

March 27, 2012

REQUEST FOR PROPOSALS

**SKILLED NURSING SERVICES
RFP No. F12-062**

The Department of Education (the “**DOE**” or the “**Department**”), is requesting proposals from qualified providers to provide skilled nursing services to eligible students who are in need of such services. The contract term will be from July 1, 2012 to June 30, 2013. Multiple contracts may be awarded under this request for proposals (“**RFP**”).

Copies of this RFP may be obtained at the Waipahu Civic Center, 94-275 Mokuola St., Room 200, Waipahu, Hawaii 96797 or from the SPO website: <http://hawaii.gov/spo/notices> or <http://hawaii.gov/spo2/health/rfp103f/>.

Proposals must be mailed, postmarked by the United States Postal Service on or before May 1, 2012, and received no later than ten (10) days from the date of postmark. Hand delivered proposals must be received no later than 2:00 p.m. Hawaii Standard Time (“**HST**”) on May 1, 2012, at the drop-off site(s) designated on the Proposal Mail-in and Delivery Information Sheet. Proposals postmarked or hand delivered after the submittal deadline shall be considered late and rejected. There are no exceptions to this requirement.

The DOE will conduct an orientation *for all islands* on April 4, 2012, from 3:00 p.m. to 4:00 p.m., HST, at the OCISS Annex, 475 22nd Avenue, Bldg. 302 Room 127, Honolulu, Hawaii. All prospective applicants are encouraged to attend the orientation.

The deadline for submission of written questions is 2:00 p.m. HST, on April 10, 2012. All written questions will receive a written response from the DOE on or about April 17, 2012.

All inquiries should be directed to Marisa Yamamoto, Procurement and Contracts Branch at 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797, telephone: (808) 675-0130, email: Marisa_Yamamoto@notes.k12.hi.us.

Notification to State Agency of Interest in Responding to an RFP

RFP Number and Title: _____

Organization or Individual: _____

Contact Person Information

First Name: _____ Last Name: _____

Position Title: _____

e-mail address: _____

Phone: _____

Fax _____

Mailing Address

Street or PO Box: _____

City _____ State: _____ Zip code _____

Please download and complete this form and either mail or e-mail to the contact person for the RFP.

Note:

- You must download this form before completing the information.
- Do NOT send this form to the State Procurement Office. Send it to the purchasing agency contact person. You will find contact information:
 - In the RFP Detail on the website, and
 - In the RFP document.

State of Hawaii
Department of Education
Office of Curriculum, Instruction and Student Support
Curriculum Instruction Branch
Special Education Section

Request for Proposals
RFP No. F12-062
Skilled Nursing Services for the
Department of Education
(Statewide)

Date Issued: March 27, 2012

Proposal Submittal Deadline: May 1, 2012

Orientation Session: April 4, 2012, at the OCISS Annex (near Diamond Head), 475 22nd Ave., Bldg. 302, Rm. 127, Honolulu, Hawaii 96816

Note: If this RFP was downloaded from the State Procurement Office RFP Website each applicant must provide contact information to the RFP contact person for this RFP to be notified of any changes. For your convenience, an [RFP Interest form](#) may be downloaded to your computer, completed and e-mailed or mailed to the RFP contact person. The State shall not be responsible for any missing addenda, attachments or other information regarding the RFP if a proposal is submitted from an incomplete RFP.

March 27, 2012

REQUEST FOR PROPOSALS

**Skilled Nursing Services for the
Department of Education**

No. RFP F12-062

NOTICE

The Department of Education (“**DOE**”) Office of Curriculum and Instructional Support (“**OCISS**”), Curriculum Instruction Branch (“**CIB**”) is requesting proposals from qualified applicants for the provision of skilled nursing services, treatments, and specialized health care procedures to eligible students (statewide) with significant health conditions to help students effectively access the general education curriculum.

SUBMITTAL DEADLINE

All proposals mailed by the United States Postal Service (“**USPS**”) shall be postmarked by May 1, 2012 to the mail-in address and received no later than ten days from the submittal deadline. Hand delivered proposals shall be received no later than May 1, 2012, 2:00 p.m. Hawaii Standard Time (“**HST**”) at the drop-off sites.

Proposals postmarked or hand delivered after the designated deadline shall be considered late and rejected. Deliveries by private mail services such as FEDEX shall be considered hand deliveries and shall be rejected if received after the submittal deadline.

MAIL-INS: DOE Procurement and Contracts Branch
Waipahu Civic Center
94-275 Mokuola Street, Rm. 200 Waipahu, HI 96797

HAND DELIVERIES (DROP-OFF SITES): **Oahu only**
DOE Procurement and Contracts Branch
Waipahu Civic Center
94-275 Mokuola Street, Rm. 200 Waipahu, HI 96797

Applicants are encouraged to attend the Orientation Meeting. (See Section 1)

INQUIRIES

Inquiries regarding this RFP should be directed to the RFP contact person:

Marisa Yamamoto

DOE Procurement and Contracts Branch, Waipahu Civic Center

94-275 Mokuola Street, Rm. 200 Waipahu, HI 96797

Phone: 808-675-0130

Email: Marisa_Yamamoto@notes.k12.hi.us

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Section 1

Administrative Overview

I. Procurement Timetable

Note that the procurement timetable represents the DOE’s best estimated schedule. Contract start dates may be subject to the issuance of a notice to proceed.

Activity	Scheduled Date
Public notice announcing RFP	3/27/12
RFP orientation session	4/4/12
Due date for written questions	4/10/12
State purchasing agency's response to written questions	4/17/12
Proposal submittal deadline	5/1/12
Proposal evaluation period	5/2-5/11
Final revised proposals (optional)	If necessary
Provider selection	5/25/12
Notice of statement of findings and decision	5/31/12
Contract start date	7/1/12

II. Websites Referenced in this RFP

The State Procurement Office (SPO) website is www.spo.hawaii.gov

For	Click
1 Procurement of Health and Human Services	“Health and Human Services, Chapter 103F, HRS...”
2 RFP website	“Health and Human Services, Ch. 103F...” and “RFPs”
3 Hawaii Administrative Rules (HAR) for Procurement of Health and Human Services	“Statutes and Rules” and “Procurement of Health and Human Services”
4 Forms	“Health and Human Services, Ch. 103F...” and “For Private Providers” and “Forms”
5 Cost Principles	“Health and Human Services, Ch. 103F...” and “For Private Providers” and “Cost Principles”
6 Standard Contract -General Conditions	“Health and Human Services, Ch. 103F...” “For Private Providers” and “Contract Template – General Conditions”
7 Protest Forms/Procedures	“Health and Human Services, Ch. 103F...” and “For Private Providers” and “Protests”

Non-SPO Websites

	For	Go to
8	Tax Clearance Forms (Department of Taxation Website)	http://www.hawaii.gov/tax/ click "Forms"
9	Wages and Labor Law Compliance, Section 103-055, HRS, (Hawaii State Legislature website)	http://www.capitol.hawaii.gov/ click "Bill Status and Documents" and "Browse the HRS Sections."
10	Department of Commerce and Consumer Affairs, Business Registration	http://www.hawaii.gov/dcca click "Business Registration"
11	Campaign Spending Commission	www.hawaii.gov/campaign

(Please note: website addresses may change from time to time. If a link is not active, try the State of Hawaii website at www.hawaii.gov)

III. The Procurement Process

Authority. This RFP is issued under the provisions of the Hawaii Revised Statutes ("HRS"), Chapter 103F and its administrative rules. All prospective applicants are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed proposal application by a prospective applicant shall constitute admission of such knowledge on the part of such prospective applicant.

RFP Organization. This RFP is organized into 4 sections:

Section 1, Administrative Overview - The procurement process; requirements for awardees.

Section 2, Service Specifications - Services to be delivered, applicant responsibilities, requirements for the proposal application.

Section 3, Proposal Application – Instructions for completing the proposal application.

Section 4, Evaluation - The method by which proposal applications will be evaluated.

Section 5, Attachments - Information and forms necessary to complete the application.

RFP Orientation Session. An orientation session to familiarize applicants with the procurement process and the requirements of the RFP shall be held. Applicants are encouraged to submit written questions prior to the orientation. Questions at the orientation are permitted, but oral questions should be submitted in writing by the date indicated in the Procurement Timetable to ensure an official written response.

Date and time: April 4, 2012 3:00 PM to 4:00 PM
Location: OCISS Annex (near Diamond Head)
 475 22nd Ave., Bldg. 302, Rm. 127
 Honolulu, HI 96816

Submission of Questions. Applicants may submit written questions to the RFP Contact Person identified in the Notice. The written response by the State purchasing agency will be available to all applicants and placed on the RFP website.

Deadline for submission of questions: April 10, 2012; 2:00 p.m. HST

Discussions with Applicants. Discussions may be conducted with potential applicants to promote understanding of the purchasing agency's requirements prior to the submittal deadline. Discussions may also be conducted with applicants whose proposals are determined to be reasonably susceptible of being selected for award, but proposals may be accepted without discussions, in accordance section 3-143-403, HAR.

Multiple or Alternate Proposals - Multiple/alternate proposals shall not be accepted.

Confidential Information – If an applicant believes any portion of a proposal contains information that should be withheld as confidential, the applicant shall request in writing nondisclosure of designated proprietary data to be confidential and provide justification to support confidentiality. Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal to facilitate eventual public inspection of the non-confidential sections of the proposal. Note that price is not considered confidential and will not be withheld.

Confidentiality of Personal Information. Act 10 relating to personal information was enacted in the 2008 special legislative session. As a result, the Attorney General's General Conditions of Form AG Form 103F, *Confidentiality of Personal Information*, has been amended to include Section 8 regarding protection of the use and disclosure of personal information administered by the agencies and given to third parties.

Opening of Proposals. Upon receipt by a state purchasing agency at the designated location(s), proposal applications shall be date-stamped, and when possible, time-stamped, held in a secure place and not examined for evaluation purposes until the submittal deadline.

Public Inspection. Procurement files shall be open to public inspection after a contract has been awarded and executed by all parties.

RFP Addenda. The State reserves the right to amend this RFP at any time prior to the closing date for the final revised proposals.

Final Revised Proposals. If requested, final revised proposals shall be submitted in the manner, and by the date and time specified by the state purchasing agency. If a final revised proposal is not submitted, the previous submittal shall be construed as the best and final offer/proposal.

Cancellation of Request for Proposals. The request for proposals may be canceled when it is determined to be in the best interests of the State in accordance with section 3-143-613, HAR.

Costs for Proposal Preparation. Any costs incurred by applicants in preparing or submitting a proposal are the applicants' sole responsibility.

Provider Participation in Planning. Provider participation in a state purchasing agency's efforts to plan for or to purchase health and human services prior to the release of a request for proposals, shall not disqualify providers from submitting proposals if conducted in accordance with sections 3-142-202, 3-142-203, HAR.

Rejection of Proposals. A proposal offering a set of terms and conditions contradictory to those included in this RFP may be rejected. A proposal may be rejected for any of the following reasons: 1) Failure to cooperate or deal in good faith (Section 3-141-201, HAR); 2) Inadequate accounting system (Section 3-141-202, HAR); 3) Late proposals (Section 3-143-603, HAR); 4) Inadequate response to request for proposals (Section 3-143-609, HAR); 5) Proposal not responsive (Section 3-143-610(a)(1), HAR); 6) Applicant not responsible (Section 3-143-610(a)(2), HAR).

Notice of Award. A statement of findings and decision shall be provided to all applicants by mail upon completion of the evaluation of competitive purchase of service proposals. Any agreement arising out of this solicitation is subject to the approval of the Department of the Attorney General as to form, and to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order or other directive. No work is to be undertaken by the awardee prior to the contract commencement date. The State of Hawaii is not liable for any costs incurred prior to the official starting date.

Protests. Any applicant may file a protest against the awarding of a contract. The Notice of Protest form, SPO-H-801, all other forms and a detailed description of procedures are on the SPO website. Only the following matters may be protested:

- (1) A state purchasing agency's failure to follow procedures established by Chapter 103F, HRS;
- (2) A state purchasing agency's failure to follow any rule established by Chapter 103F, HRS; and
- (3) A state purchasing agency's failure to follow any procedure, requirement, or evaluation criterion in a request for proposals issued by the state purchasing agency.

The Notice of Protest shall be mailed by USPS or hand delivered to the head of the state purchasing agency conducting the protested procurement and the procurement officer conducting the procurement (as indicated below) within five working days of the postmark of the Notice of Findings and Decision sent to the protestor. Delivery services other than USPS shall be considered hand deliveries and considered submitted on the date of actual receipt by the state purchasing agency.

