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EAST HAWAI'I REGION  
HAWAI'I HEALTH SYSTEMS CORPORATION

REQUEST FOR PROPOSALS

**# HHSC FY 20-0358**

**Emergency Department and Hospitalist Physician Services For  
Hale Ho'ola Hamakua and Ka'u Hospital**

For

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

AN AGENCY OF THE STATE OF HAWAII

Due Date for Proposals  
in Response to this Solicitation:

Friday, June 12, 2020; 2:00 PM HST

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

**1.1 INTRODUCTION**

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

**1.2 PROCUREMENT TIMETABLE**

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

	<b>ACTIVITY</b>	<b>SCHEDULED DATES</b>
1.	RFP Public Announcement	May 11, 2020
2.	Closing Date for Receipt of Questions	May 26, 2020
3.	Addendum for HHSC Response to OFFEROR’S Questions	June 1, 2020
4.	Closing Date for Receipt of Proposals	June 12, 2020 - No Later Than 2:00 p.m., HST
5.	Mandatory Requirements Evaluation	June 15-17, 2020
6.	Proposal Evaluations	June 18 – June 26, 2020
7.	Proposal Discussions (optional)	June 29 – July 3, 2020
8.	Best and Final Offers (optional)	June 29 – July 3, 2020
9.	Contractor Selection/Award Notification (on/about)	July 8, 2020
10.	Contract Execution Period	July 31, 2020
11.	Contract State Date	September 12, 2020

**1.3 SUBMISSION OF QUESTIONS, CLARIFICATION REQUESTS – POINT OF CONTACT**

Questions are to be submitted via email to the following point of contact not later than the “Submission Deadline for Question & Clarification Requests”, identified above, in order to generate a response.

**Jeffrey E. Dansdill, Senior Contracts Manager**  
**East Hawaii Region**  
**1190 Waianuenue Avenue**  
**Hilo, Hawaii 96720-2020**  
**PH: 808-932-3112**  
**Email: [jedansdill@hhsc.org](mailto:jedansdill@hhsc.org)**

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

**1.5 RFP AMENDMENTS**

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

**1.6 CANCELLATION OF RFP**

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

**1.7 PROTESTS**

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

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

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

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

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

**2.00 INTRODUCTION**

The awarded Offeror (“CONTRACTOR”) shall provide services described herein to the following Hawaii Health System Corporation (“HHSC”) facilities:

2.00.1 Hale Ho’ola Hamakua (“HHH”) has served the healthcare needs of the communities of Hamakua, North Hawaii and South Kohala since 1951. HHH provides 11 acute/skilled beds and 66 skilled/intermediate care beds and currently employs a staff of approximately 110. HHH also provides Emergency Room Services, 24 hours/7 days per week, on call within thirty (30) minutes.

2.00.2 Ka’u Hospital (“KH”) has served the healthcare needs of the communities of the district of Ka’u since 1972. KH has 21 swing beds which provide acute/skilled level care and or long term care and currently employs a staff of approximately 70. The other services at KH include Emergency Room Services 24/7 days a week on call within 30 minutes as well as x-ray, lab and a provider based rural health clinic for primary care.

**2.01 Agreement Term and Option to Renew**

2.01.1 The Agreement shall begin September 12, 2020 and shall be effective through October 11, 2022. Services shall begin at each facility in accordance with the following:

- A. Ka’u Hospital – All services described herein shall begin September 12, 2020 through the expiration of the Agreement.
- B. Hale’ Ho’ola Hamakua - All services described herein shall begin October 12, 2020 through the expiration of the Agreement.

2.01.2 The Agreement may be extended for three (3), one (1) year option periods at the sole discretion of HHSC. The initial term and option periods shall not exceed a period of five (5) years. The terms and conditions of any such contract extension shall remain the same as the original contract, as amended.

2.01.3 If the CONTRACTOR chooses not to exercise any available option period under the Agreement, the CONTRACTOR shall provide the Contracting Officer written notice of its intent not to renew this contract at least 180 days before its expiration. If the CONTRACTOR fails to provide the 180 day notice prior to expiration, the CONTRACTOR shall be liable for all additional costs incurred by HHSC to transition to another contractor due to the shorten notice period.

**2.02 Retaining Current Physicians**

2.02.1 The awarded CONTRACTOR shall actively recruit currently employed of contracted physicians currently providing the requested services at either Hale Ho’ola Hamakua or

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Ka'u Hospital, and offer them the right of first refusal to provide services under this Agreement.

