



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Touching Lives Everyday"

DESIGN-BUILD
REQUEST FOR PROPOSAL

RFP No:
HHSC FY 19-020

TO PROVIDE:

Design-Build Project for
Maluhia Air Conditioning Chiller Replacement

Maluhia
1027 Hala Drive
Honolulu, Hawaii 96817

Hawaii Health Systems Corporation
An Agency of the State of Hawaii

RFP No. HHSC FY 19-020
Maluhia Air Conditioning Chiller Replacement

[Rev.11.22.10]

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SECTION 1 **ADMINISTRATION**

1.0 INTRODUCTION

This Request for Proposal (hereinafter “RFP”) is issued by the Hawaii Health Systems Corporation (hereinafter “HHSC”), a public body corporate and politic and an instrumentality and Agency of the State of Hawaii. All procedures and processes will be in accordance with HRS Chapter 323F and HHSC Oahu Region Procurement Policy.

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

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

1.1 RFP TIMETABLE AS FOLLOWS

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

ACTIVITY	SCHEDULED DATES
1. RFP Public Announcement	November 29, 2018
2. RFP Orientation – Maluhia Basement Conference Room	December 6, 2018 at 9:30 a.m.
3. Closing Date for Receipt of Questions	December 14, 2018
4. Addendum for HHSC Response to Offeror’s Questions	December 24, 2018
5. Closing Date for Receipt of Proposals	January 10, 2019 by 2:00 p.m.
6. Mandatory Requirements Evaluation	January 14-18, 2019
7. Proposal Evaluations	January 21-25, 2019
8. Proposal Discussions (optional)	January 25, 2019
9. Best and Final Offers (optional)	January 29, 2019
10. Contractor Selection/Award Notification (on/about)	February 1, 2019
11. Contract Execution Period	February 4-8, 2019
12. Contract Tentative Award Date	February 11, 2019

1.2 AUTHORITY

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

1.2.1 RFP ORGANIZATION

This RFP is organized into five sections:

SECTION 1: ADMINISTRATIVE

Provides information regarding administrative requirements.

SECTION 2: SCOPE OF SERVICES

Provides a detailed description of goods and/or services to be provided and delineates HHSC and CONTRACTOR responsibilities.

SECTION 3: PROPOSALS

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

SECTION 4: EVALUATION

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

SECTION 5: AWARD OF CONTRACT

Describes procedures for selection and award of contract.

1.3 HEAD OF PURCHASING AGENCY (HOPA)

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

The HOPA for this RFP is:

Derek Aikiyoshi
Regional Chief Executive Officer

1.4 DESIGNATED OFFICIALS

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

1.4.1 ISSUING OFFICER

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

Scott Kawai, Contracts Manager
HHSC/Maluhia
1027 Hala Drive
Honolulu, Hawaii 96817
Phone: 832-3025
e-mail: skawai@hhsc.org

1.5 HHSC ORGANIZATIONAL INFORMATION

1.5.1 CHARTER

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

1.5.2 STRUCTURE AND SERVICES

HHSC oversees the operation of twelve public health facilities throughout the Hawaiian Island chain, including Oahu, Kauai and Hawaii. HHSC is organized into three operational regions and provides a broad range of healthcare services including acute, long term, rural and ambulatory health care services. As part of the Oahu Region, Maluhia is a licensed long term care facility and certified by Medicare for skilled nursing and intermediate nursing care residents. Its total capacity is 120 residents and employs 250 employees.

1.5.3 MISSION

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

1.6 FACILITY INFORMATION

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

1.7 SUBMISSION OF QUESTIONS

Questions must be submitted in writing via electronic mail, facsimile or post mail to the Issuing Officer no later than the “Closing Date for Receipt of Questions”, identified in paragraph 1.1 in order to generate an official answer. All written questions will receive an official written response from HHSC and become addenda to the RFP.

- IMPORTANT -

OFFEROR may request changes and/or propose alternate language to the attached HHSC General and Special Terms and Conditions during this phase only. All requests will be presented to the HHSC Legal Department for review. No requests to change the HHSC General or Special Terms and Conditions will be entertained after the proposals have been submitted or during the contracting process.

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

Responses by HHSC shall be due to the OFFEROR no later than the dates for initial questions and final questions stipulated in Section 1.1.

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

No other means of communication, whether oral or written, shall be construed as a formal or official response/statement and may not be relied upon. Please send questions to the Issuing Officer, Scott Kawai.

1.8 SOLICITATION REVIEW

OFFEROR should carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter, **excluding requests to revise the General or Special Conditions**, must be made in writing and should be received by the Issuing Officer, Scott Kawai, no later than the “Closing Date for Receipt of Proposals” as identified in Section 1.1. This will allow issuance of any necessary amendments to the RFP. It will also assist in preventing the opening of proposals upon which award may not be made due to a defective solicitation package.

1.9 RFP AMENDMENTS

HHSC reserves the right to amend the RFP any time prior to the ending date for the proposal evaluation period. RFP Amendments will be in the form of addenda.

1.10 CANCELLATION OF RFP

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

1.11 PROTESTS

An actual or prospective offeror who is aggrieved in connection with the solicitation or award of the contract may submit a protest. Any protest shall be submitted in writing to the HOPA as noted below.

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 prior to and not later than the "Closing Date for Receipt of Proposals" identified in section 1.1.

A protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract. The notice of award, if any, resulting from this solicitation shall be posted in the Maluhia website at: <http://www.hhsc.org/oahu/maluhia/index.html>

Any and all protests shall be submitted in writing to the HOPA, as follows:

Derek Akiyoshi
Regional Chief Executive Officer
Hawaii Health Systems Corporation
3675 Kilauea Avenue
Honolulu, Hawaii 96816

SECTION 2 **SCOPE OF SERVICES**

2.0 INTRODUCTION

The purpose of this competitive solicitation is to award a single, fixed-priced Agreement to a Design-Build OFFEROR for the Maluhia air conditioning chiller replacement.

The OFFEROR awarded an Agreement under this RFP shall be referred to as “CONTRACTOR” or “OFFEROR”.

2.1 CONTRACT PERIOD

The time of completion shall be within 168 consecutive calendar days from the official commencement date of the Notice to Proceed (NTP).

2.2 SCOPE OF SERVICES

A. The CONTRACTOR shall provide Design-Build services for the replacement of the Maluhia air conditioning chiller which includes, but is not limited to:

- Obtain and comply with all Federal, State, and County permits required for the completion of the work
- Provide installation plan to meet facility air conditioning operation needs during construction
- Installation of one (1) new water cooled screw chiller
- Remove and properly dispose of the existing chiller and associated piping and other materials and refrigerant per EPA, State, and County environmental regulations
- Installation of all necessary pipe, fittings, gauges, pipe supports, and thermometers required to properly run and maintain new chiller
- Reconnection of new chiller to existing electrical
- All material and equipment transportation/delivery necessary for the completion of the work
- Re-insulate all chilled water piping within scope of project
- Test and verify completion of installation

2.3 WORKING HOURS

A. The regular working hours for this project is from 7:45 AM to 3:30 PM Monday through Friday, excluding State Holidays. Working hours may be revised upon the approval of HHSC Technical Representative.

B. The Contractor may be given approval to work beyond the regular hours including Saturdays, Sundays, State Holidays, night work, or after hours upon the pre-approval of HHSC Technical Representative.

2.3 TECHNICAL REPRESENTATIVES

Technical Representatives have the right to oversee the successful completion of contract requirements, including monitoring, coordinating and assessing CONTRACTOR performance; placing requests for services; and, approving completed work/services with verification of same for CONTRACTOR’s invoices. Technical Representatives will also serve as points of contact for “technical” matters throughout the term of the contract. The Technical Representatives is Mr. Ron Kurasaki.

SECTION 3 **PROPOSALS**

3.0 INTRODUCTION

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

3.1 PROPOSAL PREPARATION

OFFEROR shall prepare a written proposal in accordance with requirements of this Section. Proposals shall address and contain, at a minimum:

The technical category information identified in paragraph 3.7 below.
The price category information identified in paragraph 3.8 below.

The Technical and Price proposals shall be distinct documents and readily separable for review. Proposals shall include all data and information requested to qualify proposals for evaluation and consideration for award. Non-compliance may be deemed sufficient cause for disqualification of a proposal.

Prepare proposals in three-ring binders, organized into distinctive sections, with tabs corresponding with the technical/product and price categories and other categories, as appropriate. The development of overly elaborate proposals and presentation material, not required and/or related to RFP requirements, is **HIGHLY DISCOURAGED**. This procedure will facilitate proposal evaluations.

3.2 COSTS FOR PROPOSAL PREPARATION

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

3.3 DISQUALIFICATION OF PROPOSALS

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

- ATTENTION -

Any proposal offering any other set of terms and conditions contradictory to those included in the RFP may be disqualified without further notice. Please refer to Section 1.7.

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

- Proof of collusion among OFFERORS, in which case all proposals involved in the collusive action will be rejected.
- The OFFEROR'S lack of responsibility and cooperation as shown by past work or services.
- The proposal shows any noncompliance with applicable law.

- The proposal is conditional, incomplete, or irregular in such a way as to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- The proposal has any provision reserving the right to accept or reject award, or to enter into a contract pursuant to an award, or provisions contrary to those required in the solicitation.
- Proof of exclusion from participation in federal health care programs, as defined in the Social Security Act (section 1128 and 1128A), and other federal laws and regulations relating to health care.

3.4 SUBMISSION OF PROPOSALS

Each OFFEROR may submit only one (1) written proposal (which includes a technical proposal and a price proposal). Alternate proposals will not be accepted. The Issuing Officer must receive one (1) original and three (3) copies of the proposal no later than the “Closing Date for Receipt of Proposals”, identified in Section 1, paragraph 1.1. **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:

Scott Kawai, Contracts Manager
 Re: RFP No. HHSC FY19-020
 Maluhia
 1027 Hala Drive
 Honolulu, Hawaii 96817

Electronic submittals may be submitted to skawai@hhsc.org by the “Closing Date for Receipt of Proposals”, identified in Section 1, paragraph 1.1. Offerors shall submit one original and three (3) copies of the electronic proposal within three (3) business days after the electronic submittal is submitted or after the closing date for receipt of proposals, which ever is later. Offerors are unresponsive if this requirement is not submitted.