Head of State Purchasing Agency	Procurement Officer
Name: Andrell Beppu Aoki	Name: Debra Farmer
Title: Director, OFS/PCB	Title: Administrator, OCISS/CIB/SES
Mailing Address: 94-275 Mokuola Street, Room 200 Waipahu, HI 96797	Mailing Address: 475 22 nd Avenue, Bldg. 302, Rm. 117 Honolulu, HI 96816
Business Address: Same as above.	Business Address: Same as above.

Availability of Funds. The award of a contract and any allowed renewal or extension thereof, is subject to allotments made by the Director of Finance, State of Hawaii, pursuant to Chapter 37, HRS, and subject to the availability of State and/or Federal funds.

IV. Requirements for Awardees

Tax Clearance. If awarded, a certified copy of a current valid tax clearance certificate issued by the State of Hawaii, Department of Taxation (“**DOTAX**”) and the Internal Revenue Service (“**IRS**”) will be required upon notice of award.

Wages and Labor Law Compliance. Prior to contract execution for service contract in excess of \$25,000, the provider shall certify that it complies with section 103-55, HRS, “Wages, hours, and working conditions of employees of contractors performing services.”

Compliance with all Applicable State Business and Employment Laws. All providers shall comply with all laws governing entities doing business in the State. Prior to contracting, owners of all forms of business doing business in the state except sole proprietorships, charitable organizations unincorporated associations and foreign insurance companies be register and in good standing with the Department of Commerce and Consumer Affairs (DCCA), Business Registration Division. Foreign insurance companies must register with DCCA, Insurance Division. More information is on the DCCA website. (See paragraph II, Website Reference.)

Campaign Contributions by State and County Contractors. Contractors are hereby notified of the applicability of Section 11-205.5, HRS, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. For more information, Act 203/2005 FAQs are available at the Campaign Spending Commission webpage. (See paragraph II, Website Reference.)

Monitoring and Evaluation. Criteria by which contracts will be monitored and evaluated is in Section 2.

General and Special Conditions of Contract.

The general conditions that will be imposed contractually are on the SPO website. Special conditions may also be imposed contractually by the state purchasing agency, as deemed necessary.

Refer to Attachment 3, Contract Minimum and Special Conditions.

Section 2 Service Specifications

I. Overview, Purpose or Need and Goals of Service

Term/Acronym	Definition
BLS	Basic life support
CA	Contract Administrator
CC	Care Coordinator
CPR	Cardio-pulmonary resuscitation
DES	District Educational Specialist
eCSSS	Electronic Comprehensive Student Support System
FAPE	Free Appropriate Public Education
FERPA	Family Educational Rights and Privacy Act
HAR	Hawaii Administrative Rules
HIPAA	Health Insurance Portability & Accountability Act
HRS	Hawaii Revised Statutes
IDEA	Individuals with Disabilities Education Improvement Act of 2004
IEP	Individualized Education Program
Itinerant	Requiring the nurse to travel from one school site to another to provide nursing treatment services (less than three hours treatment time per assignment)
Licensed medical provider	Physician/medical doctor (MD); Osteopathic physician/doctor (DO); Physician’s assistant (PA); advanced practice registered nurse (APRN)
LPN	Licensed practical nurse
Section 504 Plan	Section 504 Accommodation Plan
PHN	Public Health Nurse (Department of Health)
POC	Point of Contact
RN	Licensed registered nurse
SA	School administrator
SSC	Student Services Coordinator

The **DOE** ensures that all students with disabilities, aged three to 20 years have available to them a Free Appropriate Public Education (“**FAPE**”) in accordance with the Individuals with Disabilities Education Improvement Act of 2004 (“**IDEA**”) and Section 504 of the Rehabilitation Act of 1973 (“**Section 504**”). IDEA requires the provision of special education and related services to students with disabilities.

Skilled nursing services are provided to students with significant health conditions who require nursing care and monitoring by qualified nursing personnel in order to attend school during school hours as prescribed by the student’s licensed medical provider and determined necessary by the student’s Individualized Education Program (“**IEP**”) or Section 504 Plan. Skilled nursing services provide access to the general education curriculum, not to improve student’s medical condition.

The DOE seeks applications from qualified entities to provide skilled nursing services. Such services must be prescribed by a Hawaii-licensed medical provider (i.e., Medical Doctor (“**MD**”), Doctor of Osteopathy (“**DO**”), Physician’s Assistant (“**PA**”), or Advanced Practice Registered Nurse (“**APRN**”).

For the 2012-2013 school year, it is estimated that approximately two hundred-twenty (220) students with a chronic physical condition that results in a prolonged dependency on medical care that requires daily skilled nursing intervention (i.e., medically fragile) will be attending public schools statewide, including Public Charter Schools. About 160 of these students reside on Oahu. The remainder of students reside on the neighbor islands, with some in remote rural areas. Qualified nursing personnel are needed to provide skilled nursing services, statewide, to meet the needs of eligible DOE students.

II. Planning Activities

In preparation for the drafting of this RFP, the DOE reviewed the workload of DOE staff and the Department’s experience with relevant services. In addition, a request for information (“**RFI**”) was issued and posted on the State of Hawaii, State Procurement Office website on November 22, 2011, and written comments were due by December 9, 2011.

III. Demographics and Funding

Target population to be served: The service activities under this anticipated Contract are to be provided to eligible DOE students. Students are age 3-20 who require specialized health care services in order to attend school during regular school hours as prescribed by the students’ licensed medical provider and determined necessary by the student’s IEP or Section 504 Plan.

Geographic coverage of service: Statewide. The distribution of the target population are expected to remain substantially the same as described in the following chart.

(SY 2011-12)

Island	District/Geographical Region	Number of Schools	Number of Students
Oahu	Honolulu	22	49
	Windward	9	14
	Central	10	27
	Leeward	16	72
Hawaii	Kona (West Hawaii)	4	7
	Hilo (East Hawaii)	4	5
	South Hawaii	6	11
	North Hawaii	4	5
Maui/Molokai/ Lanai	Maui	7	10
	Molokai	3	5
Kauai	Kauai	5	11
TOTAL		90	216

Probable funding amounts, source, and period of availability:

It is expected that state and federal funds will be used to support these services. An estimated amount not to exceed **FOUR MILLION FIVE-HUNDRED THOUSAND AND NO/DOLLARS (\$4,500,000.00)** per year may be available, contingent upon the appropriation of funds and the need for services.

Single or multiple contracts to be awarded **Single** **Multiple** **Single & Multiple**
 (Refer to §3-143-206, HAR)

Criteria for multiple awards:

Responsive proposals submitted by a responsible Applicant, meeting all requirements of this RFP, and whose proposal obtains a score of 80 or higher (based on the criteria listed in Section 4- Evaluation) shall be determined to be qualified. These qualified applicants shall be awarded a contract with the HIDOE, and placed on a “Qualified Nursing Service Providers” list. Applicant is placed upon the list for each geographical region that the Applicant has identified and has been deemed to have capacity to service. Services will be ordered from the “Qualified Nursing Service Providers” list, by geographic region, on an as needed basis, as determined by the applicable SSC or designated representative.

Term of Contract(s)

Initial term:	<u>Twelve (12) Months</u>
Length of each extension:	<u>One (1) year</u>
Number of possible extensions	<u>Two (2) Extensions</u>
Maximum length of contract:	<u>Three (3) years</u>

Conditions for Extension: Extension must be in writing by mutual agreement of the parties, and is contingent upon the DOE’s continued need for services, potential changes to the DOE’s approach to service delivery, availability of funding, and mutual agreement of the parties.

IV. Service Activities

The services required are as follows:

Skilled Nursing Services. Provision of qualified licensed and/or certified nursing personnel (e.g., Certified Nurse Aide (“CNA”) or Home Health Aide (“HHA”), Licensed Professional Nurse (“LPN”), Registered Nurse (“RN”)), to administer authorized skilled nursing services to eligible students, as directed by the DOE as determined appropriate and necessary by the Selected PROVIDER based on the licensed medical provider’s (i.e., MD, APRN, DO, or PA) prescribed services. Selected PROVIDER shall administer treatments as prescribed by the licensed medical provider and approved by the DOE within the student’s school day. PROVIDER shall make reasonable accommodations in the administration of treatments/nursing interventions to ensure the skilled nursing service is not a barrier to student’s attendance at school.

Skilled nursing services are procedures and interventions requiring the clinical skills and didactic knowledge of a qualified licensed professional nurse (e.g., RN, LPN) and/or qualified trained aide with RN supervision (e.g., CNA/HHA).

Examples of skilled nursing included but not limited to:

1. Tracheostomy care and suctioning as needed.
2. Ventilator care and monitoring which includes diligent monitoring of patient and oxygenation.
3. Pulse oximetry for monitoring arterial oxygen saturation.
4. Preparation and administration of gastrostomy, jejunostomy, and nasogastric tube commercial and customized enteral formula feedings (physician ordered formulation due to medical condition) by drip, pump, and/or syringe bolus methods.
5. Nebulizer treatments, routine and on an as needed basis.
6. Administration of medications via various delivery routes.
7. Diabetic care which may include: blood glucose monitoring, carbohydrate counting, and insulin calculation and administration.
8. Urinary catheterizations.

Skilled nursing services are provided for students whose disability includes complex physical health needs; however, it is not the primary cause of their learning difficulties. Skilled nursing services are a related service, which is required to assist a student with a disability to benefit from special education and to access the general education curriculum opportunities as student's non-disabled peers. Skilled nursing services must be carried out in accordance with the student's IEP or Section 504 Plan and as prescribed by student's licensed medical provider.

The provision of services under this RFP provided primarily to eligible students may involve performance of ancillary, support, or administrative services related to the provision of skilled nursing services which include but are not limited to the following:

1. Lifting, moving, ambulating, assisting in range of motion exercises, and positional changes of non-ambulatory students minimally every two (2) hours.
2. Developing and updating emergency-action and/or individualized health-care plans for students serviced.
3. Providing in-transit skilled-nursing care, e.g., nursing care on bus transports which may include lifting, moving, and positioning of eligible students.
4. Developing and maintaining student's nursing chart/record, including health related plans.
5. Documenting in student's nursing chart/record, both hardcopy and electronically.
6. Clear, unequivocal communication with DOE personnel, its agents, and families to coordinate schedules and ensure staffing coverage.
7. First Aid and cardiopulmonary resuscitation ("CPR") interventions when necessary.
8. Other duties attendant to ensuring continuity of care.

Time and Frequency of Care. Services must be provided according to the time and frequency parameters specified by student's IEP or Section 504 Plan, and/or as authorized by the DOE. Services must be integrated into the student's educational program to ensure minimal disruption to the educational and other related services the student receives during the school day. If the IEP or Section 504 Plan is silent as to time and/or frequency of the services, the services shall be provided according to the parameters specified by the DOE. In addition, services must be provided within a half-hour of the treatment time prescribed by the licensed medical provider.

Services are to be provided during the student's usual school day at the school or at a site identified, as appropriate, by the IEP or Section 504 team. Student's school day may include transport time via school bus, to and from school, as indicated by the specific student's requirements. The service days shall be based on the specific student's home school's calendar.

Applicant to follow state directives regarding any school closures. When schools are closed, Selected Provider's employees or agents are not to report to the school site.

Assignments. Services are to be provided on an assignment/as needed basis. The DOE shall provide a minimum of 24 hours notice of assignments. All assignments must be fulfilled. Applicant may subcontract assignments as necessary, provided DOE approval of such subcontracts is obtained prior to the issuance of a subcontract and all requirements of this contract are followed by the subcontractor (with the exception of subcontracting).

V. Qualifications

1. Experience

Skilled Nursing Experience. Applicant SHOULD have at least three (3) years of experience as a contract provider providing the type of skilled nursing services described in this RFP.

Pediatric Experience. Applicant must have at least one (1) year of experience as a contract provider providing skilled nursing services to the pediatric population. Pediatric experience specifically in a school, community, or home setting, to children aged three (3) to twenty (20) years who have disabilities requiring skilled nursing services preferable.

2. Organization

The Applicant must possess an organizational structure, capacity and the capability to execute and comply with all Contract requirements and obligations. Selected PROVIDER must, at minimum, have the following:

Primary Source Verification. The Selected PROVIDER must maintain written policies and procedures, subject to DOE approval, that identify the Applicant's process for primary source verification of all personnel.

Protocols and Policies. The Selected PROVIDER must have policies, protocols and procedures to ensure full compliance with all provisions of the RFP. Selected PROVIDER must provide services as specified in accordance with DOE established protocols, policies, guidelines, certifications, and/or waivers.

