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10  
11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 MARCIANO PLATA, et al.,

14 *Plaintiffs,*

15 v.

16 ARNOLD SCHWARZENEGGER, et al.,

17 *Defendants.*

18 Case No. C01-1351 TEH

19 **RECEIVER'S MASTER APPLICATION**  
20 **FOR ORDER WAIVING STATE**  
21 **CONTRACTING STATUTES,**  
22 **REGULATIONS AND PROCEDURES,**  
23 **AND APPROVING RECEIVER'S**  
24 **SUBSTITUTE PROCEDURE FOR**  
25 **BIDDING AND AWARD OF**  
26 **CONTRACTS**

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1 Receiver Robert Sillen ("Receiver") submits this master application for an order (1)  
2 waiving any requirement that the Receiver comply with State statutes, rules, regulations and/or  
3 procedures governing the notice, bidding, award and protests with respect to the contracts  
4 necessary to implement certain projects described more fully below; and (2) approving the  
5 substituted notice, bidding and contract award procedures developed by the Receiver and to be  
6 utilized in connection with such projects.

7 **INTRODUCTION**

8 In the face of the unprecedented and ongoing crisis in the California prison health care  
9 system and the apparent inability of the State to address that crisis, on February 14, 2006, this  
10 Court appointed the Receiver and gave him a mandate to move forward expeditiously to remedy  
11 the deficiencies in the system. The Court vested in the Receiver the duty to control, oversee,  
12 supervise and direct all administrative, personnel, financial, accounting, contractual, legal and  
13 other operational functions of the medical delivery component of the California Department of  
14 Corrections and Rehabilitation ("CDCR"). In addition to those very broad powers, this Court  
15 established a procedure by which the Receiver could request waivers of State laws and contracts  
16 when necessary for him to accomplish his work.

17 In the event, however, that the Receiver finds that a state law, regulation, contract,  
18 or other state action or inaction is clearly preventing the Receiver from developing  
19 or implementing a constitutionally adequate medical health care system, or  
20 otherwise clearly preventing the Receiver from carrying out his duties as set forth  
in this Order, and that other alternatives are inadequate, the Receiver shall request  
the Court to waive the state or contractual requirement that is causing the  
impediment.

21 Order Appointing Receiver ("Order") filed February 14, 2006, p. 5:4-9.

22 In essence, the Order seeks to correct the two primary factors which created a need for the  
23 extraordinary remedy of a receivership: (1) the failure by CDCR officials properly to manage the  
24 delivery of health care in California's prisons; and (2) the failure of the State of California,  
25 including its control agencies, properly to provide CDCR with the basic administrative services  
26 necessary to operate a constitutional prison medical delivery system, including the ability to enter  
27 into timely contracts. Pursuant to the Order, the Receiver has the authority to manage the day to  
28 day operations of CDCR medical care; however, when necessary remedial actions call for the

1 waiver of State law, he must seek such authority from the Court.

2           Given this, the Receiver has proceeded, during the first year of operation, in a cautious,  
3 thoughtful, and measured manner concerning requests for waivers of State law. With only a few  
4 limited exceptions he has not, in more than 11 months, applied to the Court for a waiver of law.  
5 Instead, he and his staff have expended significant time and resources attempting: (1) to  
6 understand in detail the extremely complicated and convoluted elements of the State's web of  
7 bureaucratic statutes, regulations, and rules; (2) to seek remedial alternatives that could be  
8 accomplished without returning to the Court with applications for a waiver of State law; and (3)  
9 to undertake a limited number of carefully crafted and necessary remedial programs which, to be  
10 implemented in a timely, cost effective, and adequate manner, require the waiver of certain of the  
11 State's laws regarding contracting procedure.

12           As the Court is aware, the Receiver is proceeding to address the crisis in the prison health  
13 care system on multiple fronts simultaneously. As discussed in detail below, he is currently  
14 working on a host of projects necessary for advancing the "primary elements" of the Receiver's  
15 remedial programs. *See Receiver's Fourth Bi-Monthly Report*, filed herein on March 20, 2007,  
16 at p. 2. To accomplish these projects, the Receiver will require a significant number of contracts,  
17 both large and small. As this Court found, the State's contracting process can actually take as  
18 long as two years from inception to the award of a contract and the State's seeming inability to  
19 speed the contracting process has contributed to the crisis in the prisons. Findings of Fact and  
20 Conclusions of Law ("FFCL"), filed herein on October 3, 2005, at p. 26. If the Receiver were  
21 required to comply fully with existing State contracting rules, he would be unreasonably  
22 constrained in his ability to accomplish the goals the Court has set for him. In order for the  
23 Receiver to fulfill in a timely fashion the charge this Court has given him, the Receiver requires  
24 the waiver requested in this Application so that he is not hampered by the same bureaucratic  
25 procedures that have prevented the State itself from solving the problems of the California prison  
26 medical delivery system.

27           The Receiver is mindful, however, of the purposes behind State contracting procedures  
28 and intends to utilize substituted and streamlined procedures to award contracts that remain

1 faithful to the need for transparency and fairness in the contract award process. The Receiver's  
2 substituted procedures, which are described more fully in Section VI, require competitive bidding  
3 for the award of most contracts. They deviate from State law primarily in that the levels of  
4 agency review and protest procedures required under State law have been eliminated and, unlike  
5 State law, the Receiver, as an officer of the Court, retains the discretion to award contracts to  
6 anyone or no one. To the extent that the Receiver may sole source a contract, the substituted  
7 procedures set forth guidelines that the Receiver must follow so that sole sourcing remains the  
8 exception, rather than the rule. The Receiver has also suggested a simplified method to obtain  
9 contractor certifications of compliance with specific substantive requirements imposed by State  
10 law on contractors (e.g., drug-free workplace certifications).

11 Finally, this Application is intended to provide the basic factual and legal foundation for  
12 future waivers of contracting procedure the Receiver may request, so as to permit the Receiver to  
13 refer to this Application for those foundational factual and legal arguments. Those future  
14 applications can therefore be significantly shorter and will address only the specific contracts at  
15 issue.

16 **OVERVIEW OF THIS APPLICATION**

17 Because this Application is lengthy and complex, we will briefly describe its organization  
18 for the Court's convenience. Section I summarizes the current State contracting procedure to  
19 provide the Court with an overview of the State's contracting rules, their purpose and their  
20 problems, particularly as they relate to the prison healthcare system. In Section II we provide the  
21 Court with a detailed look at thirteen carefully developed and essential projects that the Receiver  
22 currently has underway, each of which will require contracts within the next several months.  
23 Section II also contains the Receiver's current best estimate as to which of the Receiver's  
24 proposed substituted contracting procedures, described more fully in Section VI, will be utilized  
25 in connection with each individual project.

26 Section III discusses why requiring the Receiver to comply with State procedures would  
27 clearly prevent him from carrying out his tasks in a timely manner. Section IV explains that the  
28 Receiver has searched for, but has found no alternatives to a waiver of State law and, in

1 particular, discusses the Receiver's efforts to obtain the State's acquiescence concerning this  
2 Application. Section V describes the State statutes, rules and procedures as to which waiver is  
3 requested.

4 Finally, in Section VI, the Receiver describes the substituted contracting procedures he  
5 intends to utilize if this Application is granted, including the circumstances under which  
6 particular contracting procedures will be selected. The Receiver proposes three categories of  
7 contracts: formal bid, informal bid, and sole source contracts, each of which has its own criteria.  
8 In addition, in Section VI, the Receiver explains how his substituted procedures retain the core  
9 purposes of State contracting law – transparency, fairness and protection of the public fisc –  
10 while permitting the Receiver to move forward in an expeditious manner.

11 **APPLICATION**

12 **I. THE STATE CONTRACTING PROCEDURE IS COMPLEX, CUMBERSOME**  
13 **AND EXTREMELY TIME CONSUMING.**

14 This Court has found that the process by which State contracts are developed, reviewed,  
15 bid and awarded contributes to and exacerbates the numerous failings in the prison health care  
16 system. *See* FCCL, at pp. 26-27. The State contracting procedures are comprised of a complex  
17 web of statutes, rules, regulations and practices, the applicability of which varies depending  
18 upon, among other things, the subject matter, complexity and dollar value of the contract  
19 involved. In addition to the overall statutory and regulatory framework, the contracting process  
20 is explained, refined and governed by the State Contracting Manual ("SCM"), a three-volume  
21 document consisting of several hundred pages. Procedures and policies set forth in the State  
22 Administrative Manual ("SAM") and in certain Management Memos ("MM") may also have an  
23 impact on particular contracts.<sup>1</sup>

24 The Receiver summarizes the State contracting process below. Of particular importance,  
25 the summary presupposes that funding is available for the goods or services sought to be  
26 obtained.<sup>2</sup>

27  
28 <sup>1</sup> The SCM, SAM and MMs can be located on the internet at [www.dgs.ca.gov](http://www.dgs.ca.gov).  
<sup>2</sup> If no such funding exists, then an appropriation must be requested through, for example, a Budget Change Proposal

1           **A. Overview Of The State Contracting Process.**

2           A comprehensive discussion of the State contracting process as it applies to the many  
3 different types of contracts that the State awards is well beyond the scope of this Application.  
4 Suffice it to say that the subject matter and dollar value of the proposed contract are key drivers  
5 in determining the particular contracting procedures and rules that must be followed. *See* SCM  
6 §§ 1.05, 3.01 *et seq.* For example, separate requirements and procedures exist for public works  
7 generally, major capital construction projects, land acquisition, procurement of goods, consulting  
8 services agreements, certain personal services agreements and IT agreements. *Id.*, §§ 3.02, 3.10,  
9 3.14; Gov't Code § 13332.09 and MM 06-03 (governing vehicle purchases and leases); Gov't  
10 Code §§ 13332.10, 14660, 14669, 15853 (governing real estate purchases and leaseholds); Gov't  
11 Code §§ 13332.19, 15815 (governing plans, specifications and procedures for large capital  
12 construction projects); Gov't Code § 19134 (requiring specific benefit provisions in certain  
13 personal services agreements); Public Contracts Code ("PCC") §§ 10109 – 10220 (contracting  
14 process for public works contracts) and SCM § 10.00 *et seq.*; PCC §§ 10308, 10309 (goods  
15 purchases under supervision of Department of General Services ("DGS")); PCC §§ 10370,  
16 10371 (requiring review of negative evaluations of consulting contractors before award of any  
17 new agreement to same contractor). In fact, contracts for the purchase of IT goods and services  
18 are governed by a separate acquisition authority, by an entire volume of the SCM devoted solely  
19 to IT and by Section 5200 *et seq.* of the SAM, SCM §§ 1.05B(4), 3.19; PCC §§ 12100 *et seq.*  
20 Moreover, with certain exceptions, the State constitution generally requires that contracting be  
21 limited to those services that State civil service employees cannot perform. Const., Art. VII;  
22 Gov't Code § 19130. If State employees could otherwise perform the services, then adequate  
23 written justification for outsourcing the task must be provided, as required by Gov't Code §  
24 19130. *See also* SCM § 5.05. What follows, therefore, is a general overview of the basic  
25 processes that are common across contract types.

