



REQUEST FOR PROPOSALS

HHSC FY15-0448

**CONSTRUCTION PROJECT MANAGEMENT
SERVICES FOR
HILO MEDICAL CENTER CAMPUS
CAPITAL IMPROVMENTS**

For

**Hawaii Health Systems Corporation
East Hawaii Region
Hilo Medical Center
1190 Waianuenue Avenue
Hilo, Hawaii 96720**

AN AGENCY OF THE STATE OF HAWAII

***Due Date for Proposals
in Response to this Solicitation:***

Thursday, June 25, 2015; 3:00 PM, HST

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OFFER

The undersigned Offeror hereby agrees to provide all services in accordance with the terms and requirements stated herein, including the proposal, all exhibits, amendments, and best and final offers (if any).

Hawaii State Tax License No.:

For clarification of this offer, contact:

Name: _____

Federal Employer Identification No.:

Phone: _____

E-Mail Address: _____

Fax: _____

Company Name

Signature of Person Authorized to Sign Offer

Address

Printed Name

City State Zip

Title

CERTIFICATION

By signature in the Offer section above, the Offeror certifies:

1. The submission of the offer did not involve collusion or other anti-competitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246 and HRS Chapter 378.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer and any resulting contract and may be subject to legal remedies provided by law.
4. **The Offeror certifies that the above referenced organization is/ is not a legislator, or an employee or a business in which a legislator or an employee has a controlling interest.**

ACCEPTANCE OF OFFER (to be completed by HHSC)

Your offer, including the proposal, all exhibits, amendments and best-and-final offer (if any), contained herein, is accepted.

The Offeror is now bound to provide all specified items listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Offeror's Offer as accepted by HHSC.

This contract shall henceforth be referred to as Contract No. FY 15-0448.

Effective Date of this Agreement shall be this _____ day of _____, 20 15.

Signed:

Dan Brinkman, Interim East Hawaii Regional CEO

Date

SECTION 1
GENERAL NOTICE

1.1 INTRODUCTION

This Request for Proposals (hereinafter “RFP”) is issued by the Hawaii Health Systems Corporation (“HHSC”), an Agency of the State of Hawaii. Thank you for your interest in submitting a proposal for this solicitation. The purpose of this RFP is to promote and ensure the fairest, most efficient means to obtain the benefits of the most qualified, responsive and responsible proposal. Hereinafter, organizations interested in submitting a proposal in response to this RFP shall be referred to as “Offerors.”

1.2 PROCUREMENT TIMETABLE

The timetable set out herein represents HHSC’s best estimate of the schedule that will be followed in the RFP process. If an event of the timetable, such as “Proposal Submission Deadline” is delayed, the rest of the timetable dates may be shifted by the same number of days. Offerors will be advised, by addendum to the RFP, of any changes to the timetable.

<u>Event</u>	<u>Scheduled Date</u>
Issue Solicitation	June 1, 2015
Submission of Intent to Submit Proposal.....	June 8, 2015
Pre-Proposal Conference	June 9, 2015
Submission Deadline for Questions & Clarification Requests.....	June 17, 2015
Proposal Submission Deadline.....	Thursday, June 25, 2015 @ 3:00 PM HST
Proposal Evaluations, Clarifications.....	June 25 – July 2, 2015
Offeror Selection/Award Notification (on/about).....	July 7, 2015
Anticipated Contract Commencement Date	July 15, 2015

1.3 SUBMISSION OF INTENT TO SUBMIT PROPOSAL

Offerors should submit, in writing, by **Monday, June 8, 2015**, their intent to submit (or not submit) a proposal. Please forward your company’s intentions either by fax to: (808) 933-2793 or by email to gcallahan@hhsc.org.

1.4 PRE-PROPOSAL CONFERENCE

HHSC will hold a **Pre-Proposal Conference** on **Tuesday, June 9, 2015, at 10:00 AM (HST)** in **the Maintenance Conference Room** in the “West Wing” between the HMC Helipad and the Behavioral Health Facility or vendors may call in at 808-932-3690, password 2580, code 1070. This meeting is for all interested Offerors for the purpose of addressing the scope of services and any questions regarding language contained in the RFP. Questions posed on these days and their subsequent answers that affect the scope of this project will be contained in the written response to questions and clarification requests. Please note attendance at this Conference is not mandatory.

1.5 SUBMISSION OF QUESTIONS, CLARIFICATION REQUESTS

Offerors are encouraged to submit written questions and requests for clarification pertaining to

the RFP.

Questions must be submitted in writing via hand-delivery, electronic mail, facsimile or post mail to the following not later than the “Submission Deadline for Question & Clarification Requests”, identified above, in order to generate an official answer.

Gary L. Callahan, Senior Contract Manager
Hilo Medical Center
1190 Waianuenue Avenue
Hilo, Hawaii 96720-2020
PH: 808-932-3112 Fax: 808-933-2793
Email: gcallahan@hhsc.org

All written questions will receive an official written response from HHSC and become addendums to the RFP. The only official position of HHSC is that which is stated in writing and issued in the RFP as addendums thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response/statement and may not be relied upon.

1.6 RFP AMENDMENTS

HHSC reserves the right to amend the RFP any time prior to the ending date for “Proposal Evaluations, Clarifications,” identified above.

1.7 CANCELLATION OF RFP

The RFP may be canceled by HHSC if it is determined to be in the best interests of HHSC.

1.8 PROTESTS

A protest based upon the content of the solicitation shall be submitted in writing within five (5) working days after the aggrieved individual/business knows or should have known of the facts giving rise thereto; provided further that the protest shall not be considered unless it is submitted in writing not later than the “Proposal Submission Deadline” identified above.

A protest of an award or proposed award shall be submitted within five (5) working days after the posting of the award or the proposed award of the contract.

Any and all protests shall be submitted in writing to the East Hawaii Regional Procurement Officer (RPO), as follows:

Dan Brinkman, East Hawaii Region
Interim Regional Procurement Officer
Hilo Medical Center
1190 Waianuenue Avenue
Hilo, Hawaii 96720

SECTION 2

SCOPE OF SERVICES

2.00 PURPOSE

Hilo Medical Center (“Hospital”), a facility of the Hawaii Health Systems Corporation, is interested in entering into an agreement with a project management firm to provide a qualified individual (the “Project Manager”) and such other personnel as are needed to perform construction project management services for Hospital’s upcoming capital improvement projects. The construction projects will be awarded pursuant to the evaluation criteria provided in Section 5, Evaluation, of this RFP. There are approximately twenty-five (25) pending projects of varying types and sizes a sampling of which is listed below:

- Parking lot design & construction;
- Family Residency Clinic design & construction;
- Outpatient Clinic design & construction;
- Energy efficiency upgrades;
- Upgrade to the fire sprinkler system;
- Replacement of air handler units;
- Long term care facility planning & design;
- Laundry Dryer & Lint Collector replacement;
- Cardiology Clinic construction;
- Ground floor ceiling grid replacement;
- FANS refrigerator/freezer replacement; and
- Imaging Equipment replacement & construction.

The facility will remain open 24/7 during each construction project. All construction must be coordinated with each department affected.

