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EAST HAWAI`I REGION  
HAWAI`I HEALTH SYSTEMS CORPORATION

REQUEST FOR PROPOSALS

**# HHSC FY 24-0546**

**Design – Main Switchboard Replacement and  
CATH LA 2 Feeder Connections**

For

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

AN AGENCY OF THE STATE OF HAWAII

Due Date for Proposals  
in Response to this Solicitation:

**Monday, July 29, 2024; 5:00 PM HST**

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**SECTION 1**  
**GENERAL NOTICE**

**1.1 INTRODUCTION**

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

**1.2 PROCUREMENT TIMETABLE**

The timetable set out herein represents HHSC’s best estimate of the schedule that will be followed in the RFP process. If an event in the timetable, such as “Closing Date for Receipt of Proposals,” is delayed, the rest of the timetable dates may be shifted by the same number of days.

	<b>ACTIVITY</b>	<b>SCHEDULED DATES</b>
1.	RFP Public Announcement	June 25, 2024
2.	Pre-Proposal Conference	July 8, 2024 10:00 AM-Meet in Hospital Lobby
3.	Closing Date for Receipt of Questions	July 12, 2024
4.	Addendum for HHSC Response to OFFEROR’S Questions	July 17, 2024
5.	<b>Closing Date for Receipt of Proposals</b>	<b>Monday, July 29, 2024 - No Later Than 5:00 p.m., HST</b>
6.	Proposal Evaluations	July 30, 2024-July 31, 2024
7.	Proposal Discussions ( <b>optional</b> )	<b>August 1, 2024-August 7, 2024</b>
8.	Best and Final Offers ( <b>optional</b> )	<b>August 1, 2024-August 7, 2024</b>
9.	Contractor Selection/Award Notification (on/about)	August 9, 2024
10.	Contract Start Date	TBD

**1.3 ISSUING OFFICER**

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

Frank Schneider, Senior Contract Manager  
Hilo Benioff Medical Center  
1190 Waiianuenue Avenue, Hilo, HI 96720  
Phone: (808) 932-3112  
Email: [hschneider@hhsc.org](mailto:hschneider@hhsc.org)

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#### 1.4 **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 1.2 in order to generate an official answer. All written questions will receive an official written response from HHSC and become addenda to the RFP.

**- IMPORTANT -**

**OFFEROR may request changes and/or propose alternate language to the attached 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 General or Special Terms and Conditions will be entertained after the proposals 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 RFP.**

HHSC reserves the right to reject or deny any request(s) made by OFFEROR. Responses by HHSC shall be due to the OFFEROR no later than the dates stipulated in Section 1.1.

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

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

#### **SEND QUESTIONS TO:**

Frank Schneider, Senior Contract Manager  
Hilo Benioff Medical Center  
1190 Waiianuenue Avenue, Hilo, HI 96720  
Phone: (808) 932-3112  
Email: [hschneider@hhsc.org](mailto:hschneider@hhsc.org)

#### 1.5 **PRE-PROPOSAL CONFERENCE**

HHSC will hold a Pre-Proposal Conference at 10:00 AM HST, on MONDAY JULY 8, 2024 meeting inside the main entrance, in the lobby, to the Hilo Benioff Medical Center located at 1190 Waiianuenue Avenue, Hilo, HI 96720 for all interested Offerors to cover the RFP and for the purpose of viewing the site after the conference. The Hospital staff involved will be present to answer questions and for contractors to view the location of the planned construction site. Attendance at the conference is not mandatory.

All written questions will receive a written response from HHSC and become addendums to the RFP. No other means of communication, whether oral or written, shall be construed as a formal or official response/statement, and such communications may not be relied upon.

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## **1.6 RFP AMENDMENTS**

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

## **1.7 CANCELLATION OF RFP**

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

## **1.8 PROTESTS**

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

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

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

Dan Brinkman  
Regional Chief Procurement Officer  
East Hawaii Region  
1190 Waiianuenue Avenue  
Hilo, Hawaii 96720

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**SECTION 2**  
**SCOPE OF SERVICES**

**2.0 GENERAL**

2.0.1 The Hawaii Health System Corporation, East Hawaii Region (HHSC) is seeking proposals from qualified contractors (Contractor) for a Design – for a Main Switchboard Replacement and CATH LA 2 Feeder Connections at the Hilo Benioff Medical Center.

2.0.2 Intentionally omitted

2.0.3 Intentionally omitted.

**2.1 MINIMUM QUALIFICATIONS**

2.1.1 The awarded Contractor shall have a minimum of three (3) years providing similar type services as requested within the Scope of Services, for a large sized organization such as government entities or commercial centers. **Prior experience working and a base of operations on Hawaii Island is preferred.**

2.1.2 The Contractor shall have adequately trained staff for the work described herein. A listing of key staff that may be assigned to work at HHSC facilities, along with their qualifications and certifications (if any), shall be included with their proposal.

2.1.3 The Contractor shall identify any and all known sub-contractors that it plans to use in the performance of the contract. The Contractor shall identify the capabilities, experience and portion of the work to be performed by the sub-contractor(s). The competency of the sub-contractor(s) with respect to skill, responsibility, business standing and being located on Hawaii Island shall be considered by HHSC when making the award.

