

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

DEPT: Public Works

BOARD AGENDA #: *C-3

AGENDA DATE: March 1, 2016

SUBJECT:

Approval to Purchase Four Paratransit Compressed Natural Gas Buses and One Clean Diesel Bus from Creative Bus Sales, Incorporated in Chino, California for the Stanislaus County Public Transit System

BOARD ACTION AS FOLLOWS:

No. 2016-105

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

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

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST:


CHRISTINE FERRARO TALLMAN, Clerk

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**


DEPT: Public Works

Urgent

Routine

BOARD AGENDA #: _____, *C-3

AGENDA DATE: March 1, 2016



CEO CONCURRENCE: _____

4/5 Vote Required: Yes No

SUBJECT:

Approval to Purchase Four Paratransit Compressed Natural Gas Buses and One Clean Diesel Bus from Creative Bus Sales, Incorporated in Chino, California for the Stanislaus County Public Transit System

STAFF RECOMMENDATIONS:

1. Approve the purchase of four Compressed Natural Gas paratransit demand response light-duty transit buses in the amount of \$547,108 for Stanislaus County Regional Transit (StaRT) public transit bus fleet from Creative Bus Sales, Incorporated.
2. Approve the purchase of one clean diesel paratransit demand response heavy-duty transit bus in the amount of \$149,036 for Stanislaus County's StaRT public transit bus fleet from Creative Bus Sales, Incorporated.
3. Authorize the Public Works Transit Division Manager to sign and execute all necessary documents.

DISCUSSION:

The Stanislaus County Public Works Transit Division oversees operation of the County's transit system, Stanislaus Regional Transit (StaRT), which is responsible for researching and providing recommendations to the Board of Supervisors for approval to purchase buses for transit services.

As a result of the 2010 U.S. Census, the County's transit system was reclassified as a Small Urban System in Fiscal Year 2012-2013 which now requires StaRT to provide Americans with Disabilities Act (ADA) Complementary Paratransit Service in its service area. The ADA complementary paratransit service is a demand responsive service specifically for persons with disabilities or persons with a Medicare card that are unable to use the fixed route system for their transportation needs.

Currently, there are twenty-three paratransit buses in the fleet used in providing dial-a-ride, shuttle and non-emergency medical transportation service. Of this number, sixteen are owned by the County's contractor, Storer Transit Systems, Inc, with the remaining owned by the County. Based on projected customer demand and recommendations from Storer, StaRT will purchase five additional paratransit buses to fulfill the requirement of providing the required ADA complementary paratransit service, as well as to successfully operate the required ADA paratransit service through StaRT's service area.

Approval to Purchase Four Paratransit Compressed Natural Gas Buses and One Clean Diesel Bus from Creative Bus Sales, Incorporated in Chino, California for the Stanislaus County Public Transit System

Morongo Basin Transit Authority (MBTA) and California Association for Coordinated Transportation (CalACT) established Cooperative Contract #11-03 (Options Year #2 – March 23, 2015). Stanislaus County can use the cooperative contract to purchase the paratransit buses at a lower cost based on the bid options approved by the State of California Department of Transportation (Caltrans). Under Federal Transit Administration (FTA) guidelines, transit agencies are afforded the opportunity to take advantage of the economies of scale to “piggyback” on the “assignability” provisions of other transit bus procurement contracts to minimize cost and maximize their buying power.

The Public Works Transit Division also continues to research other funding opportunities including the Section 5311(f), Section 5310, and the San Joaquin Valley Air Pollution Control District grant program funds to minimize the impact on using Local Transportation Funds (LTF) funding. If additional transit funding is awarded from any of the grant funding sources mentioned, staff will use these funds to backfill the use of LTF funds to procure these buses. The Transit Division is a registered member of CalACT, which is a requirement to participating in the CalACT/MBTA Purchasing Cooperative. Attached documents for participation in this procurement include a letter of assignment to purchase agreement and cooperative letter of assignment from CalACT.

