



UNITED HEALTHCARE  
WORKERS WEST  
SERVICE EMPLOYEES  
INTERNATIONAL  
UNION, CLC

Dave Regan - President  
Stan Lyles - Vice President

560 Thomas L. Berkley Way  
Oakland, CA 94612  
510-251-1250  
FAX 510-763-2680

5480 Ferguson Drive  
Los Angeles, CA 90022  
323-734-8399  
FAX 323-721-3538

[www.SEIU-UHW.org](http://www.SEIU-UHW.org)

**Petaluma Health Care District  
Board of Directors  
1425 North McDowell Blvd.  
Suite 103  
Petaluma, CA 94954**

February 9, 2016

Dear Petaluma Health Care District Board,

This letter is to call your attention to what we believe was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by the Petaluma Health Care District.

The nature of the violation is as follows: Over the past few months, the Petaluma Health Care District Board held four public meetings in order to comply with the Brown Act. At those meetings, the Board discussed the criteria it would use to select which of four initial bidders would operate Petaluma Valley Hospital (PVH) after the hospital's lease with St. Joseph Health expired. These public meetings were held to air public views on the four applicants and the criteria to be used in selection. However, after the last public meeting was held, the Board changed one of the bidders and in doing so, violated both the letter and spirit of the Brown Act. Given the statutory agenda and meeting requirements, the Board must have made the decision to switch bidders while in closed session or in serial meetings. Whatever information the Board received that led the Board to acquiesce to changing the applicant, that information was not conveyed to the public.

#### **The Distinction Between the Bidding Entities**

Prime Healthcare Services, Inc. and Prime Healthcare Foundation are entirely separate entities, despite their similar names. Therefore, a totally separate entity from the one presented to the public both in written notices and at the public hearings has been allowed to enter the bidding process after the public hearings had taken place.

According to their own tax filings, Prime Healthcare Services, Inc. and Prime Healthcare Foundation are completely unrelated entities. They are held out as having no legal relationship to one another. According to Prime Healthcare Foundation's IRS 990 form, the Foundation is a 501(c)(3) non-profit public benefit organization headquartered in Victorville, CA. The Foundation is completely unrated by rating agencies and its Form 990 does not list any related organizations. Furthermore, the Foundation is not consolidated into the financial reporting of Prime Healthcare Services, Inc.

In contrast, Prime Healthcare Services, Inc. is a for-profit Delaware corporation and is junk bond rated by Moody's rating agency. To be clear: in tax, audit, IRS, and other reporting documents, neither entity is listed as a subsidiary of the other nor is one listed as related to the other.

Of additional concern regarding the bidding process is the fact that the Board's allegedly neutral consultant has made public statements in favor of Prime in other transactions.<sup>1</sup>

### **Statement of Facts: A New Non-Profit Bidder Was Admitted to the Process After Public Hearings Were Held On a Separate For-Profit Bidder**

#### October 2015: For-Profit Prime Healthcare Services Was Invited to Move Past the RFP Process and Was Publically Announced As One of Four Bidders in the Running to Operate PVH

At the October 20, 2015 regular meeting of the Petaluma Health Care District (PHCD) Board of Directors, CEO Ramona Faith "recommends that the board invite the following RFP responders to move onto the next phase of the due diligence and bid process. They are SJH, Sutter Health, Prime Healthcare Services and Strategic Global Management." Prime Healthcare Services was described in meeting minutes as "a for-profit hospital management company headquartered in Ontario, CA that operates 38 acute care hospitals in eleven states."<sup>2</sup>

A motion was made by Director Ostroff to approve the recommendation to close the RFP process and accept no new proposals, seconded by Director Thornton. The motion was passed by a vote of 5 ayes (Directors Thornton, Adams, Hempel, Ostroff, and Stern). A motion was made by Director Ostroff to approve the recommendation to invite St. Joseph Health, Sutter Health, Prime Healthcare Services, and Strategic Global Management to continue on in the due diligence and bid process to select the operator for PVH, seconded by Director Adams. The motion was passed by a vote of 5 ayes (Directors Thornton, Adams, Hempel, Ostroff, and Stern).

