



REQUEST FOR PROPOSALS
(COMPETITIVE SEALED PROPOSALS)

New Outpatient Care Clinic
Project Manager/Owner's Representative

RFP No:
HHSC 27-0004

for

Hawaii Health Systems Corporation
West Hawaii Region

79-1019 Haukapila Street
Kealahou, HI 96750
Telephone (808) 322-9311
<http://www.kch.hhsc.org/Procurement/>
An Agency of the State of Hawaii

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SECTION 1 ADMINISTRATION

1.0 INTRODUCTION

This Request for Proposal (hereinafter “RFP”) is issued by the **West Hawaii Region**, a division of Hawaii Health Systems Corporation (hereinafter “WHR”, “KCH” or “Kona Community Hospital”), a public body corporate and politic and an instrumentality and Agency of the State of Hawaii. This solicitation is governed by the applicable provisions of Hawaii Revised Statutes (“HRS”) and implementing rules. All procedures and processes will be in accordance with applicable HRS Chapters including, but not limited to, 323F. To the extent this solicitation contains any terms or provisions inconsistent with applicable HRS Chapters and implementing policies, the statutes and the policies will control.

Kona Community Hospital, will be constructing a new approximately \$100M, 50,000 square feet Outpatient Care Clinic (“OCC”) in the north Kona area. The OCC will be located adjacent to the new Queens Health System’s hospital. Click on link for the December 3, 2025 Press Release [THE QUEEN’S HEALTH SYSTEMS AND HAWAII HEALTH SYSTEMS CORPORATION JOIN FORCES TO SIGNIFICANTLY EXPAND HEALTH CARE ACCESS ON HAWAII ISLAND – Kona Community Hospital](#)

The project’s first \$50M of funding has been secured; therefore, pre-construction planning may commence. An architect has been selected and the contracting process should be completed by August 31, 2026.

Thank you for your interest in submitting a proposal for this solicitation. The rationale for this competitive sealed RFP is to promote and ensure the fairest, most efficient means to obtain the **best value** to HHSC, i.e., the proposal offering the greatest overall combination of service and price. Hereinafter, organizations interested in submitting a proposal in response to this RFP shall be referred to as “OFFEROR”.

In order for WHR to evaluate OFFEROR’s response in a timely manner, please thoroughly read this RFP and follow instructions as presented.

1.1 RFP TIMETABLE

The timetable as presented represents WHR's best estimated schedule. If an activity of the timetable, such as "Closing Date for Receipt of Proposals" is delayed, the rest of the timetable dates may be shifted. OFFEROR will be advised, by addendum to the RFP, of any changes to the timetable. Contract start date will be subject to the issuance of a Notice to Proceed.

No.	Activity	Planned Date
1.	RFP Public Announcement	Friday, July 24, 2026
2.	Closing Date for Receipt of Questions	Wednesday, August 5, 2026 10am HST
3.	Addendum for WHR Response to OFFERORS' Questions	Friday, August 14, 2026
4.	Closing Date for Receipt of Proposals	Thursday, September 3, 2026 10am HST
5.	Mandatory Requirements Evaluation	Friday, September 4, 2026
6.	Proposal Evaluations and Short List Selection (optional)	Friday, September 11, 2026
7.	Virtual Proposal Discussions (be prepared for short notice)	Approx. Sept 17-21, 2026
8.	Best and Final Offers (optional)	
9.	Contractor Selection/Award Notification (on/about)	September 24, 2026
10.	Contract Execution Period	Sept 25-Oct 1, 2026
11.	Contract Tentative Award Date	October 1, 2026

Figure 1. Procurement Schedule

1.2 AUTHORITY

This RFP is issued under the provisions of the HRS Chapter 323F, and its administrative rules. All OFFERORS are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed proposal by any OFFEROR shall constitute admission of such knowledge on the part of such OFFEROR.

1.2.1 RFP ORGANIZATION

This RFP is organized into five Sections:

- SECTION 1: ADMINISTRATIVE**
Provides information regarding administrative requirements.
- SECTION 2: SCOPE OF SERVICES**
Provides a detailed description of goods and/or services to be

provided and delineates WHR and CONTRACTOR responsibilities.

SECTION 3:

PROPOSALS

Describes the required format and content for submission of a proposal.

SECTION 4:

EVALUATION

Describes how proposals will be evaluated and lists the “Price weight percentages” of the evaluation categories.

SECTION 5:

AWARD OF CONTRACT

Describes procedures for selection and award of contract.

1.3 REGIONAL CHIEF EXECUTIVE OFFICER (RCEO)

The RCEO for HHSC West Hawaii Region, or designee, is authorized to execute any and all Agreements (Contracts), resulting from this RFP.

The RCEO for this RFP is:

Clayton R. McGhan, Regional Chief Executive Officer
West Hawaii Region
Hawaii Health Systems Corporation
79-1019 Haukapila Street
Kealahou, HI 96750

Figure 2. RCEO – Regional Chief Executive Officer

1.4 DESIGNATED OFFICIALS

The officials identified in the following paragraphs have been designated by the RCEO as HHSC’s procurement officials responsible for execution of this RFP, award of Agreement and coordination of CONTRACTOR’s satisfactory completion of contract requirements.

1.4.1 ISSUING OFFICERS

The Issuing Officers are responsible for administering/facilitating all requirements of the RFP solicitation process and are the **only points of contact** for OFFEROR from date of public announcement of the RFP until the selection of the successful OFFEROR. The Senior Issuing Officer will also serve as the Contract Manager responsible for contractual actions throughout the term of the contract. The Issuing Officers are:

Yvonne S. Taylor, Sr. Contracts Manager West Hawaii Region Email ytaylor@hhsc.org Direct (808) 365-2415 Loretta Buasriyottiya, Office Assistant V Email: lbuasriyottiya@hhsc.org Direct (808) 322-6992 To send email to both Yvonne & Loretta, email WHRContractsMgmt@hhsc.org

Figure 3. Issuing Officer

1.5 HHSC ORGANIZATIONAL INFORMATION

1.5.1 CHARTER

HHSC is a public body corporate and politic and an instrumentality and agency of the State of Hawaii. HHSC is administratively attached to the Department of Health, State of Hawaii and was created by the legislature with passage of Act 262, Session Laws of the State of Hawaii 1996. Act 262 affirms the State's commitment to provide quality health care for the people in the State of Hawaii, including those served by small rural facilities.

1.5.2 STRUCTURE AND SERVICES

HHSC oversees the operation of ten public health facilities throughout the Hawaiian Island chain, including Oahu, Kauai and Hawaii. In addition to the ten HHSC facilities, Hawaii Health Systems Foundation and Alii Health Center are affiliates of HHSC.

HHSC is organized into five operational regions and provides a broad range of healthcare services including acute, long term, rural and ambulatory health care services. As the fourth largest public health system in the country, HHSC is the largest provider of healthcare in the Islands, other than on Oahu.

HHSC West Hawaii Region has two hospitals: Kohala Hospital and Kona Community Hospital.

Kona Community Hospital is a 94-bed full-service acute care hospital with 24-hour emergency services, proudly serving the West Hawaii community for over 100 years. Every year, KCH updates its care to include the newest medical services, allowing KCH to use all of its abilities to serve West Hawaii residents and visitors whenever they are in need. Kona Community Hospital, considers everyone to be O'hana, and as such, KCH strives to be your friend, neighbor, and family in the community.

Kona Community Hospital's staff includes over 400 highly skilled employees and 100 medical staff practitioners, many of whom have been with KCH for over 20 years. Along with our professional and experienced staff, KCH has many volunteers and affiliates that support KCH. KCH is also one of the largest employers in West Hawaii.

Kona Community Hospital is a private, public benefit health care facility accredited by the Joint Commission on Accreditation of Health Care Organizations.

1.5.3 MISSION

The mission of HHSC is to provide and enhance accessible, comprehensive health care services that are quality-driven, customer-focused and cost-effective.

1.6 FACILITY INFORMATION

Detailed information pertaining to HHSC facilities is located at <http://www.hhsc.org>.

1.7 SUBMISSION OF QUESTIONS

Relevant questions must be submitted in writing via electronic mail to the Issuing Officers (WHRContractsMgmt@hhsc.org) no later than the "Closing Date for Receipt of Questions", identified in Figure 1 in order to generate an official answer. All written questions will receive an official written response from WHR and become addenda to the RFP.

***** IMPORTANT REGARDING TERMS & CONDITIONS*****

***OFFEROR may request changes and/or propose alternate language to the attached HHSC General Conditions during this Questions phase only.** Any OFFEROR terms to be proposed must be submitted during this phase only.

All requests will be presented to the HHSC Legal Department for review. No requests to change the HHSC General Conditions, change the approved vendor terms or add additional terms will be considered after the proposals have been submitted or during the contracting process.

***OFFEROR must submit with its proposal its terms and conditions that have been accepted by HHSC.**

HHSC reserves the right to reject or deny any request(s) made by OFFEROR.

Impromptu, un-written questions are permitted and verbal answers will be provided during pre-proposal conferences and other occasions, but are only intended as general direction and will not represent the official HHSC position. The only official position of HHSC is that which is stated in writing and issued in the RFP as addenda thereto.

No other means of communication, whether oral or written, shall be construed as a formal or official response/statement and may not be relied upon.

Send relevant questions to:

Yvonne S. Taylor, Sr. Contracts Manager
and
Loretta Buasriyottiya, Office Assistant V
Email: WHRContractsMgmt@hhsc.org

Figure 4. Contact for Relevant Questions

1.8 SOLICITATION REVIEW

OFFEROR should carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter, including requests to revise the General or Special Conditions, must be made in writing and should be received by the Issuing Officers no later than the “Closing Date for Receipt of Questions” as identified in Figure 1. This will allow issuance of any necessary amendments to the RFP.

1.9 RFP AMENDMENTS

WHR reserves the right to amend the RFP any time prior to the ending date for the proposal evaluation period. RFP Amendments will be in the form of addenda and posted on the Kona Community Hospital Procurement website.

1.10 CANCELLATION OF RFP

The RFP may be canceled when it is determined to be in the best interests of WHR.

1.11 GRIEVANCE

It is the policy of the West Hawaii Region to work cooperatively with all vendors to the end of fair and fiscally sound procurement decisions. In the event a vendor or prospective vendor feels that a procurement decision has been made or is about to be made that is not in accordance with applicable law or policies, the vendor is encouraged to proceed as follows:

Request a debriefing in writing by the Issuing Officer.

If the debriefing does not satisfy the vendor, a meeting may be requested with the Issuing Officer who may invite others to participate as needed.

If the Issuing Officer does not resolve the issue, the vendor may request a meeting with the RCEO. The RCEO is the last recourse for disputes relating to procurement decisions and all decisions made by the RCEO shall be final.

A grievance based upon the content of the solicitation shall be submitted in writing within five (5) working days **after** the aggrieved individual/business knows or should have known of the facts; provided further that the grievance shall not be considered unless it is submitted in writing prior to and not later than the “Closing Date for Receipt of Questions” identified in Figure 1.