POLICY ISSUE:

The Board of Supervisors’ approval is necessary to procure the buses to ensure the buses are delivered, accepted and placed in service in a timely manner to provide the required Americans with Disabilities Act (ADA) Complementary Paratransit Service.

FISCAL IMPACT:

The total cost for the purchase of the five paratransit buses is estimated to be \$779,682. This includes \$696,145 for the buses in addition to estimated costs of \$40,000 for sales taxes and vehicle licensing, estimated cost of \$19,530 for inspecting the buses, and an estimated cost of \$24,007 to install additional amenities on the buses.

The buses are funded by the use of \$279,682 of Local Transportation Funds (LTF) in the Fiscal Year 2015-2016 Public Works Local Transit Division Budget, and a \$500,000 grant award from the Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) Bond Program through the Stanislaus Council of Governments. Funds are included in the Fiscal Year 2015-2016 Public Works Transit Division Budget.

Approval to Purchase Four Paratransit Compressed Natural Gas Buses and One Clean Diesel Bus from Creative Bus Sales, Incorporated in Chino, California for the Stanislaus County Public Transit System

Cost of recommended action:		\$ 779,682
Source(s) of Funding:		
Local Transportation Funds	\$ 279,682	
PTMISEA	\$ 500,000	
Funding Total:		<u>\$ 779,682</u>
Net Cost to County General Fund		<u>\$ -</u>

Fiscal Year:	FY 2015-2016
Budget Adjustment/Appropriations needed:	No

Fund Balance as of:

BOARD OF SUPERVISORS' PRIORITY:

Approval of this action supports the Board's priority of A Well Planned Infrastructure System and Efficient Delivery of Public Services by ensuring the County's public transit system complies with Federal and State efficiency standards.

STAFFING IMPACT:

Existing Transit Division staff will work with the General Services Agency on the procurement process. In addition, staff will work with the vendor to finalize specifications for purchasing the buses.

CONTACT PERSON:

Matt Machado, Public Works Director Telephone: (209) 525-4153

ATTACHMENT(S):

1. Purchase Order Attachment for Paratransit Buses

Attachment 1

Purchase Order Attachment for Paratransit Buses

STANISLAUS COUNTY PUBLIC WORKS – TRANSIT DIVISION
PURCHASE ORDER ATTACHMENT
LIGHT AND MEDIUM DUTY PARATRANSIT BUSES

This agreement is made by and between THE COUNTY OF STANISLAUS, hereinafter referred to as "COUNTY", and CREATIVE BUS SALES, hereinafter referred to as "CONTRACTOR".

Whereas, the COUNTY has a need for Paratransit buses; and

Whereas, the CONTRACTOR can furnish the Paratransit buses the COUNTY needs; and

Whereas, the COUNTY is able to purchase the Paratransit buses from CONTRACTOR through the California Association for Coordinated Transportation (CalACT) and Morongo Basin Transit Authority (MBTA) Bid #11-03 and Awarded March 23, 2012, (Exhibit C), and desires to do so.

Now therefore in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

1. SCOPE OF WORK

CONTRACTOR shall furnish and deliver four Class C compressed natural gas paratransit buses and one Class E clean diesel paratransit bus to COUNTY, in accordance with Coordinated Transportation (CalACT) and Morongo Basin Transit Authority (MBTA) Bid #11-03 and Awarded March 23, 2012, (Exhibit C).

2. TIME AND PLACE OF PERFORMANCE

CONTRACTOR shall deliver the buses on or before June 30, 2016, to the address designated by COUNTY's Transit Manager.

3. CONTRACT PRICE

The amount to be paid to the CONTRACTOR is as follows:

- Quantity of 4 Class C light-duty StarCraft CNG paratransit bus at \$136,777 per bus, totaling \$547,108.
- Quantity of 1 Class E medium-duty Champion clean diesel paratransit bus at \$149,036 per bus totaling \$149,036, and
- Total cost of procuring the paratransit buses shall not exceed \$696,144.

