

Invitation for Bids

Leahi Hospital and Maluhia Refuse Collection Services IFB No. HHSC FY 25R-0010

The Hawaii Health Systems Corporation (HHSC) Oahu Region is requesting bids from qualified refuse companies to provide refuse collection services at Leahi Hospital located at 3675 Kilauea Avenue Honolulu 96816 and Maluhia located at 1027 Hala Drive Honolulu 96817.

The IFB may be obtained electronically from the following website:

<http://www.leahi.hhsc.org/procurement/notices/>

<http://www.maluhia.hhsc.org/procurement/notices/>

A pre-bid orientation will not be scheduled. The deadline for submission of written/mailed questions pertaining to the IFB is April 24, 2025.

All bids must be received by May 1, 2025, 2:00 p.m. Hawaii Standard Time. Bids may be mailed to the Purchasing Office of Maluhia, at 1027 Hala Dr., Honolulu, Hawaii 96817. Bids via e-mail are acceptable and shall be sent to skawai@hhsc.org. E-mail bids not received by the deadline will be disqualified for consideration. No exceptions will be made even in the event network provider or software (MS Outlook) delays delivery.

Addenda to the IFB will be posted on the websites listed above.

For any inquiries, please contact Scott Kawai, Purchasing Department at (808) 832-3025 or by email at skawai@hhsc.org.

Leahi Hospital
3675 Kilauea Avenue
Honolulu, Hawaii 96817

Maluhia
1027 Hala Drive
Honolulu, Hawaii 96816

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SECTION 1 **ADMINISTRATION**

1.0 INTRODUCTION

This Invitation for Bid (hereinafter “IFB”) is issued by the Hawaii Health Systems Corporation (hereinafter “HHSC”), a public body corporate and politic and an instrumentality and Agency of the State of Hawaii. All procedures and processes will be in accordance with HHSC Oahu Region policy and procedures.

In order for HHSC to accept Bidder’s response in a timely manner, please thoroughly read this IFB and follow instructions as presented.

1.1 IFB TIMETABLE AS FOLLOWS

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

ACTIVITY		SCHEDULED DATES
1.	IFB Public Announcement	April 14, 2025
2.	Closing Date for Receipt of Questions	April 24, 2025
3.	Closing Date for Receipt of Bids 2:00 p.m.	May 1, 2025
4.	Contractor Selection/Award Notification (on/about)	May 2, 2025
5.	Contract Start Date	June 1, 2025

1.2 AUTHORITY

This IFB is issued under the provisions of the HHSC Hawaii Revised Statutes and its administrative rules. All BIDDERS are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed bid by any BIDDER shall constitute admission of such knowledge on the part of such BIDDER.

1.2.1 IFB ORGANIZATION

This IFB is organized into five sections:

SECTION 1: ADMINISTRATIVE

Provides information regarding administrative requirements.

SECTION 2: SCOPE OF SERVICES

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

SECTION 3: BID FORMS AND INSTRUCTIONS

Describes the required format and content for submission of the bid.

SECTION 4: BID EVALUATION AND AWARD

Describes how bids will be evaluation and procedures for selection and award of contract.

1.3 HEAD OF PURCHASING AGENCY (HOPA)

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

The HOPA for this IFB is:

Derek Akiyoshi
Regional Chief Executive Officer
Hawaii Health Systems Corporation

1.4 DESIGNATED OFFICIALS

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

1.4.1 ISSUING OFFICER

The Issuing Officer is responsible for administering/facilitating all requirements of the IFB solicitation process and is the **sole point of contact** for BIDDER from date of public announcement of the IFB until the selection of the successful BIDDER. The Issuing Officer will also be responsible for contractual actions throughout the term of the contract. The Issuing Officer is:

Scott Kawai
Maluhia, Purchasing Office
1027 Hala Drive
Honolulu, Hawaii 96817
e-mail: skawai@hhsc.org
phone: (808) 832-3025

1.5.1 CHARTER

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

1.5.2 STRUCTURE AND SERVICES

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

1.5.3 MISSION

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

1.6 FACILITY INFORMATION

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

1.7 SUBMISSION OF QUESTIONS

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

IMPORTANT

BIDDER may request changes and/or propose alternate language to the attached HHSC General and Special Terms and Conditions during this phase only. All requests will be presented to the HHSC Legal Department for review. No requests to change the HHSC General or Special Terms and Conditions will be entertained after the bids have been submitted or during the contracting process. All written questions and/or approved changes will receive an official written response from HHSC and shall be recorded as addenda to the IFB.

