

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: AGRICULTURAL COMMISSIONER John Galli

BOARD AGENDA # *B-3

Urgent

Routine

AGENDA DATE June 3, 2008

CEO Concurs with Recommendation YES NO

(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of Contract with the California Department of Transportation for County-Provided Axle-Load Scale Testing Services for Fiscal Years 2008-2009, 2009-2010 and 2010-2011

STAFF RECOMMENDATIONS:

Approve and authorize the Chairman of the Board of Supervisors to sign the contract with the California Department of Transportation for County-provided axle-load scale testing services for Fiscal Years 2008-2009, 2009-2010 and 2010-2011.

FISCAL IMPACT:

The terms of this contract cover Fiscal Years 2008-2009, 2009-2010 and 2010-2011. The maximum amount of the contract is \$12,000 over the three year term. The contract allows the Agricultural Commissioner to charge \$26 per axle-load scale tested. Additional funding has been built into the contract to cover extra costs if required. Funds have been requested in the Agricultural Commissioner's Fiscal Year 2008-2009 Proposed Budget to reflect this contract in the amount of \$1,300, since this is the amount which the Agricultural Commissioner realistically estimates to receive, based on scales tested in previous years.

BOARD ACTION AS FOLLOWS:

No. 2008-379

On motion of Supervisor Monteith, Seconded by Supervisor O'Brien
and approved by the following vote,

Ayes: Supervisors: O'Brien, Monteith, DeMartini and Chairman Mayfield

Noes: Supervisors: None

Excused or Absent: Supervisors: Grover

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

On December 9, 2003, the Board of Supervisors approved the transfer of two scales from the California Department of Food and Agriculture, Division of Measurement Standards (DMS), to Stanislaus County. The Agricultural Commissioner proposed to use one of the scales to test axle-load scales for the California Department of Transportation. In Fiscal Year 2003-2004, the Board of Supervisors approved the first contract between the Agricultural Commissioner and the California Department of Transportation (DOT) to perform the required annual testing of DOT axle-load scales. The Agricultural Commissioner charges a fee of \$26 per scale, for an estimated annual revenue of approximately \$1,000 to \$1,500 per fiscal year. The current contract covers Fiscal Years 2008-2009, 2009-2010 and 2010-2011 and is in the amount of \$12,000. Additional funding has been built into the contract to cover extra costs if required.

This contract ensures that DOT has a place for scale certification within Stanislaus County and provides the Agricultural Commissioner with an additional source of revenue for its weights and measures activities.

POLICY ISSUE:

The Board of Supervisors is asked to determine if this amendment to the contract is consistent with the Board Priority of striving for Effective Partnerships.

STAFFING IMPACT:

There are no staffing impacts associated with this item.

AGREEMENT NUMBER
51A0375
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

Department of Transportation

CONTRACTOR'S NAME

Stanislaus County, AG Commissioner/Sealer of Weights and Measures

2. The term of this Agreement is: 6/1/08 through 5/31/11

3. The maximum amount of this Agreement is: \$12,000.00
Twelve Thousand Dollars and no cents

4. The parties agree to comply with the terms and conditions of the following exhibits/attachments, which are by this reference made a part of the Agreement.

- | | |
|-----------------------------------------------------------------------------|---------|
| Exhibit A – Scope of Work | 1 Page |
| Exhibit B – Budget Detail and Payment Provisions | 3 Pages |
| Exhibit C* – General Terms and Conditions (Electronic File: GTC 307) | |
| Exhibit D - Special Terms and Conditions | 3 Pages |
| Exhibit E – Additional Provisions | 1 Page |

APPROVED AS TO FORM:
 STANISLAUS COUNTY COUNSEL

BY

Deirdre McGrath 5/23/08

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this Agreement as if attached hereto. These documents can be viewed at <http://www.ols.dgs.ca.gov/Standard+Language/default.htm>

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

Stanislaus County, AG Commissioner/Sealer of Weights and Measures

BY (Authorized Signature)

Thomas Mayfield

DATE SIGNED (Do not type)

6/3/08

PRINTED NAME AND TITLE OF PERSON SIGNING

THOMAS W. MAYFIELD, CHAIRMAN OF THE BOARD OF SUPERVISORS

ADDRESS

3800 Cornucopia Way, Suite B
 Modesto, CA 95358

STATE OF CALIFORNIA

AGENCY NAME

Department of Transportation (Department)

