

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

DEPT: Agricultural Commissioner *Michelle O'Brien*

BOARD AGENDA # _____ *B-1

Urgent

Routine

AGENDA DATE September 29, 2015

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval to Authorize the Agricultural Commissioner to Sign the Enforcement Evaluation and Improvement Project Agreement with the California Department of Pesticide Regulation for Fiscal Year 2015-2016

STAFF RECOMMENDATIONS:

1. Authorize the Agricultural Commissioner to sign the Enforcement Evaluation and Improvement Project Agreement for Fiscal Year 2015-2016.
2. Authorize the Auditor-Controller to adjust appropriations and estimated revenue in the amount of \$68,075.26 as detailed on the attached Budget Journal for Fiscal Year 2015-2016.

FISCAL IMPACT:

The total amount of the Cooperative Agreement with the California Department of Pesticide Regulation is \$68,075.26. An increase in revenue and appropriations of \$68,075.26 is requested for the Agricultural Commissioner's budget for Fiscal Year 2015-2016.

BOARD ACTION AS FOLLOWS:

No. 2015-451

On motion of Supervisor Chiesa, Seconded by Supervisor Monteith
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Withrow

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

- 1) X Approved as recommended
- 2) _____ Denied
- 3) _____ Approved as amended
- 4) _____ Other:

MOTION:

ATTEST:

Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Authorize the Agricultural Commissioner to Sign the Enforcement Evaluation and Improvement Project Agreement with the California Department of Pesticide Regulation for Fiscal Year 2015-2016

DISCUSSION:

The California Department of Pesticide Regulation (DPR) has the responsibility for overall statewide enforcement of pesticide laws and regulations. The Agricultural Commissioner of each county is charged with enforcing the pesticide laws and regulations under the direction and supervision of the Director of DPR.

DPR has determined there is a need to increase communication and collaboration with the County Agricultural Commissioners in the tracking, development, and preparation of enforcement responses. DPR also wants to evaluate compliance and enforcement data to ensure statewide consistency with DPR policies, regulations and law, and identify trends that will be used to improve outreach and education to licensees.

The work carried out under this agreement will include the collection and submission of historical compliance and enforcement data. In addition to identifying trends and looking at statewide consistency, DPR will evaluate this data and dialogue with the County Agricultural Commissioner to determine if the enforcement responses are consistent and appropriate.

Under this agreement, Stanislaus County will be responsible for submitting to DPR all completed inspections and associated follow-up inspections along with information pertaining to both pending and complete enforcement actions for the period from January 1, 2014 through December 31, 2014. DPR will reimburse Stanislaus County \$68,075.26 for costs incurred pursuant to this agreement. The amount of this agreement is based on a mutually agreed upon allocation method between DPR and the California Agricultural Commissioners and Sealers Association, which took into account each county's workload measures and metrics in proportion to all the counties in California. The Agricultural Commissioner feels the \$68,075.26 will cover the cost to provide the requested information.

POLICY ISSUE:

Approval of this item supports the Board Priority of promoting A Strong Agricultural Economy/Heritage by improving outreach and education to Stanislaus County pesticide licensees.

STAFFING IMPACT:

Existing staff from the Agricultural Commissioner's office will provide the requested information. There are no additional staffing requirements associated with this item.

CONTACT PERSON:

Milton O'Haire, Agricultural Commissioner 209-525-4730

STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213 (Rev 06/03)

AGREEMENT NUMBER 15-C0041
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:
- STATE AGENCY'S NAME
Department of Pesticide Regulation
- CONTRACTOR'S NAME
Stanislaus County
2. The term of this Agreement is: July 1, 2015 or upon final approval by the State, whichever occurs later, through February 29, 2016
3. The maximum amount of this Agreement is: **\$68,075.26**
Sixty-eight thousand seventy-five dollars and twenty-six 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 | | 4 Pages |
| Exhibit B – Budget Detail and Payment Provisions | APPROVED AS TO FORM:
STANISLAUS COUNTY COUNSEL
BY: <i>Deirdre McHart</i>
DATE: <u>9/16/15</u> | 2 Pages |
| Exhibit C* – General Terms and Conditions (GTC 610) | | * |
| Exhibit D - Special Terms and Conditions | | 2 Pages |
| Attachment 1 – Cooperative Agreement | | ** |
| Attachment 2 – California Food and Agricultural Code section 2281 | | 1 Page |

