

INVITATION FOR BID

FCC PACIFIC BROADBAND TELEHEALTH DEMONSTRATION NETWORK

IFB #:00-06 Hui No Ke Ola Pono

1. This Invitation for Bid follows the Research Corporation of the University of Hawaii (RCUH) General Terms and Conditions, the Federal Communications Commission Pilot Program Order (WC Docket 02-60; FCC 07-198, released November 19, 2007), and consistent with related FCC orders, section 254(h)(2)(A) of the Telecommunications Act of 1934, as amended, and Parts 54.601 et. seq. of the FCC's rules.
2. The UH Telecommunications and Information Policy Group (UH TIPG), on behalf of many healthcare provider organizations in Hawaii and the Pacific islands regions, received funding from the FCC to establish a Pacific Broadband Telehealth Demonstration Network (PBDTN) that interconnect health care organizations throughout the State of Hawaii and the Pacific Islands region to a broadband telehealth network. The goals of the PBDTN are to:
 - Interconnect federal, state, local, and community healthcare providers in Hawaii and the Pacific Islands region;
 - Enable the full range of telehealth and telemedicine services to be provided;
 - Expand the type of telehealth applications that may be offered; and,
 - Establish a foundation for secure network cross-connections that will also help to further the national objective of interoperable electronic health record (EHR) systems. The proposed broadband telehealth network will interconnect both urban and rural Health Care Providers (HCPs) to a state, regional, and national network backbone that enables the shared, dynamic delivery of healthcare services.
3. Pursuant to its stated goals, the PBDTN invites sealed bids from eligible and qualified bidders to procure secure, robust sustainable and interconnected telecommunication links and services for Hui No Ke Ola Pono sites in Maui.
4. **Term of Contract:** The Term of Contract will be up to five (5) years upon the execution of a contract between the bidder and either the RCUH or directly with the health care provider. At the end of the 5-Year period, RCUH may elect to annually extend the contract for no more than two (2) consecutive 1-year terms.
5. Minimal Qualifications Requirements:
 - 5.1. Experience as lead service provider of at least one project of works of a nature and complexity equivalent to the works over a period of 5 years (to comply with this requirement, works cited should be at least 70 percent complete);
 - 5.2. Have in place a Network Operations Center capable of fault and performance management;
 - 5.3. Have a 24x7 hour operations staff to respond to trouble calls;
 - 5.4. Have three (3) local references for similar services, designs and maintenance and or technical support.
6. Interested eligible bidders may obtain further information from:

Ms. Christina Higa
Telecommunications and Information Policy Group
Social Science Research Institute
2424 Maile Way, Saunders Hall 713
Honolulu, Hawaii 96822
Phone: (808) 956-7224 Fax (808) 956-8019
Email: fiscal@tipg.net

7. Bids must be delivered and or emailed to the address below by 4:30 PM HST no later than 30 days after the IFB is posted. Late bids will be rejected.

Mailing address:

The Social Science Research Institute
University of Hawaii at Manoa
2424 Maile Way, Saunders Hall 704
Honolulu, HI 96822

Attention: Calvin Fujioka, Fiscal Officer – Telephone (808) 956-7879

Email: fiscal@tipg.net

Proposals will not be subject to public inspection until after an Agreement for Services is signed. All proposals and other material submitted shall become the property of the RCUH and may be returned only at the RCUH's option.