4. CONTRACT DOCUMENTS

This agreement shall consist of the following documents, each of which is on file in the Office of the County of Stanislaus Public Works – Transit Division, and all of which are incorporated herein and made as part of hereof by reference hereto, including all additions and deletions agreed to by both parties.

- Exhibit A - Copy of Assignment to Purchase Agreement issued by CalACT
- Exhibit B - Copy of Cover Letter of Assignment.
- Exhibit C - Copy of Morongo Basin Transit Authority (MBTA) Contract #11.03 with Creative Bus Sales, Inc.
- Exhibit D – CalACT/MBTA Agreement for Accessible Transit/Paratransit Vehicles, Creative Bus Sales, Contract #7-12-23-15-05, Addendum #1

5. SERVICE OF NOTICE

Any notice required or permitted to be given under this Agreement shall be deemed given when personally delivered to recipient thereof or mailed by registered or certified mail, return receipt requested, prepaid postage, to the appropriate recipient thereof, addressed as follows:

CONTRACTOR:

Mr. Jay Holzhuter
Transit Sales Manager
Creative Bus Sales
14740 Ramona Avenue
Chino, CA 91710

COUNTY:

Eunice Lovi, Transit Manager
Stanislaus County Public Works – Transit Division
1010 10th Street, Suite 4204
Modesto, CA 95354

Or at any address which either party may subsequently designate in writing to the other party.

6. GOVERNING LAW

Notwithstanding anything to the contrary that may be in CalACT/MBTA Contract, this Agreement shall be governed and construed in accordance with the laws of the State of California. The parties agree that the venue for any court proceeding relating in any way to this Contract shall lie in Stanislaus County, California.

7. NON-DISCRIMINATION

CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to non-discrimination in employment regardless of race, creed, color, sexual orientation, marital status, physical or mental disability, or national origin.

8. CHANGES AND MODIFICATIONS

No modification of this Agreement shall be effective unless and until such modification is evidenced in writing signed by both parties.

CONTRACTOR – CREATIVE BUS SALES, INCORPORATED

BY: 

DATE: 2/9/2016

NAME: Anthony MATISEVICH

TITLE: President

AS APPROVED TO FORM:

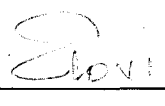
BY: _____

DATE: _____

NAME: _____

TITLE: _____

COUNTY – COUNTY OF STANISLAUS PUBLIC WORKS –TRANSIT DIVISION

BY: 


DATE: 3-18-2016

NAME: Eunice Levi

TITLE: Transit Manager

AS APPROVED TO FORM:

John P. Doering
County

BY: 

DATE: 2-2-10

Amanda DeHart
Deputy County Counsel



Assignment to Purchase Agreement

The California Association for Coordinated Transportation, "Assignor", hereby assigns Stanislaus County, "Assignee", the right to purchase Transit Vehicles ("Vehicles") from the Local Government Purchasing Schedule at a price and under the terms and conditions contained in Assignor's Contract # 11-03 with the Dealers listed on the Schedule. Only those vehicles and optional features may be purchased using the Schedule and the purchase may only be from a Seller listed on the Schedule. Specifically, the Assignment shall have the right to purchase:

- One (1) Champion, Class E, Cutaway Bus**
- Four (4) Class C Starcraft Buses**

Such ability to purchase base plus options commenced, per terms of Contract, on March 23, 2015 and may be exercised at any time on or before March 22, 2016.

