



**OAHU REGION
HAWAII HEALTH SYSTEMS CORPORATION**

LEGAL AD DATE: **APRIL 14, 2023**

**REQUEST FOR PROPOSALS
RFP No. HHSC 23OR-0010**

**SEALED OFFERS
FOR**

**CONTRACT MANAGEMENT/OPERATION OF THE
DANIEL K. AKAKA STATE VETERANS HOME
STATE OF HAWAII**

WILL BE RECEIVED UP TO **2:00 P.M. (HST) ON
JULY 21, 2023**

SEALED PROPOSALS WILL BE RECEIVED AT THE HAWAII HEALTH SYSTEMS CORPORATION OAHU REGION PURCHASING OFFICE AT: MALUHIA, 1027 HALA DRIVE, HONOLULU, HI 96817.

(signature on file)

A handwritten signature in black ink, appearing to read 'Derek Akiyoshi', is written over a horizontal line.

Derek Akiyoshi
Chief Executive Officer
Oahu Regional Healthcare System
Hawaii Health Systems Corporation (HHSC)

RFP 23OR-0010

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SECTION ONE
INTRODUCTION, TERMS AND ACRONYMS, KEY DATES

1.01 INTRODUCTION

The State of Hawaii, Oahu Regional Healthcare System, HHSC or "Owner" is requesting proposals from qualified applicants to promote and ensure the fairest, most efficient means to obtain the benefits of the most qualified, responsive, and responsible proposal to manage and operate the new Daniel K. Akaka State Veterans Home ("DKA SVH"). Hereinafter, organizations interested in submitting a proposal in response to this RFP shall be referred to as "Offerors," and the term "Contractor" refers to the Offeror who is awarded a Contract under this RFP.

1.02 CANCELLATION

This Request for Proposals (RFP) may be cancelled and any or all proposals rejected in whole or in part, without liability, when it is determined to be in the best interest of the State.

The State reserves the right to cancel this RFP and to reject any and all proposals in whole or in part when it is determined to be in the best interest of the State, pursuant to HAR Section 3-122-95 through 3-122-97. The State shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by the Offeror in the event this RFP is cancelled, or a proposal is rejected.

1.03 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

BAFO	=	Best and Final Offer
CPO	=	Chief Procurement Officer
DAGS	=	Department of Accounting and General Services
GC	=	General Conditions, issued by the Hawaii Health Systems Corporation
GET	=	General Excise Tax
HAR	=	Hawaii Administrative Rules
HRS	=	Hawaii Revised Statutes
Offeror	=	Any individual, partnership, firm, corporation, joint venture, or representative or agent, submitting an offer in response to this solicitation
Owner	-	Oahu Regional Healthcare System, HHSC
Procurement Officer	=	The contracting officer for the Owner
RFP	=	Request for Proposals
DOD	=	State of Hawaii, Department of Defense
State	=	State of Hawaii, including its departments and political subdivisions
SOW	=	Statement of Work
Contractor	=	Offeror who is awarded a contact under this RFP

1.04 RFP SCHEDULE AND SIGNIFICANT DATES

The schedule set out herein represents the State's best estimate of the schedule that will be followed. All times indicated are Hawaii Standard Time (HST). If a component of this schedule, such as "Proposals Due" date is delayed, the rest of the schedule may be shifted by the same number of days. The approximate schedule is as follows:

RFP issued and Public Announcement	Apr 14, 2023
Offeror Visit to Kapolei, Oahu Construction Site/Orientation	May 5, 2023, 10:00 a.m.
Deadline to Submit Written Questions	Jun 2, 2023, 2:00 p.m.
State's Response to Written Questions	Jun 23, 2023
Proposals Due	Jul 21, 2023, 2:00 p.m.
Proposal Evaluations	Jul 24 – Aug 18, 2023
Discussion with Priority Listed Offerors If required	Aug 21 - Sep 1, 2023
Request for Best and Final Offer (Est.)	Sep 15, 2023
Best and Final Offer (Est.)	Oct 6, 2023
Estimated Contract Award	Oct 27, 2023
Estimated Contract Start Date	Dec 15, 2023

1.05 QUESTIONS PRIOR TO OPENING OF PROPOSALS

The Issuing Officer is responsible for administrating/facilitating all requirements of the RFP. The Issuing Office is:

Scott Kawai
 Director of Contracts and Project Management
 Hawaii Health Systems Corporation Oahu Region
 1027 Hala Drive, Honolulu, HI 96817
 (808) 832-3025
skawai@hhsc.org

Questions may be submitted in writing via email to the Issuing Officer no later than the "Deadline to Submit Written Questions." Question responses shall be provided by the date indicated in Section One, 1.04 RFP Schedule and Significant Dates, or as amended, through an Addenda.

SECTION TWO

BACKGROUND AND SCOPE OF WORK

2.01 PROJECT OVERVIEW AND HISTORY

Purpose: The purpose of this contract is to provide overall management, staffing and patient care services, in compliance with all Federal, Department of Veterans Affairs (VA) and State laws, regulations and requirements, in order to have full operational responsibility for the State of Hawaii's second State Veterans Home, the Daniel K. Akaka State Veterans Home to be located in Kapolei, City and County of Honolulu, Island of Oahu, Hawaii.

History/Background: Oahu Regional Healthcare System, HHSC is Part of the HHSC and as such is an agency of the State of Hawaii. It has responsibility for the overall oversight and operation of all HHSC healthcare facilities on the island of Oahu, State of Hawaii. With the State of Hawaii's first State Veterans Home opened in Hilo on the Big Island in 2007, there has been a strong desire to open a second State Veterans Home on Oahu where the preponderance of the State's Veterans reside. Starting in 2012, the Hawaii Office of Veterans Services (OVS), with support by State of Hawaii Department of Defense (DOD), spearheaded an initiative to gain support for funding and approval of a second State Veterans Home on Oahu. The initial concept was for this second home to fall under the auspices of the Hawaii Health Systems Corporation (HHSC) as is the case for the state's first home in Hilo, however, upon approval of both Federal and State shared funding for this second home, HHSC withdrew from the process. With no other viable option, OVS stepped in and took over leadership of the initiative. However, during the 2021 Hawaii State Legislative Session, new leadership in Oahu Regional Healthcare System, HHSC, teamed up with OVS and Hawaii State Representative, Ryan Yamane, to promote new legislation which passed ownership of the project from OVS to Oahu Regional Healthcare System, HHSC, NLT June 30, 2023, as of the posting date of this RFP. With construction started in April 2021 and a projected beneficial occupancy date of May 2024, Oahu Regional Healthcare System, HHSC is seeking to issue a Request for Proposals (RFP) and evaluate parties of interest to ensure the system is receiving optimal value comparing services provided and the quality of services provided to the price for those services. Oahu Regional Healthcare System, HHSC intends to evaluate parties of interest toward the goal of selecting a manager / operator for the Daniel K. Akaka State Veterans Home and successfully negotiating an agreement to be in place with an estimated contractor start date of April 30, 2024 so as to be in place to work with all parties concerned on equipment / furniture arrival / assembly / placement, and staff hiring in preparation for a late 2024 or early 2025 opening. The following sets forth the scope of work for those services required from the contract manager / operator.

2.02 SCOPE OF WORK

Contractor Requirements:

- A. **STATEMENT OF PROJECT SCOPE:** The Contractor will provide for all aspects of the operations of a 120-bed State Veterans Home skilled nursing facility and adult day health care program (collectively referred to herein as Home) in Kapolei, Hawaii. Operation of the Home will be in accordance with Hawaii Administrative Rules (HAR) Title 11, Chapter 95, effective May 3, 1985 (Attachment C) (as amended or revised);

Department of Veterans Affairs, 38 CFR Part 51, January 7, 2000 (Attachment D)(as amended or revised); the Department of Veterans Affairs "Guide For Inspection of State Veterans Homes: Nursing Home Care Standards" IB 18-2, October 1, 1984 (as amended or revised), and Hawaii Administration Rules, Chapter 96, and any rules and/or standards, if applicable, issued by the Centers for Medicare and Medicaid Services (hereinafter, "CMS").

- a. Mission and Vision: Contractor will work in conjunction with Owner personnel in the development of a Mission and Vision for the Home suitable for veterans.
 - b. Use of Existing Owner Services: Contractor will consider, and utilize when appropriate, existing Owner resources and services on a reimbursable basis only with concurrence of Owner.
- B. ADMINISTRATION: The Contractor will manage the home at the highest standards of skilled nursing and adult day health care mandated by Federal, VA and State Publications outlined above and will ensure that each resident receives the medical, dental or rehabilitative services that are prescribed as appropriate for care needed. In the event of conflict between any of the publications, the highest standard will always prevail.
- a. Administrator. Contractor will employ and manage an on-site, full-time administrator for the Home. This individual will be a Licensed Nursing Home Administrator (LNHA) under the laws of the State of Hawaii. Under Contractor's supervision, the administrator will be responsible on a day-to-day basis for functional operation of the Home and execution of policies governing the Home's operation. The administrator will be employed or engaged by the Contractor subject to the approval of Owner.
- C. PERSONNEL: Contractor will employ and manage the Home's personnel; provide for employee recruitment, retention, recognition, and training; be responsible for payroll, salary administration, employee benefits design and administration and establishing personnel policies; be responsible for worker's compensation loss control, any required affirmative action reporting, OSHA or other employee-related required reporting or policymaking.

Contractor shall keep the Home (SNF portion only) staffed 24 hours per day, 7 days per week, in accordance with Federal, VA and State standards, but not less than 3.0 direct nursing hours per patient day for nursing home beds. In addition, Contractor will ensure that staffing levels for all departments are appropriate to efficiently manage the facility. The proposed staffing plan must be sufficient to ensure an overall CMS three star or higher rating with a goal of achieving and maintaining a five-star rating.

- a. Personnel Policy Manual: Contractor will develop and maintain a written personnel policy that, at a minimum, addresses the following:
 - Organizational chart (including the number of FTEs in each position)
 - Written employment practices and procedures including:

- Job qualifications and job descriptions including position title, description, and reporting responsibilities
- In-service training and staff development
- Veteran's preference in hiring
- Promotion policy
- Grievance and appeal procedures
- Annual employee performance evaluations
- Personnel records
- Benefits structure
- Holidays
- Leave
- Hours of work
- Basis for determining salaries
- Disciplinary procedures
- Termination procedures
- Equal Employment Opportunity Program
- Confidentiality statement

- b. Licensure: Contractor will ensure that minimum licensure/certification requirements of both full time and part time personnel meet Federal, VA and State specifications as necessary.
- c. Background Checks: Prior to employment, Contractor will conduct a criminal background check on all employees and each employee shall be subject to an investigation to include employment and medical history.
- d. Employee Physicals: All employees shall have a physical examination and necessary medical testing (including a drug screening) prior to commencement of employment and annually thereafter and when special circumstances dictate.
- e. Labor Dispute: Contractor will continue the complete operation and coverage of the Home in the event of a labor dispute or strike. The Contractor will develop a Labor Dispute Plan.
- f. In-service Training and Education: Contractor will conduct in-service training in accordance with Federal, VA and State standards.

D. OPERATIONAL POLICIES: Contractor will provide a final policy and procedures manual to ensure quality of care and compliance with Federal, VA and State regulations. Contractor will review any existing policies and with Owner's approval, develop and implement new operational policies and procedures to reasonably conform to current industry standards in the areas of budgeting, business office management, quality assurance, human resources, dietary and nursing and Contractor will support all reporting requirements for Owner in the 99 year Ground Use Lease signed with the Hawaii Housing Financial and Development Corporation (HHFDC) effective October 1, 2021 (Copy of the Lease is available upon request).