Such grievances of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract. The notice of award, if any, resulting from this solicitation shall be posted on the Kona Community Hospital website:

<http://www.kch.hhsc.org/Procurement/>

Figure 5. Website for all Procurement Activities

SECTION 2 SCOPE OF SERVICES

2.0 OVERVIEW

Kona Community Hospital (“Hospital”), a facility of the Hawaii Health Systems Corporation, is interested in entering into an agreement with a project management firm to provide a qualified individual (the “Project Manager”) and such other personnel as are needed to perform construction project management services for Hospital’s upcoming 50,000 sf Outpatient Care Clinic (“OCC”). The OCC building will be constructed on property located in North Kona donated by Queens’ Health System (“QHS”) and will share the site with QHS’s new 80 bed hospital and workforce housing. The anticipated time of performance for Project Management services is approximately 5 years.

2.01 OFFEROR’S REQUIREMENTS, RESPONSIBILITIES & SERVICES

1. Project Manager shall act as the Hospital’s owner’s representative and agent relative to the entire project.
2. The Offeror’s services will consist of those services performed by the Project Manager, Offeror’s employees, and Offeror’s consultants (if any) as outlined in this Scope of Services.
3. The Offeror and the Project Manager shall provide sufficient organization, personnel, outside resources, and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of the Hospital.
4. The Project Manager must either already reside on the west side of Hawaii Island or be willing to relocate there before the start of the project, including the pre-construction planning phase, which is expected to begin around late fall/early winter 2026.

2.02 MINIMUM QUALIFICATIONS OF THE PROJECT MANAGER

The Project Manager shall:

1. Possess a Bachelor’s degree from an accredited college or university in construction management, architectural engineering, mechanical engineering, or electrical engineering, *or* a minimum of five (5) years’ experience in on-site construction management of health care buildings and facilities, *including* administration and financial management of all aspects of construction projects. CCM or PMP certification preferred. Other combinations of applicable education, training, and experience which provide the knowledge, abilities, and skills that would be necessary to perform effectively in the position may be considered.

2. Have thorough knowledge of architectural, engineering, and construction practices and procedures, and the ability to appropriately apply them to meet the project requirements and objectives, as well as to recommend alternative approaches to eliminate or mitigate problems.
3. Have knowledge of the most current, at time of construction, AIA Guidelines for Design and Construction of Hospital and Health Care Facilities, FGI Guidelines for Design and Construction of Health Care Facilities, NFPA 101 Life Safety Code, NFPA 99 Health Care Facilities, county and state building industry laws, codes and regulations pertaining to hospitals and medical facilities, ADA regulations, fire codes not previously mentioned, municipal ordinances, general hospital functions, and Hawaii Health Systems Corporation policies and procedures.
4. Possess advanced knowledge of reading and interpreting architectural drawings.
5. Have the ability to plan projects and construction activities including, but not limited to, scheduling, construction, inspection, and timely completion of projects, in accordance with all project requirements.
6. Have the ability to supervise construction and implementation activities for projects, read and understand architectural, engineering and construction plans, and effectively manage projects from inception to completion.
7. Use oral, written and communication skills to deal effectively with a broad range of stakeholders that include construction workers to senior executive managers, occasionally under stressful circumstances.
8. Have the ability to provide project status briefings and summaries to all levels of corporate, county, state, and federal officers or representatives and to other interested parties.
9. Use organizational skills to prioritize assignments to complete work in an efficient and timely manner, as well as to be able to adjust to changes in workload or assignments.
10. Use interpersonal skills to be able to represent the Hospital in negotiations with all disciplines involved in the project, in public forums, and to plan and conduct meetings with various governmental agencies and stakeholders.
11. Have the ability to apply computer technology, including but not limited to Microsoft Office (Word, Excel, PowerPoint, Outlook) applications, Procore, and computer-aided drawing (CAD) applications, to construction and project activities.
12. Be able to travel to the project site in Kailua-Kona and the Hospital located in Kealahou, irregular work hours to accommodate off-shift construction and/or

utility interruptions, and availability 24 hours a day, 7 days a week by telephone or messaging applications.

13. Have resources available to call upon who will possess detailed expertise in all elements of design, engineering, architecture, and construction as needed during the various projects.

2.05 PERFORMANCE RESPONSIBILITIES OF THE PROJECT MANAGER

1. The Project Manager is responsible for ensuring the development and implementation of the project schedule, including the maintenance, monitoring, control, and adjustment of the project schedule in coordination with contractual, construction, user, technical, and other disciplines involved.
2. The Project Manager is responsible for assisting with developing the project budget, managing the budget and providing regular budget reports to WHR. Will provide recommendations to resolve budget issues.
3. The Project Manager shall receive and review certified payroll reports from General Contractor and Subcontractors for compliance with state requirements.
4. The Project Manager shall ensure that all vendors contracted to perform services or work on the project conform to contractual standards.
5. The Project Manager shall maintain a strong on-site presence to monitor the progress of all demolition, abatement, and construction operations and enforce continual compliance with all applicable codes and specifications of the project. The Project Manager also shall keep administrative records to assure compliance with contractual requirements.
6. The Project Manager shall bear primary responsibility for identifying potential construction and installation problems with the assistance of contracting, user, technical, and construction disciplines, and shall provide direction for a solution to these problems, or make recommendations to obtain, and coordinate, the services of architects, engineers, contractors and/or inspectors in the solution of problems that may arise during construction.
7. The Project Manager shall work with the project architect and its consultants, county, state, federal, and all other agencies as necessary in all aspects of construction, including archeological and environmental requirements. It is essential that the Project Manager develop and maintain positive working relationships with all personnel associated with the Project.
8. The Project Manager shall consult with the Hospital staff on a weekly basis, or as requested by Hospital, regarding facility construction schedules, progress, and corrective action as required. The Project Manager shall lead all

Owner/Architect/Contractor meetings and provide minutes within 48 hours that detail issues or potential issues as well as actionable items or decisions that were made in the absence of the Hospital's representative(s).

9. The Project Manager shall prepare the agendas for, and lead, owner/architect (or engineer)/Contractor meetings. The Project Manager shall review and evaluate the Contractor's submittals for sub-contractors, including the cost breakdowns and schedules for the project, to ensure compliance with contractual requirements. Once reviewed, the Project Manager shall forward to the appropriate party for approval.
10. The Project Manager shall ensure that the appropriate bonds, insurance, and other information required of the Contractor have been acquired, or already exist, verify the legitimacy of the bonding and insurance, and ensure that they are maintained in the event the project is delayed or extended beyond the initial contract period.
11. The Project Manager shall assist as needed with the submission of the appropriate applications with county, state, and federal agencies to obtain the necessary permits and authorizations to facilitate the progress and completion of the project. The Project Manager shall take all reasonable actions necessary to expedite the permit process on behalf of the Hospital, if requested, including, but not limited to, "walking" the permit through each division to obtain signatures and/or respond to questions that may arise.
12. The Project Manager shall meet regularly with the Hospital, project inspector, contract administrator, architects, engineers, consultants, Contractor, sub-contractors, equipment vendors, and furnishing manufacturers and installation companies to assure adequate management control, information exchange, and coordination within the project and amongst disciplines.
13. The Project Manager shall represent the Hospital in communications with each contracted vendors' internal project management team and with other senior Contractor personnel for final approval of submittals and change orders, resolution of policy and procedural questions, and problem solving in coordination with contracting, technical, and construction disciplines.
14. The Project Manager shall assist with the negotiation and coordination of changes and claims with contractors, including the preparation of, and recommended actions on, change orders during and after construction for architectural, structural, mechanical, and civil engineering change orders. The Project Manager shall review contractual documentation to ensure that all conditions are met prior to payment approval.
15. The Project Manager shall determine the effect of any revisions on other portions of the project and make necessary compensations within the budget of the project to accommodate the required changes. The Project Manager shall provide value

engineering advice in all aspects of the project, especially with regard to change orders, to meet the Hospital's needs and requirements without compromising quality.

16. The Project Manager shall provide recommendations and information to the Hospital regarding the allocation of responsibilities for safety programs with the Contractor. The Project Manager shall ensure that the Contractor provides and regularly assesses the need for Risk Analysis at the inception of the project and at major milestones.
17. The Project Manager shall supervise and/or perform final inspections with consultants and project inspectors to produce the final punch list. The Project Manager shall ensure that all punch list items are completed by the Contractor.
18. The Project Manager shall issue appropriate completion and closeout paperwork in a timely manner. The Project Manager shall collect as-built drawings, operation and maintenance manuals, warranties, bonds, and other closeout forms and ensure that they are complete and have been distributed to the appropriate Hospital personnel.
19. The Project Manager may be tasked to be directly responsible for resolution of all problems that may surface during the warranty period.
20. The Project Manager shall other related duties not mentioned herein, as assigned or requested by Hospital.

Note: the above responsibilities may not be all-inclusive and indicate a minimum scope of duties required to successfully fulfill the obligations of the construction project manager role.

2.06 DELIVERABLES

1. At a minimum, the Project Manager shall provide the following deliverables:
2. Written report, due on a weekly basis, of the Project Manager detailing the work accomplishments and identifying issues that occurred during the previous week, the anticipated work to be completed for the current week, a copy of the three-week look ahead schedule, percentage progress completion, a detailed explanation of revisions in contract completion date and/or budget, change order requests, and anticipated project delays. The report shall be sent electronically via email to the Hospital's Director of Facilities by no later than 10:00 AM each Monday, with an electronic copy to other Hospital staff as requested.
3. Monthly electronic Project Management billing that references the WHR contract number and contains a statement that the Project Manager reviewed the invoice

and confirms that the work for which the Hospital is being billed has been completed in accordance with contractual standards.

4. Written confirmation of the completion of the project that includes the specific date on which acceptance of the system occurred, for warranty purposes. In the event multiple system acceptances occur, the Project Manager shall provide written confirmation of system acceptance with the specific date on which the acceptance was provided, for each occurrence, with sufficient detailed description to be able to identify the system from others.
5. Closeout documentation at the completion of the project including, but not limited to, as built drawings, operation and maintenance manuals, warranties and bonds, in both electronic and hard copy format.

Note: the above deliverable may not be all-inclusive and indicate a minimum scope of deliverables required to successfully fulfill the obligations of the construction project manager role.

SECTION 3 PROPOSALS

3.0 INTRODUCTION

One of the objectives of the RFP is to make proposal preparation easy and efficient, while giving OFFEROR ample opportunity to highlight their proposal. When an OFFEROR submits a proposal, it shall be considered a complete plan for accomplishing the requirements described in this RFP.

3.1 PROPOSAL PREPARATION

OFFEROR shall prepare a written proposal in accordance with requirements of this Section.

Proposals shall include all data and information requested to qualify proposals for evaluation and consideration for award. Non-compliance may be deemed sufficient cause for disqualification of a proposal.

The development of overly elaborate proposals and presentation material, not required and/or related to RFP requirements, is highly discouraged.

3.1.1 MANDATORY PROPOSAL TABS

The following section separators must be used in the OFFEROR's proposal:

	Mandatory Tabs
1	PROPOSAL TRANSMITTAL COVER LETTER
2	TECHNICAL
	SUMMARY
	MANDATORY QUESTIONS
	BACKGROUND, QUALIFICATIONS AND EXPERIENCE
	PERSONNEL ORGANIZATION AND STAFFING
	MANAGEMENT AND CONTROL
3	PRICE
	OFFER SUMMARY
	OFFER DETAILS
	REQUIREMENTS (SEE SECTION 3.8.2)
4	COMPLIANCE DOCUMENTS
	STATE OF HAWAII VENDOR COMPLIANCE
	W-9
	GENERAL EXCISE TAX CERTIFICATE
	HHSC APPROVED VENDOR TERMS AND CONDITIONS
	HHSC APPROVED VENDOR REDLINES TO HHSC GENERAL CONDITIONS
5	PROPOSAL SUBMISSION CHECKLIST

Figure 6. Mandatory Proposal Tabs

Relevant material should be placed in the appropriate tabbed area (Figure 6). Greyed in areas indicate category titles and the sections contained in the tabs are listed directly below the category title. Please put category titles on their own page to easily separate the sections. Inapplicable material or material placed in the incorrect tabbed area may not be evaluated.

