

Alameda County Sheriff's Office

Lakeside Plaza, 1401 Lakeside Drive, 12th Floor, Oakland, CA 94612-4305



Gregory J. Ahern, Sheriff

Director of Emergency Services
Coroner - Marshal

July 5, 2018

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, CA 94612-4305

SUBJECT: AMEND AND INCREASE THE CONTRACT FOR FORENSIC PATHOLOGY SERVICES III, MASTER CONTRACT NO. 900996 AMOUNT: \$400,000

Dear Board Members:

RECOMMENDATION:

Authorize the Purchasing Agent to amend Master Contract No. 900996 with the following contractors to provide forensic pathology services to the Alameda County Sheriff's Office, increasing the contract amount from \$1,175,000 to \$1,575,000 (\$400,000 increase), and extending the current term of 5/16/13 – 8/31/18 by one year until 8/31/19.

- A. PathologyExpert, Inc. (Principal: Judy Melinek, M.D.; Location: San Francisco), increase from \$925,000 to \$1,075,000 (\$150,000 increase), Procurement Contract No. 9407; and
- B. Paul W. Herrmann, M.D. Inc. (Location: San Rafael), increase from \$250,000 to \$500,000 (\$250,000 increase), Procurement Contract No. 14990.

DISCUSSION/SUMMARY:

On May 7, 2013, your Board approved (File No. 28737, Item No. 41) a three-year contract with Judy Melinek, M.D. to provide pathology services. Dr. Melinek signed the contract with the County of Alameda as a sole proprietorship. On July 29, 2013 she amended the articles of incorporation and became a corporation. On September 4, 2013, the General Services Agency (GSA) approved a consent to assignment of the contractor, Dr. Judy Melinek M.D. "Assignee" and PathologyExpert, Inc. "Assignor". On June 20, 2017, your Board approved (Item No. 72) a one-year contract with Paul W. Herrmann, M.D. Inc. to provide forensic pathology services. Due to the shortage of qualified forensic pathologists, your Board has approved three amendments to this contract, increasing the total contract funding to \$925,000 and extending the expiration date to July 31, 2018. On July 16, 2018, GSA approved a one-month extension until 8/31/18.

The Coroner's Bureau requires the availability of three to four part-time pathologists to perform an estimated 1,200 autopsies and related toxicology services. Four part-time pathologists are

currently providing forensic pathology services, two of which are PathologyExpert, Inc. and Dr. Paul W. Herrmann. These forensic pathologists provide services on an “as needed” basis.

The contract allows for this extension by mutual agreement for these forensic pathologists to continue provide services as needed.

SELECTION CRITERIA/PROCESS:

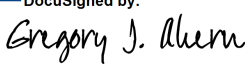
Alameda County Sheriff's Office-Coroner's Bureau worked with General Services Agency (GSA)-Procurement to develop a continuous Request for Quotation (RFQ) which was issued on July 16, 2012. It is continuously posted on the GSA Current Contracting Opportunities website in order to locate additional qualified forensic pathologists to meet the needs of the Coroner. Dr. Melinek submitted a quote on March 20, 2013, in response to the RFQ. Dr. Herrmann responded to the continuous RFQ posting and submitted a new bid proposal dated February 5, 2017.


There are no certified small, local and emerging forensic pathologists found in the GSA local vendor database. Due to the specialized nature of the service, these services may only be provided by a certified forensic pathologist and it is not possible to subcontract any portion of the contract. Small Local Emerging Business (SLEB) waivers for PathologyExpert, Inc. (SLEB Waiver No. 5403, valid through August 31, 2019) and Paul W. Herrmann, M.D. Inc. (SLEB Waiver No. 5404, valid through August 31, 2019) were granted by the Office of Acquisition Policy.

FINANCING:

Appropriations for this contract are included in the Sheriff's Office FY 2018-19 Approved Budget and will be requested in future budget years. No additional appropriations are required and there will be no increase in net County cost.