26  
27 ("BCP"). Obtaining funding in response to a BCP is by no means assured, even in crisis circumstances like those  
28 facing the state prison health care system. As the Receiver has previously reported to the Court, a BCP submitted by  
CDCR to make reforms called for by the State Inspector General was denied. Receiver's Second Bi-Monthly Report,  
filed herein on September 19, 2006 at, p. 6.

1 Unless specifically exempted, contracts of \$5,000 or more must be advertised in the State  
2 Contracts Register or otherwise listed publicly before the contracting process begins. Gov't  
3 Code § 14825 *et seq.*; PCC §§ 10140, 10141 (governing notices for public works contracts);  
4 SCM §§ 5.10A, 5.75, 5.80. Most such contracts must be competitively bid and require a  
5 minimum of three bids. SCM §§ 5.08, 5.10. If fewer than three bids are obtained, then the  
6 contracting agency must submit a written justification for why three bids were not obtainable.  
7 *See, e.g.*, PCC § 10340; SCM § 5.10. Neither advertising nor competitive bidding is required for  
8 emergency contracts. However, "emergency" is narrowly defined as a "sudden, unexpected  
9 occurrence that poses a clear and imminent danger, requiring immediate action to prevent or  
10 mitigate the loss or impairment of life, health, property, or essential public services." PCC §  
11 1102; *see also* PCC § 10340(b)(1) (competitive bidding not required for services contracts where  
12 "necessary for the immediate preservation of the public health, welfare, or safety or protection of  
13 state property"); SCM § 3.10.

14 The State recognizes four types of bidding proposals: a Non-Competitively Bid ("NCB")  
15 contract, an Invitation for Bid ("IFB"), a primary Request for Proposal ("RFP") and a secondary  
16 RFP. Before an NCB contract can be awarded, the contracting agency must submit to DGS an  
17 NCB request and justification. PCC §§ 10301 (non-IT goods); 10340 (non-IT services);  
18 12102(a)(1) (IT goods and services); MM 03-10.<sup>3</sup>

19 In general, the proposal categories for competitively bid contracts correspond to the level  
20 of complexity of the anticipated contract. IFBs are issued for simple or routine services; will  
21 usually require more limited documentation than for RFPs; rarely, if ever, require oral interviews  
22 of bidders; and are awarded to the lowest responsible bidder. Primary and Secondary RFPs are  
23 issued for more complex projects, require a narrative proposal, and may require oral interviews.  
24 The successful bidder based on an RFP may be actively involved in developing the scope of  
25 work for the project. Primary RFPs are awarded to the lowest qualified responsible proposer.

26 <sup>3</sup> Pursuant to PCC §§ 10340(b)(4) and 10348, DGS has the authority to exempt contracts from competitive bidding  
27 when it is in the State's interest. DGS has issued MM 05-04 which exempts certain medical services contracts from  
28 competitive bidding. In order to obtain an exemption, the contracting agency must follow the NCB justification  
process for a single contract, or the Special Category Non-Competitively Bid Contract Request process for a  
category of contracts. *See* MM 05-04, at p. 2.

1 Secondary RFPs are awarded on a point system and the award is made to the highest-scored  
2 responsible proposer. SCM §§ 5.17-5.25. In order to rate the proposers, the agency must  
3 develop comprehensive evaluation criteria and those criteria must be made publicly available.  
4 PCC §§ 10342, 10344; SCM § 5.15E. These criteria include various point calculations based on  
5 the bidders' satisfaction of several different preferential vendor selection programs. *E.g.* Gov't  
6 Code §§ 4533 *et seq.* (Target Area preference program); Gov't Code § 7084 (Enterprise Zone  
7 Act preference program); Gov't Code § 7118 (Local Area Military Base Recovery Area Act  
8 preference program); Gov't Code § 14835 *et seq.* (small business preference program); and Mil.  
9 & Veterans Code §§ 999 *et seq.* (disabled veterans preference program).

10 Bids must be opened publicly and be available for public inspection. *E.g.*, PCC §§ 10180,  
11 10304, 10305, 10341, 10342. The winning bid must be posted for a specified period of time  
12 before it can be awarded. *E.g.*, PCC §§ 10306, 10345. An unsuccessful bidder may challenge the  
13 award. If a challenge is interposed, the award cannot be made until the challenge is resolved.  
14 PCC §§ 10306, 10345. Unless earlier resolved, the challenge may require an evidentiary  
15 administrative hearing and decision. SCM §§ 6.02-6.18.

16 Not only must contracts be vetted and internally reviewed by the state agency awarding  
17 the contract, they must also be approved by the DGS or other applicable legal department, before  
18 award and funding. PCC § 10220 (public works contracts approved by Attorney General or  
19 department attorney); PCC § 10295; *see also* PCC §§ 10297, 10335. Even emergency contracts  
20 require DGS approval. SCM § 4.06. IT contracts, however, must be approved by the  
21 Department of Finance and/or the Office of Technology Review, Oversight and Security. SCM §  
22 1.05B(4); SAM § 5200.5. In order to obtain approval from DGS, specific State forms must be  
23 completed and must be accompanied by detailed information about the proposed contract. *See*  
24 SCM § 4.08. Certain contracts are statutorily exempt from DGS approval or may be exempted  
25 from approval by an exemption letter requested by the State agency and received from DGS.  
26 SCM §§ 4.04, 4.07.<sup>4</sup>

27  
28 <sup>4</sup> California law also imposes a host of substantive requirements on contracts and contractors. State contracts must  
contain a multitude of required provisions and certifications that advance particular public policies. *See, e.g.*, PCC §

1           **B.     The State Contracting Process Is Unduly Time-Consuming Under The Best**  
2           **Of Circumstances.**

3           The foregoing summary provides a feel for the complexity of the State contracting  
4 process, but it does not adequately convey how time-consuming the process can be. “The bidding  
5 process often takes three to eight months from the time the advertisement is placed until the  
6 award is made. This time frame does *not* take into account internal approval steps or delays  
7 caused by protests. Resolution of protests may add a delay of one to three months.” SCM §  
8 5.60A (emphasis added).

9           Although this Application does not address medical services contracts, the State  
10 procedure for medical services contracting has been the subject of considerable analysis and  
11 provides a telling glimpse of the inertia inherent in the State contracting process. Studies  
12 performed by the Division of Correctional Health Care Services (“DCHCS”) in May - July 2006,  
13 for example, determined that the contracting process for medical service contracts has at least 25  
14 separate, major steps and involves review and authorization by several agencies or departments.  
15 Exh. 1 to Declaration of John Hagar (“Hagar Decl.”), filed herewith. DCHCS estimated that,  
16 even when the process goes smoothly, an individually bid medical services contract will take  
17 four to seven months from inception to award and a statewide bid contract will take six to ten  
18 months. Exh. 2 to Hagar Decl., p. 11. “Negotiation time” incurred with respect to developing  
19 statements of work, contract terms or contract rates will necessarily lengthen these time frames.  
20 *Id.* Little wonder then that, as this Court found, the entire contracting process can actually take  
21 as long as two years from inception to the award of a contract. FFCL, p. 26:24-26.

22  
23

24 7110 (child support compliance certification on contracts >\$100,000); PCC § 10128 (requiring contractors under  
25 certain public works contracts to comply with certain provisions of California Labor Code); PCC § 10295.3  
26 (domestic partner benefits certification on contracts >\$100,000 per year); PCC § 10353 (priority hiring for welfare  
27 recipients on contracts >\$200,000); PCC §§ 10308.5, 10354 (recycle certifications); Gov’t Code §§ 4552, 4554  
28 (anti-trust claims); Gov’t Code § 8355 (drug-free workplace certification); Gov’t Code § 12990(c) (non-  
discrimination clause);. As indicated in the conclusion of this Application, the Receiver will endeavor to comply  
with these substantive requirements to the extent that they do not interfere with his ability to proceed and he has  
suggested a mechanism for doing so. As with other State laws, the Receiver will seek waivers of any of these  
substantive requirements if they are clearly preventing him from fulfilling his duties and no alternatives are available.

1           **C.     The State Contracting Process Has Real Life Impact On Prisoner Medical**  
2           **Care.**

3           The cumbersome, bureaucratic intricacies of the State of California contracting process  
4 have real, day-to-day and very serious adverse impacts on the CDCR's ability to provide  
5 adequate medical care in its prisons and on the Receiver's ability to implement necessary, timely,  
6 and inter-related remedial measures. An example is provided by the State's manner of securing  
7 contracts with hospitals, registries, and specialty providers. Following findings by the California  
8 State Auditor of serious fiscal problems relating to CDCR contracts with outside clinical  
9 providers, California's Department of General Services ("DGS") established a mandatory policy  
10 for obtaining competitive bids for all such contracts, absent certain special circumstances. As  
11 this Court determined, however, the State proved incapable of implementing these new  
12 requirements. See Order re State Contracts and Contract Payment Relating to Service Providers  
13 for CDCR Inmates ("Order re Contracts"), filed herein on March 30, 2006, at pp. 2-3. As a  
14 result, the CDCR process for negotiating, processing, renewing, and payment of medical  
15 contracts simply collapsed, and prior to the Court issuing remedial orders, private providers,  
16 some of whom had not been paid for years, began to refuse to provide necessary specialty care to  
17 the *Plata* class, with potentially dangerous, even deadly, consequences for the inmate population.  
18 Order re Contracts, at p. 1:25-28.

19           No one denies that the State's contract processes have had an adverse impact on the  
20 CDCR's attempts to address prison medical care problems; likewise, no one questions the fact  
21 that, unless certain State contracting barriers are removed, the Receiver's carefully coordinated  
22 remedial plans will move forward, if at all, only at a glacial pace. This Court did not appoint the  
23 Receiver only to have him constrained by the very burdens that have impeded the State in dealing  
24 with the undisputed challenges in the prison health care system. As set forth in more detail  
25 below, the Receiver submits that he should be freed from those constraints to permit him to meet  
26 the challenges called for in the Order Appointing Receiver.