3.2 COSTS FOR PROPOSAL PREPARATION

Any and all costs incurred in the development of proposals, i.e. preparing and submitting, on-site product/service demonstrations, on-site visits, oral presentations, travel and lodging, etc. shall be the sole responsibility of OFFEROR.

3.3 DISQUALIFICATION OF PROPOSALS

WHR reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in the RFP and which demonstrate an understanding of the Scope of Services. WHR reserves the right to ask for clarification of any item in the proposal.

An OFFEROR will be disqualified and the proposal automatically rejected for any one or more of the following reasons:

Proof of collusion among OFFERORS, in which case all proposals involved in the collusive action will be rejected.

The OFFEROR's lack of responsibility and cooperation as shown by past work or services.

The proposal shows any noncompliance with applicable law.

The proposal is conditional, incomplete, or irregular in such a way as to make the proposal incomplete, indefinite, or ambiguous as to its meaning.

The proposal has any provision reserving the right to accept or reject award, or to enter into a contract pursuant to an award, or provisions contrary to those required in the solicitation.

Proof of exclusion from participation in federal health care programs, as defined in the Social Security Act (Section 1128 and 1128A), and other federal laws and regulations relating to health care.

3.4 SUBMISSION OF PROPOSALS

Each OFFEROR may submit only one (1) proposal (which includes a technical and a price section). Alternate proposals will not be accepted. The Issuing Officer must receive one (1) copy in electronic format of the proposal no later than the "Closing Date for Receipt of Proposals", identified in Figure 1. **Proposals received after this time/date may be rejected.**

The subject line of the submission email containing the proposal must be marked, as follows:

[insert company name] Proposal Submitted in Response to
RFP # HHSC 27-0004

Figure 7. Mandatory Email Subject Line Marking

3.5 PROPOSAL TRANSMITTAL COVER LETTER

OFFEROR is required to submit their proposal with a *transmittal cover letter* (sample is supplied for your use if you choose). The transmittal cover letter must be on the OFFEROR's official business letterhead; signed by an individual authorized to legally bind the OFFEROR; and minimally include information, as written/requested, on the "sample" letter in APPENDIX A.

3.6 PUBLIC INSPECTION

Proposals shall not be opened publicly, but shall be opened in the presence of two or more procurement officials. The register of proposals and OFFERORs' proposals shall be open to public inspection after the contract is executed by all parties, subject to the nondisclosure provisions of HRS Chapter 92F.

OFFEROR shall request in writing the nondisclosure of designated trade secrets or other proprietary data to be confidential. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. The proposals are subject to disclosure rules set forth in Chapter 92F, H.R.S. The OFFEROR bears the burden of establishing that the designated data is exempted from the disclosure requirements set forth in Chapter 92F.

All proposals and other material submitted by OFFEROR become the property of HHSC and may be returned only at HHSC's option.

3.7 TECHNICAL SECTION

Any proposal offering a significantly non-compliant Technical Section may be disqualified without further notice.

The technical proposal shall include the following categories:

3.7.1 TECHNICAL SUMMARY

Clearly, concisely and briefly summarize and highlight the contents of the technical proposal in such a way to provide WHR with a broad understanding and the unique, most promising aspects of the proposal. Summary should not exceed 1 page in length.

3.7.2 MANDATORY QUESTIONS (must answer all)

1. Past Experience

- a. Has OFFEROR managed other similar projects in the past 3 years? If yes, provide details of applicable projects.
 - i. What would the project owners say about their experience with OFFEROR?
- b. Has OFFEROR had previous experience working with healthcare facilities in the past 3 years? If yes, provide details of applicable projects.

2. OFFEROR Assumptions

- a. What assumptions is OFFEROR making in preparing your proposal?
- b. In order to execute the project as detailed above, what will the OFFEROR require of WHR? What are WHR's responsibilities?

3. Minimize Performance Risks

- a. What processes do you use to manage scope changes or prevent scope creep?

- b. How familiar is OFFEROR with special requirements for outpatient clinic work? State any concerns applicable to this project and how OFFEROR proposes to minimize risk associated with the concerns.
- c. What potential project risks or issues are anticipated and how will they be addressed in order to minimize risk?
- d. What quality assurance and quality control processes does OFFEROR utilize?
- e. What is OFFEROR's communication plan for all project stakeholders to ensure timely, transparent, and coordinated information flow throughout the project's lifecycle??

4. Project Management

- a. Briefly define the Project Management Plan which covers how the project will be managed to ensure cost-effective, efficient and timely performance of all project tasks?
- b. Define all components of the project team and state qualifications of project lead.
- c. Describe how the team support functions for continuity of project management and knowledge transfer for sick time/vacation coverage.

The project management capability proposal shall include the following categories:

3.7.3 BACKGROUND, QUALIFICATIONS AND EXPERIENCE

Provide details on the following:

- A. Brief description of OFFEROR's qualifications to perform Scope of Services requirements.
- B. Provide explicit details on OFFEROR's background, qualifications and experience relative to performing requirements set forth in the Scope of Services, including but not limited to:
 - a. Background of OFFER's company ("Company"), i.e. services offered, size, resources, years in business, location(s), State of Hawaii presence, state of incorporation, etc.
 - b. Total number of current clients in Hawaii and on Island of Hawaii.
 - c. A list of clients in Hawaii with similar needs using similar products and/or services.
- C. Provide contact name and telephone number of three (3) references who can discuss Company's qualifications, experience and performance with regard to performance of the Scope of Services requirements. OFFERORs should inform all reference contacts that WHR may contact them between the Proposal Evaluation Date and Contractor Selection/Award Notification dates stated in Figure 1.
- D. Identification of litigation currently impacting the Company, if any. State "NONE", if none.
- E. Identification of any fines or violations received on projects OFFEROR has managed in the past 3 years relative to safety and environmental issues. State "NONE", if none.

3.7.4 PERSONNEL ORGANIZATION AND STAFFING

Provide details, including resumes, on the Company's personnel organization and staffing relative to performing requirements set forth in the Scope of Services, as follows:

- A. Key personnel identified to perform services, including:
 - 1. Name
 - 2. Years of experience
 - 3. Years with the company
 - 4. Qualifications (highlight specific Hawaii experience, if any)
- B. The Offeror should provide an organizational chart which clearly shows the reporting and lines of authority to include all proposed key personnel and any proposed subcontractors. The organizational chart should identify the prime point of contact between the Offeror and WHR.
- C. Number of people currently employed in the State of Hawaii with the number of employees residing on the Island of Hawaii. Identify which personnel can support WHR and in what capacity.
- D. The Offeror may submit any other pertinent information that would substantiate that the firm and its key personnel possess the experience, expertise, and capability to provide the required services.

Note: Primary personnel identified in your response may not be changed without WHR's written approval.

3.7.5 MANAGEMENT AND CONTROL

Provide a detailed summary of the methodology relative to performing requirements set forth in the Scope of Services, as follows:

- A. Assignment and management of personnel to the WHR account.
- B. Coordination of requirements with WHR personnel.
- C. Problems anticipated, if any, and possible solutions.
- D. If Subcontractors or Consultants will be used, detail how Subcontractors or Consultants will be managed to ensure WHR obtains the highest level of service possible.

3.7.6 REQUIRED DOCUMENTATION

In addition to the requirements outlined in this RFP, OFFEROR must **submit copies of** the following documentation with response:

- 1. STATE OF HAWAII VENDOR COMPLIANCE (print from website)
- 2. W9
- 3. GET LICENSE
- 4. HHSC Approved Vendor's Terms and Conditions (if applicable)
- 5. HHSC Approved Vendor's redlines to HHSC General Conditions

3.8 PROPOSAL

All pricing proposals must clearly state that the price proposal shall remain valid through December 31, 2026

3.8.1 PRICE

Along with a summary page, provide a detailed, line-item list of any and all prices representing the dollar amount offered to perform Scope of Service requirements of this RFP.

After contract award, WHR will not issue any change orders involving increased cost as a result of an OFFEROR error or oversight on the submitted proposal.

A further breakdown of price related information may be requested during proposal review and evaluation. Worksheets and supporting documentation in determining the Offer may be provided with the proposal to verify validity of computations and determine if prices are "fair & reasonable".

If you will use a subcontractor at any time during the performance of the Agreement, the subcontractor's table (Appendix I) must be included in your Price section. If you do not plan on using a subcontractor, please mark "NOT APPLICABLE" on the table and also include it in your Price Section.

3.8.2 REQUIREMENTS

- A. **Non Applicable Requirements.** Excluding HHSC General and Special Terms and Conditions, and any objectionable or defective RFP matters, if any proposal requirement, as described in this Section, is not applicable to the OFFEROR and therefore will not/cannot be provided, list what the requirement(s) are and why the requirement(s) are not applicable.
- B. **Non Acceptance of any RFP Requirement.** If any RFP requirement, as describe in this RFP, is not acceptable to the OFFEROR, list what the requirement(s) are why the requirement(s) are not acceptable. Should OFFEROR have an alternate solution submit those alternate solutions in OFFEROR's proposal.
- C. **WHR Furnished Items.** If the OFFEROR's proposal requires any goods, services, equipment, third-party vendor support, or anything of value to be provided by WHR, these items must be clearly detailed and stated in the OFFEROR's proposal.

WHR reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in the RFP.

3.9 PROPOSAL SUBMISSION CHECKLIST

The proposal submission checklist is provided by WHR and is designed to be used as a tool to ensure that all required documents and information are being submitted with OFFEROR's proposal. WHR recommends the OFFEROR go through the checklist before submitting the response. The proposal submission checklist is in APPENDIX B.

SECTION 4 EVALUATIONS

4.0 INTRODUCTION

The evaluation of proposals shall be conducted comprehensively, fairly, and impartially. Structural, quantitative scoring techniques will be utilized to maximize the objectivity of the evaluation.

4.1 PROPOSAL EVALUATION COMMITTEE

An evaluation committee of a minimum of three (3) evaluators will be selected from WHR to perform all evaluation requirements. The committee will be composed of individuals with experience in, knowledge of, and program responsibility for the requirements identified in the RFP. WHR reserves the right to request information from OFFEROR to clarify the OFFEROR's proposal.

4.2 EVALUATION PHASES

Evaluation phases will be conducted as follows:

Phase	Phase Description
Phase 1	Evaluation of Mandatory Requirements
Phase 2	Technical and Price Sections Evaluation
Phase 3	Determination of Short List of Offerors (optional)
Phase 4	Proposal Discussions by Short-List
Phase 5	Best and Final Offers by Short List (optional)
Phase 6	Recommendation for Contract Award

Figure 8. Proposal Evaluation Phases

4.2.1 PHASE 1 EVALUATION OF MANDATORY REQUIREMENTS

The evaluation of the mandatory requirements, as listed below, shall be based upon a "Pass/ No Pass" basis. The purpose of this phase is to determine whether an OFFEROR's proposal is sufficiently responsible and responsive to RFP requirements to permit a complete evaluation, i.e. responsible in terms of "Does the OFFEROR have the capability to perform fully the Scope of Services requirements"; and, "Were proposal documents received by WHR and do they contain the required information?" Failure to meet any mandatory requirement will be grounds for deeming the proposal non-responsible, non-responsive or both and disqualification ("No Pass") thereof.

