if no DBEs will be utilized.)</i>	\$

Signature of Authorized Representative	Printed Name
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Date	Title
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EXHIBIT E-3

BIDDERS LIST

Bidder/Offeror: _____ **IFB/RFP No.:** _____

The Department of Transportation requires the AUTHORITY to create and maintain a "Bidders List" containing information about all firms (DBE and Non-DBE) that bid, propose or quote on the Authority's DOT-assisted contracts, in accordance with 49 CFR Part 26.11. The "Bidders List" is intended to be a count of all firms that are participating, or attempting to participate, on DOT-assisted contracts, whether successful or unsuccessful in their attempt to obtain a contract.

The Bidder/Offeror is to complete all requested information on "***Bidders List***" for every firm who submitted a bid, proposal or quote, including the primary Bidder/Offeror, and submit this information at the time of bid submission. However, if not elected to do so at the time of bid submission, Bidders/Offerors must submit such information at the request of the Authority within the prescribed timeline set forth in the solicitation. The AUTHORITY will utilize this information to assist in the AUTHORITY's overall annual DBE goal-setting process. ***The "Bidders List" content will not be considered in evaluating the bid/proposal or determining award of any contract.***

g. Prime Bidder's/Offeror's Information:	
Name of Prime's Firm:	h. Phone: ()
i. Firm Address:	j. Fax: ()
Number of years in business:	Type of work/services/materials provided:
Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? <input type="checkbox"/> Yes <input type="checkbox"/> No	Check the box below for your firm's annual gross receipts last year:
	<input type="checkbox"/> Less than \$1 million
	<input type="checkbox"/> Less than \$5 million
	<input type="checkbox"/> Less than \$10 million
	<input type="checkbox"/> Less than \$15 million
	<input type="checkbox"/> More than \$15 million

<p>k. Provide the following information for every firm (DBE and non-DBE) that submitted a bid, proposal or quote on this DOT-assisted project, whether successful or unsuccessful in their attempt to obtain a contract:</p>	
Firm Name:	l. Phone: ()
m. Firm Address:	n. Fax: ()
Number of years in business:	Type of work/services/materials provided:
Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? <input type="checkbox"/> Yes <input type="checkbox"/> No	Check the box below for your firm's annual gross receipts last year:
	<input type="checkbox"/> Less than \$1 million
	<input type="checkbox"/> Less than \$5 million
	<input type="checkbox"/> Less than \$10 million
	<input type="checkbox"/> Less than \$15 million
	<input type="checkbox"/> More than \$15 million

<p>o. Provide the following information for every firm (DBE and non-DBE) that submitted a bid, proposal or quote on this DOT-assisted project, whether successful or unsuccessful in their attempt to obtain a contract:</p>	
Firm Name:	p. Phone: ()
q. Firm Address:	r. Fax: ()
Number of years in business:	Type of work/services/materials provided:
Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? <input type="checkbox"/> Yes <input type="checkbox"/> No	Check the box below for your firm's annual gross receipts last year:
	<input type="checkbox"/> Less than \$1 million
	<input type="checkbox"/> Less than \$5 million
	<input type="checkbox"/> Less than \$10 million
	<input type="checkbox"/> Less than \$15 million
	<input type="checkbox"/> More than \$15 million

If necessary, this "Bidders List" form can be duplicated to include all firms (DBE and non-DBE) that have submitted a bid, proposal or quote on this DOT-assisted project, whether successful or unsuccessful in their attempt to obtain a contract.

Failure of the Bidder/Offeror to submit the required "Bidders List" form will deem the Bidder/Offeror non-responsive.

EXHIBIT F

CERTIFICATION OF COMPLIANCE REGARDING

ALCOHOL AND DRUG POLICY

49 Code of Federal Regulations (CFR) Part 655

The _____
Firm name/principal

Hereby certifies that it **will comply** with the applicable alcohol and drug regulations in 49 CFR Part 655.

Signature

Title

Date

Or:

The _____
Firm name/principal

Hereby certifies that it **cannot comply** with the applicable alcohol and drug regulations in 49 CFR Part 655.

Signature

Title

Date



EXHIBIT G - 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.

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