

SAN MATEO COUNTY

**Environmental Services Agency
Agricultural Commissioner/Sealer Division**

Date: August 27, 2001

Hearing Date: September 18, 2001

TO: The Honorable Board of Supervisors

**FROM: Marcia Raines, Director Environmental Services
Gail Raabe, Agricultural Commissioner/Sealer**

me
GR

**SUBJECT: Fiscal Year 2001-02 Contractual Agreement with the California Department
of Food and Agriculture to Perform Pest Exclusion Inspection Services
(#01-0191)**

RECOMMENDATION:

Approve the resolution authorizing the execution of an agreement in the amount of \$625,126.44 between the Agricultural Commissioner and the California Department of Food and Agriculture for pest exclusion inspection services to prevent the introduction of economically important plant pests and diseases.

BACKGROUND:

AB 2283, the legislation which authorized funding for the implementation of a statewide High Risk Pest Exclusion Program, was signed into law by Governor Wilson in September 1998. This legislation addressed the need for augmentation of county plant inspection activities to prevent the introduction of exotic insects and diseases through identified high-risk pest pathways. In January 1999, the Board approved a partial year contract totaling \$586,743 to initiate the High-Risk Pest Exclusion Program. The Board approved a full year contract for fiscal year 1999-2000 in January 2000 and for fiscal year 2000-01 in November 2000. Since January 1999, 624 economically damaging pests have been intercepted on incoming air cargo and parcel and truck shipments, including several nests of Red Imported Fire Ant and produce containing Oriental fruit fly and Caribbean fruit fly larvae.

DISCUSSION:

The contractual agreement for the current fiscal year will provide state reimbursement of all costs associated with high-risk pest exclusion activities performed by the Agricultural Commissioner from July 2001 through June 2002. State funding for the program will be

disbursed in two phases. This contract in the amount of \$625,126.44 will reimburse the County for 12,629 personnel hours. Governor Davis recently signed AB 942 which authorizes a portion of state unclaimed gas tax revenue to be disbursed to counties to cover the remaining costs of high-risk pest exclusion activities. San Mateo County can expect to receive \$231,110 in additional revenue for the 6,613 remaining personnel hours through an amended contract from California Department of Food and Agriculture (CDFA) in January 2002. The Division's FY 2001-02 Budget already includes total revenue of \$856,236 for the High-Risk Pest Exclusion program.

County expenditures for FY 1997-98 "baseline level" inspection activities as well as the new "optimal level" inspections will be reimbursed. CDFA will continue to disperse state funding for the High Risk Pest Exclusion Program on an ongoing basis through renewal of annual county contracts. To remain eligible for funding in future years, County support for agricultural programs must be maintained at FY 1997-98 funding levels; therefore, reimbursement for pre-existing pest exclusion workload must be redirected into other agricultural programs.

Under the contractual agreement, Biologists will continue to inspect all incoming shipments of plants and produce at SFO, Federal Express, UPS and the U.S. Postal AirMail Facility seven days/week. Additionally, staff Biologists will be inspecting all truck shipments of potted plants arriving at wholesale and retail nurseries for the presence of foliage and soil pests, and specialty produce markets will be monitored on a periodic basis for prohibited fruits and vegetables.

FISCAL IMPACT:

The funding available under this contractual agreement for FY 2001-02 will be \$625,126.44. CDFA will reimburse the County up to \$625,126.44 for all direct and indirect costs associated with the 12,629 personnel hours outlined in this High-Risk Pest Exclusion contractual agreement including salaries, benefits, services and supplies, administrative/clerical support and A-87 overhead. An amended contract for an additional \$231,110 is anticipated after January 2002 when additional state unclaimed gas tax revenue authorized under AB 942 becomes available for disbursement.

AB2283 mandates that County support for agricultural programs must be maintained at FY 1997-98 funding levels in order to remain eligible for contract funding levels in future years. Contract reimbursement totaling \$132,000 has been redirected into agricultural programs for FY 2001-02 COLAs and Pest Detection Specialist benefits (July 2001-November 2001). There will be no net county cost associated with this contract.