- **Student's Nursing Charts/Records.** Selected PROVIDER to document all relevant nursing interventions in student's nursing chart/records maintained at the school, in accordance with professional nursing standards. Documentation will occur for each face-to-face session with the student. Student nursing chart/records shall be considered educational records and the property of the DOE. Upon completion of the school year, nursing chart/records contents will be filed as part of the student educational record.
- All records kept in connection with this Contract must be up to date, compliant, available for inspection, and maintained in accordance with all

requirements concerning confidentiality, e.g., Family Educational Rights and Privacy Act (“**FERPA**”), Health Insurance Portability and Accountability Act (“**HIPAA**”).

- **Continuity of Care.** Continuity of care must be provided to ensure the safety and well being of students. Applicant must have policies and procedures to ensure continuity of staff assigned to students, and that coverage is provided even in the event that the assigned staff is sick or otherwise unavailable. Applicant must understand and appreciate the critical nature of these services, and such understanding should be reflected in their policies, procedures, and organizational structure.
- **Supervision.** All staff must be properly supervised as required by this Contract and by applicable laws, rules, regulations, and professional standards and practices.
- **Training.** PROVIDER must ensure that all staff are trained as required by this Contract and any other applicable laws, rules, regulations, and professional standards and practices.

Billing. Billing must be timely, accurate and appropriate. Applicant must have a system of checks to ensure that billing is timely, accurate (e.g., no double billing, etc.), and appropriate (e.g., services were completed by fully trained and appropriate qualified staff, etc.). Billing invoices to be received by the DOE by the 15th of the following month.

- Once claim/invoice properly submitted, the DOE shall have thirty (30) days to pay unless the claim/invoice is called into question (e.g. appeals, corrections, etc.). If at any time the claim/invoice is called into question, then the DOE’s requirement to pay within thirty (30) days shall end. After that, the DOE’s thirty-day requirement to pay shall start anew on the day the corrected claim/invoices are properly resubmitted by the Selected PROVIDER. Any errors or omissions may cause a significant delay in payment to the Selected PROVIDER. The DOE shall not consider any late claims.
- All appeals and corrections for reporting/claims/invoice rejections must be resolved within sixty (60) calendar days from the day that the initial claim(s)/invoice(s) was first submitted. After that cumulative sixty-day period, the DOE may reject those claim(s)/invoice(s) for any reason and for no reason.

Audit, Reimbursement and Reconciliation

The DOE’s preliminary determination of claims being appropriate and allowable shall be subject to later verification and subsequent audit. The DOE reserves the right to seek reimbursement from the Selected PROVIDER upon an audit of all claims for any errors made in payment and/or for services not delivered. Final settlement of this Contract shall include submission and acceptance of all claims (or reports) and other materials to be submitted by the Selected PROVIDER to the DOE, resolution of all discrepancies in

performance of services monthly claims (or reports), and completion of all outstanding matters under this Contract.

- The DOE reserves the right to audit the Selected PROVIDER's financial records and billing documentation on an annual basis, at a minimum, through either an on-site evaluation or a documentation review.

Personal Protective Equipment. Selected PROVIDER to ensure employees have personal protective equipment (“**PPE**”) available in accordance with Hawaii Occupational Safety and Health (“**HIOSH**”) rules and regulations.

Confidentiality. Selected PROVIDER must ensure confidentiality of all activities performed, records generated, as well as the privacy and confidentiality rights of students and parents, as required by law.

Staffing Management Plans. Selected PROVIDER must ensure and demonstrate that they are available 24 hours a day/7 days a week to meet the staffing needs of eligible students in the schools.

Past Performance. Applicant must submit references and recommendations from contracts they have been awarded in the past five (5) years to demonstrate strength, performance, and capability of the PROVIDER Refer to Offer Form 2, Client Project Information.

3. Personnel

Nurses. Selected PROVIDER shall furnish the DOE with qualified nursing personnel to implement the RFP requirements. Selected PROVIDER shall provide qualified substitute personnel when assigned personnel fails to report for duty at an assigned school site. If Selected PROVIDER's employee or agent refuses to provide services as defined in this contract, Selected PROVIDER shall provide a qualified replacement.

Selected PROVIDER's nursing personnel must, at minimum, meet the following qualifications and requirements:

- A. Possess current State of Hawaii nursing license (RN or LPN).
- B. Possess at least one (1) year of experience providing skilled nursing services to a pediatric population [aged three (3) to twenty (20) years] having disabilities requiring skilled nursing services. (Note: Exceptions to the one-year requirement may be granted, at the DOE's sole discretion, with the DOE approval and PROVIDER supplied documentation of additional PROVIDER supervision, training, and competency requirements).
- C. Possess current certification in Basic Life Support (“**BLS**”) Health Care Provider cardio-pulmonary resuscitation (“**CPR**”) with automated external defibrillator (“**AED**”) for children and adults AND First Aid.

- D. Possess the knowledge, skills and abilities to competently perform the skilled nursing services required by this RFP.

Nurse's Aides. Selected PROVIDER shall furnish the DOE with qualified State of Hawaii Certified Nurse Aides (“CNA”) and/or Home Health Aides (“HHA”) to provide those nursing services that are delegable at the discretion and judgment of the licensed RN, in accordance with Hawaii Administrative Rules (HAR) Title 16, Chapter 89, Subchapter 15 and the National Council of State Boards of Nursing (NCSBN) delegation decision-making process. CNA and HHA shall meet the following minimum qualifications and requirements:

- A. Possess a current valid State of Hawaii certification as a Nurses’ Aide or Home Health Aide;
- B. Possess at least one (1) year experience as a CNA or HHA working with children or a pediatric population, aged 3 to 20 years;
- C. Possess pediatric experience specifically in a school, community, or home setting, to children aged three (3) to twenty (20) years who have disabilities requiring skilled nursing services preferable.
- D. Be able to competently and safely perform prescribed skilled nursing procedures as directed and supervised by the delegating RN;
- E. Possess current certification in Basic Life Support (“BLS”) Health Care Provider cardio-pulmonary resuscitation (“CPR”) with automated external defibrillator (“AED”) for children and adults AND First Aid.
- F. Possess the knowledge, skills and abilities to competently perform the applicable services required by this Contract.

Supervisor. Selected PROVIDER shall furnish nursing supervisors or managers, licensed as a State of Hawaii Registered Nurse and fulfilling all other requirements of RN personnel, whose responsibilities shall include but may not be limited to the following:

- A. Conduct agency employee or agency training and orientation on agency’s and DOE’s policies.
- B. Provide clinical instruction and assessment to agency employees to ensure clinical competencies of personnel at the time of hiring, annually, and as necessary.
- C. Provide orientation for each agency nurse covering a minimum of four (4) schools in the district as well as the particular student(s) needs related to the skilled nursing services.
- D. Provide orientation regarding any new student and/or school assignment requiring skilled nursing services.
- E. Provide quarterly in-services (continuing education) on pediatric school related topics and safety issues, which may include introduction of new durable medical equipment and/or supplies.
- F. Serve as Selected PROVIDER’s point of contact with the schools, districts,

and DOE designee.

- G. Serve as Selected PROVIDER's point of contact for students and families.
- H. Provide administrative and clinical supervision of the LPN, CNA and/or HHA providing direct skilled nursing services to students in the schools.
- I. Coordinate logistics of staffing assignments in the respective schools.
- J. Provide coverage of staffing (direct face-to-face nursing services to students) if the nurse staffing census is low, assist in clinical emergencies requiring additional nursing staffing coverage, community based instruction ("CBI") and/or field trip staffing needs, coverage of itinerant nursing as needed if assigned nurse is delayed at another itinerant school assignment due to unforeseen circumstances, and concerns related to safety and nursing practices till a proper nursing assessment can be conducted.
(Selected PROVIDER to ensure DOE is not invoiced multiple times for supervisor/manager's service time).
- K. Conduct record reviews using a standardized audit tool and updating all Emergency Information Forms and nursing treatment plans in the school charts/records.
- L. Provide Quality Assurance.
- M. Ongoing assessment of the nursing needs of eligible students and notification to school IEP or Section 504 Plan team if student condition or skilled nursing needs have changed.
- N. Review licensed medical provider's orders, documentation, and treatment plans for appropriateness. Obtain the licensed medical provider's signature for all medical orders and then authorize the medical order before faxing it back to the school for the classroom nurse to implement.
- O. Communicate with student's licensed medical providers as needed.
- P. Creating and updating of individualized health plans, including Emergency Action Plans, to address the health and safety issues of students including when the nurse is not available at the time urgent intervention is required.

Supervisors or managers must, at minimum, meet the following qualifications and requirements:

- A. Possess current State of Hawaii nursing license as a RN.
- B. Possess at least three (3) years of experience providing the type of skilled nursing services described in this RFP.
- C. Possess at least one (1) year of experience providing skilled nursing services to a pediatric population aged three (3) to twenty (20) years having disabilities requiring skilled nursing services. (Note: Exceptions to the one-year requirement may be granted, at the DOE's sole discretion, with the DOE approval and PROVIDER supplied documentation of additional PROVIDER supervision, training, and competency requirements).
- D. Possess current certification in BLS, CPR with AED for children and adults and First Aid.
- E. Possess the knowledge, skills and abilities to competently perform the skilled

nursing treatments required by this Contract.

The DOE reserves the right to refuse the services of any employee, agent, volunteer or prospective employee of the PROVIDER for any reason or for no reason.

Training. Selected PROVIDER's personnel must be informed and possess a working knowledge of DOE processes, school campus layouts, and the specific needs of each student requiring services. Training must include but should not be limited to the following topics:

- A. **Students.** Overview of the demographics and disabling medical conditions of the student to be serviced by the respective nursing personnel, as well as the relevant implications for nursing care.
- B. **Plans.** Emergency Action and/or individualized health care plans for students served and emergency protocols.
- C. **Services and Procedures.** Overview of prescribed services, procedures, medications, use of equipment, durable medical equipment, supplies, nutrition, and roles of providers in skilled nursing services.
- D. **Documentation.** Overview and instruction on the school nursing record/charts and forms to be completed on a daily basis. This training is to include documentation into the DOE electronic database, which must be inputted within five (5) working days, on the nursing services provided during school hours (including bus transports).

Selected PROVIDER must attend mandatory DOE training and provide ongoing support for the electronic submission to the DOE database which will be provided by the DOE.

- E. **Schools.** Location of school(s), school layout(s), classrooms, classrooms where students requiring the services are located, pertinent DOE rules and communication protocols, and required and appropriate conduct on school grounds.
- F. **Communication.** Communicating clearly and effectively with parents and school personnel.

Orientation. In addition to training outlined above, all nursing personnel providing skilled nursing services must receive a brief orientation on any new assignment(s) covering important relevant information (e.g., the students, services or interventions, durable medical equipment, the school, and the school personnel) prior to undertaking the assignment.

4. Staffing

Personnel. Selected PROVIDER shall make every effort and determination to provide qualified nursing personnel to meet the health and safety needs of eligible students requiring skilled nursing services. Refer to Attachment 2: Staffing Tool.

Selected PROVIDER shall:

- A. Assign a CNA/HHA for routine and low to medium complexity (i.e., relatively predictable) nursing interventions in accordance with State of Hawaii rules and regulations.
- B. Communicate clearly and submit written rationale with data to the DOE on the need to assign a school or student with a LPN, RN or additional nursing personnel.

VI. Pricing Structure

Contract rates shall be at established rates per service hour billed at minimum quarter hour units (0.25) and based on qualified nursing personnel's credentials.

Awardee shall bill DOE for all eligible students requiring skilled nursing services during the school day as **authorized** in their IEP or Section 504 Plan and approved by the DOE.

Hard to fill, remote or rural locations (i.e., Molokai, Lanai, Hana, Lahainaluna, Honokaa, Kau, Keeau, Kohala, Pahoa, Honokaa, Kahuku, and Laie,) shall be billed at the CNA, RN4 or LPN4 rate, dependent upon provider's credentials, to ensure services are provided to the eligible student(s), with the approval of the DOE.

Continuous Nursing Service (See Attachment 2, Level A student conditions or needs)

A student's needs as determined in their IEP or Section 504 Plan and prescribed medical treatments by a physician's order requires nursing services to be provided continuously throughout the school day without any interruption.

Continuous nursing services:

- Begins the moment the qualified nursing personnel receives the student at school or departs on the bus from school to receive the student at their residence.
- Ends when the student either leaves school for the day or when the nurse returns to school on the bus from dropping the student at his/her residence.
- May include the nurse present during bus transportation to and from school as required by the student's IEP or Section 504 Plan with supporting physician order and off campus activities (i.e., community based instruction ("CBI"), field trips).