1 **II. DESCRIPTION OF THE MAJOR PROJECTS THAT ARE THE SUBJECT OF**  
2 **THIS APPLICATION**

3 The projects requiring contracts that the Receiver is currently undertaking or which are  
4 planned are described below.<sup>5</sup> Each of these projects is a significant component of the overall  
5 reconstruction of the prison health care system and each is essential to the proper functioning of  
6 the system. The major components of the Receiver's remedial plan which are impacted by this  
7 application can be summarized as follows:

- 8 1. Medical Records and the Effective Management of Patient Care.
- 9 2. Clinical Space.
- 10 3. Recruitment of Staff and Staff Accountability.
- 11 4. Emergency Response Pilot Project.
- 12 5. Sound Fiscal Management.
- 13 6. Pharmacy Services.

14 **Medical Records And The Effective Management Of Patient Care**

15 **A. IT Technical and Operational Infrastructure Project**

16 a. *Description of the problem.* The State concedes that fundamental reform  
17 in a variety of areas, including IT, is essential if the prison health care system is to function  
18 effectively and in compliance with basic constitutional standards. FFCL, at p. 4. In fact, data  
19 management capabilities are "practically non-existent." Id., at p. 6.

20 Data management requires appropriate IT infrastructure and there is no such  
21 infrastructure within the prison system. The Receiver and his Chief Information Officer, John  
22 Hummel, investigated and have found that the prison IT network was designed and installed  
23 decades ago; network bandwidth is already at maximum capacity handling email alone and  
24 cannot also accommodate clinical or business systems; in some cases, entire clinics are operating  
25 with only a single computer workstation and phone line; and even if more IT workstations were  
26 present, existing power resources in clinics are insufficient to support these new resources. With  
27 respect to operational infrastructure for medical IT desk top support, trainers, information

28 <sup>5</sup> Except as otherwise indicated, the following discussion is based upon the facts set forth in the Hagar Decl.

1 security personnel, and network managers are all lacking. Simply stated, no coherent system or  
2 support for medical information technology exists.

3           b.       *Description of the Project.* The IT technical and Operational  
4 Infrastructure Project will lay the foundation for a functioning health care information system—a  
5 prerequisite of an effective health care *management* system—by establishing high speed  
6 information networks, data standards, and operational support. These essential infrastructure  
7 elements are the first priority of the Receiver’s “information technology” prong of his pending  
8 Plan of Action. *See* Receiver’s Fourth Bi-Monthly Report, at pp. 36-38. As a starting point, the  
9 Receiver plans to create a competent, healthcare-oriented IT unit of State employees within the  
10 *Plata* Support Division to support the Receiver’s IT projects, including “interim” IT issues.  
11 This unit will assist in assessing existing technical and operational infrastructure, designing new  
12 technical and operational systems, and procuring the goods and services necessary for the  
13 implementation of the new IT infrastructure.<sup>6</sup>

14           c.       *The contracts necessary for implementation of the Project.* The Receiver  
15 anticipates engaging an outside IT consultant for initial management of the new and emerging IT  
16 unit within the *Plata* Support Division. This contract will be awarded through the formal  
17 bidding process described in Section VI, below (*i.e.*, formal solicitations will be published, a 30-  
18 day response period will be provided, and selection committee will be appointed to make  
19 recommendations to the Receiver). The Receiver also plans to engage contractors to assist the  
20 Receiver and the *Plata* Support Division with assessing existing technical and operational  
21 infrastructure, designing new technical and operational systems, and providing the goods and  
22 services necessary for the implementation of the new infrastructure. These contracts are likely to  
23 be of variable size and complexity and it is currently not feasible to pinpoint which of the  
24 specific replacement contracting procedures will be utilized. Each contract will, however, be  
25

26  
27 <sup>6</sup> The development of an electronic medical record (“EMR”) or other clinical or business applications is *not* included  
28 in this project at this time. The Receiver will seek separate approval for certain clinical applications (e.g., pharmacy  
IT and data warehouse) as set forth herein, and will seek approval for other projects (e.g., EMR) after the  
infrastructure project has progressed further.

1 awarded in accordance with the proposed replacement contracting process based on the particular  
2 circumstances of each contract.

3 **B. Health Information Management Project**

4 a. *Description of the problem.* CDCR inmate-patients are each issued a Unit  
5 Health Record ("UHR") paper medical chart upon intake into the prison system. In theory, the  
6 policies and procedures for maintaining medical records should be the same from institution to  
7 institution as the UHR travels with the inmate. Paper charts should be legible, appropriately  
8 maintained, readily available at the point of care, and logically organized.

9 In practice, CDCR has no functional centralized oversight or management of medical  
10 recordkeeping in any of its 33 prisons. "The medical records in most CDCR prisons are either in  
11 shambles or non-existent." FFCL, at p. 20.

12 The amount of unfiled, disorganized, and literally unusable medical records  
13 paperwork at some prisons is staggering. At CIM [California Institution for Men],  
14 the records were kept in a 30 foot long trailer with no light except for a small hole  
15 cut into the roof and were arranged into piles without any apparent order.  
Conditions are similar at other prisons as well. At some prisons medical records  
are completely lost or are unavailable in emergency situations.

16 At CIM, the use of temporary medical records creates a confusing and dangerous  
17 situation for practicing physicians who often have access only to little or none of a  
18 patient's history. The Court observed first-hand at CIM that doctors were forced  
to continually open new files on patients simply because the doctors could not get  
access to the permanent files. As a result, the risk of misdiagnosis, mistreatment,  
and a minimum, wasted time, increase unnecessarily.

19 *Id.*, at p. 21 (internal citations omitted). Simply put, "the CDCR medical records system is  
20 'broken' and results in dangerous mistakes, delay in patient care, and severe harm." *Id.*

21 b. *Description of the Project.* To begin addressing the inadequacies in  
22 medical recordkeeping, the Receiver intends to (1) assess the current state of healthcare  
23 information management, including organizational structure, infrastructure, workflow, staffing,  
24 security, access, and utility of paper-based forms and documentation tools; (2) inventory all  
25 existing CDCR clinical documentation forms and describe how they are currently being used by  
26 frontline providers; (3) test his findings in light of currently available IT and industry best  
27 practices, with specific reference to published literature and experience in other correctional  
28 systems; (4) develop specific solutions that can be implemented immediately in the context of the

1 existing paper-based medical records system; and, (5) produce a detailed approach, including  
2 estimated costs and duration of effort, for the complete restructuring and modernization of  
3 healthcare information management at CDCR. The second phase of the health information  
4 management project will be to engage a contractor or contractors to implement the program  
5 developed through the steps described above.

6 c. *The contracts necessary for implementation of the Project.* The Receiver  
7 plans to engage one or more consultants to accomplish the objectives described above. Both  
8 phases of the project will be competitively bid. Phase one will likely be informally bid as  
9 described in Section VI below (*i.e.*, direct solicitation of at least three qualified vendors) as the  
10 probable value of the contract is not likely to be large. Whether formal or informal bidding is  
11 utilized with respect to phase two will depend largely on the recommendations developed in the  
12 first phase.

### 13 C. Clinical Data Warehouse Project

14 a. *Description of the problem.* Medical practice and healthcare management  
15 in CDCR takes place in an information-poor environment. Although certain data sources are  
16 available (for example, in the form of lab results and pharmacy orders), there is no way to  
17 convert this data into information, compiled and presented in a usable manner to assist system-  
18 wide decisions. For any effective clinical organization today, it is essential to convert operational  
19 data into information by creating a data warehouse. But no such resource is available in the  
20 CDCR.

21 [C]entral office staff do not have the tools they need to handle the vast quantity of  
22 information necessary to manage a billion dollar, 164,000 inmate system. Data  
23 management, which is essential to managing a large health care system safely and  
24 efficiently, is practically non-existent. These data management failures mean that  
25 central office staff cannot find and fix systemic failures or inefficiencies. As just  
26 one of innumerable examples, there are patients in the general prison population  
27 who need specialized housing, but the CDCR does not track them and  
28 headquarters staff is unaware of how many specialized beds are needed.

FFCL, at p. 6 (internal citations omitted).

27 b. *Description of the Project.* The Receiver will develop a data warehouse to  
28 centralize data now scattered among disparate operational systems and make clinical information

1 standardized and readily available to support planning and decision making. Once completed,  
2 the data warehouse will support "business intelligence" applications such as (1) clinical and  
3 financial analytics and decision support, (2) executive information systems, (3) query and  
4 reporting tools, (4) data mining, (5) business process monitoring, and (6) online scoreboards and  
5 dashboards. The data warehouse is, in essence, the reservoir from which clinical and business  
6 applications, once implemented, will draw their information. Thus, this might alternately be  
7 thought of as the "data infrastructure project," which serves no less important a function than the  
8 IT Technical and Operational Infrastructure Project, described above, in assisting the Receiver in  
9 developing information from which management decisions can be made.

10 Data warehousing requires processes and tools to define and manage data definitions,  
11 cleanse bad data contained in source systems, integrate data from diverse source systems, and  
12 organize the data into meaningful subject areas (*i.e.*, populations or disease states). Not  
13 surprisingly, the creation, implementation, and configuration of a data warehouse is extremely  
14 challenging even in a high-functioning healthcare organization. Thus, this project will require a  
15 number of competent, highly skilled technicians that are not currently available within the  
16 CDCR.

17 c. *The contracts necessary for implementation of the Project.* To implement  
18 the clinical data warehouse project the Receiver will require contracts for goods and services  
19 with a healthcare database architect, a database/data warehouse vendor, and other vendors  
20 necessary for implementing clinical and health care data management portals. The Receiver  
21 anticipates obtaining all the above goods and services through a competitive process—either  
22 formal or informal bidding—based on the scope of the particular contract.

23 **D. Telemedicine Project**

24 a. *Description of the problem.* CDCR currently operates a telemedicine  
25 program that connects inmates in as many as 24 prisons with various contracted specialty  
26 physician groups as well as with a telemedicine hub in downtown Sacramento. Since the  
27 program's inception in 1996, there have been almost 60,000 telemedicine visits, with nearly  
28 10,000 in Fiscal Year 2005-2006 alone (the last year for which data is available).

1           Nevertheless, a cursory review of CDCR Telemedicine by the Receiver's team suggests  
2 the program is not operating at its full capabilities. Less than half of all telemedicine visits are  
3 medical in nature (as opposed to mental health). Just six prisons accounted for more than 80% of  
4 all telemedicine medical visits in FY 2005-2006. The current system appears to be inadequately  
5 staffed, with only one technician available to service 24 widely-dispersed facilities. The  
6 technology in use also seems outdated, as the system is exclusively dependent on ISDN paired  
7 copper wires and analog video equipment. As such, despite its potential promise, the  
8 telemedicine program does not provide appropriate assistance in a timely and cost-effective  
9 manner.

