

REQUEST FOR PROPOSALS RFP #HHSC FY18 -0214

ANESTHESIA MANAGEMENT SERVICES

FOR

HILO MEDICAL CENTER

Due Date for Proposals in response to this Solicitation:

Thursday, May 1, 2018, no later than 2:00 PM, HST

SECTION 1. Introduction and Timeline

1.1 INTRODUCTION

The purpose of this Request for Proposal (RFP) is to obtain proposals from qualified organization for provision of comprehensive anesthesia management services at Hilo Medical Center. The desired services include provision of anesthesia care, care coordination, recruitment, retention, and quality improvement. A contract for the service will be awarded to the organization with the best overall proposal. If no proposal meets the quality, service, or financial needs of Hilo Medical center, no contract will be awarded. It is expected that the contractor will keep the current anesthesia service intact and operational during any transitional periods and program development associated with the provision of services. It is also expected that all clinical services will be provided in a quality-focused, cost-effect manner.

This Request for Proposal is issued by the Hawaii Health Systems Corporation (“HHSC”), an agency of the State of Hawaii. Thank you for your interest in submitting a proposal for this solicitation. The RFP process is used to obtain detailed proposals from qualified organizations and ensure that they are evaluated fairly and equitably. Organizations interested in submitting a proposal in response to this RFP shall be referred to as “Offerors” and the agency that is awarded a contract under this RFP shall be referred to as “Contractor”.

1.2 PROCUREMENT TIMETABLE

The timetable below represents HHSC’s best estimate of the schedule for this specific RFP process. If any event of the timetable is significantly delayed, the rest of the timetable dates may be shifted by the same number of days. Offerors will be advised promptly, by addendum to the RFP, of any and all changes in the timetable.

<u>Event</u>	<u>Schedule date</u>
1. RFP Issued & Public Announcement	January 16, 2018
2. Submit notice of intent to submit Proposals	February 23, 2018
3. Pre-Proposal Meeting including Site Visit	Scheduled upon request. Visits to be on or before March 16, 2018
4. Closing Date for Receipt of Questions	March 30, 2018
5. Addendum - HHSC Response to Offerors’ Questions (if needed)	April 9, 2018
6. Closing Date for Receipt of Proposals	May 1, 2018
7. Proposal Evaluations	May 7-11, 2018

8.	Proposal Discussions (optional)	May 14-25, 2018
9.	Best and Final Offers (optional)	May 28-31, 2018
10.	Contractor Selection/Award Notification (on/about)	June 4, 2018
11.	Contract Tentative Start Date	September 30, 2018

1.3 SUBMISSION OF INTENT TO SUBMIT PROPOSAL

Offerors should submit, in writing, by February 23, 2018 their intent to submit (or not submit) a proposal. Please submit your notification of intent to:

Sam Nelson
Senior Contract Manager
1190 Waiianuenue Ave Hilo, HI 96720
Snelson1@hhsc.org

1.4 SUBMISSION OF QUESTIONS, CLARIFICATION REQUESTS

Offerors are encouraged to submit written questions and requests for clarification pertaining to the RFP. Questions must be submitted in writing via hand-delivery, electronic mail, facsimile or post mail to the address below. These must be received no later than the deadline stated in section 1.2 above.

Sam Nelson
Senior Contract Manager
1190 Waiianuenue Ave Hilo, HI 96720
Snelson1@hhsc.org

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

1.5 SITE VISIT

At least one site visit to Hilo Medical Center will be required to meet the conditions of this RFP. The dates and times for site visits will be negotiated with those Offerors who have indicated that they intend to submit a proposal. Further information is included under the section on evaluation.

1.6 Request for Clarifications and Best and Final Offer Request

HHSC reserves the right to request proposal clarifications, updates, and Best and Final Offers from Offerors. that after initial review of all proposals are within the competitive range (including as needed follow on site visits for in person proposal review and negotiations).

SECTION 2. SCOPE OF SERVICE.

2.1 BACKGROUND

Hilo Medical Center is the largest facility in the Hawaii Health Systems Corporation. Established in 1897, HMC has grown from a 10-bed hospital erected by the Hawaiian Government into the present facility with capacity for up to 275 licensed beds. Current capacity, adjusted for efficiency, includes 157 licensed acute care beds including a 12- bed psychiatric unit, and a separate 27 bed licensed skilled nursing facility. The current facility was built in 1984 on roughly 20.5 acres of land adjacent to the picturesque Wailuku River. Also on the campus are the Hawaii Pacific Oncology Center, and the Yukio Okutsu Veterans Center. HMC is the largest employer in Hilo providing roughly 1200 jobs.

Hilo Medical Center is an active teaching and training site. Hilo Medical Center has a stand-alone 3 year Family Medicine Residency Program with a total complement of 12 residents. HMC currently hosts nursing students in training from University of Hawaii at Hilo and Hawaii Community College. The hospital is also an active training site for students from the College of Pharmacy during clinical training.

Patient services include:

24-hour Emergency Care

Level III Trauma Center

Critical Care Service

General Medical Services

Medical specialty services including Gastroenterology, Cardiology and Neurology

General Surgery Services

Surgical specialty services including Orthopedic surgery, Urology, ENT and Vascular surgery.

CT, MRI and Interventional Radiology services.

Medical Oncology.

During Calendar Year 2017, the Anesthesia service provided the following anesthesia care services at Hilo Medical Center: (Please refer to **Appendix C** for a detailed breakdown of services for the calendar year 2016.)

- a. Scheduled surgeries in HMC Operating Suite

- b. Urgent and Emergent surgeries including acute trauma cases in the HMC Operating Suite
- c. Anesthesia services for Labor and Delivery including epidural anesthesia and general anesthesia as needed for Cesarean Sections.
- d. Anesthesia services for Cardioversion, Transesophageal echocardiograms, and Angiography
- e. On Call services for all nights and weekends.

Hilo Medical Center seeks to optimize the use of the surgery suite through operational efficiencies and organic growth. Although there is no guarantee that growth will occur, consideration of future workloads and staffing is advisable in the RFP. A general outline of current status and potential three year goals is included in the table included in the section 2.3 on scope of service which follows.

2.2 Agreement start date and agreement term

HMC has no current arrangement with any organization for the provision of anesthesia management services. The expected start date for provision of services under this request would be September 30, 2018. The term is proposed to be for an initial two year period with an option to extend one additional year.

2.3 Scope of services.

The Contractor shall provide anesthesia services at Hilo Medical Center. Subject to the terms stated in the HHSC General Conditions included with this RFP, the Contractor shall employ or subcontract with qualified health care providers to provide the Services. The contractor shall provide adequate licensed and credentialed practitioners to be able to provide anesthesia coverage twenty-four hours daily every day of the year. Providers shall at all times be in communication with and responsive to other members of the hospital based health care team.

Anesthesia Provider qualifications are set forth in the Medical Staff Policies and Procedures. These are included as **Appendix D** of this document.

Anesthesia care needs at Hilo Medical Center include but are not limited to the following:

- a. Full anesthesia coverage for scheduled surgical cases at HMC including pre-operative evaluation, intraoperative anesthesia, and post-operative care.
- b. Continuous coverage and provision of services for labor and delivery including epidural anesthesia and general anesthesia for Cesarean Delivery.
- c. Continuous coverage and provision of service for emergency surgery including trauma patients
- d. Consultative services to ED physicians, surgeons, and Hospitalist physicians, as required.
- e. Participation with the Family Medicine Residency program in teaching and training of Family Medicine Residence during inpatient training activities.

- f. Contractors Anesthesia medical director will routinely meet with nursing operative services director to actively manage and monitor operational performance of the surgical suites. The Anesthesia medical director will closely collaborate with their nursing counterpart to ensure an efficient, safe, customer and patient focused delivery of service.

Service	Current status	3 year goal
HMC Operating Suite	3 Rooms open M-F (12 hours) 4 th room when needed Saturday and Sunday as needed	4 Rooms open M-F Saturday room if need justified Saturday and Sunday as needed
HMC OB-GYN / Emergency	1 Anesthesiologist on call	1 Anesthesiologist on call
On Call	First and Second call nights First and Second call Saturday and Sunday	First call / second call First and Second call Saturday and Sunday
Angio Suite / Cardiology	As needed	Staffing model to be assessed and implemented as needed. Anticipate growing need from cardiology.
Pre-operative evaluation	Not formalized	Formalized process Assess need for pre-operative clinic
Staffing Model	All Board Certified Anesthesiologist (one grandfathered)	Maintain physician model for core services. including angio suite and cardiology

Performance requirements for practitioners on the Anesthesia Service include but are not limited to the following:

- a. Provide anesthesia services at Hilo Medical Center with on-site coverage 24 hours each day on every day of the year.
- b. Respond promptly and professionally to all calls and pages.
- c. Provide and document pre-anesthesia assessments on all scheduled high risk patients the day prior to surgery beginning no later than 12 months after the contract start date.
- d. Provide anesthesia for scheduled surgical cases with a same-day cancellation rate of less than 5%
- e. Be available to respond to ED physicians call within 30 minutes
- f. Respond to Labor and Delivery for emergency C-sections with 30 minutes.
- g. Provide anesthesia care for emergency procedures within 30 minutes.
- h. Complete all documentation in a timely manner and in keeping with the

- polices and procedures of the hospital and medical staff.
- i. Utilize the existing EMR and AIMS for documentation and order entry according to current policy.
- j. Participate actively in all quality improvement and utilization review activities.
- k. Participate actively with all clinical documentation improvement initiatives.
- l. Participate in AIDET techniques and follow HCAPS scores.