2.01 OFFEROR’S REQUIREMENTS, RESPONSIBILITIES & SERVICES

- a. The Offeror will cause the Project Manager to act as the owner’s representative and agent relative to the entire project.
- b. The Offeror’s services will consist of those services performed by the Project Manager, Offeror’s employees, and Offeror’s consultants (if any) as outlined in this Scope of Services.
- c. The Offeror and the Project Manager shall provide sufficient organization, personnel, outside resources, and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of the Hospital.

2.02 MINIMUM QUALIFICATIONS OF THE PROJECT MANAGER

The Project Manager shall:

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- a. Possess a Master's degree from an accredited college or university in construction management, architectural engineering, mechanical engineering, or electrical engineering, *or* a minimum of five (5) years experience in on-site construction management of health care buildings and facilities, *including* administration and financial management of all aspects of construction projects. Other combinations of applicable education, training, and experience which provide the knowledge, abilities, and skills that would be necessary to perform effectively in the position may be considered.
 - b. Have thorough knowledge of architectural, engineering, and construction practices and procedures, and the ability to appropriately apply them to meet the project requirements and objectives, as well as to recommend alternative approaches to eliminate problems.
 - c. Have knowledge of AIA Guidelines for Design and Construction of Hospital and Health Care Facilities (2001 Ed.), FGI Guidelines for Design and Construction of Health Care Facilities (2010 Ed.), NFPA 101 Life Safety Code, NFPA 99 Health Care Facilities, current Centers for Medicare and Medicaid Services requirements, current Joint Commission Standards, Hawaii county and state building industry codes and regulations pertaining to hospitals and health care, ADA regulations, fire codes not previously mentioned, municipal ordinances, general hospital functions, and Hawaii Health Systems Corporation policies and procedures.
 - d. Have the ability to plan projects and construction activities including, but not limited to, scheduling, construction, inspection, and timely completion of projects, in accordance with all requirements.
 - e. Have the ability to supervise construction and implementation activities for projects, read and understand architectural, engineering and construction plans, and effectively manage projects from inception to completion.
 - f. Use oral, written and communication skills to deal effectively with a broad range of stakeholders that include construction workers to senior executive managers, occasionally under stressful circumstances.
 - g. Have the ability to provide project status briefings and summaries to all levels of corporate, county, state, and federal officers or representatives and to other interested parties.
 - h. Use organizational skills to manage multiple projects concurrently, prioritize assignments to complete work in an efficient and timely manner, as well as to be able to adjust to changes in workload or assignments.
 - i. Use interpersonal skills to be able to represent the Hospital in negotiations with all disciplines involved in the project, in public forums, and to plan and conduct meetings with various governmental agencies and stakeholders.

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- j. Have the ability to apply computer technology, including but not limited Microsoft Office (Word, Excel, PowerPoint, Project, and Access) applications and computer-aided drawing (CAD) applications, to construction and project activities.
 - k. Be able to travel to the project site in Hilo, Hawaii, on a daily basis for the duration of the project and warranty period. Position requires travel, irregular work hours to accommodate off-shift construction and/or utility interruptions, and availability 24 hours a day, 7 days a week by pager or telephone.
 - l. Ideally, the Project Manager will have consultants available to call upon who will possess detailed expertise in all elements of design, engineering, architecture, and construction as needed during the various projects.

2.05 PERFORMANCE RESPONSIBILITIES OF THE PROJECT MANAGER

- a. The Project Manager is responsible for ensuring the development and implementation of the project schedule, including the maintenance, monitoring, control, and adjustment of the project schedule in coordination with contractual, construction, user, technical, and other disciplines involved.
- b. The Project Manager shall ensure that all vendors contracted to perform services or work on the project conform to contractual standards.
- c. The Project Manager shall maintain a strong on-site presence to monitor the progress of all demolition, abatement, and construction operations and enforce continual compliance with all applicable codes and specifications of the project. The Project Manager also shall keep administrative records to assure compliance with contractual requirements.
- d. The Project Manager shall bear primary responsibility for identifying potential demolition, abatement, construction and installation problems with the assistance of contracting, user, technical, and construction disciplines, and shall provide direction for a solution to these problems, or make recommendations to obtain, and coordinate, the services of architects, engineers, contractors and/or inspectors in the solution of problems that may arise during construction.
- e. The Project Manager shall work with county, state, federal, and all other agencies as necessary in all aspects of demolition and construction.
- f. The Project Manager shall consult with the Hospital staff on a weekly basis regarding facility construction schedules, progress, and corrective action as required. The Project Manager shall attend all owner/architect/Contractor meetings and report back to the Hospital Administrator or her designee(s) about

discussions that ensued in those meetings as well as actionable items or decisions that were made in the absence of the Hospital's representative(s).

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

orders, to meet the Hospital's needs and requirements without compromising quality.

- n. The Project Manager shall support/assist Hospital staff in the coordination of facility/resident moves that are necessary to accommodate the demolition, abatement, construction, and equipment installation for the project.
- o. The Project Manager shall provide recommendations and information to the Hospital regarding the allocation of responsibilities for safety programs with the Contractor. The Project Manager shall ensure that the Contractor provides and regularly assesses the need for Risk Analysis at the inception of the project and at major milestones.
- p. The Project Manager shall supervise and/or perform final inspections with consultants and project inspectors to produce the final punch list. The Project Manager shall ensure that all punch list items are completed by the Contractor.
- q. The Project Manager shall issue appropriate completion and closeout paperwork in a timely manner. The Project Manager shall collect record drawings, operation and maintenance manuals, warranties, bonds, and other closeout forms and ensures that they are complete and have been distributed to the appropriate agencies.
- r. The Project Manager may be tasked to be directly responsible for resolution of all problems that may surface during the warranty period.
- s. The Project Manager shall other related duties not mentioned herein, as assigned or requested by Hospital.

2.06 DELIVERABLES

The Project Manager shall provide the following deliverables:

- a. Written report, due on a weekly basis, of the Project Manager detailing the work accomplishments and identifying issues that occurred during the week, the anticipated work to be completed for the following week, a copy of the three-week look ahead schedule, percentage progress completion, a detailed explanation of revisions in contract completion date and/or budget, change order requests, and anticipated project delays. The report shall be sent electronically via email to the Hilo Medical Center Facilities Operations Manager by no later than 3:30 PM each Friday, with an electronic copy to other Hospital staff as requested.
- b. An original and two (2) copies of the Monthly Project Management billings that reference the HHSC contract number.

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- c. Invoice Tracking Sheet (provided by Hilo Medical Center) attached to each project invoice affirming that the Project Manager reviewed the invoice and confirms that the work for which the Hospital is being billed has been completed in accordance with contractual standards.
 - d. Written confirmation of the completion of the project that includes the specific date on which acceptance of the system occurred, for warranty purposes. In the event multiple system acceptances occur, the Project Manager shall provide written confirmation of system acceptance with the specific date on which the acceptance was provided, for each occurrence, with sufficient detailed description to be able to identify the system from others.
 - e. Closeout documentation at the completion of the project including, but not limited to, as built drawings, operation and maintenance manuals, warranties and bonds.

SECTION 3

PROPOSALS

3.1 PROPOSAL PREPARATION

Offerors shall prepare a written proposal in accordance with requirements stated herein and provide the proposal to the individual at the address indicated below.