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

Proposal Submitted in Response to: RFP # HHSC FY19-020

3.5 PROPOSAL TRANSMITTAL COVER LETTER

OFFEROR is required to submit proposal with a transmittal cover letter. The transmittal cover letter must be on the OFFEROR’S official business letterhead; signed by an individual authorized to legally bind the OFFEROR; affixed with the corporate seal or notarized; and minimally include information, as written/requested, on the “sample” letter in Section 5, APPENDIX A.

3.6 PUBLIC INSPECTION

Proposals shall not be opened publicly, but shall be opened in the presence of two or more procurement officials. The register of proposals and OFFERORS’ proposals shall be open to public inspection after the contract is executed by all parties.

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

burden of establishing that the designated data is exempted from the disclosure requirements set forth in Chapter 92F.

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

3.7 TECHNICAL PROPOSAL

The technical proposal shall include the following categories:

- A. SPECIALIZED EXPERIENCE & PAST PERFORMANCE
- B. ORGANIZATION AND TECHNICAL APPROACH
- C. QUALITY CONTROL
- D. KEY PROJECT PERSONNEL CAPABILITIES AND EXPERIENCE

3.7.1 SPECIALIZED EXPERIENCE

The prime Contractor and the Mechanical Engineer/Designer (or prime contractor if design is to be self-performed) shall each demonstrate recent, relevant experience on similar projects. Offerors may identify state and local government and private contracts that are similar to the scope of work requirements. If the Offeror is a joint venture, each firm shall provide information, demonstrating experience relevant to their role on this project. The Mechanical Engineer/Designer may list prime contractors they have worked for or government, private or commercial customers. Please identify any design-build projects. The prime Contractor and the Mechanical Engineer/Designer shall submit no more than five (5) projects for each of the relevant experience or similar project. The prime Contractor shall submit information as provided in APPENDIX F and the Mechanical Engineer/Designer shall submit information as provided in APPENDIX G if applicable.

3.7.2 ORGANIZATION AND TECHNICAL APPROACH

Provide information that describes the offeror's organization and intended technical approach to executing the design-build contract. This includes the following:

Organization: Describe what firms, their resources and how their resources will be utilized, their roles and responsibilities and any contractual arrangements that are established. Clearly describe any teaming or joint venture arrangements, including a clear description of each firm's roles and responsibilities on the project. Include a simple organizational chart, illustrating the organization with the key personnel of the design-build team. Describe the proposed management structure for the team, describing how the design and construction process will be managed and the authorities and the delegation of authority within the team.

Technical Approach for Design and Construction: Describe the technical approach for design and construction of the project. Include any considerations for fast-tracking design and construction. The HHSC is looking for ways to streamline construction, manage labor and other resource constraints in an effort to reduce costs and achieve an aggressive schedule.

Collaborative Approach for Design-Build: Describe interactions within the team and with the HHSC during the design. Describe the role of the construction team members during the design. Describe the interaction between the design team with the construction team during construction,

including: control and approval of the revisions to the accepted design; requests for information; shop drawing and submittal reviews and approvals; progress meetings; contract completion and closeout.

Planning and Scheduling: Describe the time control capabilities and systems to be used to plan design and construction and how the schedule will be used to manage design and construction. Discuss internal procedures for handling delays to minimize time growth. Include a summary schedule.

3.7.3 QUALITY CONTROL

Describe the team’s quality control approach, systems and capabilities to maintain quality control of the design and construction. Describe the proposed quality control organization, including the proposed staffing plan. In addition to the required Mechanical Engineering/Designer roles specified within the RFP for maintaining integrity of the design, describe any other Mechanical Engineering/Designer involvement in the quality control process.

3.7.4 KEY PROJECT PERSONNEL CAPABILITIES AND EXPERIENCE

Provide a consolidated list of key personnel with name, position title and description of project responsibility for each. Include key designers, whether employed by the prime or by a design subcontractor. Limit the key personnel forms to the following: the prime contractor’s project manager responsible for design and construction, the design manager, mechanical and electrical, on-site manager and general superintendent.

3.8 PRICE PROPOSAL

At a minimum, the price proposal shall include the following categories:

	Amount
Design of New Chiller	\$ _____
Installation of New Chiller	\$ _____
Other: Permit/Misc. Fees (if applicable, list items)	\$ _____
_____	\$ _____
TOTAL OFFER	\$ _____

3.9 NON APPLICABLE PROPOSAL REQUIREMENT

Excluding HHSC General and Special Terms and Conditions, and any objectionable or defective RFP matters, if any proposal requirement, as describe in this Section, is not applicable to the OFFEROR and therefore will/can not be provided, list the requirement(s) and provide detailed explanation of the reasons why the requirement(s) is not applicable. HHSC reserves the right to

consider as acceptable only those proposals submitted in accordance with all requirements set forth in this Section.

3.9.1 NON ACCEPTANCE OF ANY RFP REQUIREMENT

If any RFP requirement, as describe in this RFP, is not acceptable to the Offeror, list the requirement(s) and provide detailed explanation of the reasons why the requirement(s) is not acceptable and provide a recommended revision, if applicable. HHSC reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in the RFP.

- ATTENTION -

Any proposal offering any other set of terms and conditions contradictory to those included in the RFP will be disqualified without further notice. Please refer to Section 1.7.

