

**REQUEST FOR PROPOSALS**  
**(COMPETITIVE SEALED PROPOSALS)**

**Medical and Hazardous Waste  
Disposal Services**

RFP No:  
HHSC 21-0014

for

Hawaii Health Systems Corporation  
West Hawaii Region  
Kona Community Hospital & Kohala Hospital

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<http://www.kch.hhsc.org/Procurement/default.aspx>  
An Agency of the State of Hawaii

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## **SECTION 1 ADMINISTRATION**

### **1.0 INTRODUCTION**

HHSC invites proposals from qualified and experienced licensed contractors to provide medical waste collections and disposal services as stated in the Scope of Services.

This Request for Proposal (hereinafter “RFP”) is issued by the Hawaii Health Systems Corporation West Hawaii Region Kona Community Hospital (hereinafter “HHSC” or “KCH”), 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 policies. 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.

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 **most qualified contractor** to HHSC, i.e. the proposal offering the greatest overall combination of quality of work and service and pricing. Hereinafter, organizations interested in submitting a proposal in response to this RFP shall be referred to as “OFFEROR”.

As an offeror, you are expected to submit proposals that are accurate, complete, and contain all terms and conditions which you feel are necessary. If, after submitting your proposal, you find changes are necessary, you may change or withdraw your proposal any time up to the time of the proposal opening. However, after the opening, the proposal may not be changed or altered in any way.

In order for HHSC 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 HHSC'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	April 23, 2021
2.	Closing Date for Receipt of Questions	Friday, April 30, 2021 2:00pm HST
3.	Addendum for HHSC Response to OFFEROR's Questions	Thursday, May 6, 2021
4.	<b>Closing Date for Receipt of Proposals</b>	<b>Monday, May 17, 2021 2:00pm HST</b>
5.	Mandatory Requirements Evaluation	Wednesday, May 19, 2021
6.	Proposal Evaluations (on/about)	Tuesday, May 25, 2021
7.	Proposal Discussions (optional)	
8.	Best and Final Offers (optional)	
9.	Contractor Selection/Award Notification (on/about)	Thursday, May 27, 2021
10.	Contract Execution Period	May 28-June 4, 2021
11.	Contract Tentative Award Date	June 4, 2021

Figure 1. Procurement Schedule

## 1.2 AUTHORITY

This RFP is issued under the provisions of the applicable Hawaii Revised Statutes (HRS). 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 HHSC 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 “value 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:

James Y. Lee, RCEO  
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 OFFICER**

The Issuing Officer or her designee is responsible for administering/facilitating all requirements of the RFP solicitation process and is the **sole point of contact** for OFFEROR from date of public announcement of the RFP until the selection of the successful OFFEROR. The Issuing Officer will also serve as the Contract Manager responsible for contractual actions throughout the term of the contract. The Issuing Officer is:

Yvonne S. Taylor, Sr. Contracts Manager  
West Hawaii Region  
Email [ytaylor@hhsc.org](mailto:ytaylor@hhsc.org)  
Direct (808) 322-4442  
Fax (808) 322-4488  
  
*Or in Yvonne’s absence:*  
  
Michelle Gray, Contracts Assistant II  
Email [mgray@hhsc.org](mailto:mgray@hhsc.org)  
Direct (808) 322-5830

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 nine public health facilities throughout the Hawaiian Island chain, including Oahu, Kauai and Hawaii. In addition to the nine HHSC facilities, Kahuku Medical Center, Hawaii Health Systems Foundation, and Alii Community Care are wholly owned subsidiaries.

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, and is the only acute care provider on the Islands of Maui and Lanai. In fiscal year 2009, HHSC had a total of 3,892 full time employees, operating 1,260 licensed beds, located on five different islands, with approximately 22,378 in-patient admissions.

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 nearly 100 years Kona Community Hospital has been caring for the people of West Hawaii. Adding more and more services, Kona Community Hospital has constantly improved our abilities to serve our residents and visitors whenever they are in need.

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

### **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, facsimile or post mail to the Issuing Officer 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 HHSC and become addenda to the RFP.