**2.03 CONTRACTOR'S RESPONSIBILITIES.** The CONTRACTOR shall successfully provide emergency room and hospitalist services at both Hale Ho'ola Hamakua Hospital and Ka'u Hospital ("HOSPITAL") as described in the SCOPE OF SERVICES for the term of this Agreement. **Requirements contained below are for each facility, and are not to be shared between facilities unless explicitly approved by both the Hale Ho'ola Hamakua and Ka'u Hospital Administrators.**

The SCOPE OF SERVICES are as follows:

2.03.1 Emergency Room Physician Services. Provide on-call emergency room physician services, consisting of a qualified doctor of medicine or osteopathy ("PHYSICIAN"). A PHYSICIAN shall be immediately available and capable of responding to emergency calls by telephone or radio contact twenty-four hours per day, seven days per week, 365 days per year. PHYSICIAN must be onsite at the HOSPITAL within thirty (30) minutes to provide emergency medical assessment, treatment and disposition to inpatients or to persons who come to the HOSPITAL with an emergency medical condition, as defined in the Federal Emergency Medical Treatment and Active Labor Act (EMTALA).

2.03.2 Provide a doctor of medicine or osteopathy who shall be designated as the Medical Director for ER services ("MEDICAL DIRECTOR") and shall be available to provide immediate consultation with all medical, physician, and HOSPITAL staff at all times. The MEDICAL DIRECTOR shall work approximately eighteen (18) hours per month. Monthly duties shall include:

- A. Monitor and participate in the review of all aspects of the HOSPITAL's Emergency Department services in conjunction with the medical staff multi-disciplinary review process, Continuous Quality Improvement (C.Q.I.), Quality Assurance (Q.A.), Centers for Medicare and Medicaid Services (CMS) regulations and State licensing requirements.
- B. Advise and assist in assessing the adequacy of facilities, equipment and/or manpower, in meeting certification requirements as established by CMS and State licensing requirements in meeting standards of quality control.
- C. Provide, as needed, written recommendations to the HOSPITAL's Administrator, with appropriate justifications, for the acquisition of equipment and/or supplies required to further enhance or improve the provision of emergency services to the community.
- D. Participate in the presentation of reviews and evaluations at the HOSPITAL's medical staff meetings and assist in planning the work of the PHYSICIANS as required for certification by CMS and State licensing regulations.
- E. Chair and/or sit on HOSPITAL committees as requested by HOSPITAL Administration or Medical Staff for the purpose of maintaining acceptable

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standards of medical practice and required by CMS, State licensing regulations and other certifying agencies, for the purpose of providing the best possible medical care delivery.

- F. Establish and conduct a program of in-service training sessions for the continuing medical education of all personnel in the HOSPITAL's Emergency Department, and for other HOSPITAL employees who wish to participate. The educational sessions may be conducted on-site at the HOSPITAL, or off-site, but on the Island of Hawaii.
- G. Establish clear physician communication protocols with change of scheduled shift.
- H. Submit to the HOSPITAL's Administrator, a "Monthly Summary of Services Provided" report (sample form at Appendix A) documenting, in accordance with CMS, State Medicaid program requirements, and private insurance requirements, the hours dedicated each month in providing the above indicated services.
- I. Support the facility in meeting State Trauma Services Goals for the Big Island.

2.03.3 The PHYSICIAN on duty shall provide appropriate medical screening examination to any person presented to the HOSPITAL's Emergency Room for triage and if appropriate, provide treatment for such patient. If required care cannot be provided at the HOSPITAL, PHYSICIAN and HOSPITAL staff on duty will stabilize the patient's medical condition and arrange for a transfer to another facility as appropriate. If a patient's condition is treated in the HOSPITAL'S Emergency Room but requires hospitalization, and the HOSPITAL has the appropriate resources, the patient shall be admitted.

2.04 Hospitalist Services. CONTRACTOR shall provide Hospitalist services through a qualified doctor of medicine or osteopathy for HOSPITAL patients who are admitted as inpatients from HOSPITAL's Emergency Department and, if required, the long term care beds at the HOSPITAL pursuant to this Agreement. "Hospitalist services" are defined as providing such inpatient services as are customarily provided by hospitalists in a manner that meets all applicable standards of care, including but not limited to serving as the patient's primary treating physician while the patient is hospitalized, or in the skilled nursing facility, and ensuring that the patient's tests are evaluated in a timely manner and that physician services are available to the patient during the patient's inpatient hospital/skilled nursing stay.