- a. Periodic Reviews, Reports and Records Access. Contractor will conduct an annual review of the resident care policies, documentation procedures, and operational policies used at the Home to determine if they reasonably conform to current industry standards. Contractor will prepare periodic written

reports concerning its reviews of Home operations and will provide these reports to Owner. Contactor will provide access to the VA Liaison any and all records related to staff development activities and staff training completed by the Contractor or its agents and/or subcontractors. Contractor will also allow VA Liaison read-only access to the Contractor's electronic medical records system and other administrative management software systems as requested.

E. CERTIFICATION, LICENSURE, REGISTRATION, LEGAL REQUIREMENTS:

Contractor will prepare all materials and follow all procedures necessary to retain (a) certification of the Home as a provider of services under Title XVIII (Medicare), Title XIX (Medicaid) of the Social Security Act as well as Recognition of VA certification and (b) State licensure and registration of the Home as a skilled nursing facility and adult day health care program under all applicable laws, rules, and regulations. Contractor will take all reasonable steps necessary to keep the Home fully licensed and registered by the State and accredited by applicable agencies and bodies.

- a. Regulatory Communications. Immediately upon receipt, Contractor will deliver to Owner copies of all communications received from any regulatory agency that could have a material impact on the licensure, certification, or financial performance of Home.

F. BUDGET PREPARATION AND APPROVAL: No later than three (3) months prior to the end of each fiscal year, together with the Owner's Chief Financial Officer, Home Liaison Officer and any other personnel Owner may deem appropriate, Contractor will prepare and provide to Owner its proposed budget and cash flow projections covering the succeeding 12 months. The proposed Home budget will include capital expenditure budgets, operating budgets, and cash flow projections. Owner will review and, in Owner's discretion, amend the proposed budget within 30 days after Owner receives it. No annual budget will be final until approved by Owner or until 30 days has elapsed following submission of the proposed budget to Owner without action being taken by Owner to approve, modify or disapprove the proposed budget.

- a. Bookkeeping and Accounting. Contractor will establish and implement budget monitoring systems, and business office bookkeeping, and accounting procedures necessary for the preparation of proper financial records. Contractor will prepare or assist in the preparation of financial statements, audits and tax returns.
- b. Billing and Third-Party Reimbursement. Contractor will conduct the billing for goods and services provided by the Home. Contractor will establish and implement an accounts receivable monitoring program, consistent with legal requirements. Employees of the Home, with oversight of the Contractor, will administer billing and collections.
- c. Resident Trust Accounts. Contractor will assure compliance with all legal requirements applicable to the management of resident trust accounts. Employees of the Home will administer resident trust accounts.
- d. Supplies and Equipment. Consistent with budgets approved by Owner, the Contractor will have the authority to purchase supplies and non-capital equipment necessary and appropriate for the operation of the Home. To the

extent available, and subject to applicable law, Contractor will arrange for Owner to participate in Contractor's purchasing agreements. Any purchasing agreement that will obligate Owner beyond the Term, and any purchase or lease of capital equipment, will be subject to approval of Owner.

- e. Third-Party Billing: For necessary services, supplies and pharmaceuticals over and above minimum requirements, but which are not included in the daily rates, the provider of the service will bill the third party if available

G. ADMISSION, TRANSFER AND DISCHARGE POLICES AND PROCEDURES: The Contractor shall develop and implement admissions, transfer and discharge criteria and policies and procedures in accordance with Federal, State and Department of Veterans Affairs' criteria subject to approval of Owner.

- a. Admissions Committee: The Contractor will ensure appropriate admissions to the facility on an ongoing basis through the development of an Admissions Committee comprised of (at a minimum) the medical director, director of nursing, administrator and social services.
- b. Transfer Agreements: Contractor shall maintain written transfer agreements with local civilian and nearby hospitals as well as the nearest federal Veterans Affairs Medical Facility for acute care situations. Costs for services outside the scope of this contract must be borne by the Department of Veterans Affairs, third party payer or the patients.

H. PHYSICIAN SERVICES: Contractor will recruit and contract with a physician to serve as medical director of the Home administratively as required per 38 CFR Part 51.210 (i) and to serve in the capacity of primary care physician for inpatients if necessary and to ensure the provision of physician services as required by patients.

- a. Physician Visits: Contractor will ensure that each inpatient is seen by the primary physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter, or more frequently based on the condition of the inpatient.

Contractor will ensure that the physicians review the inpatient's total program of care, including medications and treatments, at each visit and write, sign, and date progress notes at each visit, and sign and date all orders.

- b. Emergency Physician Services: Contractor will provide or arrange for the provision of physician services 24 hours a day, 7 days per week, in case of an emergency.

I. DENTAL SERVICES: Contractor will arrange for, provide or obtain from an outside resource all routine and emergency dental services to meet the needs of each patient.

J. DIETARY SERVICES: Contractor will contract for or employ sufficient support personnel to ensure that each resident receives a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each patient.

- a. Dietician: Contractor will provide or obtain services of a full-time qualified dietician on site 40 hours per week to ensure a high-quality food service program is provided to meet the nutritional needs of the patients and employees. Note, a registered dietician is preferred, but if not available then a certified dietary manager is acceptable if approved by Owner.

Vending Machines: Contractor will ensure that food and drink vending machines are available for patient and staff use.

- K. PHARMACY SERVICES: Contractor will operate an onsite pharmacy, provide or arrange for the provision of routine and emergency drugs and biologicals to the Home's patients and participate with local VA to establish a sharing agreement and thus take advantage of VA preferred contract pricing.

- a. Drug Information: Contractor will have a system for disseminating drug information to medical and nursing staff.
- b. Pharmacist: Contractor will employ or obtain the services of a pharmacist licensed in Hawaii as well as a pharmacist assistant.
- c. Labeling of Drugs: Contractor will ensure that drugs and biologicals used in the facility management are labeled in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date when applicable.
- d. Storage of Drugs: Contractor will ensure that all drugs and biologicals are stored in locked compartments under proper temperature controls and permit only authorized personnel to have access to the keys.

- L. SPECIALIZED REHABILITATION: Contractor will ensure the provision of specialized rehabilitative services to patients in the Home under the written order of a physician by qualified personnel. Specialized rehabilitation services will include, physical therapy, occupational therapy, speech language pathology and mental health services.

- M. INFECTION CONTROL: Contractor will establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection. Also, considering all recent pandemic concerns, Contractor will take whatever additional actions and initiatives deemed necessary to protect patients, staff and visitors from infections that may arise in the future.

- a. Housekeeping and Sanitation. The Contractor will ensure the provision of housekeeping and janitorial services within the facility and on the grounds and will be responsible for conforming with all housekeeping and sanitation guidelines and regulations required by Federal and State regulations to ensure the facility appears neat, clean, sanitary and in good repair. The Contractor will maintain the Home to the optimal condition with the exception of fair wear and tear. In addition, the successful Contractor will provide for trash removal, including contaminated items as well as pest control and extermination services needed in the facility or on the grounds.

- b. Linen and Laundry. Contractor will provide for all linens and laundry services for facility related items and for individual patients in the facility.
- N. QUALITY OF LIFE: Contractor will promote care for residents in a manner and in an environment that maintains or enhances each patient's dignity and respect in full recognition of his or her individuality.
- a. Patient Rights: Contractor will have a written statement of patient rights. The statement of rights shall be posted in a conspicuous place and a copy will be provided to each resident as part of the admission package.
 - b. Patient Council. Contractor will establish a council of patients that meet at least quarterly and document any concerns submitted to the management of the facility by the council.
 - c. Religious Activities: Contractor will have a written policy that will ensure each patient's voluntary practice of his/her own religious activity subject only to those limitations necessary to maintain order within the Home. The Contractor will not require that patients attend or participate in any religious services, discussions, or practices.
 - d. Release of Information: Contractor will have a written policy and procedure governing the release of information including circumstances under which releases are permitted, restrictions on the type of information to be released, and restrictions on to whom information may be released.
 - e. Patient Advocate: The Contractor will appoint a designated staff person to serve as Patient Advocate who will be responsible for handling resident complaints and special problems. In addition, the Patient Advocate will be responsible for providing assistance and responding to written requests that result from Patient Council meetings.
 - f. Personal Property: Contractor will have a written policy and procedures approved by Owner specifying what personal property patient may retain in a patient's possession. Contractor will ensure that all personal property released to a third party has the signature of approval of the patient, patient guardian, or power of attorney and the signature receipt of the third party.
 - g. Contraband: Contractor will develop a list of items considered contraband which will be clearly defined in the written policy.
 - h. Social Services. Contractor will employ sufficient medically related social services to attain or maintain the highest practicable mental and psychosocial well-being of each patient.
 - i. Therapeutic Recreation: Contractor will employ sufficient certified therapeutic recreation staff to provide for recreational activities and transportation to external activities for patients who are capable of attending. Activities will be designed for the Veteran population.
 - j. Beauty and Barber: Contractor will assure barber and beauty services are provided within the facility at no cost to the patient.

- k. Mail: Contractor will develop written policy and procedure for receiving and sending mail in accordance with U.S. Postal Services regulations to protect the personal rights of the patient and provides reasonable security.
- l. Visitation: Contractor will write and post the Home's visitation rules and regulations in a conspicuous place. Visitation rules and regulations should be appropriate for the population and visitation should be encouraged.
- m. Telephone: Contractor will have a written policy and procedure for the use of the Home's telephone system and will provide education to patients and staff on its appropriate use.
- n. Transportation: Contractor will provide, maintain, and operate at least one van equipped with a wheelchair lift meeting Federal, VA and State laws and which has the capability of transporting a minimum of seven passengers. Contractor will provide transportation to external medical facilities and physician, when appropriate, and will pay for taxi or non-emergent transportation in lieu of van use when necessary. In addition, Contractor will provide transportation to patients, as appropriate, to local VA facilities. If necessary, Contractor will provide, maintain, and operate any utility vehicles need to operate the facility.
- O. SAFETY AND EMERGENCY PROCEDURES: Contractor will have a written fire and disaster plan for the Home that is communicated to all patients and employees upon hire. The plan shall be coordinated with local, State, and Federal disaster programs and will be reviewed annually, at a minimum.
- a. Fire Prevention: Contractor will specify the Home's approved fire prevention regulations and practices to ensure the safety of staff, patients, and visitors. All employees will receive fire prevention training upon hire.
- b. Testing of Emergency Equipment: The plan shall include inspections and testing of emergency equipment at least quarterly. Contractor will conduct fire drills quarterly for each shift.
- c. Employee Safety Training: Contractor will ensure all employees are trained in any and all emergency procedures on an annual basis.
- d. Security: Contractor will provide or arrange for the provision of security services necessary to ensure the safety of patients, families, and staff.
- P. ADDITIONAL CONTRACTOR RESPONSIBILITIES:
- a. Items in Daily Room Rate (SNF only): Contractor will ensure that the following items are provided in the daily rate:
- Room and board
 - Pharmacy services
 - Physician services (not included in Medicaid)
 - Prescription and non-prescription drugs that are ordered by a licensed physician who is authorized to treat the resident, and which are not provided by another sources.