The fee schedule for this service will vary depending on the total number of students requiring continuous care at the same school with the same nurse.

Example

LPN2 would be used for continuous nursing service being provided to two students at the same school by the same nurse.

For students with as needed (prn) ONLY emergency nursing treatment/intervention(s) and in a school with other students requiring continuous nursing services, Awardee shall bill DOE for two nursing assessments to be conducted daily when student is present at the beginning of the school day and before the end of the school day (ex. 0.25 hours x 2).

If student with as needed (prn) ONLY nursing treatment/intervention(s) is in school with no other students requiring continuous nursing services, Awardee shall bill DOE for the student's authorized time or school day as reflected in the student's IEP or Section 504 Plan.

Classroom Nursing Service (See Attachment 2, Level B student conditions or needs)

A student's needs as determined in their IEP or Section 504 Plan and prescribed medical treatments by a physician's order requires skilled nursing services be provided at specific times during the school day. A nurse providing skilled nursing services to a continuous nursing service student at the same school would normally provide this type of service.

Classroom nursing service hours would be provided and documented by the nurse on the same timesheet as the continuous nursing service student(s). Treatment times will vary by student, but billable time will always be at least 15 minutes in duration. The fee schedule for this service will always be either RN1, LPN1, or CNA/HHA1 dependent upon the credentials of the qualified nursing personnel.

Itinerant Nursing Service (See Attachment 2, Level B student conditions or needs)

A student's needs as determined in their IEP or Section 504 Plan and prescribed medical treatments by a physician's order requires skilled nursing services be provided at specific times during the school day. A student receiving skilled nursing services classified as an Itinerant Nursing Service, would typically be the only student requiring skilled nursing services in their class or school and the treatment times would always be three (3) hours or less in duration.

Itinerant nursing service students are generally grouped together on an assigned route with other students at other school sites requiring this level of care, to maximize the qualified nursing personnel's time and meet the individual student's needs.

The rate for the itinerant nursing service is based on the number of assigned treatments to that route provided by the same nurse on the same day. Selected PROVIDER to bill at the established rate only for those students present in school and that received hands-on direct skilled nursing services that day.

Example

A LPN is scheduled to cover an Itinerant Route that has four students requiring skilled nursing services with one of the students receiving a morning and afternoon treatment. The nurse is scheduled for five assignments (LPN Itinerant 5).

Itinerant Route billing is based on the number of assignments on the route and remains the same, no matter how many assignments are completed face-to-face with student(s). If all students are present and the nurse completes all five assignments, the position or billing code used for that day would be LPN Itinerant 5 for all five assignment times.

If two (2) students are absent (student requiring morning and afternoon treatment present) from the Itinerant Route, Selected PROVIDER to bill at LPN Itinerant 5 rate for the three (3) assignments that are completed face-to-face that school day. The billable time is only for the two (2) students that received hands-on skilled nursing services at school that day.

VII. Other

Litigation. The applicant shall disclose any pending litigation to which they are a party, including the disclosure of any outstanding judgment. If applicable, please explain. *Statements regarding litigation will not carry any point value but are required.*

VIII. Reporting Requirements for Program and Fiscal Data

1. Sentinel Event/Incident Notification Reports

The Selected PROVIDER must have policies and procedures, approved by the DOE, that address sentinel events and incident notification. The DOE will provide a Sentinel/Incident report form to the Selected PROVIDER. These policies must address: (1) how the Selected PROVIDER shall notify the respective School Administrator (SA) and the DOE within twenty-four (24) hours by phone and within seventy-two (72) hours in writing of any event that compromises the safety of a student; (2) how the Selected PROVIDER tracks the occurrence of all sentinel events and incidents to identify trends and patterns in order to implement improvements; and (3) a complete analysis of the event as well as actions taken to address the event. Upon a sentinel event, the Selected PROVIDER shall inform the DOE utilizing the prescribed DOE format.

Develop and implement protocols, as approved by the DOE, for management of unusual or emergency situations encountered in the school and/or bus setting, including medication or treatment administration errors.

Medicaid Reimbursement Claims: The DOE intends to file claims for Medicaid Reimbursement for all eligible services; the PROVIDER is not required to file Medicaid claims.

2. Invoice Summary

The selected PROVIDER shall submit a monthly summary with the monthly invoices that includes:

a. District serviced

- b. Name of student(s) grouped by name of School attending or by itinerant route assigned
- c. Student(s) school attendance (i.e., present, absent)
- d. Authorized hours per student (i.e., daily and monthly)
- e. Total hours invoiced per student for the month
- f. Total cost per student for the month
- g. Total cost for the District for the month

3. Reporting Requirements for Program Data

The Selected PROVIDER shall input nursing required information and data into the DOE hard copy nursing chart/record and electronic database in its designated format located at the eligible student(s) school. Selected PROVIDER shall document the information in the nursing records within twenty-four (24) hours in the hard copy record and five (5) working days in the electronic database from the day of the service provided.

The Selected PROVIDER must make records available upon request by the DOE within two (2) working days of the request.

Documentation of skilled nursing services activities required by the DOE and professional nursing standards must be completed before invoice submission and payment.

Document, accurately and concisely, the skilled nursing treatment services provided and any other relevant information in the student's nursing chart/record and maintained at the school in hardcopy format in addition to the DOE electronic database.

IX. Monitoring and Evaluation

The criteria by which the performance of the contract will be monitored and evaluated are:

1 Quality Assurance and Evaluation Specifications

Contract Monitoring. The Selected PROVIDER must participate in contract monitoring as requested by the DOE. This contract monitoring shall focus on compliance with the DOE monitoring protocol and compliance with all administrative and fiscal aspects of the Agreement.

Document Inspection. All documentation and all student records must be made available for inspection and/or copying within two (2) working days of a request by the DOE. Selected PROVIDER must accurately input required skilled nursing services into the Service Log of the electronic Comprehensive Student Support System (eCSSS) within five (5) calendar days of services.

Eval/Doc Review. The DOE reserves the right to evaluate the Selected PROVIDER’s program/service delivery or financial records/billing information for program monitoring purposes through either, or both, an on-site evaluation or a documentation review.

Quality Assurance, GSP and QAP. The Selected PROVIDER shall comply with the applicable Districts/Complexes General Supervision Process (“GSP”). The Selected PROVIDER shall develop and implement a quality management plan that has been approved by the DOE, and participate in quality assurance and improvement activities to continuously improve the provision of nursing services in DOE schools. The plan shall include evidence and be available for DOE review.

Accuracy. The Selected PROVIDER shall retain responsibility for the accuracy of all work and services performed under this contract.

Competence and Continuing Education. The Selected PROVIDER shall ensure the qualifications, accurateness, completeness, and competency of all employees; including provision of basic clinical training, as needed, to ensure provision of competent nursing care (e.g., ventilator care and management, tracheostomy care). Provide continuing education opportunities on relevant nursing activities provided in the DOE schools, including Public Charter Schools.

2 Output and Performance/Outcome Measurements

Selected PROVIDER shall demonstrate and report quarterly to the DOE on:

- a. Timeliness of nursing services delivery (i.e. services provided within ½ hour or 30 minutes of prescribed treatment time(s));
- b. Staffing level/ratios;
- c. Continuity of care, accommodations made to have same personnel assigned to the school and/or student(s) including the attendance of assigned personnel and student(s);
- d. Quality of services provided (adhering to national standards of nursing practice), trainings held, sign in sheets;
- e. Maintenance of timelines in medical order verification (i.e. within 48 hours, excluding weekends and holidays);
- f. Appropriate documentation or record keeping by conducting periodic scheduled audits and other internal quality reviews as approved by the DOE.

Further, Selected PROVIDER shall provide to the DOE a quarterly report within ten (10) working days at the end of each fiscal quarter, in a format specified by the DOE, to include the following information:

- a. Name of student
- b. School, Complex or District
- c. Nursing services provided, licensure or certification of provider
- d. Number of days student present and absent; reasons for absences

- e. Unit of services provided to students
- f. Services prescribed by medical provider
- g. Billing cost/amount, total cost per student, total cost per licensure provider, total cost per school, total cost per complex or district

Section 3 Proposal Application

I. Instructions for Completing the Proposal Application

- *Proposal Applications shall be submitted to the state purchasing agency using the prescribed format outlined in this section and Section 2.*
- *A written response is required for **each** item unless indicated otherwise. Failure to answer any of the items will impact upon an applicant's score.*
- *Applicants are **strongly** encouraged to review evaluation criteria when completing the proposal.*

II. Submission of Proposal Application Documents

The proposal application documents are as follows and shall be submitted in the following order:

- *Proposal Application Identification Form (SPO-H-200) Identifies the proposal application.*
- *Table of Contents- Include a listing of all documents included in the application.*
- *Proposal Application Short-Form 1 (SPO-H 250)*
 - *Qualifications*
 - *Pricing*
 - *Other – Litigation*
- *Attachments*
 - *Offer Form 1, Service Rate Proposal Sheet*
 - *Offer Form 2, Client Project Information*

The required format for the Proposal Application Short Form 1 (SPO-H 250) follows. Note that the form is available on the SPO website (see Section 1, paragraph II, Website Reference). The form on the website will not include items specific to each RFP. If using the website form, the applicant must incorporate all items listed on the next page.

Proposal Application Short Form 1

I. Qualifications

Experience

The applicant shall provide a detailed description of their experience(s), including but not limited to projects and other contracts, pertinent to the services required. Applicant shall include dates, as well as points of contact with addresses, email, telephone numbers. The DOE reserves the right to contact references to verify experience.

Organization

Describe, in detail, how your organization addresses and meets the requirements set forth in Section V. Qualifications. Please include any supporting or otherwise relevant documentation including but not limited to procedure manuals and forms. Discussion should include:

- Proposed staffing patterns; acceptable student to staff ratios and proposed caseload capacity appropriate for effective and accurate delivery of services.
- Organization chart listing each proposed staff position and responsibility including supervision if applicable. Chart should include position title, name and certifications/qualifications.
- Description of strategies for placement of the same nurse at a school to the same student(s) to maintain continuity of care.
- Description of strategies for handling unusual or emergency situations including errors in the administration of services (if any).
- Description of capacity to provide adequate training, supervision of staff and coordination of services; including number of nursing supervisors or managers.
- Description of processes and protocols to provide substitute staff in those cases where assigned staff does not report to duty at the assigned school, including the proposed process to provide notification to the DOE.
- Description of programs established for orientation and skills check of new assignees.
- Description of protocols to ensure the accuracy and completeness of all services delivered.

Personnel

Describe, in detail, how your organization intends to ensure that the requirements are met as Set forth in Section V. Qualifications. Include summaries of staff members' relevant qualifications and experience providing skilled nursing services (as defined herein) to pediatric populations, with dates. Include any supporting or otherwise relevant documentation, e.g., resume, CV, licenses, certificates. Describe your policies, procedures and protocols intended to ensure that all personnel are fully qualified.

II. Pricing

Submit Service Rate Proposal Sheet provided (See Offer Form 1). Describe, in detail, your organization's capacity to bill and provide expense information as required herein, as well as your experience as a billing provider.

Fee rates on the Service Rate Proposal Sheet (Offer Form 1), to be completed based upon established Maximum Skilled Nursing Services Rate Schedule (Attachment 1).

Fee rates proposed exceeding the rates established under the Maximum Skilled Nursing Services Rate Schedule SY 2012-13 (Attachment 1) will be reflected in the scoring under Evaluation – Pricing and Billing.

III. Other

Litigation

Applicant shall disclose any pending litigation to which they are a party, or to which their employee is a party, including the disclosure of any outstanding judgment. The applicant shall disclose any pending litigation to which they are a party, including the disclosure of any outstanding judgment. If applicable, please explain.

Section 4

Proposal Evaluation

Evaluation Process

The evaluation of proposals received in response to the RFP will be conducted comprehensively, fairly and impartially. Structural, quantitative scoring techniques will be utilized to maximize the objectivity of the evaluation. The procurement officer or an evaluation committee of designated reviewers selected by the head of the state purchasing agency or procurement officer shall review and evaluate proposals. When an evaluation committee is utilized, the committee will be comprised of individuals with experience in, knowledge of, and program responsibility for program service and financing. Each applicant shall receive a notice of award/non-award, which shall contain a statement of findings and decision for the award or non-award of the contract to each applicant.

Evaluation and scoring of proposals shall be conducted according to the attached score sheet.