8. The Pacific Broadband Telehealth Demonstration Network will be subject to design and site modifications and changing needs. The project requires the ability to increase or decrease the quantity of circuits (e.g., T-1), services, etc. to each location. Price proposals must be flexible to meet these requirements. The final determination of the quantity and type of circuits will be made after analysis of cost proposed. RCUH and project partners are not obligated to purchase all or any services listed in this IFB.
 9. Awards will be based on the lowest responsive and responsible bidder found to have the fitness, quality, and capacity to satisfactorily deliver the goods and services as detailed in the bid package. Any potential contract award will be subject to a RCUH administrative and technical evaluation of the bidder prior to any contract award. RCUH reserves the right to reject any and all bids or to waive any formalities or technicalities in any bid in the interest of the RCUH and to award it to the best interest of the RCUH. Single conforming bids are subject to price or cost analysis by the Authority. Bids will be valid for review and award up to 45 days after bid opening.
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**FCC PACIFIC BROADBAND
TELEHEALTH DEMONSTRATION NETWORK**

IFB #:00-06 Hui No Ke Ola Pono

By signing, the Bidder certifies that he/she has read and understands the bid documents, meets the minimal qualifications and that he/she offers and agrees to furnish the goods and/or services specified under the instructions and conditions stated therein. *(Submit this document (coverletter) with your bid proposal)*

SIGNATURE: _____

PRINT NAME AND TITLE: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____ FAX: _____

DATE: _____ / _____ / _____

EMAIL ADDRESS: _____

BID DOCUMENTS

FCC PACIFIC BROADBAND TELEHEALTH DEMONSTRATION NETWORK

IFB #:00-06 Hui No Ke Ola Pono

CONTRACT ADMINISTRATOR	DATE ISSUED	CLOSING DATE/TIME	BID NUMBER
Christina Higa Phone: (808) 956-7224 Fax: (808) 956-8019 Email: fiscal@tipg.net	See USAC webs posting	4:30PM HST no later than 30 days after IFB is posted.	IFB#00-06
	Bids shall be received by 4:30PM HST no later than 30 days after IFB is posted.		

Issued by:
The Research Corporation of the University of Hawaii
For the benefit of Telecommunications and Information Policy Group
Social Science Research Institute
2424 Maile Way, Saunders Hall 713
Honolulu, Hawaii 96822

Phone: (808) 956-7224 Fax (808) 956-8019

**FCC PACIFIC BROADBAND TELEHEALTH DEMONSTRATION NETWORK
TELECOMMUNICATIONS AND INFORMATION POLICY GROUP**

IFB#06

TABLE OF CONTENTS

1.	INSTRUCTIONS TO BIDDERS.....	6
1.1.	General.....	6
1.2.	Proposal Requirements.....	6
1.3.	Tax Clearance For Proposal (only applicable if contract is with a State of Hawaii Agency)	6
1.4.	Invoice Billing and Payment Terms.....	6
1.5.	Amendments	7
1.6.	Evaluation and Award Criteria.....	7
1.7.	Preparation Costs.....	7
1.8.	References	7
1.9.	Selection on Initial Proposal.....	7
1.10.	Availability of Funds	7
1.11.	Notice to Proceed.....	7
1.12.	Changes to Contractor's Fee	7
1.13.	Disqualification	8
2.	TECHNICAL AND FUNCTIONALS REQUIREMENTS.....	9
2.1.	Specifications	9
2.2.	Part 1: T-1 Dedicated Digital Data Services	9
2.3.	Part 2: Digital Subscriber Line (DSL) Broadband Internet Service	9
2.4.	Part 3: Cable Broadband Internet Service	9
3.	APPENDICES.....	11
3.1.	Appendix A: Bid Forms	11
	Intent to Bid Form	12
	Bid Form – Part 1.....	13
	Bid Form – Part 2.....	14
	Bid Form – Part 3.....	15
3.2.	Appendix B: The Research Corporation of the University of Hawaii (RCUH) General Terms and Conditions	16

1. INSTRUCTIONS TO BIDDERS

1.1. General

The PBTDN solicits bids to procure robust, secure, sustainable and interconnected telecommunication links for the Hui No Ke Ola Pono Native Hawaiian Health Care Systems network. Terms and conditions for service delivery are as described in this Invitation for Bids including the Bid Forms.

It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.

Bidders may bid on some or all parts of this IFB.