**2.2 CONTRACTOR'S SCOPE OF WORK**

2.2.1 Hilo Benioff Medical Center is seeking a Contractor to Design a Main Switchboard Replacement and CATH LA 2 Feeder Connections located at 1190 Waiuanue Ave., Hilo, HI 96720, pursuant to the below Drawings, Specifications and Images dated.

A. Design Replacement to Existing Main Switchboard:

1. The scope of this project is to provide a design for full replacement and upgrade the existing main power distribution (main switchboard) to a higher load capacity.
2. The scope includes the system design needed to the most cost effective, viable, provided in the less disruptive means for the replacement of the distribution system in accordance to the National Electrical Code (NEC), and any applicable local or federal code requirements.
3. Design new main electrical switchboard of the Acute Hospital.
4. Design applicable sections of the main electrical switchboard to meet demands rated at 4,000 amps, 277V/480V, 3 phase. Current performance is significantly dampened by existing equipment.

5. Must design a capacity that will allow ongoing facility projects, upgrades of hospital equipment and future expansion/capacity.
- B. Design CATH LAB2 Feeder/Connection Upgrade
1. In the design scope, redesigning the CATH LAB equipment connection to the existing auto transfer switch instead of directly connected to switchboard (H).
  2. Design of existing (3/0) AWG conductor and conduit.
  3. Design for installation of new (2) 2" conduit.
  4. Design as applicable to Reuse/utilize existing parallel feeder (3/0) AWG connect to the auto transfer switch.
  5. Design for upgrade to make system operational as it relates to the ATS including the commissioning and start-up services.
  6. Design scope includes, but not limited to, design and engineering services including:
    - a. Load calculation.
    - b. Sequence of work/phasing plan as needed to the most cost effective, viable, less disruptive means of the replacement design of the current distribution system in accordance to the National Electrical Code (NEC), and any applicable local or federal code requirements.

Below project drawings and images are applicable to the design:

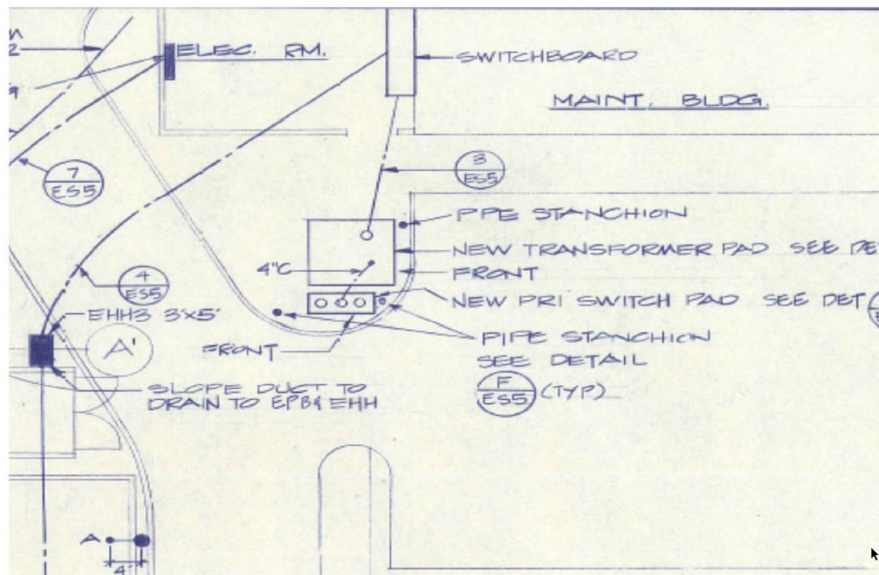


Figure 1: Site Plan.