Items above 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.dgs.ca.gov/ois/Resources/StandardContractLanguage.aspx>*

Items shown above with a double Asterisk (**), are hereby incorporated by reference and made part of this agreement as if attached hereto. *These documents can be viewed at http://www.cdpr.ca.gov/docs/enforce/compend/vol_5/cooperative_agreement.pdf*

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.) Stanislaus County		
BY (Authorized Signature) <i>Milton O'Haire</i>	DATE SIGNED (Do not type) 10-18-15	
PRINTED NAME AND TITLE OF PERSON SIGNING Milton O'Haire Agricultural Commissioner		
ADDRESS 3800 Cornucopia Way, Suite B, Modesto, CA 95358		
STATE OF CALIFORNIA		
AGENCY NAME Department of Pesticide Regulation		<input checked="" type="checkbox"/> Exempt per: Delegation Letter 74.5
BY (Authorized Signature) <i>Samantha Lewis</i>	DATE SIGNED (Do not type) 10-28-15	
PRINTED NAME AND TITLE OF PERSON SIGNING Samantha Lewis, Manager, Business Services		
ADDRESS 1001 I Street, Sacramento, CA 95814		

EXHIBIT A
STANDARD AGREEMENT

SCOPE OF WORK

1. This Agreement is entered into by the Department of Pesticide Regulation, hereinafter referred to as DPR, and Stanislaus County, hereinafter referred to as Contractor.
2. This Agreement will commence on the start date July 1, 2015 as presented herein or upon final 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. Contractor shall not receive payment for work performed prior to approval of the Agreement and before receipt of noticed to proceed by the Contract Manager. This Agreement shall expire on February 29, 2016. The services shall be provided during normal working hours.
3. The Project Representatives during the term of this Agreement will be:
 - A. All official communications, except invoices, from the Contractor to DPR shall be directed to the attention of DPR Contract Manager, Erin Yee, at:

Department of Pesticide Regulation
Enforcement Branch, MS 3B
1001 I Street, P.O. Box 4015
Sacramento, CA 95812-4015

Phone: (916) 445-3913 Fax: (916) 445-3907
Email: Erin.Yee@cdpr.ca.gov

- B. All programmatic communications from DPR to the Contractor shall be directed to the attention of Milton O'Haire, County Agricultural Commissioner, or designee at the following address and phone/fax numbers:

Stanislaus County Agricultural Commissioner
3800 Cornucopia Way, Suite B
Modesto, CA 95358

Phone: (209) 525-4730 Fax: (209) 525-4790

- C. All payments from DPR to the Contractor shall be directed to:

TREAS STANISLAUS CTY/AG COMM
P.O. BOX 770
MODESTO, CA 95353

- D. The Project Representatives during the term of this Agreement may be changed by mutual written agreement without the necessity of formal amendment to this Agreement.

EXHIBIT A
STANDARD AGREEMENT

4. Background and Purpose

The objective of this contract is to assist DPR in carrying out its Enforcement Evaluation and Improvement Project (EEIP).

The EEIP, and this contract, will assist DPR in its compliance with the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) statutory requirements pursuant to delegated enforcement authority from U.S. EPA through the three-party Cooperative Agreement¹ between U.S. EPA, DPR and County Agricultural Commissioners and Sealers Association, and Food and Agriculture Code section 2281².

Over the years, the number of enforcement actions, method of submission, level of interaction between the County Agricultural Commissioner (CAC) and DPR staff, requested detail, and the timing of submission has varied considerably. Recently, DPR has determined there is a need to increase communication and collaboration with the CAC in the tracking, development, and preparation of enforcement responses. DPR review of notice of proposed actions and civil penalty action hearing decisions prior to issuance will support and strengthen enforcement and assist the CACs with difficult or complicated enforcement action decisions. In addition, this collaboration will assist DPR in determining whether enforcement actions are warranted at the state level.

EEIP activities include:

- The collection of complete compliance and enforcement data from the CAC for the purpose of evaluating individuals and businesses licensed by the state to determine if enforcement action is warranted;
- The evaluation of compliance and enforcement data to ensure statewide consistency with DPR policies, regulations and law, and identify trends that will be used to improve outreach and education to licensees; and,
- The improvement of communication and collaboration between DPR and the CAC in the tracking, development, and preparation of enforcement responses as needed to establish and implement county agricultural commissioner enforcement.