### **- IMPORTANT -**

**OFFEROR may NOT request changes and/or propose alternate language to the attached HHSC Special Conditions and DAGS 1999 Interim General Conditions.**

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

Responses by HHSC shall be due to the OFFEROR no later than the dates for initial questions and final questions stipulated in Figure 1.

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  
West Hawaii Region  
Email [ytaylor@hhsc.org](mailto:ytaylor@hhsc.org)  
Direct (808) 322-4442  
Fax (808) 322-4488  
  
*Or in Yvonne's absence:*  
  
Michelle Gray, Contracts Assistant II  
  
Email [mgray@hhsc.org](mailto:mgray@hhsc.org)  
Direct (808) 322-5830

Figure 4. Contact for Relevant Questions

## **1.8 RFP REVIEW**

OFFEROR should carefully review this RFP for defects and questionable or objectionable matter. Comments concerning RFP's 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 Officer, Yvonne Taylor, 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**

HHSC 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 KCH Procurement website and well as electronically mailed to all bidders who have requested a RFP package.

## **1.10 CANCELLATION OF RFP**

The RFP may be canceled at any time for any reason when it is determined to be in the best interests of HHSC.

## **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 RFP 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 SCOPE OF SERVICES**

## **SCOPE OF SERVICES**

CONTRACTOR shall provide medical waste collection and disposal services for Kona Community Hospital. Kohala Hospital may be added to this Agreement through a Supplemental Agreement should Kohala Hospital determine that the services are required and CONTRACTOR is willing to provide the services.

All work must be performed in accordance with all applicable federal, state and local codes, laws and regulations. CONTRACTOR and its employees must possess all certificates and licenses required by Federal, State and County laws and guidelines for all work that is being performed under this Agreement.

The Contractor represents that, prior to submitting a response to this Request for Proposal, they have carefully reviewed the enclosed documents and fully understand the Scope of Services. The Contractor's Proposal shall include, as a minimum, the following Scope of Services. The following scope items are intended to clarify, but not limit, the Request for Proposal:

1. Contractor shall provide all services connected with and required for collection, packaging, transportation and disposal of medical and other hospital generated waste as listed below:

Aerosol Cans	Chemotherapy
Ballasts	Lab Packs, various types
Barium Sulfate Loosepacks	Oil, motor and refrigerant
Batteries, various types	Pharmaceutical
Bulbs, various types	*this list includes current types of waste, however it is subject to change

2. During the time period 4/21/20 – 8/11/20, KCH has generated:

Waste	Qty	Size
Aerosol Cans	5	6 lbs
Ballasts	5	15 lbs
Ballasts	5	6 lbs
Batteries, alkaline	19	5 gallon
Batteries, alkaline	1	20 gallon
Batteries, lead acid	1	15 gallon
Batteries, lead acid	20	30 gallon
Lab pack, acid	15	64 lbs
Lab pack, organic	30	126 lbs
Lab pack, organic	5	18 lbs

Pharmaceutical and Chemotherapy	215	20 gallon
Pharmaceutical and Chemotherapy	16	55 gallon
Straight Lamps	28	16 lbs
Straight Lamps	4	21 lbs

3. Contractor shall provide all shipping containers for the type and quantities of medical waste generated by KCH. Contractor shall provide a price list for any required consumables.
4. Other than the purchase of consumables, no other fees may be charged to KCH without prior written approval from KCH.
5. Contractor shall comply with all applicable federal, state and local regulations related to transportation and disposal of the medical waste.
6. Contractor shall provide at time of Agreement execution copies of all Federal, State and Local licenses and permits issued by Government Agencies for the handling, transportation and disposing of medical waste.
7. Contractor employees assigned to perform the services under this Agreement shall be fully trained and competent.
8. The Contractor is responsible for the cost of cleaning up and/or repackaging any waste spills it causes on KCH property.
9. Medical waste collection shall occur once every ninety (90) calendar days, unless a different schedule is agreed upon by both parties during the hours of 8:00am – 4:30pm HST Monday – Friday. Pick-up must be scheduled in advance with KCH.
10. Contractor shall provide final copies of manifests within 45 days from pick-up.
11. Contractor shall provide a calibrated scale with which to weigh the waste on-site prior to transporting. Weights must be recorded on the appropriate manifest. HHSC reserves the right to confirm the weights recorded.
12. If requested, Contractor shall provide training to HHSC's staff relative to handling, packaging, and documentation of the waste.
13. HHSC shall designate authorized personnel to whom the Contractor shall communicate regarding service dates and other items related to this Agreement. The authorized personnel are the only people permitted to sign manifests and any other required documentation.