REVIEW BY OTHERS:

This contract has been reviewed by County Counsel.

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO

STATE OF CALIFORNIA

RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE AND THE COUNTY OF SAN MATEO IN THE AMOUNT OF \$625,126.44 FOR THE PERFORMANCE OF PEST EXCLUSION INSPECTION SERVICES TO PREVENT THE INTRODUCTION OF EXOTIC PLANT PESTS AND DISEASE

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California,
that

WHEREAS, there has been presented to this Board of Supervisors for its consideration and acceptance an Agreement, reference to which is hereby made for further particulars, whereby the COUNTY of SAN MATEO agrees to perform high-risk pest exclusion inspection services for the California Department of Food and Agriculture as set forth in the Agreement for the period of July 1, 2001 to June 30, 2002; and

WHEREAS, this Board has been presented with a form of such Agreement and said Board has examined and approved same as to both form and content and desires to enter into same:

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the President of this Board of Supervisors be, and is hereby authorized and directed to execute said Agreement with the California Department of Food and Agriculture in the amount of \$625,126.44 for the performance of pest exclusion inspection services to prevent the introduction of exotic plant pests and diseases for and on behalf of the County of San Mateo, and the Clerk of this Board shall attest to the signature thereto.

#####

STANDARD AGREEMENT

STL: 213 (NEW 02/98)

AGREEMENT NUMBER
01-0191

1. This Agreement is entered into between the State Agency and the Contractor named below
 STATE AGENCY'S NAME
 DEPARTMENT OF FOOD AND AGRICULTURE
 CONTRACTOR'S NAME
 COUNTY OF SAN MATEO
2. The term of this Agreement is: July 01, 2001 through June 30, 2002
3. The maximum amount of this Agreement is: \$ 625,126.44
 Six Hundred Twenty-Five Thousand, One Hundred Twenty-Six Dollars and Forty-Four Cents.
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:
 - Exhibit A – Scope of Work 7 Page(s)
 - Exhibit B – Budget Detail and Payment 2 Page(s)
 - * Exhibit C – General Terms and Conditions GTC-201 Dated 2/20/01
 - Exhibit D – Special Terms and Conditions

*View at www.dgs.ca.gov/contracts

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

CONTRACTOR	CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)	
COUNTY OF SAN MATEO	
BY (Authorized Signature) 	DATE SIGNED
PRINTED NAME AND TITLE OF PERSON SIGNING	
ADDRESS P. O. Box 999 Redwood City, CA 94064-0999	
STATE OF CALIFORNIA	
AGENCY NAME	
DEPARTMENT OF FOOD AND AGRICULTURE	
BY (Authorized Signature) 	DATE SIGNED
PRINTED NAME AND TITLE OF PERSON SIGNING	
SANDI CONRY, ACQUISITIONS MANAGER	
ADDRESS 1220 N STREET, ROOM 100 SACRAMENTO, CA 95814	
<input type="checkbox"/> Exempt per _____	

**EXHIBIT A
(Standard Agreement)**

SCOPE OF WORK

1. Contractor agrees to provide services for California Department of Food and Agriculture (CDFA) as described herein:

To perform high-risk inspection and enforcement activities for the CDFA in compliance with the requirements imposed by Chapter 573 (AB 1771), Statutes of 2000, Food and Agricultural Code Section 2282.5, and County High-Risk Pest Exclusion Program Guidelines incorporated in this Scope of Work.

2. The services shall be performed in San Mateo County.
3. The project representatives during the term of this agreement will be:

Direct all inquiries to:

State Agency CDFA	Contractor: County of San Mateo
Section/Unit: PHPPS/PE	Section/Unit:
Attention: Richard Barbour	Attention: Ms. Gail M. Raabe
Address: 1220 N Street Room A-372 Sacramento, CA 95814	Address: P. O. Box 999 Redwood City, CA 94064-0999
Phone: (916) 653-1440	Phone: (650) 363-4700
Fax:	Fax: (650) 367-0130

EXHIBIT A
SCOPE OF WORK
Criteria for Work Plan

The County of San Mateo agrees to perform high-risk inspection and enforcement activities for the California Department of Food and Agriculture (CDFA) in compliance with the requirements imposed by Chapter 573 (AB 1771), Statutes of 2000, Food and Agricultural Code Section 2282.5, and County High-Risk Pest Exclusion Program Guidelines incorporated in this scope of work.