The work carried out under this contract includes the collection and submission of historical compliance and enforcement data. DPR will evaluate this data and dialogue with the CAC to determine if the enforcement responses are consistent and appropriate. In addition, collection and evaluation of several years' worth of compliance and enforcement data coupled with input from the CAC, will highlight chronic violators and allow DPR to pursue statewide enforcement actions against individuals and businesses licensed by the state.

¹ Cooperative Agreement included as Attachment 1 of this Agreement

² Food and Agricultural Code section 2281 included at Attachment 2 of this Agreement.

EXHIBIT A
STANDARD AGREEMENT

5. Contractor Responsibilities

- A. Submit all complete inspections and associated follow-up inspections from January 1, 2014 through December 31, 2014 to DPR including:
 - 1) Field Worker Safety Inspection Report (PR-ENF-103);
 - 2) Pesticide Use Monitoring Inspection Report (PR-ENF-104);
 - 3) Commodity Fumigation Use Monitoring Inspection Report (PR-ENF-105);
 - 4) Field Fumigation Use Monitoring Inspection Report (PR-ENF-106);
 - 5) Structural Fumigation Use Monitoring Inspection Report (PR-ENF-107);
 - 6) Structural Use Monitoring Inspection Report (PR-ENF-108);
 - 7) Pest Control Headquarters Inspection Report (PR-ENF-109); and,
 - 8) Pest Control Business Headquarters Inspection Report (PR-ENF-110).

- B. Submit information pertaining to both pending and complete enforcement actions from January 1, 2014 through December 31, 2014 to DPR including:
 - 1) Notice of Proposed Action;
 - 2) Administrative civil penalty closing document (e.g., Stipulation and Waiver or Order); and,
 - 3) Enforcement/Compliance Action Summary form (DPR-ENF-046).

- C. Respond to any questions from DPR about the data, including how compliance data is linked to enforcement data.

- D. Communicate and collaborate with DPR
 - 1) In the tracking, development, and preparation of enforcement responses as needed.
 - 2) Provide input on proposed statewide enforcement actions against individuals and businesses licensed by the State.

EXHIBIT A
STANDARD AGREEMENT

6. DPR Responsibilities

- A. Evaluate, communicate and collaborate with CAC and staff regarding how compliance data is linked to enforcement data.
- B. Communicate and collaborate with the CAC and staff in the tracking, development, and preparation of enforcement responses as needed to implement county agricultural commissioner enforcement.
- C. Obtain input from the CAC to determine if enforcement action is warranted when evaluating compliance and enforcement data on individuals and businesses licensed by the state.

EXHIBIT B
STANDARD AGREEMENT

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Invoicing and Payment

- A. In no event shall the Contractor request reimbursement from the State for obligations entered into or for costs incurred prior to the commencement date or after the expiration of this Agreement.
- B. For services satisfactorily rendered, and upon receipt and approval of the invoices by the DPR Contract Manager, DPR agrees to compensate the Contractor for actual expenditures incurred in accordance with the rate specified in paragraph 4 (Budget and Rates) of this Exhibit.
- C. The Contractor shall submit invoices quarterly, in arrears, to DPR for costs incurred pursuant to this Agreement. Payments will be made in arrears upon receipt and approval of invoice as stated below.
- D. Each invoice shall contain the following information:
 - 1) The Agreement number 15-C0041;
 - 2) The dates or time period during which the invoiced costs were incurred;
 - 3) Expenditures for the current invoice and cumulative expenditures to date; and,
 - 4) The signature of an authorized representative of the Contractor.
- E. Invoices shall be submitted in triplicate on the Contractor's printed letterhead and identified by a control number to:

Department of Pesticide Regulation
Attn: Accounts Payable
P.O. Box 4015, MS 4A
Sacramento, CA 95812-4015

- F. DPR agrees to make payment as promptly as fiscal procedures permit, upon receipt of the invoice(s), subject to approval by the DPR Contract Manager, and contingent upon satisfactory completion of the terms of this agreement.
- G. "Satisfactory completion" as used in this Agreement means that the Contractor has complied with all terms, conditions and performance requirements of this Agreement.

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

EXHIBIT B
STANDARD AGREEMENT

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 the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provisions of this agreement.

- 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 current year and/or any subsequent years covered under this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress or the California State Legislature which may affect the provisions, terms or funding of this Agreement in any manner.
- C. 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 the 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.