4.2.2 PHASE 2 TECHNICAL AND PRICE SECTIONS EVALUATION

Evaluation of OFFEROR's technical section shall be conducted using the technical section categories and the Price weight percentages identified in Paragraph 4.3 and the evaluation scoring system identified in Paragraph 4.4.

Evaluation of the Price section shall be conducted using the Price section category and the Price weight percentages identified in Paragraph 4.3 and the evaluation scoring system identified in Paragraph 4.4. The Price Section will be evaluated as a whole in terms of best Price taking into consideration all items in the Price Section. For example, the lowest priced proposal may not get the best score for Price if the OFFEROR has taken exception to many generally accepted requirements, has a poorly documented proposal, or has pricing which indicates a lack of understanding of the RFP.

4.2.3 PHASE 3 DETERMINATION OF SHORT-LISTED OFFERORS (OPTIONAL)

At its discretion, following Phase 1 and 2, WHR may develop a Short List of OFFERORS based on the evaluation of OFFERORS' Technical and Price sections

4.2.4 PHASE 4 PROPOSAL DISCUSSIONS WITH SHORT-LISTED OFFERORS (OPTIONAL)

The OFFERORS on the Short List of OFFERORS may be asked to virtually present their qualifications and how they are best suited for the OCC Project. OFFEROR's proposal may be accepted without discussions. In the event that WHR elects to hold discussions, WHR shall inform Short-Listed OFFERORS if there are specific discussion topics and issues; and schedule the discussion, which will be conducted via Microsoft TEAMS. While WHR will provided as much notice as possible, OFFERORS must be prepared for short notice.

4.2.5 PHASE 5 BEST AND FINAL OFFERS (OPTIONAL)

OFFEROR may be requested to submit a Best and Final offer. Best and Final offers shall be evaluated and scoring of the OFFEROR's proposal adjusted, accordingly. If a Best and Final offer is requested but not submitted, the original submittal shall be accepted as the Best and Final offer.

4.2.6 PHASE 6 RECOMMENDATION FOR CONTRACT AWARD

The Evaluation Committee shall prepare a report summarizing proposal evaluation findings/rankings and provide recommendation for award of contract to the RCEO.

4.3 EVALUATION CATEGORIES AND PRICE WEIGHT PERCENTAGES

The following Evaluation Categories and Price Weight Percentages shall be used:

Price Weight Percentages	Points	Evaluation Category
Pass/No Pass	N/A	MANDATORY REQUIREMENTS. Category includes:
		PROPOSAL TRANSMITTAL COVER LETTER
		TECHNICAL SECTION
		PROJECT MANAGEMENT SECTION
		PRICE SECTION
25%	25	TECHNICAL APPROACH. Category includes:
		TECHNICAL SECTION
		TECHNICAL PROPOSAL MANDATORY QUESTIONS
25%	25	PROJECT MANAGEMENT CAPABILITY. Category includes:
		TECHNICAL PROPOSAL BACKGROUND, QUALIFICATIONS AND EXPERIENCE
		TECHNICAL PROPOSAL PERSONNEL ORGANIZATION AND STAFFING
		TECHNICAL PROPOSAL MANAGEMENT AND CONTROL
45%	45	PRICE. Category includes:
		PRICE SUMMARY
		PRICE DETAILED OFFER
		WHR FURNISHED ITEMS
5%	5	COMPLIANCE WITH REQUIREMENTS. Category includes:
		ANSWERED ALL QUESTIONS PROPERLY AND PROVIDED ALL DOCUMENTS
		NON APPLICABLE PROPOSAL REQUIREMENT
		NON ACCEPTANCE OF ANY RFP REQUIREMENT

Figure 9. Evaluation Categories and Price Weight Percentages

4.4 EVALUATION SCORING SYSTEM

The maximum number of points available for scoring is one hundred (100) per evaluator. The proposal receiving the highest number of points is considered statistically the best proposal and the **best value** to WHR; and, will be recommended for award of contract, unless otherwise determined and justified by the evaluation committee.

Each Evaluation Committee Member shall review OFFEROR proposals that pass Phase 1 Evaluation of Mandatory Requirements. The Evaluation Committee Members shall determine the score for each Evaluation Category for each OFFEROR in accordance with Figure 11. The OFFEROR's total score will be the sum of all scores by all evaluators.

SECTION 5 AWARD OF CONTRACT

5.0 AWARD OF CONTRACT

Award of contract shall be made to the most responsible and responsive OFFEROR whose proposal is determined by the Evaluation Committee to provide the best value to WHR, considering all evaluation reviews and results.

5.1 CONTRACT AWARD NOTIFICATION

The notice of award, if any, resulting from this solicitation shall be posted on the Kona Community Hospital website: <http://www.kch.hhsc.org/Procurement/>. This will serve as the official notification to all OFFERORs. In addition, the Issuing Officer will inform the successful OFFEROR of contract award selection by an official “notice of award” letter.

At its discretion and as a courtesy to the OFFEROR the Issuing Officer may issue a “Notice of Posting of Award” to the unsuccessful OFFERORs. However, a delay in issuing the notice or the inadvertent omission of such courtesy notice will not extend the protest filing time.

5.2 CONTRACT AWARD DEBRIEFING

If requested, WHR shall provide a contract award debriefing. The purpose of a debriefing is to inform the non-selected OFFEROR of the basis for the source selection decision and contract award. A written request to the Issuing Officer for a debriefing shall be made within three (3) working days after receipt of non-award letter from WHR and/or posting of the award of the contract.

5.2.1 CONTRACT DOCUMENT

The contract will be awarded by executing an “Agreement for Goods or Services Based Upon Competitive Sealed Proposals” (hereinafter “CONTRACT”) by WHR and the successful OFFEROR (hereinafter “CONTRACTOR”). This document will serve as the official, legal contractual instrument between both parties. This document will incorporate (by attachments or reference) the RFP, with any and all addendums; GENERAL CONDITIONS and any SPECIAL CONDITIONS; and the CONTRACTOR’s accepted proposal, with any and all addendums, changes, negotiated agreements, all of which becomes part and whole of the CONTRACT.

A “sample” CONTRACT is located at APPENDIX C. **DO NOT complete or execute the “sample” CONTRACT.**

5.2.2 GENERAL EXCISE/USE TAX

Work to be performed under this solicitation is a business activity taxable under Chapter 237, Hawaii Revised Statutes (HRS), and Chapter 238, HRS, where applicable. Both out-of-state and Hawaii CONTRACTOR are advised that the gross receipts derived from this solicitation are subject to the general excise tax imposed by Chapter 237, HRS, and where applicable to tangible property imported into the State of Hawaii for resale, subject to the use tax imposed by Chapter 28, HRS.

Pursuant to Section 237-9, HRS, the CONTRACTOR is required to obtain and/or possess a valid General Excise Tax License from the Hawaii State Department of Taxation (DOTAX) prior to executing a contractual agreement with a State Agency.

The General Excise Tax License shall be obtained from the DOTAX offices in the State of Hawaii or the DOTAX Web Site and by mail or FAX.

5.3 CONTRACT EXECUTION

Upon receipt of the CONTRACT document, the CONTRACTOR shall have up to five (5) business days to execute and return the CONTRACT to the Issuing Officer. A copy of the fully executed CONTRACT will be provided the CONTRACTOR within five (5) business days of CONTRACT execution.

Award of CONTRACT may be withdrawn if the CONTRACTOR is unable to meet CONTRACT execution requirements.

5.4 CONTRACT COMMENCEMENT DATE

No work is to be undertaken by the CONTRACTOR prior to the commencement date specified in the **Fully Executed** Contract. WHR is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the CONTRACTOR prior to the official, notice to proceed "Commencement" date stated in the **Fully Executed** Contract.

APPENDIX A

SAMPLE PROPOSAL TRANSMITTAL COVER LETTER

Dear Mr. McGhan:

(Name of Business) proposes to provide any and all goods and services as set forth in the "Request for Proposals for Competitive Sealed Proposals" to provide "**OCC Project Manager/Owner's Representative, RFP # 27-0004**", for which fees/costs have been set. The fees/costs offered herein shall apply for (Please insert applicable period of time).

It is understood and agreed that (Name of Business) have read WHR's Scope of Services described in the RFP and that this proposal is made in accordance with the provisions of such Scope of Services. By signing this proposal, (Name of Business) guarantees and certifies that all items included in this proposal meet or exceed any and all such Scope of Services.

(Name of Business) agrees, if awarded the contract, to provide the goods and services set forth in the RFP; and comply with all terms and conditions indicated in the RFP; and at the fees/costs set forth in this proposal. The following individual(s) may be contacted regarding this proposal:

Other information:

Business Phone #:		Federal Tax ID #:	
Facsimile #:		Hawaii GET Lic. ID #:	
E-mail address:			

(Name of Business) is a: ☐ Sole Proprietor ☐ Partnership ☐ Corporation ☐ Joint Venture Other (Specify) _____

State of Incorporation is: (Specify) _____

The exact legal name of the business under which the contract, if awarded, shall be executed is:

(Authorized Bidder's Signature, Printed Name/Title)

APPENDIX B

PROPOSAL SUBMISSION CHECKLIST

***IF SPECIFIC ITEM(S) IS NOT APPLICABLE, MARK WITH "N/A"---DO NOT LEAVE BLANK.**

PLEASE CHECK OFF:

OFFEROR Shall Check Off Submitted	Proposal Items	WHR Internal Use ONLY
	Proposal Received "On-Time"	☐
☐		☐
☐	Proposal Transmittal Cover Letter:	☐
☐	• Official Business Letterhead	☐
☐	• Authorized Signature	☐
☐	• Required Information	☐
☐	Technical Proposal	☐
☐	• Summary	☐
☐	• Mandatory Requirements	☐
☐	• Background, Qualifications and Experience	☐
☐	• Personnel Organization and Staffing	☐
☐	• Management and Control	☐
☐	Price Proposal	☐
☐	• Summary	☐
☐	• Summary Offer	☐
☐	• Non Applicable Proposal Requirement(s)	☐
☐	• Non Acceptance of any RFP Requirement(s)	☐
☐	• WHR Furnished Items	☐
☐	State of Hawaii Vendor Compliance	☐
☐	W-9 & General Excise License	☐
☐	HHSC Approved Vendor's Terms and Conditions (if applicable)	☐
☐	HHSC Approved Vendor's redlines to HHSC General Conditions	☐
☐	Proposal Submission Checklist	☐

APPENDIX C

SAMPLE

HAWAII HEALTH SYSTEMS CORPORATION AGREEMENT FOR GOODS OR SERVICES BASED UPON COMPETITIVE SEALED PROPOSALS

AGREEMENT #: xx-xxxx
(project name)

THIS AGREEMENT, executed on the respective dates of the signatures of the parties shown hereafter, is effective as of **xxx**, between **Kona Community Hospital** of the West Hawaii Region, a division of **Hawaii Health Systems Corporation** (hereinafter "HHSC"), by its West Hawaii Regional Chief Executive Officer, (hereinafter "CEO"), whose address is 79-1019 Haukapila Street, Kealahou, HI 96750, and [**CONTRACTOR NAME**_____] (hereinafter "CONTRACTOR"), a [**BUSINESS STRUCTURE**____], under the laws of the State of **Hawaii**, whose business address is [**CONTRACTOR ADDRESS**_____] and FEIN No [**CONTRACTOR FEIN**_____].

