

**County of Santa Clara**  
**Office of the County Executive**  
Procurement Department



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CE13 051909

DATE: May 19, 2009

TO: Board of Supervisors

FROM:

Handwritten signature of Jenti Vandertuig in black ink.

Jenti Vandertuig  
Director of Procurement

Handwritten signature of Ann Miller Ravel in black ink.

Ann Miller Ravel  
County Counsel

SUBJECT: Delegation of Authority Related to the Purchase of Fuel

**RECOMMENDED ACTION**

Consider recommendations relating to the purchase of fuel.

Possible action:

- a. Approve delegation of authority to Director of Procurement, or designee, to negotiate, execute, administer, modify and terminate an Agreement or Memorandum of Understanding ("MOU") with other interested Bay Area jurisdictions to cooperatively conduct a reverse auction for fuel for the various jurisdictions' needs.
- b. Approve delegation of authority to Director of Procurement, or designee, to conduct a reverse auction for supply of fuel for five years in cooperation with other Bay Area

jurisdictions.

- c. Approve delegation of authority to Director of Procurement, or designee, to negotiate, amend, execute, administer, enforce and terminate Agreement No. 5500001001 with Petro-Diamond Inc. relating to providing vehicle fuel, to extend the term from June 30, 2009 to January 31, 2010, increase the compensation by \$2,500,000 for a total contract not to exceed amount of \$16,500,000, following approval by County Counsel as to form and legality and approval by the Office of the County Executive. Delegation of authority shall expire January 31, 2010.
- d. Approve delegation of authority to Director of Procurement, or designee, to negotiate, amend, execute, administer, enforce and terminate Agreement No. 5500001000 with Valley Oil Company relating to providing vehicle fuel, to extend the term from June 30, 2009 to January 31, 2010, increase the compensation by \$600,000 for a total contract not to exceed amount of \$3,600,000, following approval by County Counsel as to form and legality and approval by the Office of the County Executive. Delegation of authority shall expire January 31, 2010.

### **FISCAL IMPLICATIONS**

There is no fiscal impact to the General Fund as a result of this action. The cost of evaluation and research regarding the reverse auction will be absorbed in the Procurement Department's budget. The County's current bid-management vendor, BidSync, allows for conducting reverse auctions at no extra charge beyond the annual fee already being paid by the County. By employing a reverse auction and allowing for volume discounts by cooperative bidding with other Bay Area jurisdictions, the County expects that it will be able to reduce its current fuel costs, although the savings are difficult to quantify at this point.

### **CONTRACT HISTORY**

In order to leverage their buying power, a consortium of public agencies issued a reverse auction bid for the purchase and delivery of vehicle fuel. The City of Sunnyvale was the leading agency instrumental in the issue of the bid. Bids were issued on January 5, 2004 utilizing the reverse auction methodology from Orbis Online, Inc. Several suppliers responded to the solicitation and multiple contracts were awarded based on their responses.

Contract History Related to Recommended Action (c): As a result of the solicitation, Petro Diamond Inc. was awarded contract number 5500001001 for a three-year term beginning February 1, 2004 through January 31, 2007 in an amount not to exceed \$4,000,000, with an option to extend for two additional years. On January 30, 2007 the Board of Supervisors approved delegation of authority to the Director of Procurement to increase the value of the agreement to \$10,000,000 and extend the term through June 30, 2009 and make administrative and business process changes. On November 18, 2008 the Board of Supervisors approved delegation of authority to the Director of Procurement to increase the value of the agreement to \$14,000,000.

Contract History related to Recommended Action (d): As a result of the solicitation, Valley Oil Company was awarded contract number 5500001000 for a three-year term beginning February 1, 2004 through January 31, 2007 in an amount not to exceed \$450,000 with an option to extend for two additional years. Subsequent amendments have been executed to increase the contract value, extend the agreement through January 31, 2009 and make business process changes. This increase in fuel use was required to provide service to Fleet management's external revenue clients: CHP, Outreach and VTA. On November 18, 2008 the Board of Supervisors delegated authority to the Director of Procurement to extend the agreement through June 30, 2009 and increase the total value of the agreement to \$3,000,000. This delegation was required due to the increase in fuel costs.

