

City and County of San Francisco
Office of Contract Administration
Purchasing Department
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685



Contract Modification 1

TATTOO REMOVAL EQUIPMENT RENTAL

PRI Medical Technologies, Inc
c/o Louis Butther, President
10939 Pendleton Street
Sun Valley, CA 91352

Date: April 21, 2009
Buyer's Name: John Danaher
Term contract: **60810**
Type: Indefinite quantity
Not-to-exceed amount: \$1,000,000

The history of this contract and its modifications is as follows:

Modification	Start date	End date	Amount	other changes
Original Contract	5/01/06	4/30/09	\$1,000,000	
Modification 1	5/01/09	4/30/10	No Change	12 Months Extension

This modification 1 changes the contract as follows:

It extends the contract from May 1, 2009 to April 30, 2010. Service rates for contract are unchanged.

The following Conditions have been replaced and added to Contract 60810 (See Attachment A).

All other terms and conditions remain the same.

Approved by the City:



Naomi Kelly, Director of OCA and Purchaser

4-22-09
Date

Approved by Contractor:



Signature

5-19-09
Date

Name and title

Louis Butther, President

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Replace the following Conditions to the Contract:

49. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter in an agreement with the City for any other work that it performs in the City. Such agreement shall:

- (1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.
- (2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

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- (3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.
- (4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.
- (5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.
- (6) Set the term of the requirements.
- (7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.
- (8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.
- (9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

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c. Liquidated Damages

Contractor agrees:

- (1) To be liable to the City for liquidated damages as provided in this section;
- (2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- (3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- (4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;
- (5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:
 - A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and
 - B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

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- (6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and
- (7) That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

50. MINIMUM COMPENSATION ORDINANCE ("MCO") (waived)

- a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at :

http://www.sfgov.org/site/olse_index.asp?id=27459

A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

- b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. The required wage is posted on the Web at:

http://www.sfgov.org/site/olse_index.asp?id=27459

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractor of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

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- c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.
- d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.
- e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor.
- f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.
- g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.
- h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.
- i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

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51. REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES

(waived)

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

- a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.
- b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.
- c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.
- d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.
- e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.
- f. Contractor represents and warrants that it is not an entity that was set up, or is being used for the purpose of evading the intent of the HCAO.

CITY AND COUNTY OF SAN FRANCISCO

GAVIN NEWSOM, MAYOR

DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF LABOR STANDARDS ENFORCEMENT
 DONNA LEVITT, MANAGER

ADPICS document # BPSF00003227

Minimum Compensation Ordinance (MCO) Exemption and Waiver Request

If a Contracting Department determines that an agreement qualifies for an Exemption or Waiver from the Minimum Compensation Ordinance (MCO), it shall submit this Exemption and Waiver Request form (P-360) to the Office of Labor Standards Enforcement (OLSE) along with any supporting documentation and certify in writing that the agreement meets the requirement of the particular Exemption or Waiver requested.

Department: Department of Public Health Date Submitted: April 27, 2009
 Contact Name: Dr. Pierre Marie-Rose Phone: 415/753-7717
 Vendor Name: PRI Medical Technologies, Inc. Vendor No.: 69366
 Contract \$ Amount: \$37,000/yr.

Exemption Request

This transaction is exempt from MCO because: (Check the appropriate box.)

- The contract was signed before October 8, 2000, or the contract is based on an RFP issued before October 8, 2000 with no Change Notices issued after that date.
- The number of contractor's employees, plus the number of any parent, subsidiaries, or subcontractor's employee is 5 or fewer (or, for contracts signed before October 14, 2007 or based on an RFP issued before October 14, 2007 with no Change Notices issued after that date, 20 or fewer). Contractor's documentation is attached.
- During this fiscal year, this department's transactions with the contractor, including this contract, total less than \$25,000. This contract's amount for this fiscal year is \$_____. The contractor's total contracts with the City this fiscal year, including this contract, amount to \$_____. (Attach ADPICS Screen 2440, Purchase Orders/Contracts By Name)
- Other: _____ (Reference the MCO Chapter 12P.2 "Definitions" and cite the specific "Excluded Contracts" section (2A) thru (16) under which the Exemption is requested. Documentation may be needed, depending on the exemption, but is not required for contracts with public entities.)