The County will perform activities approved by the CDFA as described in the attached Estimate of High-Risk Pest Exclusion Activities included in Exhibit B, Budget, and by this reference made a part hereof. Definitions of the key high-risk activities can be defined as follows:

Inspection work at US Postal Distribution Centers, United Parcel Service Facilities, Federal Express Facilities, and Air Freight Facilities can include, but is not limited to County biologist(s) reviewing invoices for content origin/destination, checking packages for quarantine compliance, rejecting parcels that do not adhere to quarantine compliance, inspecting for high-risk pests, i.e., red imported fire ants, Japanese beetles, flower thrips, etc.; daily record keeping of inspections in regard to pest finds, writing reports referencing Report 4 and Report 4a to reflect daily record keeping entries, notifying the Senior Agricultural Biologist of the presence of any significant pest finds, etc.; gypsy moth (008a) requires County biologist(s) to visit residence or storage facility to inspect household items for high-risk pests as defined above; Truck Referrals (008) Plants and Truck Referrals (008) Misc. requires County biologist(s) to visit receivers of products to inspect for pests considered to be high-risk as defined above, after hold notices are received from the border stations; specialty markets and swap meets require County biologist(s) to visit the markets to determine if products are being sold that do not meet the quarantine entry requirements; Post-Entry quarantine inspections require County biologist(s) to inspect plant material to determine if it is infested with high-risk pests as defined above; and other high-risk terminals which can include, but is not limited to maritime terminals, airport terminals, bus terminals, pet stores, aquatic plant dealers, etc., requires County biologist(s) to continue to enforce quarantine requirements at these facilities in the same manner as all activities listed above.

As quarantine areas and commercial channels change, County biologist(s) shall determine the need to redirect high-risk activities in other areas as needed.

The County's biologist(s) shall determine the time of day and week the inspections are to occur. If a County finds it necessary to deviate from its approved Work Plan, said County will notify the Pest Exclusion High-Risk Program of any changes.

Exhibit A
Scope of Work
Criteria for Work Plan

Itemized invoices and Report 4a's shall be submitted within 30 days after the end of the reporting period. Invoices shall be submitted to the CDFA contract Manager in accordance with the sample provided herein and identified as Attachment 1. All monthly reports shall be submitted on Form #66-092a to the CDFA contract Manager (see Attachment 2 for sample).

COUNTY HIGH RISK PEST EXCLUSION PROGRAM ESTIMATED WORK PLAN GUIDELINES

PROGRAM DEFINITIONS

High-Risk Shipments: are those where there exists a high degree of likelihood that one or more "A" or "Q" rated plant pests will be introduced into or spread within the State by movement or entry of the shipment. "A" and "Q" rated plant pests have been determined to have potential for causing severe damage to the State's agricultural industry, natural resources, or environment, and as such any shipment likely to harbor such pests is considered high-risk. All high-risk shipments are to be inspected. Non-high-risk parcels ("Flower of the Month Club" bulbs, bare-root nursery stock from areas which do not represent a serious quarantine risk, plant materials from California origin with nursery certification, etc.) moving through a "high-risk" facility may be monitored via profiling and inspected as time allows during the premise visit. These shipments will not be included as "high-risk" shipments inspected. High-risk shipments which should be inspected include such items as cut flowers and nursery stock from quarantine areas, any plant materials in unmarked parcels, and other plant material shipments which have a historical record of "A" and "Q" rated pest interceptions.

High-Risk Pathways: those facilities where high-risk shipments are regularly or frequently intercepted. The known high-risk pathways have been listed on the Estimate of High-Risk Pest Exclusion Activities, including U.S. Postal Distribution Centers, UPS (except local), Federal Express, Air Freight, Air Freight Forwarded, Truck Referrals (008a-Gypsy Moth, 008-Plants & 008-Other), Specialty Markets, Swap Meets, Post Entry Quarantine, and "Other" pathways identified in your work plans and approved by the Department.