Respectfully submitted,

DocuSigned by:

F05B6DA11FD248A
Gregory J. Ahern
Sheriff/Coroner


Willie A. Hopkins, Jr.
Director, General Services Agency

Attachment

WAH:AO:th\acclus02\gsadata\$\Board Letters\Purchasing\FY 2018-19\900996 BLBN (4th_1st Amend) Forensic Pathology Svcs III.docx

cc: Susan S. Muranishi, County Administrator
Steve Manning, Auditor-Controller/Clerk-Recorder
Donna R. Ziegler, County Counsel

CONTRACT SUMMARY

FORENSIC PATHOLOGY SERVICES III

RFQ No. 900996

May 16, 2013 – August 31, 2019

<i>Vendor</i>	<i>Location</i>	<i>Estimated Dollar Value of Contract Award</i>
<i>PathologyExpert, Inc.</i>	<i>3739 Balboa St., #102 San Francisco, CA</i>	<i>\$1,075,000</i>
<i>Paul W. Herrmann, M.D. Inc.</i>	<i>140 Oak View Drive San Rafael, CA</i>	<i>\$500,000</i>

SECOND AMENDMENT TO AGREEMENT

This Second Amendment to Agreement (“Second Amendment”) is made by the County of Alameda (“County”) and Dr. Paul W. Herrmann, M.D. Inc., (“Contractor”) with respect to that certain agreement entered by them on September 6, 2017 and that certain First Amendment to Contract, (referred to herein as the “Contract”) pursuant to which Contractor provides forensic pathology services to County.

County and Contractor agree as follows:

1. For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Contractor agree to amend the Agreement in the following respects:
2. Except as otherwise stated in this Second Amendment, the terms and provisions of this Amendment will be considered to be effective as of the date this Second Amendment is executed by the County (“Effective Date”).
3. The term of the Agreement is currently scheduled to expire on August 31, 2018. As of the Effective Date, the term of the Agreement is extended through August 31, 2019.
4. In consideration for Contractor’s additional services, the County shall pay Contractor in an additional amount not to exceed Two Hundred Fifty Thousand dollars (\$250,000). As a result of these additional services the not to exceed amount has increased from Two Hundred Fifty Thousand dollars (\$250,000) to Five Hundred Thousand dollars (\$500,000) over the term of the Agreement and any amendments.
5. A Revised Exhibit A-1, SPECIFIC REQUIREMENTS, is attached to this Second Amendment.

6. Item 20 of the Standard Services Agreement has been amended as follows:
TERMINATION: The County has and reserves the right to suspend, terminate, or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its forensic pathology services shall not exceed \$500,000 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.

7. DEBARMENT AND SUSPENSION CERTIFICATION:
 - a. By signing this Second Amendment and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.

 - b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.

8. Except as expressly modified by this Second Amendment, all of the terms and conditions of the Contract are and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Agreement as of the day and year first above written.

COUNTY OF ALAMEDA

PAUL W. HERRMANN, M.D. INC.

By: DocuSigned by:
John Glann
EB371BC6D6094BF...
Signature

By: DocuSigned by:
Paul W. Herrmann
4368FDAAF5DC4TC...
Signature

Name: John Glann
(Printed)

Name: Paul W. Herrmann, M.D., Inc.
(Printed)

Title: Purchasing Manager

Title: President

Date: 8/17/2018

Date: 8/2/2018

By: DocuSigned by:
Kofo Domingo
692684F1C0C0455
Signature

Name: Kofo Domingo
(Printed)

Title: Procurement Administrator &
Purchasing Agent

Date: 8/20/2018

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

REVISED EXHIBIT A-1

SPECIFIC REQUIREMENTS

Revisions to the Specific Requirements of this Agreement are hereby noted below. The following sections in Exhibit A-1 are deleted in their entirety and replaced with the provisions below. All other sections in the Specific Requirements shall remain the same.

- m. See Section 12 (CONFLICT OF INTEREST; CONFIDENTIALITY) of the General Terms and Conditions.
- n. Only if Contractor obtains prior written consent from County: be permitted to publish medical findings in professional journals and professional conferences, provided that the information related to each decedent is kept in strict confidence, no individual identifying information is disclosed, and all disclosures comply with applicable laws.
- o. Will provide all required information to assist the Coroner's Bureau with applicable reporting requirements pursuant to California law on sudden infant death syndrome (SIDS) on the day of the autopsy.
- t. Intentionally deleted.