10           b.       *Description of the Project.* Improvement of the telemedicine program is  
11 one of the major initiatives of Receiver's pending Plan of Action. See Receiver's Fourth Bi-  
12 Monthly Report, at p. 38. Thus, the Receiver intends to conduct a comprehensive review of the  
13 existing telemedicine program, including (1) assessing the current program capabilities,  
14 organizational structure, and technical infrastructure, and (2) developing a plan for restructuring  
15 and modernizing the telemedicine program at CDCR so that the system works efficiently, is cost-  
16 effective and addresses inmate needs.

17           Specific elements of the assessment will include: interviewing relevant CDCR  
18 telemedicine personnel, including leadership and front-line clinical and technical staff; visiting a  
19 sample set of six to nine prisons, including those that are high, low, and non-users of CDCR  
20 telemedicine services, to determine telemedicine clinical workflow, the condition and placement  
21 of telemedicine workstations, the perceptions of telemedicine by front-line providers, and the  
22 perceived need for telemedicine services; assessing CDCR's telemedicine headquarters in  
23 downtown Sacramento; and surveying recipients of CDCR telemedicine provider contracts for  
24 feedback on CDCR's ability to function as a telemedicine partner.

25           Once the assessment and planning phases of the project are complete, the Receiver will, if  
26 and as necessary, undertake restructuring of the program to maximize its benefits to the health  
27 care mission of the prison medical system.

28

1                   c.       *The contracts necessary for implementation of the Project.* The Receiver  
2 intends to contract for all phases of this project, including assessment, plan development, and  
3 plan implementation. Such contracts may include contracts for goods and/or services, with  
4 consulting, professional services and IT firms. The Receiver is actively working towards  
5 engaging a contractor for the assessment and planning phase of the project and has already  
6 commenced a formal bid process consistent with the procedures described in Section VI. A  
7 contract with the firm will not be executed unless the Receiver's proposed contracting process is  
8 approved by way of this Application. The Receiver anticipates awarding a contract for the  
9 second phase of the project through competitively bidding—formal or informal—based on the  
10 scope of the remediation plan recommended by the consultant and adopted by the Receiver.

11                                           **Increasing And Improving Clinical Space**

12           E.       **5000 Multi-Purpose Medical Bed Construction Project: Project**  
13                   **Management and Preliminary Planning**

14                   a.       *Description of the problem.* The California prison system houses more  
15 than 170,000 inmates in a system designed to accommodate only 100,000. Compared to the  
16 general population, inmates suffer from a disproportionate burden of medical and mental illness.  
17 The State Legislative Analyst's Office estimates that by 2022 there will be more than 30,000  
18 inmates 55 and older, four times the current figure, and that geriatric inmates will constitute 16  
19 percent of the inmate population, up from about 5 percent now. *See* Exh. 3 to the Hagar Decl.

20                   Existing medical facilities are "completely inadequate for the provision of medical care."  
21 FFCL, at p. 21. The State has only about 700 medical beds in its prison facilities. And nearly all  
22 of these beds are designed for short-term or acute care. The majority of medically needy inmates  
23 are housed in general acute care hospitals (GACHs), correctional treatment centers (CTCs),  
24 outpatient housing units (OHUs), and a variety of special needs yards and cellblocks. There is  
25 currently an insufficient quantity and quality of space to care for the chronically ill and aging  
26 inmate population. The problem will quickly deteriorate further if left unaddressed.

27                   b.       *Description of the Project.* One of the Receiver's major goals is the  
28 design and construction of healthcare facilities to accommodate the thousands of inmates with

1 chronic illness, frailty, and/or functional impairments. This key element of the Receiver's  
2 remedial program was most recently described to the Court in the Receiver's Fourth Bi-  
3 Bimonthly Report, at pp. 19-20. The Receiver anticipates constructing a facility or facilities with  
4 beds to accommodate 5,000 inmates. Although the Receiver's responsibility does not extend to  
5 mental health care, the Receiver and the *Coleman* Special Master are collaborating on this  
6 project. The planned facilities will house several levels of care, exclusive of acute care hospital  
7 beds, that can be described as skilled nursing, assisted living, and congregate living. One goal of  
8 the new facilities construction is to remove medical long-term care inmates from beds within the  
9 GACH, CTC, and OHU units, all of which should be reserved for short-term stays.

10 The Receiver is currently at the preliminary planning and investigation stage of the  
11 construction project. He is studying the existing burden of chronic medical illness and functional  
12 impairment in the California prison population, assessing approaches for clustering inmates into  
13 cohorts that correspond to the level of care and programming, and developing an estimate of  
14 future long-term care bed needs by level of care and programming so as to inform new facilities  
15 construction.

16 The Receiver is also actively pursuing the engagement of a highly qualified program  
17 management firm to advise him with regard to the project and to provide facilities development  
18 expertise for the design and construction of new medical facilities. The Receiver does not intend  
19 for the program manager to provide design, construction, or construction management services.  
20 Rather, the overall mission of the program manager will be to act as a resource to the Receiver  
21 and to provide broad coordination of the full range of technical resources and management  
22 services necessary to implement the planned construction project, including assisting the  
23 Receiver in quantifying the capital resource needs for the program.

24 c. *The contracts necessary for implementation of the Project.* The Receiver  
25 will require a contract to engage the selected program manager as well as other contracts related  
26 to preliminary planning, programming and prototype development for the project. Because of the  
27 urgent need to move forward with this critical and complex project, a formal procurement  
28 process, consistent with the formal bidding procedure described in Section VI, has already been

1 undertaken to obtain the Program Manager. However, no contract has yet been executed. On  
2 January 24, 2007, the Receiver issued a Request for Qualifications ("RFQ"), soliciting 20 top  
3 program management firms directly, and publishing advertisements on various websites  
4 (including the Engineering News-Record) and in nearly a thousand weekly bulletins published  
5 for various markets around the country. Proposals were due on February 23, 2007, and the  
6 Receiver received numerous responses from reputable firms. A selection committee of  
7 construction and procurement experts was appointed by the Receiver to make recommendations  
8 regarding a short-list of firms to be interviewed, and the same committee participated in  
9 interviews along with the Receiver and his Chief of Staff. The Receiver selected a team  
10 primarily consisting of the URS Corporation and Bovis Lend Lease based on a unanimous  
11 recommendation of the committee and his own independent judgment. A contract with the firm  
12 will not be executed unless the Receiver's procurement process is approved by way of this  
13 application. A copy of the RFQ is attached to the Hagar Decl. as Exhibit 4.

14 As stated above, the Receiver anticipates that other contracts will be required for the  
15 preliminary stages of this project. These contracts will become more clearly defined once the  
16 Receiver obtains the advice and recommendations of his selected program management firm.  
17 The Receiver will file a separate application for waiver of State contract law, if necessary, with  
18 respect to the *design* and *construction* of specific facilities after preliminary planning has  
19 proceeded further.

20 **F. San Quentin Project: Medical Facility Construction**

21 a. *Description of the Problem.* As the Court has been previously informed,  
22 the Receiver has undertaken a pilot project to improve medical services at San Quentin. *See*  
23 Receiver's Second Bi-Monthly Report, at pp. 23-48. Among the many barriers to the delivery of  
24 constitutionally adequate medical care at San Quentin is the complete lack of adequate medical  
25 space.

26 The lack of space in which to work, not only clinical space but also desperately  
27 needed space for services such as telemedicine, for specialty providers, for offices,  
28 for meetings, for information technology, for office equipment and for supplies is  
a major factor driving the inability to provide constitutionally adequate medical  
care at San Quentin.

1 Id., at p. 40. As this Court observed at San Quentin, “even the most simple and basic elements of  
2 a minimally adequate medical system were obviously lacking. For example, the main medical  
3 examining room lacked any means of sanitation – there was no sink and no alcohol gel – where  
4 roughly one hundred men per day undergo medical screening.” FFCL, at p. 22.

5 The problems related to the lack of appropriate medical space also reach beyond the  
6 physical plant. “[T]he systemic problems at San Quentin, similar to those at other institutions,  
7 are the result of decades of neglect and many specific problems have a number of interrelated  
8 causes, each of which must be corrected in order to establish long term and lasting results.”  
9 Receiver’s Third Bi-Monthly Report, filed herein on December 5, 2006, at p. 31. For example,  
10 the lack of adequate space impairs not only direct patient care, but the facility’s ability to attract a  
11 sufficient number of qualified staff as well.

12 The difficulty in recruiting qualified medical staff is compounded by the poor  
13 working conditions offered. In one instance, the triage nurse at San Quentin has  
14 to walk through the men’s shower room, while it was in use, in order to get to her  
15 “clinic” in which she had no sink, exam table or medical equipment. Many  
competent professionals simply will not work, at least not for long, under such  
conditions.

16 FFCL, at p. 17 (internal citations omitted).

17 b. *Description of the Project.* The Receiver most recently updated the Court  
18 regarding his pilot project at San Quentin in his Fourth Bi-Monthly Report, at pp. 23-29. As  
19 previously reported, the Receiver has prepared a construction plan, to remedy both interim and  
20 long term medical space deficiencies. The interim and small scale projects include development  
21 of personnel offices and a medical supply warehouse, renovation of the Trauma Treatment Area,  
22 and expansion of the West and East Block rotundas to establish clinical “sick call” areas. *See*  
23 *generally* Receiver’s Third Bi-Monthly Report, at pp. 35-38; Receiver’s Fourth Bi-Monthly  
24 Report, at pp. 26-29.

25 The Receiver is also planning the construction of a Central Health Facility that will  
26 address the long term needs for medical services and space at San Quentin. The project will  
27 include all necessary infrastructure and site improvements and the demolition of the existing  
28 “Building #22” to make room for the new building. The new Central Health Services Building

1 will support the delivery of medical, dental, and mental health care services, including outpatient  
2 clinical services, specialty clinical services, licensed inpatient care, outpatient housing care,  
3 pharmacy, medical records, medical administration and support. Surgery or treatment for serious  
4 illness or medical conditions, which are beyond the capability of this new facility will be handled  
5 either in a community medical facility on a contract basis or in another CDCR medical facility.  
6 Long-term acute psychiatric care will not be available in the facility.