2.4. Hospital's Duties.

Hospital Specific duties for the Anesthesia providers shall include, but are not limited to, the following:

- a. assist in accreditation and compliance activities;
- b. develop and maintain patient safety and performance improvement programs to monitor and improve the quality of care provided;
- c. maintain professional liaison with medical, nursing, and ancillary staff; actively participate in the ICU, Pharmacy and Therapeutics Utilization Review, and other appropriate Committees;
- d. MLP mentoring and proctorship;
- e. Anesthesia and Surgical program strategic planning and development and;
- f. Maintain appropriate staffing for the pre-operative, operative, and post operative areas.

2.5 Performance Criteria

HMC and CONTRACTOR's Medical Directors shall meet within two (2) months of the effective date of any agreement executed as a result of this RFP, but in no event any later than the start date of the Agreement, to finalize performance criteria.

Performance criteria for the Anesthesia Service are detailed in **Appendix E.** and shall include, but not be limited to:

- a. On time starts for scheduled first cases.
- b. Pre-operative assessments performed before elective surgery for high risk patients or high risk procedures to begin no later than 12 months from the start of the contract.
- c. Rate of cancellation on day of surgery.
- d. MIPS measures as selected
- e. Dental injuries, Intra-Op cluster, and PACU cluster adverse events.

The format of the performance criteria report and its timing shall be mutually agreed upon by HMC and CONTRACTOR's Medical Director.

The CONTRACTOR will share with the HOSPITAL all information required to assess

the success of the program. The CONTRACTOR's Medical Director or Business Representative shall meet with the HOSPITAL'S CMO and CNO regularly and the CEO or CFO as needed, to review this information.

The Services shall at all times be subject to applicable state, local and federal laws. CONTRACTOR shall perform all Services under any agreement executed as a result of this RFP in accordance with any and all regulatory and accreditation standards applicable to HHSC, including, without limitation, those requirements imposed by the Joint Commission on Accreditation of Healthcare Organizations, the Medicare/Medicaid conditions of participation, and any amendments thereto. CONTRACTOR and its Providers shall comply with the bylaws, rules and regulations, policies and directives of HHSC and its Medical Staff. Anesthesia providers are active members of the Medical Staff at Hilo Medical Center and retain all the rights, privileges, and responsibilities of membership in the Medical Staff.

CONTRACTOR agrees not to use, or permit any of its Providers to use, any part of HMC for any purpose other than the performance of Services or the provision of other clinical services within the scope of such Physician or Provider's clinical privileges. Without limiting the generality of the foregoing, CONTRACTOR agrees that no part of the premises of HMC shall be used at any time as an office for private practice or delivery of care for non-HMC patients.

2.6 Hospital Responsibly

HMC shall provide the CONTRACTOR with:

1. Call Room and office space.
Exclusive use of an in-house call room and office space of appropriate size and furnishing for the Practitioner Services. This space shall be equipped with computers with high speed Internet connection. The call room should be provided with a minimum of a bed, toilet and access to a shower.
2. Equipment, supplies and services.
Such equipment, facilities, supplies, utilities and services, as the HOSPITAL determines from time to time to be necessary for the delivery of Services. All items supplied by HMC pursuant to this paragraph shall remain the exclusive property of the HMC.
3. Telephone access.
HMC shall facilitate CONTRACTOR access to and use of HMC telephone at no charge to receive standard incoming calls and to place outgoing calls locally and to the U.S. Mainland and Canada. CONTRACTOR shall reimburse the HMC for all incoming collect calls that CONTRACTOR accepts and outgoing International long distance calls made by the CONTRACTOR.
4. Wi-Fi Access.

HMC shall provide Wi-Fi access to the all practitioners on their smart phones and tablet devices. This service will be provided on proper registration of the device with IT and will be subject to the firewall restrictions of the HMC IT policy.

5. Access to the electronic health records (EHR).
Access to EHR will be provided by HMC with both on-site and remote access. These records include all patient medical and billing information necessary for the CONTRACTOR to bill for professional services rendered by the CONTRACTOR. Any such disclosures and use shall be subject to the applicable requirements and restrictions set forth in 45 CFR Parts 160 and 164, as amended from time to time. Both CONTRACTOR and HHSC acknowledges that successful business and clinical operations of the hospitalist Services require consistent and reliable access to the medical records. HMC agrees to fully accommodate CONTRACTOR's need for timely and complete access to medical records.
6. Anesthesia information management system (AIMS).
Access to the Plexus Anesthesia management system currently interfaced with our EMR will be provided by HMC. The purchase, subscription, and maintenance of this system is the responsibility of HMC. All optimizations of the system will be implemented in collaboration with the Anesthesia practitioners.
7. Access to records.
HMC will provide continuous access to all records and other supporting documentation necessary for the billing of Services provided by CONTRACTOR pursuant to any agreement executed as a result of this RFP shall be made available to CONTRACTOR. CONTRACTOR will be expected to recruit and hire, at its sole expense, clerical support in order to ensure that records are accessed and copied or transmitted timely in accordance with this section and the preceding section. This clerical person will distribute clinical information appropriately to CONTRACTOR and Medical Staff members, and will share administrative space with CONTRACTOR's Providers.

To the extent allowable by law, HMC will provide CONTRACTOR with access to all medical records necessary for medical staff activities and requirements, and for CONTRACTOR's risk management, billing and collection activities. HMC medical records are the property of HMC and not CONTRACTOR, and shall remain in HMC possession at all times.

8. Data Interface.
HMC will support the creation of a data interface that will allow the CONTRACTOR to use a proprietary software Program to track patient census and billing data. All costs associated with acquiring and maintain a patient tracking program are the sole responsibility of the CONTRACTOR. The patient tracking program must be reviewed by the HMC IT department and be

determined to be compatible and secure. The CONTRACTOR will be responsible for the cost of building the interface and the HMC IT department will accept responsibility to maintain it thereafter.

2.7 Recruitment.

HHSC has assessed the supply of practitioners capable and willing to provide anesthesia services in its geographic area and has determined that a shortage of such practitioners exists. Therefore, HHSC may elect to provide recruitment assistance to reimburse costs for an mutually agreeable quantity of practitioners, who, following interview with HHSC representatives, are acceptable to HHSC and who meet all the requirements of the medical staff of the HOSPITAL, to relocate to HHSC's geographic area as follows. HHSC will reimburse the payors (either CONTRACTOR or the recruited practitioner) of the actual and reasonable expenses incurred in moving the recruited practitioner to the geographic area so long as such expenses do not exceed \$10,000 per recruited practitioner and represent personal or family transportation, shipment of personal and professional goods, and temporary living expenses (including local travel) not in excess of thirty days post-relocation. HHSC will reimburse the payors of the recruitment expenses (either CONTRACTOR or the recruited practitioners) based upon actual receipts documenting the expenditures and received by HHSC within sixty (60) days of relocation. HHSC's reimbursement of recruitment expenses shall be subject to all applicable laws, including Section 1877 of the Social Security Act (known as the Stark law) and the anti-kickback statute, and shall be documented further in writings signed by HHSC, CONTRACTOR and the recruited practitioner, as applicable. CONTRACTOR shall not impose any practice restrictions (including competition restrictions) on any recruited practitioner that, in the opinion of HHSC's legal counsel, are or may be contrary to the Stark law or the proposed or final regulations interpreting it. Each recruited practitioner shall meet the requirements of Attachment 1 relating to approval and qualifications before such practitioner is eligible to render Services under any agreement executed as a result of this RFP. The above referenced written documentation, signed by HHSC, CONTRACTOR, and the recruited practitioner, as applicable, for the reimbursement of relocation expenses may require, among other things, that the relocation expenses paid by the HMC pursuant to that written documentation to be repaid to the HOSPITAL on a prorated basis if the recruited Practitioner chooses to relocate from the service area of the HMC within three years from the date of that recruited practitioner's relocation to the service area of the HMC.

Practitioners currently practicing at Hilo Medical Center who choose to join the anesthesia management group by the start date of these services shall receive a sign-on compensation package to consist of \$28,000 to cover malpractice insurance tail coverage and \$20,000 as a retention bonus for a total compensation of \$48,000. Practitioners currently practicing at Hilo Medical Center who choose to join the anesthesia management group before 12/31/2018 shall receive a compensation package consisting of \$28,000 to cover malpractice insurance tail coverage and a \$10,000 retention bonus, for a total of \$38,000. From 1/1/2019 to 12/31/2019,

anesthesiologists will receive compensation of \$28,000 to cover malpractice tail coverage and no additional retention compensation. After 12/31/2019 there will be no compensation other than as stated in the first paragraph of section 2.7, above. Malpractice Tail premium compensation to be paid at contract signing. Retention payments to be paid upon completion of one year of service. Recruitment and Retention bonuses are minimum suggested amounts. Payment amounts are based on full time work schedules and can be prorated as indicated. Payments shall be paid by the Anesthesia Management Company to recruited providers. . Payment of recruitment expenses shall be subject to all applicable laws, including Section 1877 of the Social Security Act (known as the Stark law) and the anti-kickback statute, and shall be documented further in writings signed by HHSC, CONTRACTOR and the recruited practitioner, as applicable.

