

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

June 18, 2025

FROM

BRADY GERGOVICH, Agricultural Commissioner / Sealer, Department of Agriculture / Weights & Measures

SUBJECT

Purchase of One Slip-On Calibration Unit Fixed Asset from Seraphin

RECOMMENDATION(S)

Approve Quote (Quote No. PEMQ 5379) (**Agreement No. 25-459**), including non-standard terms, with Seraphin, a division of Pemberton Fabricators, Inc., for the purchase of one Slip-On Calibration Unit used for testing the accuracy of gasoline and diesel dispensers, for a total cost of \$35,075.56.

(Presenter: Brady Gergovich, Agricultural Commissioner / Sealer, 387-2115)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). Sufficient appropriation and revenue have been included in the Department of Agriculture / Weights & Measures (AWM) 2024-25 budget.

BACKGROUND INFORMATION

This item seeks approval for the purchase of one Slip-On Calibration Unit (Unit), which will test the accuracy of gasoline and diesel dispensers at service stations. The Unit is used to ensure that commercially operated gasoline and diesel dispensers at service stations are accurate and that the amount charged for gasoline and diesel per gallon is correct.

AWM currently has seven Units in use that were previously purchased from Seraphin, which is a division of Pemberton Fabricators Inc. (Pemberton), under the same Terms and Conditions in the recommended Quote (Quote No. PEMQ 5379) (Quote). Pemberton is the sole source manufacturer of the Units and Seraphin is the sole source distributor of these Units.

AWM is seeking approval to purchase an additional unit due to the growth and development within the county. Additional retail motor fuel stations are being built within the county and the unit will be used to complete inspections at these additional places of business.

This program is state mandated as outlined in Business & Professions Code §12210. Each Sealer shall, within his or her county inspect, try, and test all mechanical devices for measurement, and tools, appliances and accessories connected with any or all such

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instruments or measures, sold or used by any proprietor, agent, lessee or employee for commercial purposes.

The Quote contains the following non-standard terms, which require Board of Supervisors approval:

1. The Quote's payment terms is net 30 days. A late payment in the form of interest at the rate of 2% per month, or a service charge of like amount, will be levied on all late payments (the type of charge being consistent with the applicable local law).
 - The County Standard Term payment is net 60 days with no interest or late payment penalties.
 - Potential Impact: Inclusion of this non-standard term will require payment by the earlier date and may subject the County to interest and penalties for late payment.
2. The Quote's venue of law is that the contract shall be governed by the laws of the State of New Jersey, with venue exclusively in the US District Court of New Jersey or the New Jersey State Courts in Burlington County, New Jersey.
 - The County Standard Term is governing law is the State of California, and venue is San Bernardino County.
 - Potential Impact: Inclusion of this non-standard term would require the County to seek any legal relief, in the event necessary, by filing a lawsuit in New Jersey utilizing New Jersey law, which may be more unfavorable than California law. The County would need to be represented by an attorney who is licensed in the State of New Jersey as well.
3. The Quote is silent on the payment of attorney fees and costs.
 - The County Standard Term is neither party is responsible for paying for the other party's attorney's fees and costs, except for indemnity obligations.
 - Potential Impact: Inclusion of this non-standard term can potentially lead to an expense to the County.
4. The Quote's Limitation of Liability states that the Seller's total aggregate liability (arising out of or in connection with but not limited to any breach of contract, negligence, tort, liquidated damages, specific performance, termination, cancellation including the repaying on the contract price or parts thereof, fundamental breach, failure of essential purpose, breach or warranties, misrepresentation, nonperformance, nonpayment, or any other) whether based in contract, in tort, in equity, on statute, at law or on any other theory of law, shall not exceed the paid contract price. No action, regardless of form, arising out of the transactions of the agreement may be brought by the buyer. Neither buyer nor seller will be liable to the other for incidental, special or consequential damage, lost profits, or indirect damage of any kind or nature whatsoever. No action, regardless of form arising out of the transactions of the agreement may be brought by the buyer more than one year after the cause of action has accrued.
 - The County Standard Term does not allow the contractor to limit its liability in the performance of the contract.
 - Potential Impact: The limitation of liability term contained in the agreement would limit any damage the County could recover in lawsuit to just the price paid for the item. For example, should the equipment cause damage to a person or property,

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the County could not seek recovery of those damages beyond the price actually paid for the equipment.

5. The Quote does not require Seraphin to meet the County's insurance standards as required pursuant to County Policies, 11-05, 11-07 and 11-07SP.
 - County policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Department of Risk Management and as set forth in County policy and in the County standard contract.
 - Potential Impact: The County has no assurance that Seraphin will be financially responsible for claims that may arise under the Agreement, which could result in expenses to the County that exceed the total Agreement amount.
6. The Quote does not require Seraphin to indemnify the County, as required by County Policies 11-05 and 11-07.
 - The County standard contract indemnity provision requires the contractor to indemnify, defend, and hold County harmless from any and all claims arising out of the acts, errors or omissions of any person.
 - Potential Impact: Seraphin is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Seraphin's negligent or intentional acts and intellectual property infringement. If the County is sued for any claim, including intellectual property infringement based on its use of Seraphin's services, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount.
7. The County is required to indemnify Seraphin against any proven claim and assessed liability for infringement of any United States Patent arising from the specifications, process and design of any apparatus supplied by the County.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify Seraphin, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against Seraphin without such limitations and the County could be responsible to reimburse Seraphin for costs, expenses, and damages, which could exceed the total Agreement amount.
8. The Quote imposes insurance obligations on the County.
 - The standard County contract does not include any insurance requirements for the County.
 - Potential Impact: The County must be mindful of the insurance obligations and ensure that it maintains all the necessary insurance policies or programs of self-insurance required under the Agreement or risk being in breach of the Agreement terms.

AWM recommends approval of the Quote for the purchase of one Unit, including all non-standard terms, as Pemberton is the sole source manufacturer and Seraphin is the sole provider of this equipment.

PROCUREMENT

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Purchasing supports the non-competitive procurement of the Unit due to equipment and system compatibility. AWM personnel are already trained to use this brand's equipment, which is also compatible with existing AWM equipment systems and meets state requirements.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Brett Davison, Deputy County Counsel, 387-5455) on June 5, 2025; Purchasing (Ariel Gill, Supervising Buyer, 387-2070) June 5, 2025; Risk Management (Greg Ustaszewski, Staff Analyst II, 386-9008) June 5, 2025; Finance (Eduardo Mora, Administrative Analyst, 387-4376) on June 6, 2025; and Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on June 6, 2025

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.

Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: June 18, 2025



cc: AWM - Gergovich w/ agree
Contractor c/o AWM w/ agree
File w/ agree

JLL 06/26/2025