2.04.1 Hospitalist services shall be required on-site a minimum of five (5) days per week at each HOSPITAL, for a minimum of forty (40) hours per week for Hale Ho'ola Hamakua, and a minimum of twelve (12) hours per week for Ka'u Hospital. If the CONTRACTOR is not onsite providing Hospitalist services, CONTRACTOR shall be available, within thirty (30) minutes of initial contact, for on-call consultation twenty-four (24) hours per day, three hundred sixty five (365) days per year. Hospitalist services shall include both admissions and discharges for acute, long term care and swing bed / critical access hospital services seven days per week.

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- 2.04.2 CONTRACTOR shall also be responsible for the coordination/management of medical care for all residents/patients in the facility including compliance with all regulatory patient visits and documentation according to CMS/state/federal guidelines; Admission CMA within 48 hours of admission and annually thereafter, Face to Face visits/progress notes – CAH weekly, LTC within 30 days of admission for 1st 90 days then every 60 days thereafter, recertification for SNF in LTC facility beds within 14 days from initial certification then 30 days from last certification until SNF benefits are exhausted, discharge summary on discharge.
- 2.04.3 The CONTRACTOR’s PHYSICIAN(s) on duty shall participate as needed in weekly Interdisciplinary Treatment team meetings, family meetings, discharge planning meetings, medical staff meetings, etc.
- 2.05 CONTRACTOR acknowledges that the HOSPITAL, as a critical access hospital (CAH), must meet all of the relevant conditions of participation for CAHs as set forth in 42 CFR Part 485 Subpart F. Section 620(b) of that Subpart requires that a CAH provide “acute inpatient care for a period that does not exceed, on an annual average basis, 96 hours per patient.” CONTRACTOR agrees to cooperate with and assist HOSPITAL, to the extent allowed by law, for the HOSPITAL to meet the relevant conditions of participation for CAHs.
- 2.06 Provide such medical assessment, treatment and care in accordance with procedures which meet all of the applicable professional standards of care, including the Standards of Practice of Emergency Medicine as established by the American College of Emergency Physicians.
- 2.07 Provide and ensure that the CONTRACTOR’s MEDICAL DIRECTOR and the PHYSICIANS who provide on-call services hereunder are qualified and experienced in emergency care and shall at all times be active and in good standing and whose credentials at anytime shall not be restricted, made conditional, or suspended, summarily or otherwise:
- A. A valid license to practice medicine in the State of Hawaii;
  - B. Board certification in a primary care specialty with recent emergency room experience; Medical Director will be board certified in emergency room services;
  - C. Staff privileges and credentials necessary to work at the HOSPITAL;
  - D. Compliance with all Mandatory Continuing Education (MCE) requirements imposed by the State of Hawaii and the HOSPITAL.
  - E. Have at least three (3) years of experience, or the completion of a postgraduate training program in an acceptable medical specialty, relevant to performing services under this Agreement.
  - F. Possess and maintains a current Advance Cardiac Life Support (ACLS) and Pediatric Advanced Life Support (PALS) certification and other certification(s) as deemed necessary by the medical staff rules and bylaws.



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2.08 The CONTRACTOR further understands and agrees as to the respective rights and obligations as follows:

2.08.1 **Discharge and Referral.** If, after appropriate assessment and examination, the PHYSICIAN determines in the exercise of PHYSICIAN's sound medical judgment that the patient's emergency medical condition, if any, is sufficiently stabilized and the patient no longer requires emergency medical care, the PHYSICIAN may discharge and/or refer such patient to the patient's physician for treatment.

2.08.2 **Subsequent Inpatient Service.** If, after appropriate assessment and examination, the PHYSICIAN determines in the exercise of the PHYSICIAN's sound medical judgment that the patient requires inpatient services following emergency medical treatment and care, the PHYSICIAN shall determine in collaboration with Director of Nursing the appropriate level of care facility. If appropriate for admission to Hospital, referral to the hospitalist for further inpatient care will be made. The patient's regular attending physician will be informed of the admission. If the appropriate admission is to another facility, ER physician will manage the transfer of the patient.

2.08.3 **Treating Patient Who Has Own Physician.** If the PHYSICIAN, in the exercise of PHYSICIAN's sole and sound medical judgment, determines that it is medically necessary to examine and treat a patient who otherwise has his or her own regular physician, the PHYSICIAN may provide such necessary examination and treatment.

2.08.4 **Medical Responsibility for Care.** Upon medically appropriate discharge or referral as described above, the medical responsibility for the care of the patient passes to the physician who assumes the care of the patient, and the PHYSICIAN shall then no longer be medically responsible for the subsequent care of that patient.