Evaluation Criteria

On the following two (2) pages is a sample of the evaluation sheet that will be used to evaluate proposal applications. Applicants will receive a report similar to the attached when upon completion of the evaluation process.

Evaluation of
 RFP F12-062, Skilled Nursing Services
 Issued <_____>

Applicant:
 Proposal Application ID:

<i>Criterion</i>	<i>Total Possible Score</i>	<i>Score</i>
Qualifications		
<i>Experience</i>	25	
<ul style="list-style-type: none"> • Experience providing skilled nursing services • Skills, abilities, knowledge and experience in the delivery of proposed services • Capacity to provide proposed services by DOE’s school district(s) • Past performance • Sufficiency of quality assurance and evaluation plans for the proposed services, including methodology 	10 5 5 3 2	
Comments:		
<i>Organization</i>	45	
<ul style="list-style-type: none"> • Proposed staffing pattern is reasonable to ensure efficient and accurate provision of the proposed services • Has established training and orientation program for employees • Has established protocols and processes to ensure that records are maintained as required and in compliance with the contract provisions. • Plans and approach to service activities and management meet the service delivery requirements stated in this RFP • Has knowledge of confidentiality laws including HIPAA and FERPA • Organization chart provided and is complete. • Has protocols to handle unusual situations, reporting mechanisms and experiences in orienting and training new staff 	20 10 8 4 1 1 1	
Comments:		
<i>Personnel</i>	15	
<ul style="list-style-type: none"> • <i>Sufficient number of fully qualified and appropriately experienced personnel.</i> • Ability to recruit, train and supervise all staff necessary for delivery of proposed services 	6 5	

<ul style="list-style-type: none"> Managers and supervisors have capacity and experience to coordinate and oversee and administer the service and service delivery Number of nursing supervisor(s) or manager(s) required is fair and reasonable 	2 2	
Comments:		
Pricing and Billing	15	
<ul style="list-style-type: none"> Capacity to bill and provide expense information as required Price meets the rates established under the Maximum Skilled Nursing Services Rate Schedule SY 2012-13 Price is below rates established under the Maximum Skilled Nursing Services Rate Schedule SY 2012-13 Past experience 	5 4 3 3	
Comments:		
TOTAL:		100

Section 5

Attachments

- A. Offer Form 1, Service Rate Proposal Sheet
- B. Offer Form 2, Client Project Information
- C. Attachment 1, Maximum Skilled Nursing Services Rate Schedule
- D. Attachment 2, Staffing Tool
- E. Attachment 3, Contract Minimum and Special Provisions

Offer Form 1 – To be completed by Applicant and submitted with Applicant’s Proposal.
Service Rate Proposal Sheet

Service Description	Provided by	Students Served in Class, bus	Proposed Fee Rate Per Hour Per Student (\$)	Total per Hour (\$)
Supervisor	RN	N/A		
<u>Continuous, Classroom, bus transport services</u> Provided to Eligible: IDEA (Individuals with Disabilities Education Improvement Act of 2004) (verified by IEP) Or Section 504 (verified by Section 504 Plan)	RN	1		
	RN	2		
	RN	3		
	RN	4		
	RN	5		
	RN	6		
	RN	7		
	RN	8		
	RN	9		
	LPN	1		
	LPN	2		
	LPN	3		
	LPN	4		
	LPN	5		
	LPN	6		
	LPN	7		
	LPN	8		
	LPN	9		
	CNA/HHA	1		
	CNA/HHA	2		
CNA/HHA	3			
CNA/HHA	4			
CNA/HHA	5			

<u>Itinerant services</u>	Provided by	Assignment(s) per Route	Proposed Fee Rate Per Hour (\$)
	(billable time does not include travel time between school assignments – face to face time only) (verified by IEP or Section 504 Plan)	RN ITINER	1
RN ITINER		2	
RN ITINER		3	
RN ITINER		4	
RN ITINER		5	
RN ITINER		6	
RN ITINER		7	
RN ITINER		8	
RN ITINER		9	
LPN ITINER		1	
LPN ITINER		2	
LPN ITINER		3	
LPN ITINER		4	
LPN ITINER		5	
LPN ITINER		6	
LPN ITINER		7	
LPN ITINER		8	
LPN ITINER		9	
CNA/HHA ITINER		1	
CNA/HHA ITINER		2	
CNA/HHA ITINER		3	
CNA/HHA ITINER		4	
CNA/HHA ITINER		5	

Page 2
Offer Form 1
Applicant Capacity by Geographic Region

Geographic Region	Number of students requiring Continuous & Classroom Nursing Services	Number of students requiring Itinerant Nursing Services Only	Total Students	Capacity to service area
Honolulu	22	27	49	
Windward	11	3	14	
Central	26	1	27	
Leeward	65	7	72	
Big Island	7	21	28	
Maui/ Molokai/ Lanai	3	12	15	
Kauai	6	5	11	

Offer Form 2 - To be completed by Applicant and submitted with Applicant's Proposal
Client Project Information

Directions:

- Please provide information regarding recent projects.
- Submit up to five (5) separate Offer Form 2's, identifying clients who may be contacted.
- Any supplemental information related to this project although not required, should be attached to the respective Offer Form 2.

Name of Your Company:	
<i>Name of Client:</i>	
<i>Name of Client Contact Person:</i>	
<i>Client's Phone Number:</i>	
<i>Date or period of project/service:</i>	
<i>Description of project/services rendered:</i>	
<i>Other Information or comments:</i>	
<input type="checkbox"/> <i>check here if supplemental information related to this project is attached.</i>	

Attachment 1

**MAXIMUM SKILLED NURSING SERVICES RATE SCHEDULE
(CONTINUOUS, CLASSROOM, BUS TRANSPORT SERVICES)
SCHOOL YEAR 2012-2013**

RN RATE			
Position	Description	Maximum Rate Per Hour, Per Student	Total per hour
RN	1 Student served in class, bus	\$50.00	\$50.00
RN	2 Students serviced in class, bus	\$25.00	\$50.00
RN	3 Students serviced in class, bus	\$20.00	\$60.00
RN	4 Students serviced in class, bus	\$17.50	\$70.00
RN	5 Students serviced in class, bus	\$16.00	\$80.00
RN	6 Students serviced in class, bus	\$15.00	\$90.00
RN	7 Students serviced in class, bus	\$14.29	\$100.03
RN	8 Students serviced in class, bus	\$13.75	\$110.00
RN	9 Students serviced in class, bus	\$13.33	\$119.97

RN	Supervisor	\$55.00 per hour	\$55.00
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LPN RATE			
Position	Description	Maximum Rate Per Hour, Per Student	Total per hour
LPN	1 Student served in class, bus	\$30.00	\$30.00
LPN	2 Students serviced in class, bus	\$15.00	\$30.00
LPN	3 Students serviced in class, bus	\$13.33	\$39.99
LPN	4 Students serviced in class, bus	\$12.50	\$50.00
LPN	5 Students serviced in class, bus	\$12.00	\$60.00
LPN	6 Students serviced in class, bus	\$11.67	\$70.02
LPN	7 Students serviced in class, bus	\$11.43	\$80.01
LPN	8 Students serviced in class, bus	\$11.25	\$90.00
LPN	9 Students serviced in class, bus	\$11.11	\$99.99

CNA/HHA RATE			
Position	Description	Maximum Rate Per Hour	Total per hour
CNA/HHA	1 Student served in class, bus	\$20.00	\$20.00
CNA/HHA	2 Students serviced in class, bus	\$20.00	\$20.00
CNA/HHA	3 Students serviced in class, bus	\$20.00	\$20.00
CNA/HHA	4 Students serviced in class, bus	\$20.00	\$20.00
CNA/HHA	5 Students serviced in class, bus	\$20.00	\$20.00

RN ITINERANT RATE

<u>Service Code</u>	<u>Service Description - Itinerant Route</u>	<u>Maximum Rate Per Hour</u>
RN ITINER1	1 Assignment on Itinerant Route	\$60.00
RN ITINER2	2 Assignments on Itinerant Route	\$60.00
RN ITINER3	3 Assignments on Itinerant Route	\$70.00
RN ITINER4	4 Assignments on Itinerant Route	\$80.00
RN ITINER5	5 Assignments on Itinerant Route	\$90.00
RN ITINER6	6 Assignments on Itinerant Route	\$100.03
RN ITINER7	7 Assignments on Itinerant Route	\$110.00
RN ITINER8	8 Assignments on Itinerant Route	\$119.97
RN ITINER9	9 Assignments on Itinerant Route	\$130.00

LPN ITINERANT RATE

<u>Service Code</u>	<u>Service Description Itinerant Route</u>	<u>Service Fee Maximum Rate Per Hour</u>
LPN ITINER1	1 Assignment on Itinerant Route	\$40.00
LPN ITINER2	2 Assignments on Itinerant Route	\$40.00
LPN ITINER3	3 Assignments on Itinerant Route	\$50.00
LPN ITINER4	4 Assignments on Itinerant Route	\$60.00
LPN ITINER5	5 Assignments on Itinerant Route	\$70.02
LPN ITINER6	6 Assignments on Itinerant Route	\$80.01
LPN ITINER7	7 Assignments on Itinerant Route	\$90.00
LPN ITINER8	8 Assignments on Itinerant Route	\$99.99
LPN ITINER9	9 Assignments on Itinerant Route	\$110.00

CNA/HHA ITINERANT RATE

<u>Service Code</u>	<u>Service Description Itinerant Route</u>	<u>Service Fee Maximum Rate Per Hour</u>
CNA/HHA ITINER1	1 Assignment on Itinerant Route	\$20.00
CNA/HHA ITINER2	2 Assignments on Itinerant Route	\$20.00
CNA/HHA ITINER3	3 Assignments on Itinerant Route	\$20.00
CNA/HHA ITINER4	4 Assignments on Itinerant Route	\$20.00
CNA/HHA ITINER5	5 Assignments on Itinerant Route	\$20.00

Attachment 2**Staffing Tool****LEVEL A**

RN	LPN	CNA/HHA
X	X	

Student requires skilled nursing services available at all times

- Unstable
 - Health condition is variable, may not be well-controlled
 - A range of changes in condition could occur, timing of changes difficult to anticipate
 - Health interventions may be required immediately
 - Condition has been diagnosed recently
 - Outcomes/expectations are unpredictable
- Highly Complex
 - Involves multiple considerations in care and may involve multiple systems and complex interrelationships. The range of care needs might not be readily identifiable
 - Assessment requires clinical skill and judgment that may involve making modifications in nursing interventions
 - Potential signs and symptoms or responses in the student's condition can be subtle
 - Negative outcomes are unpredictable
 - Negative outcomes could have overall effect causing an urgent or emergency situation if not managed quickly and appropriately
 - Condition variability is high and may require immediate intervention
 - Close monitoring with immediate availability for assessment/intervention may be necessary
 - Recently diagnosed with unknown range of care needs.
- Student Severely Limited in Ability to Express Needs to Provider
 - Non-verbal
 - Unable to communicate needs or participate in care or decision making
- Conditions or needs may include:
 - Tracheostomy (breathing device in throat) that needs to be monitored and/or replaced
 - Durable medical or technological equipment to assist student in breathing (ventilator)
 - Continuous and as needed oxygen administration
 - Continuous enteral tube (non-oral) feedings
 - Suctioning as needed due to inability to handle own secretions
 - Nebulizer treatments for difficulty breathing

- Blood sugar testing and insulin administration for student with diabetes and unable to perform self-care
- Unstable seizure disorder with Diastat or emergency medication administration needs

Exhibit A

- As needed medication or treatments that requires nursing assessment and judgment
- Student receives skilled nursing services in the home requiring RN or LPN level of care

LEVEL B

RN	LPN	CNA/HHA
	X	X

Student requires daily or routine skilled nursing services

- Stable
 - The condition is stable and well-defined
 - Health outcomes are readily identifiable and predictable
 - Guidelines for care are clearly defined (routine)
 - Observations and judgments are considered routine in nature and do not require immediate intervention, but may require coordination of care

- Medium complexity
 - Health Condition is defined and well controlled
 - No significant changes are likely to occur. If changes are likely, they are identifiable and can be anticipated
 - Care needs and outcomes are well-established and predictable

- Student Limited in Ability to Express Needs to Provider
 - Communication and coordination of care require some time and effort
 - Limited verbal skills

- Conditions or needs may include:
 - Preparation and administration of gravity bolus tube feedings (gastrostomy [GT], nasogastric [NG], jejunostomy [JT])
 - Clean intermittent catheterization
 - Ostomy care
 - Routine nebulizer treatments for asthma
 - Administration of routine medications
 - Monitoring self-care of diabetic needs (e.g., blood sugar testing, insulin administration)

Transportation Considerations

- ◆ Students with significant health needs may require special transportation considerations including appropriate qualified nursing staffing. Staffing must be maintained to address health needs during transport between school, home, and including field trips or community based instruction (CBI), as appropriate.