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

Responses by HHSC shall be due to the BIDDER prior to notice of award.

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

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

SEND QUESTIONS TO:

Scott Kawai, Issuing Officer
e-mail: skawai@hhsc.org

1.8 SOLICITATION REVIEW

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

1.9 IFB AMENDMENTS

HHSC reserves the right to amend the IFB any time prior to the deadline date of the IFB. IFB Amendments will be in the form of addenda.

1.10 CANCELLATION OF IFB

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

1.11 PROTESTS

Any protest shall be submitted in writing to the HOPA as noted below.

A protest based upon the content of the solicitation shall be submitted in writing within five (5) working days **after** the aggrieved individual/business knows or should have known of the facts giving rise thereto; provided further that the protest shall not be considered unless it is submitted in writing prior to and not later than the “Closing Date for Receipt of Bid” identified in section 1.1.

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

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

Derek Akiyoshi
Hawaii Health Systems Corporation
Oahu Region
3675 Kilauea Avenue
Honolulu, Hawaii 96816

SECTION 2

SCOPE OF SERVICES

2.0 INTRODUCTION

The purpose of this competitive solicitation is to award a single, fixed-priced Agreement for BIDDER to furnish refuse collection services at Leahi Hospital and Maluhia for a 2-year period.

The Contractor awarded an Agreement under this IFB shall be referred to as “CONTRACTOR” or “BIDDER”.

2.1 CONTRACT PERIOD

The contract shall commence on June 1, 2025 to and including May 31, 2027. There will be an option to extend the Contract upon mutual agreement in writing by both parties.

2.2 SCOPE OF SERVICES

The CONTRACTOR shall provide “Refuse Collection and Disposal Services” for Maluhia and Leahi Hospital pursuant to provisions set forth in this IFB and the HHSC General Conditions.

A. General

Provide all labor, transportation, equipment, containers, supplies and materials necessary to collect and dispose of hospital general and maintenance refuse on a regular, emergency and on-call collection basis, as follows:

1. Regular Refuse Collection. Regular refuse collection is defined as a “weekly scheduled” collection of general refuse in accordance with the Hospital’s collection schedule.
2. Emergency Refuse Collection. Emergency refuse collection is defined as an “unscheduled” collection of general refuse upon telephonic notification and instructions thereof by the Hospital. The Emergency Refuse Collection services shall be at the site within a 24-hour period upon telephonic notification and may remain at the Hospital for up to a 2-week period.
3. On-call Refuse Collection. On call refuse collection is defined as an “unscheduled” collection of maintenance refuse upon telephonic notification and instructions thereof by the Hospital.

B. Leahi Hospital Specifications

1. Regular Refuse Collection
 - a. Provide one (1) roll on/off, self compactor container with minimum thirty (30) cubic yard capacity to collect hospital general refuse. The container shall be located at the sub-basement parking lot of the Hospital, Young Building, Pokole Street entrance. The security gate is opened at 5:30 a.m. and closes at 6:00 p.m. daily.
 - i. Collection Schedule. Collect refuse one (1) per week, Thursdays, between the hours of 11:30 a.m. and 1:00 p.m. If the collection day falls on a holiday, the Contractor shall pick-up 24 hours before or after the holiday.
2. Emergency Refuse Collection. Upon telephone notification, provide one (1) roll off/on, self-compactor container with minimum thirty (30) cubic yard capacity and one(1) container with minimum four (4) cubic yard capacity with locking lid to collect

emergency general refuse and dietary refuse. Telephone notification instruction shall include, container deliver date, time and location; container pick up date and time.

3. On-Call Refuse Collection (Maintenance). Upon telephone notification, provide one (1) roll off/on, open-top container with minimum thirty (30) cubic yard capacity to collect maintenance refuse. Telephone notification instructions shall include, container delivery date, time and location; container pick-up date and time.