4. Budget and Rates

- A. The total amount of the Agreement shall not exceed \$68,075.26. The total amount of this Agreement is based on a mutually agreed upon allocation method determined by each county's workload measures and metrics in proportion to all counties.
- B. The Contractor shall not receive additional compensation for reimbursement or for costs not identified in this Agreement and shall not decrease the work to compensate therefore.

EXHIBIT D
STANDARD AGREEMENT

SPECIAL TERMS AND CONDITIONS

1. Termination

- A. Either Party reserves the right to terminate this agreement without cause upon 30 days written notice to the other Party, or immediately in the event of a material breach. In the event of termination, Contractor shall be paid for all allowable costs incurred up to the date of termination and upon receipt of the final invoice.
- B. In the event that the total Agreement amount is expended prior to the expiration date, DPR may, at its sole discretion, terminate this Agreement with 30 days written notice to contractor.

2. Subcontracting

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

3. Harassment Free Workplace

The Department of Pesticide Regulation (DPR) is committed to providing a safe, secure environment, free from sexual misconduct. It is policy of the Department that employees have the right to work in an environment that is free from all forms of discrimination, including sexual harassment. This policy specifically speaks to freedom from a sexually harassing act that results in the creation of an intimidating, hostile or offensive work environment or that otherwise interferes with an individual's employment or work performance. As a Contractor with DPR, you and your staff are expected to comply with a standard of conduct that is respectful and courteous to DPR employees and all other persons contacted during the performance of this Agreement. Sexual harassment is unacceptable, will not be tolerated; and may be cause for prohibiting some or all of the Contractor's staff from performing work under this Agreement.

4. Retention of Records/Audits

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, 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

EXHIBIT D
STANDARD AGREEMENT

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.

5. Resolution of Disputes

- A. DPR reserves the right to issue an order to stop work in the event that a dispute should arise, or in the event that DPR gives the performing agency a notice that his Agreement will be terminated. If DPR exercises this right, the stop-work order will be in effect until the dispute has been resolved or this Agreement has been terminated.
- B. Any dispute concerning a question of fact arising under the terms of this Agreement which is not disposed of within a reasonable period of time by agency employees normally responsible for the administration of this agreement, shall be brought to the attention of the Executive Officer or designated representative of each agency for joint resolution.
- C. The Contractor shall continue with the responsibilities under this agreement during any dispute until the expiration of this Agreement or notified to stop work.

ATTACHMENT 2
STANDARD AGREEMENT

FOOD AND AGRICULTURAL CODE - FAC

DIVISION 2. LOCAL ADMINISTRATION [2001 - 2344]
(Division 2 enacted by Stats. 1967, Ch. 15.)

CHAPTER 2. County Agricultural Commissioners and Their Employees [2101 - 2287]
(Chapter 2 enacted by Stats. 1967, Ch. 15.)

ARTICLE 8. Powers and Duties [2271 - 2287]
(Article 8 enacted by Stats. 1967, Ch. 15.)

2281.

Except as otherwise specifically provided, in all cases where provisions of this code place joint responsibility for the enforcement of laws and regulations on the director and the commissioner, the commissioner shall be responsible for local administration of the enforcement program. The director shall be responsible for overall statewide enforcement and shall issue instructions and make recommendations to the commissioner. Such instructions and recommendations shall govern the procedure to be followed by the commissioner in the discharge of his duties. The director shall furnish assistance in planning and otherwise developing an adequate county enforcement program, including uniformity, coordination, training, special services, special equipment, and forms, statewide publicity, statewide planning, and emergency assistance.

The instructions and recommendations shall include a cost analysis of the local administration of such programs, determined from data supplied by the commissioner pursuant to Section 2272. Such cost analysis shall identify the joint programs or activities for which funds necessary to maintain adequate county administration and enforcement have not been provided. The director shall develop, jointly with the commissioners, county priorities for such enforcement programs and activities.

The director shall report annually to the Legislature his findings concerning the cost analysis with specific regard to programs where funds are inadequate for an efficient enforcement program, together with a listing of the priorities jointly established by the director and the commissioners that are contained in the formal instructions and recommendations of the director.

(Amended by Stats. 1980, Ch. 820. Note: See this section as modified on July 17, 1991, in Governor's Reorganization Plan No. 1 of 1991.)