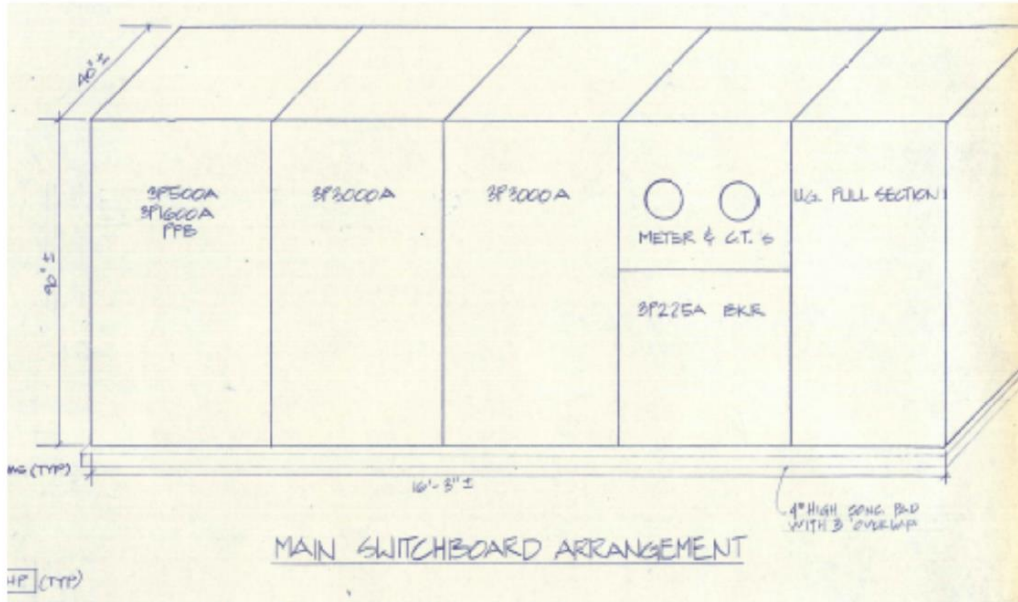


Figure 2: Existing Main Switchboard Arrangement

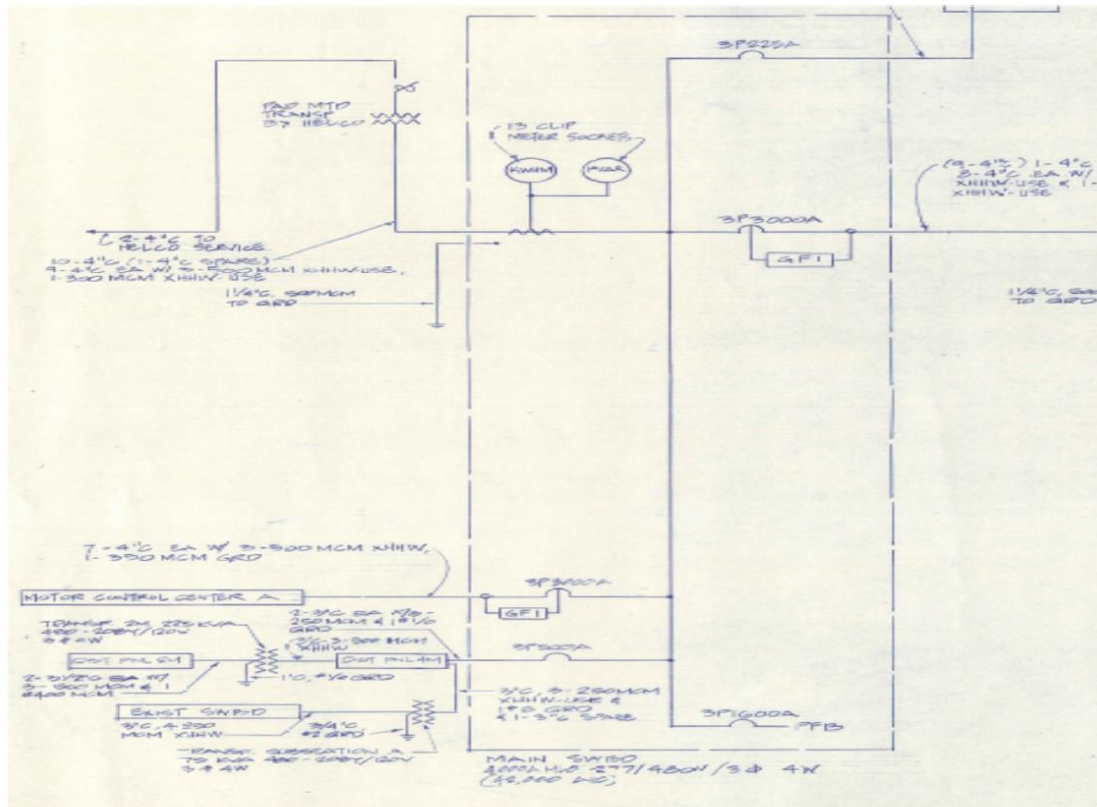


Figure 3: One Line Diagram





Figure 4: Existing Switchboard H / Transfer Switch

2.2.6 This project will utilize Procore's ( [www.procore.com](http://www.procore.com) ) project management and collaboration system for all project documentation. The Contractor will be invited to, and are required to create a Procore username (email) and password if they do not already have one. The Contractor is required to obtain drawings, sketches, RFIs, meeting minutes, coordination drawings, change information, etc. via this application. It will be the responsibility of the Contractor to regularly check and review updated documents as they are added. The Contractor is required to complete a free, one-hour training certification course located at <http://learn.procore.com/procore-certification-subcontractor> within (2) two weeks following contract execution. There will be no cost to the Contractor for use of Procore.

The Contractor shall use the Procore App on-site to provide real-time access to current posted drawings, specifications, RFIs, submittals, project documents, as well as any deficient observations or punch list items.

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## **2.3 WORKING IN THE FACILITY**

2.3.1 The Contractor shall comply with the following Hilo Benioff Medical Center’s Construction Policies; copies of the policies can be found at <https://www.hilomedicalcenter.org/resource-library/>:

- A. 743-150-07: Outside Contractors – Hazard Communications Program (Maintenance) (PDF)
- B. 743-150-08: Outside Contractors Working on the Facility (Maintenance) (PDF)
- C. 800-125-30: Construction and Renovation (Infection Control) (PDF)
- D. 850-122-26: Contractor/Sub-Contractor Safety & Environmental Practices at HMC (Administration) (PDF)

## **2.4 TECHNICAL REPRESENTATIVE**

The Technical Representative shall have the right to oversee the successful completion of contract requirements, including monitoring, coordinating and assessing the CONTRACTOR’S performance; and approving completed work/services with verification of same for the CONTRACTOR’S invoices. The Technical Representative also serves as the point of contact for the CONTRACTOR for “Technical” matters (non-contractual) from award to contract completion. The Technical Representative is:

Kris Wilson  
East Hawaii Region Chief Information Officer  
Phone: 808-932-3802  
Email: [kwilson@hhsc.org](mailto:kwilson@hhsc.org)

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## **SECTION 3** **PROPOSALS**

### **3.1 PROPOSAL PREPARATION**

Offerors shall prepare a written proposal in accordance with requirements stated herein and provide the proposal to the individual at the address indicated below. The proposal, at a minimum, shall include the categories identified below.