Waiver Request

This transaction is appropriate for a waiver based on the indicated section of Chapter 12P: (Check the appropriate box; the contracting department must attach documentation.)

- XX** Sole source. (12P.7(a)) (Attach the OCA P-21.5(b) Sole Source Waiver Request.)
- Emergency. (12P.7(b))
- No vendors comply. (12P.7(c))
- Bulk purchasing. (12P.7(d))
- Nonprofit Corporation: economic hardship, impact on services, or no increase in contract allocation to cover CPI increase. Include a statement from the nonprofit corporation. (12P.8)
- PUC. Bulk water, electricity or natural gas; or spinning reserve, voltage control, or loading scheduling. (12P.9)

Collective Bargaining. Include relevant portions of the collective bargaining agreement. The agreement must explicitly waive MCO benefits. (12P.10)

Department Signature

Request submitted by department head or authorized representative:

John Danaher
Signature

JOHN DANAHER, Purchaser
Print Name

Instructions

ADPICS document number: This is very important. If possible, create the ADPICS document for this transaction **before** you submit this form. If that is not possible, create the ADPICS document as soon as possible thereafter, and call or e-mail OLSE and give them the number. If you create a requisition, the document # will begin with "RQ." If you create a purchase order, the document # will begin with "PO." If you create a blanket, the document # will begin with "BP."

Contact Name: The person in your office OLSE should call for more information.

Vendor Number: Check the vendor file. In ADPICS, go to screen 9600 (Vendor Name Inquiry), enter the contractor's name and press Enter. If a match comes up, go to screen 9510 (Vendor Header) to confirm it's the correct vendor.

Exemption Category: See the definition of "contract" in 12P.2 for a list of transactions that are exempt from the MCO. The three most common categories are listed. If the exemption is based on the number of employees, keep the original of the contractor's documentation and attach a copy to this form.

Waiver Category: See the indicated sections of Chapter 12P for details on each type of waiver.

Waiver Documentation: OLSE needs documentation to consider your waiver request. If you submit this form without documentation, the request cannot be processed.

Routing Instructions

Send this form (plus any documentation) to OLSE. Keep copies. After OLSE approves or disapproves the request, OLSE will return the request form to you. The completed Exemption/Waiver Request form, plus any supporting documentation should be attached to the contract package.



Office of Labor Standards Enforcement use only! OLSE Request Code: 12 P 2 (A)

Action: Approved [] Disapproved

Signature: *Jeray K. Alshire Sr* Date: 4-4-09

Print Name: Jeray K. Alshire Sr

CITY AND COUNTY OF SAN FRANCISCO

GAVIN NEWSOM, MAYOR

DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF LABOR STANDARDS ENFORCEMENT
 DONNA LEVITT, MANAGER

ADPICS document # BPSF00003227

Health Care Accountability Ordinance (HCAO) Exemption and Waiver Request

If a Contracting Department determines that an agreement qualifies for an Exemption or Waiver from the Health Care Accountability Ordinance (HCAO), it shall submit this Exemption and Waiver Request form (P-365) to the Office of Labor Standards Enforcement (OLSE) along with any supporting documentation and certify in writing that the agreement meets the requirement of the particular Exemption or Waiver requested.

Department: Department of Public Health Date Submitted: April 27, 2009
 Contact Name: Dr. Pierre Marie-Rose Phone: 415/753-7717
 Vendor Name: PRI Medical Technologies, Inc. Vendor No.: 69366
 Contract \$ Amount: \$37,000/yr.

Exemption Request

This transaction is exempt from HCAO because: (Check the appropriate box.)

