



MARIPOSA COUNTY

Public Works • (209) 966-5356



RESOLUTION - ACTION REQUESTED 2016-444

MEETING: August 16, 2016

TO: The Board of Supervisors

FROM: Tony Stobbe, Public Works Director

RE: Vehicle Auction Services

RECOMMENDATION AND JUSTIFICATION:

Approve a Three-Year Agreement with First Capitol Auction, Inc. For Vehicle and Equipment Public Auction Services; and Authorize the Public Works Director to Sign the Agreement.

The County retires surplus vehicles and equipment that have reached the end of their economical and reliable life span on an annual basis. To maximize potential revenue from the public sale of retired County assets, the County has historically contracted with a bonded professional auction services provider. In the past, the services provider has been Brasher Auto Auctions in Rio Linda, California-- a firm that is no longer available to the County for these services.

Staff has reviewed a number of qualified firms that provide auction services and recommends contracting with First Capitol Auction, Inc. First Capitol offers both an in-person and online auction bid presence from their headquarters in Vallejo, California.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board has approved contracted procurement of these services in the past through Brasher Auto Auctions of Rio Linda, California. Although staff was satisfied with the service offered by this firm, they have notified the County that their services are no longer available to us.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Should this contract not be approved, retired vehicles will continue to stockpile and decline in value at the County Public Works Facility.

FINANCIAL IMPACT:

There is no Financial Impact envisioned through this action.

ATTACHMENTS:

First Capitol Auction, Inc 17-001 (PDF)

CAO RECOMMENDATION

Requested Action Recommended


Mary Hodson, CAO 8/10/2016

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Rosemarie Smallcombe, District I Supervisor

SECONDER: Marshall Long, District III Supervisor

AYES: Smallcombe, Jones, Long, Cann, Carrier

17-001

CONTRACT FOR SERVICES

This Contract made this 16th day of August, 2016 between:

COUNTY: Department of Public Works
4639 Ben Hur Road
Mariposa, CA 95338

and

CONTRACTOR: First Capitol Auction, Inc.
50 Solano Ave.
Vallejo, CA. 94590

ARTICLE I. TERM OF CONTRACT

1.01 Contract Term: This Contract shall become effective on July 27, 2016, and shall terminate June 30, 2019, unless terminated in accordance with the provisions of Article 7 of this Contract.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

2.01 Independent Contractor: It is the expressed intention of the parties that Contractor is an independent Contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Contract.

2.02 Contractor Qualifications: Contractor warrants that Contractor has the necessary experience and technical skills to provide services under this Contract.

2.03 Contract Management: Contractor shall report to the Public Works Director who will review the activities and performance of the Contractor and administer this Contract.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

3.01 Scope of Services: Contractor agrees to furnish the following services:
Contractor shall provide the services described in Exhibit "A" attached hereto.

No additional services shall be performed by Contractor unless approved in advance in writing by the County stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with County and the results of the work shall be monitored by the Public Works Director or his/her designee. However, the means by which the work is accomplished shall be the sole responsibility of the Contractor.

3.02 Method of Performing Services: Contractor will determine the method, details, and means of performing the above-described services including measures to protect the safety of the traveling public and Contractor's employees. County shall not have the right to, and shall not, control the manner or determine the method of accomplishing Contractor's services.

3.03 Employment of Assistants: Contractor may, at the Contractor's own expense, employ such assistants as Contractor deems necessary to perform the services required of Contractor by this Contract. County may not control, direct, or supervise Contractor's assistants or employees in the performance of those services.

Contractor assumes full and sole responsibility for the payment of all compensation and expenses of these assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

ARTICLE 4. COMPENSATION

4.01 Compensation: In consideration for the services to be performed by Contractor, County will receive funds for vehicles and equipment sold by Contractor as shown on Exhibit "A" attached hereto.

4.02

Total sum to be paid upon completion of services.

or

Incremental payments based on the following schedule:

Funding Source: 702-0253-308-1200, 703-0310-308-1200, 704-0304-308-1200

4.02 Invoices: Contractor shall submit detailed invoices for all services being rendered from the Contractor to the County. All invoices shall reference contract number.

4.03 Date for Payment of Compensation: County will endeavor to make payment within 45 days of invoices being submitted from the Contractor to the County, and approval and acceptance of the work by the County.