- A. The information identified below;
- B. The pricing information identified below;
- C. Proposal Transmittal Cover Sheet, Appendix A;
- D. Acceptance or Notifications of Clarifications of our General Conditions, Appendix B;
- E. Standards of Conduct Declaration, Appendix F; and

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

The General Conditions (Appendix C), the Special Conditions (Appendix D) and the Specifications contained in this RFP packet shall be read by the Offeror, as they will form a part of the contract entered into between the Offeror and HHSC, and they will govern all items and services provided under the contract.

### **3.2 DISQUALIFICATION OF PROPOSALS**

HHSC reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in the RFP and which demonstrate an understanding of the Scope of Services. Any proposal offering any other set of terms and conditions contradictory to those included in the RFP may be disqualified without further notice. HHSC reserves the right to ask for clarification of any item in the proposal.

### **3.3 ELECTRONIC DOCUMENTS:**

HHSC may provide an electronic version of this procurement document. Any unidentified alteration or modification to the original document (or to any Exhibit contained therein) issued by HHSC shall be null and void. In those instances where modifications are identified, the original document issued by HHSC shall take precedence.

### **3.4 SUBMISSION OF PROPOSALS**

Each OFFEROR may submit only one (1) proposal (which includes a technical proposal and a price proposal). Alternate proposals may be accepted. The Issuing Officer must receive one (1) original hardcopy and one (1) electronic copy of the proposal no later than the "Closing Date for Receipt of Proposals", identified in Section 1, paragraph 1.1. **Proposals received after this time/date may be rejected.** Mail or deliver proposals to the following address:

Frank Schneider, Senior Contract Manager  
Hilo Benioff Medical Center  
1190 Waiianuenue Avenue, Hilo, HI 96720

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Phone: (808) 932-3112

Email: [hschneider@hhsc.org](mailto:hschneider@hhsc.org)

Electronic proposals can be submitted via the email address provided: [hschneider@hhsc.org](mailto:hschneider@hhsc.org)

The submitted electronic documents or for hardcopies, the outside cover of the package containing the proposal should be noticeably marked, as follows: **RFP # HHSC FY24-0546: <Vendor Name>**

**3.4.1. Confidential Information:**

- A. If a person believes that a portion of a bid, proposal, offer, specification, or protest contains information that should be withheld due to confidentiality, the Contracting Officer shall so be notified. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. A detailed statement, presented as a cover letter, shall both identify those specific areas considered confidential and also state the specific harm or prejudice which may arise if disclosed.
- B. The information identified by the person as confidential shall not be disclosed until the Contracting Officer makes a written determination. HHSC cannot guarantee that designated data will be kept confidential.
- C. If approved, such confidential information shall be removed from the public record.
- D. An entire bid, proposal, offer, specification, or protest shall not be identified as confidential; only those portions which are considered proprietary, trade secrets or patented information. Pricing shall not be considered as confidential. The proposals are subject to disclosure rules set forth in Chapter 92F, H.R.S. The OFFEROR bears the burden of establishing that the designated data is exempted from the disclosure requirements set forth in chapter 92F.
- E. All proposals and other material submitted by OFFERORS become the property of HHSC and may be returned only at HHSC's option.

**3.5 PROPOSAL INFORMATION**

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

**3.5.1. Technical Proposal:**

The Offerors should prepare their technical proposals to highlight all the elements of Scope of Service the Offeror's program meets. The Offeror's experience and past performance providing the requested services will be evaluated on the extent of its success in managing and integrating projects relevant to that defined in this Solicitation and General Requirements. Therefore, the

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Offeror is advised to submit any and all information which documents successful and reliable experience in past performances as related to this RFP.

**References.** References should be verifiable and be able to comment on the Offeror's related experience. The Offeror should submit, at a minimum, **two (2) professional references** for similar services provided over the last three (3) years that would demonstrate the Offeror possesses an understanding and the experience in providing the required services.

Quality of staff will be an area considered. The firm's clients' assessment of the quality of staff provided will be an element specifically sought after during reference verifications. The Offeror should provide **an organizational chart** which clearly shows the reporting and lines of authority; to include all proposed key personnel and any proposed subcontractors. The organizational chart should identify the prime point of contact between the Offeror and HHSC.

Offeror should provide a schedule for completing the design, requesting and obtaining permits as applicable and monitoring construction and installation of the improvements.