RECITALS

- A.** The HHSC is in need of the goods or services, or both, described in this Agreement and its attachments.
- B.** The HHSC has issued a request for competitive proposals, and has received and reviewed proposals submitted in response to the request.
- C.** The CONTRACTOR has been identified as the responsible and responsive OFFEROR whose proposal is the most advantageous for the HHSC, taking into consideration price and the evaluation factors set forth in the request.
-

D. The HHSC desires to retain and engage the CONTRACTOR to provide the goods or services, or both, as the case may be, and the CONTRACTOR is agreeable to providing said goods or services, or both.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the HHSC and the CONTRACTOR agree as follows:

1. **SCOPE OF SERVICES.** The CONTRACTOR shall, in a proper and satisfactory manner as determined by the HHSC, provide all the goods set forth in **Attachment 1 Scope of Services.**

2. **TIME OF PERFORMANCE.** The performance required of the CONTRACTOR under this Agreement shall be executed in accordance with the time period set forth in the **Attachment 2 Time of Performance**, which is made a part of this Agreement.

3. **COMPENSATION.** The CONTRACTOR shall be compensated for services performed under this Agreement pursuant to the provisions as set forth in **Attachment 3 Compensation**, which is hereby made a part of this Agreement..

4. **BONDS.** The CONTRACTOR ☒ (is) or ☐ (is not) required to provide a performance bond.

5. **STANDARDS OF CONDUCT DECLARATION.** The Standards of Conduct Declaration of the CONTRACTOR is attached and is made a part of this Agreement.

6. **OTHER TERMS AND CONDITIONS.** The General Conditions and any Special Conditions are attached hereto and made a part of this Agreement (or, Any Special Conditions are attached hereto and made a part of this Agreement). In the event of a conflict between the General Conditions and the Special Conditions, the Special

Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) Agreement, including all attachments and addenda; (2) Request, including all attachments and addenda; and (3) Proposal.

7. **LIQUIDATED DAMAGES.** Liquidated damages are applicable.

8. **TECHNICAL REPRESENTATIVE.** The Technical Representative shall have the right to oversee the successful completion of contract requirements, including monitoring, coordinating and assessing performance; and, approving completed work/services with verification of same on invoices. The Technical Representative also serves as the point of contact for the CONTRACTOR for “Technical” matters (non-contractual) from award to contract completion. The Technical Representative is:

TBD

9. **NOTICES.** Any written notice required to be given by any party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice required to be given to the CEO shall be sent to: **Kona Community Hospital, 79-1019 Haukapila Street, Kealahou, HI 96750.** Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address as indicated in this Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the HHSC in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Agreement by their signatures,
on the dates below, to be effective as of the date first above written.

HHSC

SIGNATURE: _____

PRINTED NAME: Clayton R. McGhan

TITLE: Regional CEO, West Hawaii
Region

DATE: _____

CONTRACTOR * [__CONTRACTOR NAME__]

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty percent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State or HHSC, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges.

On behalf of [**CONTRACTOR NAME**], CONTRACTOR, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR ☐ IS or ☐ IS NOT a legislator or an employee or a business in which a legislator or an employee has a controlling interest.*
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a State or HHSC employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the State or HHSC within the preceding two (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been a State or HHSC employee, or in the case of the Legislature, a legislator.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, 1) within the past twelve (12) months, served as a State or HHSC employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

CONTRACTOR understands that the Agreement to which this document is attached is voidable on behalf of the State or HHSC if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the State or HHSC.

CONTRACTOR

SIGNATURE: _____

Print Name: _____

Title: _____

Date: _____

ATTACHMENT 1

SCOPE OF SERVICES

Final Scope of Services will be included in the contract.

ATTACHMENT 2

TIME OF PERFORMANCE

1. The CONTRACTOR shall provide the services required under this Agreement for a period from **XX** to and including **XX**, unless sooner terminated or extended as provided.

-OPTIONAL-

2. **OPTION TO EXTEND:** The TIME OF PERFORMANCE of this Agreement may be extended for XX () additional XX () month intervals, subject to mutual written agreement between WHR and the CONTRACTOR, prior to the end of the current contract period. A Supplemental Agreement will be executed by the CONTRACTOR and HHSC to exercise extensions.

ATTACHMENT 3

COMPENSATION AND PAYMENT SCHEDULE

In full consideration for the services to be performed by the CONTRACTOR under this Agreement, the HHSC agrees, subject to appropriation and allotments, to pay to the CONTRACTOR a total sum of money not to exceed **XXX AND NO/100 DOLLARS (\$XXX.00)** including all applicable taxes and expenses incurred, and in accordance with the following:

A. Total Contract Award. This Total Sum shall include any and all taxes, shipping and handling and other miscellaneous costs to complete the work required in the Scope of Services.

B. Invoicing Schedule. Contractor shall invoice Hospital in accordance with the following:

1. This is a Fixed Price Agreement.
2. The contractor is paid monthly.
3. Travel costs are not allowable.
4. If the not-to-exceed value is insufficient to complete all phases of the Project, Hospital may, at their sole discretion, issue a separate agreement in accordance with their procurement policies for the remainder of the work or complete the work with Hospital personnel.

C. Payment Guidelines

5. Company shall provide W-9 and Certificate of Insurance upon Contract Award.
- 6. The Contract Number (xx-xxxx) and Payment Milestone Number must appear on every Invoice.**
7. The "Invoice To" must be "Kona Community Hospital".
8. The "Remit To" name on your invoice must match your company name as you are registered with the State of Hawaii and the name stated in Contract.
9. If the "Remit To" address on the invoice is different from the address stated on the face of the Contract, we must state the "Remit To" address in Contract.
10. Invoice shall be transmitted to:

Technical Representative

****** If your invoice does not contain your contract number, it may be rejected and payment delayed. ******

ATTACHMENT 4

HHSC GENERAL CONDITIONS

(Immediately following this page).

APPENDIX D

PRICING

In accordance with the attached Scope of Services, HHSC General Conditions, Special Conditions (if applicable) and all information contained within this proposal, the Offeror submits the following pricing which includes all applicable taxes:

Fixed Percentage of Project Not-to-Exceed cost: %

This percentage represents the Project Manager's fee as assessed against the total Project Construction Cost. This percentage must include all reasonable and customary fees and costs (i.e. consultants' fees, administrative expenses, software, hardware, all travel related expenses, and applicable taxes, etc.) for the Project. If the Project comes in below budget (under the accepted Quote) the savings belongs to WHR.

Identify any other possible fees or mark-ups that may be charged to WHR during the project below:

APPENDIX E

SUBCONTRACTOR TABLE
(IF NONE, WRITE "N/A" ON TABLE)

*Any changes with your subcontractor must be requested in writing to the Hospital Technical Representative prior to starting that phase of work.

[illegible]

APPENDIX F

CONTRACTOR GUIDELINES HANDBOOK (NON-CONSTRUCTION)

(Immediately following this page).



Contractor Guidelines

NON-CONSTRUCTION

Introduction

This Contractor Guidelines Booklet is designed for contractors and sub-contractors who provide services to Kona Community Hospital.

This booklet provides requirements and expectations of the contractors and sub-contractors that are contracted to perform work in the hospital.

Contractors and sub-contractors working in the hospital must successfully complete all requirements listed in the booklet prior to any project work beginning on-site at Kona Community Hospital.

Important Phone Numbers

Human Resources	322-4458
Employee Health	322-4478
Infection Prevention	322-4478
Facility Director	322-4495
Maintenance Clerk	322-4592
Risk Manager	322-6976
Hospital Supervisor	322-4594
Patient Access (Admitting)	322-5803
Security	322-4525
Maintenance Supervisor	322-4566
Housekeeping	322-4521
ICU Manager	322-5824
Emergency Room Manager	322-4484
Medical/Surgical Manager	322-4477
Surgical Services (OR) Manager	322-6909
First Floor Acute Manager	322-4407
Behavior Health Manager	322-4573
Obstetrics Manager	322-4598
Imaging Manager	322-5872
Pharmacy Manager	322-4402
Clinical Labs Manager	322-4422
Dietary Manager	322-4415
Administration (CEO, CNE)	322-6970
IT Department	322-5887
Contracts Management	322-6992

Human Resource Requirements

Contact Human Resources to schedule an appointment to pick up and review documents listed below:

- ♠ Read the Contractor Guideline booklet. Return **Contractor Guidelines Confirmation of Understanding** to Human Resources.
- ♠ **Drug Screening:** Each contractor / sub-contractor will have to complete a five panel drug screen within six months of the project start date. Negative drug screening results are to be submitted to Human Resources. Additionally, if management has a reasonable individualized suspicion that a contractor is currently violating the Hospital Drug Free workplace policy, a urine drug screen may be requested. Arrangements to complete a drug screening can be made through Human Resources at a fee of \$17.00 per person. Contact Human Resources to schedule an appointment (page 4).
- ♠ **State and Federal Criminal History Record Check:** Each contractor / sub-contractor will have to complete a State and Federal criminal background check within six months of project start date. Background check results are to be submitted to Human Resources. Persons with any criminal charges pending or with any felony convictions shall not be eligible to work in the Hospital. Arrangements to complete a background check can be made through Human Resources at a fee of \$50.00 per person. Contact Human Resources to schedule an appointment (page 4).
- ♠ Complete **Request for State Federal Criminal History Record Check** form
- ♠ Complete and return the **Acknowledgement and Understanding**.
- ♠ Camera Surveillance and Image Recording form. Initial, sign, and date **Appendix A**. Policy is for your records.

Employee Health Requirements

Contact Employee Health / Infection Control to review documents listed below: All documents can be picked up at Human Resources.

- ♠ Complete the following forms:

- Contractor Health Evaluation**

- Immunization Declination Requirements for Maintenance and Construction Contractors**

- ♠ Submit a completed 2-step Tuberculosis test. Arrangements to complete a TB test can be made through your primary care physician or contact the Hawaii Department of Health at 808-322-1522.
- ♠ Completion of an annual influenza vaccine (or declination form) during the flu season of October through March.



Request for Records and Documentation

Contractor will cooperate with and make available to Kona Community Hospital any records and documentation required by such authorities within eight (8) hours upon request. Kona Community Hospital will make such requests during normal business hours.

Confidentiality

At Kona Community Hospital, privacy of patients is valued and protected by law. Although contractor employees will never have reason to use private health information, they may come into contact with documents and computer screens, or overhear conversations that contain private information. Please remember that this information is protected and private and should not be discussed or shared.

Not all areas of the hospital are open to the public for reasons of safety or privacy. If contractors are required to work in clinical areas they must observe specific HIPPA security/confidentiality rules.

General Safety

Kona Community Hospital is committed to the safety of employees, students, visitors, and patients. All employees, including contractor employees, are expected to take safety seriously and follow good safety practices. If there is any doubt regarding the safety of a job or task, notify the Facilities Director.

If you are feeling ill stay home. You are more prone to germs from others and more likely to spread your germs to patients who are already sick and have little defenses left to use against them. You will get better faster and you won't get anyone else sick either.