Additionally, proposals shall include and address, at a minimum:

- 3.1.1 The information identified below in Section 3.5;
- 3.1.2 The pricing information identified below in Section 4.0;
- 3.1.3 Transmittal Cover Sheet, Appendix A;
- 3.1.4 Acceptance (or Notifications of Clarifications) of our GENERAL CONDITIONS, Appendix B;

The original of the following documents:

- 3.1.5 “Certificate of Compliance” from the Hawaii State Department of Labor and Industrial Relations; and
- 3.1.6 “Certificate of Good Standing” from the Department of Commerce and Consumer Affairs Business Registration Division.

(Refer to Section 6.5, entitled “Certifications”, below, for instructions on how to obtain the Certificate of Compliance and Certificate of Good Standing).

Offerors should submit all required information specified above to qualify their proposal for evaluation and consideration for award. Failure to provide the required information may

Additionally, the GENERAL CONDITIONS, any SPECIAL CONDITIONS, and the Specifications contained in this RFP packet shall be read by the Offeror, as they will form a part of the contract entered into between the Offeror and HHSC, and they shall govern all Services.

3.2 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. Any proposal offering any other set of terms and conditions contradictory to those included in the RFP may be disqualified without further notice. HHSC reserves the right to ask for clarification of any item in the proposal.

3.3 ELECTRONIC DOCUMENTS

HHSC may provide an electronic version of this procurement document. Any unidentified alteration or modification to the original document (or to any Exhibit

contained therein) issued by HHSC shall be null and void. In those instances where modifications are identified, the original document issued by HHSC shall take precedence.

3.4 SUBMISSION OF PROPOSALS

Each Offeror should submit one (1) original hardcopy, three copies and one (1) electronic copy of their proposal saved in the .PDF file format and submitted on a CD or USB flash drive no later than 3:00pm, HST, on the “Proposal Submission Deadline”, identified in SECTION 1. **Proposals received after this time/date may be rejected.** The original shall be clearly marked “ORIGINAL” and copies shall be clearly marked “COPY”. Mail or deliver proposals to the following address:

Gary L. Callahan, Senior Contract Manager
Hilo Medical Center
1190 Waiianuenue Avenue
Hilo, Hawaii 96720-2020
PH: 808-932-3112
Fax: 808-933-2793
Email: gcallahan@hhsc.org

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

“Proposal Submitted in Response to: RFP # HHSC FY15-0448”

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.

Offerors shall request in writing 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. HHSC cannot guarantee that designated data will be kept confidential. 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 Offerors become the property of HHSC and may be returned only at HHSC’s option.

3.5 PROPOSAL INFORMATION

Offerors are hereby notified that evidence of the authority of the person(s) signing the offer document is required to be included with the offer documents. Failure to comply with this requirement will be cause for rejection of an offer as being non-responsive.

Each Offeror is to submit its proposal with the required number of copies in the format as contained in this RFP. The material should be in sequence and related to the RFP. HHSC will not provide any reimbursement for the cost of developing or presenting proposals in response to this RFP. Failure to include the requested information may have a negative impact on the evaluation of the Offeror's proposal. The proposal should include at least the following information:

3.5.1. Experience and Expertise of the Firm and Key Personnel:

The Offeror's experience and past performance will be evaluated on the extent of its success in managing and integrating work relevant to that defined in the Scope of Services. Therefore, the Offeror is advised to submit any and all information which documents successful and reliable experience in past performances as related to this RFP (i.e. previous construction project management in a hospital setting, familiarity with FGI Guidelines, etc.).

References: References should be verifiable and be able to comment on the Offeror's related experience. The Offeror should submit, at a minimum, three (3) professional services references for services provided over the last two (2) years that would demonstrate the Offeror possesses an understanding of and experience in providing the required service. As these references may be checked, ensure all information is current and accurate and that prior permission to use is obtained from each reference.

Quality of staff will be an area considered. The firm's clients' assessment of the quality of staff provided will be an element specifically sought after during reference verifications.

The qualifications of the key personnel proposed by the Offeror to perform the requirements of this solicitation will be considered in the evaluation. Therefore, the Offeror should submit detailed information related to the experience, technical expertise and qualifications for each key personnel proposed. Offeror should provide the names and titles for all proposed key personnel; clerical staff is not considered key personnel.

The Offeror should provide an organizational chart which clearly shows the reporting and lines of authority to include all proposed key personnel and any proposed subcontractors. The organizational chart should identify the prime point of contact between the Offeror and HHSC.

The Offeror may submit any other pertinent information that would substantiate that the firm and its key personnel possess the experience, expertise, and capability to provide the required services.

3.5.2 Proposed Method of Approach:

Proposals will be evaluated based on the Offeror's distinctive plan for providing these specialized services. Since the evaluators have already read the Scope of

Services for the services described, it is not necessary for the Offeror to repeat the exact language, or to present a paraphrased version, as an original idea for a technical approach.

The Offeror may utilize a written narrative or any other printed technique to demonstrate his ability to satisfy the Scope of Services. When appropriate, the narrative should describe a logical progression of tasks and efforts starting with the initial steps or tasks to be accomplished and continuing until all proposed tasks are fully described. The language of the narrative should be straightforward and limited to facts, solutions to problems, and plans of proposed action. The usage of technical language should be minimized and used only to describe a technical process. A work schedule shall be included as a requirement of this section.

3.5.3 Cost:

The evaluation of the category of Cost shall be based on the prices, as indicated on the Pricing Schedule submitted with Offeror's proposal. In order to determine the maximum liability to the State of Hawaii, any percentage increases proposed for extension option periods shall be also included in the cost evaluation.

3.5.4 Additional Information:

The Offeror may submit any other pertinent information that would substantiate the Offeror has the experience, expertise and capability to provide the required services.

3.6 INTENT TO PROVIDE CERTIFICATE OF INSURANCE

The Offeror should provide a statement that, if notified of contract award, it will submit to HHSC for review and acceptance the applicable certificate(s) of insurance as required within this RFP document, within five (5) business days of such notification.

3.7 EXCEPTIONS TO GENERAL CONDITIONS:

3.7.1 If an Offeror takes any exception to any term, condition or requirement included in this solicitation document, including the GENERAL CONDITIONS, such exception shall be submitted to the Contract Manager **at least seven (7) days prior to the due date and time for receipt of proposals.** This will allow the Contract Manager to review all exceptions and, if applicable, afford any approved exceptions to all other potential Offerors.

3.7.2 If an Offeror includes, in their proposal, exceptions, not covered by Section 3.7.1, above, such exceptions shall be null, void and without force and shall not be considered, and may negatively affect the proposal evaluation based on the published evaluation criteria or may result in rejection of the proposal.

3.7.3 To the extent they are inconsistent with the terms of this RFP, the Offeror's preprinted or standard terms will not be considered by HHSC as a part of any resulting Contract.

3.8 OFFEROR'S RESPONSIBILITY

The Offeror is cautioned that it is the Offeror's sole responsibility to submit information related to the evaluation categories and that HHSC is under no obligation to solicit such information if it is not included with the Offeror's proposal. Failure of the Offeror to submit such information may cause an adverse impact on the evaluation of the Offeror's proposal.