## **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. Examples of Non-Compliance are, but not limited to, no-bidding any section of RFP, quoting non-approved alternates or not submitting Sub Contractor information.

The development of overly elaborate proposals and presentation material, not required and/or related to RFP requirements, is HIGHLY DISCOURAGED. If OFFEROR will submit hard copy proposals, loose bound 3 ring binders or binder clips are preferred. Please let Contracts Manager know if you would like to have your binders returned after the RFP's closing.

#### **3.1.1 MANDATORY PROPOSAL TABS**

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

Mandatory Tabs	
1.	PROPOSAL TRANSMITTAL COVER LETTER
2.	TECHNICAL SECTION
	SUMMARY
	MANDATORY QUESTIONS
	PERSONNEL
3.	PRICE
	OFFER SUMMARY w/ OFFER DETAILS
	REQUIREMENTS (see section 3.9)
4.	REQUIRED DOCUMENTATION/COMPLIANCE DOCUMENTS
	W-9
	VENDOR TERMS AND CONDITIONS (if any)
	CONFIDENTIALITY AGREEMENT (Exhibit H)
	GENERAL EXCISE LICENSE (copy)
	REQUIRED GOVERNMENT LICENSES (copies)
5.	PROPOSAL SUBMISSION CHECKLIST

Figure 6. Mandatory Proposal Tabs

Relevant material should be placed in the appropriate tabbed area. Greyed in areas in the Mandatory Proposal Tabs (Figure 6) indicate category titles and separate 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

HHSC 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. HHSC 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 (response). Alternate proposals will not be accepted. The Issuing Officer must receive one (1) original, three (3) copies OR one (1) copy in electronic format (electronic is preferred) 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 original shall be clearly marked "ORIGINAL" and copies shall be clearly marked "COPY". All items submitted must be clearly labeled, marked or titled with the following information at a minimum:

RFP # HHSC 21-0014  
Medical and Hazardous Waste Disposal Services  
Your\_Company\_Name

Figure 7. Mandatory Proposal Item Identification

Mail or deliver proposals to the following address:

Yvonne S. Taylor, Sr. Contracts Manager  
West Hawaii Region  
Hawaii Health Systems Corporation  
79-1019 Haukapila Street  
Kealahou, HI 96750

Figure 8. Address for Proposal Submittals

Proposals transmitted via email shall have the following information in the subject line:

RFP #HHSC 21-0014 Medical and Hazardous Waste Disposal Services

The outside cover of the package containing the proposal should be marked, as follows:

Proposal Submitted in Response to RFP # HHSC 21-0014 Medical and Hazardous Waste Disposal Services
--

Figure 9. Mandatory Proposal Package Marking

### 3.5 PROPOSAL TRANSMITTAL COVER LETTER

OFFEROR is required to submit proposal with a transmittal cover letter. 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 Section is comprised of all contractor, sub-contractor and project details (Exhibit E will be completed by OFFEROR) with the exception of pricing and should include the following categories:

#### 3.7.1 SUMMARY

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

#### 3.7.2 *THIS SECTION IS DELETED.*

#### 3.7.3 MANDATORY QUESTIONS

See Exhibit E (Mandatory Questions) and insert the questions and answers in this section.

#### 3.7.4 PERSONNEL

See Exhibit I (Subcontractors Table) and insert the completed form in this section.



### **3.8 PRICE PROPOSAL**

Provide price summary and details.

#### **3.8.1 PRICE**

Price shall be a fixed fee for all work described in drawing package dated August 2020 and specification manual dated August 2020.