7           c.       *The contracts necessary for implementation of the Project.* The Receiver  
8 will require contracts directly related to all phases of medical facility construction at San Quentin  
9 from pre-planning analysis, to planning, design, development and construction of the new facility  
10 to rebuilding, improvement and repair of existing facilities. The Receiver is actively working  
11 towards engaging a master contractor for the design and construction of the project and has  
12 already commenced a formal bid process consistent with the replacement contracting process set  
13 forth in Section VI. A contract with a firm will not be executed unless and until the Receiver's  
14 substituted procedures are approved by way of this Application. There will undoubtedly be  
15 subcontracts and additional direct contracts necessary for the completion of the project. These  
16 contracts will be awarded after competitive bidding to the extent possible. The Receiver,  
17 however, has established an aggressive timeline for the completion of this project given the  
18 urgency of the need for additional clinical space at San Quentin. Also, over the lifetime of a  
19 construction project, traditional bidding processes for all of the subcontracts necessary to  
20 complete a project can add months, if not years, to the project's completion. Thus, the Receiver  
21 anticipates that some contracts which under other circumstances might call for formal bidding,  
22 will be informally bid or sole sourced, where the contract is an essential part of a Central Health  
23 Facility project and delay will substantially interfere with timely or cost-effective completion of  
24 the project.<sup>7</sup>

25           **G.       Temporary Medical Facility (Modular Building) Project**

26           a.       *Description of the Problem.* The Receiver has now toured 18 prisons. He  
27 has discovered that most of the medical space in these facilities is aging and deteriorating, is

28 <sup>7</sup> See the discussion of sole-sourcing in Section VI below.

1 overwhelmed by the burgeoning inmate population of the prisons or both. There is a dire need  
2 for additional space for medical clinics, ancillary services (e.g., pharmacy, laboratory and  
3 medical records) and offices throughout the entire system.

4           b.       *Description of the Project.* In addition to addressing the immediate needs  
5 for new medical space at San Quentin, the Receiver must provide some short term relief to other  
6 prisons while long term facility expansion takes place over the next three to five years. Thus, the  
7 Receiver is planning to supplement existing medical facility space with temporary modular  
8 buildings where needed within the prisons. The Receiver anticipates placing the first modular  
9 units at Avenal State Prison, where the Receiver has recently undertaken more focused efforts.  
10 See Receiver's Fourth Bi-Monthly Report, at pp. 52-53. The Receiver will expand the project  
11 from its pilot phase at Avenal depending on the success of the initial placements. The project  
12 will include defining facility needs as well as the design, logistics, and installation of the modular  
13 units.

14           c.       *The contracts necessary for implementation of the Project.* The Receiver  
15 anticipates engaging a construction program management firm to oversee the project. As  
16 described above, the Receiver has begun a formal bid process to engage a construction project  
17 manager for his capital expansion program. The solicitation called not only for construction of  
18 new sub-acute hospital beds, but also for the renovation or reconstruction of other non-housing  
19 components of the CDCR medical health care system. However, the Receiver has decided to  
20 separate the management of the "5,000 bed" project from the Temporary Medical Facility project  
21 to ensure that an appropriate focus is provided to each. Thus, with respect to the Temporary  
22 Medical Facility project, the Receiver anticipates engaging the firm rated second highest by the  
23 Receiver and his selection committee during the program management RFQ process discussed  
24 above. That firm is Vanir Construction. The Receiver will also require contracts for the  
25 purchase or lease, transportation, configuration, and placement of the modular units, in addition  
26 to any other services necessarily and directly related to installing the new modular building  
27 space. The Receiver anticipates awarding these contracts after competitive bidding in  
28 accordance with substituted procedures described below.

Recruitment And Staff Accountability

H. **Recruitment and Hiring Project**

a. *Description of the problem.* The crisis in the delivery of medical care in California “is due, in significant part, to the chronic failure of [CDCR] to adequately staff clinical positions at California state prisons—positions which are often situated in remote locations and/or present a far more challenging work environment than presented by other employment opportunities.” Order Re: Receiver’s Motion For A Waiver of State Law (“Order Re Waiver”), dated October 17, 2006, at p. 2. California prisons have a 20 percent vacancy rate statewide for primary care providers (physicians, nurse practitioners and physician assistants), in addition to unacceptable vacancy rates throughout the clinical classifications. See Receiver’s Motion for Waiver of State Law, dated September 12, 2006, at pp. 4-5. These high vacancy rates negatively impact the quality of patient care, and make it difficult to achieve systemic improvements, because so few permanent staff are on hand to implement and maintain remedial efforts.

Because Defendants are consistently unable to fill their clinical positions they have been forced to rely upon short-term contract personnel and Registries (who provide short-term personnel) as a stop gap method of providing partial coverage for vacant positions. This approach has not only proven extremely costly for the State but is also prevents Defendants from providing the continuity of care that is critical to providing constitutionally adequate medical services to California’s inmates, particularly given that the roughly 170,000 plus inmate population now includes many older inmates and inmates who suffer from chronic and long-term diseases. As Jane Robinson, CDCR’s Regional Director of Nursing states “[c]onsistency in nurse-patient interactions is the foundation for a professional, therapeutic relationship.”

Order Re Waiver, at p. 4. In sum, “[w]ithout permanent and better qualified clinical personnel the Receiver will be unable to develop and implement the remedial programs necessary to bring prison medical care up to constitutional levels.” Receiver’s Second Bi-Monthly Report, filed herein on September 19, 2006, at p. 16.

High vacancy rates also waste taxpayer dollars because they have “forced CDCR officials to shift significant public resources to private providers.” Receiver’s First Bi-Monthly Report, filed herein on July 5, 2006, at p. 24.

These contractors are paid an hourly rate which far exceeds the salaries of State employees; in fact, the salaries of the contractors often exceed the salary of the CDCR managers who supervise them. It is important to emphasize that no real

1 taxpayer savings result from the intolerably low salaries of prison health care  
2 employees. Instead, according to recent audits, the cost of compensation simply  
3 shifted from State employees to the private providers. For example, the total  
4 annual cost for contract health care services in the CDCR has increased from  
5 approximately 153 million dollars in 2000-2001 to approximately 821 million  
6 dollars in 2005-2006, an increase of 668 million dollars or 537%.

7 Id.

8 In addition to the high vacancy rate across all classes of clinical staff, the Court has found  
9 a debilitating lack of qualified personnel in CDCR health care leadership positions. Specifically,  
10 “[o]f the higher level management positions in the CDCR’s Health Care Services Division, 80%  
11 are vacant, making effective supervision or management impossible. This is akin to having a  
12 professional baseball team with only a relief pitcher and no infielders.” FFCL, at p. 7.

13 Unacceptable vacancy rates among medical leadership continue. Applicants with the  
14 necessary skills and experience to solve the medical delivery crisis refuse to apply for work in  
15 California’s prison system given the State’s inadequate management and executive salaries and  
16 poorly conceived and overly restrictive duty statements. To make matters worse, there is no pool  
17 of competent State employees with the requisite skill, experience, and work habits to correct this  
18 crisis. Even if qualified candidates can be enticed to explore a career with the CDCR, “the long  
19 and bureaucratic hiring process at CDCR increases the difficulty of retaining competent doctors  
20 and nurses.” Id., at p. 17. Thus, there remains a significant risk that the CDCR will fail to fill  
21 the department’s vacancies due to delays and red tape.

22 b. *Description of the Project.* On February 23, 2007, with the prior approval  
23 of this Court, the Receiver announced salary increases for physicians working in the prisons to  
24 aid in recruitment efforts and to provide improved access to quality care for inmate patients.  
25 This action follows a salary adjustment last year for most other prison medical staff that  
26 delivered increases ranging from 5% to 64% over time for critical health care positions and  
27 brought their salaries closer in line with those paid at University of California hospitals.

28 The Receiver also intends to establish a non-classified, broadband Career Executive  
Assignment (“CEA”) category of employees to fill the approximately 250 medical executive  
positions necessary to begin the process of establishing a constitutionally adequate medical  
system in California’s prisons. Those selected for the CEA positions will function as the top

1 layers of management in the prisons, in regional offices, and in a central office directed by the  
2 Receiver. The Receiver will also establish the appropriate salaries for this new classification of  
3 employees who serve under his direction.<sup>8</sup>

4 Enhancing the pay scale and creating new leadership positions, however, is just the first  
5 step in filling the void of qualified medical staff. The critical next steps are to implement a  
6 marketing, recruitment and executive search campaign to attract the *best qualified* health care  
7 professionals, and to improve the CDCR's examination and hiring process so that good  
8 candidates are not lost to more nimble employers. Particular attention will be paid to the  
9 recruitment of qualified Board Certified physicians in family practice or internal medicine and  
10 executive level leadership positions, which have been particularly difficult to attract. Additional  
11 details regarding the Receiver's efforts to undertake professional and timely recruitment are set  
12 forth in the Receiver's Fourth Bi-Monthly Report, at pp. 8-9.

13 c. *The contracts necessary for implementation of the Project.* The Receiver  
14 intends to engage consulting, recruitment and other human resources support firms to work in  
15 conjunction with the CDCR *Plata* Support Unit and to assist with filling clinical and leadership  
16 vacancies, including conducting executive search, recruitment, and exam administration. The  
17 Receiver anticipates awarding these contracts through competitive bidding (either formal or  
18 informal) in accordance with procedures described in Section VI.

19 **I. Peer Review Project**

20 a. *Description of the problem.* A well-run healthcare delivery system would  
21 ordinarily, and on an ongoing basis, assess the quality of physicians' care through a peer review  
22 process. "But in the CDCR, peer review is 'either bogus or it's not done at all.'" FFCL, at p. 16.

23 The peer review process sometimes fails because there is a paucity of qualified  
24 staff to engage in the process. Doctors with internal medicine qualifications are  
25 needed to review medical decisions, correct mistakes and provide training, but  
26 such doctors are rarely present at the institution. At some prisons, the doctors  
who engage in the peer review process are incompetent. As a result, "untrained  
physicians who make mistakes will continue to make them because there is no  
one to identify and correct their mistakes."

27 <sup>8</sup> On February 17, 2006 the Department of Personnel Administration eliminated the CEA salary caps and delegated  
28 responsibility to all departments for the CEA compensation program. That responsibility subsequently transferred  
from the CDCR Secretary to the Receiver pursuant to the Court's Order of February 14, 2006.

1 Id., at p. 6 (internal citations omitted). The testimony of Dr. Goldenson, the Court's expert in the  
2 Plata litigation, before the administrative law judge in the matter of the *UAPD v. State of*  
3 *California (CDC)*, illustrates the problem. In evaluating the CDCR's peer review process, Dr.  
4 Goldenson explained:

5 Well basically, the way Peer Review functions is that you have qualified  
6 physicians reviewing the work of their peers. And in this system, where at each  
7 facility that we visited, you had physicians who weren't competent reviewing the  
8 work of other physicians who were working at that facility. In addition, we felt  
9 that we—there was a, sort of a—this idea of you take care of your friends and that  
10 any kind of problems that were there were sort of glossed over. And sort of a  
11 buddy system where they weren't going to do that.