3.9 DISCUSSIONS

In accordance with East Hawaii Region PUR 005 (J), after the initial receipt of proposals, discussions may be conducted with Offeror(s) who submit proposals determined to be reasonably susceptible of being selected for award. Award may be made without discussions; therefore, offers should be submitted complete and on most favorable terms.

3.10 NON-ACCEPTANCE OF "SPECIFICATIONS" REQUIREMENTS

If any "Specifications" requirement is not acceptable to the Offeror, provide detailed explanation of the reasons why, by attachment to the proposal. HHSC reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in the "Specifications."

SECTION 4
PRICING SCHEDULE & COMPENSATION

Vendor Name _____

4.0 PRICING SCHEDULE

In accordance with the attached Scope of Services, General Conditions, Special Conditions and all information contained within this proposal, the Offeror submits the following pricing which will include all applicable taxes:

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

This percentage will represent the Project Manager's fee as assessed against the total Project Cost for each project assigned. This percentage must include all reasonable and customary fees and costs, (i.e. consultants' fees, all travel related expenses, and applicable taxes, etc.) for the Projects. If the Project comes in below budget (under the accepted Quote) the savings belongs to the Owner, HHSC.

The Project Manager will issue invoices for payment as projected below:

For assigned Projects with a completion schedule at three (3) months or less, the PM will issue a single invoice; and

For assigned Projects with a completion schedule that exceeds three (3) months, the PM will issue quarterly invoices.

4.2 COMPENSATION

In full consideration for the services to be performed by the Offeror under this Agreement, HHSC agrees, subject to appropriation and allotments, to pay to the Offeror the set compensation, which shall include all applicable taxes and expenses incurred, in accordance with and subject to the following:

4.2.1 HHSC shall pay Offeror for goods and services performed, as designated by the Pricing Schedule submitted with the Offer, for equipment furnished and services rendered pursuant to this agreement, inclusive, all in arrears, subject to the prior receipt of the following written documentation, which must be included in the invoice for services:

- a. the date(s) of the service(s) performed;
- b. the assigned HHSC Contract number, (#15-0448)
- c. a description of the tasks performed with such detail as the Technical Representative may reasonably request;
- d. the percent of work completed;
- e. signed and dated by the Offeror's delegated signatory.

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- 4.2.2 The Offeror's invoice is due to that facility by the tenth (10th) day of the month immediately following the month in which the services were provided. HHSC shall pay sums due SIXTY (60) days after receipt of Offeror's invoice or the last day of the month immediately following the month in which the services were provided, whichever is later.
- 4.2.3 The Offeror agrees to accept such amounts as payment in full for all services rendered in accordance with the terms of this Agreement.

SECTION 5

EVALUATION

5.1 INTRODUCTION

The evaluation of proposals will be conducted comprehensively, fairly, and impartially. The evaluation will be made on the basis of experience, the Offeror's narrative discussion as to its methodology for meeting the requirements of the Scope of Services, the ability of the Offeror to best meet HHSC's specified requirements and the acceptability of the proposed pricing.

5.2 EVALUATION PHASES

Evaluation phases will be conducted as follows:

- Phase 1.....Evaluation of Mandatory Requirements
- Phase 2.....Technical Proposal Evaluation
- Phase 3.....CosProposal Evaluation
- Phase 4..... Proposal Discussions (**optional**)
- Phase 5..... Best and Final Offers (**optional**)
- Phase 6.....Recommendation for Contract Award

5.2.1 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 responsive in terms of "Were proposal documents, as identified below, received and contain the required information?"). Failure to meet any mandatory requirement ("no pass") may be grounds for deeming the proposal non-responsible, non-responsive or both and for disqualification thereof.

Proposal "**Mandatory Requirements**":

- Proposal Transmittal Cover Sheet (Appendix A)
- Acceptance of GENERAL CONDITIONS form (Appendix B)
- Technical Proposal
 - Background, Qualifications and Experience
 - Key Personnel Organization and Staffing
 - Method of Approach to the Scope of Services
- Pricing Schedule & Compensation
 - Pricing Schedule
- Proposal Submission Checklist (Appendix D)
- Standards of Conduct Declaration (Appendix E)

5.2.2 PHASE 2--TECHNICAL PROPOSAL EVALUATION

Evaluation of Offeror’s technical proposal shall be conducted using the technical proposal categories and the value weight percentages identified in Section 5.3; and, the evaluation scoring system identified in Section 5.4.

5.2.3 PHASE 3---COST PROPOSAL EVALUATION

Evaluation of the cost proposal shall be conducted using the cost proposal category and the value weight percentages identified in Section 5.3; and, the evaluation scoring system identified in Section 5.4.

5.2.4 PHASE 4--PROPOSAL DISCUSSIONS (OPTIONAL)

HHSC may conduct discussions with Offerors, or an Offeror’s proposal may be accepted without discussions. HHSC shall inform Offerors of specific discussion topics and issues and the schedule of any discussion proceedings.

5.2.5 PHASE 5--BEST AND FINAL OFFERS (OPTIONAL)

Offerors 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 previous submittal shall be construed as the “Best and Final” offer.

5.2.6 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 HPA.

5.3 EVALUATION CATEGORIES AND VALUE WEIGHT PERCENTAGES

Mandatory Requirements	Pass/No Pass
Technical Proposal	<u>Value Weight</u>
Experience & Expertise of Firm & Key Staff	40%
Proposed Method of Approach to Scope.....	30%
Cost Proposal.....	<u>30%</u>
TOTAL.....	100%

5.4 EVALUATION SCORING SYSTEM

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

The evaluation categories are assigned a value weight percentage, as determined by HHSC, totaling 100%. The evaluation committee will rate each category between one (1) and ten (10), with ten being the highest (the best rating). The Offeror's total score (see note below) will be determined by: a) multiplying the assigned percentage value weight of each category by the numerical rating provided by the evaluation committee; b) multiplying the result in clause a) by ten (10) to determine the score for each category; and c) totaling the score for all categories. For example, if the Offeror has a rating of 8 for the Proposed Method of Approach to Scope category, which has a weight of 30%, the score would be determined by multiplying 8 by 30%, yielding a product of 2.4, which is then multiplied by 10 to yield a score of 24 for that category.

NOTE: In determining the total score, the Offeror's cost proposal with the lowest costs will receive the highest available rating allocated to costs. Each proposal that has a higher cost than the lowest will have a lower rating for costs. The points allocated to higher-priced proposals will be equal to the lowest proposal price multiplied by the maximum points available for price (30 points), divided by the higher proposal price.

SECTION 6
AWARD OF CONTRACT

6.1 AWARD OF CONTRACT

Award of contract shall be made to the most responsible and responsive Offeror whose proposal is judged/determined, by the HHSC's evaluation team, to provide the best value to HHSC, considering all evaluation reviews and results.

6.2 CONTRACT AWARD NOTIFICATION

An official "notice of award" letter will be provided to the successful Offeror; and, a "notice of non-award" letter shall be provided to all un-successful Offerors. The notice of award letter resulting from this solicitation shall be posted on Hilo Medical Center's website.