3.9.2 PROPOSAL SUBMISSION CHECKLIST

The proposal submission checklist is designed to be used as a tool to ensure that all required documents and information are being submitted with OFFEROR'S proposal; and, as a supplementary means of performing evaluation of the "Mandatory Requirements", as set forth in Section 4 paragraph 4.2.1. The checklist is required to be completed by each OFFEROR and included (as the last document) in the proposal package. The proposal submission checklist is in Section 5, APPENDIX B

SECTION 4 **EVALUATIONS**

4.0 INTRODUCTION

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

4.1 PROPOSAL EVALUATION COMMITTEE

An evaluation committee will be selected from HHSC to perform all evaluation requirements. The committee will be composed of individuals with experience in, knowledge of, and program responsibility for the requirements identified in the RFP. HHSC reserves the right to request information from OFFEROR to clarify the OFFEROR'S proposal.

4.2 EVALUATION PHASES

Evaluation phases will be conducted as follows:

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

4.2.1 PHASE - 1 EVALUATION OF MANDATORY REQUIREMENTS

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

Proposal Mandatory Requirements

- A. Proposal Cover Letter **with corporate seal or notarization**
- B. Company financial statements for the past two years, preferably audited, or a copy of filed tax returns. Certified Balance & Income Statements are acceptable; keep documentation simple/limited. If not available or applicable, please explain reason(s) why.
- C. Identification of litigation currently impacting the Company, if any. State "NONE", if none.
- D. Proposal Submission Checklist

4.2.2 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 paragraph 4.3 and the evaluation scoring system identified in paragraph 4.4.

4.2.3 PHASE - 3 PRICE PROPOSAL EVALUATION

Evaluation of the price proposal shall be conducted using the price proposal category and the value weight percentages identified in paragraph 4.3 and the evaluation scoring system identified in paragraph 4.4.

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

At its discretion, following the Mandatory Requirements Phase, HHSC may develop a Priority List of Offerors based on the evaluation of OFFERORS' Technical and Price proposals. This Priority List may be asked to conduct discussions with HHSC. OFFEROR'S proposal may be accepted without Discussions. In the event that HHSC elects to hold Discussions, HHSC shall inform Priority-Listed OFFERORS of specific Discussion topics and issues; and schedule Discussion proceedings.

4.2.5 PHASE - 5 BEST AND FINAL OFFERS (OPTIONAL)

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

4.2.6 PHASE - 6 RECOMMENDATION FOR CONTRACT AWARD

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

4.3 EVALUATION CATEGORIES AND VALUE WEIGHT PERCENTAGES

Mandatory Requirements	Pass/No Pass
Technical Proposal	<u>Value Weight</u>
Specialized Experience & Past Performance	25%
Organization and Technical Approach	25%
Quality Control	10%
Key Project Personnel Capability and Experience	15%
Price Proposal.....	25%
TOTAL.....	100%

4.4 EVALUATION SCORING SYSTEM

The maximum number of points available for scoring is one thousand (1000) per evaluator. The proposal receiving the highest number of points is considered statistically the best proposal and the **best value** 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%. Each category will be rated between one (1) and ten (10), with ten being the highest (the best

rating) by each member of the evaluation committee. The OFFEROR'S total score (see note below) will be determined by: a) multiplying the assigned weight value of each category by the numerical rating provided by the evaluation committee member to determine the score for each category; b) totaling the score for all categories of each evaluation committee member; and, c) totaling the score of all evaluators.

Note: In determining the total score, the OFFEROR'S price proposal with the lowest price will receive the highest available rating allocated to price. Each proposal that has a higher price than the lowest will have a lower rating for price. The points allocated to higher-priced proposals will be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price.

SECTION 5

AWARD OF CONTRACT

5.0 AWARD OF CONTRACT

Award of contract shall be made to the most responsible and responsive OFFEROR whose proposal is determined by the Evaluation Committee to provide the best value to HHSC, considering all evaluation reviews and results. The Contract award may be awarded in whole or in part based on the availability of funds.

5.1 CONTRACT AWARD NOTIFICATION

The notice of award, if any, resulting from this solicitation shall be posted on the HHSC website. This will serve as the official notification to all OFFERORS. In addition, the Issuing Officer will inform the successful OFFEROR of contract award selection by an official “notice of award” letter.

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

5.2 CONTRACT AWARD DEBRIEFING

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

5.3 CONTRACT DOCUMENT

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

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

5.4 GENERAL AND SPECIAL CONDITIONS:

The General Conditions – Purchase of Goods and Services from Non-Healthcare Service Providers (for Non 103D Agreements) are applicable and shall be apart and whole and attached to the Agreement.

In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

Of particular significance, please note/review the following requirements:

5.5 GENERAL EXCISE/USE TAX

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

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

The **General Excise Tax License** shall be obtained from the DOTAX offices in the State of Hawaii or the DOTAX Web Site and by mail or FAX. Refer to the next paragraph for procedures in obtaining DOTAX forms and information.

Hawaii Compliance Express

Alternatively, OFFEROR may apply and obtain proof of compliance with the above agencies electronically through the Hawaii State Procurement Office's "Hawaii Compliance Express website at <http://vendors.hawaii.gov>

One interface covers all the forms for all state agencies and partners. Easy to read instructions and context sensitive help make compliance safe, fast and efficient. Using the Wizard will file with Department of Taxation and optionally with the Business Registration Division of the DCAA. If you have or will have employees, the Wizard will also file with Department of Labor and Industrial Relations.