In addition to the above, current practitioners are also providing services to the Hilo Community Surgical Center (located at 82 Pu'uhonu Place, Suite 100 Hilo, Hawaii 96720) and would like to continue providing services at this location. Hilo Medical Center has an ownership interest in this location, but not a controlling interest, so this RFP does not include providing services at this location. HMC requests in your proposal that you advise what if any arrangement with HCSC your organization has entered into. Additionally, it is requested that provider contracts with practitioners include malpractice insurance coverage to allow for working at other locations such as HCSC during the contract period even if Contractor does not have a relationship with the other organization.

Provider contracts are also requested to not include a non-compete clause and a Termination for convenience notification period of no less than 90 days. Offerors are encouraged to provide draft copies of provider contracts in their technical proposal.

2.8 Physician Qualifications:

1. All Physicians shall have appropriate clinical privileges at HMC in good standing. Physicians must be Board certified or Board eligible in Anesthesiology and show adequate experience in Anesthesia. To retain Medical Staff privileges the physician must become Board certified before expiration of his or her Board eligibility.
2. All Providers shall have and maintain current PALS and ACLS certification.
3. All Providers shall possess good communication and human relations skills and a consistent ability to work well with patients, providers and staff. CONTRACTOR shall evaluate its providers at least annually, and will provide this report to the Medical Executive Committee of the HMC upon request.
4. All Physicians, regardless of service line, shall demonstrate an ability and willingness to:

- a. serve on medical staff committees and as officers in medical staff governance,
- b. participate in performance improvement projects and protocols as requested,
- c. complete all documentation, especially medical records, in a timely manner. Completion of documentation includes response to all clinical documentation improvement requests and to coder queries, and
- d. provide timely, accurate and consistent completion of a pre-anesthesia evaluations and post-anesthesia notes.

None of CONTRACTOR's Providers shall have:

1. been excluded or suspended from participation in any federal or state health care program, including but not limited to Medicare, Medicaid, and CHAMPUS/Tricare; or
2. been convicted of a crime related to healthcare; or been suspended, excluded, debarred or sanctioned under any other federal health care program, including, but not limited to, the Food and Drug Administration, the National Institutes of Health, the Department of Defense or the Department of Veterans Affairs.

Before CONTRACTOR'S Providers render Services under any agreement executed as a result of this RFP, CONTRACTOR must ensure that the provider has completed credentialing through the standard process of Hilo Medical Center. Hilo Medical Center reserves the right to approve only those Providers proposed by CONTRACTOR who can demonstrate acceptable skills and a history of behavior that would ensure harmonious delivery of services and an acceptable quality of performance. Only Providers who are approved by Hilo Medical Center shall render Services pursuant to any agreement executed as a result of this RFP.

CONTRACTOR shall ensure that all its Providers agree to and abide by the obligations of CONTRACTOR under any agreement executed as a result of this RFP.

CONTRACTOR shall provide, at CONTRACTOR's sole cost and expense, a substitute for any Provider who is unable to provide Services required under any agreement executed as a result of this RFP. As a condition of providing Services under any agreement executed as a result of this RFP, any such substitute shall otherwise satisfy all qualifications and requirements applicable to Physicians and Providers, including, but not limited to, being appropriately credentialed, and being covered under CONTRACTOR's insurance (or otherwise submitting proof of coverage that meets all of the requirements set forth in paragraph 17 of the General Conditions included with this RFP.

2.9 Other Considerations

For the initial 2 year period of the contract, HMC requires that an all MD model be implemented. We welcome alternate proposals for alternate models of service utilizing

CRNA's or RN's. Offerors are encouraged to provide alternate technical and cost proposals for providing these services on alternate models which offerors think may be able to be utilized at HMC.

3. PROPOSAL PREPARATION AND PRESENTATION

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 shall include the technical and cost categories identified below.

Proposals shall include and address, at a minimum:

1. The technical information identified below;
2. The pricing information identified below;
3. Transmittal Cover Letter, **Appendix A**;
4. References, **Appendix B**;
5. The original of the following documents:
 - a. "Tax Clearance Certificate" from the Hawaii State Department of Taxation (refer to instructions below) or a copy of certificate stating Offeror has applied for same and will have before execution of contract, **Appendix F**;
 - b. "Certificate of Good Standing from the Hawaii State Department of Labor and Industrial Relations; and
 - c. "Certificate of Good Standing from the Department of Commerce and Consumer Affairs Business Registration Division.(Refer to Section 5, Article 5.5, entitled "Certifications", below, for instructions on how to obtain Tax Clearance, Certificate of Compliance and Certificate of Good Standing); and
 - d. Acceptance (or Notifications of Clarifications . . .) of our General Conditions, **Appendix G**.

Offerors must submit all information specified above to qualify their proposal for evaluation and consideration for award. The following information is requested as a part of the consideration of all proposals.

Additionally, the General Conditions, the Special Conditions and the Scope of Services contained in this RFP packet shall be read by the Offeror as they form a part of the contract to be entered into between the Offeror and HHSC, and they shall govern all Services.

3.2 DISQUALIFICATION OF PROPOSALS

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

the proposal.

3.3 SUBMISSION OF PROPOSALS

Each OFFEROR should submit one (1) original and two (2) copies of their proposal no later than 4:00pm, HST, on the "Proposal Submission Deadline", identified in SECTION 1. Proposals received after this time/date may be rejected. The original shall be clearly marked "ORIGINAL" and copies shall be clearly marked "COPY". Mail or deliver proposals to the following address:

Sam Nelson
Senior Contract Manager
1190 Waianuenue Ave Hilo, HI 96720
Snelson1@hhsc.org

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

Proposal Submitted in Response to: RFP # HHSC FY18-0214

OFFERORS shall request, in writing, the nondisclosure of designated trade secrets or other proprietary data they require to be kept confidential. The proposals are subject to disclosure rules set forth in Chapter 92F, of the Hawaii Revised Statute (H.R.S). The OFFEROR bears the burden of establishing that the designated data is exempted from the disclosure requirements set forth in chapter 92F. All confidential materials shall accompany the proposal and shall be readily separable from the remainder of the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. HHSC will make a good faith effort to maintain confidentiality of all designated materials but makes warranty regarding this material.

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

4. TECHNICAL PROPOSAL

The technical proposal shall include the categories listed below.

4.1 Summary

Clearly and concisely summarize and highlight the contents of the proposal in such a way to provide HHSC with a broad understanding of the proposal.

4.2 Company Background and details

Provide explicit details on company's background, qualifications and experience relative to performing requirements set forth in the "Scope of Services", including but not limited to:

1. Background of the company, i.e. services offered, size, resources, years in business, location, State of Hawaii presence (if any), State of incorporation, etc.
2. Brief description of company's qualifications to perform "Scope of Services" requirements.
3. Brief description of three (3) past and/or present contracts demonstrating company's qualifications, experience and performance. Include customer name, contact name and telephone number. If not available, provide contact name and telephone number of three (3) references that can discuss your company's qualifications, experience and performance.

4.3 Billing and Collections

1. Describe and provide the company's billing and collections history and working relationship with insurance Companies for the past 3 years. Provide a description of your system to ensure billing integrity and results of any internal or external audits of billing integrity, if available.
2. Please provide a statement of policy regarding transparency in billing. Please state, if possible, how you provide for provider review of billing submitted on their behalf.

4.4 Licensure

Copies of licensure within the State of Hawaii and State of Incorporation.

4.5 Financial Status

Company financial statements for the past two years, preferably audited, or a copy

of filed tax returns. Balance & Income Statements are acceptable; keep documentation simple limited. If not available or applicable, please explain reason(s) why.

Disclosure of all litigation currently or potentially impacting the company, if any. State "NONE", if none.

4.6 Personnel organization and staffing

Provide details on the company's personnel organization and staffing relative to performing requirements set forth in the "Scope of Services", including but not limited to:

1. Company's Managerial organizational chart.
2. Personnel identified/available to perform services, including: name, years of experience, years with the company, qualifications, Curriculum Vitae, advanced cardiac life support and advanced trauma life support certifications, documentary evidence of board eligibility or board certifications in specialty, licenses, degrees, other credentials, and verifiable references (with contact telephone numbers), if any.

4.7 Quality Assurance

1. Provide evidence of experience documenting compliance with the requirements of the Joint Commission on Accreditation of Healthcare Organizations, Medicare, Medicaid and similar entities.
2. Provide details of two quality improvement initiatives at sites where you provide services. Include the implementation strategy and measurable outcomes.
3. Describe your current process for monitoring and submitting data for CMS mandated quality programs. Specifically detail what measures have been selected for MIPS including quality measures and quality improvement activities.

4.8 Technical Approach

Provide technical information/plans relative to performing requirements set forth in the "Scope of Services", including but not limited to:

1. A "Medical Service" plan describing the technical approach to meet the Service needs of the HMC and the community it serves.
2. A "Mission Statement" reflecting overall CONTRACTOR guidelines and values.