Kona Community Hospital has adopted and follows a safety plan designed to provide a safe environment. The goal of this plan is to create a workplace that is free from hazards and where risks of injuries to employees, patients, visitors, and contractors is at a minimum.

Since safety is a team effort, everyone working at Kona Community Hospital must look out for themselves and each other by watching for unsafe practices and correcting or reporting them if encountered.

Contractor Check-In

Upon the daily arrival of a contractor to Kona Community Hospital, the contractor is required to check-in and sign-in at the Maintenance Office. Contractors must also check-out and sign-out daily at the Maintenance Office. Hours of normal operations are 0600 to 1430 Mondays thru Fridays. Any off shift , holiday and weekend work requires prior approval and 48 hours notice arranged with the Facilities Director. Arrangements for card access to project areas requires 48 hours notice.

Identification Badges and Basic Security

All contractor employees must wear a KCH badge (permanent / temporary). Badges are issued from HR after all HR and Employee Health requirements are completed. Badges are signed out and back in daily through the Maintenance Department. The badge must be worn above the waist. Contractor employees without badges will be asked to check in at the Maintenance Department. Off shift, holiday and weekend arrangements will be made with the Maintenance Clerk and approval of the Facilities Director to have the badges sent to Patient Access to be signed in and returned at end of shift.

Parking

Parking at Kona Community Hospital is at a premium. Contractors must park in areas designated by the facility.

Smoking and Tobacco Use

Kona Community Hospital is a Smoke and Tobacco Free Campus. Use of tobacco products including cigarettes, chew and electronic cigarettes is not allowed on campus.

Personal Appearance

- ♠ A shirt displaying the contractor's name is preferred. Long work pants or jeans and covered shoes are required
- ♠ Identification badge must be worn above the waist.
- ♠ Not allowed are slippers, shorts and sleeveless shirts with holes, and / or offensive language and / or artwork.

Appropriate Behavior

Kona Community Hospital promotes a healthy work environment and expects appropriate behavior by everyone on campus.

Reports of inappropriate behavior will be investigated and disciplinary action may result.

Whistling, inappropriate language and any other gesture that is perceived to be offensive to Kona Community Hospital employees and guests will not be tolerated and will be cause for dismissal.

All contractors are responsible for adhering to these guidelines and must report inappropriate actions to the Nursing Supervisor, Facilities Director, or Risk Manager.

Workplace Violence Prevention

Violence, threat of violence, intimidation, harassment or coercion is not tolerated on the KCH campus.

Contractor employees are responsible for adhering to these guidelines and for reporting disruptive or violent behavior to Security, Nursing Supervisor, Facilities Director or the Risk Manager.

Interacting with Patients and Hospital Staff

The employees of Kona Community Hospital are proud of their facilities and are always careful to ensure the comfort and welfare of patients, visitors and co-workers. Even if only temporarily, contractor employees will become part of the KCH work force and may even be viewed as KCH employees by patients, guests or visitors.

All contact with patients, staff and visitors must demonstrate respect for the individual. Any action or words that suggest bias or prejudice are not appropriate.

Healthcare Personal Protective Equipment Requirements

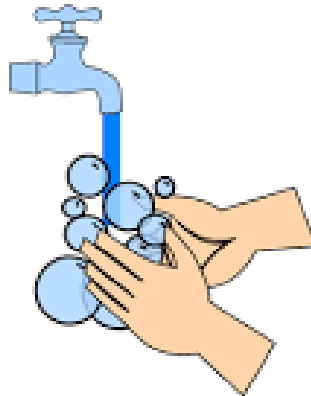
Personal protective equipment (PPE) is provided in an assortment of sizes and includes the following examples: gloves, isolation gown, mask, face shield, shoe covers and jumpsuits. Observe sterile work zone requirements and restrictions. Do not enter sterile corridors or rooms without appropriate attire required (ie. Scrubs, hats, booties, face mask, etc.) Do not wear this clothing out of the sterile area and re-enter, if you have exited area replace with clean PPE's prior to re-entry into area. You must coordinate with unit manager if you are unsure of appropriate attire or procedure required.



Hand-washing and Disinfection

In the Hospital setting any surfaces (phones, elevator buttons, tool handles etc.) can become a breeding ground for germs. Anyone that comes into contact with these surfaces can then transmit the germs to other areas in the hospital and potentially to our vulnerable patients. Every year thousands of people die from infections acquired at the hospital. The best defense against germs is hand washing; frequent hand washing in a healthcare setting will keep patients, staff and you safe from potential life threatening germs and spread of disease. KCH has alcohol hand washing stations throughout the facility for your convenience; to use just apply the foam/gel to your hands and rub until dry. If you like the traditional soap and water method please remember to scrub your hands for at least 20 seconds and use a paper towel to dry your hands and another one to turn off the faucet. Hand washing is expected during the following activities:

- ♣ When entering and exiting the facility and construction locations
- ♣ Before and after working on hospital equipment/locations
- ♣ When entering and exiting patient care areas
- ♣ Before applying and immediately after removing personal protective equipment.
- ♣ After removing gloves
- ♣ After using the restroom
- ♣ Before eating meals



Reporting an Emergency

To report an emergency at Kona Community Hospital please call the Hospital Operator at 322-9311 or dial 0 from hospital phone.

Emergency Response

In the event that emergency procedures are announced (Page Codes) check immediately with your Supervisor or the nearest KCH staff member to ask what is expected in this situation. You may be asked to leave the area.

Page Codes

Kona Community Hospital uses a color code system to notify employees, vendors and contractor employees of emergency situations. These codes will be given verbally over the public address system. These codes are:

For example, if there is a fire, there will be a page over the public address system stating: “Code Red” followed by the location.

If employees wait until an emergency is actually occurring before attempting to determine what is expected of them they may be too late because time is a very valuable commodity during an emergency.

Code Black	Severe Weather
Code Blue	Cardiac Arrest/Medical Emergency
Code Gray	Security Assistance
Code Green	Bomb Threat
Code Orange	Hazmat/ Bioterrorism
Code Pink	Infant Abduction
Code Red	Fire
Code Silver	Adult Elopement
Code Active Shooter	Active Shooter
Code Triage	Disaster Activation

Code Red—Fire Plan

Everyone working in Kona Community Hospital must always be aware of the locations of the nearest fire alarm pull station, the nearest fire extinguisher and the nearest exit.

When the fire alarm sounds everyone needs to leave the building.

R.A.C.E

R - Rescue

Rescue anyone in danger. Protecting of life is paramount.

A - Activate

Activate the nearest fire alarm station by pulling down the lever.

Dial # 40 on telephone handset and announce loudly 3 times “Code Red and location of fire (example code red electrical room first floor)”.

Assist others who may need assistance.

C - Confine

Close all doors, windows or openings in the room or corridor area where smoke and/or fire are present to isolate the condition.

Remember that smoke is also very dangerous, many victims of fires succumb to smoke.

If a closed door is hot, this may mean that there is fire on the other side.
DO NOT OPEN a hot door.

E - Extinguish: Secure fire extinguishers for use.

Fire extinguishers may be used only for small fires that are getting started, do not attempt to use a fire extinguisher on a fire that is too large or dangerous.

Only the respiratory therapy department or nursing may turn off medical gasses.

If you elect to extinguish the fire remember:

When using a fire extinguisher, remember the word “P.A.S.S”.
Each letter represents a step for using the fire extinguisher.

P– Pull the pin from the fire extinguisher.

A– Aim the hose at the base of the fire.

S- Squeeze the handle (lasts 20 seconds)

S- Sweep from side to side.

Evacuation—General Guidelines

- ♣ Keep Calm
- ♣ Leave lights on
- ♣ Do not use elevators (unless directed by Fire Dept.)
- ♣ Do not use telephones (unless directed by Fire Dept.)
- ♣ Keep all corridors clear at all times.
- ♣ Do not block the fire extinguishers or fire hoses.
- ♣ Do not block or lock any designated exits
- ♣ Know the location of fire extinguishers and pull stations.

Fire Safety General Guidelines—DO

- ♣ Obtain a Hot Work Permit prior to performing any hot work, including welding, soldering, torch cutting, or any work using an open flame.
- ♣ Participate in fire drills.
- ♣ Follow Interim Life Safety Measures (ILSM’s) implemented due to construction. Refer to attached policy (page 46)
- ♣ Place ceiling tiles back in place when completed with above ceiling.
- ♣ Protect penetrations through fire rated walls in accordance with UL System requirements.

Kona Community
Hospital
79-1019 Haukapila Street
Kealahou, HI 96750

Revised January 2016

Contractor Guidelines Confirmation of Understanding

By signing this page, I acknowledge that I:

- a. Have read and understand the contents of the contractor Guidelines Booklet.
- b. Responsible for my safety, and will abide by the safety rules of KCH and my employer.

Name (Print): _____

Signature: _____ Date: _____

Employer: _____

Project Name: _____

Contractor: _____

APPENDIX G

HHSC GENERAL CONDITIONS (LONG FORM)

(Immediately following this page).

HAWAII HEALTH SERVICES CORPORATION GENERAL CONDITIONS
(PURCHASE OF GOODS AND SERVICES - NON-HEALTHCARE SERVICE PROVIDERS)
(FOR NON-HRS 103D AGREEMENTS)

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1. **COORDINATION OF SERVICES BY HHSC.** The "head of the purchasing agency" (through the Technical Representative(s) or other designee as specified in the Agreement) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Agreement. The CONTRACTOR shall maintain communication with the head of the purchasing agency through the Technical Representative(s) or other designee at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Agreement. "Purchasing agency" as used in these General Conditions means and includes any HHSC region or facility which is authorized to enter into contracts for the procurement of goods and services. The term "HHSC" refers to HHSC and the region or facility entering into this Agreement. The term, "CONTRACTOR" includes all employees, agents, subcontractors, and other entities and persons utilized by the CONTRACTOR to fulfill the obligations of this Agreement. It will be the responsibility of CONTRACTOR to ensure that those other persons and entities follow the terms of this Agreement.
2. **RELATIONSHIP OF PARTIES: INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.**
 - a. In the performance of services required under this Agreement, the CONTRACTOR is an independent contractor, with the authority and responsibility to control and direct the performance and details of the work and services required under this agreement; however, HHSC shall have a general right to inspect work in progress to determine whether, in HHSC's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. Unless otherwise provided by special condition, it is understood that HHSC does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to provide services to other individuals or entities.
 - b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of HHSC for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from HHSC any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to HHSC employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes and (iii) general excise taxes. Unless provided otherwise by agreement between the parties, the CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, HRS, and shall comply with all requirements thereof.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs and other liabilities associated with securing the insurance coverage.
3. **PERSONNEL REQUIREMENTS.**
 - a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied. Where the facility is Joint Commission accredited, CONTRACTOR agrees to meet all applicable Joint Commission standards.
4. **CONTRACTOR EXCLUSION FROM FEDERAL PROGRAMS.** CONTRACTOR affirmatively states that it and none of its employees, agents or subcontractors performing services or providing goods pursuant to this Agreement are excluded from participation in federal health care programs, as defined in the Social Security Act (Section 1128 and 1128A), and other federal laws and regulations relating to health care. CONTRACTOR has an affirmative duty to verify the accuracy of this statement at least monthly and to inform HHSC in the event it is discovered that it is no longer true. HHSC reserves the right to verify that the above statements are true and to immediately cancel this Agreement in the event they are not true.
5. **NONDISCRIMINATION.** No person performing work under this Agreement, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law or regulation.
6. **CONFLICTS OF INTEREST.** The CONTRACTOR represents that neither the CONTRACTOR, nor any employees or agents of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

7. SUBCONTRACTS AND ASSIGNMENTS: CHANGE OF NAME.

- a. No assignment without consent. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Agreement and no such assignment or subcontract shall be effective unless the CONTRACTOR obtains the prior written consent of HHSC. Additionally, no such assignment or subcontract shall be effective unless the contractors assignee or subcontractor obtains a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9 HRS.
- b. Recognition of a successor in interest. When in the best interests of HHSC, a successor in interest may be recognized in an assignment agreement in which HHSC, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
 - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Agreement but waives all rights under this Agreement as against HHSC; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
- c. Change of name. When the CONTRACTOR asks to change the name under which it holds this Agreement with HHSC, the contract officer of the purchasing agency shall, upon receipt of a document acceptable or satisfactory to said officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Agreement with the CONTRACTOR to effect such a change of name. The amendment to this Agreement changing the CONTRACTOR'S name shall specifically indicate that no other terms or conditions of this Agreement are thereby changed.

