

 <p>HAWAII HEALTH SYSTEMS CORPORATION <i>"Touching Lives Everyday"</i></p> <p>Policies and Procedures</p>	Department: Corporate Finance	Policy No.: PUR 0014
	Issued by: Kelley Roberson COO & CFO	Revision No.: 3
Subject: <i>Legal Review of RFP/IFB and Contracts</i>	Approved by: Thomas M. Driskill, Jr. President & CEO	Effective Date: October 1, 2007
		Supersedes Policy: November 1, 2006
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- I. **PURPOSE:** To streamline the process of legal review of contracts, RFP, IFB and to assure all financial arrangements with physicians and physician groups are subject to appropriate legal review.

The Hawaii Health Systems Corporation (HHSC) Chief Executive Officer (CEO) requires HHSC to maintain documentation for, and appropriate reviews of, all contracts, as the term is defined below. This policy supersedes all former HHSC corporate PUR policies on this subject.

II. **DEFINITION**

As used herein:

- A. The term "**contract**" means any agreement or arrangement, written or verbal, entered between or among parties, one of which is HHSC, which creates financial, or any other obligation or obligations. A contract includes financial arrangements and agreements.
- B. The term "**HHSC**" means Hawaii Health Systems Corporation, including any one or more of its facilities or Regional System Boards.
- C. The term "**management**" means the executive team member or hospital administrator who will execute the contract.
- D. The term "**physician**" means a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor, as defined in section 1861(r) of the Social Security Act.

E. The term “**RFP**” means Request for Proposal that is the preferred solicitation method for HHSC. The term IFB means Invitation for Bid.

III. POLICY: It is the policy of the HHSC to have all contracts subject to legal review, except as expressly set forth in subsection B of section IV below. Any contract requiring legal review, as set forth in subsection A of section IV below, SHALL BE in writing and SHALL NOT be executed by any employee, officer, or agent of the HHSC prior to the appropriate review of, and approval as to, the legal form of the contract by the HHSC legal department.

IV. PROCEDURE:

A. Contracts Requiring Legal Review

Submit to the HHSC legal department for its review all of the following contracts:

1. Contracts over \$200,000.
2. All contracts (regardless of amount or cost and including no-cost contracts) with physician(s), physician group(s), and/or other entities owned, in whole or in part, by one or more physicians and/or physician groups, or their family members, including:
 - a. space lease or rental agreements
 - b. equipment lease or rental agreements
 - c. reimbursement contracts
 - d. employment contracts
 - e. recruitment agreements
 - f. medical director agreements
 - g. emergency department coverage agreements
 - h. joint venture, any type of partnership, and limited liability company agreements
 - i. contracts and/or agreements for payment from a physician, physician group and/or physician- or physician group-owned entity for items or services
 - j. contracts and/or agreement for payment from the hospital to a physician, physician group and/or physician – or physician group-owned entity for items or services
 - k. any other contract and/or agreements, whether or not related to the provision of health care services
 - l. Agreements for the sale or purchase of a physician practice
 - m. Supplemental agreements to any of the above types of contracts.
3. All Vendor Contracts regardless of dollar value, unless the abbreviated General Conditions form is attached as part of the agreement and given priority over conflicting terms in the vendor agreement.

4. Supplemental Agreements, where the Primary or previous supplement requiring legal review was not reviewed by legal.
5. Supplemental Agreements, where the Primary does not require legal review but the contract as amended by the Supplemental Agreement requires legal review under this Section (example, a Primary Contract with a not to exceed contract amount of less than \$200,000 which otherwise does not require legal review, amended by a Supplemental Agreement that increases the not to exceed amount of the contract to over \$200,000).
6. Special requirements determined on a case-by-case basis, regardless of amount.
7. Equipment and Space leases of any kind. All financing leases must receive both legal and HHSC COO/CFO review.
8. Contracts and supplemental agreements for purchase or sale of goods/services where payment is made by federal or state health care programs, including, but not limited to, the following:
 - Clinical laboratory services
 - Physical therapy services
 - Occupational therapy services
 - Radiology or other diagnostic services
 - Durable medical equipment (DME)
 - Parenteral and enteral nutrients, equipment and supplies
 - Prosthetics, orthotics and prosthetic devices
 - Home health services
 - Outpatient prescription drugs
 - Inpatient and outpatient hospital services
9. Joint venture or other investment contracts.
10. Contracts that require disclosure or protected health information or use of PHI by the contractor.
11. Contracts with persons who are, or are related to HHSC employees, directors or officers.
12. Contracts that are being submitted to the Board of Directors.

B. Contracts Not Requiring Legal Review

Contracts not listed in subsection A above, do not need to be submitted to the legal department for legal review PROVIDED all of the following conditions are satisfied. If any one (or more) of the following conditions is (or are) not

satisfied, the contract shall require legal review by the HHSC legal department.

1. **Indemnification** - There must be no indemnification and/or hold harmless clause from HHSC for the benefit of the contractor or other persons. This type of clause comes in a variety of forms; any clause that requires us to pay for the other party to the contract is not be allowed. **NOTE: ANYONE WHO SIGNS ANY AGREEMENT CONTAINING SUCH A CLAUSE WILL RISK BEING HELD PERSONALLY LIABLE FOR PERFORMANCE UNDER THE CLAUSE.**

We would prefer to have our standard indemnification and cost of litigation clause (for the contractor to indemnify us) included in all agreement. However, the management may waive those clauses after obtaining legal advice.