12 Exh. 5 to Hagar Decl., at p. 68.

13 b. *Description of the Project.* Due to the inadequacy of local peer review in  
14 the 33 State prisons, the CDCR centralized peer review under the Physician Practices Executive  
15 Committee ("PPEC"), which was established little more than a year ago. The Receiver has  
16 assumed responsibility for the activities of PPEC's governing body with respect to *medical* issues  
17 (PPEC serves *all* health care services, including mental health, within the CDCR). PPEC is  
18 responsible for death reviews, for-cause reviews of individual cases, for-cause pattern of practice  
19 reviews, and random pattern of practice reviews. As a result of these reviews PPEC may limit a  
20 physicians' practice, up to and including suspending a physician's privileges to practice in the  
21 prison system. The ability of PPEC to process cases in a timely manner is, therefore, critical to  
22 ensuring unsafe practitioners are removed from their duties and patient/inmates remain safe from  
23 incompetent care.

24 Because PPEC is carrying the peer review case load for all 33 prisons, its professional  
25 resources have become stretched. Thus, the Receiver intends to engage a professional peer  
26 review organization or organizations to support PPEC by, for example, preparing medical record  
27 or pattern of practice reviews for consideration by PPEC.

28 c. *The contracts necessary for implementation of the Project.* The Receiver  
intends to contract with professional review and other support service organizations as needed, to  
provide professional and administrative support to PPEC. The Receiver anticipates awarding

1 these contracts after informal bidding in accordance with the procedures described below, given  
2 the relatively small value of the engagements.

3 **Emergency Response**

4 **J. Emergency Response Project**

5 a. *Description of the problem.* In reviewing the response, treatment, and  
6 transportation of patients with emergency medical conditions, the Receiver has found several  
7 critical deficiencies in the CDCR's practices:

- 8 i) Due to geography, population density, and call volume  
9 experience, the community emergency medical services  
10 (EMS) response time to the prison entry site is often  
11 prolonged.
- 12 ii) Security procedures further delay ambulance response  
13 through the entry site.
- 14 iii) First response within the prison is often performed by  
15 custody and health care personnel with limited experience  
16 in emergency medical treatment.
- 17 iv) Training of CDCR personnel in emergency medical  
18 treatment is limited and many are unfamiliar with existing  
19 EMS policies and procedures.
- 20 v) Patient transportation vehicles are inadequate.
- 21 vi) There are additional security delays as the ambulance exits  
22 the facility.

23 A tragic illustration of these problems is the stabbing death of Officer Manuel A.  
24 Gonzalez, Jr., on January 10, 2005, at the CIM. Following Officer Gonzalez's death, the Office  
25 of the Inspector General ("OIG") conducted a special review and found a number of deficiencies  
26 that played a critical role in the incident. The OIG identified multiple inadequacies and failings  
27 in the facility's emergency medical response, ranging from faulty and missing equipment to  
28

1 inadequate or non-existing staff training to a failure of leadership by staff physicians. *See* Exh. 6  
2 to Hagar Decl.

3           b.       *Description of the Project.* To begin addressing these problems, the  
4 Receiver intends to conduct an 18-month pilot project that will place paramedics in 8 of the 33  
5 State prisons on an around the clock basis. Experienced paramedics with substantial experience  
6 in emergency medical care and training will be used, and they will be employees of a Local  
7 Emergency Medical Services Agency (“LEMSA”)-approved Advanced Life Support (“ALS”)  
8 service provider. The ultimate goals of the pilot project are to improve the emergency medical  
9 care and response within the prisons, improve patients’ clinical outcomes and decrease  
10 unexpected deaths due to a lack of appropriate emergency medical care. Pilot projects are a  
11 critical element of the Receiver’s remedial program, enabling him to “establish an initial  
12 framework for sound remedial methodology.” Receiver’s Fourth Bi-Monthly Report, at p. 3.  
13 This particular pilot project is linked to the priority “emergency response” prong of the  
14 comprehensive Plan of Action being developed by the Receiver. *Id.*, at p. 36.

15           The project is planned to consist of three phases. Phase 1 will establish pre-hospital care  
16 for medical emergencies within the prison facilities. The paramedics will be locally accredited,  
17 operating under the medical control of the local EMS Agency Medical Director and will be  
18 subject to LEMSA policies and procedures. Specialized transportation vehicles, for use only in  
19 the prison, may also be tested. Paramedics will not transport patients outside the prison. All  
20 EMS transports will continue to be performed by ambulance transportation providers in  
21 compliance with LEMSA policies and procedures.

22           Phase 2 will include utilization of paramedics to educate CDCR staff on EMS response,  
23 skills and competencies. They will also assist in improving equipment, policies and procedures,  
24 and further coordinate the custody and healthcare staff to optimize the prison EMS response  
25 system.

26           Phase 3 will explore the feasibility of conducting an OSHPD Health Manpower Pilot  
27 Project to use paramedics in a nurse-extender role within CTCs and Triage and Treatment Areas  
28 (TTAs).

1 c. *The contracts necessary for implementation of the Project.* The Receiver  
2 will require several contracts directly related to the implementation of the emergency response  
3 project, including contracts with the selected paramedic provider, a project  
4 coordinator/consultant, and contracts for the procurement of vehicles (for transport within  
5 prisons' perimeter), equipment and supplies needed for project implementation. The Receiver  
6 anticipates awarding a sole source agreement to American Medical Response (AMR) for  
7 paramedic first response, given the urgent need for enhanced emergency response in the prisons.  
8 AMR is also the largest private provider of paramedic services in California (serving 28  
9 counties) and thus most capable of providing the depth and breadth of personnel and equipment  
10 to all the pilot sites throughout the state. No other paramedic provider has the statewide reach  
11 and staffing capacity required to meet the Receiver's needs. Data regarding the geographic  
12 distribution of paramedic providers is available on the website of the California Emergency  
13 Medical Services Authority at: [http://www.emsa.ca.gov/emsddivision/2006\\_transport\\_prov.xls](http://www.emsa.ca.gov/emsddivision/2006_transport_prov.xls).

14 **Sound Fiscal Management**

15 **K. Fiscal Control Project**

16 a. *Description of the problem.* The CDCR's budgeting and financial control  
17 processes are in disarray, severing the critical link between patient care needs and the financial  
18 planning necessary to provide for those needs. The Receiver and his Chief Financial Officer,  
19 Richard Wood, have encountered a multitude of problems in trying to plan for the Receiver's  
20 corrective actions, among them: (1) The current financial reporting and budgeting process and  
21 system is undocumented; (2) current financial and budget reports are not inventoried; (3) budget  
22 report content is not complete, consistent with GAAP accounting or conducive to comparison  
23 with prior periods, budget or benchmarks; (4) key operating metrics are not captured and reported  
24 and do not appear to be consistent with or to corroborate expenditure levels; (5) budget/finance  
25 staff skill levels are not adequately assessed prior to assignment, staff are not given adequate  
26 training to perform current or new job responsibilities, and supervisory staff are spread thin; and  
27 (6) significant portions of the budget are not based on historical utilization of outside service,  
28

1 supplies or workload. The result is that the prison healthcare system is not only failing in its core  
2 mission, it is wasting vast sums of money in the process.

3           b.       *Description of the Project.* Fiscal stewardship by the Receiver is both a  
4 mandate from this Court and a key element of the Receiver's remedial program. *See* Receiver's  
5 Fourth Bi-Monthly Report, at pp. 32-33. To address the specific problems identified above, the  
6 Receiver and his Chief Financial Officer are undertaking a two-phase project. In the first phase,  
7 the Receiver will retain a professional services firm with recognized expertise in public sector  
8 accounting, budgeting and financial systems to study and document the current system; identify  
9 the "bottlenecks" in current processes and provide a plan of "work arounds" and interim  
10 procedures and processes to provide more timely and reliable financial reporting so that the  
11 Receiver and all CDCR managers can engage in better financial planning. In the second phase,  
12 the Receiver will seek outside expertise in designing a permanent system of internal controls and  
13 professional standards for the financial operation of the CDCR and the Receivership. The  
14 Receiver's goal is not simply to make the financial reporting system consistent, accurate and  
15 transparent, but to provide CDCR with the tools to manage properly the public dollars entrusted  
16 to the agency.

17           c.       *The contracts necessary for implementation of the Project.* The Receiver  
18 anticipates engaging a professional services firm or firms to complete the project steps outlined  
19 above. The Receiver will award the contracts for both phases of this project by way of  
20 competitive bidding (either through a formal or informal bid process).

21           **L.       Contracting Project**

22           a.       *Description of the problem.* The Court is already well aware of the serious  
23 problems inherent in CDCR's management of the more than \$400 million in clinical contracts  
24 awarded each year. CDCR's contract management had, by late 2005, all but collapsed,  
25 jeopardizing patient care and wasting limited public resources. *See generally* Order Re  
26 Contracts; Receiver's First Bi-Monthly Report, at pp. 23-26.

27           b.       *Description of the Project.* In response to the Order re Contracts, the  
28 Receiver established a Project Team to process the payment of all outstanding invoices and to



1 Corporation, Inc. ("Maxor"). That audit, which was presented to the Court last year, described in  
2 some detail the many areas that must be addressed if the pharmacy operations are to meet the  
3 needs of the inmate population. Among the failings in the current pharmacy operation is that the  
4 system (such as it is) is unduly expensive, even as it fails to provide timely and medically  
5 appropriate service to the inmate population.

6           b.     *Description of the Project.* As the Court is also aware, the Maxor Audit  
7 included a "Road Map" for revamping the pharmacy operations over a three year period. The  
8 primary focus of the Road Map is implementing a sustainable, patient-centered, and outcome-  
9 driven pharmacy process, with the goal of creating a cost-effective CDCR managed and operated  
10 "best practice" pharmacy. The Road Map is designed to progress in stages—"crawl," "walk,"  
11 and "run"—with each stage advancing pharmacy standards based the completion of the  
12 preceding stage. The Receiver awarded the contract to implement the Road Map to Maxor.  
13 While the pharmacy project is progressing, the completion of the initial steps of the Road Map  
14 has not and will not end the pharmacy crisis. Significant work remains. A detailed update  
15 regarding the pharmacy project is set forth in the Receiver's Fourth Bi-Monthly Report, at  
16 pp. 15-18.

17           c.     *The contracts necessary for implementation of the Project.* In addition to  
18 the primary contract awarded to Maxor which this Court previously approved, the Receiver must  
19 enter into a number of supplemental contracts to complete the pharmacy operations project. For  
20 example, an essential component of the Maxor Road Map is a central fill facility. Such a facility  
21 will provide greater standardization, quality control and efficiency in drug dispensing throughout  
22 the State. As the Court knows, there is no such facility currently; instead, the Receiver must  
23 lease or purchase the necessary land and then build out the facility. This facility must, in turn, be  
24 equipped with drug dispensing, packaging and reclamation equipment. The Maxor Road Map  
25 also calls for the procurement of IT resources necessary to establish connectivity between  
26 individual prison pharmacies, and the development of a pharmacy information management  
27 system—without which the Receiver will be unable to accomplish the Road Map's objective of  
28 centralized and standardized practice and management.