2.08.5 **Service under Physician Order.** The PHYSICIAN is not obligated under this Agreement to, and shall not, provide any services in the emergency medical facility to any patient, where such service is under the orders, of any kind or nature whatsoever, of the patient's physician.

2.08.6 **Patient of Staff Physician.** The PHYSICIAN shall notify any staff physician of the HOSPITAL to update him or her on their own patient that present to the Emergency Room.

2.08.7 **Patient's Best Interest.** The PHYSICIAN shall at all times during the performance of this Agreement act in the best interests of the patients and promote the best interests of the HOSPITAL.

2.08.8 **Other Controlling Documents.** The PHYSICIAN shall at all times during the performance of this Agreement comply with the bylaws and the rules and regulations of the medical staff of the HOSPITAL, the rules and regulations of the HOSPITAL, policies and procedures of the medical staff and of the HOSPITAL (collectively, "bylaws and rules and regulations"), and all state and federal laws and administrative regulations. Notwithstanding and provision in this Agreement to the contrary, this Agreement is not intended by the CONTRACTOR or HOSPITAL to, and does not, alter or otherwise affect

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any of the obligations of a medical staff member under the bylaws and rules and regulations; where there is any conflict between any of the terms of this Agreement and the bylaws and rules and regulations, the terms and provisions of the bylaws and rules and regulations shall control.

- 2.08.9 **CONTRACTOR or PHYSICIAN's Responsibility.** The CONTRACTOR or PHYSICIAN shall not be held responsible for the acts of the HOSPITAL's employees and other physicians utilizing the emergency room over which the CONTRACTOR or PHYSICIAN exerts no control.
- 2.09 The HOSPITAL may at its discretion review the performance of the PHYSICIAN. Within seventy-two (72) hours of CONTRACTOR's receipt of written notification of concerns relating to the performance of a PHYSICIAN, CONTRACTOR shall resolve any such concerns to the reasonable satisfaction of the HOSPITAL. This requirement is independent of and in addition to the peer review process set forth in the Medical Staff By-laws.
- 2.10 The CONTRACTOR, in a timely and accurate manner, will provide the HOSPITAL written reports it requests regarding PHYSICIAN services provided.
- 2.11 The CONTRACTOR shall ensure the PHYSICIAN promptly submits, to the HOSPITAL's medical records administrator and/or patient's private physician, written reports of all examinations, treatments, and procedures provided pursuant to this Agreement. CONTRACTOR and PHYSICIAN shall use the medical records and report forms provided by the HOSPITAL. CONTRACTOR further agrees that all records and reports required by this Section shall be the exclusive property of the HOSPITAL.
- 2.12 Upon implementation of the East Hawaii Region's Electronic Medical Records (EMR) System at the HOSPITAL, the CONTRACTOR shall ensure that their PHYSICIANS submit all medical records through that EMR system. HOSPITAL shall provide sufficient training for all of CONTRACTOR's Physicians to ensure their knowledge and understanding of the EMR system.
- 2.13 **Professionalism.** CONTRACTOR's Physicians are expected to promote a positive work environment through behavior that demonstrates a commitment to Hospital's Mission, Vision and Values. Behaviors that demonstrate Hospital's values of Trust, Respect, Integrity, and Mindfulness will promote better patient care and encourage long-lasting, meaningful relationships among all Hospital staff, and increase both employee and patient engagement. Intimidating and disruptive behaviors can foster medical errors, contribute to poor patient satisfaction and engagement, and contribute to preventable adverse outcomes. The Administration and/or outside organizations will periodically survey staff, patients, and other providers to determine whether the CONTRACTOR's Physicians are meeting the HOSPITAL'S mission, vision, and values and is in compliance with the policies and expectations listed below. The CONTRACTOR's Physicians will be given feedback and, if improvement is deemed by the HOSPITAL Administration to be needed, in its sole discretion, the CONTRACTOR's Physicians will be expected to alter their behavior to come into compliance with these policies and expectations.

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2.13.1 Unprofessional Conduct that continues after organizational efforts to correct are unsuccessful may result in termination of this Agreement as provided for under its terms and conditions. The Administration will have sole authority to decide whether the CONTRACTOR's Physicians has successfully remediated their unprofessional conduct and the decision of the Administration is final. Additional policy violations and non-clinical Unprofessional Conduct will be investigated by the Human Resources Department and/or outside organizations. Unprofessional Conduct that raises clinical concerns will be addressed by the Medical Staff Office and referred to the Regional CEO.