### **3.5.2 Proposed Method of Approach:**

The Offeror should utilize a written narrative or any other printed technique to demonstrate its ability to satisfy the requirements of the Scope of Services. When appropriate, the narrative should describe a logical progression of tasks and efforts starting with the initial steps or tasks to be accomplished and continuing until all proposed tasks are fully described. The language of the narrative should be straightforward and limited to facts, solutions to problems, and plans of proposed action. The usage of technical language should be minimized and used only when necessary to describe a technical process.

### **3.5.3 Cost:**

The evaluation of the category of Cost, as requested in RFP Section 4.0, shall be based on the prices, as indicated on the **Compensation and Fee Schedule** submitted with Offeror's proposal.

HHSC is not required to respond to each Offeror for further negotiations, even though that option is available.

### **3.5.4. Additional Information:**

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

## **3.6 INTENT TO PROVIDE CERTIFICATE OF INSURANCE**

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

## **3.7 EXCEPTIONS TO GENERAL CONDITIONS:**

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- 3.7.1 If an Offeror takes any exception to any term, condition or requirement included in this solicitation document, such exception shall be submitted to the Contracting Officer prior to the date of Receipt of Questions as listed in the RFP Timetable.
  - 3.7.2 If an Offeror includes in its proposal exceptions that are not covered by paragraph 3.7.1, above, and that are not approved in writing by the Contracting Officer, such exceptions shall be null, void and without force and shall not be considered, and may negatively affect the proposal evaluation based on the published evaluation criteria or may result in rejection of the proposal.
  - 3.7.3 To the extent they are inconsistent with the terms of the Solicitation, the Offeror's preprinted or standard terms will not be considered by HHSC as a part of any resulting Contract.

### **3.8 OFFEROR'S RESPONSIBILITY**

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

### **3.9 DISCUSSIONS**

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

**SECTION 4**

**COMPENSATION & FEE SCHEDULE**

Vendor Name \_\_\_\_\_

4.0.1 The undersigned Offeror hereby proposes to furnish and pay for all materials, tools, transportation, equipment, labor, all insurances, and other incidental work necessary for the Hilo Benioff Medical Center - RFP No. FY24-0546 Design - Main Switchboard Replacement and CATH LA 2 Feeder Connections together with equipment and all necessary appurtenances and work incidental thereto in accordance with the true intent and meaning of the Plans, Request for Proposal document, Offeror's Proposal, Specifications, Interim General Conditions (1999 Edition) and Special Conditions, made a part of these specifications by reference; and any other form of pertinent proposed contract documents which have been attached herein and hereby made a part of the project specifications and contract documents, for the Total Lump Sum Price of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

which includes all applicable taxes and expenses for the Project.

4.0.2 Complete a breakdown of your pricing for this Project.

4.0.4 Offerors shall include a listing of the Main business address for each subcontractor proposed for this Project.

4.0.5 The Offeror shall provide the applicable labor rates and markups (if any) that would be applicable to change orders.

4.1 RECEIPT OF ADDENDA

Receipt of the following addenda issued by the HHSC is acknowledged by the date (s) of receipt indicated below:

Addendum No. 1 \_\_\_\_\_ Addendum No. 5 \_\_\_\_\_

Addendum No. 2 \_\_\_\_\_ Addendum No. 6 \_\_\_\_\_

Addendum No. 3 \_\_\_\_\_ Addendum No. 7 \_\_\_\_\_

Addendum No. 4 \_\_\_\_\_ Addendum No. 8 \_\_\_\_\_

It is understood that failure to receive any such addendum shall not relieve the Contractor from any obligation under this Proposal as submitted.

4.2 ALL JOINT CONTRACTORS OR SUBCONTRACTORS TO BE ENGAGED ON THIS PROJECT

4.2.1 The Contractor agrees the following is a complete listing of all joint contractors or subcontractors covered under Chapter 444 HRS, who will be engaged by the Contractor on this project to perform the required work indicated pursuant to East Hawaii Region Policies. The Contractor certifies that it and its listed subcontractors or joint contractors together hold all licenses necessary to complete the Work, and understands that failure to comply with this requirement may be just cause for rejection of the bid.

4.2.2 'A' General Engineering Contractors and 'B' General Building Contractors are reminded that due to the Hawaii Supreme Court's January 28, 2002 decision in *Okada Trucking Co., Ltd. v. Board of Water Supply, et al.*, 97 Haw. 450 (2002), they are prohibited from undertaking any work, solely or as part of a larger project, which would require the general contractor to act as a specialty contractor in any area in which the general contractor has no license. Although the 'A' and 'B' Contractor may still bid on and act as the "Prime Contractor" on an 'A' or 'B' project (*See, HRS § 444-7 for the definitions of an "A" and "B" project.*), respectively, the 'A' and 'B' contractor may only perform work in the areas in which they have the appropriate contractor's license (*An 'A' or 'B' Contractor obtains 'C' specialty contractor's licenses either on its own, or automatically under HAR § 16-77-32*). The remaining work must be performed by appropriately licensed entities. It is the sole responsibility of the Contractor to review the requirements of this Project and determine the appropriate licenses that are required to complete the Project.

4.2.3 The Contractor shall provide the complete firm name, license number and nature and classification description by each joint contractor or subcontractor. For projects with Alternate(s), Contractors shall fill out the supplementary schedule and list the Joint Contractor or Subcontractor who will be engaged for the respective Alternate Work. Do not include any Joint Contractor or Subcontractor previously listed.