C. Maluhia Hospital Specifications

1. Regular Refuse Collection
 - a. Provide one (1) roll on/off, self compactor container with minimum thirty (30) cubic yard capacity to collect hospital general refuse. The container shall be located in the basement area, lower driveway, mauka end of the hospital.
 - i. Collection Schedule. Collect refuse three (3) times per month on the 5th, 15th, 25th day, between the hours of 10:00 a.m. to 3:00 p.m. If the collection day falls on a holiday, the Contractor shall pick-up 24 hours before or after the holiday.
2. Emergency Refuse Collection. Upon telephone notification, provide one (1) roll off/on, self-compactor container with minimum thirty (30) cubic yard capacity and one(1) container with minimum four (4) cubic yard capacity with locking lid to collect emergency general refuse and dietary refuse. Telephone notification instruction shall include, container deliver date, time and location; container pick up date and time.
3. On-Call Refuse Collection (Maintenance). Upon telephone notification, provide one (1) roll off/on, open-top container with minimum thirty (30) cubic yard capacity to collect maintenance refuse. Telephone notification instructions shall include, container delivery date, time and location; container pick-up date and time.

D. General Requirements for Maluhia and Leahi Hospital

1. Collection of Refuse. Containers shall be emptied completely during collection with minimum refuse spillage. Spillage of any type shall be picked up and the area left broom clean, free of debris and rubbish. Containers shall be covered to prevent littering. The empty containers, or replacement containers, shall be returned to the hospital collection locations within three (3) hours after disposal.
2. Disposal of Refuse. Transport collected refuse to disposal site and dispose pursuant to requirements of local ordinances and regulations applicable to refuse disposal.
3. Sanitation. Clean and spray containers with a germicidal disinfectant agent after each collection and disposal of refuse. Cleaning containers shall not be done on hospital grounds.
4. Maintenance/Appearance of Vehicles, Containers and Equipment. Vehicles, containers and equipment shall be clean and well-maintained, both mechanically and in appearance. Oil container movable parts (hinges, caster, etc.), as needed.
5. Peak Traffic Hours. Schedule all work and related activities to minimize adverse impact on traffic congestion during peak traffic hours. Morning peak traffic hours are 5:30 a.m. to 8:00 a.m. and afternoon peak traffic hours are 3:30 p.m. to 6:00 p.m.

6. Replacement Container. In the event collection bin is not operable, it shall be replaced with another similar or same container. The HHSC has the right to reject the replacement and CONTRACTOR shall obtain one from another source at the same price quoted.
7. Sunday and Holidays. If a scheduled collection day falls on a Sunday or State holiday, the CONTRACTOR shall pick-up 24 hours before or after the Sunday or holiday.
8. "Make Up" Collections. If for any reason collection is not made as scheduled (inclement weather or any other unavoidable condition), CONTRACTOR shall "make up" the collection within twenty-four (24) hours or a date/time mutually agreed upon between the CONTRACTOR and the hospital.
9. Contractor's Representative. The Contractor shall designate a Representative responsible to the hospital for any and all matters relating to the satisfactory execution of contract services and requirements. The persons name and telephone number shall be provided to the designated hospital Representative upon commencement of Contract performance.
10. Cancellation of Scheduled Collections. The hospital may cancel any scheduled collection date, as conditions may warrant.

E. Qualifications. The Contractor shall have:

2. A current and valid refuse collection license on file with the City and County of Honolulu License Division.
3. Performed refuse collection and disposal services for the past three (3) consecutive years.
4. A permanent, on-island office location in conducting business which is accessible to telephone calls. An answering service is not acceptable.
5. Miscellaneous Provisions. The estimated annual refuse tonnage/container requirements are attached and are based upon recent (and projected) collections. The annual quantity of refuse tonnage/number of containers presented in the table below are estimates and may differ from the actual quantity of refuse during the contract period. The Contractor shall, in submitting its per ton and per container bid amount on the bid form, take into consideration the fact that the estimated and actual refuse quantity may differ. The per ton and per container bid amount the Contractor submits shall not be amended or otherwise adjusted during the term of the contract based on any discrepancy between the estimated figures presented here and the actual refuse quantity during the term of the contract. The Contractor shall be compensated for actual refuse tonnage collected/disposed based upon the per ton bid amount it submits, and for actual container used based upon the per container bid amount it submits.