2.13.2 For purposes of this Section, Unprofessional Conduct means any of the following:

A. Disruptive behavior, as defined by the East Hawaii Region Code of Conduct to mean anything a person does that interferes with the orderly conduct of Hospital business. Disruptive behavior includes, but is not limited to, the following actions:

1. Physically threatening anyone in the work environment
2. Verbal outbursts
3. Making threatening or intimidating physical contact with another person
4. Throwing things, instruments, or charts
5. Threatening violence or retaliation
6. Sexual and other harassment
7. Making belittling, sarcastic or condescending statements regarding HHSC, Hospital or its employees.
8. Calling people names
9. Using profanity
10. Blatantly failing to respond to patient care needs or staff requests
11. Deliberately failing to return calls, pages, and messages.

2.13.3 A violation of any of the following policies that guide our conduct:

1. HHSC ADM 0032 - Workplace Disruptive Behavior No Tolerance Policy
2. HMC – HR 02370 – Workplace Violence No Tolerance Policy
3. HMC – HR 00745 – Non Harassment Policy
4. TJC Sentinel Event Alert No. 40 – Behaviors that Undermine a Culture of Safety

2.14 The parties to this Agreement certify that they shall not violate the Anti-Kickback Statute or the Stark Law with respect to the performance of this Agreement.

2.15 The PHYSICIAN must provide written notice to HHSC's Contracting Officer upon receipt of notification that the PHYSICIAN has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity. The Contracting Officer may, upon receipt of such written notice, immediately terminate this Agreement if the Contracting Officer or HHSC determine that the PHYSICIAN has been debarred, suspended or otherwise lawfully prohibited

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from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.

## **2.16 HOSPITAL'S RESPONSIBILITIES**

2.16.1 **Rest and Relaxation Room.** The HOSPITAL shall provide an indoor area used as a "rest and relaxation" room by the PHYSICIAN during on-call duty hours. While it is not a requirement for the PHYSICIAN to reside onsite, the HOSPITAL will make available one (1) room for the PHYSICIAN on-duty to use to enable him or her to comply with on-call requirements.

2.16.2 **Telephone Access.** The HOSPITAL shall allow the PHYSICIAN access to and use of the HOSPITAL's telephone at no charge to receive standard incoming and place outgoing local calls. The CONTRACTOR shall reimburse the HOSPITAL for all incoming collect calls the CONTRACTOR or PHYSICIAN accepts and outgoing long distance calls made by the CONTRACTOR or PHYSICIAN not directly related to patient care.

2.16.3 **Disclosure for Payment Process.** The HOSPITAL shall allow access to and use of its records, including patient records, necessary for the CONTRACTOR to accurately bill for professional services provided by the PHYSICIAN. Any such disclosure and use shall be subject to all applicable requirements and restrictions set forth in 45 CFR Part 160 and 164, as amended from time to time.

2.16.4 **Electronic Medical Records (EMR) System.** Upon implementation at the HOSPITAL, sufficient training will be provided to CONTRACTOR's staff. HOSPITAL will provide all necessary equipment for the use of the EMR. All medical records will be entered into the EMR system and HOSPITAL shall maintain the system for all users.

2.16.5 **Equipment and Supplies.** HOSPITAL shall provide and maintain all equipment, drugs, supplies, furniture, and fixtures for the use by PHYSICIAN as necessary for the proper functioning of an emergency room or are required by federal, state and local laws, regulations and ordinances.

## **2.17 BILLING AND COLLECTIONS FOR SERVICES – EMERGENCY ROOM PHYSICIAN SERVICES**

2.17.1 Specifically for Emergency Room Physician Services, CONTRACTOR shall perform billing and collection of all charges for professional medical services rendered by its staff for the Emergency Room staffing for the HOSPITAL. CONTRACTOR shall bill patients and third party payers for the professional fees at its own expense and under its own provider number. HOSPITAL shall perform billing and collection of all other charges, including but not limited to, facility fees.

2.17.2 The CONTRACTOR shall accept current year Medicare rates as payment in full for medical care provided to HOSPITAL employees and for other patients whose bills are being paid by the HOSPITAL.

2.17.3 The HOSPITAL shall make available to CONTRACTOR, in a practical manner consistent with current practices, legible copies of all records and other supporting documentation

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necessary for the accurate billing and patients for professional services provided by CONTRACTOR and its staff pursuant to this Agreement.