EXHIBIT D

**COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION**

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named or unnamed subcontractor:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessary result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: Paul W. Herrmann, M.D., Inc

PRINCIPAL: Paul W. Herrmann TITLE: President

SIGNATURE:  DATE: 8/2/2018

FIFTH AMENDMENT TO AGREEMENT

This Fifth Amendment to Agreement (“Fifth Amendment”) is made by the County of Alameda (“County”) and PathologyExpert, Inc., (“Contractor”) with respect to that certain agreement entered by them on May 14, 2013, and that certain First Amendment to Agreement dated September 10, 2014, that certain Second Amendment to Agreement dated May 19, 2016, that certain Third Amendment to Agreement dated September 25, 2017, and that certain Fourth Amendment to Agreement date July 16, 2018 (collectively referred to herein as the “Contract” or “Agreement”) pursuant to which Contractor provides forensic pathology services to County.

County and Contractor agree as follows:

1. For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Contractor agree to amend the Agreement in the following respects:
2. Except as otherwise stated in this Fifth Amendment, the terms and provisions of this Fifth Amendment will be considered to be effective as of the date this Fifth Amendment is executed by the County (“Effective Date”).
3. The term of the Agreement is currently scheduled to expire on August 31, 2018. As of the Effective Date, the term of the Agreement is extended through August 31, 2019.
4. In consideration for Contractor’s additional services, the County shall pay Contractor in an additional amount not to exceed One Hundred Fifty Thousand dollars (\$150,000). As a result of these additional services, the not to exceed amount has increased from Nine Hundred Twenty Five Thousand dollars (\$925,000) to One Million Seventy Five Thousand dollars (\$1,075,000) over the term of the Agreement and any amendments.

5. General Terms and Conditions has been revised pursuant to the Additional Provisions contained herein.
6. A Revised Exhibit A-1, SPECIFIC REQUIREMENTS, is attached to this Fifth Amendment.
7. Exhibit O, The Iran Contracting Act (ICA) of 2010, is attached to this Fifth Amendment.
8. DEBARMENT AND SUSPENSION CERTIFICATION:
 - a. By signing this Fifth Amendment and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
 - b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
9. Except as expressly modified by this Fifth Amendment, all of the terms and conditions of the Contract are and remain in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Amendment to the Agreement as of the day and year first above written.

COUNTY OF ALAMEDA

PATHOLOGYEXPERT, INC.

By: DocuSigned by:
John Glann
EB371BC6D6094BF...
Signature

By: DocuSigned by:
Judy Melinek
61B579058F8D4FA...
Signature

Name: John Glann
(Printed)

Name: Judy Melinek M.D.
(Printed)

Title: Purchasing Manager

Title: Contract Pathologist

Date: 8/17/2018

Date: 8/9/2018

By: DocuSigned by:
Kofo Domingo
692684F1C0C0455...
Signature

Name: Kofo Domingo
(Printed)

Title: Procurement Administrator &
Purchasing Agent

Date: 8/20/2018

By signing above, signatory warrants and represents that he/she executed this Fifth Amendment in his/her authorized capacity and that by his/her signature on this Fifth Amendment, he/she or the entity upon behalf of which he/she acted, executed this Fifth Amendment.

ADDITIONAL PROVISIONS

Revisions to the General Terms and Conditions of this Agreement are hereby noted below.

1. The fifth paragraph of Section 1 (INDEPENDENT CONTRACTOR) is deleted in its entirety and replaced with the following:

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with standard medical practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

2. The following sentence is added to the end of Section 2 (INDEMNIFICATION):
The obligations of this indemnity shall be for the full amount of all damages to the County, including defense costs, and shall not be limited by any insurance limits.

3. The following sentences are added to the end of Section 3 (INSURANCE AND BOND):

The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Contractor's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Contractor's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Contractor's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self-insurance shall be called upon to protect it as a named insured.