Any State of Hawaii funded projects over \$50,000.00 are required to have contract performance and payment bonds, the costs of which will be included in the final contract amount.

### **3.9 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 describe in this Section, is not applicable to the OFFEROR and therefore will/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 described in this RFP, is not acceptable to the OFFEROR, list what the requirement(s) are and why the requirement(s) are not acceptable. Should you have an alternate solution submit it.
- C. **HHSC Furnished Items.** If the OFFEROR's proposal requires any goods, services, equipment, third-party vendor support, or anything of value to be provided by HHSC, these items must be clearly detailed and stated in the OFFEROR's proposal.

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

### **3.10 REQUIRED DOCUMENTATION/COMPLIANCE DOCUMENTS**

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

- A. W9
- B. VENDOR TERM'S AND CONDITIONS (IF ANY)
- C. CONFIDENTIALITY AGREEMENT (EXHIBIT H)
- D. GENERAL EXCISE LICENSE (COPY)
- E. GENERAL CONTRACTOR'S LICENSE (COPY)
- F. LETTER FROM SURETY COMMITTING TO PROVIDE PERFORMANCE & PAYMENT BONDS

### **3.11 PROPOSAL SUBMISSION CHECKLIST**

The proposal submission checklist is provided by HHSC and is designed to be used as a tool to ensure that all required documents and information are being submitted with OFFEROR's proposal. HHSC 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 will be selected from HHSC 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. HHSC 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 Section Evaluation
Phase 3	Determination of Short List of Offerors (optional)
Phase 4	Proposal Discussions by Short-List (optional)
Phase 5	Best and Final Offers by Short List (optional)
Phase 6	Recommendation for Contract Award

Figure 10. 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 HHSC 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 SECTION EVALUATION**

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

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

At its discretion, following Phase 1 and 2, HHSC may develop a Short List of OFFERORS based on the evaluation of OFFERORS' Technical section.

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

The OFFERORS on the Short List of OFFERORS may be asked to conduct discussions with HHSC. OFFEROR's proposal may be accepted without discussions. In the event that HHSC elects to hold discussions, HHSC shall inform Short-Listed OFFERORS of specific discussion topics and issues; and schedule the discussion.

#### **4.2.5 PHASE 5 BEST AND FINAL OFFERS (OPTIONAL)**

OFFEROR(s) 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 VALUE WEIGHT PERCENTAGES**

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

<b>Value Weight Percentages</b>	<b>Points</b>	<b>Evaluation Category</b>
Pass/No Pass	N/A	MANDATORY REQUIREMENTS. Category includes:
		PROPOSAL TRANSMITTAL COVER LETTER
		REQUIRED DOCUMENTATION/COMPLIANCE DOCUMENTS PROVIDED
		REQUIRED QTY OF ORIGINAL AND COPIES
30%	30	TECHNICAL APPROACH. Category includes:
		SUMMARY
		MANDATORY QUESTIONS
60%	60	PRICE. Category includes:
		SUMMARY AND DETAILS
10%	10	COMPLIANCE WITH REQUIREMENTS. Category includes:
		NON APPLICABLE PROPOSAL REQUIREMENT
		NON ACCEPTANCE OF ANY RFP REQUIREMENT
		HHSC FURNISHED ITEMS
		PROPOSAL WAS COMPLETED IN ACCORDANCE WITH RFP REQUIREMENTS

Figure 11. Evaluation Categories and Value 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 cumulative number of points is considered statistically the best proposal to HHSC; 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 HHSC, 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 grievance filing time.

### **5.2 CONTRACT AWARD DEBRIEFING**

If requested by unsuccessful OFFEROR, HHSC 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 HHSC 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 HHSC 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 as 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 (Reference the GENERAL CONDITIONS - NON-PHYSICIAN HEALTHCARE SERVICES, APPENDIX D).