## **2.18 BILLING AND COLLECTIONS FOR SERVICES – HOSPITALIST SERVICES**

2.19.1 Specifically for Hospitalist Services, HOSPITAL shall bill and collect all fees for the Services rendered pursuant to this Agreement and PHYSICIAN agrees that he or she shall not take any actions whatsoever to bill (or cause to be billed) any patient, other individual, or entity for any such services and agrees to accept only such compensation as is set forth in this Agreement as payment in full for all Services rendered in accordance with the terms of this Agreement. PHYSICIAN further agrees to provide HOSPITAL with documentation in a manner satisfactory to HOSPITAL regarding all professional Services rendered by PHYSICIAN for HOSPITAL patients and further agrees to cooperate with HOSPITAL to ensure the prompt billing of all patients for all services rendered.

2.19.2 PHYSICIAN hereby assigns to HOSPITAL all amounts directly or indirectly payable as a result of Services provided by PHYSICIAN under the terms of this Agreement and during the term of this Agreement, including, by way of example and not by way of limitation, amounts paid by patients, by any insurance company, pursuant to any workers' compensation program, by employers or employer plans and amounts paid by any other third party payer. HOSPITAL shall provide billing and collection services pursuant to its usual policies and procedures, and shall not be required to take any extraordinary action in this regard, including litigation.

## **2.20 TECHNICAL REPRESENTATIVE**

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

Hale Ho'ola Hamakua  
Denise Mackey, Administrator  
Phone: 808-932-4101  
Email: [dmackey@hhsc.org](mailto:dmackey@hhsc.org)

Ka'u Hospital  
Merilyn Harris, Administrator  
Phone: 808-932-7987  
Email: [mharris@hhsc.org](mailto:mharris@hhsc.org)

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**SECTION 3**  
**PROPOSALS**

**3.1 PROPOSAL PREPARATION**

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

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

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

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

**3.2 DISQUALIFICATION OF PROPOSALS**

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

**3.3 ELECTRONIC DOCUMENTS:**

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

**3.4 SUBMISSION OF PROPOSALS**

OFFEROR is to submit its Proposal to the Issuing Officer no later than the "Closing Date for Receipt of Proposals", identified in Section 1, paragraph 1.2. **Proposals received after this time/date may be rejected.** Proposals may be submitted electronically (PREFERRED) or submittal of a paper hardcopy, which shall also include an electronic copy on USB Flash Drive, to the following address:

Jeffrey E. Dansdill, Senior Contracts Manager  
East Hawaii Region, HHSC,  
1190 Waianuenue Ave., Hilo, HI 96720  
Fax: 808. 933-2793

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

Electronic proposals can be submitted to the following file share address (PREFERRED): <https://hawaiihealthsystemcorporation.sharefile.com/r-rc856a1acb1e48a8b>

When submitting a hardcopy proposal, the outside cover of the package containing the proposal should be noticeably marked, as follows: **RFP # HHSC FY20-0358: <Vendor Name>**

**3.4.1. Confidential Information:**

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

**3.5 PROPOSAL INFORMATION**

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

**3.5.1. Technical Proposal:**

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

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

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

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

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

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

### **3.5.3 Cost:**

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

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

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

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

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

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

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

3.7.1 If an Offeror takes any exception to any term, condition or requirement included in this solicitation document, such exception shall be submitted to the Contracting Officer prior to the date of Receipt of Questions as listed in the RFP Timetable.



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3.7.2 If an Offeror includes in its proposal exceptions that are not covered by paragraph 3.7.1, above, and that are not approved in writing by the Contracting Officer, such exceptions shall be null, void and without force and shall not be considered, and may negatively affect the proposal evaluation based on the published evaluation criteria or may result in rejection of the proposal.

3.7.3 To the extent they are inconsistent with the terms of the Solicitation, the Offeror's preprinted or standard terms will not be considered by HHSC as a part of any resulting Contract.

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

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

### **3.9 DISCUSSIONS**

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

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**SECTION 4**

**COMPENSATION & FEE SCHEDULE**

4.0 Pricing Schedule: In accordance with the attached Scope of Services, Offeror submits the following pricing to HHSC:

4.0.1 Pricing for Hale Ho'ola Hamakua for Twenty-Four (24) months shall be as follows:

**A. Specifically for Emergency Room Physician Services**, Offeror submits an amount of

\$ \_\_\_\_\_ per month for providing the services required under the Scope of Services contained in this Agreement. This fee shall be inclusive of all taxes and expenses incurred. The CONTRACTOR acknowledges the billing and collection shall be the responsibility of the CONTRACTOR, as stated in the Scope of Services.