- All necessary hygienic supplies such as bedpans, basins, urinals, water pitchers, cotton swabs, bandages, razors, toothbrushes, toothpaste, mouthwash, etc.
- b. Information Technology: Contractor will arrange for and provide computer hardware, software, and all associated networking equipment required for the efficient operation of the Home including and not limited to Minimum Data Set software and mobile telephones plus a fully operational wireless Internet system for the Home.
 - c. Medical Records: The Contractor will develop and maintain medical records in accordance with Federal, VA and State regulations for operation of a nursing facility. Contractor will ensure compliance with HIPAA regulations. Contractor will provide for use of an established Electronic Health Record (EHR) System that is approved for use by Owner.
 - d. Confidentiality of Home Records. Contractor will maintain the confidentiality of all files and records of the Home, disclosing the same only as required by law or by Owner in any particular instance. Contractor shall comply with Owner's policy concerning confidentiality of health information of patients at the Home. In addition, Contractor will ensure compliance with HIPAA regulations.
 - e. Maintenance and Repairs. Contractor will be responsible for day-to-day maintenance and will cause all necessary repairs, replacements, and maintenance to be completed, consistent with the Home budget. Contractor will annually inspect the Home and report thereon to Owner along with recommended improvements and estimated costs thereof.
 - f. Grounds: Contractor shall ensure that the Home's grounds and landscaping are maintained consistent with Village of Kapolei Home Owners Association (VOKA) requirements.
 - g. Utilities: Contractor will pay for all utilities such as heat, gas and electric, water and sewer and communications used within the facility or the grounds.
 - h. Insurance Program Coordination. Contractor shall be responsible for review and administration of the following insurance programs for and as directed by the Owner:
 - Casualty/Property Insurance
 - Liability Insurance
 - Workers' Compensation Insurance
 - Employee Benefit Coverages
 - Dishonesty Policies or Surety Bonds for Fiduciaries
 - i. Customer Relations and Marketing. Contractor will develop and implement a marketing plan and customer relations program for the Home, in consultation with established groups representing Home constituencies, such as Veterans Organizations, family, patients and care providers.

- j. Public Information. Contractor will prepare and distribute all media releases and other public information regarding the Home, subject to Owner's approval.

Q. CAPITAL EXPENDITURES: Contractor shall be responsible for major maintenance or facility improvements up to \$1,000.00 per bed per annum. Facility improvements and purchase or replacement of equipment items greater than \$1,000.00 per bed per annum will be the responsibility of Contractor subject to approval of Owner. This requirement applies to both the SNF licensed beds as well as the Adult Day Health Care positions.

2.03 PROFESSIONAL EXPERIENCE AND QUALIFICATIONS

- A. The successful Contractor will have verifiable documentation of a minimum of five years' experience in the operation of multiple skilled nursing facilities, preferred State Veterans Home experience, and the ability to successfully operate an adult day health care program.
- B. The successful Contractor (including any and all individual physicians or other health care practitioners providing services hereunder [referred to individually and collectively as "Provider(s)"]) represents and warrants to Owner, upon execution and while this Agreement is in effect, as follows:
 - a. Contractor is not bound by any agreement or arrangement that would preclude said Contractor from entering into or fully performing as required under this Agreement;
 - b. No Provider is bound by any agreement or arrangement that would preclude said Provider from fully performing the services required under this Agreement;
 - c. No Provider's license to practice medicine in the State of Hawaii or in any other jurisdiction has ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;
 - d. No Provider's medical staff privileges at any health care facility have ever been denied, suspended, revoked, terminated voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction;
 - e. No Provider has in the past conducted, or is presently conducting, his or her medical practice in such a manner as to cause such Provider to be suspended, excluded, barred, or sanctioned under the Medicare or Medicaid Program, or any government licensing agency, nor has Provider ever been convicted of a criminal offense related to health care, or listed by a federal agency as debarred, excluded or otherwise ineligible for federal program participation;
 - f. Each Provider has, and shall maintain throughout the term of this Agreement, an unrestricted license to practice medicine in the State of Hawaii;

- g. Contractor affirmatively states that neither Contractor nor any of its employees, agents, or subcontractors, including Providers, 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. Owner reserves the right to verify that the above statement is true and to immediately cancel this Agreement in the event it is not true.

2.04 TERMS OF CONTRACT

- A. Successful Contractor shall be required to enter into a formal written contract to commence work on this project. The formal written contract shall contain the following provisions:
- B. The initial term of the contract shall be for a period of five years beginning on the official commencement date stipulated in the Notice to Proceed. Unless terminated, the Contractor and the State may extend the term of the contract for up to **five (5)** additional one to two year periods or portions thereof without the necessity of re-bidding, upon mutual agreement in writing prior to the expiration of the contract. The contract price paid to the Contractor for the extended periods shall remain the same or shall be renegotiated for a lesser rate in the event services are not required for the full duration of the contract. The contract will end when the services are no longer needed. The Contractor or State may terminate the extended contract period at any time upon **six months** prior written notice;
- C. The aggregate services Contractor provides pursuant to the terms of this Agreement do not exceed those that are reasonable and necessary for the legitimate and commercially reasonable business purpose of the services;
- D. The services provided pursuant to the terms of this Agreement do not involve the counseling or promotion of a business arrangement or other activity that violates any State of Hawaii or Federal law;
- E. The Contractor and the Contractor's employees and agents, including Providers, are not by reason of this Agreement agents or employees of Owner or the State of Hawaii for any purpose, and the Contractor and the Contractor's employees and agents shall not be entitled to claim or receive from Owner or the State of Hawaii any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to Owner or State of Hawaii employees;
- F. The Contractor shall be responsible for the accuracy, completeness, and adequacy of the Contractor's performance under this Agreement. All services shall be performed in compliance with the applicable standards set forth by law or ordinance or established by the rules and regulations of any Federal, VA, State of Hawaii or local legal authority, and applicable accreditation agencies, such as The Joint Commission. Furthermore, the Contractor intentionally, voluntarily, and knowingly assumes the sole and entire liability for all loss, damage, or injury to the Contractor's employees and agents, and to any individual not a party to this Agreement, caused by the Contractor or the Contractor's employees or agents in the course of their employment;

Except as otherwise set forth in the Agreement, the Contractor shall not assign or subcontract any of the Contractor's duties, obligations, or interests under this

agreement and no such assignment of subcontract shall be effective unless the Contractor obtains the prior written consent of the Owner;

- G. The Contractor shall defend, indemnify, and hold harmless either the Owner and/or State of Hawaii from and against all liability, loss, damage, cost, and expense, including all attorneys' fees and all claims, suits, and demands therefor, arising out of or resulting from 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;
- H. In case either the Owner and/or State of Hawaii shall, without any fault on its part, be made a party to any litigation commenced by or against the Contractor in connection with this Agreement, the Contractor shall pay all costs and expenses incurred by or imposed on either the Owner and/or State of Hawaii, including attorney's fees;
- I. 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, VA, State of Hawaii or County law.
- J. Contractor shall notify Owner in writing within three (3) days after any of the following events occurs:
- Any Provider's license to practice medicine in the State of Hawaii or any other jurisdiction lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction;
 - Any Provider's medical staff membership and/or privileges at any health care facility are denied, suspended, revoked, terminated, voluntarily relinquished (under threat of disciplinary action) or made subject to terms of probation or other restriction;
 - Any Provider is required to pay damages in any malpractice action by way of judgment or settlement;
 - Any Provider becomes the subject of a disciplinary proceeding or action before any governmental or professional licensing board, medical staff or peer review body;
 - Any Provider's DEA number is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way;
 - Any event that substantially interrupts all or a portion of any Provider's professional practice or that materially adversely affects any Provider's ability to perform Provider's obligations hereunder; or
 - Any Provider is convicted of a criminal offense related to health care or any Provider is listed by a federal agency as being debarred, excluded or otherwise ineligible for federal program participation.
- K. Contractor shall participate in all third-party payment or managed care programs in which cover facility patients and will negotiate agreed upon rates with those programs, as payment in full for services of the Providers to program patients.

- L. Contractor shall have the sole responsibility to compensate any Providers providing services hereunder for performance of the services, including payment of health insurance and other fringe benefits, payroll taxes, Social Security contributions, and premiums for any government-mandated employment-related insurance. Contractor reserves the right, in its sole discretion, to determine the compensation payable to each Provider. Contractor will indemnify and hold both Owner and the State of Hawaii harmless in connection with any claims for compensation by such Providers for services rendered hereunder. The indemnification obligations herein stated in this subparagraph shall survive the termination and/or expiration of this Agreement.
- M. In the event the parties continue to abide by the terms of this Agreement after the expiration of an initial or renewal term of at least one (1) year without having agreed in writing to renew this Agreement, the term of this Agreement shall continue on a month-to-month basis thereafter for up to **twelve (12)** months, subject to termination by either party at any time upon the provision of **one hundred and twenty (120)** days' prior written notice to the other party.
- a. Termination Without Cause. Either party may terminate this Agreement upon **one hundred and twenty (120)** days prior written notice to the other party. If either party terminates this Agreement without cause prior to the expiration of the then-current term, Facility and Physician may not enter into an agreement for services similar to those provided by Physician hereunder, until the expiration of the then current term. Termination without cause does not constitute breach.
 - b. Termination for Breach. Either party may terminate this Agreement upon breach by the other party of any material provision of this Agreement, provided such breach continues for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party.
 - c. Effect of Termination. As of the effective date of termination of this Agreement, neither party shall have any further rights or obligations hereunder except: (i) as otherwise provided herein; (ii) for rights and obligations accruing prior to such effective date of termination; or (iii) arising as a result of any breach of this Agreement.
- N. Upon occurrence of any of the following events, Owner may either: (a) immediately terminate this Agreement in the event Contractor providing services hereunder is a sole proprietor, solely-owned professional corporation, or other similar entity with only a single Provider providing services hereunder; or (b) require immediate removal and replacement of any Provider providing services hereunder ("Affected Provider") by written notice to Contractor:
- a. The denial, suspension, revocation, termination, restriction, lapse or voluntary relinquishment (under threat of disciplinary action) of any Affected Provider's medical staff membership and/or privileges to practice medicine in the State of Hawaii;
 - b. The denial, suspension, revocation, termination, relinquishment (under threat of disciplinary action) or restriction of any Affected Provider's medical staff

membership and/or privileges to practice medicine in any jurisdiction other than the State of Hawaii;

- c. The death of any Affected Provider, or the disability of any Affected Provider which prevents such Affected Provider from performing the services in compliance with applicable standards as described above;
- d. The termination, revocation, restriction, or relinquishment of any Affected Provider's DEA number;
- e. The failure of Contractor to make a timely disclosure concerning the Affected Provider required pursuant to paragraph K. above, "Required hereof";
- f. Conduct by an Affected Provider which, in the discretion of Owner could adversely affect the quality of professional care provided to facility patients or the performance of duties required hereunder, or be prejudicial or adverse to the best interest and welfare of patients;
- g. Breach by any Affected Provider of any of the confidentiality provisions hereof;
- h. Affected Provider's conviction of a criminal offense related to health care, or any Affected Provider's listing by a federal agency as being debarred, excluded or otherwise ineligible for federal program participation; or
- i. Contractor's commission of any act or series of acts, illegal or otherwise (including, but not limited to, fraud or misrepresentation), whether intentional, reckless, or negligent, that is detrimental to the business or reputation of Owner, as determined at the sole reasonable discretion of Owner.
- j. If Owner furnishes Contractor with written disapproval of an Affected Provider (the "Disapproval Notice"), Contractor shall immediately direct the Affected Provider to cease the performance of services at the facility and shall arrange for a qualified interim replacement ("Interim Replacement") for the Affected Provider, which replacement shall be reasonably acceptable to Owner. Owner shall act reasonably in disapproving an Affected Provider, but shall not be required to have legal "cause" or to conduct a formal or informal hearing as a requirement for disapproval or issuance of the Disapproval Notice. Owner, or Owner's representative shall meet with the Contractor and confer within seven (7) days following provision of the Disapproval Notice to discuss the reason(s) for issuance of the Disapproval Notice, the necessity for Contractor to furnish a permanent replacement provider ("Permanent Replacement") for the Affected Provider, and the identity or desired qualifications for a Permanent Replacement. Within ninety (90) days after provision of the Disapproval Notice by Owner the Contractor shall appoint a qualified Permanent Replacement for the Affected Provider acceptable to Owner. Contractor's failure to do so within such ninety (90) day period shall constitute grounds for termination of this Agreement by DOD immediately upon the provision of written notice by Owner to the Contractor.