6.3 CONTRACT DOCUMENT

The contract will be made up of this solicitation and the terms and conditions attached and referenced. The contract will also include your proposal, including all exhibits, amendments and your Best and Final offer, if applicable. This document will serve as the official, legal contractual instrument between both parties. This document will incorporate (by attachments or reference) this RFP, with any and all addendums; the GENERAL CONDITIONS and any SPECIAL CONDITIONS (Appendix C); and the Offeror's accepted proposal, with any and all addendums, changes, negotiated agreements, etc.; all of which become part of the whole contract.

6.4 GENERAL AND SPECIAL CONDITIONS

The GENERAL CONDITIONS (Appendix C) and any SPECIAL CONDITIONS (Appendix D) attached hereto are applicable to and shall be considered part of the whole contract. HHSC reserves the right to add terms and conditions during contract negotiations, if conducted. Additional terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

Additionally, Offerors will need to obtain the following documents:

6.5 CERTIFICATIONS:

Pursuant to East Hawaii Region Purchasing Policies, Offerors shall be required to provide proof of the following;

6.5.1 CERTIFICATE OF COMPLIANCE

The Offeror is required to obtain/posses a valid Certificate of Compliance from the Hawaii State Department of Labor and Industrial Relations (DLIR) prior to executing a contractual agreement with a State Agency. The certificate is valid for six months from the date of issue and must be valid on the date it is received by HHSC.

The Certificate of Compliance shall be obtained on the State of Hawaii, DLIR APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-

122-112, HAR, Form LIR #27, which is available on-line at <http://labor.hawaii.gov/ui/files/2012/12/LIR27.pdf> or at the neighbor island DLIR District Offices. The application for the certificate is the responsibility of the Offeror and must be submitted directly to the DLIR and not to HHSC. The DLIR will return the form to the Offeror who in turn shall submit the form to HHSC. Further instructions for acquiring this Certificate can be found in **Appendix G**.

6.5.2 CERTIFICATE OF GOOD STANDING

HAWAII BUSINESS. A business entity referred to as a “Hawaii Business”, is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, the Offeror shall obtain/posses Certificate of Good Standing issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG). A “Hawaii Business” that is a sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate. An Offeror’s status as sole proprietor and its business street address as indicated on the Proposal Transmittal Cover Sheet (Appendix A) will be used to confirm that the Offeror is a Hawaii Business.

COMPLIANT NON-HAWAII BUSINESS. A business entity referred to as a “Compliant Non-Hawaii Business” is not incorporated or organized under the laws of the State of Hawaii but is registered to do business in the State. As evidence of compliance, the Offeror shall obtain/posses a Certificate of Good Standing issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG).

The Certificate of Compliance can be obtained by phone (call 808 586-2727, M-F 7:45-4:30 HST) or by mail (Department of Commerce and Consumer Affairs, Business Registration Division, PO Box 40, Honolulu, Hawaii 96810). Further instructions for acquiring this Certificate can be found in **Appendix G**. The certificate is valid for six months from date of issue and must be valid on the date it is received by HHSC.

6.5.3 HAWAII COMPLIANCE EXPRESS

Alternatively, Offeror may apply and obtain proof of compliance with the above agencies electronically through the Hawaii State Procurement Office’s new “Hawaii Compliance Express” website. Instructions for using this new service can be found in **Appendix G**.

PROPOSAL TRANSMITTAL COVER SHEET
RFP #HHSC FY15-0448

This page must be completed and have an original signature. Attach this page on top of your proposal. Proposals received without this page or incomplete of the requested information may be rejected from consideration.

Organization: _____

(If a corporation or partnership, the exact legal name as registered with the State Department of Commerce and Consumer Affairs)

Mailing Address: _____

(Post Office Box is not acceptable)

Federal Tax Identification No.: _____

Offeror's License No.: _____

Contact: _____ Telephone: _____

Email Address: _____ Facsimile No.: _____

Certification

The undersigned has carefully examined the Scope of Services outlined in this RFP and the GENERAL CONDITIONS and any SPECIAL CONDITIONS presented in the proposal packet and hereby proposes to furnish at its own expense all labor, items necessary to complete all Services as shown and called for therein, all according to the true intent and meaning of the Scope of Services and the GENERAL CONDITIONS and any SPECIAL CONDITIONS. The undersigned also certifies that the information provided in this proposal is accurately represented.

Authorized signature

Printed name

Title

Date

ACCEPTANCE (OR NOTIFICATION OF CLARIFICATIONS) DOCUMENT

**Offerors Agreement of Acceptance or Notification of Clarifications and Exceptions to the following
GENERAL CONDITIONS:**

On behalf of _____, Offeror, the undersigned does agree that it does not have any exceptions to the following GENERAL CONDITIONS.

Signature: _____

Title: _____

Or

On behalf of _____, Offeror, has the following clarifications and exceptions to the following GENERAL CONDITIONS:

(Please attach additional pages, as required)

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

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1. **COORDINATION OF SERVICES BY HHSC.** The "head of the purchasing agency" (through the Technical Representative(s) or other designee as specified in the Agreement) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Agreement. The CONTRACTOR shall maintain communication with the head of the purchasing agency through the Technical Representative(s) or other designee at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Agreement. "Purchasing agency" as used in these General Conditions means and includes any HHSC region or facility which is authorized to enter into contracts for the procurement of goods and services. The term "HHSC" refers to HHSC and the region or facility entering into this Agreement.
2. **RELATIONSHIP OF PARTIES: INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.**
 - a. In the performance of services required under this Agreement, the CONTRACTOR is an independent contractor, with the authority and responsibility to control and direct the performance and details of the work and services required under this agreement; however, HHSC shall have a general right to inspect work in progress to determine whether, in HHSC's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. Unless otherwise provided by special condition, it is understood that HHSC does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to provide services to other individuals or entities.
 - b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of HHSC for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from HHSC any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to HHSC employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes and (iii) general excise taxes. Unless provided otherwise by agreement between the parties. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, HRS, and shall comply with all requirements thereof.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs and other liabilities associated with securing the insurance coverage.
3. **PERSONNEL REQUIREMENTS.**
 - a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied. Where the facility is Joint Commission accredited, CONTRACTOR agrees to meet all applicable Joint Commission standards.
4. **CONTRACTOR EXCLUSION FROM FEDERAL PROGRAMS.** CONTRACTOR affirmatively states that it and none of its employees, agents or subcontractors performing services or providing goods pursuant to this Agreement are excluded from participation in federal health care programs, as defined in the Social Security Act (Section 1128 and 1128A), and other federal laws and regulations relating to health care. CONTRACTOR has an affirmative duty to verify the accuracy of this statement at least annually 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 agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.
7. **SUBCONTRACTS AND ASSIGNMENTS: CHANGE OF NAME.**
 - a. **No assignment without consent.** The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Agreement and no such assignment or subcontract shall be effective unless the CONTRACTOR obtains the prior written consent of HHSC. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Agreement shall be effective unless and until the assignment is approved by HHSC.
 - 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, demands therefore, arising out of or resulting from any acts or including all attorneys' fees and costs, and all claims, suits and 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) the HHSC reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR 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 Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay. This paragraph is of no force and effect unless the amount of liquidated damages is specified in the Agreement.