BY (Authorized Signature)

Janet Omoto

DATE SIGNED (Do not type)

6-3-08

PRINTED NAME AND TITLE OF PERSON SIGNING

for John Bennyhoff, Contract Officer

ADDRESS

1727 30th Street
 Sacramento, CA 95816

California Department of
 General Services Use Only

Exempt per: MM 3-10 Attach C (2)

NOTICE 11.8

EXHIBIT A
Standard Agreement

SCOPE OF WORK

1. Contractor agrees to provide Certification of Portable Wheel Scales to the Department of Transportation (Department), as described herein:

The services shall be performed at 3800 Cornucopia Way, Modesto, CA 95358.

2. This Agreement will commence on the start date 6/1/08 as presented herein or upon approval by the State, whichever is later and no work shall begin before that time. This Agreement is of no effect unless approved by the State. The Contractor shall not receive payment for work performed prior to approval of the Agreement and before receipt of notice to proceed by the Contract Manager. This Agreement shall expire on 5/31/11. The services shall be provided during working hours, Monday through Friday, except holidays
3. All inquiries during the term of this Agreement will be directed to the project representatives listed below:

Department of Transportation	Contractor: Stanislaus County, AG Commissioner/Sealer of Weights and Measures
Section/Unit: Traffic Operations	Section/Unit:
Contract Manager: Stanley Norikane	Project Manager: Milton O'Haire
Address: 1120 N Street MS # 36	Address: 3800 Comucopia Way Suite B
Sacramento, CA 95814	Modesto, CA 95358
Bus. Phone No.: (916) 654-5651	Bus. Phone No.: (209) 525-4730
Fax No: (916) 654-2976	Fax No: (209) 525-4790

4. Detailed description of work to be performed and duties of all parties:

Stanislaus County, AG Commissioner/Sealer of Weight and Measures agrees to provide Caltrans Division of Traffic Operations, inspection and re-certification services on approximately 80 MD 400 portable scale units. Service is to be provided on an as needed basis and as a minimum on a yearly interval. Dates and times of inspections will be agreed upon between Stanislaus County, AG Commissioner/Sealer of Weights and Measures and the Contract Manager.

EXHIBIT B
Standard Agreement

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Invoicing and Payment

- A. For services satisfactorily rendered approved by the Contract Manager, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor in accordance with the rates specified in **Attachment 1**. Incomplete or disputed invoices shall be returned to the Contractor, unpaid, for correction.
- B. Invoices shall be itemized in accordance with Attachment 1 and shall include this Agreement Number, dates of services, Location of service and shall be signed and submitted in triplicate not more frequently than monthly in arrears to:
- Department of Transportation
Office/Unit Traffic Operations, MS 36
Attention: Stanley Norikane
1120 N Street
Sacramento, CA 95814
- C. The State will honor cash discounts and will make payment to the Contractor in accordance with the cash discount terms specified on the invoice, provided requirements of the Agreement have been met. Discount must be a minimum of one half of 1% of the amount due, but not less than \$25.00.

2. Budget Contingency Clause

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.
- B. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government or the California State Legislature for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms or funding of this Agreement in any manner.
- C. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- D. The State has the option to terminate the Agreement under the 30-day termination clause or to amend the Agreement to reflect any reduction of funds.

EXHIBIT B
Standard Agreement

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

4. Cost Limitation

A. Total amount of this Agreement shall not exceed \$12,000.00.

5. Rates

The Contractor shall perform all work under this Agreement for the lump sum of \$12,000.00.

6. Failure To Pay

Should Cities or Counties fail to pay moneys due the State within 30 days of demand or within such other period as may be agreed between the parties hereto, State, acting through the State Controller, may withhold an equal amount from future apportionment's due Cities or Counties from the Highway Users Tax Fund.

7. Excise Tax

The State of California is exempt from federal excise taxes, and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

8. Cost Principles

- A. The contractor also agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- B. Any costs for which payment has been made to contractor that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 *et seq.*, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments are subject to repayment by Contractor to State.
- C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

EXHIBIT B
Standard Agreement

9. Inclusive Costs

- A. The cost of employer payments to or on behalf of employees, subsistence, travel, compensation insurance premiums, unemployment contributions, social security taxes, Agreement bond premiums, and any other taxes or assessments **INCLUDING SALES AND USE TAXES** required by law or otherwise shall be included in the Agreement rates and no additional allowance will be made thereof, unless separate payment provision should specifically so provide.