3. A "Marketing and Public Relations" plan that includes:
 Coordination of efforts with HOSPITAL staff and consultants, Patient satisfaction surveys, questionnaires and follow-up; and, Coordination of efforts with local community service providers.

4.9 Employment Model

Please state whether you would be employing providers or contracting providers for anesthesia services under this proposal. If you provide an option to choose between the two employment models, please provide information for both models. The information requested for each employment model is included in the table below.

Employment Model / Benefits

Employment Model	Importance	Weight for Evaluation
Employed		
Vacation / Sick leave	High	25%
Compensation Structure Hourly or Shifts	High	25%
Retirement	medium	10%
CME	low	5%
Malpractice Insurance and tail coverage	high	25%
Medical Coverage	medium	10%
Total		100%
Independent Contractor		
Compensation	High	20%
Malpractice Insurance and tail coverage	High	20%
CME	Low	4%
Retirement	Medium	8%
Medical Coverage	Medium	8%
Time Off – Scheduling	High	20%
Time Off – maximum and minimum	High	20%
Total		100%
Conditions for both models		
Required to take all Anesthesiologist currently working at Hilo Medical Center who choose to join	High	Required
Sign on package	High	Required
18 month transition	High	Required
Flexible Schedule	High	Required
Part-time options	High	Required
Lack of non-compete clause	High	Required

Malpractice Insurance coverage for HCSC	High	Required
Medical Staff Dues and Medical Licensing fees	High	Required

4.10 Malpractice Insurance and litigation

Provide the name and coverage amount of the malpractice insurance provider. Please provide statement as to whether or not the malpractice insurance can settle a claim without the consent of the provider. A summary of claims history including number of claims, number settled and outcome of litigation (cases found for plaintiff verses cases found for defendant) is desirable.

4.11 Provision for short-term interim staffing

Describe what procedures you have for provision of short-term interim staffing in the event one or more of the providers on site are unable to perform duties due to illness, disability or maternity leave. A system to provide for interim staffing without relying on external locums companies is desirable.

5. COST ANALYSIS

5.1 SUMMARY OFFER

Provide a summary total of the dollar amount offered to perform "Scope of Service" requirements of this RFP. Include your company's assumptions or pro forma projections about revenues arising from collections.

Clearly, concisely and briefly summarize the pricing proposal, in such a way, to provide HHSC with a broad understanding of the pricing. This analysis should include the total projected annual cost and should be broken down by the following categories:

1. Anticipated Total annual cost
 - a. Direct (Summary, details to be given below)
 - b. Indirect costs (Summary, details to be given below)
2. Anticipated annual revenue generated.
3. Anticipated annual subsidy (1. - 2.)

5.2 COMPENSATION AND RISK SHARING

HHSC recognizes that Offerors will be basing their pricing proposal upon:

1. historical Surgery figures,
2. payor mix,
3. Surgical growth, and
4. the costs of providing services, and revenues arising out of providing the Services from collections (insurance payments, managed care payment,

Medicaid/Medicare payments, other sources of collection).

With the variability/uncertainty inherent in such assumptions, HHSC would consider a pricing/compensation proposal that shares some of the risk for a fixed period of time, until actual revenues, costs, volume and other factors can be determined with some reliability. Our expectation is that Offerors will actively optimize revenue to minimize subsidies from HHSC.

5.3 DIRECT COSTS

Direct costs are defined as "personnel compensation/fee" of any and all individuals directly performing "Scope of Service" requirements of this RFP.

Provide a detailed breakdown and summary total of direct costs. All worksheets and supportive documentation, in determining direct costs, shall be provided to enable HHSC evaluators to verify validity of computations and determine if costs are fair & reasonable.

5.4 INDIRECT COSTS

Indirect costs are defined as "any and all other costs" to perform "Scope of Service" requirements of this RFP. For example, indirect costs may include costs for: transportation/travel, equipment, supplies, administration, taxes, insurance, lodging/housing, profit, etc.

Provide a detailed breakdown and summary total of indirect costs, All worksheets and supportive documentation, in determining indirect costs, shall be provided to enable HHSC evaluators to verify validity of computations and determine if costs are fair & reasonable.

5.5 ORAL PROPOSAL (Optional)

If proposal is within the competitive range, offerors shall also be prepared to present an "Oral Proposal" addressing specific technical and/or pricing elements, if selected as a Priority-List Offeror and HHSC elects to have oral presentations.

5.6 NON ACCEPTANCE OF "SCOPE OF SERVICES" REQUIREMENTS

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

6. EVALUATION

6.1 INTRODUCTION

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

6.2 Evaluation committee

Proposals will be evaluated by an evaluation committee. This committee will be comprised of four members of the division of Anesthesia and four members of the Executive Management Team of Hilo Medical Center. The members from the division of Anesthesia will be selected by the division of Anesthesia.

6.3 Site Visits

1. Operational Sites. Offerors will provide access, within reasonable limits, to two anesthesia sites under their management. Access would include prescheduled informational calls to providers and administrators and, potentially, a site visit by anesthesia providers.

6.4 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 OFFERORS proposal is sufficiently responsible and responsive to RFP requirements to permit a complete evaluation, i.e. responsible in terms of "Does the OFFEROR have the capability to perform fully the "Scope of Services" requirements; and responsive in terms of "Were proposal documents, as identified below, received and contain the required information"? Failure to meet any mandatory requirement ("no pass") will be grounds for deeming the proposal non-responsible, non-responsive or both and disqualification thereof.

Technical Proposal

Cost Proposal Documentation

Tax Clearance Certificate (or evidence of application for same)

Certificate of Compliance (or evidence of application for same)

Certificate of Good Standing (or evidence of application for same)

NOTE: Previously issued certificates are valid for submittal with RFP if date of issuance is within the last six months.

EVAUATION CATEGORIES AND VALUE WEIGHT PERCENTAGES

Technical Proposal	
Background, Qualifications and Experience.	30%
Personnel Organization and Staffing.	20%
Quality Assurance.	20%
Cost Proposal.	<u>30%</u>
Total.....	100%

The evaluation categories are assigned a value weight percentage, as determined by HHSC, totaling 100%. Each category will be rated between one (1) and five (5), with five being the highest (the best rating) by each member of the evaluation committee. The Offeror's total score will be determined by: a) multiplying the assigned weight value of each category by the numerical rating provided by the evaluation committee member to determine the score for each category; b) totaling the score for all categories of each evaluation committee member; and c) totaling the score of all evaluators. HHSC reserves the right to change criteria and their weighting unilaterally and without notification to Offerors.

Note: In determining the total score, the Offeror's Price proposal with the lowest Prices will receive the highest available rating allocated to Prices. Each proposal that has a Price higher than the lowest will have a lower rating for Prices. 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.

6.5 BEST AND FINAL OFFERS (OPTIONAL)

Offerors may be requested to submit a "Best and Final" offer. "Best and Final" offers shall be evaluated and "scoring" of the Offerors 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.

6.6 AWARD OF CONTRACT

Award of contract shall be made to the most responsible and responsive OFFEROR whose proposal is judged/determined, by the HHSC's evaluation team, to provide the best value to HHSC, considering all evaluation reviews and results. Furthermore, HHSC may elect to award the work at each individual hospital to more than one company. This determination will be made solely by HHSC.

6.7 CONTRACT AWARD NOTIFICATION

An official "notice of award" letter will be provided to the successful OFFEROR; and, a "notice of non-award" letter shall be provided to all un-successful Offerors. The notice of award letter resulting from this solicitation shall be posted in a public location.

No Work is to be undertaken by the CONTRACTOR prior to the execution of a contract resulting from award. HHSC is not liable for any Work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the CONTRACTOR prior to execution of contract.

6.8 CONTRACT DOCUMENT

The contract will be awarded by executing an "Agreement for Goods or Services Based upon Competitive Sealed Proposals" (hereinafter "Agreement") by HHSC and the successful OFFEROR. 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.

6.9 GENERAL CONDITIONS

The GENERAL CONDITIONS (**Appendix G**) 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.

CERTIFICATIONS:

Pursuant to § 1030, HRS, Offerors shall be required to provide proof of the following;

A. TAX CLEARANCE CERTIFICATE

Pursuant to § 1030-328, HRS, the CONTRACTOR is required to obtain/posses a Tax Clearance Certificate issued by the Hawaii State Department of Taxation and the Internal Revenue Service (IRS) prior to executing a contractual agreement with a State Agency. The certificate is valid for six (6) months from the most recent approval stamp date on the certificate and must be valid on the date it is received by HHSC.

The Tax Clearance Certificate shall be obtained on the State of Hawaii, DOTAX TAX CLEARANCE APPLICATION Form A-6 (Rev. 10/2004) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website and by mail or FAX. Form A-6 is the responsibility of the CONTRACTOR and must be submitted directly to the DOTAX and not to HHSC.

DOTAX website: (www.state.hi.us/tax/tax.html). Open "Forms" on the navigate sidebar and open "alphabetical Listing of Tax Forms"

DOTAX forms by FAX/Mail: DOTAX	808 587-7572
forms by FAX:	1 800 222-7572
CERTIFICATE OF COMPLIANCE	(on Oahu) 808 587-7572
	(outside of Oahu) 808 678-0522

B. CERTIFICANT OF COMPLIANCE

Pursuant to § 103D-310(c), HRS, the CONTRACTOR is required to obtain/posses a valid Certificate of from the Hawaii State Department of Labor and Industrial Relations (DLIR) prior to executing a contractual agreement with a State Agency. The certificate is valid for six months from the date of issue and must be valid on the date it is received by HHSC.