O. CONFIDENTIALITY:

- a. Contractor recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Owner hereunder, Contractor and Providers may have access to certain information of Owner that is confidential and constitutes valuable, special, and unique property of Owner. Contractor agrees that neither Contractor nor any Provider will at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Owner's express prior written consent, except pursuant to Provider's duties hereunder, any confidential or proprietary information of Owner, including, but not limited to, information which concerns the facility's patients, costs, or treatment methods developed by Owner and which is not otherwise available to the public.
- b. Except for disclosure to Contractor's or any Provider's legal counsel, accountant or financial advisors (none or whom shall be associated or affiliated in any way with Owner) neither nor any Provider shall disclose the terms of this Agreement to any person who is not a party or signatory to this Agreement unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented to by Owner. Unauthorized disclosure of the terms of this Agreement shall be a material breach of this Agreement and shall provide Owner with the option of pursuing remedies for breach or immediate termination of this Agreement in accordance with paragraphs above.
- c. Neither Contractor nor any Provider, nor Owner, shall disclose to any third party, except where permitted or required by law, any patient or medical record information regarding the facility's patients; and Contractor, Providers, and Owner shall comply with all federal, VA and State of Hawaii laws and regulations regarding the confidentiality of such information. Contractor and Owner acknowledge that in receiving or otherwise dealing with any records or information about the facility's patients receiving treatment for alcohol or drug abuse, Contractor, Providers and Owner are fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records (42 C.F.R. Part 2, as amended from time to time).
- d. All information, data, or other material provided by the Contractor to the Owner shall be subject to the Uniform Information Practices Act, chapter 92F, HRS, as modified by chapter 323F, HRS ("UIPA"). Contractor further acknowledges and agrees that the compensation terms of this Agreement are government records subject to disclosure under the UIPA.
- e. Survival. The provisions of this paragraph shall survive expiration or other termination of this Agreement, regardless of the cause of such termination.

P. INSURANCE.

- a. During the term of this Agreement, Contractor shall maintain at all times or cause to be maintained comprehensive general liability and professional liability insurance (the "POLICY") covering the acts and omissions of Providers rendering the services at the facility. The POLICY shall be maintained with a company or companies approved by Owner, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and per Provider and Three Million Dollars (\$3,000,000.00) in the aggregate, per

Provider. Said POLICY shall provide that Owner shall receive not less than thirty (30) days' notice prior to any cancellation or material change or reduction of coverage. Prior to the commencement of this Agreement, Contractor shall provide Owner with a certificate of insurance. Thereafter, prior to the expiration of each policy period, Contractor's insurance carrier shall provide Owner with certificates of insurance evidencing the foregoing coverage and provisions. Owner reserves the right to request and receive a certified copy of the POLICY. Contractor shall also carry workers' compensation insurance for Contractor's employees in the statutory amounts. Failure to maintain or cause to be maintained insurance in accordance with the provisions set forth herein shall be a material breach of this Agreement and shall provide Owner with the option of pursuing remedies for breach and/or immediate termination of this Agreement.

- b. The coverage required by this provision shall be either: (a) on an occurrence basis; or (b) on a claim made basis. If the coverage is on a claims made basis, Contractor hereby agrees that not less than thirty (30) days' prior to the effective date of termination by Contractor of any Provider's insurance coverage by the current carrier, Contractor shall: (a) purchase tail or extended reporting coverage insurance for a minimum period of five (5) years in the above-stated amounts for all claims arising out of incidents occurring prior to such termination of coverage; and (b) provide Owner with a certificate of such coverage. If Contractor fails to purchase such coverage and provide Owner with a certificate of same in accordance with the above-stated requirements, Owner shall have the right, as hereby acknowledged by Contractor, to purchase such coverage and notify Contractor in writing of the total premium costs therefor. Contractor hereby expressly acknowledges and agrees that the total premium cost for such coverage purchased by Owner under this provision shall be immediately due and payable by Contractor to Owner upon Contractor's receipt of said notice and may be offset against any money owed by Owner to Contractor.
- Q. The Contractor shall be responsible for payment of all applicable federal, State of Hawaii, 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. The contractor also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement. Finally, 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.
- R. All payments under this Agreement shall be made only upon submission by the Contractor of original invoices specifying in reasonable detail the services performed and the amount due, and certifying that services requested under the Agreement have been performed by the Contractor according to the Agreement.
- S. Any reimbursement due for per diem and / or transportation expenses under will be borne by the contractor.

- T. The Contractor will develop, publish, and follow a legally appropriate Corporate Compliance Program that is acceptable to Owner. The Corporate Compliance Program will require at a minimum 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.
- U. No Contractor or Provider shall incur any financial obligation on behalf of Owner without the prior written approval of Owner.
- V. Contractor acknowledges that it is unlawful under HRS Section 11-355 (unless specifically permitted under that law) for Contractor at any time between the execution of this Agreement through the completion of this 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.
- W. This Agreement shall be construed, interpreted, and governed by the laws of the State of Hawaii. The provisions of this paragraph shall survive expiration or other termination of this Agreement, regardless of the cause of such termination.
- X. If the value or cost of services rendered to Owner pursuant to this Agreement is Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, Contractor agrees as follows:
 - a. Until the expiration of four (4) years after the furnishing of such services, Contractor shall, upon written request, make available to Owner 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 the sub-paragraph immediately above. The provisions of this paragraph shall survive the expiration or other termination of this Agreement, regardless of the cause of such termination.
- Y. No provision of this Agreement shall be interpreted for or against any party on the basis that such party was the draftsman of such provision, and no presumption of burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.
- Z. A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.
- AA. This Agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronically and such facsimile or electronic execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or

facsimile/electronic executions or a combination thereof shall be construed together and shall constitute one and the same Agreement.

BB. Owner and Contractor agree that any Provider providing services hereunder may discuss with patients, or their authorized representative(s), all treatment options that Provider deems appropriate based on relevant professional standards, regardless of benefit coverage limitations and within the prevailing practices and standards of the profession and community, subject, however, to all applicable laws and regulations pertaining to confidentiality (“Open Communication”).

CC. MODIFICATIONS OF AGREEMENT.

- a. Any modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be made only upon mutual agreement and by written amendment to this Agreement signed by both Contractor and Owner.
- b. No oral modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be permitted or acknowledged; and any such oral modification, alteration, amendment, change or extension shall be null and void.
- c. Notwithstanding any other provisions in this contract to the contrary, any modification, alteration, amendment, change or extension of any term, provision or condition shall be null and void if such modification, alteration, amendment, change or extension is reasonably determined by either party to result in the violation of any federal, VA or State of Hawaii statutes or regulations, including, but not limited to, Section 1877 of the Social Security Act, by either or both of the parties.

2.05 POINTS OF CONTACT

The Owner point of contact during the execution of this contract is:

Scott Kawai
Director of Contracts and Project Management
Hawaii Health Systems Corporation Oahu Region
1027 Hala Drive, Honolulu, HI 96817
skawai@hhsc.org
(808) 832-3025

SECTION THREE

PROPOSAL FORMAT AND CONTENT

3.01 OFFEROR'S AUTHORITY TO SUBMIT AN OFFER

The State will not participate in determinations regarding an Offeror's authority to sell a product or service. If there is a question or doubt regarding an Offeror's right or ability to obtain and sell a product or service, the Offeror shall resolve that question prior to submitting an offer.

Competency of Offeror. Prospective Offeror must be capable of performing the work for which offers are being called. Either before or after the deadline for an offer, the purchasing agency may require Offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to the ability of the Offeror to furnish satisfactorily the goods or services being solicited by the STATE. Any such inquiries shall be made and replied to in writing; replies shall be submitted over the signatures of the person who signs the offer. Any Offeror who refuses to answer such inquiries will be considered non-responsive.

3.02 SUBMISSION OF PROPOSAL

- A. The submission of a proposal shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of the RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.
- B. Any exceptions taken to the terms, conditions, specifications, or other requirements listed herein, must be listed in the *Exceptions* section of the Offeror's proposal, if the exception is unresolved by the Proposal Due date.
- C. Preparation of Offer. An Offeror may submit only one offer in response to a solicitation. If an Offeror submits more than one offer in response to a solicitation, then all such offers shall be rejected. Similarly, an Offeror may submit only one offer for each line item (if any) of a solicitation. If an Offeror submits more than one offer per line item, then all offers for that line item shall be rejected.
- D. By submission of a proposal, the Contractor represents that neither the Contractor nor any employee 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 of this contract.

3.03 REQUIRED REVIEW

- A. The Offeror shall thoroughly and carefully examine this RFP, any attachment, addendum, and other relevant document, to ensure Offeror understands the requirements of the RFP. Offeror shall also become familiar with Federal, VA, State, and County laws, statutes, ordinances, rules, and regulations that may in any manner affect the cost, progress, or performance of the work required.

- B. Should the Offeror discover what it considers to be a discrepancy, ambiguity, omission or doubt as to the intent and meaning of the terms noted in this RFP, the Offeror shall submit all questions and request for changes via email to the Issuing Officer by the date noted in the RFP *Schedule and Significant Dates*, as amended.

3.04 PROPOSAL PREPARATION COSTS

Any and all costs incurred by the Offeror in the preparation, submission, or presentation of a proposal shall be the Offeror's sole responsibility whether or not any award results from this RFP. The State, which includes the Owner, shall not reimburse such costs.

3.05 RESPONSIBILITY OF OFFERORS

- A. Pursuant to HRS §103D-310(c), the Offeror shall be compliant with all laws governing entities doing business in the State including the following chapters:
 - a. Chapter 237, General Excise Tax Law;
 - b. Chapter 383, Hawaii Employment Security Law;
 - c. Chapter 386, Worker's Compensation Law;
 - d. Chapter 392, Temporary Disability Insurance;
 - e. Chapter 393, Prepaid Health Care Act; and
 - f. §103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

The State will verify compliance on Hawaii Compliance Express (HCE).

- B. Hawaii Compliance Express. The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service; Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs. Vendors/contractors/service providers should register with (HCE) prior to submitting an offer at <https://vendors.ehawaii.gov>. The annual registration fee is \$12.00 and the 'Certificate of Vendor Compliance' is accepted for the execution of contract and final payment.
- C. Timely Registration on HCE. Vendors/contractors/service providers are advised to register on HCE soon as possible. If a vendor/contractor/service provider is not compliant on HCE at the time of award, an Offeror will not receive the award.
- D. Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Contractor is advised that they are liable for the Hawaii GET at the current rate of **4.712%** for revenues generated in the State of Hawaii. If, however an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax-exempt status and cite the HRS chapter or section allowing the exemption.
- E. Offeror shall submit its current Federal I.D. Number and Hawaii General excise Tax License I.D. number in the space provided on Offer Form, page OF-1, thereby

attesting that the Offeror is doing business in the State and that Offeror will pay such taxes on all sales made to the State.

3.06 PROPERTY OF STATE

All proposals become the property of the State of Hawaii.