4.2.4 Contractors shall list only one joint contractor or subcontractor per required specialty contractor's license.

4.2.5 All joint contractors or subcontractors are subject to HHSC's approval, and HHSC shall have the right to refuse, in its discretion, any joint contractor or subcontractor named by the Contractor.



HHSC shall discuss any refusal of a joint contractor or subcontractor with the Contractor and shall assist the Contractor in naming a replacement acceptable to HHSC.

Class	Classification Description	License	Complete Firm Name Joint Contractor or Subcontractor

4.3 COMPENSATION

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

4.3.1 HHSC shall pay CONTRACTOR progress payments as work progresses as designated by the Pricing Schedule submitted with the Offer, for services and materials rendered pursuant to and during the term of this agreement, inclusive, all in arrears, subject to the prior receipt of the following written documentation, which must be submitted on the American Institute of Architect’s (AIA) Application and Certificate for Payment (Form G702) and Continuation Sheet (Form G703), and include:

- A. the date(s) of the service(s) performed;
- B. the contract number (HHSC 24-0546);
- C. a description of the tasks performed with such detail as the Technical Representative may reasonably request;
- D. the dollar amount of work completed and outstanding;
- E. signed, certified, notarized and dated by the Offeror’s delegated signatory.

4.3.2 The CONTRACTOR'S invoice is due by the tenth (10th) day of the month immediately following the month in which the services were provided. HHSC shall pay sums due FORTY-FIVE (45) days

after receipt of CONTRACTOR'S invoice or the last day of the month immediately following the month in which the services were provided, whichever is later. Failure to submit an invoice on the prescribed forms or to include the information required may delay payment processing.

4.3.3 HMC reserves the right, during construction, to decrease or increase the scope of work, to decrease or increase construction schedule, because of limitations of funds, with no adjustment in unit prices other than that specified hereinabove.

4.3.4 It is understood and agreed that the contractor shall be responsible for bearing the cost of all inspections, permits and specialty inspections including testing, etc., as required for the project's scope of work. The Contractor is also responsible for completing and providing As-Built drawings by a licensed engineering or architectural firm, at his/her own expense.

#### 4.4 OTHER CONDITIONS

4.4.1 Anti-collusion Certification - In accordance with HAR 3-122-192, by submitting this proposal, the Contractor is declaring that the price submitted is independently arrived at without collusion.

4.4.2 Certification for Safety and Health Programs for Offers in excess of \$100,000 - In accordance with HRS 396-18, by submitting this proposal, the Contractor certifies that its organization will have a written safety and health plan for this Project that will be available and implemented by the date stipulated in the Notice to Proceed. Details of the requirements of this plan may be obtained from the Department of Labor and Industrial Relations, Occupational, Safety and Health Division (HIOSH).

4.4.3 Labor and Wage Certification - In accordance with HRS 104 Wages and Hours of Employment on Public Works Construction Projects in excess of \$2,000, by submitting this proposal, the Contractor will comply with the requirements of chapter 104 and certifies that:

A. Individuals engaged in the performance of the contract on the job site shall be paid not less than wages that the Director of Labor and Industrial Relations shall have determined to be prevailing for corresponding classes of laborers and mechanics employed on public works projects including any periodic adjustments to the prevailing wages during the performance of the contract;

B. Overtime compensation shall be at one and one-half times the basic hourly rate plus fringe benefits for hours worked on Saturday, Sunday, or legal holiday of the State or in excess of eight hours on any other day; and

- C. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety shall be fully complied with.
- 4.4.4 For bids of \$25,000 or more, the Contractor shall comply with the following chapters of the Hawaii Revised Statutes (HRS): Chapter 237 HRS (general excise tax); Chapter 383 HRS (employment security - unemployment insurance); Chapter 386 HRS (workers compensation); Chapter 392 (temporary disability insurance); Chapter 393 HRS (pre-paid health care); and shall be incorporated or organized under the laws of the State, or be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract. Contractor shall complete the CERTIFICATION OF COMPLIANCE form at the end of the PROPOSAL and submit it with their bid.
- 4.4.5 It is understood that HMC reserves the right to reject any or all bids, or to accept other than the low bid, as may appear in the best interest of the work. It is also understood that the bid shall be awarded only to a Contractor who is currently licensed in the State of Hawaii.
- 4.4.6 The Offeror hereby agrees that if he is awarded this contract, he will enter into and execute the same within ten (10) days from the date of notice to award and furnish a performance bond in the amount and character required.
- 4.4.7 The Offeror further agrees that if awarded the contract and if he FAILS to enter into and execute the contract and furnish the required bonds within the specified time, the Owner may determine the Offeror has abandoned the contract and thereupon forfeiture of the security accompanying his proposal shall operate and the same become property of the Owner.