The Certificate of Compliance shall be obtained on the State of Hawaii, DLIR APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-122, HAR, Form LIR #27, which is available at www.dlir.state.hi.us (open "Forms", open "LIR #27") or at the neighbor island DLIR District Offices. The application for the certificate is the responsibility of the OFFEROR and must be submitted directly to the DLIR and not to HHSC. The DLIR will return the form to the CONTRACTOR who in turn shall submit the form to HHSC.

C. CERTIFICATE OF GOOD STANDING

HAWAII BUSINESS. A business entity referred to as a "Hawaii Business", is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of

compliance, the CONTRACTOR shall obtain/possess a Certificate of Good Standing issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG). A "Hawaii Business" that is a sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate. A CONTRACTOR's status as sole proprietor and its business street address as indicated on the proposal transmittal cover letter (APPENDIX A) will be used to confirm that the CONTRACTOR is a Hawaii Business.

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

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

D. HAWAII COMPLIANCE EXPRESS

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

Appendix A. Proposal Transmittal Cover Sheet

RFP #HHSC FY18-0214

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

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

Mailing Address: _____
(Post Office box is unacceptable)

Federal Tax Identification No: _____

Contractor's License No. _____

Contact: _____ Telephone Number: _____

Email address: _____ Facsimile Number: _____

Certification:

The undersigned has carefully examined the scope of services outlined in this RFP, general and special conditions presented in the proposal packet and hereby proposes to furnish at his own expense all labor necessary to complete all services as described herein. The undersigned also certifies that the information provided in this proposal is accurately represented.

Authorized signature

Printed name

Title

Date

Appendix B REFERENCES

Offerors shall list below at least two (2) references for which the Offeror has a current active contract to provide inpatient anesthesia services. The references must be available on a reasonable basis for telephone conversations between administrators of Hilo Medical Center and administrators and physicians at the reference Site. HHSC reserves the right to contact each of the listed firms to set up a site visit on a mutually agreeable day and time.

Reference 1.

Contact:

Phone Number:

Hospital:

Description of Current Contract.

Reference 2.

Contact:

Phone Number:

Hospital:

Description of Current Contract

Appendix C. Anesthesia Statistics for HMC

Hilo Medical Center Operating Room Utilization for calendar year 2016

Procedure Type	Number
Total OR Procedures	4761
Ortho	506
General	1413
Dental	160
Eye	491
C-section	438
Urology	593
Gastro	389
Peripheral Vascular	269
Other	~500
Non OR anesthesia procedures	
TEE/Cardioversion	55

C-Sections are included in the “Other” procedure category as well as a separate line item.

Hilo Medical Center Anesthesia Minutes

Calendar year 2016
Jan-Jun 2017

291548 min.
178037 min .

Appendix D

DIVISION OF ANESTHESIOLOGY CORE PRIVILEGES Scope

Physicians practicing Anesthesiology in the Operating Room and the acute care settings at Hilo Medical Center.

Basic Education

M.D. or D.O.

Formal Training

Successful completion of ACGME and/or AOA accredited anesthesiology residency program.

Certification

Certified by American Board of Anesthesiology --Current members of the department are encouraged to maintain certified status OR Board Prepared and in certification process (up to 12 years) OR At least 15 years' experience in administration of anesthetics Current ACLS and PALS Certification

References (for initial applicants or low volume practitioners)

At least 3 positive letters
· Residency director (at the time of your training or current), or
· Current Chief/Chair of your Department where you have most recently had active privileges, and

At least 2 peer practitioners in your field who can speak to your quality of care

Core Privileges

- Perioperative patient evaluation and anesthetic management.
- Administration of general, regional and monitored anesthetic care for ASA I-VI category patients.
- Placement and interpretation of invasive monitors (arterial, central venous and pulmonary artery catheters).
- Therapeutic nerve blocks.
- Lumbar punctures.
- Consultation in airway and ventilator management.

DIVISION OF ANESTHESIOLOGY
SPECIAL INVASIVE PRIVILEGES

Only applicants who qualify for core privileges may apply for Special Invasive Privileges.

Applicants are required to demonstrate evidence of additional experience/training in each

Celiac Plexus Block
Spinal/Epidural Implants
Neurolytic procedures
Facet Block

**Requests for any procedures not listed above must be submitted separately in writing with adequate demonstrated current competence. All such requests are subject to approval by the Department of Anesthesia.

Appendix E. Anesthesia Quality Metrics

On Time Starts	Achieve on-time starts for all scheduled first cases through active perioperative leadership and by eliminating anesthesia related delays.
Pre-op Assessment of high risk inpatients	Pre-op assessment and anesthesia plan completed the day prior to surgery on all high risk surgery patients.
Pre-op Assessments in Timely Manner in Pre-op holding area.	Pre-op assessment and anesthesia plan completed prior to case start time on all electively scheduled patients that arrive in pre-op holding area
Reduced Cancellation Rate	Reduce same-day cancellation rate of patient procedures for all electively scheduled cases due to non-medical reason. This would exclude cancelations due to surgeon decision, patient decision or acute change in patient condition warranting cancelation.
MIPS Outcome Measures 342 Pain brought under control within 48 hours 404 Anesthesiology smoking abstinence 424 Perioperative Temperature Management 427 Post-anesthesia transfer of Care Measure Procedure room to ICU 430 Prevention of Post-operative Nausea and vomiting.	
MIPS Improvement Activity program *Care coordination agreements *implementation of formal quality improvement methods	
Intraoperative Cluster * Unable to intubate *Failed blocks *Inadvertent dural puncture *Wrong site block	
PACU Cluster *Hyperglycemia *Postop pain excessive or difficult to control *Unanticipated mechanical ventilation *Refractory nausea and vomiting *Corneal abrasion	
Patient Experience – Physician Score per HCAHPS survey results as reported by Press Ganey. Specific questions as currently reported, or mutually agreed to: 1. Patients who reported that	Greater than 50 th percentile for similar sized hospital

<p>their doctors "Always" communicated well. 2. Patients who reported that their pain was "Always" well controlled. 3. Patients who gave their hospital a rating of 9 or 10 on a scale from 0 (lowest) to 10 (highest). 4. Patients who reported YES, they would definitely recommend the hospital.</p>	
<p>Surgeon Experience As measured by the Annual Press Ganey physician experience survey</p>	

Appendix F. CERTIFICATION FOR TAX CLEARANCE

Attach a valid, original, certified copy of the Federal and State of Hawaii Tax Clearance certificates.

If Tax Clearance certificates are pending at the time of this proposal, complete the following attestation:

I certify that I submitted a State and IRS tax clearance application on _____ and have not received an original, certified copy at the time this offer was submitted.

Upon receipt of a tax clearance, I will immediately send an original, certified copy by mail to the RFP manager:

Managers name and address here.

Signature (Original):

Printed Name:

Title:

Company Name:

Date:

Appendix G

GENERAL CONDITIONS AND ACCEPTANCE (OR NOTIFICATION OF CLARIFICATIONS) DOCUMENT

Offerors Agreement of Acceptance or Notification of Clarifications and Exceptions to the GENERAL CONDITIONS included with this RFP:

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

Signature:

Title:

Or

On behalf of _____, Offeror, has the following clarifications and exceptions to the following General Conditions:
(Please attach additional pages, as required)

GENERAL CONDITIONS
(PURCHASE OF GOODS AND SERVICES FROM HEALTHCARE SERVICE PROVIDERS)
(NON-103D)

----Table of Contents----

	<u>PAGE (S)</u>
1. <u>COORDINATION OF SERVICES BY THE HHSC</u>	38
2. <u>REPRESENTATIONS AND WARRANTIES</u>	38
3. <u>HHSC EMPLOYEES; PROVIDERS’ OBLIGATIONS</u>	39
4. <u>CONTRACTOR EXCLUSION FROM FEDERAL PROGRAMS</u>	39
5. <u>CONTRACTOR’S AND PROVIDER’S STATUS</u>	39
6. <u>SUBCONTRACTS AND ASSIGNMENTS</u>	39
7. <u>INDEMNIFICATION AND DEFENSE</u>	39
8. <u>COST OF LITIGATION</u>	39
9. <u>NONDISCRIMINATION</u>	39
10. <u>REQUIRED DISCLOSURES</u>	39
11. <u>MANAGED CARE</u>	40
12. <u>ENTIRE COMPENSATION</u>	40
13. <u>TERM AND TERMINATION</u>	40
14. <u>IMMEDIATE REPLACEMENT OF PROVIDER OR TERMINATION</u>	41
15. <u>CONFIDENTIALITY</u>	42
16. <u>INSURANCE</u>	42
17. <u>CONTRACTOR’S TAX RESPONSIBILITIES</u>	43
18. <u>PAYMENT PROCEDURES; FINAL PAYMENT; TAX CLEARANCE</u>	43
19. <u>COST AND EXPENSE REIMBURSEMENT</u>	43
20. <u>CORPORATE COMPLIANCE PROGRAM</u>	43
21. <u>BUSINESS ASSOCIATE ADDENDUM</u>	44
22. <u>FINANCIAL OBLIGATION</u>	44
23. <u>REFERRALS</u>	44
24. <u>CAMPAIGN CONTRIBUTIONS</u>	44
25. <u>MEDICARE ADVANTAGE PROGRAM ADDENDUM</u>	44
26. <u>GOVERNING LAW</u>	44
27. <u>CHANGES IN LAW</u>	44
28. <u>ACCESS TO BOOKS AND RECORDS</u>	45
29. <u>DRAFTING</u>	45
30. <u>WAIVER</u>	45
31. <u>CAPTIONS</u>	45
32. <u>COUNTERPARTS</u>	45
33. <u>CROSS-REFERENCE TO MASTER LIST OF PHYSICIAN CONTRACTS</u>	45
34. <u>OPEN PRACTITIONER-PATIENT COMMUNICATIONS (ANTI-GAG PROVISION); REFERRALS NOT REQUIRED</u>	46
35. <u>MODIFICATIONS OF AGREEMENT</u>	46
36. <u>ENTIRE AGREEMENT</u>	46