**B. Specifically for Hospitalist Services**, Offeror submits an amount of

\$ \_\_\_\_\_ per month for providing the services required under the Scope of Services contained in this Agreement. This fee shall be inclusive of all taxes and expenses incurred. The CONTRACTOR acknowledges the billing and collection shall be the responsibility of the HOSPITAL, as stated in the Scope of Services.

4.0.2 Pricing for Ka'u Hospital for Twenty-Five (25) months shall be as follows:

**A. Specifically for Emergency Room Physician Services**, Offeror submits an amount of

\$ \_\_\_\_\_ per month for providing the services required under the Scope of Services contained in this Agreement. This fee shall be inclusive of all taxes and expenses incurred. The CONTRACTOR acknowledges the billing and collection shall be the responsibility of the CONTRACTOR, as stated in the Scope of Services.

**B. Specifically for Hospitalist Services**, Offeror submits an amount of

\$ \_\_\_\_\_ per month for providing the services required under the Scope of Services contained in this Agreement. This fee shall be inclusive of all taxes and expenses incurred. The

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CONTRACTOR acknowledges the billing and collection shall be the responsibility of the HOSPITAL, as stated in the Scope of Services.

4.0.3 The **total sum proposed (Sections 4.0.1 + 4.0.2 above)** for providing the requested services, including all taxes and expenses incurred, shall be

\$ \_\_\_\_\_ .

4.1 Invoices for services rendered pursuant to and during the term of this agreement, inclusive, all in arrears, are subject to the prior receipt of the following written documentation, which must be included in the invoice for services:

- A. the Contract number, (#20-0358);
- B. the date(s) of the service(s) performed;
- C. a description of the tasks performed with such detail as the Technical Representative may reasonably request;
- D. signed and dated by the CONTRACTOR's delegated signatory.

4.1.1 The CONTRACTOR's invoice is due to the Technical Representative named in this Agreement by the tenth (10<sup>th</sup>) day of the month immediately following the month in which the services were provided. HHSC shall pay sums due SIXTY (60) days after receipt of CONTRACTOR's invoice or the last day of the month immediately following the month in which the services were provided, whichever is later.

4.1.2 The CONTRACTOR agrees to accept such amounts as payment in full for all services rendered in accordance with the terms of this Agreement.

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## **SECTION 5 EVALUATION**

### **5.1 INTRODUCTION**

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

### **5.2 EVALUATION PHASES**

Evaluation phases will be conducted as follows:

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

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

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

Proposal "**Mandatory Requirements**":

- A. Proposal Transmittal Cover Sheet (Appendix A)
- B. Acceptance (or Notification of Clarifications) document (Appendix B)
- C. Technical Proposal (Experience & Method of Approach)
- D. Cost Proposal (Completed Compensation & Fee Schedule)
- E. Proposal Submission Checklist (Appendix E)

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

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

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

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

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

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

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

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

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

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

**5.3 EVALUATION CATEGORIES AND VALUE WEIGHT PERCENTAGES**

<b>Mandatory Requirements</b>	Pass/No Pass
	<u><b>Value Weight</b></u>
<b>Technical Proposal</b>	
<b>Experience &amp; Expertise of Firm / Key Personnel .....</b>	40%
<b>Method of Approach to Scope of Services.....</b>	30%
<b>Compensation .....</b>	<u>30%</u>
<b>TOTAL.....</b>	<b>100%</b>

**5.4 EVALUATION SCORING SYSTEM**

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

The evaluation categories are assigned a value percentage, as determined by HHSC, totaling 100%. The Evaluation Committee will rate each category and assign a score based on the total percentage points available for that category. For example, if the percentage points for Experience and Expertise of the

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Firm are 40%, the maximum number of points that can be awarded in that category are 40. The Offeror's total score will be determined by having the Evaluation Committee assign points in each category to each Offeror based on their evaluation of that section of the Offeror's proposal; and totaling the score for all categories.

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

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

**6.1 AWARD OF CONTRACT**

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

**6.2 CONTRACT AWARD NOTIFICATION**

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

**6.3 CONTRACT DOCUMENT**

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

**6.4 GENERAL CONDITIONS**

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

**PROPOSAL TRANSMITTAL COVER SHEET  
RFP #HHSC FY 20-0358**

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

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

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

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

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

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

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

**Certification**

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

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



20-0358  
ACCEPTANCE (OR NOTIFICATION OF CLARIFICATIONS) DOCUMENT

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

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

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

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

**Or**

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

(Please attach additional pages, as required)

**GENERAL CONDITIONS**

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

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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 sixty (60) 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 or obligations hereunder except: (i) as otherwise provided herein; (ii) for rights and obligations accruing prior to such effective date of termination; or (iii) arising as a result of any breach of this Agreement.