**24-0546**  
**CERTIFICATION OF COMPLIANCE**

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

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

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

Furthermore, \_\_\_\_\_ acknowledges that making a  
(Company Name)

false certification shall cause its suspension from further offerings or awards pursuant to Hawaii Revised Statutes.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **SECTION 5 EVALUATION**

### **5.1 INTRODUCTION**

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

### **5.2 EVALUATION PHASES**

Evaluation phases will be conducted as follows:

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

#### **5.2.1 PHASE 1--EVALUATION OF MANDATORY REQUIREMENTS**

The evaluation of the mandatory requirements, as listed below shall be based upon a "pass/no pass" basis. The purpose of this phase is to determine whether an Offeror's proposal is sufficiently responsible and responsive to RFP requirements to permit a complete evaluation, i.e. responsible in terms of "Does the Offeror have the capability to perform fully the requirements of the Specifications"; and responsive in terms of "Were proposal documents, as identified below, received and contain the required information?" Failure to meet or submit any mandatory requirement ("no pass") with the proposal may be grounds for deeming the proposal non-responsible, non-responsive or both and may disqualify the proposal.

Proposal "**Mandatory Requirements**":

- A. Proposal Transmittal Cover Sheet (Appendix A)
- B. Acceptance (or Notification of Clarifications) document (Appendix B)
- C. Technical Proposal (Experience & Method of Approach)
- D. Cost Proposal, including Proposal Schedule for Hilo Medical Center Expansion Phase 1 (Completed Compensation & Fee Schedule)
- E. Proposal Submission Checklist (Appendix E)

#### **5.2.2 PHASE 2--TECHNICAL PROPOSAL EVALUATION**

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

**5.2.3 PHASE 3--COST PROPOSAL EVALUATION**

Evaluation of the cost proposal shall be conducted using the cost proposal category identified in Section 4 and paragraphs 5.3, the value weight percentages identified in paragraph 5.3; and, the evaluation scoring system identified in paragraph 5.4.

**5.2.4 PHASE 4--PROPOSAL DISCUSSIONS (OPTIONAL)**

HHSC may conduct discussions with Offerors. Offeror’s proposals may be accepted without discussions. HHSC shall inform Offerors of specific discussion topics and issues; and, schedule discussions proceedings.

**5.2.5 PHASE 5--BEST AND FINAL OFFER (OPTIONAL)**

Offerors may be requested to submit a “Best and Final” offer. “Best and Final” offers shall be evaluated and “scoring” of the Offeror’s proposal adjusted, accordingly. If a “Best and Final” offer is requested but not submitted, the previous submittal shall be construed as the “Best and Final” offer.

**5.2.6 PHASE 6--RECOMMENDATION FOR CONTRACT AWARD**

The Evaluation Committee shall make a recommendation of its proposal evaluation findings/rankings and provide recommendation for award of contract to the head of the purchasing agency.

**5.3 EVALUATION CATEGORIES AND VALUE WEIGHT PERCENTAGES**

<b>Mandatory Requirements</b>	Pass/No Pass
	<b><u>Value Weight</u></b>
<b>Technical Proposal</b>	
<b>Experience &amp; Expertise of Firm / Key Personnel .....</b>	20%
<b>Method of Approach to Scope of Services.....</b>	20%
<b>Project Schedule .....</b>	20%
<b>Cost Proposal .....</b>	<u>40%</u>
<b>TOTAL.....</b>	<b>100%</b>

**5.4 EVALUATION SCORING SYSTEM**

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

The evaluation categories are assigned a value percentage, as determined by HHSC, totaling 100%. The Evaluation Committee will rate each category and assign a score based on the total percentage points available for that category. For example, if the percentage points for Experience and Expertise of the Firm are 40%, the maximum number of points that can be awarded in that category are 40. The Offeror's total score will be determined by having the Evaluation Committee assign points in each category to each Offeror based on their evaluation of that section of the Offeror's proposal; and totaling the score for all categories.

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

**SECTION 6**  
**AWARD OF CONTRACT**

**6.1 AWARD OF CONTRACT**

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

**6.2 CONTRACT AWARD NOTIFICATION**

An official "notice of award" notification will be provided to the successful Offeror; and, a "notice of non-award" notification shall be provided to all un-successful Offerors.

**6.3 CONTRACT DOCUMENT**

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

**6.4 GENERAL CONDITIONS**

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



**PROPOSAL (Email, Dropoff, Deliver) TRANSMITTAL COVER SHEET  
RFP #HHSC FY 24-0546**

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

Organization: \_\_\_\_\_  
(If a corporation, partnership or limited liability company, provide the exact legal name as registered with the State Department of Commerce and Consumer Affairs)

Mailing Address: \_\_\_\_\_  
(Post Office Box is not acceptable)

Federal Tax Identification No.: \_\_\_\_\_

Contractor's License No.: \_\_\_\_\_

Contact: \_\_\_\_\_ Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_ Facsimile No.: \_\_\_\_\_

**Certification**

The undersigned has carefully examined the Specifications outlined in this RFP and the general and special conditions presented in the proposal packet and hereby proposes to furnish at his own expense all labor and all items necessary to complete all work as shown and called for therein, all according to the true intent and meaning of the plans, specifications, general and special conditions. The undersigned also certifies that the information provided in this proposal is accurately represented.

\_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

24-0546  
ACCEPTANCE (OR NOTIFICATION OF CLARIFICATIONS) DOCUMENT

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

On behalf of \_\_\_\_\_, Offeror, the undersigned does agree that it does not have any exceptions to the following General Conditions.

