

**MY HOSPITAL** ———

Hilo  Medical Center

——— **MY COMMUNITY**

## **REQUEST FOR PROPOSALS**

RFP No:  
**HHSC 24-0233**

COMPETITIVE SEALED PROPOSALS  
TO PROVIDE:

## **INTERVENTIONAL CARDIOLOGIST STAFFING**

For

Hawaii Health Systems Corporation

East Hawaii Region

**Hilo Medical Center**

1190 Waiuanue Avenue

Hilo, Hawaii 96720

An Agency of the State of Hawaii

**Proposals in response to this Solicitation are due:**

**No later than 2:00 PM, HST, February 20, 2024**

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**SECTION 1**  
**ADMINISTRATION**

**1.0 INTRODUCTION**

The purpose of this RFP is to award a contract for Interventional Cardiologist Staffing for The East Hawaii Region of HHSC

This Request for Proposal hereinafter “RFP” is issued by the Hawaii Health Systems Corporation (“HHSC”), an agency of the State of Hawaii. Thank you for your interest in submitting a proposal for this solicitation. The rationale for 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” and the agency that is awarded a contract under this RFP shall be referred to as “Contractor”.

In order for HHSC to evaluate OFFEROR’S response in a timely manner, please thoroughly read this RFP and follow instructions as presented.

**1.1 RFP TIMETABLE AS FOLLOWS**

The timetable as presented represents HHSC’s best estimated schedule. If an activity of the timetable, such as “Closing Date for Receipt of Questions” is delayed, the rest of the timetable dates may be shifted. OFFEROR will be advised, by addendum to the RFP, of any changes to the timetable.

<b>ACTIVITY</b>	<b>SCHEDULED DATES</b>
1. RFP Issued & Public Announcement	January 31, 2024
2. Submission of Intent to Submit Proposal	February 7, 2024
3. Site Visit at Hilo Medical Center	Will schedule upon request
4. Closing Date for Receipt of Questions	February 8, 2024
5. HHSC addendum issued responding to Questions	February 14, 2024
6. <b>Closing Date for Receipt of Proposals</b>	<b>February 20, 2024- No Later than 2:00 PM, HST</b>
7. Proposal Evaluation	February 21-23, 2024
9. Proposal Discussions ( <b>optional</b> )	February 26-29 2024
10. Best and Final Offers ( <b>optional</b> )	February 29, 2024
11. Contractor Selection/Award Notification (on/about)	March 1, 2024
12. Contract Tentative Award Date	March 17, 2024
11. Contract Tentative Start Date	April 1, 2024

**1.2 SUBMISSION OF INTENT TO SUBMIT PROPOSAL**

Offerors should submit, in writing, by **February 7, 2024**, their intent to submit (or not submit) a proposal. Please forward your company’s intentions by email to [snelson1@hhsc.org](mailto:snelson1@hhsc.org)

**1.3 AUTHORITY**

This RFP is issued under the provisions of the East Hawaii Regional Procurement Policies & Procedures. All OFFERORS are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed proposal by any OFFEROR shall constitute admission of such knowledge on the part of such OFFEROR.

### **1.3.1 RFP ORGANIZATION**

This RFP is organized into five sections:

**SECTION 1: ADMINISTRATIVE**

Provides information regarding administrative requirements.

**SECTION 2: SCOPE OF SERVICES**

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

**SECTION 3: PROPOSALS**

Describes the required format and content for submission of a proposal.

**SECTION 4: EVALUATION**

Describes how proposals will be evaluated and lists the “value weight percentages” of the evaluation categories.

**SECTION 5: AWARD OF CONTRACT**

Describes procedures for selection and award of contract.

### **1.4 HEAD OF PURCHASING AGENCY (HOPA)**

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

The HOPA for this RFP is:

Dan Brinkman  
Chief Executive Officer  
East Hawaii Region  
Hawaii Health Systems Corporation

### **1.5 DESIGNATED OFFICIALS**

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

#### **1.5.1 ISSUING OFFICER**

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

Sam Nelson, Regional Compliance and Contracts Officer  
East Hawaii Region, HHSC  
1190 Waianuenue Avenue, Hilo, HI 96720  
PH: (808) 932-3113 FAX: (808) 933-2793  
E-mail: [snelson1@hhsc.org](mailto:snelson1@hhsc.org)

## **1.6 HHSC ORGANIZATIONAL INFORMATION**

### **1.6.1 CHARTER**

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

### **1.6.2 STRUCTURE AND SERVICES**

HHSC is the "Safety Net" for Neighbor Island acute care and the "Safety Net" for long-term care in the state of Hawaii. This means that HHSC facilities provide services to all regardless of whether an individual has health insurance or the ability to pay for the health care service they receive. The system operates 847 licensed beds in facilities located on three different islands. In Fiscal Year 2018, HHSC facilities provided: 13,016 acute care admissions and 70,398 acute patient days; 575 long-term care admissions and 50,353 long-term care patient days; delivered 1,872 babies births; and handled 75,456 emergency room visits (excluding inpatient admissions).