1. **COORDINATION OF SERVICES BY THE 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 the Agreement. The CONTRACTOR shall communicate 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 or the HHSC corporate office which is authorized to enter into contracts for the procurement of goods or services. The term “HHSC” refers to HHSC and its region or facility entering into this Agreement.

2. **REPRESENTATIONS AND WARRANTIES.** CONTRACTOR (including any and all individual physicians or other health care practitioners providing services hereunder [referred to individually and collectively as “Provider(s)”]) represents and warrants to HHSC, upon execution and while this Agreement is in effect, as follows:

a. CONTRACTOR is not bound by any agreement or arrangement that would preclude said CONTRACTOR from entering into or fully performing as required under this Agreement;

b. No Provider is bound by any agreement or arrangement that would preclude said Provider from fully performing the services required under this Agreement;

c. No Provider’s license to practice medicine in the State of Hawaii (“STATE”) or in any other jurisdiction has ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;

d. No Provider’s medical staff privileges at any health care facility have ever been denied, suspended, revoked, terminated voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction;

e. No Provider has in the past conducted, or is presently conducting, his or her medical practice in such a manner as to cause such Provider to be suspended, excluded, barred or sanctioned under the Medicare or Medicaid Program, or any government licensing agency, nor has Provider ever been convicted of a criminal offense related to health care, or listed by a federal agency as debarred, excluded or otherwise ineligible for federal program participation;

f. Each Provider has, and shall maintain throughout the term of this Agreement, an unrestricted license to practice medicine in the STATE and medical staff privileges at the HHSC facility or facilities;

g. No Provider receives aggregate compensation from CONTRACTOR that varies with, or otherwise reflects, the volume or value of referrals or other business generated by Provider for the HHSC facility or facilities furnishing the designated health services as defined under 42 C.F.R. Section 411.351;

h. The aggregate services CONTRACTOR provides pursuant to the terms of this Agreement do not exceed those that are reasonable and necessary for the legitimate and commercially reasonable business purpose of the services;

i. The services provided pursuant to the terms of this Agreement do not involve the counseling or promotion of a business arrangement or other activity that violates any STATE or Federal law; and

j. CONTRACTOR warrants that: neither CONTRACTOR, any person with an ownership interest in CONTRACTOR, any Provider providing services hereunder, nor any member of any such Provider’s immediate family is employed by or has a financial relationship with HHSC or any of its subsidiaries or affiliates. If at any time during the term of this Agreement such a relationship becomes established, immediate notice shall be given by CONTRACTOR to HHSC as provided in this Agreement. HHSC will then review the situation and determine if such relationship complies with applicable law. If the relationship and this Agreement are found by HHSC to comply with applicable law, no further steps shall be taken. If the relationship and the Agreement are found to not comply with applicable law, then HHSC shall propose appropriate amendments to this Agreement or the other relationship (which may include termination) so as to ensure that this Agreement and the other relationship comply with all applicable laws.

For this purpose, “immediate family” means husband or wife, natural or adoptive parent, child or sibling; step-parent, step-child, step-brother or step-sister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.

3. **HHSC EMPLOYEES; PROVIDERS' OBLIGATIONS.** Neither CONTRACTOR nor Provider shall solicit the services of, or employ or procure on behalf of another the employment of, any individual currently employed by HHSC, except with the express written consent of HHSC; nor shall CONTRACTOR or any Provider engage in any other activity which would be in conflict with his/her/its respective obligations hereunder.

4. **CONTRACTOR EXCLUSION FROM FEDERAL PROGRAMS.** CONTRACTOR affirmatively states that neither CONTRACTOR nor any of its employees, agents or subcontractors, including Providers, performing services or providing goods pursuant to this Agreement are excluded from participation in federal health care programs as defined in the Social Security Act (Section 1128 and 1128A) and other federal laws and regulations relating to health care. HHSC reserves the right to verify that the above statement is true and to immediately cancel this Agreement in the event it is not true.

5. **CONTRACTOR'S AND PROVIDERS' STATUS; STANDARDS.**

a. CONTRACTOR and Providers shall act at all times under this Agreement as independent contractor(s) to HHSC. The parties agree that HHSC shall not have and shall not exercise any control or direction over the manner or method by which CONTRACTOR meets its obligations under this Agreement nor over the manner or method by which any Provider provides the Services. However, Contractor and Providers shall perform at all times in accordance with currently approved methods and standards of practice for the services in the medical community and as required by the HHSC, HHSC corporate, regional and facility rules, regulations, policies and bylaws, the recommendations of The Joint Commission as applicable, and relevant professional organizations. The provisions of this paragraph 5 shall survive expiration or other termination of this Agreement, regardless of the cause of such termination.

b. The CONTRACTOR and the CONTRACTOR's employees and agents, including Providers, are not by reason of this Agreement agents or employees of the HHSC or the STATE for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the HHSC or the STATE any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to HHSC or STATE employees.

c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. All services shall be performed in compliance with the applicable standards set forth by law or ordinance or established by the rules and regulations of any Federal, STATE or local legal authority, and applicable accreditation agencies, such as The Joint Commission. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability for all loss, damage, or injury to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, caused by the CONTRACTOR or the CONTRACTOR's employees or agents in the course of their employment.

6. **SUBCONTRACTS AND ASSIGNMENTS.** Except as otherwise set forth in the Agreement, the CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Agreement and no such assignment or subcontract shall be effective unless the CONTRACTOR obtains the prior written consent of HHSC.. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Agreement shall be effective unless and until the assignment is approved by HHSC. This Agreement is assignable by HHSC without consent provided that HHSC provides prompt written notice of the assignment.

7. **INDEMNIFICATION AND DEFENSE.** The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, the 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 all claims, suits, and demands therefor, arising out of or resulting from acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

8. **COST OF LITIGATION.** In case the STATE, the HHSC, the contracting facility, and their directors, officers, employees, and agents shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Agreement, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, the HHSC, the contracting facility, and their directors, officers, employees, and agents, including attorney's fees.

9. **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.

10. **REQUIRED DISCLOSURES.** CONTRACTOR shall notify HHSC in writing within three (3) days after any of the following events occurs:

- a. Any Provider's license to practice medicine in the STATE or any other jurisdiction lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction;
- b. Any Provider's medical staff membership and/or privileges at any health care facility are denied, suspended, revoked, terminated, voluntarily relinquished (under threat of disciplinary action) or made subject to terms of probation or other restriction;
- c. Any Provider is required to pay damages in any malpractice action by way of judgment or settlement;
- d. Any Provider becomes the subject of a disciplinary proceeding or action before any governmental or professional licensing board, medical staff or peer review body;
- e. Any Provider's DEA number is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way;
- f. Any event that substantially interrupts all or a portion of any Provider's professional practice or that materially adversely affects any Provider's ability to perform Provider's obligations hereunder; or
- g. Any Provider is convicted of a criminal offense related to health care or any Provider is listed by a federal agency as being debarred, excluded or otherwise ineligible for federal program participation.

11. MANAGED CARE. CONTRACTOR shall participate in all third-party payment or managed care programs in which HHSC participates, render services to patients covered by such programs, and accept the payment of amounts provided for under those programs as payment in full for services of the Providers to program patients.

12. COMPENSATION.

a. Entire Compensation. CONTRACTOR shall have the sole responsibility to compensate any Providers providing services hereunder for performance of the services, including payment of health insurance and other fringe benefits, payroll taxes, Social Security contributions, and premiums for any government-mandated employment-related insurance. CONTRACTOR reserves the right, in its sole discretion, to determine the compensation payable to each Provider. CONTRACTOR hereby agrees to indemnify and hold HHSC harmless in connection with any claims for compensation by such Providers for services rendered hereunder. The indemnification obligations herein stated in this subparagraph shall survive the termination and/or expiration of this Agreement.

b. Fair Market Value of Compensation Paid to Contractor. The parties agree that the compensation paid by HHSC to CONTRACTOR: (a) does not exceed fair market value; and (b) is not determined in a manner that takes into account the volume or value of referrals or other business that might be generated among HHSC, CONTRACTOR and Provider(s), except as may be permitted by law. The parties further agree that the Agreement does not require the limitation or withholding of items or services from patients in violation of any federal, STATE, or local law.

c. Notwithstanding the above provisions, or any other provision of this Agreement (including any attachments and exhibits), this Agreement is subject to appropriation should the contract term extend beyond the end of the current fiscal year and any renewal or extension of this Agreement is also subject to appropriation.