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 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. HHSC 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. Lee:

(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 "**Kona Community Hospital – Medical and Hazardous Waste Disposal Services, RFP # HHSC 21-0014**, 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 HHSC'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 (must match W9):

\_\_\_\_\_  
(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 Submitted	HHSC Use	Proposal Items
<input type="checkbox"/>	<input type="checkbox"/>	Proposal Received “On-Time”
<input type="checkbox"/>	<input type="checkbox"/>	One (1) Original & Three (3) Copies of Proposals or one (1) e-mail
<input type="checkbox"/>	<input type="checkbox"/>	<b>Proposal Transmittal Cover Letter:</b>
<input type="checkbox"/>	<input type="checkbox"/>	i. Official Business Letterhead
<input type="checkbox"/>	<input type="checkbox"/>	ii. Authorized Signature
<input type="checkbox"/>	<input type="checkbox"/>	iii. Required Information
<input type="checkbox"/>	<input type="checkbox"/>	<b>Technical Proposal</b>
<input type="checkbox"/>	<input type="checkbox"/>	i. Summary
<input type="checkbox"/>	<input type="checkbox"/>	ii. Mandatory Questions
<input type="checkbox"/>	<input type="checkbox"/>	<b>Price</b>
<input type="checkbox"/>	<input type="checkbox"/>	i. Summary and Offer
<input type="checkbox"/>	<input type="checkbox"/>	ii. Non Applicable Proposal Requirement(s)
<input type="checkbox"/>	<input type="checkbox"/>	iii. Non Acceptance of any RFP Requirement(s)
<input type="checkbox"/>	<input type="checkbox"/>	iv. HHSC Furnished Items
<input type="checkbox"/>	<input type="checkbox"/>	<b>Required Documentation/Compliance Documents</b>
<input type="checkbox"/>	<input type="checkbox"/>	i. W-9
<input type="checkbox"/>	<input type="checkbox"/>	ii. Vendor’s terms and conditions (if applicable)
<input type="checkbox"/>	<input type="checkbox"/>	iii. Confidentiality Agreement
<input type="checkbox"/>	<input type="checkbox"/>	iv. General Excise License (copy)
<input type="checkbox"/>	<input type="checkbox"/>	v. Required Government Licenses (copies)
<input type="checkbox"/>	<input type="checkbox"/>	<b>Proposal Submission Checklist</b>

## APPENDIX C

SAMPLE

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

AGREEMENT #: SAMPLE  
SAMPLE

---

**THIS AGREEMENT**, executed on the respective dates of the signatures of the parties shown hereafter, is effective as of **xxx**, between **Kona Community Hospital**, a division of **Hawaii Health Systems Corporation** (hereinafter "HHSC"), by its Regional Chief Executive Officer, (hereinafter "CEO"), whose address is 79-1019 Haukapila Street, Kealahou, HI 96750, and **[\_\_CONTRACTOR NAME\_\_]** (hereinafter "CONTRACTOR"), a **sole proprietor**, 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. See attachment 3.

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:

Mr. Roy Gillespie, Director of Facilities  
Kona Community Hospital  
79-1019 Haukapila Street  
Kealahou, HI 96750  
Telephone 808-322-4495 Email: rgillespie@hhsc.org

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: James Y. Lee

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 Agreement.

## 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 HHSC 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.

### 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:

**Total Contract Award.** This Total Sum is a not to exceed amount and shall include any and all taxes, shipping and handling and other miscellaneous costs to complete the work required in the Scope of Services.

**Invoicing Schedule.** Contractor shall invoice Hospital on a monthly basis.

If the not-to-exceed amount is insufficient to complete all required work during the Time of Performance as defined in Attachment 2, HHSC may, at its sole discretion, issue a Supplement Agreement in accordance with their procurement policies for the additional funds required.

#### **Payment Guidelines**

1. Company shall provide W-9 and Certificate of Insurance upon Contract Award.
- 2. The Contract Number (XX-XXXX) must appear on every Invoice.**
3. The "Invoice To" must be "Kona Community Hospital".
4. 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.
5. Invoice shall be transmitted (electronically is preferred) to:

**Mr. Roy Gillespie, Director of Facilities**

Kona Community Hospital

79-1019 Haukapila Street

Kealahou, HI 96750

Telephone 808-322-4495

Email: rgillespie@hhsc.org

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

## **APPENDIX D**

### **HHSC GENERAL CONDITIONS**

(SEE FOLLOWING PAGES)