## **REASONS FOR RECOMMENDATION**

Reasons for Recommended Actions (a) and (b): The County currently uses various methods of solicitations, including Request for Proposals ("RFPs"), Invitations to Bid ("ITBs") and Request for Quotations ("RFQs"). These methods are specifically referenced in the Board Policy Manual. The County's Board Policy Manual does not specifically describe the use of reverse auctions in this County; however, the Board may authorize the use of reverse auctions or other forms of solicitations. Additionally, the Board Policy Manual allows exceptions to solicitation methods as approved by the Director of Procurement on a case-by-case basis. The Director of Procurement is seeking approval by the Board before fully exploring and conducting this solicitation.

Reverse auctions have been used to establish the best market price for commodities by commercial enterprises and public entities for approximately ten and five years, respectively. The recommended auctions would allow the County to potentially realize cost savings in its fuel procurement using this selection method and would provide the benefits of cooperative purchasing, since Bay Area governments would participate in the reverse auction together, with the County in the lead role. Vendors could bid for the fuel requirements of several participating governments, thereby allowing them to achieve cost savings from volume discounts, which would then be passed on to participating jurisdictions because of the transparency and competition afforded by the reverse auction mechanism.

The Procurement Department proposes the exploration of this reverse auction in order to realize cost savings in a difficult budgetary situation. Once the reverse auction mechanism, combined with cooperative purchasing, has been successfully employed, the County may consider expanding its scope for use in other commodities, with the potential for additional savings. After the selection of a winning vendor using the reverse auction process, the Director of Procurement will present a contract(s) for approval and execution to the Board of Supervisors.

Reasons for Recommended Actions (c) and (d): An extension of the current agreements with Petro-Diamond Inc. and Valley Oil Company will allow the County to ensure the supply of fuel to the County Fleet operations while the Procurement Department completes the solicitation process and establishes a new master agreement(s). An increase in the value of the current agreements with Petro-Diamond Inc. and Valley Oil Company is necessary to accommodate potential fuel purchases utilizing below market rates made available to the County.

The Procurement Department in collaboration with the Facilities and Fleet Department (FAF) will take the lead role in cooperative purchasing and utilize reverse auction as the method of solicitation for the purchase of fuel. The Director of FAF, Director of Intragovernmental Support Services and the Fleet Manager have fully supported this endeavor and have partnered with the Procurement Department and the Office of the County Counsel to make this effort a success for the County.

## **BACKGROUND**

The County of Santa Clara maintains and operates a fleet of more than 2,100 vehicles and equipment that drive an average of 13.5 million miles per year. Greater than 68% of the County Fleet is attributed to departments that provide mandated functions. Fleet Management operates as an Internal Service Fund with revenues that reflect the true cost of ownership. The County Fleet is dependent on bulk fuel purchases to generate cost effective prices below market rate allowing for County departments to recognize resultant savings.

Fleet Management supports Logistics functions within the Incident Command structure of the Emergency Operations Center. As part of the emergency operations fuel plan, the County must be self-sufficient with an adequate fuel supply to sustain County and codependent external agencies for ten days. Bulk fuel purchases are critical to contingency plans for the County, as well as daily operations.

Fleet Management increased demand for bulk fuel purchases in 2006, following the agreement with Outreach to provide fuel and maintenance for the Outreach fleet. Outreach is a revenue account that will pay cost plus \$.40/gallon administrative fee to the County for use of the fuel facilities. Outreach currently uses 18,000 gallons of fuel per month. Amtrak Peninsula Rail, Superior Court of San Jose and VTA also purchase fuel from the County at cost plus administrative surcharge. The approximate spend for a five-year period is \$25,000,000.

Vehicle fuel is stored in several underground storage tanks within Santa Clara County, monitored by Facilities and Fleet staff, and is ordered on a weekly basis, as needed. The fuel rates are adjusted weekly by market trends shown by Oil Price Information Service (OPIS) San Jose average. OPIS is a private sector group providing regional wholesale pricing information. The County is currently paying .32% below the OPIS San Jose average.