13. TERM AND TERMINATION.

a. Term. In the event the parties continue to abide by the terms of this Agreement after the expiration of an initial or renewal term of at least one (1) year without having agreed in writing to renew this Agreement, the term of this Agreement shall continue on a month-to-month basis thereafter for up to six (6) months, subject to termination by either party at any time upon the provision of thirty (30) days' prior written notice to the other party.

b. Termination.

(1) Termination Without Cause. Either party may terminate this Agreement upon ninety (90) days prior written notice to the other party. If either party terminates this Agreement without cause prior to the expiration of the then-current term, Facility and Physician may not enter into an agreement for services similar to those provided by Physician hereunder, until the expiration of the then current term. Termination without cause does not constitute breach.

(2) Termination for Breach. Either party may terminate this Agreement upon breach by the other party of any material provision of this Agreement, provided such breach continues for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party.

(3) Effect of Termination. As of the effective date of termination of this Agreement, neither party shall have any further rights nor obligations hereunder except: (i) as otherwise provided herein; (ii) for rights and obligations accruing prior to such effective date of termination; or (iii) arising as a result of any breach of this Agreement.

14. IMMEDIATE REPLACEMENT OF PROVIDER OR TERMINATION.

a. Upon the occurrence of any of the following events, HHSC may either: (a) immediately terminate this Agreement in the event CONTRACTOR providing services hereunder is a sole proprietor, solely-owned professional corporation, or other similar entity with only a single Provider providing services hereunder; or (b) require immediate removal and replacement of any Provider providing services hereunder ("Affected Provider") by written notice to CONTRACTOR:

(1) the denial, suspension, revocation, termination, restriction, lapse or voluntary relinquishment (under threat of disciplinary action) of any Affected Provider's medical staff membership and/or privileges at HHSC or of any Affected Provider's license to practice medicine in the STATE;

(2) the denial, suspension, revocation, termination, relinquishment (under threat of disciplinary action) or restriction of any Affected Provider's medical staff membership and/or privileges at any health care facility other than HHSC, or of any Affected Provider's license to practice medicine in any jurisdiction other than the STATE;

(3) the death of any Affected Provider, or the disability of any Affected Provider which prevents such Affected Provider from performing the services in compliance with applicable standards as described above, as determined in the discretion of HHSC Administrator in consultation with an officer of HHSC's medical staff;

(4) the termination, revocation, restriction, or relinquishment of any Affected Provider's DEA number;

(5) the failure of CONTRACTOR to make a timely disclosure concerning the Affected Provider required pursuant to paragraph 10, "Required Disclosures", hereof;

(6) conduct by an Affected Provider which, in the discretion of HHSC in consultation with an officer of the medical staff of HHSC, could adversely affect the quality of professional care provided to HHSC's patients or the performance of duties required hereunder, or be prejudicial or adverse to the best interest and welfare of patients;

(7) breach by any Affected Provider of any of the confidentiality provisions hereof;

(8) any Affected Provider's conviction of a criminal offense related to health care, or any Affected Provider's listing by a federal agency as being debarred, excluded or otherwise ineligible for federal program participation; or

(9) Provider's commission of any act, illegal or otherwise (including, but not limited to, fraud or misrepresentation), detrimental to the business or reputation of HHSC or any of its facilities.

b. If HHSC furnishes CONTRACTOR with written disapproval of an Affected Provider (the "Disapproval Notice"), CONTRACTOR shall immediately direct the Affected Provider to cease the performance of services at HHSC and shall arrange for a qualified interim replacement ("Interim Replacement") for the Affected Provider, which replacement shall be reasonably acceptable to HHSC. HHSC shall act reasonably in disapproving an Affected Provider, but shall not be required to have legal "cause" or to conduct a formal or informal hearing as a requirement for disapproval or issuance of the Disapproval Notice. HHSC and CONTRACTOR shall meet and confer within seven (7) days following provision of the Disapproval Notice to discuss the reason(s) for issuance of the Disapproval Notice, the necessity for CONTRACTOR to furnish a permanent replacement provider ("Permanent Replacement") for the Affected Provider, and the identity or desired qualifications for a Permanent Replacement. Within ninety (90) days after provision of the Disapproval Notice by HHSC, CONTRACTOR shall appoint a qualified Permanent Replacement for the Affected Provider acceptable to HHSC. CONTRACTOR's failure to do so within such

ninety (90) day period shall constitute grounds for termination of this Agreement by HHSC immediately upon the provision of written notice by HHSC to CONTRACTOR.

15. CONFIDENTIALITY.

a. HHSC Information. CONTRACTOR recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to HHSC hereunder, CONTRACTOR and Providers may have access to certain information of HHSC that is confidential and constitutes valuable, special and unique property of HHSC. CONTRACTOR agrees that neither CONTRACTOR nor any Provider will at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without HHSC's express prior written consent, except pursuant to Provider's duties hereunder, any confidential or proprietary information of HHSC, including, but not limited to, information which concerns HHSC's patients, costs, or treatment methods developed by HHSC and which is not otherwise available to the public.

b. Terms of this Agreement. Except for disclosure to CONTRACTOR's or any Provider's legal counsel, accountant or financial advisors (none of whom shall be associated or affiliated in any way with HHSC or any of its affiliates) neither CONTRACTOR nor any Provider shall disclose the terms of this Agreement to any person who is not a party or signatory to this Agreement unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented to by HHSC. Unauthorized disclosure of the terms of this Agreement shall be a material breach of this Agreement and shall provide HHSC with the option of pursuing remedies for breach or immediate termination of this Agreement in accordance with Paragraph 13.b.(2), "Termination for Breach", hereof.

c. Patient Information. Neither CONTRACTOR nor any Provider, nor HHSC, shall disclose to any third party, except where permitted or required by law, any patient or medical record information regarding HHSC's patients; and CONTRACTOR, Providers, and HHSC shall comply with all federal and STATE laws and regulations, and all bylaws, rules, regulations, and policies of HHSC and HHSC's medical staff regarding the confidentiality of such information. CONTRACTOR and HHSC acknowledge that in receiving or otherwise dealing with any records or information about HHSC's patients receiving treatment for alcohol or drug abuse, CONTRACTOR, Providers and HHSC are fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records (42 C.F.R. Part 2, as amended from time to time).

d. Application of Uniform Information Practices Act. All information, data, or other material provided by the CONTRACTOR to the HHSC shall be subject to the Uniform Information Practices Act, chapter 92F, HRS, as modified by chapter 323F, HRS ("UIPA"). CONTRACTOR further acknowledges and agrees that the compensation terms of this Agreement are government records subject to disclosure under the UIPA.

e. Survival. The provisions of this paragraph shall survive expiration or other termination of this Agreement, regardless of the cause of such termination.

16. INSURANCE.

a. During the term of this Agreement, CONTRACTOR shall maintain at all times or cause to be maintained comprehensive general liability and professional liability insurance (the "POLICY") covering the acts and omissions of Providers rendering the services at HHSC. The POLICY shall be maintained with a company or companies approved by HHSC, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and per Provider and Three Million Dollars (\$3,000,000.00) in the aggregate, per Provider, or such greater amount as may be required from time to time by HHSC's Corporate Bylaws or Medical Staff Bylaws, whichever is the greater amount. Said POLICY shall provide that HHSC shall receive not less than thirty (30) days' notice prior to any cancellation or material change or reduction of coverage. Prior to the commencement of this Agreement, CONTRACTOR shall provide HHSC with a certificate of insurance naming HHSC as the certificate holder. Thereafter, prior to the expiration of each policy period, CONTRACTOR's insurance carrier shall provide HHSC with certificates of insurance evidencing the foregoing coverage and provisions. HHSC reserves the right to request and receive a certified copy of the POLICY. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR's employees in the statutory amounts. Failure to maintain or cause to be maintained insurance in accordance with the provisions set forth herein shall be a material breach of this Agreement and shall provide HHSC with the option of pursuing remedies for breach and/or immediate termination of this Agreement.

b. The coverage required by this provision shall be either: (a) on an occurrence basis; or (b) on a claims made basis. If the coverage is on a claims made basis, CONTRACTOR hereby agrees that not less than thirty (30) days' prior to the effective date of termination by CONTRACTOR of any Provider's insurance coverage by the current carrier, CONTRACTOR shall: (a) purchase tail or extended reporting coverage insurance for a minimum period of five (5) years in the above-stated amounts for all claims arising out of incidents occurring prior to such termination of coverage; and (b) provide HHSC with a certificate of such coverage. If CONTRACTOR fails to purchase such coverage and provide HHSC with a certificate of same in accordance with the above-stated requirements, HHSC shall have the right, as hereby acknowledged by CONTRACTOR, to purchase such

coverage and notify CONTRACTOR in writing of the total premium costs therefor. CONTRACTOR hereby expressly acknowledges and agrees that the total premium cost for such coverage purchased by HHSC under this provision shall be immediately due and payable by CONTRACTOR to HHSC upon CONTRACTOR's receipt of said notice, and may be offset against any money owed by HHSC to CONTRACTOR.