OFFERORS who elect to use the services will be required to pay an annual fee of \$15.00.

5.6 CERTIFICATE OF COMPLIANCE

The CONTRACTOR 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 at www.hawaii.gov/labor (open "Get a Form"; then open "LIR#27) 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 CONTRACTOR who in turn shall submit the form to HHSC.

5.7 CERTIFICATE OF GOOD STANDING

- a. **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 CONTRACTOR shall obtain/possess **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. A CONTRACTOR’s status as sole proprietor and its business street address as indicated on the proposal transmittal cover letter (APPENDIX A) will be used to confirm that the CONTRACTOR is a Hawaii Business.
- b. **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 CONTRACTOR shall obtain/posses **Certificate of Good Standing** issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG).
- c. The **Certificate of Good Standing** can be obtained by phone (call (808) 586-2727, Monday thru Thursday 7:45-4:30 HST) or by mail (Department of Commerce and Consumer Affairs, Business Registration Division, P.O. Box 40, Honolulu, Hawaii 96810). The certificate is valid for six (6) months from date of issue and must be valid on the date it is received by HHSC.

5.8 PERFORMANCE AND PAYMENT BOND

Upon the acceptance of the proposal by HHSC, the CONTRACTOR must enter into and execute a contract and furnish a Performance and Payment bond, as required by law.

5.9 Certification for Safety and Health Programs for Offers in excess of \$100,000

In accordance with HRS 396-18, by submitting this proposal, the Offeror certifies that its organization will have a written safety and health plan for this Project that will be available and implemented by the date stipulated in the Notice to Proceed. Details of the requirements of this plan may be obtained from the Department of Labor and Industrial Relations, Occupational, Safety and Health Division (HIOSH).

5.10 Labor and Wage Certification

In accordance with HRS 104 Wages and Hours of Employment on Public Works Construction Projects in excess of \$2000, by submitting this proposal, the Offeror will comply with the requirements of chapter 104 and certifies that:

- a. Individuals engaged in the performance of the contract on the job site shall be paid not less than wages that the Director of Labor and Industrial Relations shall have determined to be prevailing for corresponding classes of laborers and mechanics employed on public works projects including any periodic adjustments to the prevailing wages during the performance of the contract;
- b. Overtime compensation shall be at one and one-half times the basic hourly rate plus fringe benefits for hours worked on Saturday, Sunday, or legal holiday of the State or in excess of eight hours on any other day; and
- c. All applicable laws of the federal and state governments relating to workers’

compensation, unemployment compensation, payment of wages, and safety shall be fully complied with.

5.11 For offers of \$25,000 or more , the bidder shall comply with the following chapters of the Hawaii Revised Statutes (HRS): Chapter 237 HRS (general excise tax); Chapter 383 HRS (employment security - unemployment insurance); Chapter 386 HRS (workers compensation); Chapter 392 (temporary disability insurance); Chapter 393 HRS (pre-paid health care); and shall be incorporated or organized under the laws of the State, or be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract. Offeror shall complete the CERTIFICATION OF COMPLIANCE form (APPENDIX H) and submit it with the proposal.

5.12 CONTRACT EXECUTION

Upon receipt of the CONTRACT document, the CONTRACTOR shall have ten (10) business days to execute and return the CONTRACT to the Issuing Officer. Explicit execution instructions will accompany the CONTRACT. A copy of the fully executed CONTRACT will be provided the CONTRACTOR within seven (7) business days of CONTRACT execution.

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

5.13 CONTRACT COMMENCEMENT DATE

Upon completion of CONTRACT execution requirements, a **“Notice to Proceed”** letter will be provided the CONTRACTOR specifying the “Commencement” (start work) date of the CONTRACT. No work is to be undertaken by the CONTRACTOR prior to the commencement date specified in the Notice to Proceed letter. HHSC is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the CONTRACTOR prior to the official, notice to proceed “Commencement” date.

5.14 TIME OF PERFORMANCE

The time of completion shall be within 168 consecutive calendar days from the official commencement date of the Notice to Proceed.

Liquidated damages shall be assessed in the amount of two hundred fifty and 00/100 DOLLARS (\$250.00) per calendar day of delay, in accordance with the terms of paragraph 9 of the General Conditions.

SAMPLE PROPOSAL TRANSMITTAL COVER LETTER

Mr. Kawai:

(Name of Business) _____ proposes to provide any and all goods and services as set forth in the “Request for Proposals for Competitive Sealed Proposals” to provide “**Maluhia Air Conditioning Chiller Replacement**”, RFP # **HHSC FY19-020**, for which fees/costs have been set. The fees/costs offered herein shall apply for _____ (Please insert applicable period of time) _____.