- The contract was signed before July 1, 2001, or the contract is based on an RFP issued before July 1 with no Change Notices issued after July 1.
- The Contract duration is for less than one year.
- During this fiscal year, this department's transactions with the contractor, including this contract, total less than \$25,000 or less than \$50,000 if the contractor is a nonprofit. This contract's amount for this fiscal year is \$_____. The contractor's total contracts with the City this fiscal year, including this contract, amount to \$_____. (Attach ADPICS screen 2440, Purchase Orders/Contracts By Name)
- Other: (Reference the HCAO Chapter 12Q.2.4 "Contract" and cite the specific "Excluded Contracts" section (a) thru (b)(16) under which the exemption is requested.)_____. (Documentation may be needed, depending on the exemption, but is not required for contracts with public entities.)

Prime Contractor is Exempt, but Subcontractors are not

- The prime contractor is exempt from HCAO because at the time the contractor signed the contract, it, and any parent or subsidiary companies, had 20 or fewer employees if the contractor is a for-profit company, or 50 or fewer employees if the contractor is a non-profit. The number of employees includes any employees the contractor plans to hire to fulfill this contract. The department has attached documentation from the contractor.

Waiver Request

This transaction is appropriate for a waiver based on the indicated section of Chapter 12Q: (Check the appropriate box.)

- Collective Bargaining Agreement.** The contracting department has attached documentation, including relevant portions of a bona fide collective bargaining agreement in which all or any portion of the applicable requirements of HCAO is waived, providing such waiver is explicitly set forth in the agreement in clear and unambiguous terms. Sec.12Q.8

- Sole Source.** The contracting department has attached documentation. Sec. 12Q.6(a)(1). Attach OCA P-21.5(b) Sole Source Waiver Request.
- Emergency.** The contracting department has attached documentation. Sec. 12Q.6(a)(2).
- No vendors comply.** The contracting department has attached documentation. Sec. 12Q.6(a)(3).
- Public Interest.** The waiver is needed because HCAO would cause an adverse impact on services or unreasonable adverse financial impact on City. Sec. 12Q.6(a)(4).
- Bulk Purchasing.** The contracting department has attached documentation. Sec. 12Q.6(a)(5)
- PUC.** Bulk water, electricity or natural gas; or spinning reserve, voltage control, or loading scheduling. Sec. 12Q.7.

Department Signature:

Request submitted by department head or authorized representative:

John Danaher
Signature

JOHN DANAHER
Print Name



Instructions

ADPICS document number. This is very important. If possible, create the ADPICS document for this transaction before you submit this form. If that is not possible, create the ADPICS document as soon as possible thereafter, and call or e-mail OLSE and give them the number. If you create a requisition, the document # will begin with "RQ." If you create a purchase order, the document # will begin with "PO." If you create a blanket, the document # will begin with "BP."

Contact name. The person OLSE should call for more information.

Vendor Number: Check the vendor file. In ADPICS, go to screen 9600 (Vendor Name Inquiry), enter the contractor's name and press Enter. If a match comes up, go to screen 9510 (Vendor Header) to confirm it's the correct vendor.

Exemption Category: See the definition of "contract" in 12Q.6 for a list of transactions that are exempt from the HCAO. The four most common categories are listed. Attach documentation as indicated.

Waiver Category: See the indicated sections of Chapter 12Q for details on each type of waiver.

Waiver Documentation: OLSE needs documentation to consider your waiver request. If you submit this form without documentation, the request cannot be processed.

Routing Instructions

Send this form (plus any documentation) to OLSE. Keep copies. After OLSE approves or disapproves the request, OLSE will return the request form to you. The completed Exemption/Waiver Request form, plus any supporting documentation should be attached to the contract package.



Office of Labor Standards Enforcement use only! OLSE Request Code: 12Q6(a)(1)

Action: Approved Disapproved

Signature: *Troy K. Ashmore Sr.* Date: 5-4-09

Print Name: TROY K. ASHMORE SR