4.04 Expenses: Contractor shall be responsible for all costs and expenses incident to the performance of services for County, including but not limited to, all costs of materials, equipment, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor

and all other of Contractor's costs of doing business. County shall not be responsible for any expense incurred by Contractor in performing services for County.

ARTICLE 5. OBLIGATIONS OF CONTRACTOR

- 5.01** Tools and Instrumentalities: Contractor will supply all tools and instrumentalities required to perform the services under this Contract. Contractor is not required to purchase or rent any tools, equipment or services from County. County shall not provide working space, supplies, materials or other such support to Contractor in the performance of the services and tasks as described herein.
- 5.02** Indemnification: Contractor shall indemnify and hold County harmless against any and all liability imposed or claimed, including attorney's fees and other legal expenses, arising directly or indirectly from any act or failure of Contractor or Contractor's assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property. Contractor agrees to maintain a policy of liability insurance in the minimum amount of One Million Dollars (\$1,000,000) to cover such claims or in an amount determined appropriate by the County Risk Manager. Contractor shall furnish a certificate of insurance evidencing such insurance and naming the County as an additional insured for the above-cited liability coverage prior to commencing work. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by County of insurance certificates and endorsements required under this Contract does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Contract, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- 5.03** General Liability and Automobile Insurance: During the term of this Contract Contractor shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least \$1,000,000 combined limit for bodily injury and property damage; provided that the County, its officers, employees, volunteers and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that no other insurance effected by County or other named insureds will be called on to cover a loss covered thereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The County will be named as an additional insured using ISO form CG 2010 1185 or the same form with an edition date no later than 1990, or in other form satisfactory to County.
- 5.04** Certificate of Insurance: Contractor shall complete and file with the County prior to engaging in any operation or activity set forth in this Contract, certificates of insurance evidencing coverage as set forth in paragraphs 5.03 and 5.05 which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Contract, without thirty (30) days written notice to County prior to the effective date of such cancellation.

- 5.05** Workers' Compensation: During the term of this Contract Contractor agrees to provide workers' compensation insurance for Contractor's employees and agents and agrees to hold harmless and indemnify County for any and all claims arising out of any injury, disability, or death of any of Contractor's employees or agents.
- 5.06** Public Employees Retirement System (CalPERS): In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Contract is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.
- 5.07** State and Federal Taxes: As Contractor is not County's employee; Contractor is responsible for paying all required state and federal taxes. In particular:
- a. County will not withhold FICA (Social Security) from Contractor's payments;
 - b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
 - c. County will not withhold state or federal income tax from payment to Contractor;
 - d. County will not make disability insurance contributions on behalf of Contractor;
 - e. County will not obtain workers' compensation insurance on behalf of Contractor.
- 5.08** Records: It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Contract shall be the property of the County, and Contractor hereby agrees to deliver the same to the County upon request. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Contract are prepared specifically for the County and are not necessarily suitable for any future or other use.
- 5.09** Contractor's Books and Records: Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the County for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the County.

5.10 Assignability of Contract: It is understood and agreed that this Contract contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Contract will be permitted only with the express written consent of the County.

ARTICLE 6. OBLIGATIONS OF COUNTY

6.01 Cooperation of County: County agrees to comply with all reasonable requests of Contractor and to provide access to all documents as permitted by law necessary to the performance of Contractor's duties under this Contract.

6.02 Assignment: Neither this Contract nor any duties or obligations under this Contract may be assigned by County without the prior written consent of Contractor.

ARTICLE 7. TERMINATION OF CONTRACT

7.01 Termination on Occurrence of Stated Events: This Contract shall terminate automatically on the occurrence of any of the following events:

1. Bankruptcy or insolvency of Contractor;
2. Death of Contractor.

7.02 Termination by County for Default of Contractor: Should Contractor default in the performance of this Contract or materially breach any of its provisions, County, at County's option, may terminate this Contract by giving written notification to Contractor.

7.03 Termination for Convenience of County: County may terminate this Contract at any time by providing a notice in writing to Contractor that the Contract is terminated. Said Contract shall then be deemed terminated and no further work shall be performed by Contractor. If the Contract is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

7.04 Termination of Funding: The parties acknowledge that the nature of government finance is unpredictable and that the rights and obligations set forth in this Contract are necessarily contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Contract and all obligations of County arising from this Contract shall be immediately discharged. County agrees to inform Contractor no later than thirty (30) calendar days after County determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available.