3.07 CONFIDENTIAL INFORMATION

- A. If an Offeror believes that any portion of their proposal, offer, specification, protest, or correspondence contains information that should be withheld from disclosure as confidential (e.g., trade secrets or other proprietary data), the Offeror shall submit the information under a separate package clearly labeled "CONFIDENTIAL" to facilitate inspection of the non-confidential portion of the proposal. Price is not considered confidential and will not be withheld. The Offeror shall also include a written statement, identifying those portions of the proposal that contain trade secrets or other proprietary information that is to remain confidential.
- B. Public requests to inspect the portions of an offeror's proposal designated as confidential pursuant to HAR Section 3-122-58, shall be subject to a written determination by the Attorney General for confidentiality in accordance with HRS Chapter 92F. If the Attorney General determines in writing that the material designated as confidential is subject to disclosure, the material shall be open to public inspection unless the offeror appeals pursuant to HRS 92F-42(1). If the request for inspection is denied, the person may appeal the denial to the Office of Information Practices in accordance with HRS Section 92F-15-5.

3.08 EXCEPTIONS AND SUBSEQUENT REQUESTS TO AMEND THE RFP

Any exceptions taken by an Offeror to the requirements of this RFP and requests to amend the requirements of the RFP as a result of the exception taken, shall only be considered prior to proposal due date, and as follows:

- A. The Offeror, in writing, shall identify the RFP section and requirement to which an exception is taken, the reason for the exception, and requested change to the requirement.
- B. Written exception(s) and request(s) to amend the RFP shall be submitted to the Contracts Assistant identified in Section 1.05 by the date and time specified in Section 1.04, RFP Schedule and Significant Dates, or as amended.
- C. Written exception(s) and request(s) to amend the RFP shall be reviewed by the State. Any changes to the RFP shall be made through the issuance of a written Addendum to the RFP.
- D. Any exception taken to any requirement of the RFP or requests to amend the RFP that was not submitted by the date and time specified shall be considered as a condition to Offeror's proposal, which may negatively affect the evaluation of Offeror's proposal or result in the disqualification of that proposal.

Offeror shall not submit their organization's terms and conditions, standard contracts, or other agreements. General references to such items or attempts at substitution for such items may result in disqualification of Offeror's proposal.

The State reserves the right to accept or not accept any exceptions.

No exceptions to statutory requirements of the General Conditions shall be considered.

3.09 PROPOSAL OBJECTIVES

- A. One of the objectives of this RFP is to make proposal preparation easy and efficient, while giving Offerors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective. Therefore,
 - a. Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis shall be placed on its completeness, clarity, and content.
 - b. When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the tasks described in this RFP and any supplemental tasks the Offeror has identified as necessary to successfully complete the obligations outlined in this RFP.
 - c. The proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP as stated in Section 2.02 SCOPE OF WORK.
 - d. The offeror shall submit a proposal that includes an overall strategy, timeline and plan for the work proposed as well as expected results and possible shortfalls.

3.10 PROPOSAL FORMS

- A. To be considered responsive, the Offeror's proposal shall respond to and include all items specified in this RFP and any subsequent addendum. Proposals offering terms and conditions that conflict with the terms and conditions provided in the RFP or in subsequent addendum may be rejected without further consideration.
- B. Offer Form, Page OF-1 (Attachment 1). Indicate the Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, in the appropriate space. Failure to do so may delay proper execution of the Contract.

The Offeror's authorized signature shall be an original signature in ink, which shall be required before an award, if any, can be made. The submission of the proposal shall signify the Offeror's intent to be bound.

- C. PROPOSAL SUBMISSION CHECKLIST (Attachment 2). Offeror shall submit the proposal in accordance with the checklist provided.

3.11 PROPOSAL CONTENTS

Proposals shall include all of the information requested in this RFP in the order specified. Be organized into sections, following the exact format using all titles, subtitles, and numbering, with tabs separating each section described below. Each section shall be tagged individually, and pages numbered. See Attachment 2 – Proposal Submission Checklist.

- A. Include a transmittal cover letter with a statement that the Offeror agrees with and accepts the requirements, provisions, terms, and conditions specified in this RFP. Transmittal shall include the RFP number, project name and company information. See Section 3.16, General Instructions.
- B. Include the original signed in ink Offer Form OF-1 (Attachment 1) with the complete name and address of Offeror's firm and the name, mailing address, telephone number, and fax number of the person the State should contact regarding the Offeror's proposal.
 - a. If subcontractor(s) will be used, append a statement to the transmittal letter from each subcontractor, signed by an individual authorized to legally bind the subcontractor and stating:
 - b. The general scope of work to be performed by the subcontractor;
 - c. The subcontractor's willingness to perform for the indicated price.
- C. Experience and Capabilities
 - a. A complete, related, and current client listing.
 - b. Indicate the number of years Offeror has been in business and the number of years Offeror has performed services specified by this RFP.
 - c. A list of key personnel and associated resumes for those who will be dedicated to this project.
 - d. A list of at least three (3) references from the Offeror's client listing that may be contacted by the State as to the Offeror's past and current job performance. Offeror shall provide the names, titles, organizations, telephone numbers, email and postal addresses for the references cited.
 - e. A summary listing of judgments or pending lawsuits or actions against; adverse contract actions, including termination(s), suspension, imposition of penalties, or other actions relating to failure to perform or deficiencies in fulfilling contractual obligations against the Offeror. If none, so state.
 - f. Other pertinent information. The Offeror may submit any other pertinent information that would substantiate the Offeror has the experience, expertise, and capability to provide the required services.
- D. Proposed overall strategy, timeline, and plan: Offeror shall submit an overall strategy, timeline, and plan from the award of the Contract to the start of patient

intake, this include but not limited a method of approach, start-up operational plan, a detailed staffing plan, and a schedule of the work and tasks required to satisfy the Scope of Work.

- E. Cost Proposal: The offeror will state in their cost proposal their annual fee for management/operation of the facility as a percent of gross annual revenue. See Section 5.06 below. Format shall be inclusive of all applicable taxes and expenses for managing the home.
- F. Exceptions: If any additional information is required by the State regarding any aspects of the Offeror's proposal, it shall be provided within four (4) business days.

3.12 PROPOSAL PREPARATION

Offer Guaranty (Proposal Security). An offer guaranty is NOT required for this RFP.

Taxpayer Preference. For evaluation purposes, pursuant to HRS §103D-1008, the Offeror's tax-exempt price offer submitted can be increased by the applicable retail rate of general excise tax and the applicable use tax. However, under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

Original Proposal and Copies to be Submitted. Offeror shall submit one (1) original proposal marked "ORIGINAL", three (3) **copies** of the original marked "COPY", and one (1) electronic proposal. It is imperative to note that the Offeror submit only one original and the required number of copies. DO NOT SUBMIT MORE THAN ONE ORIGINAL.

Offeror is encouraged to submit typewritten offers. If handwritten, it should be clearly printed. Offeror is cautioned that illegible offers of any item(s) may be automatically rejected to avoid any errors in interpretation by the reviewers during the evaluation process.

Copies of documents transmitted by Offerors via email shall be limited to the modifications or withdrawal of an offer pursuant to HAR Sections 3-122-108 and 3-122-28, respectively.

3.13 SUBMISSION AND RECEIPT OF PROPOSAL

Offers shall be received no later than the date and time stated in Section 1.04, Significant Dates, as amended, at:

**Maluhia
HHSC Oahu Region
Attn: Scott Kawai
1027 Hala Drive
Honolulu, HI 96817**

Timely receipt of offers shall be evidenced by the date and time registered by the OAHU REGION, HHSC OFFICE time stamp clock. Offers received after the deadline shall be returned unopened.

If the Offeror chooses to deliver its offer by United States Postal Service (USPS), please be aware that the USPS does not deliver directly to the receiving office, but to a central mailroom. This may cause a delay and the offer may not reach the Oahu Region, HHSC Office until after the deadline, resulting in automatic rejection.

3.14 GENERAL INSTRUCTIONS

The following instructions establish the minimum acceptable requirements for the format and content of a vendor's proposal.

- Incomplete proposals (e.g., those that do not address all the evaluation factors), may be rejected and not evaluated.
- Proposals for products or services other than those specified will not be considered.
- A one-page cover letter must accompany each proposal. Prepare this letter on your company letterhead with the following information:
 - Solicitation Number
 - Project Title
 - Full Legal Name and Address of Company
 - Date of the Proposal
 - Principal Point of Contact Name, Title, Address (if different from the above), Telephone Number, Fax Number, and email address.
- Proposals that fail to address all required documentation requested in the solicitation package and its attachments will be evaluated accordingly.
- All proposals must be produced on 8-1/2" x 11" white paper with a font size no smaller than 12 points.
- The proposal must be bound in either in a loose-leaf binder or by means of a mechanical or equivalent secure binding style.
- Each evaluation factor must be contained and labeled in its own separately tabbed section within the proposal.
- Each proposal must contain a Table of Contents following the cover letter.

3.16 PROPOSAL OPENING

Proposals will be opened at the date, time, and place specified in Section One or as amended. Proposals will not be opened publicly but shall be opened in the presence of two or more state officials. Proposals and modifications will only be shown to members of the evaluation committee and state personnel, or their designees having a legitimate interest in them.

3.17 EVALUATION AND SELECTION PROCESS

- A. General Description: The proposal evaluation and selection process will be made by a Selection Committee. After the proposals are received, the Selection Committee will convene to evaluate the proposals and will award up to 100 points based on the parts listed in section four Evaluation Criteria.
- B. Selection Committee: The Selection Committee will review and evaluate each offeror's proposal. The Committee is composed of employees of the State of Hawaii and, where permissible and deemed necessary by Owner, State of Hawaii

designated contractors who are assisting in the RFP process. If not permitted by law to be a formal part of the Selection Committee, State of Hawaii designated contractors may serve in a consultative capacity on said committee.

- C. Proposal Clarifications: In the event the Selection Committee finds, in the course of its review, that clarification of a proposal is necessary and/or is required for a fair and objective evaluation, such clarification will be requested in writing to the proposer, the proposer shall respond in writing. The same confidentiality will be observed in this exchange as in the original submittal. Since time is of the essence, if a response is not received in the time allowed, evaluations will be made accordingly.
- D. Non-Responsive Proposals: During the evaluation process it may become apparent that one or more of the proposals do not qualify on the basis of technical deficiencies or non-responsiveness to the RFP requirements. If required items are not included in the proposal as described in the RFP documents, the Offeror's proposal will be deemed non-responsive. If so determined by the Selection Committee, these proposals will be recommended to the Procurement Officer for disqualification and returned to the proposer. In certain situations, the non-responsive portion may be a minor or easily adjusted modification in an otherwise responsive proposal, and the Owner may waive such irregularities. The decision of the Owner in this matter is final and no appeal will be considered. Minimum requirements such as experience, insurance, tax clearance is considered mandatory and will not be waived.
- E. Evaluation Criteria: See Section Four below.

3.18 BEST AND FINAL OFFER (BAFO) (HAR §3-122-54)

- A. If the State determines a BAFO is necessary, the procurement officer shall establish a date and time for priority-listed offerors to submit their BAFO.
- B. Unless otherwise determined by the state in accordance with section 3-122-54 HAR, BAFOs shall be submitted only once. If a priority-listed offeror does not submit a notice of withdrawal or another BAFO, their immediate previous offer will be construed as their BAFO.
- C. After BAFOs are received, final evaluation will be conducted for an award pursuant to §3-122-57 HAR.