**HAWAII HEALTH SYSTEMS CORPORATION GENERAL CONDITIONS**  
(103D Goods and Non-Healthcare Services)

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1. **COORDINATION OF SERVICES BY HHSC.** The “head of the purchasing agency,” (through the Technical Representative(s), or other designee), shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Agreement. The CONTRACTOR shall maintain communications 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, “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 contract to provide services to other individuals or entities while under contract with HHSC.
  - 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 the 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, Hawaii Revised Statutes (“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 accredited by The Joint Commission, CONTRACTOR agrees to meet any Joint Commission standards that are applicable to CONTRACTOR.
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 (1) the CONTRACTOR obtains the prior written consent of HHSC and (2) the CONTRACTOR’S assignee or subcontractor obtain a general excise tax license from the Department of Taxation, State of Hawaii in accordance with Section 237-9 HRS. Additionally, no such assignment or subcontract shall be effective unless the contractors assignee or subcontractor obtain 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 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 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 the 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. Pursuant to applicable State law and regulations (including, but not limited to, HRS§ Chapter 103D and Hawaii Administrative Rules (HAR) Title 3, Chapter 125, Section 3-125-21), 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 incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. 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 the 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.
  - (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the head of the purchasing agency may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 12d(3) below.
  - (2) The head of the purchasing agency and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Agreement price plus settlement costs reduced by payments previously made by HHSC, the proceeds of any sales of goods and manufacturing materials under subparagraph 12.c, and the Agreement price of the performance not terminated.
  - (3) Absent complete agreement under subparagraph 12.d.(2) the head of the purchasing agency shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 12.d.(2) shall not duplicate payments under this subparagraph for the following:
    - (A) Contract prices for goods or services accepted under the Agreement;
    - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Agreement would have completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Subject to the prior approval of the Procurement Officer, costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 12.b. Subcontractors shall be entitled to a markup of no more than ten per cent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with subparagraph 12.d.(3)(B).

(D) The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Agreement price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 12.c.(3) and the Agreement price of performance not terminated.

e. HAR Chapter 3-123. Costs claimed, agreed to, or established under subparagraphs 12.d.(2) and 12.d.(3) above shall be in accordance with HAR Chapter 3-123.

**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. Changes Clause.

(1) Generally. By written order, at any time, and without notice to any surety, the head of the purchasing agency may, unilaterally, order:

(A) Changes in the work within the scope of the Agreement; and

(B) Changes in the time of performance of the Agreement that do not alter the scope of the work of the Agreement.

(2) Adjustments 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 contract, an adjustment shall be made and the Agreement modified in writing accordingly.

(A) Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the Price Adjustment Clause of this Agreement. Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with the Price Adjustment Clause.

(B) Failure of the parties to agree to an adjustment in time shall not excuse the CONTRACTOR from proceeding with the contract as changed, provided that the head of the purchasing agency or designee, within fourteen days after the changed word commences, makes the provisional adjustments in time as the head of the purchasing agency deems reasonable.

The right of the CONTRACTOR to dispute the contract 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 by the Agreement.

(3) Time period for claim. Except as may be provided otherwise by Section 103D-501(b), HRS, the CONTRACTOR must file a written claim disputing the contract price or time provided in a change order within ten days after receipt of a written change order, unless such period for

filing is extended by the head of the purchasing agency in writing. The requirement for filing a timely written claim cannot be waived and shall be a condition precedent to the assertion of a claim.

(4) Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if the claim is not received by the head of the purchasing agency prior to final payment under this Agreement.

(5) Other claims not barred. In the absence of such a change order, nothing in this 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 and all appropriate adjustments signed by the CONTRACTOR and HHSC. Change orders shall be made in accordance with paragraph 13 herein. Notice to any surety is not required.

Modifications may include any one or more of the following:

(1) Drawings, designs, or specifications, for the goods to be furnished;

(2) Method of shipment or packing;

(3) Place of delivery;

(4) Description of services to be performed;

(5) Time of performance (i. e., hours of the day, days of the week, etc.);

(6) Place of performance of the services; or

(7) Other provisions of the contract accomplished by mutual action of the parties to the contract.