#### **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 or 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](http://www.hhsc.org)). The CONTRACTOR, by signing this contract, acknowledges that it has read said description, and that the CONTRACTOR knows of the fact and substance of the Corporate Compliance Program, which governs operations at all facilities of the HHSC. The CONTRACTOR understands and agrees that employees, agents, 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](http://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](http://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.]**

**PROPOSAL SUBMISSION CHECKLIST**

<b><u>Items Submitted</u></b>	<b><u>For HHSC Use</u></b>	
_____	_____	Proposal Received "On-Time"
_____	_____	One (1) Original Proposal - electronic copy in pdf format (Preferred) or hard copy with USB drive of Proposals.
_____	_____	Proposal Transmittal Cover Sheet (Appendix A)
_____	_____	Official Business Letterhead
_____	_____	Authorized Signature
_____	_____	Acceptance (or Notification of Clarifications) document (Appendix B)
_____	_____	<b>Technical Proposal</b>
_____	_____	References
_____	_____	Organizational Chart
_____	_____	Method of Approach
_____	_____	<b>Pricing Schedule &amp; Compensation</b>
_____	_____	Pricing Information
_____	_____	Not To Exceed Amount
_____	_____	<b>Other Mandatory Items:</b>
_____	_____	Non-Applicable Proposal Requirement(s)
_____	_____	Non-Acceptance of "Specifications" Requirement(s)
_____	_____	All Data and Information Required by the RFP
_____	_____	Proprietary Documents Request (if any)
_____	_____	Proposal Submission Checklist
_____	_____	Standards of Conduct Declaration

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

**STANDARDS OF CONDUCT DECLARATION**

For the purposes of this declaration:

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

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

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

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

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

**CONTRACTOR**

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

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

**EXHIBIT 1**

**Hale Ho'ola Hamakua  
Background Data**

ER Volume (visits)	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
FY20	168	181	168	183	170	159	173	147	123	96			<b>1568</b>
FY19	170	149	162	159	145	151	142	140	185	166	158	150	<b>1877</b>
FY18	172	186	174	163	174	166	196	165	162	153	152	159	<b>2022</b>
FY17	200	178	214	172	176	209	183	191	174	180	182	194	<b>2253</b>
ER PAYOR MIX (% of gross charge)													
	FY19	FY18	FY17										
<b>COMM</b>	9%	8%	10%										
<b>HMSA</b>	15%	15%	16%										
<b>KAISER</b>	3%	4%	2%										
<b>MANAGED MEDICAR</b>	10%	8%	9%										
<b>MEDICAID</b>	0%	0%	0%										
<b>MEDICARE</b>	14%	17%	15%										
<b>NO FAULT</b>	0%	0%	0%										
<b>QUEST</b>	41%	40%	41%										
<b>SELF PAY</b>	8%	7%	7%										
<b>WORKERS COMP</b>	1%	1%	1%										
	100%	100%	100%										

**EXHIBIT 2**

**Ka'u Hospital  
Background Data**

ER Volume (visits)	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
FY20	276	321	258	263	251	282	307	280	221	145			<b>2604</b>
FY19	196	237	249	250	205	238	237	278	304	259	238	250	<b>2941</b>
FY18	236	266	260	242	270	263	276	259	263	235	226	201	<b>2997</b>
FY17	190	193	228	214	199	233	264	216	263	249	270	231	<b>2750</b>
ER PAYOR MIX (% of gross charge)													
	FY19	FY18	FY17										
<b>COMM</b>	10%	10%	12%										
<b>HMSA</b>	9%	11%	10%										
<b>KAISER</b>	3%	3%	2%										
<b>MANAGED MEDICAR</b>	9%	9%	8%										
<b>MEDICAID</b>	0	0%	1%										
<b>MEDICARE</b>	24%	18%	20%										
<b>NO FAULT</b>	0%	1%	1%										
<b>QUEST</b>	34%	40%	36%										
<b>SELF PAY</b>	8%	8%	9%										
<b>WORKERS COMP</b>	1%	1%	1%										
	100%	101%	100%										



**END OF DOCUMENT**

**# 20-0358**