### **Reverse Auction as a Method of Solicitation**

A reverse auction is the opposite of a traditional auction. In a traditional auction, the seller offers an item for sale and multiple potential buyers submit sequentially higher bids for the item. In a reverse auction, multiple sellers of items compete for the business of a single buyer. A reverse auction differs from the usual method of vendor selection by allowing bidders to continually to bid *down* the price offered to deliver items. During this competition, the vendors drive the price of the item down. Due to the emphasis on price, reverse auctions are best-suited in cases where quality and/or expected performance are clear, and easily assessed.

In a decision issued by the Court of Federal Claims in 2005, the reverse auction procedure was affirmed against legal challenge for procuring housing inspection services for the federal government. In that case (*MTB Group, Inc. v. U.S.*, 65 Fed.Cl. 516 (Fed. Cl. 2005)) the court noted several benefits of reverse auctions, including: "achieving true market pricing because of the real-time competition; giving a buyer the opportunity to pre-approve participants in the auction; allowing for the anonymity of bidders, who have the ability to continually bid down prices until the close of the auction;...allowing agencies control over the starting and ending times of auctions; collecting buying and pricing

patterns; minimizing the acquisition time for agencies; and supporting competition in an automated environment." *Id.* at 531 at n. 34.

Santa Clara County has participated in a reverse auction for fuel before, but has not played the lead agency role. In January 2004, the County participated with a consortium of public agencies in a reverse auction for the purchase and delivery of vehicle fuel. The City of Sunnyvale was the lead agency and participating jurisdictions utilized the reverse auction methodology from Orbis Online, Inc. Several suppliers responded to the solicitation and multiple contracts were awarded based on their responses.

It is proposed that the Director of Procurement perform a survey among Bay Area jurisdictions to gauge the level of interest in a reverse auction for fuel to be conducted this fall. (Informal conversations with staff members in various jurisdictions have already indicated a high level of interest in participating in such a process.) However, these jurisdictions would be required to commit to evaluating their fuel requirements, providing them in a useful format, to paying an administrative fee if appropriate to the County, and to purchasing fuel from the selected vendor(s) at the conclusion of the solicitation process. The Director of Procurement would enter into an agreement with these terms with interested jurisdictions in the Bay Area. It bears emphasizing that, ultimately, each jurisdiction would separately contract with fuel vendor(s); therefore the County would not be in the position of guaranteeing contractual performance or payment by any party.

The County's current bid management vendor, BidSync, provides the capability of conducting reverse auctions on the Internet within the County's current fee structure. The reverse auction contemplated is one in which all interested jurisdictions would provide their fuel requirements, separated into "lots." Only qualified vendors would be allowed to participate. Therefore, vendors would be required to undergo a pre-qualification process, such as a Request for Qualifications. Since transportation costs are expected to be a significant factor in the competitiveness of each vendor, it is expected that a local vendor will be able to provide the best price. Once qualified vendors have been determined, they may bid on individual lots or a combination of lots at the online reverse auction, which would be conducted on BidSync's web site. During the auction, vendors will be able to view the ongoing low price bid, but not the identity of other vendors (i.e., similar to Ebay, but in reverse). If a low bid is made within 30 seconds of the pre-established closing time of the reverse auction, the closing time would be extended for five minutes to allow other vendors to further bid against the late-entered price.

## **CONSEQUENCES OF NEGATIVE ACTION**

The County would not be able to realize the cost savings that are potentially available using reverse auctions.

## **STEPS FOLLOWING APPROVAL**

- (1) The Director of Procurement will conduct a survey of jurisdictions interested in participating in a reverse auction.
- (2) The Director of Procurement will research, analyze and test the feasibility of conducting a Reverse Auction on the BidSync system with other jurisdictions, with the County of Santa Clara performing the lead role.
- (3) The Director of Procurement will enter into a contract with jurisdictions interested in participating in the reverse auction.

(4) The Director of Procurement will conduct the reverse auction and select the winning vendor(s) this Fall.

(5) The Director of Procurement will present a recommendation for award of contract(s) to the full Board upon selection of winning supplier(s).