A motion was made by Director Ostroff to approve the recommendation that each of the four bidders have 60 days to complete the remaining due diligence, and that after the 60-day period, the Board would meet to review the refined proposals. The motion was seconded by Director Thornton, and was passed by a vote of 5 ayes (Directors Thornton, Adams, Hempel, Ostroff, and Stern).

PHCD issued a press release announcing the invitation to four responders to the District's formal "Request for Proposal" to continue participating in the due diligence and bid process. Potential operators identified were St. Joseph Health, Sutter Health, Prime Healthcare Services, and Strategic Global Management. St. Joseph Health and Sutter Health were identified as not-for-profit health care systems. Prime Healthcare Services and Strategic Global Management were identified as for-profit corporations. The press release described Prime Healthcare Services as "a for-profit hospital management company headquartered in Ontario, California that operates 38 acute care hospitals in eleven states."<sup>3</sup>

#### November 2015: The Board Issued a Press Release Announcing Dates and Times for Public Hearings on the Four Possible Operators

On November 10, 2015, PHCD issued a press release announcing dates and times of four public meetings, occurring between December 1, 2015 and January 14, 2016, that would be dedicated to soliciting input regarding the service offerings and selection criteria for the future operator of PVH.<sup>4</sup>

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<sup>1</sup> "Steve Valentine, president of the Camden Group, an El Segundo healthcare consulting firm, said Prime "has the better deal on the table right now" for Daughters of Charity. "But organized labor is trying to make this very difficult," he added." <http://www.latimes.com/business/la-fi-hospital-protest-20140816-story.html>.

<sup>2</sup> <http://phcd.org/userfiles/Board%20Min%2010-20-15.pdf>.

<sup>3</sup> [http://phcd.org/userfiles/PHCD%20Names%20PVH%20Operator%20Finalists%20-%20FINAL%20-%202010-20-2015\(1\).pdf](http://phcd.org/userfiles/PHCD%20Names%20PVH%20Operator%20Finalists%20-%20FINAL%20-%202010-20-2015(1).pdf).

<sup>4</sup> [http://phcd.org/userfiles/PVH%20Due%20Dilligence%20Update%20-%202011-10-2015%20\(002\).pdf](http://phcd.org/userfiles/PVH%20Due%20Dilligence%20Update%20-%202011-10-2015%20(002).pdf).

December 2015: An Argus-Courier News Article Publicized the Dates Set by the Board for Consideration of Criteria Related to the Four Candidates, Including For-Profit “Prime Healthcare Services”

On December 2, 2015, an Argus-Courier news article reported on the first of four public meetings held by PHCD to solicit input while the Board narrowed down criteria for selecting a leading candidate to operate PVH. The article named for-profit Prime Healthcare Services as one of the four bidders.<sup>5</sup>

January 2016: For the First Time, PHCD Announced in a Press Release That Non-Profit Prime Healthcare Foundation Was One of the Two Operators That Completed the Bidding Process, Along With Non-Profit St. Joseph Health

On January 19, 2016, after the fourth and final public meeting, PHCD issued a press release announcing that two hospital operators had completed the bidding process to lease and operate PVH when the lease with St. Joseph Health expires in January 2017. The two bidders were stated to be St. Joseph Health and Prime Healthcare Services. PHCD stated that it would review the two bids over a period of 60 to 90 days before making a recommendation to the community.

In the press release, the description of Prime Healthcare Services deviated substantially from previous descriptions on the District’s website, in Board minutes, in news releases, and at public hearings. The January 2016 press release stated, “Prime Healthcare Services is a hospital management company headquartered in Ontario, Calif. that operates 38 acute care hospitals in eleven states. It has proposed to operate PVH through its Prime Healthcare Foundation, a 501(c)3 public charity, whose mission is to provide quality, compassionate healthcare for all, and serve communities through various charitable and educational initiatives.”<sup>6</sup>

**The Bid of For-Profit Prime Healthcare Services, and Not Non-Profit Prime Healthcare Foundation, Was Not Disclosed or Discussed Transparently As Required by the Brown Act**

Because of the significant flaw in the Board’s meeting process and parallel public disclosures regarding a new PVH operator, we demand that the Board cure the flaw in advance of SEIU-UHW lodging a similarly based complaint with the State Office of the Attorney General.