17. CONTRACTOR'S TAX RESPONSIBILITIES.

a. 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. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.

b. 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.

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 in reasonable detail the services performed and the amount due, and certifying that services requested under the Agreement have been performed by the CONTRACTOR according to the Agreement.

b. Prompt Payment.

(1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract, provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

(2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money, provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

19. COST AND EXPENSE REIMBURSEMENT. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Agreement shall be subject to the following guidelines:

a. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.

b. Reimbursement for ground transportation shall not exceed the actual cost of renting an intermediate-sized vehicle.

c. Unless prior written approval of the head of the purchasing agency is obtained, reimbursement for subsistence allowable (i.e., hotel and meals) shall be \$145 per day, which consists of \$85 for hotel and \$60 for food, computed on quarter days. No other travel or living expense (e.g., tips, entertainment, alcohol, etc.) shall be reimbursed by HHSC, other than those items listed in subparagraphs a and b, above. Invoices shall document the days of travel by including the name of the traveler, itinerary, airfare receipt, hotel receipt, and ground transportation receipts. All travel must be pre-approved by the HHSC technical representative.

d. CONTRACTORS located on the island where the work will be performed do not qualify for travel or subsistence reimbursement.

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

HHSC facilities to review the posted orientation materials and participate in any compliance training programs HHSC may require.

21. BUSINESS ASSOCIATE ADDENDUM. By signing this Agreement, CONTRACTOR acknowledges that CONTRACTOR is a Business Associate of HHSC within the meaning of the federal privacy and security laws as stated in 45 C.F.R. Parts 160 and 164, Subparts A, C, and E. CONTRACTOR further acknowledges that CONTRACTOR has read the Business Associate Addendum, which is posted on the HHSC internet site (www.hhsc.org/BAA) and is applicable to all Business Associates. Said Business Associate Addendum is hereby incorporated by reference and made a part of this Agreement as if fully repeated herein. By signing this Agreement, CONTRACTOR agrees to fully comply with, and be bound by, all terms set forth in the Business Associate Addendum, as it may be amended from time to time.

22. FINANCIAL OBLIGATION. No CONTRACTOR or Provider shall incur any financial obligation on behalf of HHSC without the prior written approval of HHSC.

23. REFERRALS. The parties acknowledge that none of the benefits granted CONTRACTOR hereunder are conditioned on any requirement that the CONTRACTOR or Provider make referrals to, be in a position to make or influence referrals to, or otherwise generate business for HHSC. The parties further acknowledge that Providers are not restricted from establishing staff privileges at, referring any patient to, or otherwise generating any business for, any other hospital or facility of their choosing.

24. CAMPAIGN CONTRIBUTIONS. CONTRACTOR acknowledges that it is unlawful under HRS Section 11-355 (unless specifically permitted under that law) for CONTRACTOR at any time between the execution of this Agreement through the completion of this Agreement, to: (a) directly or indirectly make any contribution or to promise expressly or impliedly to make any contribution to any political party, committee, or candidate or to any person for any political purpose or use; or (b) knowingly solicit any contribution from any person for any purpose during any period.

25. MEDICARE ADVANTAGE PROGRAM ADDENDUM. The HHSC Medicare Advantage Program Addendum, as amended from time to time and available on-line at the HHSC internet site, www.hhsc.org/MAPA is incorporated herein as if set out fully in this Agreement

26. GOVERNING LAW. This Agreement shall be construed, interpreted, and governed by the laws of the State of Hawaii. The provisions of this paragraph shall survive expiration or other termination of this Agreement, regardless of the cause of such termination.

27. CHANGES IN LAW.

a. **Legal Event; Consequences.** Notwithstanding any other provision of this Agreement, if the governmental agencies that administer the Medicare, Medicaid, or other federal programs (or their representatives or agents) or any other federal, state or local governmental or nongovernmental agency, or any court, administrative tribunal passes, issues, or promulgates any law, rule, regulation, standard, interpretation, order, decision or judgment, including but not limited to those relating to any regulations pursuant to state or federal anti-kickback or self-referral statutes (collectively or individually, "Legal Event"), which, in the good faith judgment of one party (the "Noticing Party"), materially and adversely affects either party's licensure, accreditation, certification, or ability to refer, to accept any referral, to bill, to claim, to present a bill or claim, or to receive payment or reimbursement from any federal, state or local governmental or nongovernmental payor, or which subjects the Noticing Party to a risk of prosecution or civil monetary penalty, or which, in the good faith judgment of the Noticing Party, indicates a rule or regulation with which the Noticing Party desires further compliance, then the Noticing party may give the other party notice of intent to amend or terminate this Agreement in accordance with the next subparagraph.

b. **Notice Requirements.** The Noticing Party shall give notice to the other party together with an opinion of counsel setting forth the following information:

- (1) The Legal Event(s) giving rise to the notice;
- (2) The consequences of the Legal Event(s) as to the Noticing party;
- (3) The Noticing Party's intention to either:
 - (i) Terminate this Agreement due to unacceptable risk of prosecution or civil monetary penalty; or

(ii) Amend this Agreement, together with a statement that the purpose thereof is one or more of the following:

- (a) to further comply with any anti-kickback or Stark II statutory provisions or rules or regulations created or affected by the Legal Event(s); or
- (b) to satisfy any licensure, accreditation, or certification requirements created or affected by the Legal Event(s); and/or
- (c) to eliminate or minimize the risk of prosecution or civil monetary penalty;

(4) The Noticing Party's proposed amendment(s); and

(5) The Noticing Party's request for commencement of the Renegotiation Period (as defined below).

c. **Renegotiation Period; Termination.** In the event of notice under either subparagraph b.(3)(i) or b.(3)(ii) above, the parties shall have ten (10) days from the giving of such notice ("Renegotiation Period") within which to attempt to amend this Agreement in accordance with the Noticing Party's proposal (if any) or otherwise as the parties may agree. If this Agreement is not so amended within the Renegotiation Period, this Agreement shall terminate as of midnight on the 10th day after said notice was given. Except as otherwise required by applicable law, any amounts owing to either party hereunder shall be paid, on a pro rata basis, up to the date of such termination, and any obligation hereunder that is to continue beyond expiration or termination shall so continue pursuant to its terms. All opinions of counsel presented by the Noticing Party hereunder, and any corresponding opinions given by the other party in response, shall be deemed confidential and given solely for purposes of renegotiation and settlement of a potential dispute, and shall not be deemed disclosed so as to waive any privileges otherwise applicable to said opinions.

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

a. Until the expiration of four (4) years after the furnishing of such services, CONTRACTOR shall, upon written request, make available to 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 the sub-paragraph immediately above. The availability of CONTRACTOR's books, documents and records shall be subject at all times to all applicable legal requirements, including without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation. The provisions of this paragraph shall survive the expiration or other termination of this Agreement, regardless of the cause of such termination.

29. DRAFTING. No provision of this Agreement shall be interpreted for or against any party on the basis that such party was the draftsman of such provision, and no presumption of burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

30. WAIVER. A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

31. CAPTIONS. The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

32. 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.

33. CROSS-REFERENCE TO MASTER LIST OF PHYSICIAN CONTRACTS. The parties acknowledge that any and all agreements as between the parties to this Agreement, including this Agreement, shall be included in the master list of all contracts between HHSC and all physicians providing services at HHSC facilities, maintained and updated regionally and available for review upon request by any governmental authority to the extent such review is required by law.

34. OPEN PRACTITIONER-PATIENT COMMUNICATIONS (ANTI-GAG PROVISION); REFERRALS NOT REQUIRED. HHSC and CONTRACTOR agree that any Provider providing services hereunder may discuss with patients, or their authorized representative(s), all treatment options that Provider deems appropriate based on relevant professional standards, regardless of benefit coverage limitations and within the prevailing practices and standards of the profession and community, subject, however, to all applicable laws and regulations pertaining to confidentiality ("Open Communication"). HHSC shall not assess Provider(s) any penalties, financial or otherwise, as a result of such Open Communication. It is expressly understood and agreed that HHSC has contracted for services set forth herein solely to ensure the availability of medically appropriate services for HHSC's patients; nothing herein is intended, nor shall it be construed, to require or encourage any Provider providing services hereunder to refer any patient, procedure or ancillary service to any HHSC facility.

35. 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 only upon mutual agreement and by written amendment to this Agreement signed by both CONTRACTOR and HHSC.

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; and any such oral modification, alteration, amendment, change or extension shall be null and void.

c. Notwithstanding any other provisions in this contract to the contrary, any modification, alteration, amendment, change or extension of any term, provision or condition shall be null and void if such modification, alteration, amendment, change or extension is reasonably determined by either party to result in the violation of any federal or state statutes or regulations, including, but not limited to, Section 1877 of the Social Security Act, by either or both of the parties.

36. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties relating to such subject matter.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

APPENDIX H.

Hawaii Compliance Express.

STATE of Hawaii Procurement Circular
(attach here)

State of Hawaii Certificate of Vendor Compliance
(Attach sample here)

**End of Request for Proposal
18-0214**