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

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

Other information:

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

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

Other (Specify) _____

State of Incorporation is: (Specify) _____

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

Business Address: _____

(Authorized Bidder’s Signature, Printed Name/Title; Corporate Seal or Notarized)

Encl: Proposal

RFP No. HHSC FY 19-020
Maluhia Air Conditioning Chiller Replacement

PROPOSAL SUBMISSION CHECKLIST

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

Please
Check Off
Offeror
Submitted

HHSC Use

Proposal Items

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- Proposal Received "On-Time"
- One (1) Original & three (3) Copies of Proposals. Electronic copies may be included versus additional copies in binders. Submittals may also be sent electronically to: mkato@hhsc.org
- Proposal Transmittal Cover Letter:
 - Official Business Letterhead
 - Authorized Signature
 - Corporate Seal or Notarized
- Mandatory Requirements
 - Company Financial Statements
 - Company Litigation Statement
- Technical Proposal
 - Specialized Experience & Past Performance
 - Organization and Technical Approach
 - Quality Control
 - Key Project Personnel Capability and Experience
- Cost Proposal
- APPENDIX H: Certificate of Compliance
- Proprietary Documents
- Others (List)
- Proposal Submission Checklist
- Hawaii State Compliance Documents

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

AGREEMENT No.: FY _____

THIS AGREEMENT, executed on the respective dates of the signatures of the parties shown hereafter, is effective as of date of last signature, between **Hawaii Health Systems Corporation**, an Agency of the State of Hawaii (hereinafter "HHSC"), by its Regional Chief Executive Officer (hereinafter "CEO"), whose address is 3675 Kilauea Avenue, Honolulu, Hawaii 96816, and _____, (hereinafter "CONTRACTOR"), a _____, under the laws of the State of _____ whose business address and taxpayer identification number are as follows:

RECITALS

- A. The HHSC is in need of the goods or services, or both, described in this Agreement and its attachments.
- B. The HHSC has issued a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.
- C. The solicitation for proposals and the selection of the CONTRACTOR were made in accordance with Chapter 323F, Hawaii Revised Statutes and HHSC Oahu Region Procurement Policy.
- D. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the HHSC, taking into consideration price and the evaluation factors set forth in the request.
- D. The HHSC desires to retain and engage the CONTRACTOR to provide the goods or services, or both, as the case may be, and the CONTRACTOR is agreeable to providing said goods or services, or both.

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

1. **Scope of Services.** The CONTRACTOR shall, in a proper and satisfactory manner as determined by the HHSC, provide all the services set forth in the request for competitive sealed proposals, **RFP # HHSC FY _____** ("REQUEST"), and the CONTRACTOR's accepted proposal,

RFP No. HHSC FY 19-020
Maluhia Air Conditioning Chiller Replacement

including any and all revisions/addendum's/negotiated agreements thereto (collectively "PROPOSAL"), both of which, even if not physically attached to this Agreement, are hereby made a part of this Agreement.

2. **Time of Performance.** The performance required of the CONTRACTOR under this Agreement shall be executed in accordance with the time period set forth in Attachment S2.

3. **Compensation.** The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Agreement in a total amount not to exceed _____ DOLLARS (\$ _____), including taxes, at the time and in the manner set forth in the RFP and CONTRACTOR's proposal.

4. **Bonds.** The CONTRACTOR (is) required to provide a (performance and payment) bond in the amount of 5% of the Contract award amount.

5. **Standards of Conduct Declaration.** The Standards of Conduct Declaration of the CONTRACTOR, is attached and is made a part of this Agreement.

6. **Other Terms and Conditions.** The General Conditions and any Special Conditions are attached hereto and made a part of this Agreement (or, Any Special Conditions are attached hereto and made a part of this Agreement). In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) Agreement, including all attachments and addenda; (2) Request, including all attachments and addenda; and (3) Proposal.

6. **Liquidated Damages.** Liquidated damages shall be assessed in the amount of _____ DOLLARS (\$ _____) per day, in accordance with the terms of paragraph 10 of the General Conditions.

7. **Notices.** Any written notice required to be given by any party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice required to be given to the CEO shall be sent to: HHSC, Head of Purchasing Agency (HOPA) / President & Chief Executive Officer, HHSC, 3675 Kilauea Avenue, Honolulu, Hawaii 96816. Notice to the "head of the purchasing agency" and/or "Agency Procurement Officer" as denoted in the General Conditions shall be sent to: HHSC, Attn: Procurement Office, 3675 Kilauea Avenue, Honolulu, Hawaii 96816. Notice to the CONTRACTOR shall be sent to the CONTRACTOR's address as indicated in this Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time or actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the HHSC in writing of any change of address.

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

HHSC _____
(Signature)

Dereck Akiyoshi

(Printed Name)

Regional Chief Executive Officer

(Title)

(Date)

***CONTRACTOR** _____
(Signature)

Printed Name:

(Title)

(Date)

*** Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.**

CONTRACTOR'S ACKNOWLEDGMENT

State of _____

County of _____

County of _____

On this day of _____, 200____, before me personally appeared _____ to me personally known, who being by me duly sworn, did say that he/she is the _____ of _____, the CONTRACTOR named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he/she executed said instrument as the free act and deed of the CONTRACTOR.

NOTARY PUBLIC:

SIGNATURE: _____

PRINTED NAME: _____

COMMISSION EXPIRES: _____

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

I certify that the services to be provided under this Agreement by the CONTRACTOR may be performed concurrently with the CONTRACTOR's private business or profession or other private employment, and that it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State or HHSC. Pursuant to section 76-16(15), Hawaii Revised Statutes, the services are exempt from the state civil service.

_____ Date: _____

Derek Akiyoshi
Regional Chief Executive Officer

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

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

1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.*

2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.

3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a State or HHSC employee or, in the case of the Legislature, by a legislator.

4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the State or HHSC within the preceding two (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.

5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been a State or HHSC employee, or in the case of the Legislature, a legislator.