ARTICLE 8. GENERAL PROVISIONS

- 8.01** Notices: Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Contract, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.
- 8.02** Entire Agreement of the Parties: This Contract supersedes any and all contracts, either oral or written, between the Parties hereto with respect to the rendering of services by Contractor for County and contains all the covenants and contracts between the Parties with respect to the rendering of such services in any manner whatsoever. Each Party to this Contract acknowledges that no representatives, inducements, promises, or contracts, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, which are not embodied herein, and that no other contract, statement, or promise not contained in this Contract shall be valid or binding. Any modification of this Contract will be effective only if it is in writing signed by the Party to be charged and approved by the County as provided herein or as otherwise required by law.
- 8.03** Partial Invalidity: If any provision in this Contract is held by a court or competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 8.04** Attorney's Fees: If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Contract, the prevailing Party will be entitled to reasonable attorney's fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that Party may be entitled.
- 8.05** Conformance to Applicable Laws: Contractor shall comply with the standard of care regarding all applicable federal, state and county laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons who work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.
- 8.06** Waiver: In the event that either County or Contractor shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or any other covenant, condition or obligation.
- 8.07** Governing Law: This Contract and all matters relating to it shall be governed by the laws of the State of California and County of Mariposa and any action brought relating to this Contract shall be held exclusively in a state court in the County of Mariposa.

Executed in Mariposa, California, on the date and year first above written.

CONTRACTOR:
First Capitol Auction, Inc.

By: [Signature] 8/3/16
(signature) (date)

COUNTY:
County of Mariposa

By: [Signature] 8/16/16
Tony Stobbe (date)
Public Works Director

APPROVED AS TO FORM:

By: [Signature] 8-19-16
Steven W. Dahlem (date)
County Counsel

EXHIBIT "A"

AUCTION SERVICES AGREEMENT

For

COUNTY OF MARIPOSA

4639 BEN HUR ROAD

MARIPOSA, CA 95338

ATTN: BRAD JOUETT

VIA EMAIL: BJOUETT@MARIPOSACOUNTY.ORG

Submitted by:

FIRST CAPITOL AUCTION INC.

50 SOLANO AVENUE

VALLEJO, CA 94590

PHONE: (707) 552-0739

FAX: (707) 552-8613

EMAIL: Auctioncap@aol.com

WEB: 1stcapitolauction.com

DATE: March 14, 2016

AUCTION AGREEMENT

FIRST CAPITOL AUCTION INC., now hereinafter referred to as ("Auctioneer") and the undersigned ("Seller") agree as follows:

1. **AGENCY.** Seller hereby appoints Auctioneer as its agent to conduct a Public Auction of personal property described below. Auctioneer shall be an independent contractor. Seller authorizes and confers upon Auctioneer the power to take all actions on its behalf necessary to complete the auction. Such as accepting cash or checks on behalf of Seller in payment for property sold, signing on behalf of Seller as the registered and/or legal owner of any motor vehicles sold to affect a transfer, and satisfying or compromising secured parties who hold or assert a lien on any Property sold at auction. Seller hereby agrees to sell the Property to the highest bidder with no minimums or reserves.
2. **AUCTIONS AND PROPERTY.** Auctioneer conducts public auctions approximately six to eight times a year at 50 Solano Avenue, City of Vallejo, State of California. None of the property may be sold before the auction without the written consent of both parties, in which case the sales proceeds shall be treated as part of the gross proceeds of the auction. All of the Property shall be at the auction at least one week prior to the auction and in the event of a failure of Seller to deliver said Property, or if Seller shall breach this contract, Seller agrees to pay the other costs as provided below and said commission based on market value of said property. Auctioneer is a fully licensed auto dealer and is bonded with the State of California. Vehicles will not be offered at auction unless the Certificates of Ownership and all other documents necessary to affect a transfer of title for Motor Vehicles, Trailers and Towable Property are submitted to Auctioneer at least seven (7) business days prior to the sale. All property submitted for auction shall be free and clear of any toxic waste and/or environmental hazards. If these items are not environmentally safe, they may incur additional fees or disposal costs.
3. Auctioneer is in compliance with all State of California environmental requirements as well as in compliance with all current California Air Resource Board (CARB) requirements. For all CARB sales, the seller must identify all non compliant vehicles & equipment to Auctioneer. The seller, as the legal owner, must complete the "VIN Stop Request" form and submit it to CARB. The two (2) pages "Out of State Sales Verification" forms should be submitted to Auctioneer upon delivery of the vehicle with "Selling Party's Information, Vehicle Information and Engine Information" filled out. Auctioneer will in turn complete the "Purchaser Information" at the time of the sale notifying the buyer the item(s) cannot be registered or operated in the State of California without being retrofitted to meet CARB requirements. Auctioneer will provide seller with copies of the purchaser's information (disclosure statement) and maintain records for three (3) years as required by Section 2449(j) of the California Air Resource Board regulation. All CARB sales are sold "Demand Title." In order to complete the sale Auctioneer must have the original title otherwise the sale cannot be completed. The Auctioneer will submit all forms back to the Seller for their records with payment.