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

a. Order to stop performance. The head of the purchasing agency may, by written order to the CONTRACTOR at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period of time not exceeding sixty (60) days unless the parties agree to a different period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any other period to which the parties shall have agreed, the head of the purchasing agency shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Agreement.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any

extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery or performance schedule or contract price, or both, and the Agreement shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Agreement and
- (2) The CONTRACTOR asserts a claim for such adjustment within thirty (30) days after the end of the period of performance stoppage provided that if the head of the purchasing agency decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provisions of this Agreement.

11. TERMINATION FOR DEFAULT.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, or otherwise fails to timely satisfy the Agreement provisions, or commits any other substantial breach of this Agreement, the head of the purchasing agency may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the head of the purchasing agency, such officer may terminate the CONTRACTOR'S right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the head of the purchasing agency may procure similar goods or services in a manner and upon the terms deemed appropriate. The CONTRACTOR shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods and services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Agreement and subject to any directions from the head of the purchasing agency, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the State of Hawaii or HHSC has an interest.

c. Compensation. Payment for completed goods and services delivered and accepted by the 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. The HHSC may withhold from amounts due the CONTRACTOR such sums as the head of the purchasing agency deems to be necessary to protect the HHSC against loss because of outstanding liens or claims and to reimburse the HHSC for the excess costs expected to be incurred by the HHSC in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in

performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and failure arises out of causes such as: acts of God; acts of a Public enemy; acts of the State of Hawaii and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the head of the purchasing agency shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of HHSC under this Agreement. As used in this paragraph the term "subcontractor" means subcontractor at any tier.

- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 11.d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 12.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Agreement.

12. TERMINATION FOR CONVENIENCE BY HHSC

- a. Termination for convenience of goods and services agreements. The head of the purchasing agency may, when the interests of HHSC so require, terminate this Agreement in whole or in part, for the convenience of HHSC. HHSC shall give written notice of the termination to the CONTRACTOR specifying the part of the Agreement terminated and when such termination becomes effective. HHSC shall exercise its rights under this paragraph in good faith and only when circumstances subsequent to the signing of this Agreement are changed to the extent that continuation of the Agreement is not in the best interest of HHSC. Such termination shall not be arbitrary or capricious.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall mitigate the cost of termination and incur no further obligations in connection with the terminated performance. The CONTRACTOR will stop performance to the extent specified on the date(s) set in the notice of termination. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance. The head of the purchasing agency may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to HHSC. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The head of the purchasing agency may require the CONTRACTOR to transfer title and deliver to HHSC in the manner and to the extent directed by the head of the purchasing agency:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Agreement; and
- (3) The CONTRACTOR shall, upon direction of the head of the purchasing agency, protect and preserve property in the possession of the CONTRACTOR in which 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. The CONTRACTOR may submit a termination claim specifying the unavoidable costs incurred because of the termination for convenience. This claim is in addition to any claim for payment for goods or services already performed prior to the termination. The head of the purchasing agency shall review the termination claim and respond to the CONTRACTOR with written objections or full payment within 60 days, provided that the claim is substantiated with invoice documentation. The amount paid for a termination claim shall be determined by the head of the purchasing agency but in no event shall exceed the amount remaining on the contract.

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

- a. Change clause. By written order, at any time, and without notice to any surety, the head of the purchasing agency may, unilaterally, order of the CONTRACTOR:
 - (1) Changes in the work within the scope of the Agreement; and
 - (2) Changes in the time of performance of the Agreement that do not alter the scope of the work of the Agreement.
- b. Adjustment of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Agreement, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Agreement or as negotiated. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the head of the purchasing agency promptly and duly makes the provisional adjustments in payment or time for the direct costs of the work as HHSC deems reasonable. The right of the CONTRACTOR to dispute the Agreement price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established in the Agreement or in these rules.
- c. Time period of claim. Within ten (10) days after receipt of a written change order, unless the period is extended by the head

of the purchasing agency in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.

- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written response is not given prior to final payment under this Agreement.
- e. Claims not barred. In the absence of a change order, nothing in the clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Agreement or for contract.

14. MODIFICATIONS OF AGREEMENT.

- a. In writing. Any modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be made by written amendment to this Agreement signed by the CONTRACTOR and HHSC. Change orders shall be made in accordance with paragraph 13 herein.
- 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 is not made prior to final payment under this Agreement.
- e. Claims not barred. In the absence of a written modification to the Agreement, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Agreement or for a breach of contract.

15. VARIATION IN QUANTITY FOR DEFINITE QUANTITY AGREEMENTS.

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

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

- a. Change in scope. If any action or omission on the part of the head of the purchasing agency (which term includes the designee of such officer) requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of proper officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages or extension of time for completion, provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the head of the purchasing agency:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Written thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance, or
- (C) Within such further time as may be allowed by the head of the purchasing agency in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages or an extension of time. The head of the purchasing agency, upon receipt of such a notice, may rescind such action, remedy such omission or take such other steps as may be deemed advisable.

- (3) Basis must be explained. The notice required by this paragraph must describe as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages or an extension or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the head of the purchasing agency within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to HHSC, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however shall excuse the CONTRACTOR from compliance with any rules or laws precluding collusion or bad faith in causing the issuance of or performing change orders which are clearly not within the scope of the Agreement.

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

- a. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the head of the purchasing agency is obtained, reimbursement for subsistence allowable (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.
- c. CONTRACTORS with an office located on the same island as the site of the services to be provided pursuant to this Agreement are not entitled to per diem or transportation expense reimbursement unless explicitly specified in the Agreement.

18. PAYMENT PROCEDURES.

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

19. PROMPT PAYMENT OF SUBCONTRACTORS.

- a. Generally. Any money paid to a CONTRACTOR shall be disbursed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the procurement agency has withheld payment.
- b. Final payment. Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- c. Penalty. The procurement officer or the CONTRACTOR, as applicable, will be subject to a penalty of one and one-half per cent per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. Where a subcontractor has provided evidence to the CONTRACTOR of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in paragraph (d), and:
 - (1) Has provided to the CONTRACTOR an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 103-32.1, HRS; or
 - (2) The following has occurred:

- (A) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to CONTRACTOR and the surety, as provided for in section 103D-324, HRS (reference of HRS 103D-324 provision does not intend to imply that this contract is governed by that chapter or the implementing rules and regulations); and
- (B) The subcontractor has provided to the CONTRACTOR, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the CONTRACTOR; any other bond acceptable to the CONTRACTOR; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the CONTRACTOR and subsequently, upon receipt from the procurement officer, by the

CONTRACTOR to the subcontractor within the applicable time periods specified in paragraph (b) and section 103-10, HRS. The penalty may be withheld from future payment due to the CONTRACTOR, if the CONTRACTOR was the responsible party. If a CONTRACTOR has violated paragraph (2) three or more times within two years of the first violation, the contractor shall be referred by the procurement officer to the contractors license board for action under section 444-17(14), HRS.

- d. A properly documented final payment request from a subcontractor, as required by paragraph (c), shall include:
 - (1) Substantiation of the amounts requested;
 - (2) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:
 - (A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;
 - (B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
 - (C) The payment request does not include any amount that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and
 - (3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The procurement officer shall return any final payment request that is defective to the CONTRACTOR within seven days after receipt, with a statement identifying the defect.