HHSC has approximately 2,500 employees. Over 89 percent of the HHSC employees are represented by 1 of 2 unions and are divided into 7 collective bargaining units. The two collective bargaining representatives are United Public Workers and the Hawaii Government Employees Association. Because HHSC is a public agency, its employees receive the same benefit rights and privileges of employees in other state agencies. There are close to 1000-plus physicians affiliated with HHSC facilities.

### **1.6.3 MISSION**

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

## **1.7 SITE VISIT & FACILITY INFORMATION**

A site visit to Hilo Medical Center is strongly encouraged. While the site visit by Offerors will not be mandatory, HHSC will facilitate tours for Offerors who wish to see the facility. The dates and times for site visits will be negotiated with those Offerors who have indicated that they intend to submit a proposal.

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

## **1.8 SUBMISSION OF QUESTIONS**

Questions must be submitted in writing via electronic mail, facsimile or post mail to the Issuing Officer no later than the "Closing Date for Receipt of Questions", identified in paragraph 1.1 in order to generate an

official answer. All written questions will receive an official written response from HHSC and become addenda to the RFP.

**- IMPORTANT -**

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

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

Responses by HHSC shall be due to the OFFEROR no later than the dates stipulated in Section 1.1.

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

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

**SEND QUESTIONS TO:**

Sam Nelson, Regional Compliance and Contracts Officer  
East Hawaii Region, HHSC,  
1190 Waianuenue Ave., Hilo, HI 96720  
Fax: (808) 933-2793  
Email: [snelson1@hhsc.org](mailto:snelson1@hhsc.org)

**1.9 SOLICITATION REVIEW**

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

**1.10 RFP AMENDMENTS**

HHSC reserves the right to amend the RFP any time prior to the ending date for the proposal evaluation period. RFP Amendments will be in the form of addenda.

**1.11 CANCELLATION OF RFP**

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

**1.12 PROTESTS**

Pursuant to East Hawaii Regional Policies, an actual or prospective offeror who is aggrieved in connection with the solicitation or award of the contract may submit a protest. Any protest shall be submitted in writing to the HOPA as noted below.

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

A protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract as detailed in East Hawaii Regional Procurement Policies. The notice of award, if any, resulting from this solicitation shall be posted in the East Hawaii Region Procurement website:

<http://www.hhsc.org/easthi/hmc/procurement.htm>

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

Dan Brinkman, Chief Executive Officer  
East Hawaii Region  
Hawaii Health Systems Corporation  
1190 Waianuenu Avenue  
Hilo, Hawaii 96720

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

### **2.1 Background:**

Hilo Medical Center is the largest facility in the Hawaii Health Systems Corporation. Established in 1897, HMC has grown from a 10-bed hospital erected by the Hawaiian Government into the present facility of 275 licensed beds. Current capacity includes 141 licensed acute care beds including a 20 bed psychiatric unit, and a separate 134 bed licensed skilled nursing facility. The current facility was built in 1984 on roughly 20.5 acres of land adjacent to the picturesque Wailuku River. Also on the campus are the Hawaii Pacific Oncology Center, and the Yukio Okutsu Veterans Center. HMC is the largest employer in Hilo providing roughly 1200 jobs.

Hilo Medical Center is an active teaching and training site. HMC currently has nursing students in training from University of Hawaii at Hilo as well as Hawaii Community College. The hospital is an active training site for students from the College of Pharmacy during clinical training. Hilo Medical Center also has its own stand-alone 3 year Family Medicine Residency Program with a total complement of 15 residents in 2022

Patient services include:

- 24-hour Emergency Care

- Level III Trauma Center

- Critical Care Service

- General Medical Services

- Medical specialty services including Gastroenterology, Cardiology and Neurology

- General Surgery Services

- Surgical specialty services including Urology, ENT, Orthopedic, OB/Gyn and Vascular surgery.

- CT, MRI and Interventional Radiology services.

- Medical Oncology.

During Calendar Year 2022, the Cardiology Clinic at HMC saw the following number of patients and completed the following numbers of procedures:

10,432 Cardiology outpatient visits per year to include:

- 14-day ECG monitors

- Echocardiograms

- Exercise and Pharmacologic stress testing

- Coronary calcium scoring

- Coronary cardiac computed tomography angiography

- Cardiac magnetic resonance imaging

4,918 Cardiology hospital procedures per year to include:

- Cardiac catheterization.