8. INDEMNIFICATION AND DEFENSE. The CONTRACTOR shall defend, indemnify and hold harmless HHSC, the contracting facility, and their directors, employees and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees and costs, and all claims, suits and demands therefor, arising out of or resulting from any acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement for any reason.

9. LIQUIDATED DAMAGES. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 11 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to HHSC the amount, if any, set forth in this Agreement per calendar day from the date set for cure until either (i) HHSC reasonably obtains similar goods or services, or both, if the contract is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the contract is not terminated for default. To the extent that the CONTRACTOR's delay or nonperformance is excused under paragraph 11.d (Excuse for Nonperformance or Delayed Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay. This paragraph is of no force and effect unless the amount of liquidated damages is specified in the Agreement.

10. SUSPENSION OF AGREEMENT. HHSC reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

- a. Order to stop performance. The head of the purchasing agency may, by written order to the CONTRACTOR at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period of time not exceeding sixty (60) days unless the parties agree to a different period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any other period to which the parties shall have agreed, the head of the purchasing agency shall either:
 - (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Agreement.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery or performance schedule or contract price, or both, and the Agreement shall be modified in writing accordingly, if:
 - (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Agreement and

- (2) The CONTRACTOR asserts a claim for such adjustment within thirty (30) days after the end of the period of performance stoppage provided that if the head of the purchasing agency decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provisions of this Agreement.

11. TERMINATION FOR DEFAULT.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, or otherwise fails to timely satisfy the Agreement provisions, or commits any other substantial breach of this Agreement, the head of the purchasing agency may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the head of the purchasing agency, such officer may terminate the CONTRACTOR's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the head of the purchasing agency may procure similar goods or services in a manner and upon the terms deemed appropriate. The CONTRACTOR shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods and services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Agreement and subject to any directions from the head of the purchasing agency, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the State of Hawaii or HHSC has an interest.
- c. Compensation. Payment for completed goods and services delivered and accepted by HHSC shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the head of the purchasing agency. If the parties fail to agree, the head of the purchasing agency shall set an amount. HHSC may withhold from amounts due the CONTRACTOR such sums as the head of the purchasing agency deems to be necessary to protect HHSC against loss because of outstanding liens or claims and to reimburse HHSC for the excess costs expected to be incurred by HHSC in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and failure arises out of causes such as: acts of God; acts of a Public enemy; acts of the State of Hawaii and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the head of the purchasing agency shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of HHSC under this Agreement. As used in this paragraph the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 11.d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 12.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Agreement.

12. TERMINATION FOR CONVENIENCE BY HHSC.

- a. Termination for convenience of goods and services agreements. The head of the purchasing agency may, when the interests of HHSC so require, terminate this Agreement in whole or in part, for the convenience of HHSC. HHSC shall give written notice of the termination to the CONTRACTOR specifying the part of the Agreement terminated and when such termination becomes effective. HHSC shall exercise its rights under this paragraph in good faith and only when circumstances subsequent to the signing of this Agreement are changed to the extent that continuation of the Agreement is not in the best interest of HHSC. Such termination shall not be arbitrary or capricious.

- b. CONTRACTOR's obligations. The CONTRACTOR shall mitigate the cost of termination and incur no further obligations in connection with the terminated performance. The CONTRACTOR will stop performance to the extent specified on the date(s) set in the notice of termination. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance. The head of the purchasing agency may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to HHSC. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The head of the purchasing agency may require the CONTRACTOR to transfer title and deliver to HHSC in the manner and to the extent directed by the head of the purchasing agency:
 - (1) Any completed goods or work product; and
 - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Agreement; and
 - (3) The CONTRACTOR shall, upon direction of the head of the purchasing agency, protect and preserve property in the possession of the CONTRACTOR in which HHSC has an interest. If the head of the purchasing agency does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that HHSC has breached the Agreement by exercise of the termination for convenience provision.
- d. Compensation. The CONTRACTOR may submit a termination claim specifying the unavoidable costs incurred because of the termination for convenience. This claim is in addition to any claim for payment for goods or services already performed prior to the termination. The head of the purchasing agency shall review the termination claim and respond to the CONTRACTOR with written objections or full payment within 60 days, provided that the claim is substantiated with invoice documentation. The amount paid for a termination claim shall be determined by the head of the purchasing agency but in no event shall exceed the amount remaining on the contract.

13. CHANGE ORDERS TO GOODS AND SERVICES AGREEMENTS. A change order is a written order signed by the head of the purchasing agency, directing the CONTRACTOR to make changes which the below "change clause" authorizes the head of the purchasing agency to order without the consent of the CONTRACTOR.

- a. Change clause. By written order, at any time, and without notice to any surety, the head of the purchasing agency may, unilaterally, order:
 - (1) Changes in the work within the scope of the Agreement; and
 - (2) Changes in the time of performance of the Agreement that do not alter the scope of the work of the Agreement.
- b. Adjustment of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Agreement, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this clause shall be determined, where applicable, as negotiated. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the head of the purchasing agency promptly and duly makes the provisional adjustments in payment or time for the direct costs of the work as HHSC deems reasonable. The right of the CONTRACTOR to dispute the Agreement price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established in the Agreement or in these rules.
- c. Time period of claim. Within ten (10) days after receipt of a written change order, unless the period is extended by the head of the purchasing agency in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.
- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written response is not given prior to final payment under this Agreement.
- e. Claims not barred. In the absence of a change order, nothing in the clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Agreement or for breach of contract.

14. MODIFICATIONS OF AGREEMENT.

- a. In writing. Any modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be made by written amendment to this Agreement signed by the CONTRACTOR and HHSC. Change orders shall be made in accordance with paragraph 13 herein. Notice to any surety is not required.
- b. No oral modification. No oral modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be permitted or acknowledged.

- c. Adjustment of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Agreement, an adjustment shall be made and this Agreement modified in writing accordingly. Any adjustment in price made pursuant to this clause shall be determined, where applicable, in accordance with the terms of this Agreement or as negotiated.
- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Agreement and the claims are not made prior to final payment under this Agreement.
- e. Claims not barred. In the absence of a written modification to the Agreement, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Agreement or for breach of contract.

15. VARIATION IN QUANTITY FOR DEFINITE QUANTITY AGREEMENTS. Upon the agreement of HHSC and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in the Agreement, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the head of the purchasing agency makes a written determination that such an increase will either be more economical than awarding another Agreement or that it would not be practical to award another agreement.

16. CLAIMS BASED ON THE HEAD OF THE PURCHASING AGENCY'S ACTIONS OR OMISSIONS.

- a. Change in scope. If any action or omission on the part of the head of the purchasing agency (which term includes the designee of such officer) requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of proper officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages or extension of time for completion, provided:
 - (1) Written notice required. The CONTRACTOR shall give written notice to the head of the purchasing agency:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission; or
 - (B) Written thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the head of the purchasing agency in writing.
 - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages or an extension of time. The head of the purchasing agency, upon receipt of such a notice, may rescind such action, remedy such omission or take such other steps as may be deemed advisable.
 - (3) Basis must be explained. The notice required by this paragraph must describe as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages or an extension of time may be remedies to which the CONTRACTOR is entitled; and
 - (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the head of the purchasing agency within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to HHSC, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however shall excuse the CONTRACTOR from compliance with any rules or laws precluding collusion or bad faith in causing the issuance of or performing change orders which are clearly not within the scope of the Agreement.

17. COSTS AND EXPENSES. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Agreement shall be subject to the following guidelines, unless otherwise stated in the Agreement:

- a. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the head of the purchasing agency is obtained, reimbursement for subsistence allowance (i.e., hotel and meals) shall be \$145 per day, which consists of \$85 for hotel and \$60 for food, computed on quarter days. No other travel or living expense (e.g., tips, entertainment, alcohol, etc.) shall be reimbursed by HHSC, other than those items listed in subparagraphs a and b, above. Invoices shall document the days of travel by including the name of the traveler, itinerary, airfare receipt, hotel receipt, and ground transportation receipts. All travel must be pre-approved by the HHSC technical representative.
- d. CONTRACTORS with an office located on the same island as the site of the services to be provided pursuant to this Agreement are not entitled to per diem or transportation expense reimbursement unless explicitly specified in the Agreement.

18. PAYMENT PROCEDURES.

- a. Original invoices required. All payments under this Agreement shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Agreement have been performed by the CONTRACTOR according to the Agreement.
- b. Payment only for work under contract. HHSC is not responsible to pay for work performed by CONTRACTOR or its subcontractors that is not in this Agreement and any amendments or change orders thereto. All CONTRACTORS must follow paragraph 14, Modifications of Agreement or paragraph 13, Change Orders to Goods and Services Agreements and must have proper authorization before performing work outside the original Agreement.

19. PROMPT PAYMENT OF SUBCONTRACTORS.

- a. Generally. Any money paid to a CONTRACTOR shall be disbursed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes regarding payment.
- b. Final payment. Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- c. Penalty. The procurement officer or the CONTRACTOR, as applicable, will be subject to a penalty of one and one-half per cent per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. Where a subcontractor has provided evidence to the CONTRACTOR of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in paragraph (d), and:
 - (1) Has provided to the CONTRACTOR an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in Section 103-32.1, HRS; or
 - (2) The following has occurred:
 - (A) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to CONTRACTOR and the surety, as provided for in Section 103D-324, HRS (reference of HRS 103D-324 provision does not intend to imply that this contract is governed by that chapter or the implementing rules and regulations); and
 - (B) The subcontractor has provided to the CONTRACTOR, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the CONTRACTOR; any other bond acceptable to the CONTRACTOR; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the CONTRACTOR and subsequently, upon receipt from the procurement officer, by the CONTRACTOR to the subcontractor within the applicable time periods specified in paragraph (b) and Section 103-10, HRS. The penalty may be withheld from future payment due to the CONTRACTOR, if the CONTRACTOR was the responsible party. If a CONTRACTOR has violated paragraph (2) three or more times within two years of the first violation, the contractor shall be referred by the procurement officer to the contractors license board for action under Section 444-17(14), HRS.
- d. A properly documented final payment request from a subcontractor, as required by paragraph (c), shall include:
 - (1) Substantiation of the amounts requested;
 - (2) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:
 - (A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;
 - (B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
 - (C) The payment request does not include any amount that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and
 - (3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The procurement officer shall return any final payment request that is defective to the CONTRACTOR within seven days after receipt, with a statement identifying the defect.
- e. This section shall not be construed to impair the right of a CONTRACTOR or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be

met before the subcontractor shall be entitled to receive final payment under paragraph (c); provided that any such payments withheld shall be withheld by the procurement officer.