- d. This section shall not be construed to impair the right of a CONTRACTOR or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under paragraph (c); provided that any such payments withheld shall be withheld by the procurement officer.

20. CONFIDENTIALITY OF MATERIAL.

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of 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, business plans, goals, strategies, objectives and agreements of HHSC and any of its facilities, affiliates or subsidiaries, and all patient information in any form, whether written, verbal or electronic are confidential ("Confidential Information"); provided, however, that Confidential Information, with the exception of patient information, shall not include information that is in the public domain.

b. All information, data, or other material provided by the CONTRACTOR to the HHSC is subject to the Uniform Information Practices Act, chapter 92F, HRS, as modified by chapter 323F HRS.

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

22. BUSINESS ASSOCIATE ADDENDUM. By signing this Agreement, CONTRACTOR acknowledges that CONTRACTOR is 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 (<http://bit.ly/HHSC-BAA>) and is applicable to all Business Associates. Said Business Associate Addendum is hereby incorporated by reference and made a part of this Agreement as if fully repeated herein. By signing this Agreement, CONTRACTOR agrees to fully comply with, and be bound by, all terms set forth in the Business Associate Addendum, as it may be amended from time to time.

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

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

25. INSURANCE. During the term of this Agreement, CONTRACTOR shall maintain at all times or cause to be maintained general and professional liability insurance coverage for CONTRACTOR and its employees rendering services to HHSC under this Agreement. The insurance policies shall be issued by a company or companies authorized to do business in Hawaii and approved by HHSC, with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and THREE MILLION DOLLARS (\$3,000,000) in the aggregate, or such greater amount as may be required from time to time by HHSC. Said policies shall provide that HHSC shall receive not less than thirty (30) days notice prior to any

cancellation or material change or reduction in coverage. No such material change or reduction may be made without approval from HHSC. HHSC shall be listed as an additional insured on all policies. Prior to the commencement of this Agreement, CONTRACTOR shall provide HHSC with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the CONTRACTOR shall provide HHSC with certificates of insurance evidencing the foregoing coverage and provisions. HHSC reserves the right to request a certified copy of the policies. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR'S employees in the amounts required by applicable law. Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of this Agreement and HHSC shall thereafter have the option of pursuing remedies for such breach and/or immediate termination of this Agreement.

26. LIENS AND WARRANTIES.

a. Liens. All products provided under this Agreement shall be free of all liens and encumbrances.

b. Warranties for products and services. In the event this Agreement is for the provision of products (goods or equipment), CONTRACTOR warrants that it has all rights, title and interest in and to all products sold, leased or licensed to HHSC. CONTRACTOR also warrants that the products shall substantially conform to all descriptions, specifications, statements of work and representations set forth in the Agreement, schedules, publications of CONTRACTOR and/or any order(s), and will be free from defects in materials, performance, workmanship and design. CONTRACTOR further warrants that it will perform any services required with promptness, diligence and in accordance with prevailing standards in the industry to the reasonable satisfaction of HHSC. The Warranty period shall commence after Acceptance, as defined in this Agreement. Any specific warranty periods shall be as set forth in the proposals, schedules, orders or Special Conditions pertaining to this Agreement but in any event such warranty period shall not be less than one (1) year.

27. ACCESS TO BOOKS AND RECORDS AND AUDIT BY HHSC. If the value or cost of Services rendered to HHSC pursuant to this Agreement is Ten Thousand Dollars (\$10,000.00) more over a twelve-month period, CONTRACTOR agrees as follows:

a. Until the expiration of four (4) years after the furnishing of such services, CONTRACTOR shall, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly-authorized representative, the Comptroller General, or the Comptroller General's duly-authorized representative, such books, documents, and records as may be necessary to certify the nature and extent of the cost of such Services; and

b. If any such Services are performed by way of subcontract with another organization and the value or cost of such subcontracted Services is Ten Thousand Dollars (\$10,000.00) or more over a twelve month period such subcontract shall contain and CONTRACTOR shall enforce a clause to the same effect as paragraph 26.a, above. The availability of CONTRACTORS' books, documents and records shall be subject to all applicable legal requirements, including such criteria and procedures for obtaining access that may be promulgated by the Secretary. The provisions of paragraph 26.a and 26.b. shall survive the expiration or other termination of this Agreement regardless of the cause of such termination.

c. 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.

28. **ANTITRUST CLAIMS.** The HHSC and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to HHSC any and all claims for overcharges as to goods and materials purchased in connection with this Agreement, except as to overcharges which result from violations commencing after the price is established under this Agreement and which are not passed on to the HHSC under an escalation clause.
29. **DISCOUNT AND REBATE.** CONTRACTOR hereby acknowledges its obligations to comply with any and all requirements imposed upon it as a seller under 42 U.S.C. Sec. 1320a-7b(b)(3)(A) and 42 C.F.R. Sec. 1001.952(h) Discounts.
30. **GOVERNING LAW.** The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a State court of competent jurisdiction in Hawaii.
31. **COMPLIANCE WITH LAWS.** The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Agreement.
32. **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 contribution from any person for any purpose during any period.
33. **ENTIRE AGREEMENT.** This Agreement sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the HHSC and the CONTRACTOR relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the HHSC and the CONTRACTOR other than as set forth or as referred to herein.
34. **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.
35. **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.
36. **WAIVER.** The failure of HHSC to insist upon the 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.
37. **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.
38. **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 Technical Representative of any changes to tooling, facilities, materials, availability of parts, or processes that could affect the contracted product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. CONTRACTOR shall notify the HHSC Technical Representative of any pending or contemplated future action to discontinue articles purchased or replacement parts for the articles purchased pursuant to this Agreement and shall work with HHSC to determine the need to stockpile any parts for the likely life of the product and offer those parts to HHSC prior to the actual discontinuance. CONTRACTOR shall extend opportunities to HHSC to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.
39. **DISPUTES.** Prior to resorting to any remedies allowed by law, disputes between the CONTRACTOR and HHSC arising out of this Agreement shall first be addressed in a telephonic or in-person meeting between the HHSC Technical Representative or designee and the CONTRACTOR'S representative. If the issue is not resolved to the mutual satisfaction of the Parties, a HHSC Regional CFO shall hold a telephonic or in-person meeting with the manager of the CONTRACTOR'S representative. Both Parties shall discuss and attempt to resolve the issues in good faith.

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

The GENERAL CONDITIONS are hereby amended with the following:

1. **Conflict of Interest:** The Offeror shall not undertake any work that represents a potential conflict of interest, or which is not in the best interest of HHSC or the State without prior written approval by HHSC. The Offeror shall fully and completely disclose any situation that may present a conflict of interest. If the Offeror is now performing or elects to perform during the term of this contract any services for any HHSC health plan, provider or contractor or an entity owning or controlling same, the Offeror shall disclose this relationship prior to accepting any assignment involving such party.

2. **Contract:**
 - 2.1 The contract between HHSC and the Offeror shall consist of (1) the Request for Proposal (RFP), including any amendments or addendums thereto and the GENERAL CONDITIONS and the SPECIAL CONDITIONS, and (2) the proposal submitted by the Offeror in response to the RFP, including any and all addendums, changes, negotiated agreements, etc. In the event of a conflict in language between the two documents referenced, the provisions and requirements set forth and/or referenced in the RFP shall govern. However, HHSC reserves the right to clarify any contractual relationship in writing, and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFP or the Offeror’s proposal. In all other matters not affected by the written clarification, if any, the RFP shall govern.