Angiogram (peripheral and coronary)  
Angioplasty  
Coronary atherectomy  
Fractional flow reserve measurement  
Intravascular ultrasound  
Stent placement  
Thrombolysis  
Balloon pump  
Impella pump  
Complex percutaneous coronary intervention (PCI) with hemodynamic support  
Transthoracic Echocardiogram  
Transesophageal Echocardiography

## **2.2 Agreement start date and agreement term**

Planned start date for these services is April 1, 2024. Contract term will be 3 years for the initial term with the option to extend for an additional three (3) one year terms subject to HHSC Board approval, appropriation of funding and upon mutual agreement in writing.

## **2.3 Scope of Service:**

The Contractor shall provide the following:

1. Interventional Cardiologist Staffing – minimum of 1 FTE
  - Provide experienced and qualified interventional cardiologists with Hawaii license
  - Ensure coverage for on-call emergencies, outpatient clinic sessions
  - diagnostic imaging services and reading of EKG and related imaging results, echocardiograms, nuclear imaging including CTA/MRA, and supervision of stress tests; hospital rounding and consultations; catheterization laboratory procedures specifically diagnostic and interventional cardiology services;
2. On-Call Coverage:
  - Deliver 24/7 on-call coverage for interventional cardiology emergencies which follows hospital call policy
  - Ensure prompt response and availability for urgent interventions.
3. Inpatient Coverage:
  - Provide skilled interventional cardiologists to manage inpatient services.
  - Perform necessary diagnostic and interventional procedures as required.
4. Clinic Coverage:
  - Facilitate outpatient clinic coverage for routine assessments and patient consultations.
  - Collaborate with clinic staff for seamless patient management.
5. Administrative Oversight
  - Offer administrative support and oversight for the deployed interventional cardiologists.

- Ensure compliance with organizational policies, regulatory requirements, and quality standards.
- recruiting Physicians(s) to provide the Physician Services;
- scheduling Physician(s) with Hospital; logistics;
- maintaining Physician licensure and credentialing
- Hospital to bill and collect for services

#### **2.4. HIPAA Compliance Statement:**

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 it has read the Privacy and Security Addendum, which is posted on the HHSC internet ([www.hhsc.org](http://www.hhsc.org)) and is applicable to all Business Associates. Said Privacy and Security 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 the terms set forth in the Privacy and Security Addendum.

#### **2.5 Personnel Removal from Project:**

In the event that HOSPITAL, at any time and at its sole discretion, determines that the work performed or any portion thereof is unsatisfactory, HOSPITAL may require CONTRACTOR to correct or improve the deficiency. CONTRACTOR shall immediately thereafter take steps to correct the deficient performance to the reasonable satisfaction of the HOSPITAL.

CONTRACTOR shall remove from the assignment any CONTRACTOR personnel upon HOSPITAL's reasonable request. CONTRACTOR shall replace the removed person with a deadline mutually agreed upon with HOSPITAL.

#### **2.6 Background Documentation:**

To the extent allowed by law, CONTRACTOR shall provide to HOSPITAL criminal background and OIG checks of CONTRACTOR personnel that provide Services to HOSPITAL under this Agreement per request of HOSPITAL. Contractor will not employ at Hospital any employees flagged as ineligible to work under Government Contracts.

#### **2.7 Technical Representatives**

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

#### **For Hospital:**

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RFP No. HHSC FY 24-0233  
Interventional Cardiology Staffing

Lisa Shiroma Chief Administrative Officer  
East Hawaii Region  
Hilo Medical Center  
1190 Waiianuenue Avenue  
Phone: (808) 932-3138  
E-mail: [lshiroma@hhsc.org](mailto:lshiroma@hhsc.org)

**For Contractor:**

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

#### **3.0 INTRODUCTION**

One of the objectives of the RFP is to make proposal preparation easy and efficient, while giving OFFEROR ample opportunity to highlight their proposal. When an OFFEROR submits a proposal, it shall be considered a complete plan for accomplishing the requirements described in this RFP.

#### **3.1 PROPOSAL PREPARATION**

OFFEROR shall prepare a written proposal in accordance with requirements of this Section. Proposals shall address and contain, at a minimum:

The technical category information identified in paragraph 3.7 below.  
The price category information identified in paragraph 3.8 below.

Proposals shall include all data and information requested to qualify proposals for evaluation and consideration for award. Non-compliance may be deemed sufficient cause for disqualification of a proposal.

Prepare proposals, organized into distinctive sections, with tabs corresponding with the technical and price categories and other categories, as appropriate. The development of overly elaborate proposals and presentation material, not required and/or related to RFP requirements, is **HIGHLY DISCOURAGED**. This procedure will facilitate proposal evaluations.

#### **3.2 COSTS FOR PROPOSAL PREPARATION**

Any and all costs incurred in the development of proposals, (i.e. preparing and submitting, on-site product/service demonstrations, on-site visits, oral presentations, travel and lodging, etc.) shall be the sole responsibility of OFFEROR.