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 price adjustment clause 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 claim are not made prior to final payment under this Agreement.

e. Other 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.

f. Head of purchasing agency approval. If this is a professional services agreement awarded pursuant to Section 103D-304, HRS, any modification, alteration, amendment, change or extension of any term, provision or extension of this Agreement which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) of the initial Agreement price must receive the prior approval of the head of the purchasing agency.

- g. Sole source agreements. Amendments to sole source agreements that would change the original scope of the agreement may only be made with the approval of the head of the purchasing agency. Annual renewal of a sole source agreement for services shall not be submitted as an amendment.

**15. VARIATIONS 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. VARIATIONS IN QUANTITY FOR INDEFINITE QUANTITY AGREEMENTS.** When an Agreement provides for indefinite goods and/or services the Agreement should state:

- a. The minimum quantity, if any, HHSC is obligated to order and the CONTRACTOR is to provide;
- b. Whether there is a quantity that HHSC expects to order and how this quantity relates to any minimum or maximum quantities that may be ordered under the Agreement;
- c. Any maximum quantity HHSC may order and the CONTRACTOR must provide; and
- d. Whether HHSC is obligated to order its actual requirements under the Agreement, or in the case of a multiple award as defined in Section 3-122-145, HAR, that HHSC will order its actual requirements from the contractors under the multiple award subject to any minimum or maximum quantity stated.

**17. PRICE ADJUSTMENT.**

- a. Price adjustment. Any adjustment in the Agreement price pursuant to a provision in this Agreement shall be made in one or more of the following ways:

- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance;
- (2) By unit prices specified in the Agreement or subsequently agreed upon before commencement of the pertinent performance;
- (3) By the costs attributable to the events or situations covered by the provision, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon before commencement of the pertinent performance;
- (4) In such other manner as the parties may mutually agree upon before commencement of the pertinent performance; or
- (5) In the absence of agreement between the parties, the adjustment shall be made pursuant to 103D-501(b)(5), HRS.

- e. Submission of cost or pricing data. The CONTRACTOR shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 103D-312, HRS. The submission of any cost or pricing data shall be made for any price adjustment subject to the provisions of HAR subchapter 15, chapter 3-122. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in paragraph (a)(1) through (a)(4) shall be issued within ten days after agreement on the method of adjustment.

**18. 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 subparagraph 18a(1) 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 any State officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provisions of the Agreement and these General Conditions.

**19. COST AND EXPENSES.** Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Agreement shall be subject to the following guidelines:

- 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.

## **20. 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.

## **21. 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; 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;
  - (C) 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
  - (D) 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.

## **22. 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 the 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.

**23. 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](http://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 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.

**24. 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](http://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.

**25. 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.

**26. 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.

**27. 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 insurance carriers for 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.

**28. 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.

**29. 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) or 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 29.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 paragraphs 29.a and 29.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.
30. **ANTITRUST CLAIMS.** 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 HHSC under an escalation clause.
31. **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.
32. **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. This specifically includes Sections 103-55 and 103-55.5, Hawaii Revised Statutes, dealing with wages, hours, and working conditions of employees of contractors providing services or construction. Other laws which may be applicable to contractors include, but are not limited to: HRS Chapters 383, 386, 387, 392, and 393. It shall be the responsibility of the CONTRACTOR to determine applicability and comply with the law.
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. **DISPUTES.** Disputes shall be resolved in accordance with Section 103D-703, HRS and Chapter 3-126, Hawaii Administrative Rules.
35. **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](http://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.
36. **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.
37. **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.
38. **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.
39. **DISCOUNTS AND REBATES.** 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.
40. **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.
41. **OBSOLETE PARTS/LONGTERM 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 HHSC 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 HHSC 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.
42. **ENTIRE AGREEMENT.** This Agreement sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between 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 HHSC and the CONTRACTOR other than as set forth or as referred to herein.

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END OF GENERAL CONDITIONS

## **APPENDIX E**

### **MANDATORY QUESTIONS**

See following pages.