 - 2.2 The contract shall be construed according to the laws of the State of Hawaii. The State of Hawaii is not obligated for the expenditures under the contract until funds have been encumbered.

3. **Disclosure of Confidential Information:** The Offeror shall not, without prior written approval from the Contracting Officer, either during or after the performance of the services required by this contract, use, other than for such performance, or disclose to any person other than HHSC personnel with a need to know, any information, data, material, or exhibits created, developed, produced, or otherwise obtained during the course of the work required by this contract. This nondisclosure requirement shall also pertain to any information contained in reports, documents, or other records furnished to the Offeror by HHSC.

4. **Effective Date:** The effective date of this contract shall be the date that the Contracting Officer signs the Offer and Award page of this document unless otherwise stated in this document.

5. **Time of Performance.** The initial term shall commence upon final execution of the Agreement by HHSC and shall be for a period of two (2) years. HHSC reserves the right to extend the Agreement for up to three (3), additional one (1) year terms, providing performance is satisfactory, both parties agree to the extension, and such extension is approved by HHSC.
6. **Not-To-Exceed Amount.** The total sum of money that HHSC is administratively authorized to expend under this Agreement including all applicable taxes and expenses incurred, is dependent upon the total number of projects and the State funding provided for those projects.
7. **Technical Representative.** The Technical Representative shall have the right to oversee the successful completion of contract requirements, including monitoring, coordinating and assessing the Offeror's performance; and approving completed work/services with verification of same for the Offeror's invoices. The Technical Representative also serves as the point of contact for the Offeror for "Technical" matters (non-contractual) from award to contract completion. The Technical Representative is:

Jim Paapke
Facilities Operations Manager
808-932-3532
jpaapke@hhsc.org
8. **Anti-Kickback Statute / Stark Law.** The parties to this Agreement certify that they shall not violate the Anti-Kickback Statute or the Stark Law with respect to the performance of this Agreement.
10. **Required Notice.** The Offeror must provide written notice to Hilo Medical Center's Contracting Officer upon receipt of notification that the Offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity. The Contracting Officer may, upon receipt of such written notice, immediately terminate this Agreement if the Contracting Officer or HHSC determine that the Offeror has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.
11. **Exempt.** HHSC is exempt from HRS chapter 103D for this solicitation. Reference to that statute or its implementing administrative rules does not evidence intent to waive the exemption. References to the statute and rules herein are for convenience, since it is our intent to incorporate some of the language in the statute and rules as a matter of policy.

PROPOSAL SUBMISSION CHECKLIST

*Please Check Off Items Submitted	For HHSC Use	
_____	_____	Proposal Received “On-Time”
_____	_____	One Hardcopy Original & One Electronic Copies of Proposal
_____	_____	Proposal Transmittal Cover Sheet (Appendix A):
_____	_____	Authorized Signature
_____	_____	Required Information
_____	_____	Technical Proposal
_____	_____	Background, Qualifications and Experience
_____	_____	Key Personnel Organization and Staffing
_____	_____	Method of Approach to the Scope of Services
_____	_____	Cost Proposal
_____	_____	Pricing Schedule
_____	_____	Optional Services Costs
_____	_____	Standards of Conduct Declaration (Appendix E)
_____	_____	Acceptance of General Conditions Form (Appendix B)
_____	_____	Non-Acceptance of “Scope of Services” Requirement(s)
_____	_____	All Data and Information Required by the RFP
_____	_____	Proprietary Documents Request
_____	_____	Others (List)
_____	_____	Proposal Submission Checklist

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

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 Agreement to the State or HHSC or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges.

On behalf of _____, CONTRACTOR, the undersigned does declare, under penalty of perjury, as follows:

- 1. CONTRACTOR** [] IS or [X] IS NOT a legislator or an employee or a business in which a legislator or an employee has a controlling interest (Section 84-15(a), HRS).
2. CONTRACTOR has not been assisted or represented personally in the matter by an individual who has been an employee of HHSC within the preceding two years and who participated while so employed in the matter with which the Agreement is directly concerned. (Section 84-15(b), HRS).
3. 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 this Agreement, if the legislator or employee had been involved in the development or award of the Agreement. (Section 84-14(d), HRS).
4. CONTRACTOR has not been represented on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, served as an HHSC employee or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Agreement (HRS 84-18(b) and (c), HRS).

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

By: _____

Print Name: _____

Print Title: _____

Date: _____

**Reminder to contracting facility: if "is" is circled, and the Agreement involves goods or services of a value in excess of \$10,000, the Agreement must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, HHSC/Contracting facility may not award the Agreement unless it posts a notice of its intend to award it and files a copy of the notice with the State Ethics Commission prior to contracting .(Section 84-15(a), HRS).

Instructions for Hawaii Compliance Express

Hawaii Compliance Express (HCE)

Instead of filling out forms and manually applying for the certificates listed below at the various state agencies, this new process allows businesses to register online through a simple wizard interface at:

<http://vendors.ehawaii.gov>

On the last line, click on “Create An Account” and once there, click on the circle and line marked:

No, I just want to get setup to use this service.

From this point, just fill in the blocks and follow the directions.

One simple interface covers all the forms with all the state agencies and partners. Easy to read instructions and context sensitive help make compliance safe, fast, and efficient. Using the Wizard will file with the Dept. of Taxation (to get your Taxpayer ID) and optionally with the Business Registrations Division of the DCCA. If you have or will have employees, the Wizard will also file with Dept. of Labor and Industrial Relations.

Vendors that elect to use the new Hawaii Compliance Express services will be required to pay an annual fee of \$12.00.

Government procurement personnel will be provided with no-cost online access to the HCE system, allowing them to view and print the compliance status of registered vendors. Since the HCE process may require the disclosure of sensitive company information, access to view information on registered vendors will be restricted to the respective vendor and to registered authorized procurement personnel.

Vendors choosing not to participate in the program will be required to provide the paper certificates. This can be done by contacting the various state agencies below:

DLIR Certificate of Compliance. By law vendors are required to provide a Certificate of Compliance from the Hawaii State Department of Labor and Industrial Relations (DLIR), TO ENSURE COMPLIANCE WITH LAWS, AS APPLICABLE, CONCERNING UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION, TEMPORARY DISABILITY INSURANCE, AND PREPAID HEALTH CARE.

Visit <http://labor.hawaii.gov/ui/files/2012/12/LIR27.pdf> to obtain Form LIR#27. Once approved by DLIR, *provide HHSC a copy of the certificate.*

Certificate of Good Standing. By law vendors are required to provide a Certificate of Good Standing from the Hawaii State Department of Commerce and Consumer Affairs (DCCA). Business are required to be registered to do business in the State of Hawaii. (Certificate of Good Standing not required for "Sole Proprietorship".)

Visit <https://portal.ehawaii.gov/home/online-services/certificate-of-goods-standing/> to register on-line, or to obtain a Certificate by phone call (808) 586-2727. *Provide HHSC a copy of the certificate.*

END OF DOCUMENT
15-0448