#### **3.3 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. HHSC reserves the right to ask for clarification of any item in the proposal.

**- ATTENTION -**

**Any proposal offering any other set of terms and conditions contradictory to those included in the RFP may be disqualified without further notice. Please refer to Section 1.8.**

An OFFEROR will be disqualified and the proposal automatically rejected for any one or more of the following reasons:

- Proof of collusion among OFFERORS, in which case all proposals involved in the collusive action will be rejected.
- The OFFEROR'S lack of responsibility and cooperation as shown by past work or services.
- The proposal shows any noncompliance with applicable law.
- The proposal is conditional, incomplete, or irregular in such a way as to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- The proposal has any provision reserving the right to accept or reject award, or to enter into a contract pursuant to an award, or provisions contrary to those required in the solicitation.
- Proof of exclusion 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.

### **3.4 SUBMISSION OF PROPOSALS**

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

Sam Nelson Regional Compliance and Contracts Officer  
East Hawaii Region, HHSC,  
1190 Waianuenue Ave., Hilo, HI 96720  
808- 932-3113  
Email: [snelson1@hhsc.org](mailto:snelson1@hhsc.org)

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

**"Proposal Submitted in Response to: RFP # HHSC 24-0233"**

### **3.5 PROPOSAL TRANSMITTAL COVER LETTER**

OFFEROR is required to submit proposal with a transmittal cover letter. The transmittal cover letter must be on the OFFEROR'S official business letterhead; signed by an individual authorized to legally bind the OFFEROR; and minimally include information, as written/requested, on the "sample" letter in Section 6, APPENDIX A.

### **3.6 PUBLIC INSPECTION**

Proposals shall not be opened publicly, but shall be opened in the presence of two or more procurement officials. The register of proposals and OFFERORS' proposals shall be open to public inspection after the contract is executed by all parties.

OFFEROR shall request in writing the nondisclosure of designated trade secrets or other proprietary data to be confidential. 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. 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.

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

### **3.7 TECHNICAL PROPOSAL**

The technical proposal shall include the following categories:

- a. SUMMARY
- b. BACKGROUND, QUALIFICATIONS AND EXPERIENCE
- c. PERSONNEL ORGANIZATION AND STAFFING; and
- d. MANAGEMENT AND CONTROL.
- e. IMPLEMENTATION SCHEDULE

#### **3.7.1 SUMMARY**

Clearly, concisely and briefly summarize and highlight the contents of the technical proposal in such a way to provide HHSC with a broad understanding and the unique, most promising aspects of the proposal.

#### **3.7.2 BACKGROUND, QUALIFICATIONS AND EXPERIENCE**

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

- a. Background of the Company, i.e. services offered, size, resources, years in business, location, State of Hawaii presence, state of incorporation, etc.
- b. Brief description of Company's qualifications to perform Scope of Services requirements.
- c. Brief description of three (3) past and/or present contracts demonstrating Company's qualifications, experience, and performance. Include customer name, contact name and telephone number. If not available, provide contact name and telephone number of three (3) references that can discuss your Company's qualifications, experience, and performance.
- d. Company financial statements for the past two years, preferably audited, or a copy of filed tax returns. Certified Balance & Income Statements are acceptable; keep documentation simple/limited. If not available or applicable, please explain reason(s) why.
- e. Identification of litigation currently impacting the Company, if any. State "NONE", if none.

#### **3.7.3 PERSONNEL ORGANIZATION AND STAFFING**

Provide explicit details on the Company's personnel organization and staffing relative to performing requirements set forth in the Scope of Services, as follows:

- a. Company's managerial organizational chart and resumes of key positions.
- b. Key personnel identified to perform services, including: name, years of experience, years with the Company, qualifications and verifiable references (with contact telephone numbers), if any. Offerors are encouraged to meet with current staff.

#### **3.7.4 MANAGEMENT AND CONTROL**

Provide a detailed summary of the methodology relative to performing requirements set forth in the Scope of Services, as follows:

- a. Assignment and management of personnel.
- b. Coordination of requirements with HHSC personnel.
- c. Problems anticipated, if any.

### **3.8 PRICE PROPOSAL**

A standard price proposal based on cost of service provision (Section 4.1)

- a. SUMMARY
- b. SUMMARY OFFER

#### **3.8.1 SUMMARY**

Clearly, concisely and briefly summarize and highlight the contents of the price proposal, in such a way as to provide HHSC with a broad understanding of the unique, most promising aspects of the proposal.

#### **3.8.2 SUMMARY OFFER**

Provide a detailed, line-item list (including at a minimum: description of price elements and personnel performing services; hours required; unit price; total price; taxes including Hawaii General Excise Tax) of any and all prices, with a summary total, representing the dollar amount offered (Summary Offer) to perform Scope of Service requirements of this RFP.