With respect to the Vehicles assigned hereunder and this Assignment, Assignee agrees to perform all covenants, conditions and obligations required of Assignor under said Contract and agrees to defend, indemnify and hold Assignor harmless from any liability or obligation under said Contract. Assignee further agrees to hold Assignor harmless from any deficiency or defect in the legality or enforcement of the terms of said Contract or option to purchase there under. Assignee agrees and understands that Assignor is not acting as a broker or agent in this transaction and is not representing Seller or Assignee, but rather is acting as a principle in assigning its interest in the above-referenced assignment to purchase the vehicle under the Contract to Assignee.

Please be advised that assignment of said vehicles does not constitute a recommendation or endorsement of this product by the Cooperative. Stanislaus County, as the purchaser, is responsible for its choice of vehicle product and options selected and are responsible for vehicle inspection, acceptance and enforcement of any contract provisions.

Assignee hereby unconditionally releases and covenants not to sue Assignor upon any claims, liabilities, damages, obligations or judgments whatsoever, in law or in equity, whether known or unknown, or claimed, which they or either of them have or claim to have or which they or either of them may have or claim to have in the future against Assignor, with respect to the Vehicles or any rights whatsoever assigned hereunder. Date: January 6, 2016

Daniel Mundy



January 6, 2016

Eunice Lovi, Transit Manager
Stanislaus County Department of Public Works -Transit Division
Stanislaus Regional Transit
1010 10th Street, Suite 4204
Modesto, CA 95354

Re: Cooperative Letter of Assignment

Dear MS Lovi:

The CALACT-MBTA Vehicle Purchasing Cooperative is pleased to assign Stanislaus County one (1) Class E, Champion and four (4) Starcraft Class C, cutaway buses from Creative Bus Sales using Contract #11-03.

Please be advised that assignment of said vehicles does not constitute a recommendation or endorsement of this product by the Cooperative. Stanislaus County, as the purchaser, is responsible for its choice of vehicle product and options selected and are responsible for vehicle inspection, acceptance and enforcement of any contract provisions.

By accepting assignment, Stanislaus County agrees to hold harmless, indemnify and defend the Cooperative as per Section 3.0 (9.1) of contract #11-03 from any and all liabilities.

Thank you for purchasing your vehicles through the Cooperative. If you have any questions, please contact me at 916-920-8018.

Sincerely,

A handwritten signature in cursive script that reads "Dan Mundy".

Dan Mundy
Deputy Director

MBTA CONTRACT # 11-03 CBS

AGREEMENT REGARDING PURCHASE OF PARATRANSIT VEHICLES.

THIS AGREEMENT is made and entered into on May 10, 2012 between and among **CREATIVE BUS SALES, INC.**, a California corporation, with its principal place of business located at 13501 Benson Street, Chino, California California ("SELLER"), and **MORONGO BASIN TRANSIT AUTHORITY ("MBTA")**. SELLER and MBTA may be referred to herein individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, MBTA, by its Request for Proposals #011-03, duly advertised for written proposals to be submitted on or before 11:30 a.m. on December 14, 2011 for the purchase of Paratransit Vehicles ("BUSES") on behalf of the California Association for Coordinated Transportation ("CALACT") by the MBTA; and

WHEREAS, the MBTA's RFP is attached hereto as Exhibit "A", and is incorporated herein by reference as if set forth in full; and

WHEREAS, SELLER submitted a sealed bid in response to MBTA's Notice Inviting Proposals; and

WHEREAS, after it was determined that SELLER was the successful responsive and responsible bidder; and

WHEREAS, SELLER's proposal in response to MBTA's Notice Inviting Proposals is attached hereto as Exhibit "B", and is incorporated herein by reference as if set forth in full; and

WHEREAS, the MBTA Board of Directors has authorized the General Manager via Resolution to award contracts and accept SELLER'S bid through agreement by and between SELLER and MBTA upon the terms and conditions set forth herein; and

WHEREAS, MBTA has fully complied with all federal, state, and local laws governing the public bidding process for the purchase of the BUSES;

NOW, THEREFORE, incorporating the foregoing recitals herein, for and in consideration of the promises and of the mutual covenants and agreements herein contained, SELLER and MBTA hereby agree as follows:

1. **CONTRACT DOCUMENTS.** This Agreement, along with all Exhibits referenced herein, and including without limitation, all documents

referenced in said Exhibits shall hereinafter be referred to as the "Contract Documents." In the event of any conflict, the Contract Documents, including specifically RFP #11-03 and any addendums thereto, shall take priority in interpreting the respective rights and obligations of the Parties created by this Agreement. Any contract, agreement, or other document subsequently created by any Party in connection with a purchase order issued pursuant to this Agreement and which changes or otherwise modifies the terms and conditions set forth in the Contract Documents shall not be valid without the prior written approval of both of the Parties to this Agreement.

2. **DESCRIPTION OF BUSES PURCHASED.** SELLER hereby agrees that it shall sell the BUSES manufactured by Braun, Champion, Eldorado, Goshen and StarCraft as more particularly described in RFP #11-03 (attached hereto as Exhibit "B") to any and all CalAct/MBTA participants who desire to purchase such BUSES from SELLER. BUSES are to be vehicles with less than 4000 miles and that have never been previously registered.

3. **CONTRACT PRICING.** SELLER hereby agrees to sell such BUSES as more particularly described in RFP #11-03 (attached hereto as Exhibit "B") under the terms and conditions set forth in RFP #11-03.

4. **DELIVERY.** SELLER shall deliver F.O.B. per terms and conditions of MBTA RFP #11-03 Section SP 7.4 and as proposed.

5. **PAYMENT BY COOPERATIVE PARTICIPANTS.** SELLER shall collect payment from CalAct/MBTA participants within thirty (30) days after the delivery and acceptance of the BUSES by the participant, and a receipt of an invoice thereof, per RFP #11-03, Section SP 9.1 and 9.2.

6. **NO ASSIGNMENT.** Neither this Agreement, nor any interest in it, may be assigned or transferred by any Party without the prior written consent of all of the Parties to this Agreement.

7. **NO ATTORNEYS' FEES.** If litigation is required to enforce or interpret the provisions of this Agreement, neither SELLER nor the Cooperative shall be entitled to an award of attorneys' fees or costs, but shall be entitled to any other relief to which it may be entitled by law.

8. **MODIFICATION.** This Agreement may be modified only in a writing approved by the MBTA Board and signed by all Parties.

9. **GOVERNING LAW.** The laws of the State of California will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in San Bernardino County, California.

10. **NO WAIVER OF DEFAULT.** The failure of any Party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement.

11. **FURTHER ASSURANCES.** Each Party shall execute and deliver such papers, documents, and Instruments, and perform such acts as are necessary or appropriate, to implement the terms of this Agreement and the intent of the parties to this Agreement.

12. **BINDING EFFECT; CONTEXT; COUNTERPARTS.** Subject to Paragraph 6, the rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties to the contract and their heirs, administrators, executors, personal representatives, successors and assigns. Whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural. This Agreement may be executed in any number of counterparts, each of which shall be considered as an original and be effective as such.

13. **NON-INTEREST.** No officer or employee of the MBTA shall hold any interest in this Agreement (California Government Code section 1090).

14. **CORPORATE AUTHORITY.** Each individual signing this Agreement on behalf of an entity represents and warrants that he or she is respectively, duly authorized to sign on behalf of the entity and to bind the entity fully to each and all of the obligations set forth in this Agreement.

15. **INDEMNIFICATION.** SELLER shall indemnify, defend, and hold harmless MBTA, its officers, agents and employees against any and all liability, claims, actions, causes of action or demands whatsoever against them, or any of them, before administrative or judicial tribunals of an kind whatsoever, arising out of, connected with, or caused by SELLER'S employees, agents, independent contractors, companies, or subcontractors in the performance of, or in any way arising from, the terms and provisions of this Agreement whether or not caused in part by a party indemnified hereunder, except for MBTA's sole active negligence or willful misconduct.