3.19 MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS (HAR §3-122-16.07)

- A. The Offeror may modify or withdraw a proposal before the established proposal due date and time by any one of the following documents.
 - a. Modification of proposals:

A written notice accompanying the actual modification, received in the office designated in the solicitation, stating that a modification to the proposal is submitted.
 - b. Withdrawal of proposals:

- A signed, written notice received in the office designated in the solicitation; or
- A written notice by electronic method pursuant to section 3-122-9, to the office designated in the solicitation.

3.20 CORRECTION OF PROPOSALS AND WITHDRAWAL OF PROPOSALS (HAR §3-122-31)

- A. Corrections to proposals after the established proposal due date and time but prior to award may be made under the following conditions:
- a. If the mistake is attributable to an arithmetical error. In the case of an error in the extension of proposal price, the unit price shall govern.
 - b. If the mistake is a minor informality which shall not affect price, quality, quantity, delivery, or contractual conditions, the offeror shall request correction by submitting proof of evidentiary value which demonstrates that a mistake was made. The Owner shall prepare a written approval or denial in response to this request. Examples of such mistakes include:
 - Typographical errors;
 - Transposition errors;
 - Failure of the offeror to sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the offerors intent to be bound.
 - c. For reasons not allowable under paragraphs 3.23 A.1 and A.2, when the Owner determines that the correction or waiver of an obvious mistake is in the best interest of the Department or is warranted for the fair treatment of other proposers.
- B. Withdrawal of proposals after the receiving of proposals but prior to award may be made when the proposal contains a mistake attributable to an obvious error which affects price, quantity, quality, delivery, or contractual conditions, and the proposer requests withdrawal in writing by submitting proof of evidentiary value which demonstrates that a mistake was made. The Owner shall prepare a written approval or denial in response to this request.
- C. Correction or withdrawal of proposals after award is not permissible except in response to a written withdrawal or correction request by the offeror, and the Owner makes a written determination that the Owner's procurement practices and policies would not be materially affected by such correction or withdrawal.

3.21 DISCUSSIONS WITH OFFERORS

- A. Discussions may be conducted with "priority-listed" offerors pursuant to §3-122-53 HAR. However, proposals may be accepted upon evaluation, without discussions.
- B. Discussions will be limited to only "priority-listed" offerors, and are held to:

- a. Promote understanding of the State's requirements and priority-listed offeror's proposals; and
 - b. Facilitate arriving at a contract that will provide the best value to the State, taking into consideration the evaluation factors set forth in the request for proposals.
- C. Priority-listed offers shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals.
 - a. Any substantial oral clarification of a proposal shall be reduced to writing by the priority-listed offeror;
 - b. If during discussions there is a need for any substantial clarification or change in the request for proposals, the request for proposals shall be amended by addendum to incorporate the clarification or change.
- D. Addenda to the request for proposals shall be distributed only to priority-listed offerors.
 - a. Priority-listed offerors shall be permitted to submit new proposals or to amend those submitted;

If in the opinion of the procurement officer or the evaluation committee, a contemplated amendment will significantly change the nature of the procurement, the request for proposals may, at the discretion of Owner, be cancelled and a new request for proposals issued.
- E. The contents of any proposal shall not be disclosed to competing offerors during the discussion process.

3.22 LATE SUBMITTAL OF OFFER, LATE WITHDRAWAL, AND LATE MODIFICATION [HAR §3-122-16.08]

- A. Proposals or modifications received after the established proposal due date and time will not be considered for award, and shall be returned to the offeror unopened, as soon as practicable, accompanied by a letter stating the reason for its return.
- B. Requests for withdrawal of proposals received after the established proposal due date and time, except as provided for in §3-122-31 HAR regard mistakes in bid, will not be accepted, and shall be responded to with a letter stating the reason for the non-acceptance.

3.23 AWARD OF CONTRACT [HAR §3-122-57]

- A. The Selection Committee will review all proposals in light of the evaluation criteria categories including cost evaluation.
- B. The award shall be issued in writing to the responsible offeror whose proposal is determined in writing to provide the best value to the State taking into consideration price and the evaluation criteria in the request for proposals.

3.24 OTHER CONDITIONS FOR AWARD

- A. The Owner may reject any and all proposals, waive any defects, or otherwise deviate from any HRS Chapter 103D or other procurement regulations if the Owner believes the rejection, waiver, or deviation is in the best interest of the State.
- B. The State/Owner shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by the Offeror in the event this RFP is cancelled or a proposal is rejected.
- C. The Owner may hold all proposals up to sixty (60) calendar days from the date proposals are due. Unless otherwise required by law, proposals may not be withdrawn without penalty.
- D. The award of the contract is conditioned upon the availability of funds.
- E. Any agreement or contract is subject to the approval by the Owner and/or other government entity, as required by statute, regulation, rule, order, or other directive.

3.25 REQUESTS FOR DEBRIEFING [HAR §3-122-60]

- A. The purpose of a debriefing is to inform non-selected offerors of the basis for the source selection decision and contract award. Requests for a debriefing shall be submitted in writing within three (3) working days after the contract is awarded.
- B. If granted, a debriefing is solely for informational purposes and offerors, shall not have the right to file a formal protest.

SECTION FOUR
EVALUATION CRITERIA

Evaluation criteria and general weight to be given to each criterion are listed below.

- 1) Cost Proposal (**10%**)
- 2) Experience and capabilities: Previous experience, capability, and proficiency in the operation of multiple skilled nursing facilities, preferred State Veterans Homes, and the ability to successfully operate an adult day health care program. (**25%**)
 - a. Number of years in the business and number of years performing services specified in this RFP.
 1. Minimum of 5 years operating a Skilled Nursing Facility (SNF).
 2. Experience operating 3 or more SNFs preferred.
 - b. Reference and client listings
 1. Number of facilities managed for a minimum of 5 years.
- 3) Overall Strategy Proposal (**55%**)
 - a. Methodology (e.g., Staffing)
 - b. Timeline
 - c. Start-up Operational Plan
 - d. Ability to support deficit funding/ line of credit for funding
 - e. Ability to meet all Federal, VA and State law, statute, and regulatory requirements
- 4) Resumes. Proposed staff qualifications (**10%**)

SECTION FIVE

CONTRACTOR SELECTION & CONTRACT AWARD

5.01 PROPOSAL AS PART OF THE CONTRACT

This RFP and all or part of the successful proposal may be incorporated into the contract.

5.02 CONTRACT EXECUTION

Successful Offeror receiving award shall enter into a formal written contract in the form as in Exhibit C. No performance or payment bond is required for this contract.

No work is to be undertaken by the Contractor prior to the effective date of contract. The State of Hawaii/Owner is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official starting date.

If an option to extend is mutually agreed upon, the Contractor shall be required to execute a supplement to the contract for the additional extension period.

5.04 INSURANCE

A. Prior to the contract start date, the Contractor shall procure at its sole expense and maintain insurance coverage acceptable to the State in full force and effect throughout the term of the Contract. The Offeror shall provide proof of insurance for the following minimum insurance coverage(s) and limit(s) in order to be awarded a contract. The type of insurance coverage is listed as follows:

a. Commercial General Liability Insurance

Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of all operations, activities or contractual liability by the Contractor, its employees, and subcontractors during the term of the Contract. This insurance shall include the following coverage and limits specified or required by any applicable law: bodily injury and property damage coverage with a minimum of **\$1,000,000** per occurrence; personal and advertising injury of **\$1,000,000** per occurrence; broadcasters' liability insurance of **\$1,000,000** per occurrence; and with an aggregated limit of **\$3,000,000**. The commercial general liability policy shall be written on an occurrence basis and the policy shall provide legal defense costs and expenses in addition to the limits of liability stated above. The Contractor shall be responsible for payment of any deductible applicable to this policy.

b. Automobile Liability Insurance:

Automobile liability insurance covering owned, non-owned, leased, and hired vehicles with a minimum of **\$1,000,000** for bodily injury for each person, **\$1,000,000** for bodily injury for each accident, and **\$1,000,000** for property damage for each accident.

c. Appropriate levels of per occurrence insurance coverage for workers' compensation and any other insurance coverage required by Federal or State law.

d. NOTE: Error & Omissions insurance is available for technology suppliers and may be required for the specific procurement being conducted.

B. The Contractor shall deposit with the Owner, on or before the effective date of the Contract, certificate(s) of insurance necessary to satisfy the Owner that the provisions of the Contract have been complied with, and to keep such insurance in effect and provide the certificate(s) of insurance to the Owner during the entire term of the Contract. Upon request by the Owner, the Contractor shall furnish a copy of the policy or policies.

C. The Contractor will immediately provide written notice to the Owner and contracting department or agency should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed up expiration.

D. The certificates of insurance shall contain the following clauses:

a. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."

b. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

E. Failure of the Contractor to provide and keep in force such insurance shall constitute a material default under the Contract, entitling the State to exercise any or all of the remedies provided in the Contract (including without limitation terminating the Contract). The procuring of any required policy or policies of insurance shall not be construed to limit the Contractor's liability hereunder, or to fulfill the indemnification provisions of the Contract. Notwithstanding said policy or policies of insurance, the Contractor shall be responsible for the full and total amount of any damage, injury, or loss caused by the Contractor's negligence or neglect in the provision of services under the Contract.

5.05 REQUIREMENTS FOR PERFORMANCE BONDS – Not required for this contract.

5.06 COST PROPOSAL AND COMPENSATION

The offeror will state in their cost proposal their annual fee for management/operation of the facility as a percent of gross annual revenue to be invoiced and paid in part on a monthly basis as stipulated below. Further performance incentives and disincentives will be negotiated as part of the final contract process.

Incremental payments shall be made to the awarded Contractor on a monthly basis. HRS Section 103-10, provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the State will reject any offer submitted with a condition requiring payment within a shorter period. Further, the State will reject any offer submitted with a condition requiring interest payments greater than that allowed by HRS §103-10, as amended.

The State will not recognize any requirement established by the Contractor and communicated to the State after award of the contract, which requires payment within a shorter period or interest payment not in conformance with statute.

Final Payment Requirements - Contractor is required to submit a current Certificate of Vendor Compliance with the final invoice.

It is projected that the facility “may” have a deficit from operations in the initial year of operations. Since there are no additional funds available to cover initial deficit, the successful offeror must agree to either:

- **Fund initial deficit from internal resources with interest paid by Owner that will be negotiated in the final contract; or**
- **Take out a banking line of credit to cover this initial deficit.**

In either case the contractor loan plus interest or the contractor line of credit plus fees will be paid back from operational net revenues in excess of the contracted amounts due to Contractor in subsequent years until no balance remains.

SECTION SIX

SPECIAL PROVISIONS

6.01 SCOPE

All staffing support for the facility shall be in accordance with this RFP, including the special provisions in this section, the Scope of Work specified herein, and the General Conditions (GC), available at: <https://www.hhsc.org/>.

6.02 OFFEROR QUALIFICATIONS

Offeror shall meet all of the qualifications required by this RFP. Failure to meet the qualifications as specified in Section 3.11, Proposal Content, will likely have an adverse affect on Offeror's proposal evaluation.

6.03 OFFER GUARANTY

A proposal security deposit is NOT required for this RFP.

6.04 CERTIFICATION OF OFFEROR CONCERNING WAGES, HOURS AND WORKING CONDITIONS OF EMPLOYEES SUPPLYING SERVICES

All Offerors for service contracts shall comply with section 103-55, Hawaii Revised Statutes, which provides as follows:

Wages, hours, and working conditions of employees of Contractor supplying services: Before any prospective Offeror is entitled to submit any offer for the performance of any contract to supply services in excess of \$25,000 to any governmental agency, Offeror shall certify that the services to be performed will be performed under the following conditions:

Wages: Will be negotiated and agreed upon by the Contractor and hired employees and shall not be subject to state payment comparisons or state union provisions.