Hospital	Annual General Refuse	Annual Emergency Refuse	Annual Maintenance Refuse (on-call)
Leahi Hospital	240	10	2
Maluhia	240	10	2

13. HOSPITAL shall provide:

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

SECTION 3

Bid Forms and Instruction

General Instructions for Completing Forms

- *Bids shall be submitted in the prescribed format outlined in this IFB*
- *No supplemental literature, brochures or other unsolicited information should be included in the bid packet.*
- *A written response is required for each item unless indicated otherwise.*

3.0 Bid Form

The bid form must be completed and submitted to HHSC by the required due date and time, and in the form prescribed by the HHSC (see Appendix A and Appendix B, B-1, & B-2). Facsimile transmissions shall not be accepted.

Interested bidders shall submit their bid under the interested bidder's exact legal name that is registered with the Department of Commerce and Consumer Affairs and shall indicate this exact legal name in the appropriate space on page 1 of the bid form. Failure to do so may delay proper execution of the Contract.

Interested bidders shall certify its ability to provide security services on June 1, 2025. The Hospital reserves the right to apply liquidated damages for the delay in Contract execution on the part of the Contractor.

If the Bid Document on Appendix A is unsigned or the affixed signature is a facsimile or a photocopy, the bid shall be automatically rejected.

The option to extend the Contract will be at the sole discretion of the Hospital and determined to be in the best interests of the State.

3.1 General Conditions

The HHSC General Conditions of the Contract are attached for the interested bidder's review and information (see Appendix C). The general conditions shall be incorporated into the Contract with the Successful Bidder.

(END OF SECTION)

SECTION 4

BID EVALUATION AND AWARD

4.0 Bid Evaluation

Each bid offer will be reviewed for exact conformity of the requirements in the IFB, known as a responsible bid. Information provided in/with the bid offer will be used to determine whether the interested bidder has the technical and financial capacity to deliver the goods or services, known as a responsive bid.

4.1 Method of Award

An award shall be made to the lowest responsible and responsive bidder's grand total base bid price that includes the price for year 1 and year 2 of Maluhia and Leahi Hospital. To be considered a responsive bid and eligible for an award, the interested bidder must bid on both Hospitals.

The option to extend the Contract will be at the sole discretion of the HHSC. Nothing in this IFB shall be construed or interpreted to mean that the Hospital is obligated to exercise any extensions. The Contract may be extended, without the necessity of rebidding, at the same rates as proposed in the original bid, unless price adjustments are made and agreed upon by HHSC.

4.2 Contract Execution

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

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

SAMPLE BID TRANSMITTAL COVER LETTER

Dear Mr. Kawai,

(Name of Business) proposes to provide any and all goods and services as set forth in the “Invitation for Bid” to furnish refuse collection services at Leahi Hospital and Maluhia IFB No. 25R-0010, for which fees/costs have been set. The fees/costs offered herein shall apply from June 1, 2025 to May 31, 2027.

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

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

Other information:

Address:		Federal Tax ID #:	
Phone No.:		Hawaii GET ID #:	
E-mail address:			

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

State of Incorporation is: (Specify) _____

Year of Business started: _____

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

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

BID FORM

_____ submits the following bid price for refuse
(*Name of Business*)

collection services at Leahi Hospital and Maluhia from June 1, 2025 to May 31, 2027.

Leahi Hospital

Year 1 _____

Year 2 _____

Maluhia

Year 1 _____

Year 2 _____

Grand Total _____

The Grand Total price shall match exactly to the bid worksheets as shown in Appendix B-1 and B-2. If the prices do not match exactly the bid worksheets will be calculated and taken as the Grand Total price.

Leahi Hospital	Bid Price	Number of total pick-ups/Estimated tons per year	Total Bid Price
Year 1			
Self-Compactor			
Pick-Up cost	<div></div>	x <div>52</div>	<div></div>
Cost per ton	<div></div>	x <div>240</div>	<div></div>
Emergency Refuse			
Self-Compactor			
Pick-Up cost	<div></div>	x <div>2</div>	<div></div>
Cost per ton	<div></div>	x <div>12</div>	<div></div>
On-Call			
4.0 cubic yard bin			
Pick-Up cost	<div></div>	x <div>2</div>	<div></div>
Cost per ton	<div></div>	x <div>2</div>	<div></div>
Grand Total Year 1			<div></div>