16. **WARRANTY.** The BUSES are warranted by SELLER to be new and to be free from defects in material and workmanship pursuant to and in accordance with those certain manufacturer's warranties collectively attached hereto as Exhibit "B", and as submitted in response to RFP 11-03 by SELLER and incorporated herein by reference as if set forth in full. During said warranty periods, the BUSES shall maintain structural and functional integrity. The warranty is based on regular operation under operating conditions prevailing in the purchaser's operating area.

17. **WARRANTY OF FITNESS.** SELLER hereby warrants that the BUSES and all materials furnished shall meet the requirements and conditions of the Contract Documents and shall be fit for the purposes intended. Acceptance of this warranty and acceptance the BUSES and materials to be manufactured or assembled pursuant to the specifications in these Contract Documents shall not waive any warranty, either express or implied.

18. **NOTICE.** All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon depositing in the United States mail. The Parties shall be addressed as follows, or at any other address designated by proper notice:

MBTA: Joe Meer
General Manager
Morongo Basin Transit Authority
62405 Verbena Road
Joshua Tree, CA 92252

SELLER: Anthony Matijevitch
President
Creative Bus Sales, Inc.
13501 Benson Avenue
Chino, California

19. **EXECUTION.** This Agreement is effective upon execution by both Parties. It is the product of negotiation and all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

CREATIVE BUS SALES, INC.,
a corporation

By 
Anthony Matijevitch, President

Morongo Basin Transit Authority

By 
Joe Meer, General Manager

**CALIFORNIA PARTICIPATING ADDENDUM WITH CALIFORNIA ASSOCIATION FOR COORDINATED TRANSPORTATION (CalACT) & MORONGO BAY TRANSIT AUTHORITY (MBTA) COOPERATIVE AGREEMENT FOR ACCESSIBLE TRANSIT/PARATRANSIT VEHICLES
CREATIVE BUS SALES, INC.
CONTRACT NO. 7-12-23-15-05
ADDENDUM # 1**


- 1. **Scope:** This Participating Addendum covers the purchase of Accessible Transit/Para transit Vehicles for all State departments and will include all California political subdivisions/local governments. Depending on the contractor's award, as identified in the CalAct/MBTA Cooperative Agreement. A political subdivision (local government) is defined as any city, county, city and county, district, or other local governmental body or corporation, including the California State Universities (CSU) and University of California (UC) systems, K-12 schools and community colleges empowered to expend public funds. Each political subdivision (local government) should make its own determination whether the CalAct/MBTA Cooperative Agreement is consistent with their procurement policies and regulations.
- 2. **Changes/Adds:** The changes or additions to the products, user instructions, terms and conditions set forth in the signed CalAct/MBTA Cooperative Agreement and Participating Addendum are as follows:
 - a. The State of California, Department of General Services, Procurement Division (DGS/PD) is pleased to execute the attached Addendum No. 1 to extend the contract term for one additional year. State Departments may continue to use the CalAct/MBTA Cooperative Agreement, beginning upon DGS/PD approval signature until March 15, 2015.
 - b. State Departments may continue to use the CalAct/MBTA Cooperative Agreement for all listed product categories and maintenance in accordance with the CalAct/MBTA Cooperative Agreement contract number 7-12-23-15-05 for the following vehicle categories:


Class A, B, C Cutaway	Class E Medium Duty Buses
Class D Minivans	Class F&G Large Cutaway

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

This Addendum and the Price Agreement together with its exhibits and previous Addendums, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written; with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its specifications and previous Addendums shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Addendum No. 1 to the Participating Addendum as of the date of execution by both parties below:

State of California:
 Signed By: 
 Name: Jim Butler
 Title: Deputy Director
 Date: 4/14/14

Creative Bus Sales:
 Signed By: 
 Name: Anthony Matijevich
 Title: President
 Date: 4-8-14