Compliance with labor laws: All applicable laws of the Federal, and State governments relating to workers compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

No contract to perform services for any governmental contracting agency in excess of \$25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of the contract to perform services may result in cancellation of the contract at the discretion of Owner.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$25,000 to enforce this section.

This section shall apply to all contracts to perform services in excess of \$25,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (15) of section 76-16, paragraphs (7), (8), and (9) of section 46-33, and paragraphs (7), (8), and (12) of section 76-77, Hawaii Revised Statutes, (HRS).
- (5) Contracts for professional services.
- (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (7) Contracts with nonprofit institutions.

6.05 CONTRACT MODIFICATIONS - UNANTICIPATED AMENDMENTS

During the course of this contract, the Contractor may be required to perform additional work that will be within the general scope of the initial contract. When additional work is required, the Contract Administrator will provide the Contractor a written description of the additional work and request the Contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work.

Changes to the contract may be modified only by written document (contract supplement) signed by the Owner and Contractor personnel authorized to sign contracts on behalf of the Contractor.

The Contractor will not commence additional work until a signed contract supplement has been issued.

6.06 GOVERNING LAW: COST OF LITIGATION

The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties to this contract, shall be governed by the laws of the State of

Hawaii. Any action at law or equity to enforce or interpret the provisions of this contract shall be brought in a state court or competent jurisdiction in Honolulu, Hawaii.

6.07 ADDITIONAL TERMS AND CONDITIONS

The State reserves the right to add terms and conditions during the contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluation.

6.08 NON-DISCRIMINATION

The Contractor shall comply with all applicable federal and State laws prohibiting discrimination against any person on the grounds of race, color, national origin, religion, creed, sex, age, sexual orientation, marital status, handicap, or arrest and court records in employment and any condition of employment with the Contractor or in participation in the benefits of any program or activity funded in whole or in part by the State.

6.09 WAIVER

The failure of the State to insist upon the strict compliance with any term, provision or condition of this contract shall not constitute or be deemed to constitute a waiver or relinquishment of the State's right to enforce the same in accordance with this contract.

6.10 SEVERABILITY

In the event that any provision of this contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this contract.

6.11 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

It has been determined that some funds for this contract have been appropriated by a State legislative body.

Therefore, Offeror, if awarded a contract in response to this solicitation, agrees to comply with HRS Section 11-355, which states that campaign contributions are prohibited from a State and County government contractor during the term of the contract if the contractor is paid with funds appropriated by a legislative body.

6.12 ADDITIONS, AMENDMENTS AND CLARIFICATIONS

Nondiscrimination. No person performing work under this Agreement, including any subcontractor, employee, or agency of the Contractor, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

Records Retention. The Contractor and any subcontractors shall maintain the books and records that relate to the Agreement and any cost or pricing data for three (3) years from the date of final payment under the Agreement .

SECTION SEVEN

ATTACHMENTS AND EXHIBITS

- Attachment 1: OFFER FORM, OF-1
- Attachment 2: PROPOSAL SUBMISSION CHECKLIST
- Exhibit A: OVERVIEW OF THE RFP PROCESS
- Exhibit B: GENERAL CONDITIONS

**OFFER FORM
OF-1**

ATTACHMENT 1

CONTRACT MANAGEMENT/OPERATION PROPOSAL FOR DANIEL K AKAKA
STATE VETERANS HOME, STATE OF HAWAII
RFP HHSC 23OR-0010

Maluhia
Hawaii Health Systems Corporation Oahu Region
Attn: Scott Kawai
1027 Hala Drive
Honolulu, HI 96817

Dear Sir:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

The undersigned represents: **(Check one only)**

- A **Hawaii business** incorporated or organized under the laws of the State of Hawaii; **OR**
- A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii. Business shall be registered prior to award at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii. State of incorporation: _____

Offeror is:

- Sole Proprietor Partnership Corporation Joint Venture
 Other _____

Federal I.D. No.: _____

Hawaii General Excise Tax License I.D. No. _____

Payment address (other than street address below): _____

City, State, Zip Code: _____

Business address (street address): _____

City, State, Zip Code: _____

Respectfully submitted:

Date: _____

(x) _____
Authorized (Original) Signature (*1)

Telephone No.: _____

Fax No.: _____

Name and Title (Please Type or Print)

E-mail Address: _____

Exact Legal Name of Company (Offeror)

(*2)

(*1) Original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

(*2) If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:

PROPOSAL SUBMISSION CHECKLIST

ATTACHMENT 2

***Please
Check Off
Items
Submitted**

**For
HHSC Use**

	_____	Proposal Received "On-Time"
_____	_____	One (1) original signed hard copy
_____	_____	Three (3) <u>copies</u> of the original marked "COPY"
_____	_____	One (1) electronic copy
_____	_____	Proposal Transmittal Cover Sheet: (Section 3.16)
_____	_____	Authorized Signature
_____	_____	Required Information
_____	_____	Technical Proposal
_____	_____	Background, Qualifications and Experience
_____	_____	Key On-Site Personnel and Staffing
_____	_____	Methodology
_____	_____	Schedule
_____	_____	Start-up Operational Plan
_____	_____	Staffing Plan
_____	_____	Cost Proposal
_____	_____	Management/Operation Fee (Section 4)
_____	_____	Fee Schedule
_____	_____	Attachment 1: Offer Form, OF-1

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

OVERVIEW OF THE RFP PROCESS

- 7.01** The procurement process begins with the issuance of the RFP and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by Addendum.
- 7.02** Proposals shall be received in accordance with “Section One, 1.04 and Section Three, Proposal Format and Content”. The register of proposals and Offerors’ proposals shall be open to public inspection after posting of the award.
- All proposals and other material submitted by Offerors become the property of the State and may be returned only at the State’s option.
- 7.03** The Procurement Officer, or an evaluation committee approved by the Procurement Officer, shall evaluate the proposals in accordance with the evaluation criteria in Section Four.
- 7.04** Proposals may be accepted on evaluation without discussion. However, if deemed necessary, prior to entering into discussions, a "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The priority list may be limited to a minimum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror’s proposal before the BAFO is tendered.
- 7.05** If during discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFP shall be distributed only to priority listed Offerors who submit acceptable or potentially acceptable proposals.
- 7.06** Following any discussions, Priority Listed Offerors will be invited to submit their BAFO, if required. The Procurement Officer or an evaluation committee reserves the right to have additional rounds of discussions with the top three (3) Priority Listed Offerors prior to the submission of the BAFO.
- 7.08** The date and time for Offerors to submit their BAFO, if any, is indicated in Section 1.04, RFP Schedule and Significant Dates. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror’s immediate previous offer shall be construed as its BAFO.
- 7.09** After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in Section Four, the Procurement Officer or an evaluation committee will make its recommendation. The Procurement Officer will award the contract to the Offeror whose proposal is determined to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in Section Four.
- 7.10** The contents of any proposal shall not be disclosed during the review, evaluation, or discussion. Once award notice is posted, all proposals, successful

and unsuccessful, become available for public inspection. Those sections that the Offeror and the State agree are confidential and/or proprietary should be identified by the Offerors and shall be excluded from access.

- 7.11** The Procurement Officer or an evaluation committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The Procurement Officer or an evaluation committee will conduct a comprehensive, fair, and impartial evaluation of proposals received in response to the RFP.
- 7.12** The RFP, any addenda issued, and the successful Offeror's proposal shall become a part of the contract. All proposals shall become the property of the State of Hawaii.

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

EXHIBIT B

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1. **COORDINATION OF SERVICES BY HHSC.** The "head of the purchasing agency" (through the Technical Representative(s) or other designee as specified in the Agreement) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Agreement. The CONTRACTOR shall maintain communication with the head of the purchasing agency through the Technical Representative(s) or other designee at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Agreement. "Purchasing agency" as used in these General Conditions means and includes any HHSC region or facility which is authorized to enter into contracts for the procurement of goods and services. The term "HHSC" refers to HHSC and the region or facility entering into this Agreement. The term, "CONTRACTOR" includes all employees, agents, subcontractors, and other entities and persons utilized by the CONTRACTOR to fulfill the obligations of this Agreement. It will be the responsibility of CONTRACTOR to ensure that those other persons and entities follow the terms of this Agreement.

2. **RELATIONSHIP OF PARTIES: INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.**

- a. In the performance of services required under this Agreement, the CONTRACTOR is an independent contractor, with the authority and responsibility to control and direct the performance and details of the work and services required under this agreement; however, HHSC shall have a general right to inspect work in progress to determine whether, in HHSC's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. Unless otherwise provided by special condition, it is understood that HHSC does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to provide services to other individuals or entities.
- b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of HHSC for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from HHSC any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to HHSC employees.
- c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.
- d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes and (iii) general excise taxes. Unless provided otherwise by agreement between the parties, the CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, HRS, and shall comply with all requirements thereof.
- f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's

employees and agents that is or may be required by law, and for payment of all premiums, costs and other liabilities associated with securing the insurance coverage.

3. **PERSONNEL REQUIREMENTS.**

- a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.
- b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied. Where the facility is Joint Commission accredited, CONTRACTOR agrees to meet all applicable Joint Commission standards.

4. **CONTRACTOR EXCLUSION FROM FEDERAL PROGRAMS.** CONTRACTOR affirmatively states that it and none of its employees, agents or subcontractors performing services or providing goods pursuant to this Agreement are excluded from participation in federal health care programs, as defined in the Social Security Act (Section 1128 and 1128A), and other federal laws and regulations relating to health care. CONTRACTOR has an affirmative duty to verify the accuracy of this statement at least monthly and to inform HHSC in the event it is discovered that it is no longer true. HHSC reserves the right to verify that the above statements are true and to immediately cancel this Agreement in the event they are not true.

5. **NONDISCRIMINATION.** No person performing work under this Agreement, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law or regulation.

6. **CONFLICTS OF INTEREST.** The CONTRACTOR represents that neither the CONTRACTOR, nor any employees or agents of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

7. **SUBCONTRACTS AND ASSIGNMENTS: CHANGE OF NAME.**

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

document acceptable or satisfactory to said officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Agreement with the CONTRACTOR to effect such a change of name. The amendment to this Agreement changing the CONTRACTOR'S name shall specifically indicate that no other terms or conditions of this Agreement are thereby changed.

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

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

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

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

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

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

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

(1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Agreement and

(2) The CONTRACTOR asserts a claim for such adjustment within thirty (30) days after the end of the period of performance stoppage provided that if the head of the purchasing agency decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.

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

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

11. TERMINATION FOR DEFAULT.

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

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

c. Compensation. Payment for completed goods and services delivered and accepted by HHSC shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the head of the purchasing agency. If the parties fail to agree, the head of the purchasing agency shall set an amount. HHSC may withhold from amounts due the CONTRACTOR such sums as the head of the purchasing agency deems to be necessary to protect HHSC against loss because of outstanding liens or claims and to reimburse HHSC for the excess costs expected to be incurred by HHSC in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms,

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

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

12. TERMINATION FOR CONVENIENCE BY HHSC.

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

to HHSC in the manner and to the extent directed by the head of the purchasing agency:

- (1) Any completed goods or work product; and
 - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Agreement; and
 - (3) The CONTRACTOR shall, upon direction of the head of the purchasing agency, protect and preserve property in the possession of the CONTRACTOR in which HHSC has an interest. If the head of the purchasing agency does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that HHSC has breached the Agreement by exercise of the termination for convenience provision.
- d. Compensation. The CONTRACTOR may submit a termination claim specifying the unavoidable costs incurred because of the termination for convenience. This claim is in addition to any claim for payment for goods or services already performed prior to the termination. The head of the purchasing agency shall review the termination claim and respond to the CONTRACTOR with written objections or full payment within 60 days, provided that the claim is substantiated with invoice documentation. The amount paid for a termination claim shall be determined by the head of the purchasing agency but in no event shall exceed the amount remaining on the contract.