2. **Attorneys' Fees** – There must be no clause in which we agree to pay for the other party's attorneys' fees, unless management voluntarily agrees to such a clause. This type of clause also comes in a variety of forms.
3. **Evergreen Clause** – There must be no automatic renewal clause (the "Evergreen Clause"); extension or renewal always requires mutual agreement.
4. **Term** – The term of the contract must be stated clearly; preferably, the term should not be longer than two years, which coincide with the budgeting period. If it is longer than two years, consider the possibility of making it two years, with an option for extension or renewal. Terms beyond the existing biennium budget shall be explicitly made "subject to appropriation."
5. **Written Modification** – There must be no clause that allows the other party to modify the terms of the agreement without our written consent; the contract must require that all amendments to the contract be in writing and signed by both parties.
6. **Governing Law and Jurisdiction/Venue** -- There must be no provision requiring application of laws other than those of Hawaii, or requiring us to submit to a court or jurisdiction outside the state of Hawaii; if there is, replace it with the following:

"The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a State court of competent jurisdiction in Honolulu, Hawaii. The provisions

of this paragraph shall survive expiration or other termination of this Agreement, regardless of the cause of such termination.”

7. **Confidentiality** – Any confidentiality clause requiring us to maintain confidence must be made subject to HRS Chapter 92F as modified by Chapter 323F and Chapter 103D. If in doubt, propose the following:

“All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the HHSC.

All information, data, or other material provided by the CONTRACTOR to the HHSC shall be subject to the Uniform Information Practices Act, chapter 92F, HRS, as modified by Chapter 323F, HRS, and chapter 103D HRS, and other applicable laws.”

8. **Assignment** - There must be no clause that allows the contractor to assign the contract or any rights or obligations under the contract to another without HHSC’s prior approval.
9. **Contract Amount** - The contract amount must be clearly stated. There must be a “not to exceed amount” and “subject to appropriation” qualification.
10. **Termination** – There should be a clause allowing us to terminate the agreement without cause, even if we need to pay a penalty for it. There should also be a termination for cause clause stating under what conditions we may terminate for cause. Management must make an informed decision on these points.
11. **Corporate Compliance** – Corporate compliance requirement (our standard clause) must be stated; if the other party insists that they be allowed to comply with its own corporate compliance program, obtain a copy of their program description, and have it reviewed by our corporate compliance officer for program adequacy.
12. **Computer Security** – If the contractor is allowed access to our computer system, the agreement must state that the contractor must comply with the requirements of corporate policy ITD 0006. Add this requirement to the section that allows such access to our system by the contractor.

Any remote access to HHSC system by Contractor for any purpose shall be in compliance with HHSC Corporate Policy ITD 0006 on Remote Access.

13. **Privacy** - Business associate agreement must be included, unless we are certain there is no disclosure of any protected health information to the contractor.

14. **Insurance** – There must be no clause requiring us to obtain insurance; if there is, the clause must be reviewed by legal.

15. **Exclusion from Federal Program** – The contract must require the following (our standard) provision or equivalent:

“CONTRACTOR warrants that it and none of its employees, agents or subcontractors performing services or providing goods pursuant to this Agreement are excluded from participation in federal health care programs, as defined in the Social Security Act (section 1128 and 1128A), and other federal laws and regulations relating to health care. HHSC reserves the right to verify that the above warranty is true, and to immediately cancel this Agreement in the event it is violated.”

16. **Nondiscrimination** – the contract must require the following:

“No person performing work under this Agreement, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.”

17. **Access to Books and Records** – the contract must require the following or equivalent if the contract amount over the course of a year is over \$10,000:

“If the value or cost of Services rendered to HHSC pursuant to this Agreement is Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, CONTRACTOR agrees as follows:

- a. Until the expiration of four (4) years after the furnishing of such services, CONTRACTOR shall, upon written requests, make available to the Secretary of the Department of Health and Human Services (the “Secretary”), the Secretary’s duly-authorized representative, the Comptroller General, or the Comptroller General’s duty-authorized representative, such books, documents and records as may be necessary to certify the nature and extent of the cost of such Services; and
- b. If any such Services are performed by way of subcontract with another organization and the value or cost of such subcontracted Services is Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, such subcontract shall contain and CONTRACTOR shall

enforce a clause to the same effect as subparagraph a. immediately above. The availability of CONTRACTOR'S books, documents, and records shall be subject at all times to all applicable legal requirements, including without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation. The provisions of subparagraph a. and this subparagraph b., shall survive the expiration of other termination of this Agreement regardless of the cause of such termination."

18. **Compliance with Laws** – the contract must include the following clause or equivalent:

"The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this agreement."

C. **Others Terms** - Other terms may require legal review dependent on the type of solicitation utilized, the type of contract and the item or services purchased. The Contract Managers shall confer with General Counsel's office and utilize the standard forms provided by General Counsel.

D. **Legal Review at the Discretion of Contracts Managers** - Contract Managers shall have discretion to refer any contract, for any reason, for legal review.

F. **RFP/IFB** packages will be reviewed by the legal department for all projected solicitations estimated to be \$500,000 or more and for all services of the type described in Section IV.A.2 or 8, above. Contract managers have full discretion to refer any RFP/IFB for legal review on a case-by-case basis.

V. **APPLICABILITY:** All HHSC facilities and corporate office.

VI. **REFERENCES:** HRS Ch. 92F; HRS Ch. 323F; HRS Ch. 103D and implementing Hawaii Administrative Rules (HAR)._(Reference to Chapter 103D does not imply it is applicable in all cases.)