All worksheets and supporting documentation in determining the Summary Offer shall be provided with the proposal to verify validity of computations and determine if prices are “fair & reasonable”. A further breakdown of price elements and/or price related information may be requested during proposal review and evaluation.

The Summary Offer shall represent the total amount offered; and, if proposal is accepted, the “Not to Exceed” maximum dollar amount of the contract.

#### **3.8.3 NON-APPLICABLE PROPOSAL REQUIREMENT**

Excluding HHSC General and Special Terms and Conditions, and any objectionable or defective RFP matters, if any proposal requirement, as describe in this Section, is not applicable to the OFFEROR and therefore will/cannot be provided, list the requirement(s) and provide detailed explanation of the reasons why the requirement(s) is not applicable. HHSC reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in this Section.

#### **3.8.4 NON-ACCEPTANCE OF ANY RFP REQUIREMENT**

If any RFP requirement, as describe in this RFP, is not acceptable to the Offeror, list the requirement(s) and provide detailed explanation of the reasons why the requirement(s) is not acceptable and provide a recommended revision, if applicable. HHSC reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in the RFP.

**- ATTENTION -**

**Any proposal offering any other set of terms and conditions contradictory to those included in the RFP may be disqualified without further notice. Please refer to Section 1.8.**

### **3.8.5 PROPOSAL SUBMISSION CHECKLIST**

The proposal submission checklist is designed to be used as a tool to ensure that all required documents and information are being submitted with OFFEROR'S proposal; and, as a supplementary means of performing evaluation of the "Mandatory Requirements", as set forth in Section 5 paragraph 5.2.1. The checklist is required to be completed by each OFFEROR and included (as the last document) in the proposal package. The proposal submission checklist is in Section 6, APPENDIX B

## **SECTION 4**

### **COST ANALYSIS**

#### **4.1 SUMMARY OFFER COST-BASED SERVICES**

Provide a summary total of the dollar amount offered to perform "Scope of Service" requirements of this RFP. Provide price on a monthly, annual, and total price basis.

##### **4.1.1 PAYMENT AND INVOICE REQUIREMENTS.**

The HOSPITAL shall pay CONTRACTOR the rate for the appropriate category of services as designated by the Pricing Schedule submitted with the Offer, for services rendered pursuant to and during the term of this agreement, inclusive, all in arrears, subject to the prior receipt of the following written documentation, which must be included in the invoice for services:

- a. The Contract number, (#24-0233);
- 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. A signature and date by the Contractor's delegated signatory.

##### **4.1.2 TIMELINESS OF INVOICE AND PAYMENT.**

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. The Hospital 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.

##### **4.1.3 ACCEPTANCE OF PAYMENT**

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

##### **4.1.3 NOT TO EXCEED.**

Offerors are requested to provide a Not TO Exceed total number for their proposal. The total sum of money the Hospital is administratively authorized to expend under this Agreement during its full term, including all applicable taxes and expenses incurred.



#### **4.2.1 PAYMENT AND INVOICE REQUIREMENTS.**

The HOSPITAL shall pay CONTRACTOR the rate for the appropriate category of services as designated by the Pricing Schedule submitted with the Offer, for services rendered pursuant to and during the term of this agreement, inclusive, all in arrears, subject to the prior receipt of the following written documentation, which must be included in the invoice for services:

- a. The Contract number, (#24-0233);
- 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. A signature and date by the Contractor's delegated signatory.

#### **4.2.2 TIMELINESS OF INVOICE AND PAYMENT.**

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. The Hospital 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.

#### **4.2.3 ACCEPTANCE OF PAYMENT**

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

#### **4.2.4 NOT TO EXCEED.**

The total sum of money the Hospital is administratively authorized to expend under this Agreement during its full term, including all applicable taxes and expenses incurred, remains the same as stated in Section 4.1.

## **SECTION 5** **EVALUATIONS**

### **5.0 INTRODUCTION**

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

### **5.1. PROPOSAL EVALUATION COMMITTEE**

An evaluation committee will be selected from HHSC to perform all evaluation requirements. The committee will be composed of individuals with experience in, knowledge of, and program responsibility for the requirements identified in the RFP. HHSC reserves the right to request information from OFFEROR to clarify the OFFEROR'S proposal.

### **5.2 EVALUATION PHASES**

Evaluation phases will be conducted as follows:

- Phase 1.....Evaluation of Mandatory Requirements
- Phase 2.....Technical Proposal Evaluation
- Phase 3.....Price Proposal Evaluation
- Phase 4....Determination of Priority List of OFFERORS
- Phase 4.....Proposal Discussions by Priority-List (**optional**)
- Phase 5.....Best and Final Offers by Priority List (**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 Scope of Services requirements"; and, "Were proposal documents, as identified below, received by HHSC and do they contain the required information?" Failure to meet any mandatory requirement may be grounds for deeming the proposal non-responsible, non-responsive or both and disqualification ("No Pass") thereof.