1 All major contracts described above—build out of a central fill pharmacy, procurement of  
2 dispensing, packaging and reclamation equipment, and the procurement of a pharmacy  
3 information system – will be awarded after formal bidding according to the proposed  
4 replacement process described in Section VI below. The lease or purchase of the central fill  
5 property will likely be a sole source contract based on the unique characteristics, location and  
6 availability of appropriate space. Other, smaller scale contracts peripheral to these larger  
7 agreements, for example, contracts with local vendors for installation of equipment for the  
8 pharmacy IT system, will be procured in accordance with guidelines set forth in Section VI based  
9 on the particular circumstances of each contract.

10 **III. COMPLIANCE WITH STATE CONTRACTING PROCEDURE WILL**  
11 **CLEARLY PREVENT THE RECEIVER FROM CARRYING OUT HIS TASKS.**

12 The Receiver described his ongoing projects above in some detail to provide the Court  
13 with an appreciation and working knowledge of the complexity, scope and breadth of the projects  
14 underway or about to get underway. The Receiver submits that, on its face, State contracting  
15 procedure is much too slow, much too bureaucratic and insufficiently nimble to accommodate  
16 the Receiver’s efforts to bring the projects described to fruition or to make meaningful change to  
17 the prison healthcare system in a timely fashion. If even single contracts take months, and in  
18 some cases years, to be awarded under the State’s procedure, it is inconceivable that the Receiver  
19 could utilize that procedure to award the many agreements discussed above and still move  
20 forward at a pace acceptable to this Court.

21 This is made all the more evident by the fact that the projects – while distinct – are  
22 nevertheless interlinked and interdependent. Improved pharmacy operations require improved  
23 recordkeeping, data retrieval and document management systems. Improved recordkeeping, data  
24 retrieval and document management systems require improved and upgraded IT. The system’s  
25 IT cannot be improved without adequately trained personnel, and new hardware and software.  
26 Every function in the system requires additional, usable space which in turn requires securing the  
27 land upon which facilities will be built and then undertaking competent analysis, design and  
28 construction of new facilities. Injecting State contracting procedure into even a part of these

1 multi-faceted, interdependent projects threatens to slow the Receiver's work to a snail's pace at  
2 best and to bring it to a grinding halt at worst. The Receiver submits, therefore, that compliance  
3 with State contracting procedures will clearly prevent him from accomplishing his work.<sup>9</sup>

4 **IV. THE RECEIVER HAS ENDEAVORED TO EXERCISE HIS POWER**  
5 **CONSISTENT WITH STATE LAW CONCERNING THIS REQUEST FOR A**  
6 **WAIVER.**

7 State contracting procedure is inadequate to the task of meeting the Receiver's needs and  
8 the State itself has indicated its inability to undertake these many contracts and projects in the  
9 time frames that are necessary.

10 For example, the Receiver's Chief of Staff and Staff Counsel, Jared Goldman, have met  
11 with State representatives on numerous occasions concerning specialty care contracts, hospital  
12 contracts, and registry contracts, among others. John Hummel, the Receiver's Chief Information  
13 Officer has raised on numerous occasions in discussions with State representatives that State  
14 contracting procedure limits his ability to proceed with planned information technology projects.  
15 The Receiver and his Chief of Staff have conducted several meetings with State officials  
16 concerning the contracting barriers erected by State law to design/build and other alternative  
17 methods of timely, less expensive prison construction. At every meeting, without exception,  
18 State officials have acknowledged that many serious barriers exist to effectuating prompt  
19 remedial action. At no point has any State official identified any mechanism available under  
20 State contracting law and procedure that is available to speed up the process sufficiently to  
21 permit the Receiver to move forward at anything like the pace necessary to effect change in the  
22 prison healthcare system. Instead, those State officials have consistently recommended that the  
23 Receiver "get an order from the Federal Court" to waive State law. The Receiver, therefore, does  
24 not anticipate opposition from the State to the relief requested in this Application. Hagar Decl.,  
25 ¶ 60.

26 Finally, as the Court is aware, for the better part of the last 12 months, efforts have been  
27 under way to improve and streamline the procedures governing contracting for medical services.

28 <sup>9</sup> Equally clearly, requiring the Receiver to seek waivers one contract at a time, even on an expedited basis, will itself  
impede the Receiver's ability to move forward in a timely fashion and will result in additional expense to the  
receivership estate. Hagar Decl., ¶ 58.

1 Much progress has been made on that front, but the new systems are not yet in place even for  
2 medical services contracting. Ultimately, the Receiver intends to expand the contracting  
3 improvement project to address contracting procedures for the prison healthcare system  
4 generally. But, other issues, like the projects described in this Application, require more urgent  
5 attention and the Receiver wishes to have the medical services contracting procedures improved  
6 and implemented before moving on to other contracting processes. *Id.*, ¶¶ 3-4. In short,  
7 currently there are no meaningful and adequate alternatives under State law to the waiver  
8 requested in this Application.

9 **V. RECEIVER'S REQUEST FOR A WAIVER OF STATE CONTRACTING LAW**  
10 **AND PROCEDURES.**

11 Based on the foregoing, the Receiver requests a waiver of State laws, regulations and  
12 procedures governing the development, advertisement, bidding, award and protest of State  
13 contracts, to the extent they would otherwise apply *only to the projects and contracts described*  
14 *above*, including but not limited to, the following:

15 Gov't Code §§ 14825 – 14828 and SCM §§ 5.10A, 5.75, 5.80 (governing advertisement  
16 of State contracts).

17 PCC §§ 10290 – 10295, 10297, 10333, 10335, 10351, 10420 – 10425; Gov't Code §  
18 14616; SCM §§ 4.00 – 4.11; (governing approval of contracts by DGS and exemption from and  
19 consequences for failure to obtain DGS approval).

20 PCC §§ 10308, 10309, 10314; SCM vol. 2, SAM §§ 3500 – 3696.3 (governing  
21 procurement of goods).

22 PCC § 10337; Gov't Code § 19130 (requiring services to be performed by State  
23 personnel unless exemption is justified and permitting review of contracts by State Personnel  
24 Board);

25 PCC §§ 6106, 10109 – 10126, 10129, 10140, 10141, 10180 – 10185, 10220, 10301 –  
26 10306, 10340 – 10345, 10351, 10367, 10369; Gov't Code §§ 4525 – 4529.20, 4530-4535.3,  
27 7070-7086, 7105-7118, 14835-14837; and Mil. & Veterans Code §§ 999-999.13; 2 CCR §§ 1195  
28 – 1195.6; SCM §§ 5.00 – 6.40 and MM 03-10 (governing competitive bidding, required language

1 in bid packages, NCB procedures, preferential selection criteria, contractor evaluations and  
2 notice, contract award and protest procedures for service, consulting service, construction project  
3 management and public works contracts).

4 PCC §§ 10314, 10346 (progress payment limitations).

5 Gov't Code § 13332.09 and MM 06-03 (governing vehicle purchases).

6 PCC §§ 12100 – 12113, 12120 – 12121, 12125 – 12128; SCM vol. 3; SAM §§ 4800 –  
7 4989.3, 5200 – 5291 (governing procurement of IT, telecommunication and data processing  
8 goods and services and applicable alternate protest procedures).

9 Gov't Code §§ 13332.10, 14660, 14669, 15853 (governing acquisition and leasing of real  
10 property).

11 Gov't Code §§ 13332.19, 15815 (governing plans, specifications and procedures for  
12 major capital projects).

13 PCC §§ 10365.5, 10371; SCM § 3.02.4 (governing restrictions on and approval for  
14 multiple contracts with same contractor).

15 **VI. THE SUBSTITUTE PROCEDURES SUGGESTED BY THE RECEIVER**  
16 **COMPLY WITH THE ESSENTIAL GOALS OF STATE CONTRACTING LAW.**

17 Although he has requested a waiver of the State's contracting procedures, the Receiver  
18 appreciates, and is entirely supportive of, the purpose behind those procedures: *i.e.*, to prevent  
19 fraud and corruption, to ensure transparency and procedural fairness and to protect the public  
20 interest. *E.g., Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4<sup>th</sup> 161, 173, 176. Those  
21 important purposes, however, must be balanced against the need for the Receiver to proceed  
22 expeditiously to remedy the near collapse of the prison health care system and the attendant risks  
23 to inmate health and safety.

24 The State has acknowledged that it cannot avoid the impediments built into the  
25 contracting process to permit the Receiver to move forward quickly. Nevertheless, during  
26 discussions between the Receiver's staff and State officials, those officials have stressed the  
27 salutary purposes underlying State contracting law and have cautioned the Receiver against  
28 "throwing the baby out with the bath water" when devising alternate procedures. Accordingly,

1 the Receiver has devised alternate contracting procedures which – though streamlined when  
2 compared to State procedure – are designed to be transparent and fair and to obtain, in the  
3 Receiver’s exercise of reasonable judgment, high quality goods and services at the best price.

4 **A. Substituted Notice, Bidding And Award Procedures.**

5 As discussed above, the State has four broad approaches to awarding contracts: NCBs  
6 (*i.e.*, sole source), IFBs, primary RFPs and secondary RFPs. The Receiver has suggested only  
7 three approaches: formal bidding, informal bidding and sole source. Each suggested procedure  
8 and the more significant deviations from State law are discussed following the description of  
9 each approach.

10 **Formal bidding**

11 The formal bidding process will be applicable to (1) all contracts of \$1,000,000 or more  
12 in total contract price; and, (2) any contract with a total value greater than \$500,000 that involves  
13 products or services that are highly complex, uncommon or unique in the marketplace and in  
14 which the successful bidder may assist in the development of the Scope of Work and  
15 performance under the contract requires unusual, innovative or creative techniques, methods and  
16 approaches and the quality of expertise and approaches, methods, and innovation used in the  
17 performance of the contract may differ significantly from one proposer to another.<sup>10</sup>

- 18 1. The Receiver will develop and issue a Request for Proposal (“RFP”) and will  
19 formally solicit at least three bids by posting the RFP on the Receiver’s website  
20 and publishing the solicitation in a trade publication of general circulation and/or  
21 an internet-based public RFP clearinghouse for a period of at least 1 week. The  
22 Receiver may, in his discretion, identify and solicit additional bidders. If fewer  
23 than three bidders respond to the RFP, the Receiver shall make reasonable, good  
24 faith efforts to identify additional bidders and solicit their responses to the RFP.
- 25 2. The period for response to the RFP shall be at least 30 days.