Leahi Hospital	Bid Price	Number of total pick-ups/Estimated tons per year	Total Bid Price
Year 2			
Self-Compactor			
Pick-Up cost	<div></div>	x <div>52</div>	<div></div>
Cost per ton	<div></div>	x <div>264</div>	<div></div>
Emergency Refuse			
Self-Compactor			
Pick-Up cost	<div></div>	x <div>2</div>	<div></div>
Cost per ton	<div></div>	x <div>12</div>	<div></div>
On-Call			
4.0 cubic yard bin			
Pick-Up cost	<div></div>	x <div>2</div>	<div></div>
Cost per ton	<div></div>	x <div>2</div>	<div></div>
Grand Total Year 2			<div></div>

Maluhia	Bid Price	Number of total pick-ups/Estimated tons per year	Total Bid Price
Year 1			
Self-Compactor			
Pick-Up cost	_____ x _____	36	_____
Cost per ton	_____ x _____	240	_____
Emergency Refuse			
<u>Self-Compactor</u>			
Pick-Up cost	_____ x _____	2	_____
Cost per ton	_____ x _____	12	_____
On-call Refuse Collection			
<u>30 cubic yard bin</u>			
Pick-up cost	_____ x _____	2	_____
Cost per ton	_____ x _____	6	_____
<u>4.0 cubic yard bin</u>			
Pick-up cost	_____ x _____	2	_____
Cost per ton	_____ x _____	2	_____
Grand Total Year 1			_____

Maluhia	Bid Price	Number of total pick-ups/Estimated tons per year	Total Bid Price
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Year 2

Self-Compactor

Pick-Up cost	_____ x _____	36	_____
Cost per ton	_____ x _____	240	_____

Emergency Refuse

Self-Compactor

Pick-Up cost	_____ x _____	2	_____
Cost per ton	_____ x _____	12	_____

On-call Refuse Collection

30 cubic yard bin

Pick-up cost	_____ x _____	2	_____
Cost per ton	_____ x _____	6	_____

4.0 cubic yard bin

Pick-up cost	_____ x _____	2	_____
Cost per ton	_____ x _____	2	_____

Grand Total Year 2 _____

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

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

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

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

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

3. **PERSONNEL REQUIREMENTS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. TERMINATION FOR DEFAULT.

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

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

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

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

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

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

12. TERMINATION FOR CONVENIENCE BY HHSC.

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

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

- (1) Any completed goods or work product; and
 - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Agreement; and
 - (3) The CONTRACTOR shall, upon direction of the head of the purchasing agency, protect and preserve property in the possession of the CONTRACTOR in which HHSC has an interest. If the head of the purchasing agency does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that HHSC has breached the Agreement by exercise of the termination for convenience provision.
- d. Compensation. The CONTRACTOR may submit a termination claim specifying the unavoidable costs incurred because of the termination for convenience. This claim is in addition to any claim for payment for goods or services already performed prior to the termination. The head of the purchasing agency shall review the termination claim and respond to the CONTRACTOR with written objections or full payment within 60 days, provided that the claim is substantiated with invoice documentation. The amount paid for a termination claim shall be determined by the head of the purchasing agency but in no event shall exceed the amount remaining on the contract.
- ## **13. CHANGE ORDERS TO GOODS AND SERVICES AGREEMENTS.** A change order is a written order signed by the head of the purchasing agency, directing the CONTRACTOR to make changes which the below "change clause" authorizes the head of the purchasing agency to order without the consent of the CONTRACTOR.
- a. Change clause. By written order, at any time, and without notice to any surety, the head of the purchasing agency may, unilaterally, order:
 - (1) Changes in the work within the scope of the Agreement; and
 - (2) Changes in the time of performance of the Agreement that do not alter the scope of the work of the Agreement.
 - b. Adjustment of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Agreement, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this clause shall be determined, where applicable, as negotiated. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the head of the purchasing agency promptly and duly makes the provisional adjustments in payment or time for the direct costs of the work as HHSC deems reasonable. The right of the CONTRACTOR to dispute the Agreement price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established in the Agreement or in these rules.
 - c. Time period of claim. Within ten (10) days after receipt of a written change order, unless the period is extended by the head of the purchasing agency in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.

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

14. MODIFICATIONS OF AGREEMENT.

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

15. VARIATION IN QUANTITY FOR DEFINITE QUANTITY AGREEMENTS.

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

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

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

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

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

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

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