Shipments Inspected: Shipments physically opened and examined. This is not packages or pots inspected. A shipment is one lot of plant material sent from one shipper to one receiver via one mode of transport.

Rejections: Number of state level rejection notices written. This does not include rejections of materials for failing to meet nursery standards of cleanliness, or materials rejected for B or C rated pests. Any time a live A or Q rated pest is found in a shipment a rejection notice should be issued.

Pest Interceptions: Number of "A" and "Q" pest interceptions. When more than one pest species is found in a single shipment, each different species is to be counted as an interception. Finding more than one pest of the same species does not equate to multiple interceptions.

U.S. Post Office: Postal distribution centers formerly known as sectional centers that sort mail sealed against inspection (first-class, priority, and express mail parcels).

United Parcel Service (except local service): Facilities which process parcels shipped via overnight or expedited service versus facilities that process only parcels moving locally.

Air Freight: Air cargo shipments inspected at the airport facility or at destination (see next item).

Air Freight/Forwarded: Shipments allowed to proceed to destination or another location for inspection within the same county or to another county and under a warning hold notice (blue tag) or by compliance agreement authorization.

Truck (008a): Shipments of historically high-risk household articles from historically high-risk areas that require inspection for gypsy moth.

Truck (008-Plants & 008-Other): High-risk shipments moving to destination under quarantine hold notice. This does not include blue-tagged intrastate shipments of nursery stock inspected for glassy winged sharpshooters.

Post-Entry Quarantine Inspections: These inspections include both site and plant inspections. A shipment should be recorded when plant material is inspected.

Other: This column is to be used to estimate the workload for any high-risk pathway not already listed on the form; these may include: pet stores or aquariums, express parcel carriers, sea freight forwarded or other special focus activities approved by the Department. Special focus activities are then to be described under "Special Focus Description".

ACCOUNTING GUIDELINES

Program cost estimates for high-risk exclusion activities conducted at optimal levels are to be estimated based upon the guidelines and definitions contained within the County Agricultural Commissioners' Annual Financial Statement Procedures Manual. This cost/hour figure is to be estimated from an average of the costs/hour for Fiscal Years 1997/98, 1998/99 and 1999/2000. A county may choose to use their established County Auditor approved hourly rate in lieu of the three-year average. This would be the rate charged an applicant for phytosanitary or other type of certification if such a rate is established.

PROGRAM GUIDELINES

1. All inspections of high-risk terminal points are to be conducted as close to optimal service levels as is fiscally possible.
2. Optimal service level inspections are those conducted during the sort time(s) or before the last critical dispatch(s) of the facility monitored.
3. All high-risk shipments are to be inspected. Shipments not presenting a high risk that are moving through a high-risk facility may be monitored and inspected as time permits but should not be included as a program cost or counted as a measure under this work plan.
4. A shipment is any amount of agriculturally regulated product/packages/potted plants from one specific shipper, in one shipment, sent to one specific consignee.

OPTIMAL SERVICE LEVELS FOR PEST EXCLUSION TERMINAL INSPECTION FREQUENCY

FACILITY	OPTIMUM INSPECTION FREQUENCY
U.S. Postal Distribution Center, United Parcel Service & Federal Express	Daily during sort
Air Freight	Daily when appropriate after offloading
Truck Referrals (008) & (008a)	100 % of Referrals after offloading
Specialty Markets & Swap Meets	Monthly during normal county office hours
Post-Entry Quarantine	All Referrals – Four visits/year normal office hours

SAMPLE INVOICE

Please Submit on County Letterhead

2001/02 HIGH RISK PEST EXCLUSION ACTIVITIES

Invoice for the period from _____ to _____, 2001/02

New Activity

Activity	Other High-Risk	Scientific Evaluation
Total Hours		
Cost Per Hour		
Total Cost		

**Year-to-Date
Summary**

Activity	Other High-Risk	Scientific Evaluation
Total Hours		
Cost Per Hour		
Total Cost		

Type	Premise Visits	Shipments Inspected	NOR's	A/Q Pest Interceptions	Hours
Post Office					
UPS					
Federal Express					
Air Freight					
Air Freight - forwarded					
Gypsy Moth					
Truck (008 Plants)					
Truck (008 Other)					
Specialty Market					
Swap Meets					
Post-Entry					
Other					
Other					
Comments					

**EXHIBIT B
(Standard Agreement)**

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.
- B. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to:

THE CONTRACT MANAGER

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

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.