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

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

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

14. MODIFICATIONS OF AGREEMENT.

- a. In writing. Any modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be made by written amendment to this Agreement signed by the CONTRACTOR and HHSC. Change orders shall be made in accordance with paragraph 13 herein. Notice to any surety is not required.
- b. No oral modification. No oral modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be permitted or acknowledged.
- c. Adjustment of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Agreement, an adjustment shall be made and this Agreement modified in writing accordingly. Any adjustment in price made pursuant to this clause shall be determined, where applicable, in accordance with the terms of this Agreement or as negotiated.
- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Agreement and the claims are not made prior to final payment under this Agreement.
- e. Claims not barred. In the absence of a written modification to the Agreement, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Agreement or for breach of contract.

15. VARIATION IN QUANTITY FOR DEFINITE QUANTITY AGREEMENTS.

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

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

- a. Change in scope. If any action or omission on the part of the head of the purchasing agency (which term includes the designee of such officer) requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of proper officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages or extension of time for completion, provided:
 - (1) Written notice required. The CONTRACTOR shall give written notice to the head of the purchasing agency:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission; or
 - (B) Written thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

(C) Within such further time as may be allowed by the head of the purchasing agency in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages or an extension of time. The head of the purchasing agency, upon receipt of such a notice, may rescind such action, remedy such omission or take such other steps as may be deemed advisable.
- (3) Basis must be explained. The notice required by this paragraph must describe as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the head of the purchasing agency within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to HHSC, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however shall excuse the CONTRACTOR from compliance with any rules or laws precluding collusion or bad faith in causing the issuance of or performing change orders which are clearly not within the scope of the Agreement.

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

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

18. PAYMENT PROCEDURES.

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

authorization before performing work outside the original Agreement.

19. PROMPT PAYMENT OF SUBCONTRACTORS.

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

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

The procurement officer shall return any final payment request that is defective to the CONTRACTOR within seven days after receipt, with a statement identifying the defect.
- d. This section shall not be construed to impair the right of a CONTRACTOR or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under paragraph (c); provided that any such payments withheld shall be withheld by the procurement officer.

20. CONFIDENTIALITY OF MATERIAL.

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

- 21. CORPORATE COMPLIANCE PROGRAM.** A description of the Corporate Compliance Program of HHSC, including orientation materials, is posted on the HHSC internet site (www.hhsc.org). The CONTRACTOR, by signing this contract, acknowledges that it has read said description, and that the CONTRACTOR knows of the fact and substance of the Corporate Compliance Program, which governs operations at all facilities of the HHSC. The CONTRACTOR understands and agrees that employees, agents, contractors and subcontractors performing any services at any of the HHSC facilities shall be fully subject to such Corporate Compliance Program, as may be amended from time to time, as well as all federal program requirements and applicable policies and procedures of HHSC and its facilities. The Corporate

Compliance Program requires periodic training, including an orientation program, of all people who provide financial, business office, personnel, coding, medical records information systems and clinical services in the facility. The CONTRACTOR agrees to cause its employees, agents and contractors who provide financial, business office, personnel, coding, medical records information systems and/or clinical services at any of the HHSC facilities to review the posted orientation materials and participate in any compliance training programs HHSC may require.

- 22. BUSINESS ASSOCIATE ADDENDUM.** By signing this Agreement, CONTRACTOR acknowledges that CONTRACTOR may be a Business Associate of HHSC within the meaning of the federal privacy and security laws as stated in 45 C.F.R. Parts 160 and 164, Subparts A, C, and E. CONTRACTOR further acknowledges that CONTRACTOR has read the Business Associate Addendum, which is posted on the HHSC internet site (www.hhsc.org/BAA). If CONTRACTOR is a Business Associate as defined in the above laws, said Business Associate Addendum is hereby incorporated by reference and made a part of this Agreement as if fully repeated herein. By signing this Agreement, CONTRACTOR agrees to fully comply with, and be bound by, all terms set forth in the Business Associate Addendum, as it may be amended from time to time.
- 23. PUBLICITY.** The CONTRACTOR shall not refer to the HHSC or any office, agency, or officer thereof, or any HHSC employee, including the head of the purchasing agency, the Agency procurement officer, the HHSC Board of Directors, or to the services or goods, or both, provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR without the explicit written consent of HHSC. All media contacts with the CONTRACTOR about the subject matter of this Agreement shall be referred to the head of the purchasing agency.
- 24. OWNERSHIP RIGHTS AND COPYRIGHT.** HHSC shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Agreement and all such material shall be considered "works for hire." All such materials shall be delivered to HHSC upon expiration or termination of this Agreement. HHSC, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Agreement.
- 25. INSURANCE.** During the term of this Agreement, CONTRACTOR shall maintain at all times or cause to be maintained general and professional liability insurance coverage for CONTRACTOR and its employees rendering services to HHSC under this Agreement. The insurance policies shall be issued by a company or companies authorized to do business in Hawaii and approved by HHSC, with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and THREE MILLION DOLLARS (\$3,000,000) in the aggregate, or such greater amount as may be required from time to time by HHSC. HHSC shall receive not less than thirty (30) days notice prior to any cancellation or material change or reduction in coverage. No such material change or reduction may be made without approval from HHSC. HHSC shall be listed as an additional insured on all policies. Prior to the commencement of this Agreement, CONTRACTOR shall provide HHSC with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the CONTRACTOR shall provide HHSC with certificates of insurance evidencing the foregoing coverage and provisions. HHSC reserves the right to request a certified copy of the policies. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR'S employees in the amounts required by applicable law. Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of this Agreement and HHSC shall

thereafter have the option of pursuing remedies for such breach and/or immediate termination of this Agreement.

26. LIENS AND WARRANTIES.

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

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

- a. Until the expiration of four (4) years after the furnishing of such services, CONTRACTOR shall, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly-authorized representative, the Comptroller General, or the Comptroller General's duly- authorized representative, such books, documents, and records as may be necessary to certify the nature and extent of the cost of such Services; and
- b. If any such Services are performed by way of subcontract with another organization and the value or cost of such subcontracted Services is Ten Thousand Dollars (\$10,000.00) or more over a twelve month period such subcontract shall contain and CONTRACTOR shall enforce a clause to the same effect as paragraph 26.a, above.
- c. The availability of CONTRACTORS' books, documents and records shall be subject to all applicable legal requirements, including such criteria and procedures for obtaining access that may be promulgated by the Secretary. The provisions of paragraph 26.a and 26.b shall survive the expiration or other termination of this Agreement regardless of the cause of such termination.
- d. HHSC may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor or prospective subcontractor which are related to this Agreement. HHSC may utilize third-party agents to conduct an audit and/or analysis of CONTRACTOR'S records related to quotes, proposals, orders, invoices, sales reports, expenses charged to HHSC, sales reports, and discounts related to this Agreement and or proposed amendment to this Agreement. Any such agents will be bound by the same confidentiality clauses as stated in this Agreement.

28. ANTITRUST CLAIMS. The HHSC and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to HHSC any and all claims for overcharges as to goods and materials purchased in connection with this Agreement, except as to overcharges which result from violations

commencing after the price is established under this Agreement and which are not passed on to the HHSC under an escalation clause.

- 29. DISCOUNT AND REBATE.** CONTRACTOR hereby acknowledges its obligations to comply with any and all requirements imposed upon it as a seller under 42 U.S.C. Sec. 1320a-7b(b)(3)(A) and 42 C.F.R. Sec. 1001.952(h) Discounts.
- 30. GOVERNING LAW.** The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a State court of competent jurisdiction in Hawaii.
- 31. COMPLIANCE WITH LAWS.** The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Agreement. Other laws which may be applicable to contractors include, but are not limited to: HRS Chapters 383, 386, 387, and 393. It shall be the responsibility of the CONTRACTOR to determine applicability and comply with the law.
- 32. ACCESS TO HHSC NETWORK AND SYSTEMS.** CONTRACTOR may be given access to some of the HHSC computer network and systems in order to fulfill the terms of the Agreement. CONTRACTOR agrees to follow and to require all agents, employees and subcontractors to also follow the Information Technology and Confidentiality policies summarized and posted on the HHSC Procurement internet site (www.hhsc.org/GC) and to comply with such other instructions as provided by HHSC in the use of HHSC computer systems. CONTRACTOR shall not use the HHSC systems or data for any purpose other than to fulfill its duties under this Agreement.
- 33. CAMPAIGN CONTRIBUTIONS.** CONTRACTOR acknowledges that it is unlawful under Section 11-355, Hawaii Revised Statutes, unless specifically permitted under that law, for CONTRACTOR at any time between the execution of this Agreement through the completion of the Agreement to: (a) directly or indirectly make any contribution or to promise expressly or impliedly to make any contribution to any political party, committee or candidate or to any person for any political purpose or use; or (b) knowingly solicit any such contribution from any person for any purpose during any period.
- 34. ENTIRE AGREEMENT.** This Agreement sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the HHSC and the CONTRACTOR relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the HHSC and the CONTRACTOR other than as set forth or as referred to herein.
- 35. COUNTERPARTS.** This Agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronically and such facsimile or electronic execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile/electronic executions or a combination thereof, shall be construed together and shall constitute one and the same Agreement.
- 36. SEVERABILITY.** In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.
- 37. WAIVER.** The failure of HHSC to insist upon strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of HHSC's right to enforce the same in accordance with this Agreement. The fact that HHSC specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of HHSC's rights or the CONTRACTOR's obligations under the law.
- 38. ACCEPTANCE OF GOODS AND SERVICES.** HHSC shall accept goods and services or give CONTRACTOR notice of rejection within a reasonable time, notwithstanding any payment, prior test, or inspection. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance with the specifications, shall relieve CONTRACTOR of any obligations under this Agreement or impair any rights or remedies of HHSC.
- 39. OBSOLETE PARTS/LONG TERM PARTS AVAILABILITY (Goods and Equipment Agreements Only).** CONTRACTOR shall timely report on the status of end of life (EOL) hardware that has been procured for the purchased or leased product. EOL hardware includes the following: electronic components/piece parts and mechanical hardware. CONTRACTOR shall provide advanced notification in writing to the Technical Representative of any changes to tooling, facilities, materials, availability of parts, or processes that could affect the contracted product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. CONTRACTOR shall notify the HHSC Technical Representative of any pending or contemplated future action to discontinue articles purchased or replacement parts for the articles purchased pursuant to this Agreement and shall work with HHSC to determine the need to stockpile any parts for the likely life of the product and offer those parts to HHSC prior to the actual discontinuance. CONTRACTOR shall extend opportunities to HHSC to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.
- 40. DISPUTES.** Prior to resorting to any remedies allowed by law, disputes between the CONTRACTOR and HHSC arising out of this Agreement shall first be addressed in a telephonic or in-person meeting between the HHSC Technical Representative or designee and the CONTRACTOR'S representative. If the issue is not resolved to the mutual satisfaction of the Parties, a HHSC Regional CFO shall hold a telephonic or in-person meeting with the manager of the CONTRACTOR'S representative. Both Parties shall discuss and attempt to resolve the issues in good faith.

END OF GENERAL CONDITIONS