4. COMMISSION AND EXPENSES

A. Commission (Selling Fees)

- | | |
|--|-----------|
| 1. Motor Vehicles and Off Road Vehicles | No Charge |
| 2. Miscellaneous Property (Non-motor or Off Road Vehicles) | No Charge |
| 3. Non running vehicles | No Charge |
| 4. State of California Vehicle Safety Inspection | No Charge |
| 5. Smog Service | No Charge |
| 6. CARB Administrative Fee | No Charge |
| 7. Duplicate Title | No Charge |

B. Transportation Charges and Other Services (All charges based on full loads)

- | | |
|--|----------------|
| 1. Standard Towing: Running Vehicles (minimum of 5 vehicles) | \$200/Veh |
| 2. Standard Towing: Non-Op Units. | See low bed |
| 3. Low Bed Trailer Service (Equip/Med to Large Trucks) | \$1100.00/Load |
| 4. Surplus Personal Property (Miscellaneous) | No Charge |
| 5. Minor De-Logo (no paint) | No Charge |
| 6. Exempt Plates: Processing "E" Plates | No Charge |
| 7. Storage Fees | No Charge |

C. Additional Services Provided to the Public

1. Free Color Sales Brochure
2. Free Permanent Bidder Program (encouraging return bidders)
3. Free Auction Sale Catalog (this is an important selling aid for the buyer)
4. Three (3) way to bid at First Capitol Auction Inc.; live, absentee or online

5. SECURITY INTEREST. Seller hereby gives Auctioneer a security interest in the Property and Equipment listed herein and now owned and hereinafter acquired by Seller (including insurance) and in the sales proceeds, in order to secure any and all advances which may be made to or on behalf of the Seller by Auctioneer and to secure any and all other obligations that the Seller may owe Auctioneer arising out of or in connection with this Agreement, the Property, and or any other agreement, transaction, or Property involving Seller and Auctioneer. Auctioneer shall have all the rights of a secured creditor under the Uniform Commercial code and Seller agrees to execute a financing statement enabling Auctioneer to perfect this security interest as a first lien on the Property listed herein.

6. REPRESENTATION AND INDEMNITY BY SELLER. Seller represents and warrants that title to the Property is and will be at the time of the auction, free and clear of any and all liens, security interests, encumbrances, rights and claims other than those of Auctioneer pursuant to this Agreement, Seller further represents and warrants that Seller has used no other business name or address other than the names and addresses specified in this Agreement.

Auctioneer hereby indemnifies, defends and holds Seller harmless from and against any and all losses, costs, expenses, demands, claims, causes of action and liabilities (including without limitation, reasonable attorney's fees) (collectively "losses and liabilities") related directly or indirectly to, arising out of, or in connection with the performance of services by Auctioneer under this Agreement, caused in whole or in part by the willful misconduct or any negligent act or omission of the Auctioneer, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of Seller.

Auctioneer and its consignors will indemnify and hold harmless Selling agency, its boards, commissions, officers and employees in performance of services here under. Auctioneer will provide comprehensive general liability insurance not less than \$1,000,000.

7. GENERAL PROVISIONS

1. Within fifteen (15) banking days after the auction date, Auctioneer shall present a full accounting of the sales proceeds and expenses, and shall, if requested, document the accounting by invoices and/or vouchers. With such accounting, Auctioneer shall present Seller with a check for all monies due from such action unless delayed by legal proceedings or inability of Auctioneer, through no fault of its own, to transfer title or to comply with the Uniform Commercial code or other laws. Auctioneer reserves the right to eliminate from settlement any property for which payment has not been made and Seller agrees to accept responsibility for reclaiming same wherever located. Auction may at their own discretion charge a buyer's premium.