27 <sup>10</sup> The requirement of formal bidding with respect to the category of contracts above \$500,000 is based upon  
28 precisely the same criteria that the State utilizes in deciding whether to apply secondary RFP procedures. See SCM  
§ 5.17

- 1 3. The Receiver will appoint a 3-person selection committee, none of whom are  
2 affiliated with any bidder.
- 3 4. Criteria for selection of the successful bidder may, in the reasonable determination  
4 of the Receiver, include but not be limited to such factors as cost, reputation of the  
5 bidder for responsiveness and timeliness of performance, quality of service or  
6 product performance, ability of the bidder to provide innovative methods for  
7 service delivery, and other similar factors the Receiver deems relevant.
- 8 a. The Receiver (or, at his direction, the selection committee) may conduct  
9 interviews of some or all bidders, answer questions posed by bidders and  
10 provide additional information to bidders.
- 11 b. The selection committee will make a recommendation to the Receiver.
- 12 c. The Receiver will retain the discretion to reject the recommendation of  
13 the selection committee and award the contract to another bidder deemed  
14 more qualified or to no one.
- 15 5. The Receiver will list all bidders in his quarterly report and identify the successful  
16 bidder. If fewer than three bidders responded to the RFP and/or any bidder  
17 responded to a direct solicitation by the Receiver, the Receiver will so note that  
18 fact in the report.

19 **Comment:**

20 This more formal process has been reserved for the largest and/or most complicated  
21 contracts that the Receiver may award. This process deviates from State law primarily in the  
22 elimination of the multi-level agency review and approval that adds so much time to the State  
23 process and in the elimination of the protest procedures. Although the Receiver requests broad  
24 relief from strict compliance with State law, this proposed process remains faithful to the  
25 essential elements of the State procedure: public notice of the contract will be provided; and the  
26 Receiver will issue an RFP with an established response period, competitive bidding and a  
27 selection committee. Indeed, as noted in footnote 10, above, the criteria for applying this process  
28 to contracts of less than \$1 million are essentially the same as the criteria the State uses to

1 determine the applicability of its secondary RFP process. See SCM § 5.17 The RFQ for the  
2 Program Management services recently issued by the Receiver is an example of how the  
3 Receiver intends to proceed under the formal bidding process. See Exh. 4 to Hagar Decl. The  
4 Receiver submits that the essential elements of State contracting procedure have been retained in  
5 his proposed formal bidding process, while most of the impediments have been removed.

6 **Informal bidding**

7 The informal bidding procedure proposed by the Receiver will be applicable to many of  
8 contacts the Receiver is likely to award, particularly those with a value between \$50,000 and  
9 \$500,000 and contracts between \$500,000 and \$1,000,000 that do not involve overly complex or  
10 unusual services performance.

- 11 1. The Receiver will make reasonable, good faith efforts to identify and solicit at  
12 least three proposals and will accept additional unsolicited bids that may be  
13 submitted.
- 14 2. The Receiver may, in his discretion, develop an RFP prior to soliciting bidders,  
15 establish a response period with respect to any such RFP and/or establish a  
16 selection committee to assist in the selection of the successful bidder.
- 17 3. Criteria for selection of the successful bidder, in the reasonable determination of  
18 the Receiver or his staff, may include, but will not be limited to, cost, reputation  
19 of the contractor for responsiveness and timeliness of performance, quality of  
20 product or service and other similar factors the Receiver deems relevant.
- 21 4. The Receiver will retain the discretion to award the contract to any bidder or to no  
22 bidder.
- 23 5. The Receiver will identify all bidders, including the successful bidder, in his  
24 quarterly report. If the Receiver is unable to obtain at least three bidders, he will  
25 note that fact in the report.

26 **Comment:**

27 The procedure described above deviates from State law in that the proposed contracts will  
28 not be advertised in the State Contracts Register, will not be formally solicited and will not be

1 subject to the multi-level review, approval and protest process that characterizes State procedure.

2 This process is designed to permit the Receiver the flexibility to adopt those procedures  
3 he reasonably believes will enable him to obtain the best products or services under all the  
4 circumstances and in a timely and cost-effective manner. Nevertheless, since the informal  
5 bidding process requires the Receiver to attempt to obtain at least three bidders, it retains the  
6 hallmark of State procedure: competitive bidding.

7 **Sole source contracts:**

- 8 1. The Receiver may utilize a sole source (a) for contracts with a total value of less  
9 than \$50,000 or (b) where he reasonably determines that (i) there is no other  
10 readily available source; (ii) delay risks endangering the health or safety of  
11 inmates or staff; or (iii) the contract is essential to the "critical path" of a larger  
12 project and delay will substantially interfere with timely or cost-effective  
13 completion of the larger project.
- 14 2. Any contract that is sole-sourced will be listed in the Receiver's quarterly report  
15 with a brief statement identifying the reason for sole sourcing.

16 **Comment:**

17 The Receiver understands that the constraints on sole sourcing imposed by State law are  
18 designed to insure accountability and to protect the public fisc. The Receiver also understands  
19 that this Court has criticized the encrusted and sclerotic nature of the State contracting process.  
20 Accordingly, the Receiver has attempted to develop a sole sourcing protocol that permits him  
21 somewhat greater flexibility to sole source a contract than currently exists under State law,  
22 without simply providing him carte blanche.

23 Typically under State law, an NCB must be submitted to DGS before contracts over  
24 \$5,000 may be sole sourced. The Receiver contends that he should not be required to submit  
25 NCB justifications to the State each time he wishes to sole source a contract, particularly if the  
26 Receiver has determined that no other source is available. Such a requirement would effectively  
27 make the Receiver subject to the control of the same State bureaucracy that this Court has  
28 condemned. In addition, the \$5,000 dollar threshold under State law is so low as to be virtually

1 meaningless. The Receiver proposes increasing the threshold to \$50,000. He ought to be able to  
2 move expeditiously to award such small contracts without going through a bidding process.

3 Under State law, "emergency" contracts may be awarded without competitive bidding  
4 but, as discussed in Section I.A., above, an emergency is defined so narrowly that it will be rare  
5 indeed that the Receiver could rely upon that as a basis to sole source a contract. Rather, if the  
6 Receiver reasonably determines that delay will substantially increase the risk to the health and  
7 safety inmates or staff, he should not be constrained by having to submit a justification to the  
8 State before proceeding to award a contract to address that need.

9 Finally, and of equal significance, remedying the many failings in the prison healthcare  
10 system has meant that the Receiver must proceed on a number of projects simultaneously. In  
11 some cases, successful completion of a project will require timely completion of a component  
12 part or step in the overall process, much like the critical path of a construction project. The  
13 Receiver ought to be freed to sole source a contract where it appears that the contract is necessary  
14 to timely completion of an overall project.

15 The Receiver submits that he has suggested a standard for sole sourcing that will permit  
16 him flexibility but nevertheless not be so open-ended that competitive bidding will be easily  
17 avoided.

18 In summary, the Receiver submits that his substituted contract award procedures will  
19 provide adequate safeguards against bias and fraud and will permit competitive bidding for most,  
20 and particularly the most complex, contracts. The essential elements of State procedure have  
21 been retained while the impediments have been removed.

22 **B. Minor Modification Of Substantive Contracting Requirements.**

23 As indicated in footnote 4, above, California law imposes many substantive requirements  
24 on State contracts and contractors. State contracts typically must include provisions and  
25 certifications that address particular public policies. The Receiver will endeavor to comply with  
26 these substantive requirements to the extent they may otherwise apply and to the extent that they  
27 do not interfere with his ability to proceed in an expeditious fashion to remedy the ills in the  
28 prison health care system and is not seeking a waiver of them in this Application at this time.

1 But, in an effort to streamline and simplify the contracts awarded by the Receiver, the Receiver  
2 will publish the provisions requiring contractor certifications of compliance on his website and  
3 include a single representation in the contracts he awards to the effect that the contractor has  
4 read, and attests that he/she/it is in compliance with, the required provisions.

#### 5 CONCLUSION

6 The Receiver concluded his Fourth Bi-Monthly Report, filed March 20, 2007, by  
7 emphasizing that “[a]s we enter the second year of the Receivership, our progress may be likened  
8 to coming out of the ‘crawl’ phase of the ‘crawl/walk/run continuum’ and entering a more  
9 advanced but still significantly limited and more time consuming ‘walk’ phase. The motions for  
10 waivers of State law that will be filed in April 2007, if approved, will enable the Receivership to  
11 move into this next phase and thereby, to advance forward.” The Receiver emphasizes in this  
12 application the critical importance of these waivers, without which the Receivership will be  
13 unable to implement in a timely, cost effective, and competent manner a number of important  
14 projects upon which the delivery of constitutionally adequate medical care for more than 170,000  
15 men and women depends.

16 For all the foregoing reasons, therefore, the Receiver respectfully requests an order (1)  
17 waiving any requirement that the Receiver comply with State statutes, rules, regulations and/or  
18 procedures governing the notice, bidding, award and protests only with respect to the contracts  
19 necessary to complete the projects described in this Application; and (2) approving the  
20 substituted notice, bidding and award procedures developed by the Receiver to be utilized in  
21 connection with such contracts.

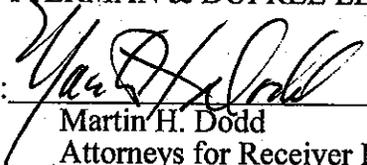
22 A form of proposed order accompanies this Application. In the discussions between the  
23 Receiver’s staff and State officials regarding this matter, the State officials have requested as  
24 much specificity as possible in the description of the contracts that will be subject to the order.  
25 Because the various projects described above remain largely in the planning stages, it is difficult  
26 for the Receiver to be any more precise in his descriptions of the contracts to be awarded than is  
27 reflected in Section II. The proposed form of order, therefore, suggests a process whereby the  
28 Receiver will be required to provide advance notice to the State of contracts to be formally bid,

1 and in his quarterly reports to the Court, he will be required to specify the contracts that have  
2 been awarded, to identify the projects to which those contracts pertain, and to provide a brief  
3 description of each contract and the method the Receiver utilized to award the contract (e.g,  
4 formal or informal bid).

5 As indicated above, the Receiver will request separate waivers, as necessary, with respect  
6 to future projects. In addition, the Receiver will keep the Court apprised of the progress of each  
7 of the projects described in this Application in his regular quarterly reporting and in special  
8 reports as necessary.

9 Dated: April 17, 2007

FUTTERMAN & DUPREE LLP

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11 By:   
12 Martin H. Dodd  
13 Attorneys for Receiver Robert Sillen  
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