Exhibit A

- ◆ Communication technology for immediate health consultation must be in place for transportation of students with emergent health issues, if a nurse is not available.
- ◆ An Emergency Action Plan (EAP), if indicated, including transportation considerations and off-school site activities to be distributed to all appropriate involved parties caring for student(s) with skilled nursing needs.

No.	Nursing Interventions	RN	LPN	CNA/HHA
1	Tracheostomy care	X	X	
2	Ventilator management	X	X	
3	Oxygen Administration and monitoring	X	X	
4	Continuous enteral tube feedings	X	X	
5	Suctioning as needed	X	X	
6	Nebulizer treatments, as needed	X	X	
7	Diabetic blood sugar testing and insulin administration, unable to do self-care	X	X	
8	Unstable seizure disorder with emergency medication administration	X	X	
9	As needed medication and/or treatments	X	X	
10	Bolus enteral tube feedings		X	X
11	Clean intermittent catheterization		X	X
12	Routine nebulizer treatments		X	X
13	Routine blood sugar testing and administration of insulin, self-care		X	X
14	Routine medication administration		X	X
15	Ostomy care		X	X
16	Student requires RN or LPN level of care in the home setting	X	X	

Attachment 3

Contract Minimum and Special Conditions

1. CONTRACT ADMINISTRATOR

For purposes of this Contract, the person named below or his/her duly authorized representative or successor in office is designated Contract Administrator (CA). The CA may be contacted as follows:

Contract Administrator:	Debra Farmer
Telephone Number:	(808) 203-5560
E-mail Address:	debra_farmer@notes.k12.hi.us

The CA is responsible for:

- 1.1 the terms, conditions, quantities, specifications, scope of services, other contract terms, and all decisions relating to the Contract;
- 1.2 monitoring the PROVIDER's work, documenting that PROVIDER maintains the required insurance coverage (if applicable), resolving contract disputes and discrepancies, evaluating the work of the PROVIDER, assuring the services or goods are delivered as required in the Contract, and processing payment for services rendered; and
- 1.3 notifying Procurement & Contracts Branch in the event of change in scope of work, change in the performance period, increase or decrease in total compensation, and/or changes in any other contract terms.

Notwithstanding the responsibilities set forth hereinabove, any coordination of services falling outside those articulated above shall remain with the head of the purchasing agency, as set forth in the attached General Conditions (see General Conditions, paragraph 3.1, entitled "Coordination of Services by the STATE.").

2. POINT OF CONTACT

The CA has designated the following person as Point-of-Contact (POC) for this Contract. As such, the POC should be the initial contact on all matters related to this Contract. The POC can be contacted as follows:

POC:	Bill Patterson
Telephone Number:	(808) 203-5560
e-mail Address:	bill_patterson@notes.k12.hi.us

3. PROVIDER'S POINT OF CONTACT

The PROVIDER's primary point of contact shall be identified upon award of contract.

The PROVIDER shall notify the STATE, verbally within twenty-four (24) hours, upon the occurrence of any of the events indicated below:

- 3.1. Change in the PROVIDER's business address or phone number;
- 3.2. Change in the PROVIDER's tax identification number; or
- 3.3. Any other situation that could reasonably be expected to affect the PROVIDER's ability to carry out its obligation under this Contract.

4. CONDUCT

PROVIDER's employees or agents must sign in at the school office when entering a school campus, and sign out when leaving a school campus.

In addition, all PROVIDER's employees or agents must wear a picture identification badge listing agency name, employee name, and position (e.g., RN, LPN, Nurse Supervisor) at all times while on school premises.

PROVIDER's employees or agents must maintain a professional attitude, work ethic, and appearance. PROVIDER's employee or agents must be accessible to observations without notice by designated DOE personnel and provide services, as specified in the IEP or Section 504 Plan.

5. CREDENTIALING

PROVIDER shall maintain records providing proof that staff is fully and currently qualified. Documentation of qualifications must include: licensure, certification, experience, and/or training; TB check; criminal background check, including state and federal (FBI) criminal history records search; fingerprinting; as required by this Contract, as well as by applicable laws, rules, regulations, and codes. The PROVIDER must maintain personnel files that include documentation of the training, licensure, supervision, appropriate credentialing or certification, and ongoing performance of all its employees, agents, and volunteers. The PROVIDER must make records available upon request by the DOE within two (2) working days of the request.

The DOE reserves the right to refuse the services of any employee, agent, volunteer or prospective employee of the PROVIDER for any reason or for no reason.

6. CRIMINAL HISTORY RECORD CHECK REQUIREMENTS

The PROVIDER shall conduct all reasonable investigations which, at a minimum, includes: a criminal background check, including state and federal (FBI) criminal history records search; and fingerprinting; to determine whether an employee, agent, volunteer, or prospective employee including but not limited to administrative and direct service staff members who work in close proximity to children (“Worker”), has been convicted of any criminal offense pursuant to any law enforcement or military authority which would make the Worker unsuited for working in close proximity to children.

All PROVIDER employees shall meet credentialing requirements prior to any assignment, which includes fingerprinting. The required fingerprint checks shall be completed and a determination of suitability made before any Worker is assigned to any work site. Furthermore, the PROVIDER shall inform the STATE if any Worker providing services under this Agreement has been convicted of a criminal offense.

The STATE reserves the right to refuse the services of any Worker of the PROVIDER for any reason or for no reason.

The PROVIDER shall maintain a record of the mandatory criminal history checks performed on each of its Workers in compliance with this section. Additionally, the PROVIDER shall at all times maintain a current list of all new Workers documenting the status and completion dates of the mandatory criminal history checks and other primary source verification.

The STATE reserves the right to monitor the PROVIDER’s compliance with this section through either, or both, an on-site evaluation or a documents review.

All costs associated with conducting and processing criminal history checks of the PROVIDER’s Workers shall be borne by the PROVIDER.

7. TB CLEARANCE REQUIREMENTS

The PROVIDER shall require and maintain certification of TB examination for all employees, agents, and volunteers issued within the twelve (12) month period preceding the start of employment of service under this Agreement. Certificate must state that the person is free of communicable tuberculosis.

The PROVIDER shall adopt and implement a policy requiring all personnel providing services under this contract to obtain current tuberculosis clearance from a licensed medical provider and PROVIDER shall maintain records of such clearance.

8. EXCLUSION OF SPECIFIC WORKERS

The STATE reserves the right to require the PROVIDER to remove WORKER from performing work under this Contract. The Contract Administrator shall notify the PROVIDER in writing and this exclusion of a specific Worker(s) shall take effect as indicated on the notice. This provision shall not infringe upon the right of the PROVIDER to employ the removed individual, but shall apply to any work requiring interaction with the STATE, its employees or students.

9. COMPENSATION

The contract price shall include all services, materials, overhead, profit, all applicable taxes, and any other incidental and operational expenses incurred by PROVIDER in the performance of its obligations hereunder. The contract price shall be the all-inclusive cost to the STATE and no other charges shall be honored.

Total Compensation stated herein is estimated for the contract period specified. Actual compensation shall be contingent on the needs of the STATE, the service rates stated in the following section, and funding availability. No guarantee to purchase services in the exact amount stated is intended or implied. In the event service requirements do not materialize and the STATE purchases less than the total compensation stated, such failure shall not constitute grounds for equitable adjustment under this Contract.

Additionally, unless explicitly stated in this Contract, no additional fees or charges may be assessed to the STATE, the parties that the services are provided to, or their parents, guardians, insurance, or any other party associated with the provision of these specific services.

10. COMPENSATION RATES

Total compensation is based on the Contract unit measures and rates. These rates are paid in accordance with the work described herein, and includes all labor, services, travel, materials and equipment (as applicable), overhead, profit, all applicable taxes, and any other incidental and operational expenses incurred by the PROVIDER in the performance of its obligations hereunder. The rates established shall be all-inclusive to the STATE and no other charges shall be honored.

11. INVOICING AND PAYMENT SCHEDULE

11.1. Monthly Claim Submissions

Payments shall be made in monthly installments upon the monthly claim/invoice submissions by the PROVIDER for the services provided. If available, all claims/invoices for service must be submitted online utilizing the Service Verification Module (“SVM”) in eCSSS within fifteen (15) calendar days after the last day of each calendar month.

The PROVIDER shall submit one (1) original and two (2) invoice copies utilizing the STATE-prescribed invoice form for monthly claim submission. In addition, PROVIDER shall submit a data storage device (e.g. jump drive, etc.) of contracted services provided during the month within fifteen (15) calendar days after the last day of each calendar month, using the STATE-prescribed claim format with daily time sheets, RN supervisor time sheets, and a summary of monthly billing (format to be provided by the STATE). Invoices, claim submissions/data storage devices, and supporting billing documents shall be submitted to the STATE using the STATE-prescribed format.

Monthly claims shall be reviewed by the STATE and shall be subject to the STATE's preliminary determination of appropriateness and allowability of claim. The STATE reserves the right to withhold payment from the PROVIDER for any non-compliance with the Contract.

Once properly submitted, the STATE shall have thirty (30) days to pay unless the claim/invoice is called into question (e.g. appeals, corrections, etc.). If at any time the claim/invoice is called into question, then the STATE's requirement to pay within thirty (30) days shall end. After that, the STATE's thirty-day requirement to pay shall start anew on the day the corrected claim/invoices are properly resubmitted by the PROVIDER. Any errors or omissions may cause a significant delay in payment to the PROVIDER. The STATE shall not consider any late claims.

All appeals and corrections for reporting/claims/invoice rejections must be resolved within sixty (60) calendar days from the day that the claim(s)/invoice(s) was first submitted. After that sixty-day period, the STATE may reject those claim(s)/invoice(s) for any reason and for no reason.

11.2. Audit, Reimbursement and Reconciliation

The STATE's preliminary determination of appropriateness and allowability of the claim shall be subject to later verification and subsequent audit. The STATE reserves the right to seek reimbursement from the PROVIDER upon an audit of all claims for any errors made in payment and/or for services not delivered. Final settlement of this Contract shall include submission and acceptance of all claims (or reports) and other materials to be submitted by the PROVIDER to the STATE, resolution of all discrepancies in performance of services monthly claims (or reports), and completion of all outstanding matters under this Contract.

The STATE reserves the right to audit the PROVIDER's financial records and billing documentation on an annual basis, at a minimum, through either an on-site evaluation or a documentation review.

11.3. Payment for Services not Requested by the STATE

The STATE reserves the right to deny any claims for payment for the testimony or participation of individual providers that was not requested by the STATE. Unauthorized services include but are not limited to, the PROVIDER pursuing litigation on behalf of itself. The PROVIDER is not authorized to claim payment for, among other things, services relating to testimony, depositions, or other litigation matters in pursuit of its own interests.

11.4. Final Settlement

The STATE shall withhold fifty percent (50%) of the accepted amount for the final month of this Contract until final settlement of all claims (or reports) of this Contract.

12. FINAL PAYMENT

In addition to the requirements in the General Conditions, the following shall accompany the final payment invoice:

12.1. An original tax clearance certificate, not over two months old and with an original green “certified copy” stamp, must accompany the invoice for final payment. In lieu of the tax clearance certificate, PROVIDER may instead submit an original CERTIFICATE OF VENDOR COMPLIANCE as issued by the State Procurement Office via the online system referred to as “Hawaii Compliance Express”. Details regarding this online application process can be viewed at: <http://vendors.ehawaii.gov/hce/>.

12.2. “Certification of Compliance for Final Payment” (DOE Form-22) with an original signature shall be required for final payment.

13. AVAILABILITY OF FUNDS

This Contract is subject to the availability of funds. No contract entered into between the STATE and the PROVIDER shall be binding or of any force unless the Chief Financial Officer (CFO) certifies that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the Contract.

If the Contract calls for performance or payment in more than one fiscal year (July 1 to June 30), the CFO may certify only that portion of the total funds allocated to satisfy the STATE’s obligations for payments in the current fiscal year. In that event, the STATE shall not be liable for the unpaid balance beyond the end of the current fiscal year, and availability of funds in excess of the amount certified shall be contingent upon future appropriations or special fund revenues. All partially-funded contracts shall be enforceable only to the extent that funds are certified as available. The STATE agrees to notify the PROVIDER of such non-allocation at the earliest possible time. The STATE shall not be penalized in the event this provision is exercised. This provision is not meant

to permit the STATE to terminate the Contract in order to acquire similar equipment or services from a third party.