6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, 1) within the past twelve (12) months, served as a State or HHSC employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

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

CONTRACTOR

By: _____

Title: _____

Date: _____

*Reminder to FACILITY: if "is" is circled, YOUR FACILITY is required, under section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, ten (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

Scope of Services

- A. The CONTRACTOR shall provide Design-Build services for the replacement of the Maluhia air conditioning chiller which includes, but is not limited to:
- Obtain and comply with all Federal, State, and County permits required for the completion of the work
 - Provide installation plan to meet facility air conditioning operation needs during construction
 - Installation of one (1) new water cooled screw chiller
 - Remove and properly dispose of the existing chiller and associated piping and other materials and refrigerant per EPA, State, and County environmental regulations
 - Installation of all necessary pipe, fittings, gauges, pipe supports, and thermometers required to properly run and maintain new chiller
 - Reconnection of new chiller to existing electrical
 - All material and equipment transportation/delivery necessary for the completion of the work
 - Re-insulate all chilled water piping within scope of project
 - Test and verify completion of installation
- B. WORKING HOURS
1. The regular working hours for this project is from 7:45 AM to 3:30 PM Monday through Friday, excluding State Holidays. Working hours may be revised upon the approval of HHSC Technical Representative.
 2. The Contractor may be given approval to work beyond the regular hours including Saturdays, Sundays, State Holidays, night work, or after hours upon the pre-approval of HHSC Technical Representative.

Time of Performance

1. The time of completion shall be within 168 consecutive calendar days from the official commencement date of the Notice to Proceed (NTP).
2. Liquidated damages shall be assessed in the amount of two hundred fifty and 00/100 DOLLARS (\$250.00) per calendar day of delay, in accordance with the terms of paragraph 9 of the General Conditions.

ATTACHMENT 3

Compensation

In full consideration for the services to be performed by the CONTRACTOR under this Agreement, the HHSC agrees, subject to appropriation and allotments, to pay to the CONTRACTOR a total sum of money not to exceed _____
DOLLARS (\$000,000.00), including all applicable taxes and expenses incurred, and in accordance with the following:

GENERAL CONDITIONS
(PURCHASE OF GOODS AND SERVICES FROM 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. HHSC reserves the right to verify that the above statement is true and to immediately cancel this Agreement in the event it is 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, including all attorneys' fees and costs, and all claims, suits and demands therefore, arising out of or resulting from any acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement for any reason.

9. **LIQUIDATED DAMAGES.**

When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 11 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to HHSC the amount, if any, set forth in this Agreement per calendar day from the date set for cure until either (i) 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.

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

12. **TERMINATION FOR CONVENIENCE BY HHSC.**

- a. Termination for convenience of goods and services agreements. 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:
 - Changes in the work within the scope of the Agreement; and
 - 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 a 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, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for State officers and employees in the executive branch who are excluded from collective bargaining coverage.

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. Prompt payment.
 - (1.) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) 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; and
 - (2.) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- c. 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. **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.

20. **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.

21. **BUSINESS ASSOCIATE, PRIVACY AND SECURITY ADDENDUM.**

By signing this agreement, CONTRACTOR acknowledges that it 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 it has read the Privacy and Security Addendum, which is posted on the HHSC internet (www.hhsc.org) and is applicable to all Business Associates. Said Privacy and Security Addendum is hereby incorporated by reference and made a part of this agreement as if fully repeated herein. By signing this contract, CONTRACTOR agrees to fully comply with, and be bound by, all the terms set forth in the Privacy and Security Addendum, as it may be amended from time to time and posted on the HHSC internet site (www.hhsc.org).

22. **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.

23. **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.

24. **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.

25. **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. 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.

26. **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.

27. **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.

28. **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.

29. **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.

30. **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.

31. **CAMPAIGN CONTRIBUTIONS.**

CONTRACTOR acknowledges that it is unlawful under Section 11-205.5, 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.

32. **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.

33. **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 and such facsimile execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile executions or a combination thereof, shall be construed together and shall constitute one and the same Agreement.

34. **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.

35. **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.

SPECIAL CONDITIONS

1. The State of Hawaii INTERIM GENERAL CONDITIONS, dated August 1999, and AMENDMENTS shall be read by the Contractor as they form a part of the Agreement to be entered into between the Contractor and the HHSC. The Interim General Conditions are not physically included in these specifications, but are included by reference. Copies of the INTERIM GENERAL CONDITIONS may be obtained from the Division of Public works, Department of Accounting and General Services, State of Hawaii at the following website: http://hawaii.gov/pwd/construction_bids/Members/qc/gen_cond_constr
2. The General Conditions are hereby amended as follows:
 - a. The following terms specified in Section 1 are hereby defined:
 - i) Bidder shall have the same definition as Contractor.
 - ii) Comptroller shall be the Chief Financial Officer at HHSC Oahu Region or his authorized representative.
 - iii) Department shall be HHSC or its designee.
 - iv) Engineer shall be the person so designated by Maluhia
 - v) State shall be HHSC or its designee.
 - b. Section 1.20 and 1.25 replace "State of Hawaii" with "State".
 - c. The last two sentences of the third paragraph of Section 2.1.1.2, in the Interim General Conditions is deleted and is replaced with the following:

" If the notice is faxed, the time of receipt by the CEO's fax machine shall be official. The submittal of intention to bid via fax is acceptable only to this office."
 - d. Section 2.1.2.1: second sentence is hereby deleted in its entirety.
 - e. Last sentence of paragraph 2.1.2.3 of the Interim General Conditions is amended to read as follows:

"Failure to submit either the required tax clearance certificate or Bid Form 4 will be sufficient grounds for HHSC to refuse to receive or consider the prospective bidder's proposal."
 - f. The addresses specified in Section 2.6.1 of the Interim General Conditions shall be changed to Maluhia 1027 Hala Drive, Honolulu, Hawaii 96817.
 - g. Sections 2.10 through 2.11 are hereby deleted in their entirety.
 - h. Paragraph 3.8.1 of the Interim General Conditions is amended to read as follows:

"The contract shall be signed and forwarded to Hawaii Health System Corporation, by the successful bidder all within three (3) days of receipt of the contract. The

performance and payment bonds shall be received by Hawaii Health Systems Corporation within ten (10) calendar days after the bidders is awarded the contract. No proposal or contract shall be considered binding upon the State until the contract has been fully and properly executed by all parties thereto.”

- i. In paragraph 3.9.2 of the Interim General Conditions, “ten (10) calendar days after such award or within such further time as the Comptroller may allow” shall be replaced with, “the time allowed in the previous section.”
- j. Section 4.1: the words “accepted bid” is deleted from the first sentence.
- k. Section 4.9.3: the words “submission of bids” is replaced with the words”execution of this contract”.
- l. Section 5.5: the last sentence is hereby deleted in its entirety and replaced with the following:

“In the event of conflict among the Contract Documents, the order of precedence is listed in paragraph 5 of this contract and is further detailed in the following subparagraphs:”
- m. Sections 5.5.1 and 5.5.2 are hereby deleted in their entirety.
- n. Section 5.8.1: “twenty-four (24)” is hereby changed to “three (3)”.
- o. Section 5.11 is hereby deleted in its entirety.
- p. Section 5.12.4 is hereby deleted in its entirety.
- q. Section 7.3.7.4, subparagraphs a and b: Replace “If the project falls within the State University System, The University of Hawaii” with “HHSC”.
- r. Section 7.4.1 is hereby deleted in its entirety and replaced with the following:

“The Contractor shall prepare, process, obtain, and pay for all permits necessary for the proper execution of the work.”
- s. Section 7.7.2 is amended to read as follows: “The wage rate schedule is attached to this contract.”
- t. Sections 7.14.2, 7.19.2, and 7.19.4: delete “Departments and Agencies and their” and insert “directors” between “officers” and “representatives”.
- u. Section 7.14.4 is hereby added and reads as follows:

“Contractor warrants 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. HHSC reserves the right to verify that the above warranty is true and to immediately cancel this Agreement in the event it is violated.”
- v. Section 7.15 delete “and its Departments and Agencies”.
- w. Section 7.21.8.6 — Delete the word “bad” before the words “weather day conditions.”

x. Section 7.35.1: the last word “earlier” is changed to “later”.

8. 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.

**SPECIALIZED EXPERIENCE
CONSTRUCTION OR PRIME CONTRACTOR**

Provide the following information to show examples of projects your company constructed within the last five years indicating experience with projects of similar type and scope. Use one form per project. Each project shall not exceed 2 pages.

Your Firm's Name: _____

Name of Project: _____

Location of Project: _____

Owner: _____

General Scope of Construction Project:

Your Role (Prime, Joint Venture, or Subcontractor, etc.)

Construction cost: _____

Extent and type of work you subcontracted out: _____

Dates Construction: Began _____ Completed _____

A/E name if Design Build: _____

Were you terminated or assessed liquidated damages? _____

If either yes, please explain _____

Owner's point of contact for reference

Name: _____

Company: _____

Phone: _____

**SPECIALIZED EXPERIENCE
DESIGN FORM OR IN-HOUSE DESIGN CAPABILITY**

Provide the following information to show examples of projects your company constructed within the last five years indicating experience with projects of similar type and scope. Use one form per project. Each project shall not exceed 2 pages.

Your Firm's Name: _____

Name of Project: _____

Location of Project: _____

Owner: _____

General Scope of Construction Project:

Summary of your role in Design of this Project:

Construction cost: _____

Extent and type of work you subcontracted out: _____

Dates Construction: Began _____ Completed _____

A/E name if Design Build: _____

Were you terminated or assessed liquidated damages? _____

If either yes, please explain _____

Owner's point of contact for reference

Name: _____

Company: _____

Phone: _____

APPENDIX H

CERTIFICATION OF COMPLIANCE

_____ certifies it is in compliance with all laws
(Company Name)

governing entities doing business in the State, including the following:

1. Chapter 237 HRS (General Excise Tax)
2. Chapter 383 HRS (Hawaii Employment Security Law - Unemployment Insurance)
3. Chapter 386 HRS (Workers' Compensation Law)
4. Chapter 392 HRS (Temporary Disability Insurance)
5. Chapter 393 HRS (Prepaid Health Care Act)
6. Offeror / Bidder is incorporated or organized under the laws of the State or is registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.

Furthermore, _____ acknowledges that
(Company Name)
making a false certification shall cause its suspension from further offerings or awards.

Signature: _____ Date: _____

Print Name: _____

Title: _____