#### **Proposal Mandatory Requirements.**

- Proposal Cover Letter **with corporate seal or notarization**
- Technical Proposal
  - Background, Qualifications and Experience
  - Personnel Organization and Staffing
  - Management and Control
  - Miscellaneous
- Price Proposal
- State of Hawaii Compliance Documents
- Proposal Submission Checklist

**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 4.3 and the evaluation scoring system identified in paragraph 4.5.

**5.2.3 PHASE - 3 PRICE PROPOSAL EVALUATION**

Evaluation of the price proposal shall be conducted using the price proposal category and the value weight percentages identified in paragraph 4.3 and the evaluation scoring system identified in paragraph 4.4.

**5.2.4 PHASE - 5 PROPOSAL DISCUSSIONS WITH PRIORITY-LISTED OFFERORS (OPTIONAL)**

At its discretion, following the Mandatory Requirements Phase, HHSC may develop a Priority List of Offerors based on the evaluation of OFFERORS’ Technical and Price proposals. This Priority List may be asked to conduct discussions with HHSC. OFFEROR’S proposal may be accepted without Discussions. In the event that HHSC elects to hold Discussions, HHSC shall inform Priority-Listed OFFERORS of specific Discussion topics and issues; and schedule Discussion proceedings.

**5.2.5 PHASE - 4 BEST AND FINAL OFFERS (OPTIONAL)**

OFFEROR 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 prepare a report summarizing proposal evaluation findings/rankings and provide recommendation for award of contract to the HOPA.

**5.3 EVALUATION CATEGORIES AND VALUE WEIGHT PERCENTAGES**

<b>Mandatory Requirements</b>	<b>Pass/No Pass</b>
<b>Technical Proposal</b>	<b><u>Value Weight</u></b>
Background, Qualifications and Past Performance .....	15%
Personnel Organization and Staffing.....	45%
Method of Approach to the Scope of Services.....	15%
<b><u>Price Proposal.....</u></b>	<b><u>25%</u></b>
<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.

1.

The evaluation categories are assigned a value, as determined by HHSC, totaling 100%. The Evaluation Committee will rate each category and arrive at a consensus score based on the percentage of value. The Offeror's total score (see note below) will be determined by adding the score of each category for their total overall score.

**NOTE:** In determining the total score, the Offeror's cost proposal with the lowest costs will receive the highest available rating allocated to costs (and will thus receive a score of 25 for the cost proposal category). Each proposal that has a higher cost than the lowest will have a lower rating for costs. The formula for determining the points for all except the lowest cost proposal is as follows:

[(Lowest price/price in Offeror's proposal) x 25 points = Offeror's points.]

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

### **6.0 AWARD OF CONTRACT**

Award of contract shall be made to the most responsible and responsive OFFEROR whose proposal is determined by the Evaluation Committee to provide the best value to HHSC, considering all evaluation reviews and results.

### **6.1 CONTRACT AWARD NOTIFICATION**

The notice of award, if any, resulting from this solicitation shall be posted on Hilo Medical Centers Website. This will serve as the official notification to all OFFERORS. In addition, the Issuing Officer will inform the successful OFFEROR of contract award selection by an official "notice of award" letter.

At its discretion and as a courtesy to the OFFEROR the Issuing Officer may issue a "Notice of Posting of Award" to the unsuccessful OFFERORS. However a delay in issuing the notice or the inadvertent omission of such courtesy notice will not extend the protest filing time.

### **6.2 CONTRACT AWARD DEBRIEFING**

If requested, HHSC shall provide a contract award debriefing. The purpose of a debriefing is to inform the non-selected OFFEROR of the basis for the source selection decision and contract award. A written request to the Issuing Officer for a debriefing shall be made within three (3) working days after receipt of non-award of contract letter from HHSC and/or posting of the award of the contract.

### **6.3 METHOD OF AWARD**

#### **6.3.1 CONTRACT DOCUMENT**

The contract will be awarded by executing an **“Agreement for Goods or Services Based upon Competitive Sealed Proposals”** (hereinafter “CONTRACT”) by HHSC and the successful OFFEROR (hereinafter “CONTRACTOR”). 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 CONTRACTOR’s accepted proposal, with any and all addendums, changes, negotiated agreements, all of which becomes part and whole of the CONTRACT.

#### **6.4. GENERAL AND SPECIAL CONDITIONS:**

The GENERAL CONDITIONS – HEALTHCARE SERVICE PROVIDERS, APPENDICES D, are applicable and shall be part and whole and attached to the Agreement.

The GENERAL CONDITIONS – HEALTHCARE SERVICE PROVIDERS, APPENDIX D **provisions are non-negotiable**. Please refer to Section 1.7.