14. TIME OF PERFORMANCE

14.1. CONTRACT TERM

Contract shall commence on July 1, 2012 and shall end on June 30, 2013.

14.2. CONTRACT RENEWAL

This Contract may be extended for not more than two (2) additional twelve-month periods, i) upon mutual written agreement of the parties, ii) prior to expiration and iii) under the same terms and conditions of the original Contract or as negotiated between the STATE and the PROVIDER. Contract extension(s) shall be contingent upon i) the need for continued services and ii) funding availability beyond the current fiscal year. As each option(s) to extend is mutually agreed upon, the PROVIDER shall be required to execute a supplement to the Contract for each additional period.

14.3. PERFORMANCE PERIOD

The PROVIDER shall complete the work within the time limits specified herein. The time specified herein is the maximum time allowed.

15. CONTRACT EXECUTION

The PROVIDER shall be required to enter into a formal written contract, and no work is to be undertaken by the PROVIDER prior to the commencement date of the Contract. The STATE is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the PROVIDER prior to official starting date.

16. CONFIDENTIALITY OBLIGATIONS

The following serves to supplement provision 8.2 of the General Conditions, entitled "Confidentiality of Material" and provision 8, entitled "Confidentiality of Personal Information":

While performing under this Contract, the PROVIDER may receive, be exposed to or acquire confidential information. Such information may include names, addresses, telephone numbers, birthdates, social security numbers, medical information, and other educational, student, or personal employment information. The information may be in written or oral form, fixed in hard copy or contained in a computer database or computer readable form. Hereinafter, such language shall be collectively referred to as "Confidential Information."

The PROVIDER, including its employees, agents, representatives, and assigns shall abide by the following with regards to Confidential Information: (i) They shall not disclose to any unauthorized party any Confidential Information, except as specifically permitted by the STATE and subject to the STATE's limitations on confidentiality of information and relevant legal requirements of the State to include, but not limited to the Family Educational Rights and Privacy Act ("FERPA"); (ii) They shall only permit access to Confidential Information to employees, agents, representatives, and assigns having a specific need to know in connection with performance under this Contract; and (iii) They shall advise each of their employees, agents, representatives, and assigns of their obligations to keep such Confidential Information confidential.

The PROVIDER, its employees, agents, representatives, or assigns shall ensure the security of the Confidential Information. The PROVIDER shall provide the STATE with a list of individuals (by name and position) who are authorized to handle the Confidential Information (hereinafter referred to as "Authorized Handlers"). Authorized Handlers shall ensure the security of the Confidential Information. Only Authorized Handlers shall have access to the Confidential Information, which shall be kept on password protected computers with the hard copy documents kept in a locked file cabinet. The PROVIDER shall ensure that procedures exist to prohibit access to the Confidential Information by anyone other than an Authorized Handler.

The PROVIDER shall be responsible for safeguarding the confidentiality of all Confidential Information it receives from the STATE and shall safeguard and protect such documents from unauthorized use, handling, or viewing. The PROVIDER shall be liable to the STATE and to any person whose records the PROVIDER receives custody of under this Contract for records protection for any unpermitted release, viewing, or loss of such records. The PROVIDER shall assume liability responsibility for records protection and for the inappropriate or unlawful release of Confidential Information. The PROVIDER shall return all documents containing Confidential Information upon completion of the services PROVIDER is contracted to provide under this Contract.

16.1 Prior Written Approval: PROVIDER may not i) share Confidential Information or any other data received under this Contract, ii) publish, or iii) distribute such information without the prior written approval of the STATE.

16.2 In the event of termination of this Contract, PROVIDER shall return to STATE all student information received under this Contract and further agrees to destroy any and all copies of, or references to, any student information shared by STATE as a result of this Contract.

17. RELIEF AVAILABLE TO STATE

In addition to all rights and remedies available to the STATE provided in this Contract or otherwise provided under law, if the PROVIDER is in non-compliance with contract requirements, the STATE may:

- 17.1 Suspend Payments – Temporarily withhold or disallow all or part of the billing cost/payments pending correction of a deficiency or a non-submission of a required deliverable by the PROVIDER;
- 17.2 Suspend Referrals – Suspend referrals to the PROVIDER should the PROVIDER fail to comply with any of the requirements or other term(s) or condition(s) of this Contract and, further, the STATE may maintain the suspension of referrals until such time as the deficiency or non-compliance is corrected and the PROVIDER’s corrective actions are determined to be acceptable by the STATE; and
- 17.3 Seek Reimbursement – Seek reimbursement from the PROVIDER or withhold future payments for any funds paid to the PROVIDER subsequent to a determination that such was unauthorized, fraudulently obtained, or inappropriately billed.
- 17.4 Seek Market Value – In the event the PROVIDER fails, refuses or neglects to perform the services in accordance with the requirements of these Special Conditions, the Scope of Services or the General Conditions, the STATE reserves the right to purchase, in the open market, a corresponding quantity of the services specified herein and to deduct from any monies due or that may thereafter become due to the PROVIDER, the difference between the price named in the Contract and the actual cost to the STATE. In case any money due the PROVIDER is insufficient for said purpose, the PROVIDER shall pay the difference upon demand from the STATE. The STATE may also utilize all other remedies provided by law.

18. LIABILITY INSURANCE

General Conditions, section 1.4, entitled “Insurance Requirements”, is deleted entirely and replaced with the following (revisions to the original text are noted in redline where deletions bold strikethrough text indicates deletions, and additions are in bold italics):

Insurance Requirements. The PROVIDER shall obtain from a company authorized by law to issue such insurance in the State of Hawai‘i commercial general liability insurance (“liability insurance”) in an amount of at least TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) coverage for bodily injury and property damage resulting from the PROVIDER’s performance under this Contract. The PROVIDER shall maintain in effect this liability insurance until the STATE certifies that the PROVIDER’s work under the Contract has been completed satisfactorily.

The insurance shall be primary and shall cover the insured for all work to be performed under the Contract, including changes, and all work performed incidental thereto or directly or indirectly connected therewith.

A certificate of the liability insurance shall be given to the STATE by the PROVIDER. The certificate shall provide that the STATE and its officers and employees are Additional Insureds.

The certificate shall provide that the coverages being certified will not be cancelled or materially changed without giving the STATE at least 30 days prior written notice by mail.

Should the insurance coverages be cancelled before the PROVIDER's work under the Contract is certified by the STATE to have been completed satisfactorily, the PROVIDER shall immediately procure replacement insurance that complies in all respects with the requirements of this section.

Nothing in the insurance requirements of this Contract shall be construed as limiting the extent of PROVIDER's responsibility for payment of damages resulting from its operations under this Contract, including the PROVIDER's separate and independent duty to defend, indemnify, and hold the STATE and its officers and employees harmless pursuant to other provisions of this Contract.

In addition, the following minimum insurance coverage(s) and limit(s) shall be provided by the PROVIDER (including its subcontractor(s) where appropriate):

<u>Coverage</u>	<u>Limits</u>
<i>Automobile Liability, Comprehensive Bodily Injury:</i>	<i>\$1,000,000 per accident</i>
<i>Property Damage:</i>	<i>\$ 50,000 per occurrence</i>
<i>Professional Liability</i>	<i>\$1,000,000 per claim or \$2,000,000 per annual aggregate</i>

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the Contract, including supplemental agreements. Each insurance policy shall be written by 1) an insurance company licensed to do business in the State of Hawaii, or 2) if not licensed by the State of Hawaii, an insurance company which meets §431:8-301, Hawaii Revised Statutes.

Upon execution of the Contract, the PROVIDER agrees to deposit with the STATE certificate(s) of insurance necessary to satisfy the STATE that the insurance provisions of this Contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the STATE during the entire term of this Contract, including those of its subcontractor(s), where appropriate. Upon request by the STATE, PROVIDER shall be responsible for furnishing a copy of the policy(ies).

Failure of the PROVIDER to provide and keep in force such insurance shall be regarded as material default under this Contract, entitling the STATE to exercise any or all of the remedies provided herein.

The PROVIDER will provide written notice within twenty-four (24) hours to the Contract Administrator should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

19. SPECIAL CONDITIONS ARE SUPPLEMENTAL

Unless otherwise stated, these Special Conditions shall serve to supplement the General Conditions; both documents remain part of the Contract with full force and effect.

20. APPROVALS

This Contract is subject to the approval of the Department of the Attorney General as to form, and to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.

GENERAL CONDITIONS FOR HEALTH & HUMAN SERVICES CONTRACTS

1. Representations and Conditions Precedent

1.1 Contract Subject to the Availability of State and Federal Funds.

1.1.1 State Funds. This Contract is, at all times, subject to the appropriation and allotment of state funds, and may be terminated without liability to either the PROVIDER or the STATE in the event that state funds are not appropriated or available.

1.1.2 Federal Funds. To the extent that this Contract is funded partly or wholly by federal funds, this Contract is subject to the availability of such federal funds. The portion of this Contract that is to be funded federally shall be deemed severable, and such federally funded portion may be terminated without liability to either the PROVIDER or the STATE in the event that federal funds are not available. In any case, this Contract shall not be construed to obligate the STATE to expend state funds to cover any shortfall created by the unavailability of anticipated federal funds.

1.2 Representations of the PROVIDER. As a necessary condition to the formation of this Contract, the PROVIDER makes the representations contained in this paragraph, and the STATE relies upon such representations as a material inducement to entering into this Contract.

1.2.1 Compliance with Laws. As of the date of this Contract, the PROVIDER complies with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the PROVIDER's performance of this Contract.

1.2.2 Licensing and Accreditation. As of the date of this Contract, the PROVIDER holds all licenses and accreditations required under applicable federal, state, and county laws, ordinances, codes, rules, and regulations to provide the Required Services under this Contract.

1.3 Compliance with Laws. The PROVIDER shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the PROVIDER's performance of this Contract, including but not limited to the laws specifically enumerated in this paragraph:

1.3.1 Smoking Policy. The PROVIDER shall implement and maintain a written smoking policy as required by Chapter 328K, Hawaii Revised Statutes (HRS), or its successor provision.

1.3.2 Drug Free Workplace. The PROVIDER shall implement and maintain a drug free workplace as required by the Drug Free Workplace Act of 1988.

- 1.3.3 Persons with Disabilities. The PROVIDER shall implement and maintain all practices, policies, and procedures required by federal, state, or county law, including but not limited to the Americans with Disabilities Act (42 U.S.C. §12101, et seq.), and the Rehabilitation Act (29 U.S.C. §701, et seq.).
- 1.3.4 Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the PROVIDER, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
- 1.4 Insurance Requirements. The PROVIDER shall obtain from a company authorized by law to issue such insurance in the State of Hawai'i commercial general liability insurance ("liability insurance") in an amount of at least TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) coverage for bodily injury and property damage resulting from the PROVIDER's performance under this Contract. The PROVIDER shall maintain in effect this liability insurance until the STATE certifies that the PROVIDER's work under the Contract has been completed satisfactorily.
- The liability insurance shall be primary and shall cover the insured for all work to be performed under the Contract, including changes, and all work performed incidental thereto or directly or indirectly connected therewith.
- A certificate of the liability insurance shall be given to the STATE by the PROVIDER. The certificate shall provide that the STATE and its officers and employees are Additional Insureds. The certificate shall provide that the coverages being certified will not be cancelled or materially changed without giving the STATE at least 30 days prior written notice by registered mail.
- Should the "liability insurance" coverages be cancelled before the PROVIDER's work under the Contract is certified by the STATE to have been completed satisfactorily, the PROVIDER shall immediately procure replacement insurance that complies in all respects with the requirements of this section.
- Nothing in the insurance requirements of this Contract shall be construed as limiting the extent of PROVIDER's responsibility for payment of damages resulting from its operations under this Contract, including the PROVIDER's separate and independent duty to defend, indemnify, and hold the STATE and its officers and employees harmless pursuant to other provisions of this Contract.
- 1.5 Notice to Clients. Provided that the term of this Contract is at least one year in duration, within 180 days after the effective date of this Contract, the PROVIDER shall create written procedures for the orderly termination of services to any clients receiving the Required Services under this Contract, and for the transition to services supplied by another provider upon termination of this Contract, regardless of the circumstances of such termination. These procedures shall include, at

the minimum, timely notice to such clients of the termination of this Contract, and appropriate counseling.