**Signature:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Or**

\_\_\_\_\_, Offeror, has the following clarifications and exceptions to the following General Conditions:

(Please attach additional pages, as required)

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

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1. **COORDINATION OF SERVICES BY HHSC.** The "head of the purchasing agency" (through the Technical Representative(s) or other designee as specified in the Agreement) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Agreement. The CONTRACTOR shall maintain communication with the head of the purchasing agency through the Technical Representative(s) or other designee at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Agreement. "Purchasing agency" as used in these General Conditions means and includes any HHSC region or facility which is authorized to enter into contracts for the procurement of goods and services. The term "HHSC" refers to HHSC and the region or facility entering into this Agreement. 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.**
- 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.
  - 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.
  - 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.
  - 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.
  - 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.
  - 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.**
- The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.
  - 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.**
- 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.
  - 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:
    - The Assignee assumes all of the CONTRACTOR'S obligations;
    - The CONTRACTOR remains liable for all obligations under this Agreement but waives all rights under this Agreement as against HHSC; and
    - The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
  - 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.
- d. CONTRACTORS with an office located on the same island as the site of the services to be provided pursuant to this Agreement are not entitled to per diem or transportation expense reimbursement unless explicitly specified in the Agreement.
- 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.

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

**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](http://www.hhsc.org)). The CONTRACTOR, by signing this contract, acknowledges that it has read said description, and that the CONTRACTOR knows of the fact and substance of the Corporate Compliance Program, which governs operations at all facilities of 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](http://www.hhsc.org/BAA)). If CONTRACTOR is a Business Associate as defined in the above laws, said Business Associate Addendum is hereby incorporated by reference and made a part of this Agreement as if fully repeated herein. By signing this Agreement, CONTRACTOR agrees to fully comply with, and be bound by, all terms set forth in the Business Associate Addendum, as it may be amended from time to time.
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](http://www.hhsc.org/GC)) and to comply with such other instructions as provided by HHSC in the use of HHSC computer systems. CONTRACTOR shall not use the HHSC systems or data for any purpose other than to fulfill its duties under this Agreement.
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

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## SPECIAL CONDITIONS

The GENERAL CONDITIONS are hereby amended with the addition of the following:

- 4.0 Effective Date:** The effective date of this contract shall be the date that the Contracting Officer signs the Offer and Award page of this document unless otherwise stated in this document.
- 5.0 Time of Performance:** The Contractor shall submit the Progress Schedule with their submitted proposal. The Contractor and HHSC will agree to the Progress Schedule, and the Contractor shall complete all work by the schedule's completion date. The Agreement's expiration date will be thirty (30) days from the schedule's completion date.
- 7.0 Notice of Debarment, or Suspension:** The CONTRACTOR must provide written notice to Hilo Medical Center's Contracting Officer upon receipt of notification that the CONTRACTOR has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity. HHSC may, upon receipt of such written notice, immediately terminate this Agreement if HHSC determine that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.
- 8.0 Anti-Kickback/Stark Law:** The parties to this Agreement certify that they shall not violate the Anti-Kickback Statute or the Stark Law with respect to the performance of this Agreement.
- 10.0 Exemption From Hawaii Revised Statutes Chapter 103D:** East Hawaii Region of HHSC is exempt from HRS Chapter 103D for this contract. References to sections of that statute or related administrative rules do not evidence intent to waive the exemption. References to the statute and rules herein are for convenience where it is our intent to incorporate some of the language of the referenced statute or rules as a matter of policy.

**PROPOSAL SUBMISSION CHECKLIST**

<b><u>Items Submitted</u></b>	<b><u>For HHSC Use</u></b>	
_____	_____	Proposal Received "On-Time"
_____	_____	Proposal Submitted in Negometrix e procurement system.
_____	_____	One Proposal Hardcopy Delivered to the Contract Management Office
_____	_____	Proposal Transmittal Cover Sheet (Appendix A)
_____	_____	Official Business Letterhead
_____	_____	Authorized Signature
_____	_____	Acceptance (or Notification of Clarifications) document (Appendix B)
_____	_____	<b>Technical Proposal</b>
_____	_____	References
_____	_____	Organizational Chart
_____	_____	Method of Approach
_____	_____	Project Schedule
_____	_____	<b>Pricing Schedule &amp; Compensation</b>
_____	_____	Schedule for Hilo Benioff Medical Center
_____	_____	Not To Exceed Amount
_____	_____	<b>Other Mandatory Items:</b>
_____	_____	Non-Acceptance of "Specifications" Requirement(s)
_____	_____	All Data and Information Required by the RFP
_____	_____	Proprietary Documents Request (if any)
_____	_____	Proposal Submission Checklist
_____	_____	Standards of Conduct Declaration

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

**STANDARDS OF CONDUCT DECLARATION**

For the purposes of this declaration:

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

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

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

1. CONTRACTOR   (is)     (is not)   a legislator or an employee or a business in which a legislator or an employee has a controlling interest.\*
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a State or HHSC employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the State or HHSC within the preceding two (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been a State or HHSC employee, or in the case of the Legislature, a legislator.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, 1) within the past twelve (12) months, served as a State or HHSC employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

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

**CONTRACTOR**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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

**END OF DOCUMENT**

**# 24-0546**