#### **Of particular significance, please note/review the following requirements:**

##### **6.4.1 GENERAL EXCISE/USE TAX**

Refer to the GENERAL CONDITIONS - HEALTHCARE SERVICE PROVIDERS, APPENDIX E. Work to be performed under this solicitation is a business activity taxable under Chapter 237, Hawaii Revised Statutes (HRS), and Chapter 238, HRS, where applicable. Both out-of-state and Hawaii CONTRACTOR are advised that the gross receipts derived from this solicitation are subject to the general excise tax imposed by Chapter 237, HRS, and where applicable to tangible property imported into the State of Hawaii for resale, subject to the use tax imposed by Chapter 28, HRS.

Pursuant to Section 237-9, HRS, the CONTRACTOR is required to obtain and/or possess a valid General Excise Tax License from the Hawaii State Department of Taxation (DOTAX) prior to executing a contractual agreement with a State Agency (Reference the GENERAL CONDITIONS -, APPENDIX E).

The **General Excise Tax License** shall be obtained from the DOTAX offices in the State of Hawaii or the DOTAX Web Site and by mail or FAX. Refer to the next paragraph for procedures in obtaining DOTAX forms and information.

##### **6.4.2 CONTRACT EXECUTION**

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

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

##### **6.4.5 CONTRACT COMMENCEMENT DATE**

Upon completion of CONTRACT execution requirements, a **“Notice to Proceed”** letter will be provided the CONTRACTOR specifying the “Commencement” (start work) date of the CONTRACT. No work is to be undertaken by the CONTRACTOR prior to the commencement date specified in the Notice to Proceed letter. HHSC is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the CONTRACTOR prior to the official, notice to proceed “Commencement” date.

## SAMPLE PROPOSAL TRANSMITTAL COVER LETTER

Mr. Nelson:

(Name of Business) \_\_\_\_\_ proposes to provide any and all goods and services as set forth in the “Request for Proposals for Competitive Sealed Proposals” to provide “**Interventional Cardiologist Staffing Services**”, RFP # **HHSC 24-0233**, for which fees/costs have been set. The fees/costs offered herein shall apply for (Please \_\_\_\_\_ insert applicable period of time) .

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

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

\_\_\_\_\_  
\_\_\_\_\_

**Other information:**

Business Phone #:		Federal Tax ID #:	
Facsimile #:		Hawaii GET Lic. ID #:	
E-mail address:			

\_\_\_\_\_(Name of Business) \_\_\_\_\_ is a:  Sole Proprietor  Partnership  Corporation  Joint Venture

Other \_\_\_\_\_ (Specify) \_\_\_\_\_

State of Incorporation is: \_\_\_\_\_ (Specify) \_\_\_\_\_

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

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

Encl: Proposal

**PROPOSAL SUBMISSION CHECKLIST**

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

**Please  
Check Off  
Offeror  
Submitted**

**HHSC Use**

**Proposal Items**

<input type="checkbox"/>	<input type="checkbox"/>	Proposal Received “On-Time”
<input type="checkbox"/>	<input type="checkbox"/>	One (1) <b>Original Hard Copy</b> & one (1) electronic copy (on disk or jump drive) of Proposals.
<input type="checkbox"/>	<input type="checkbox"/>	Proposal Transmittal Cover Letter:
<input type="checkbox"/>	<input type="checkbox"/>	• Official Business Letterhead
<input type="checkbox"/>	<input type="checkbox"/>	• Authorized Signature
<input type="checkbox"/>	<input type="checkbox"/>	• Corporate Seal or Notarized
<input type="checkbox"/>	<input type="checkbox"/>	• Required Information
<input type="checkbox"/>	<input type="checkbox"/>	Technical Proposal
<input type="checkbox"/>	<input type="checkbox"/>	• Background, Qualifications and Experience
<input type="checkbox"/>	<input type="checkbox"/>	• Personnel Organization and Staffing
<input type="checkbox"/>	<input type="checkbox"/>	• Management and Control
<input type="checkbox"/>	<input type="checkbox"/>	Cost Proposal
<input type="checkbox"/>	<input type="checkbox"/>	• Summary
<input type="checkbox"/>	<input type="checkbox"/>	• Summary Offer
<input type="checkbox"/>	<input type="checkbox"/>	Optional Services Costs
<input type="checkbox"/>	<input type="checkbox"/>	Implementation Schedule
<input type="checkbox"/>	<input type="checkbox"/>	Non Applicable Proposal Requirement(s)
<input type="checkbox"/>	<input type="checkbox"/>	All Data and Information Required of the RFP
<input type="checkbox"/>	<input type="checkbox"/>	Proprietary Documents
<input type="checkbox"/>	<input type="checkbox"/>	Others (List)
<input type="checkbox"/>	<input type="checkbox"/>	Proposal Submission Checklist



**APPENDIX C**

**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 "is" is circled, 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.