EXHIBIT D
Standard Agreement

SPECIAL TERMS AND CONDITIONS

1. Settlement of Disputes

- A. Any dispute concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by the Department's Contract Officer, who may consider any written or verbal evidence submitted by the contractor. The decision of the Contract Officer, issued in writing, shall be the final decision of the Department.
- B. Neither the pendency of a dispute nor its consideration by the Contract Officer will excuse the contractor from full and timely performance in accordance with the terms of the Agreement.

2. Agency Liability

The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

3. Subcontractors

The contractor shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted

4. Termination

- A. The Department of Transportation reserves the right to terminate this Agreement without cause upon thirty (30) days written notice to the Contractor or immediately in the event of material breach by the Contractor.
- B. In the event that the total contract amount is expended prior to the expiration date, the State may, at its discretion, terminate this contract with 30 days notice to contractor.

5. Retention of Records/Audits

- A. For the purpose of determining compliance with Public Contract Code Section 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 8546.7, the Contractor, subcontractors and the State shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to,

EXHIBIT D Standard Agreement

the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The State, the State Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the Contractor that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

- B. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this article.

6. Default

If, after award and execution of the Agreement, the contractor defaults, the Agreement may be terminated for non-satisfactory performance. Should the Contractor default on the Agreement, the Contractor may be liable to the State for damages including the difference between their original bid price and the actual cost of performing their work by another contractor.

7. Non-Solicitation

The contractor warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained or contracted by the contractor for the purpose of securing business. For breach or violation of this warranty, the state shall have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

8. Disabled Veterans Business Enterprise (DVBE) Participation (Without Goals)

The State has established no goals for the participation of DVBE for this contract. However, the Contractor shall be fully informed respecting the California Public Contract Code Section 10115 *et seq.*, which is incorporated by reference. Contractor is urged to obtain DVBE subcontractor participation should clearly defined portions of the work become available.

9. Laws to be Observed

The contractor shall keep fully informed of all existing and future state and federal laws and county, and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or

EXHIBIT D
Standard Agreement

tribunals having any jurisdiction or authority over the same. Contractor shall at all times observe and comply with, and shall cause all agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the work. The contractor shall protect and indemnify the State of California and all officers and employees thereof connected with the work against any claim, injury, or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the contractor, a subcontractor, or an employee. If any discrepancy or inconsistency is discovered in the plans, drawings, specification, or Agreement for the work in relation to any such law, ordinance, regulation, order, or decree, the contractor shall immediately report the same to the contract manager in writing.

10. Specific Statutory Reference

Any reference to certain statutes in this Agreement shall not relieve the Contractor from the responsibility of complying with all other statutes applicable to the service, work, or rental to be furnished thereunder.

11. Equipment Indemnification

- A. The contractor shall indemnify the state against all loss and damage to the contractor's property or equipment during its use under this Agreement and shall at the contractor's own expense maintain such fire, theft, liability or other insurance as deemed necessary for this protection. The contractor assumes all responsibility which may be imposed by law for property damage or personal injuries caused by defective equipment furnished under this Agreement or by operations of the contractor or the contractor's employees under this Agreement.
- B. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

EXHIBIT E
Standard Agreement

ADDITIONAL PROVISIONS

1. Liability Insurance Provisions

- A. Contractor is responsible for any deductible or self-insured retention contained within the insurance program.
- B. The Insurance policy shall contain a provision that states that coverage will not be cancelled without 30 days prior written notice to the State.
- C. Coverage must be in force for the complete term of this Agreement. If insurance expires during the term of this Agreement, a new certificate must be received by the State at least ten (10) days prior to the expiration of this insurance. This new insurance must still meet the terms of this Agreement.
- D. In the event contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of the Agreement.
- E. Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by the State.
- F. The State will not be responsible for any premiums or assessments on the policy.
- G. The State of California, its officers, agents, employees, and servants shall be included as additional insured, but only with respect to work performed for the State of California under this Agreement. The insurance carrier should provide an endorsement for the additional insured statement.