The action taken was not in compliance with the Brown Act because the discussion of and decision to allow bidding entities to “swap out” must have occurred in closed session or in serial meetings, despite being a matter which the Act does not permit to be discussed in closed session. In addition, there was no adequate notice to the public on the posted agenda for the meeting that the matter acted upon would be discussed, and there was no finding of fact made by the Board that urgent action was necessary on a matter unforeseen at the time the agenda was posted.

In the event you determine that the conduct of the Board specified herein did not amount to the taking of action, we call your attention to Section 54952.6, which defines “action taken” for the purposes of the Act expansively, i.e., as “a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.”

As you are aware, the Brown Act creates specific agenda obligations for notifying the public with a “brief description” of each item to be discussed or acted upon, and also creates a legal remedy for illegally taken actions—namely, their judicial invalidation upon proper findings of fact and conclusions of law.

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<sup>5</sup> <http://www.petaluma360.com/news/4854037-181/petaluma-hospital-bids-coming-into>.

<sup>6</sup> [http://phcd.org/userfiles/PHCD%20Announcement%20of%20PVH%20Final%20Bids%20-%20FINAL\(1\).pdf](http://phcd.org/userfiles/PHCD%20Announcement%20of%20PVH%20Final%20Bids%20-%20FINAL(1).pdf).

Pursuant to that provision (Government Code Section 54960.1), we demand that the Board cure and correct the illegally taken action by removing Prime Healthcare Foundation from the bidding process.

To protect the public from deception, the Brown Act requires local agencies and legislative bodies to comply with meeting and disclosure requirements. Here, the arrangement whereby a for-profit bidder was replaced by a non-profit bidder was not fully discussed in advance of the district board decision because the public hearings were premised on a different bidder than the actual bidder.

The Brown Act specifically prohibits any “action or discussion [to] be undertaken on any item not appearing on the posted agenda.”<sup>7</sup> The posted agenda made no mention of a change in bidding entities. Again, these protections are in place to assure transparency and to require the District Board to present a true and fair accounting to the public of the bidders and their qualifications: “It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. ... The people insist on remaining informed so that they may retain control over the instruments they have created.”<sup>8</sup>

### **The Petaluma Health Care District Should Remove from Consideration Prime Healthcare Foundation’s Proposal to Operate Petaluma Valley Hospital**

As a consequence of the facts stated above, we demand that Prime Healthcare Foundation be removed from the bidding process. In the alternative, if the Board insists on considering a new bidder, we demand that at least two public hearings be held on the “substantial amendment” of changing entities and that those hearings, as required by law, be held in advance of the District Board’s decision to allow non-profit Prime Healthcare Foundation to take the bidding spot of for-profit Prime Healthcare Services.

During the bidding process, one of the two currently remaining bidders suddenly was admitted to the process after the completion of the public Board hearings. As described in this letter, the change in bidders is a violation of the Brown Act. Not only does the sudden appearance of a new post-public-hearing bidder violate the Brown Act, it also creates an unfair bidding field. Sutter, for instance, was presumably not given the opportunity to bring in a for-profit bidding arm after the initial set of public hearings. The Board must remove Prime Healthcare Foundation from consideration, because that entity was not included in the public’s opportunity to participate in the Board’s due diligence as required by the Brown Act.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform us of your decision not to do so. If you fail to cure or correct as demanded, such inaction means our recourse is to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case we would also ask the court to order payment of our court costs and reasonable attorney fees pursuant to Section 54960.5.

Sincerely,



**Ra Criscitiello**  
**Research Coordinator, SEIU-UHW West**  
560 Thomas L. Berkley Way / Oakland, CA 94612  
cell 415.203.5261 / [rciscitiello@seiu-uhw.org](mailto:rciscitiello@seiu-uhw.org)

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<sup>7</sup> <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=54001-55000&file=54950-54963>.

<sup>8</sup> *Ibid.*