ESTIMATE OF HIGH-RISK PEST EXCLUSION ACTIVITIES

FISCAL YEAR 2001/2002

Exhibit B

County
San Mateo

Cost per hour:

\$49.50

Date: 7/1/01

Facility	No. of High-risk Facilities 01/02	Estimated Visits/Year 01/02	Estimated Hours/Visit 01/02	Estimated Hours/Year 01/02	Estimated Annual Cost 01/02
U S Postal Distribution Center	1	1,095	1.00	1,095.00	\$54,202.50
United Parcel Service (except local)	2	520	1.04	540.80	\$26,769.60
Federal Express	2	624	1.04	648.96	\$32,123.52
Air Freight	11	12,100	0.61	7,381.00	\$365,359.50
Air Freight - Forwarded	12	495	0.73	361.35	\$17,886.83
Gypsy Moth (008A)	240	242	1.66	401.72	\$19,885.14
Truck Referrals (008) Plants	11	965	2.15	2,071.99	\$102,563.37
Truck Referrals (008) Other					\$0.00
Specialty Markets	60	80	0.85	68.00	\$3,366.00
Swap Meets	1	16	2.00	32.00	\$1,584.00
Post Entry Quarantine	8	8	1.50	12.00	\$594.00
Other High Risk Facilities-TradeShow	2	2	8.00	16.00	\$792.00
Totals				12,628.82	\$625,126.45
Description of Other (Special) High-Risk Facilities Trade Shows					

Include Notes On Reverse

EXHIBIT C
(Standard Agreement)

GENERAL TERMS AND CONDITIONS, GTC-201

PLEASE NOTE: This page is not included with the final agreement. The General Terms and Conditions are included in this agreement by reference to Internet site www.dgs.ca.gov/contracts.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of

whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in document the CCC201 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the

GTC201 Page 5 of 5
time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with, that:

a). The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be effected thereby.

18. UNION ORGANIZING For all contracts, except fixed price contracts of \$50,000 or less, the Contractor acknowledges that:

By signing this agreement Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement and agrees to the following:

a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.

b) No state funds received under this agreement will be used to assist, promote or deter union organizing.

c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.

d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

EXHIBIT D
(Standard Agreement)

SPECIAL TERMS AND CONDITIONS

1. **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.

2. **Settlement of Disputes**

In the event of a dispute, Contractor shall file a "Notice of Dispute" with the CDFA within ten (10) days of discovery of the problem. Such Notice of Dispute shall contain the Agreement number. Within ten (10) days of receipt of such Notice of Dispute, the Agency Secretary, or Designee, shall meet with the Contractor and the CDFA project manager for the purpose of resolving the dispute. The decision of the Agency Secretary or Designee shall be final. In the event of a dispute, the language contained within this Agreement shall prevail over any other language including that of the bid proposal.

3. **Evaluation of Contractor**

Performance of the Contractor under this Agreement shall be evaluated. The evaluation shall be prepared on Contract/Contractor Evaluation Sheet (STD 4) and maintained in the Agreement file. For consultant agreements, a copy of the evaluation will be sent to the Department of General Services, Office of Legal Services, if it is negative and the agreement amount is over \$5,000.

4. **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.

5. **Potential Subcontractors**

If Contractor subcontracts out a portion of the work required by this Agreement, nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

6. **Right To Terminate**

The State reserves the right to terminate this agreement subject to 30 days written notice to the Contractor. Contractor may submit a written request to terminate this agreement only if the State should substantially fail to perform its responsibilities as provided herein. However, the agreement can be immediately terminated for cause.