4. The second paragraph of Section 12 (Conflict of Interest; Confidentiality) is deleted in its entirety and replaced with the following:

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential and not be disclosed to any other person; provided, however, that the Contractor may disclose any such information, if reasonably necessary, for the performance of the Contractor's services pursuant to this Agreement, so long as the disclosure is made only to individuals with the legal right and need to know and complies with state and federal laws, including without limitation the Health Insurance Portability and Accountability Act (HIPAA) and Confidentiality of Medical Information Act (CMIA). Prior to disclosing such information, the Contractor agrees to immediately notify the County by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement or if it becomes aware that Contractor or any subcontractor has improperly disclosed any information. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.

5. Section 13 (Notices) is revised to replace the addresses for giving notice. The addresses for notice shall be the following:

To County: County of Alameda
Sheriff's Office, Coroner's Bureau
2901 Peralta Oaks Court, 2nd Floor
Oakland, CA 94605
Attn: Lt. David Vandagriff
(510) 382-3001

To Contractor: PathologyExpert, Inc.
3739 Balboa Street, #102
San Francisco, CA 94121
Phone: 415-850-7056
Attn: Dr. Judy Melinek

6. The not to exceed amount in Section 20 (Termination) is revised to reflect a new

amount of \$1,075,000.

7. The following sentence is added to the end of Section 20 (Termination):

The Contractor has and reserves the right to terminate this Agreement without cause at any time upon giving to the County prior written notice of at least 30 days.

8. Section 27 (Advertising or Publicity) is deleted in its entirety and replaced with the following:

ADVERTISING OR PUBLICITY: Except as provided below, Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance. Notwithstanding the foregoing, Contractor may confirm in a resume or curriculum vitae the fact that it provides services to the County pursuant to this Agreement.

9. The following subsection D is added to Section 30 (SUBCONTRACTING/ASSIGNMENT):

- d. Contractor shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, including, without limitation, Exhibit C. Contractor shall verify subcontractor's compliance.

REVISED EXHIBIT A-1

SPECIFIC REQUIREMENTS

Revisions to the Specific Requirements of this Agreement are hereby noted below. The following sections in Exhibit A-1 are deleted in their entirety and replaced with the provisions below. All other sections in the Specific Requirements shall remain the same.

- m. See Section 12 (CONFLICT OF INTEREST; CONFIDENTIALITY) of the General Terms and Conditions.
- n. Only if Contractor obtains prior written consent from County: be permitted to publish medical findings in professional journals and professional conferences, provided that the information related to each decedent is kept in strict confidence, no individual identifying information is disclosed, and all disclosures comply with applicable laws.
- o. Will provide all required information to assist the Coroner's Bureau with applicable reporting requirements pursuant to California law on sudden infant death syndrome (SIDS) on the day of the autopsy.
- t. Intentionally deleted.

EXHIBIT D

COUNTY OF ALAMEDA

DEBARMENT AND SUSPENSION CERTIFICATION

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named or unnamed subcontractor:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessary result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: PathologyExpert Inc.

PRINCIPAL: Judy Melinek M.D. TITLE: Contract Pathologist

SIGNATURE:  DATE: 8/9/2018

EXHIBIT O

COUNTY OF ALAMEDA

THE IRAN CONTRACTING ACT (ICA) OF 2010

For Procurements of \$1,000,000 or more

The California Legislature adopted the Iran Contracting Act (ICA) to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The ICA prohibits persons engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A person who “engages in investment activities in Iran” is defined in either of two ways:

1. The person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. The person is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2201(b) as a person engaging in the investment activities described in paragraph 1 above.

By signing below, I hereby certify that as of the time of bidding or proposing for a new contract or renewal of an existing contract, neither I nor the company I own or work for are identified on the DGS list of ineligible persons and neither I nor the company I own or work for are engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

If either I or the company I own or work for are ineligible to bid or submit a proposal or to renew a contract, but I believe I or it qualifies for an exception listed in PCC § 2202(c), I have described in detail the nature of the exception: _____

NAME: PathologyExpert Inc.

PRINCIPAL: Judy Melinek MD TITLE: Contract Pathologist

SIGNATURE:  DATE: 8/9/2018