20. CONFIDENTIALITY OF MATERIAL.

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of HHSC. It is acknowledged and agreed that all of the trade secrets, business plans, marketing plans, know how, data, contracts, including this Agreement, documents, scientific and medical concepts, billing records, personnel records, medical records of any kind, and referral sources for existing or future services, products, operations, management, business, pricing, financial status, valuations, goals, strategies, objectives and agreements of HHSC and any of its facilities, affiliates or subsidiaries, and all patient information in any form, whether written, verbal or electronic are confidential ("Confidential Information"); provided, however, that Confidential Information, with the exception of patient information, shall not include information that is in the public domain.
- b. All information, data, or other material provided by the CONTRACTOR to the HHSC is subject to the Uniform Information Practices Act, chapter 92F, HRS, as modified by chapter 323F HRS.

21. CORPORATE COMPLIANCE PROGRAM. A description of the Corporate Compliance Program of HHSC, including orientation materials, is posted on the HHSC internet site (www.hhsc.org). The CONTRACTOR, by signing this contract, acknowledges that it has read said description, and that the CONTRACTOR knows of the fact and substance of the Corporate Compliance Program, which governs operations at all facilities of the HHSC. The CONTRACTOR understands and agrees that employees, agents, contractors and subcontractors performing any services at any of the HHSC facilities shall be fully subject to such Corporate Compliance Program, as may be amended from time to time, as well as all federal program requirements and applicable policies and procedures of HHSC and its facilities. The Corporate Compliance Program requires periodic training, including an orientation program, of all people who provide financial, business office, personnel, coding, medical records information systems and clinical services in the facility. The CONTRACTOR agrees to cause its employees, agents and contractors who provide financial, business office, personnel, coding, medical records information systems and/or clinical services at any of the HHSC facilities to review the posted orientation materials and participate in any compliance training programs HHSC may require.

22. BUSINESS ASSOCIATE ADDENDUM. By signing this Agreement, CONTRACTOR acknowledges that CONTRACTOR may be a Business Associate of HHSC within the meaning of the federal privacy and security laws as stated in 45 C.F.R. Parts 160 and 164, Subparts A, C, and E. CONTRACTOR further acknowledges that CONTRACTOR has read the Business Associate Addendum, which is posted on the HHSC internet site (www.hhsc.org/BAA). If CONTRACTOR is a Business Associate as defined in the above laws, said Business Associate Addendum is hereby incorporated by reference and made a part of this Agreement as if fully repeated herein. By signing this Agreement, CONTRACTOR agrees to fully comply with, and be bound by, all terms set forth in the Business Associate Addendum, as it may be amended from time to time.

23. PUBLICITY. The CONTRACTOR shall not refer to the HHSC or any office, agency, or officer thereof, or any HHSC employee, including the head of the purchasing agency, the Agency procurement officer, the HHSC Board of Directors, or to the services or goods, or both, provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR without the explicit written consent of HHSC. All media contacts with the CONTRACTOR about the subject matter of this Agreement shall be referred to the head of the purchasing agency.

24. OWNERSHIP RIGHTS AND COPYRIGHT. HHSC shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Agreement and all such material shall be considered "works for hire." All such materials shall be delivered to HHSC upon expiration or termination of this Agreement. HHSC, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Agreement.

25. INSURANCE. During the term of this Agreement, CONTRACTOR shall maintain at all times or cause to be maintained general and professional liability insurance coverage for CONTRACTOR and its employees rendering services to HHSC under this Agreement. The insurance policies shall be issued by a company or companies authorized to do business in Hawaii and approved by HHSC, with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and THREE MILLION DOLLARS (\$3,000,000) in the aggregate, or such greater amount as may be required from time to time by HHSC. HHSC shall receive not less than thirty (30) days notice prior to any cancellation or material change or reduction in coverage. No such material change or reduction may be made without approval from HHSC. HHSC shall be listed as an additional insured on all policies. Prior to the commencement of this Agreement, CONTRACTOR shall provide HHSC with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the CONTRACTOR shall provide HHSC with certificates of insurance evidencing the foregoing coverage and provisions. HHSC reserves the right to request a certified copy of the policies. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR'S employees in the amounts required by applicable law. Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of this Agreement and HHSC shall thereafter have the option of pursuing remedies for such breach and/or immediate termination of this Agreement.

26. LIENS AND WARRANTIES.

- a. Liens. All products provided under this Agreement shall be free of all liens and encumbrances.
 - b. Warranties for products and services. In the event this Agreement is for the provision of products (goods or equipment), CONTRACTOR warrants that it has all rights, title and interest in and to all products sold, leased or licensed to HHSC. CONTRACTOR also warrants that the products shall substantially conform to all descriptions, specifications, statements of work and representations set forth in the Agreement, schedules, publications of CONTRACTOR and/or any order(s), and will be free from defects in materials, performance, workmanship and design. CONTRACTOR further warrants that it will perform any services required with promptness, diligence and in accordance with prevailing standards in the industry to the reasonable satisfaction of HHSC. The Warranty period shall commence after Acceptance, as defined in this Agreement. Any specific warranty periods shall be as set forth in the proposals, schedules, orders or Special Conditions pertaining to this Agreement but in any event such warranty period shall not be less than one (1) year.
- 27. ACCESS TO BOOKS AND RECORDS AND AUDIT BY HHSC.** If the value or cost of Services rendered to HHSC pursuant to this Agreement is Ten Thousand Dollars (\$10,000.00) more over a twelve-month period, CONTRACTOR agrees as follows:
- a. Until the expiration of four (4) years after the furnishing of such services, CONTRACTOR shall, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly-authorized representative, the Comptroller General, or the Comptroller General's duly- authorized representative, such books, documents, and records as may be necessary to certify the nature and extent of the cost of such Services; and
 - b. If any such Services are performed by way of subcontract with another organization and the value or cost of such subcontracted Services is Ten Thousand Dollars (\$10,000.00) or more over a twelve month period such subcontract shall contain and CONTRACTOR shall enforce a clause to the same effect as paragraph 26.a, above.
 - c. The availability of CONTRACTORS' books, documents and records shall be subject to all applicable legal requirements, including such criteria and procedures for obtaining access that may be promulgated by the Secretary. The provisions of paragraph 26.a and 26.b shall survive the expiration or other termination of this Agreement regardless of the cause of such termination.
 - d. HHSC may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor or prospective subcontractor which are related to this Agreement. HHSC may utilize third-party agents to conduct an audit and/or analysis of CONTRACTOR's records related to quotes, proposals, orders, invoices, sales reports, expenses charged to HHSC, sales reports, and discounts related to this Agreement and or proposed amendment to this Agreement. Any such agents will be bound by the same confidentiality clauses as stated in this Agreement.
- 28. ANTITRUST CLAIMS.** The HHSC and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to HHSC any and all claims for overcharges as to goods and materials purchased in connection with this Agreement, except as to overcharges which result from violations commencing after the price is established under this Agreement and which are not passed on to the HHSC under an escalation clause.
- 29. DISCOUNT AND REBATE.** CONTRACTOR hereby acknowledges its obligations to comply with any and all requirements imposed upon it as a seller under 42 U.S.C. Sec. 1320a-7b(b)(3)(A) and 42 C.F.R. Sec. 1001.952(h) Discounts.
- 30. GOVERNING LAW.** The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a State court of competent jurisdiction in Hawaii.
- 31. COMPLIANCE WITH LAWS.** The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Agreement. Other laws which may be applicable to contractors include, but are not limited to: HRS Chapters 383, 386, 387, and 393. It shall be the responsibility of the CONTRACTOR to determine applicability and comply with the law.
- 32. ACCESS TO HHSC NETWORK AND SYSTEMS.** CONTRACTOR may be given access to some of the HHSC computer network and systems in order to fulfill the terms of the Agreement. CONTRACTOR agrees to follow and to require all agents, employees and subcontractors to also follow the Information Technology and Confidentiality policies summarized and posted on the HHSC Procurement internet site (www.hhsc.org/GC) and to comply with such other instructions as provided by HHSC in the use of HHSC computer systems. CONTRACTOR shall not use the HHSC systems or data for any purpose other than to fulfill its duties under this Agreement.
- 33. CAMPAIGN CONTRIBUTIONS.** CONTRACTOR acknowledges that it is unlawful under Section 11-355, Hawaii Revised Statutes, unless specifically permitted under that law, for CONTRACTOR at any time between the execution of this Agreement through the completion of the Agreement to: (a) directly or indirectly make any contribution or to promise expressly or impliedly to make any contribution to any political party, committee or candidate or to any person for any political purpose or use; or (b) knowingly solicit any such contribution from any person for any purpose during any period.
- 34. ENTIRE AGREEMENT.** This Agreement sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the HHSC and the CONTRACTOR relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect.

There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the HHSC and the CONTRACTOR other than as set forth or as referred to herein.

35. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronically and such facsimile or electronic execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile/electronic executions or a combination thereof, shall be construed together and shall constitute one and the same Agreement.
36. **SEVERABILITY.** In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.
37. **WAIVER.** The failure of HHSC to insist upon strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of HHSC's right to enforce the same in accordance with this Agreement. The fact that HHSC specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of HHSC's rights or the CONTRACTOR's obligations under the law.
38. **ACCEPTANCE OF GOODS AND SERVICES.** HHSC shall accept goods and services or give CONTRACTOR notice of rejection within a reasonable time, notwithstanding any payment, prior test, or inspection. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance with the specifications, shall relieve CONTRACTOR of any obligations under this Agreement or impair any rights or remedies of HHSC.
39. **OBSOLETE PARTS/LONG TERM PARTS AVAILABILITY (Goods and Equipment Agreements Only).** CONTRACTOR shall timely report on the status of end of life (EOL) hardware that has been procured for the purchased or leased product. EOL hardware includes the following: electronic components/piece parts and mechanical hardware. CONTRACTOR shall provide advanced notification in writing to the Technical Representative of any changes to tooling, facilities, materials, availability of parts, or processes that could affect the contracted product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. CONTRACTOR shall notify the HHSC Technical Representative of any pending or contemplated future action to discontinue articles purchased or replacement parts for the articles purchased pursuant to this Agreement and shall work with HHSC to determine the need to stockpile any parts for the likely life of the product and offer those parts to HHSC prior to the actual discontinuance. CONTRACTOR shall extend opportunities to HHSC to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.
40. **DISPUTES.** Prior to resorting to any remedies allowed by law, disputes between the CONTRACTOR and HHSC arising out of this Agreement shall first be addressed in a telephonic or in-person meeting between the HHSC Technical Representative or designee and the CONTRACTOR'S representative. If the issue is not resolved to the mutual satisfaction of the Parties, a HHSC Regional CFO shall hold a telephonic or in-person meeting with the manager of the CONTRACTOR'S representative. Both Parties shall discuss and attempt to resolve the issues in good faith.

END OF GENERAL CONDITIONS