	Company Name & Address: Contact Name & Information:	
	QUESTION	COMMENTS
	3.7.3 A. Background, Qualifications and Experience	
	Provide a brief description of Company's qualifications to perform the Scope of Services requirements.	
	Does your company have any letters of recommendations that can be submitted as a part of this RFP? If yes, please include.	
	How long has your company been in business?	
	Have you ever operated under another business name? If yes, please list the name(s) and date(s).	
	What state is your company incorporated in?	
	How many employees does your company employ? (Direct employees only)	
	What is the shortest timeframe an employee has worked with you and what is the longest?	
	What sets you or your company apart from your competitors?	
	What does your company offer its employees by way of training?	
	Identification of litigation currently impacting the Company, if any. State "NONE", if none.	
	Identification of any fines or violations received in the past 3 years relative to safety and environmental issues. State "NONE", if none.	

	Company Name & Address: Contact Name & Information:	
	QUESTION	COMMENTS
	Have you had any legal action brought against you as the result of work you have performed? If yes, why, and what was the outcome?	
	B. Project Management	
	What potential project risks or issues are anticipated and how will they be addressed in order to minimize risk?	
	C. Financial	
	Have you or any of your company's ever declared bankruptcy?	
	State your billing cycle (monthly, quarterly?) and payment terms.	
	D. References	
	Provide a brief description of three (3) past and/or present contracts demonstrating Company's qualifications, experience and performance with regard to performance of the Scope of Services requirements. Include customer name, contact name, email address and telephone number.	

## APPENDIX F

### SUBCONTRACTOR TABLE

\*If, at any time, any of the work may be sub-contracted to another company, list the company(ies) information below .

COMPANY NAME	COMPANY ADDRESS	LICENSE NUMBER	YEARS IN BUSINESS

## **APPENDIX G**

### **PRICING SUMMARY**

See following page

item No.	Item (cross out the item line for items your company does not provide disposal services for)	Size & UOM	Price per Unit	Comments (if any)
1	Aerosol Cans	5 gallon drum		
2	Ballast, Non-PCB	5 gallon drum		
2a	Ballast, Non-PCB	30 gallon drum		
3	Barium Sulfate Loosepack	10 gallon drum		
4	Batteries, Alkaline	5 gallon drum		
5	Batteries, Non-Alkaline			
6	Batteries, Lead	15 gallon drum		
6a	Batteries, Lead	30 gallon drum		
7	Batteries, Lithium	lb		
8	Batteries, NICAD	16 gallon drum		
9	Bulbs, Fluorescent, Crushed	10 gallon drum		
10	Bulbs, Compact Fluorescent	lb		
11	Bulbs, Fluorescent, Straight	lb		
12	Bulbs, Shattershield	lb		
13	Bulbs, Miscellaneous shaped	lb		
14	Chemotherapy	20 gallon drum		
14a	Chemotherapy	55 gallon drum		
15	Lab Pack, Acid	15 gallon drum		
15a	Lab Pack, Acid	55 gallon drum		
16	Lab Pack, Basic	30 gallon drum		
16a	Lab Pack, Basic	55 gallon drum		
17	Lab Pack, Flammable	55 gallon drum		
18	Lab Pack, Organics	5 gallon drum		
18a	Lab Pack, Organics	30 gallon drum		

item No.	Item (cross out the item line for items your company does not provide disposal services for)	Size & UOM	Price per Unit	Comments (if any)
18b	Lab Pack, Organics	55 gallon drum		
19	Oil, Motor & Refrigerant	5 Gallon		
20	RCRA Pharmaceutical and Chemotherapy Waste	19 Gallon drum		
20a	RCRA Pharmaceutical and Chemotherapy Waste	30 gallon drum		
20b	RCRA Pharmaceutical and Chemotherapy Waste	55 gallon drum		
REIMBURSABLE EXPENSES (if any)				
	Pick up fee which shall be all-inclusive, meaning the price must include all applicable fees related to the collection and disposal of the item. (i.e. transportation, lodging, airfare, etc.)			
CONSUMABLES (if any)				
	<i>Offeror: list any consumables that KCH is required to purchase.</i>			