**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 of whom shall be associated or affiliated in any way with HHSC or any of its affiliates) neither CONTRACTOR nor any Provider shall disclose the terms of this Agreement to any person who is not a party or signatory to this Agreement unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented to by HHSC. Unauthorized disclosure of the terms of this Agreement shall be a material breach of this Agreement and shall provide HHSC with the option of pursuing remedies for breach or immediate termination of this Agreement in accordance with Paragraph 13.b.(2), "Termination for Breach", hereof.

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

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

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

## **16. INSURANCE.**

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

b. The coverage required by this provision shall be either: (a) on an occurrence basis; or (b) on a claims made basis. If the coverage is on a claims made basis, CONTRACTOR hereby agrees that not less than thirty (30) days' prior to the effective date of termination by CONTRACTOR of any Provider's insurance coverage by the current carrier, CONTRACTOR shall: (a) purchase tail or extended reporting coverage insurance for a minimum period of five (5) years in the above-stated amounts for all claims arising out of incidents occurring prior to such termination of coverage; and (b) provide HHSC with a certificate of such coverage. If CONTRACTOR fails to purchase such coverage and provide HHSC with a certificate of same in accordance with the above-stated requirements, HHSC shall have the right, as hereby acknowledged by CONTRACTOR, to purchase such coverage and notify CONTRACTOR in writing of the total premium costs therefor. CONTRACTOR hereby expressly acknowledges and agrees that the total premium cost for such coverage purchased by HHSC under this provision shall be immediately due and payable by CONTRACTOR to HHSC upon CONTRACTOR's receipt of said notice, and may be offset against any money owed by HHSC to CONTRACTOR.

## **17. CONTRACTOR'S TAX RESPONSIBILITIES.**

a. The CONTRACTOR shall be responsible for payment of all applicable federal, STATE, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including, but not limited to, (i) income taxes, (ii) employment-related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.

b. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

## **18. PAYMENT PROCEDURES.**

a. Original Invoices Required. All payments under this Agreement shall be made only upon submission by the CONTRACTOR of original invoices specifying in reasonable detail the services performed and the amount due, and certifying that services requested under the Agreement have been performed by the CONTRACTOR according to the Agreement.

b. Prompt Payment.

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

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

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

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

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

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

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

**20. CORPORATE COMPLIANCE PROGRAM.** A description of the Corporate Compliance Program of HHSC, including orientation materials, is posted on the HHSC internet site ([www.hhsc.org](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.

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**Physician Qualifications**

**QUALIFICATIONS**

1. Physicians shall be Board certified or board eligible in Interventional Cardiology or other specialties as mutually agreed upon, or will become Board certified as required by the applicable medical staff department(s).
2. All Physicians shall have appropriate clinical privileges at HOSPITAL. Physicians shall abide by all HOSPITAL and medical staff policies, bylaws, rules and regulations, and all state and federal laws in providing the Services.
3. All Physicians shall have current ACLS certification.
4. All Physicians and APPs shall possess good communication and human relations skills and a consistent ability to work well with patients, providers and staff. CONTRACTOR shall evaluate its providers at least annually, and will provide this report to the Medical Executive Committee of the HOSPITALS.
5. All Physicians shall demonstrate an ability and willingness to:
  - a. serve on medical staff committees;
  - b. participate in performance improvement projects and protocols as requested;
  - c. complete all documentation, especially medical records, in a timely manner; and
  - d. provide timely, accurate and consistent communications with patients' primary care physicians, including the completion of a history and physical and discharge summary within 24 hours of discharge.
6. Each of CONTRACTOR's Physicians shall not have (i) been excluded or suspended from participation in any federal or state health care program, including but not limited to Medicare, Medicaid, and CHAMPUS/Tricare; (ii) been convicted of a crime related to healthcare; or (iii) been suspended, excluded, debarred or sanctioned under any other federal health care program, including, but not limited to, the Food and Drug Administration, the National Institutes of Health, the Department of Defense or the Department of Veterans Affairs.
8. PROVIDERS will participate in completing other's annual 360 surveys and responding to their own survey results with a debriefing and coaching when requested by Administration.
9. PROVIDERS will participate in the Press Ganey Survey of the Hospital when requested on an annual basis. They will also actively participate in developing strategies to mitigate the areas that are recognized as needing improvement.

Before CONTRACTOR'S Physicians render Services under this Agreement, CONTRACTOR must provide notice of the intention of CONTRACTOR to allow the Physician to provide Services and obtain HHSC's prior approval of the Physician. Furthermore, notwithstanding the qualifications set forth above, HHSC reserves the right to approve only those Physicians proposed by CONTRACTOR who can demonstrate acceptable skills and a history of behavior that would ensure harmonious delivery of services and an acceptable quality of performance. Only Physicians who are approved by HHSC shall render Services pursuant to this Agreement.

**END OF RFP # 24-0233**