- 1.6 Reporting Requirements. The PROVIDER shall submit a Final Project Report to the STATE containing the information specified in this Contract if applicable, or otherwise satisfactory to the STATE, documenting the PROVIDER’s overall efforts toward meeting the requirements of this Contract, and listing expenditures actually incurred in the performance of this Contract. The PROVIDER shall return any unexpended funds to the STATE.
- 1.7 Conflicts of Interest. In addition to the Certification provided in the Standards of Conduct Declaration to this Contract, the PROVIDER represents that neither the PROVIDER nor any employee or agent of the PROVIDER, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the PROVIDER’s performance under this Contract.

2. Documents and Files

- 2.1 Confidentiality of Material.
 - 2.1.1 Proprietary or Confidential Information. All material given to or made available to the PROVIDER by virtue of this Contract that is identified as proprietary or confidential information shall be safeguarded by the PROVIDER and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - 2.1.2 Uniform Information Practices Act. All information, data, or other material provided by the PROVIDER to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS, and any other applicable law concerning information practices or confidentiality.
- 2.2 Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished that is developed, prepared, assembled, or conceived by the PROVIDER pursuant to this Contract, and all such material shall be considered “works made for hire.” All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the PROVIDER pursuant to this Contract.
- 2.3 Records Retention. The PROVIDER and any subcontractors shall maintain the books and records that relate to the Contract, and any cost or pricing data for three (3) years from the date of final payment under the Contract. In the event that any litigation, claim, investigation, audit, or other action involving the records retained under this provision arises, then such records shall be retained for three (3) years from the date of final payment, or the date of the resolution of the action, whichever occurs later. During the period that records are retained under this section, the

PROVIDER and any subcontractors shall allow the STATE free and unrestricted access to such records.

3. Relationship between Parties

- 3.1 Coordination of Services by the STATE. The STATE shall coordinate the services to be provided by the PROVIDER in order to complete the performance required in the Contract. The PROVIDER shall maintain communications with the STATE at all stages of the PROVIDER’s work, and submit to the STATE for resolution any questions which may arise as to the performance of this Contract.
- 3.2 Subcontracts and Assignments. The PROVIDER may assign or subcontract any of the PROVIDER’s duties, obligations, or interests under this Contract, but only if (i) the PROVIDER obtains the prior written consent of the STATE and (ii) the PROVIDER’s assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawai‘i, and the Internal Revenue Service showing that all delinquent taxes, if any, levied or accrued under state law against the PROVIDER’s assignee or subcontractor have been paid. Additionally, no assignment by the PROVIDER of the PROVIDER’s right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawai‘i, as provided in section 40-58, HRS.
- 3.3 Change of Name. When the PROVIDER asks to change the name in which it holds this Contract, the STATE, shall, upon receipt of a document acceptable or satisfactory to the STATE indicating such change of name such as an amendment to the PROVIDER’s articles of incorporation, enter into an amendment to this Contract with the PROVIDER to effect the change of name. Such amendment to this Contract changing the PROVIDER’s name shall specifically indicate that no other terms and conditions of this Contract are thereby changed, unless the change of name amendment is incorporated with a modification or amendment to the Contract under paragraph 4.1 of these General Conditions.
- 3.4 Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - 3.4.1 Independent Contractor. In the performance of services required under this Contract, the PROVIDER is an “independent contractor,” with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE’s opinion, the services are being performed by the PROVIDER in compliance with this Contract.
 - 3.4.2 Contracts with Other Individuals and Entities. Unless otherwise provided by special condition, the STATE shall be free to contract with other individuals and entities to provide services similar to those performed by the Provider under this Contract, and the

PROVIDER shall be free to contract to provide services to other individuals or entities while under contract with the STATE.

3.4.3 PROVIDER's Employees and Agents. The PROVIDER and the PROVIDER's employees and agents are not by reason of this Contract, agents or employees of the State for any purpose. The PROVIDER and the PROVIDER's employees and agents shall not be entitled to claim or receive from the STATE any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees. Unless specifically authorized in writing by the STATE, the PROVIDER and the PROVIDER's employees and agents are not authorized to speak on behalf and no statement or admission made by the PROVIDER or the PROVIDER's employees or agents shall be attributed to the STATE, unless specifically adopted by the STATE in writing.

3.4.4 PROVIDER's Responsibilities. The PROVIDER shall be responsible for the accuracy, completeness, and adequacy of the PROVIDER's performance under this Contract.

Furthermore, the PROVIDER intentionally, voluntarily, and knowingly assumes the sole and entire liability to the PROVIDER's employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the PROVIDER, or the PROVIDER's employees or agents in the course of their employment.

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

The PROVIDER shall obtain a general excise tax license from the Department of Taxation, State of Hawai'i, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The PROVIDER shall obtain a tax clearance certificate from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service showing that all delinquent taxes, if any, levied or accrued under state law against the PROVIDER have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The PROVIDER shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under section 103-53, HRS, and these General Conditions.

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

3.5 Personnel Requirements.

3.5.1 Personnel. The PROVIDER shall secure, at the PROVIDER's own expense, all personnel required to perform this Contract, unless otherwise provided in this Contract.

3.5.2 Requirements. The PROVIDER shall ensure that the PROVIDER's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Modification and Termination of Contract

4.1 Modification of Contract.

4.1.1 In Writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the PROVIDER and the STATE.

4.1.2 No Oral Modification. No oral modification, alteration, amendment, change, or extension of any term, provision or condition of this Contract shall be permitted.

4.1.3 Tax Clearance. The STATE may, at its discretion, require the PROVIDER to submit to the STATE, prior to the STATE's approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service showing that all delinquent taxes, if any, levied or accrued under state and federal law against the PROVIDER have been paid.

4.2 Termination in General. This Contract may be terminated in whole or in part because of a reduction of funds available to pay the PROVIDER, or when, in its sole discretion, the STATE determines (i) that there has been a change in the conditions upon which the need for the Required Services was based, or (ii) that the PROVIDER has failed to provide the Required Services adequately or satisfactorily, or (iii) that other good cause for the whole or partial termination of this Contract exists. Termination under this section shall be made by a written notice sent to the PROVIDER ten (10) working days prior to the termination date that includes a brief statement of the reason for the termination. If the Contract is terminated under this paragraph, the PROVIDER shall cooperate with the STATE to effect an orderly transition of services to clients.

- 4.3 Termination for Necessity or Convenience. If the STATE determines, in its sole discretion, that it is necessary or convenient, this Contract may be terminated in whole or in part at the option of the STATE upon ten (10) working days' written notice to the PROVIDER. If the STATE elects to terminate under this paragraph, the PROVIDER shall be entitled to reasonable payment as determined by the STATE for satisfactory services rendered under this Contract up to the time of termination. If the STATE elects to terminate under this section, the PROVIDER shall cooperate with the STATE to effect an orderly transition of services to clients.
- 4.4 Termination by PROVIDER. The PROVIDER may withdraw from this Contract after obtaining the written consent of the STATE. The STATE, upon the PROVIDER's withdrawal, shall determine whether payment is due to the PROVIDER, and the amount that is due. If the STATE consents to a termination under this paragraph, the PROVIDER shall cooperate with the STATE to effect an orderly transition of services to clients.
- 4.5 STATE's Right of Offset. The STATE may offset against any monies or other obligations that STATE owes to the PROVIDER under this Contract, any amounts owed to the State of Hawai'i by the PROVIDER under this Contract, or any other contract, or pursuant to any law or other obligation owed to the State of Hawai'i by the PROVIDER, including but not limited to the payment of any taxes or levies of any kind or nature. The STATE shall notify the PROVIDER in writing of any exercise of its right of offset and the nature and amount of such offset. For purposes of this paragraph, amounts owed to the State of Hawai'i shall not include debts or obligations which have been liquidated by contract with the PROVIDER, and that are covered by an installment payment or other settlement plan approved by the State of Hawai'i, provided, however, that the PROVIDER shall be entitled to such exclusion only to the extent that the PROVIDER is current, and in compliance with, and not delinquent on, any payments, obligations, or duties owed to the State of Hawai'i under such payment or other settlement plan.

5. Indemnification

- 5.1 Indemnification and Defense. The PROVIDER shall defend, indemnify, and hold harmless the State of Hawai'i, the contracting agency, and their officers, employees, and agents from and against any and all liability, loss, damage, cost, expense, including all attorneys' fees, claims, suits, and demands arising out of or in connection with the acts or omissions of the PROVIDER or the PROVIDER's employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
- 5.2 Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the PROVIDER in connection with this Contract, the PROVIDER shall pay any cost and expense incurred by or imposed on the STATE, including attorneys' fees.

6. Publicity

- 6.1 Acknowledgment of State Support. The PROVIDER shall, in all news releases, public statements, announcements, broadcasts, posters, programs, computer postings, and other printed, published, or electronically disseminated materials relating to the PROVIDER's performance under this Contract, acknowledge the support by the State of Hawai'i and the purchasing agency.
- 6.2 PROVIDER's Publicity Not Related to Contract. The PROVIDER shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, or to the services or goods, or both provided under this Contract, in any of the PROVIDER's publicity not related to the PROVIDER's performance under this Contract, including but not limited to commercial advertisements, recruiting materials, and solicitations for charitable donations.

7. Miscellaneous Provisions

- 7.1 Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the PROVIDER, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
- 7.2 Paragraph Headings. The paragraph headings appearing in this Contract have been inserted for the purpose of convenience and ready reference. They shall not be used to define, limit, or extend the scope or intent of the sections to which they pertain.
- 7.3 Antitrust Claims. The STATE and the PROVIDER recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the PROVIDER hereby assigns to the STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
- 7.4 Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawai'i. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawai'i.
- 7.5 Conflict between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the Procurement Rules or a Procurement Directive, the Procurement Rules or any Procurement Directive in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
- 7.6 Entire Contract. This Contract sets forth all of the contracts, conditions, understandings, promises, warranties, and representations between the STATE and the PROVIDER relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings,

promises, warranties, and representations, which shall have no further force or effect. There are no contracts, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the PROVIDER other than as set forth or as referred to herein.

- 7.7 Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
- 7.8 Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE’s right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the Procurement Rules or one section of the Hawai‘i Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE’s rights or the PROVIDER’s obligations under the Procurement Rules or statutes.
- 7.9 Execution in Counterparts. This Contract may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one instrument.

8. Confidentiality of Personal Information

8.1 Definitions.

8.1.1 Personal Information. “Personal Information” means an individual’s first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

- 1) Social Security number;
- 2) Driver’s license number or Hawaii identification card number; or
- 3) Account number, credit or debit card number, access code, or password that would permit access to an individual’s financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

8.1.2 Technological Safeguards. “Technological safeguards” means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

8.2 Confidentiality of Material.

8.2.1 Safeguarding of Material. All material given to or made available to the PROVIDER by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the PROVIDER and shall not be disclosed without the prior written approval of the STATE.

8.2.2 Retention, Use, or Disclosure. PROVIDER agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

8.2.3 Implementation of Technological Safeguards. PROVIDER agrees to implement appropriate “technological safeguards” that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.

8.2.4 Reporting of Security Breaches. PROVIDER shall report to the STATE in a prompt and complete manner any security breaches involving personal information.

8.2.5 Mitigation of Harmful Effect. PROVIDER agrees to mitigate, to the extent practicable, any harmful effect that is known to PROVIDER because of a use or disclosure of personal information by PROVIDER in violation of the requirements of this paragraph.

8.2.6 Log of Disclosures. PROVIDER shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by PROVIDER on behalf of the STATE.

8.3 Security Awareness Training and Confidentiality Agreements.

8.3.1 Certification of Completed Training. PROVIDER certifies that all of its employees who will have access to the personal information have completed training on security awareness topics related to protecting personal information.

8.3.2 Certification of Confidentiality Agreements. PROVIDER certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

- 1) The personal information collected, used, or maintained by the PROVIDER will be treated as confidential;
- 2) Access to the personal information will be allowed only as necessary to perform the Contract; and
- 3) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

8.4 Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by PROVIDER of this paragraph by PROVIDER, the STATE may at its sole discretion:

- 1) Provide an opportunity for the PROVIDER to cure the breach or end the violation; or
- 2) Immediately terminate this Contract.

In either instance, the PROVIDER and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

8.5 Records Retention.

8.5.1 Destruction of Personal Information. Upon any termination of this Contract, PROVIDER shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

8.5.2 Maintenance of Files, Books, Records. The PROVIDER and any subcontractors shall maintain the files, books, and records, that relate to the Contract, including any personal information created or received by the PROVIDER on behalf of the STATE, and any cost or pricing data, for three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall not be disclosed without the prior written approval of the STATE. After the three (3) year retention period has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS.

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