1.2. Proposal Requirements

Each bidder shall prepare and submit:

1. Intent to Bid Form
2. Completed and Signed Invitation For Bid Cover letter
3. Bid Form – Cost Proposal Sheets - Submit Bid Form for each part your company will be bidding for. If bidding for all parts, submit all corresponding Bid Forms.
4. Reference - Names, Addresses and Contacts of THREE (3) local references for similar services, designs, maintenance and technical support services as required in this IFB. (Attach as a separate sheet.)

Three (3) original proposals shall be sent or delivered to:

The Social Science Research Institute
University of Hawaii at Manoa
2424 Maile Way, Saunders Hall 704
Honolulu, HI 96822

Attention: Calvin Fujioka, Fiscal Officer – Telephone (808) 956-7879

Or one (1) electronic copy emailed to: fiscal@tipg.net

1.3. Tax Clearance For Proposal (only applicable if contract is with a State of Hawaii Agency)

A tax clearance from the State of Hawai'i Department of Taxation and the Internal Revenue Service is not required for submission of a proposal. However, contract with a State of Hawaii agency, in accordance with Section 103-53, Hawai'i Revised Statutes, the selected contractor shall submit original tax clearances from the State of Hawai'i Department of Taxation and the Internal Revenue Service prior to execution of the Agreement for Services. Tax clearances obtained shall certify that all tax returns due have been filed and all taxes, interest, and penalties levied or accrued under the provisions of Title 14 that are administered by the State of Hawai'i Department of Taxation and under the Internal Revenue Code against the offeror, have been paid. (See Tax Facts, September 2000 (<http://www.state.hi.us/tax/taxfacts/tf00-01rev.pdf>).

1.4. Invoice Billing and Payment Terms

Awards under this solicitation are subject to the availability of funds from the Rural Health Care Division of the Universal Service Administrative Company and the U.S. Congress.

The Universal Services Administrative Company (USAC) on behalf of the FCC is administering the Rural Health Care Pilot Program. Payment of up to 85% for eligible

RHCPP equipment and or services shall be reimbursed to the service provider by USAC. Payment of 15% shall be made by Health Care Provider or by RCUH.

Under this program there are specific administrative requirements for invoicing. For example, the Service Provider invoices the customer for 100% of the cost. The customer shall pay 15% of this amount. UH TIPG, as the Project Coordinator, will validate invoice items, 15% payment and complete USAC invoice forms. The Service Provider will be required to review USAC invoice form, sign and mail to the RHCD Project Reviewer. RHCD forwards to USAC for review and reimbursement to the Service Provider. All Service Providers are required to obtain a SPIN number.

For ineligible RHCPP equipment and services invoices shall be paid in full by customer.

1.5. Amendments

The RCUH reserves the right to amend the IFB any time prior to the closing date for best and final offers. RCUH may cancel this solicitation without cause and at no cost to RCUH, in whole or in part, if such action is determined to be in the best interest of RCUH.

1.6. Evaluation and Award Criteria

As directed by statute, qualified bids will be evaluated and acceptance may be made of the lowest and best bid most advantageous to PBTDN. Contracts shall be awarded to the lowest responsive and responsible bidder found to have the fitness, quality, and capacity to satisfactorily deliver the goods and services as detailed in the bid package. Any potential contract award will be subject to a RCUH administrative and technical evaluation of the bidder prior to any contract award. RCUH reserves the right to reject any and all bids or to waive any formalities or technicalities in any bid in the interest of the RCUH and to award it to the best interest of the RCUH. The final determination of the quantity and type of circuits will be made after analysis of cost proposed. RCUH and project partners are not obligated to purchase all or any services listed in this IFB. Single conforming bids are subject to price or cost analysis by the RCUH. Bids will be valid for review and award up to 45 days after bid opening.

1.7. Preparation Costs

Any costs incurred by bidder in preparing or submitting a proposal shall be the bidder's sole responsibility.

1.8. References

The RCUH reserves the right to contact the references named and to reject a proposal submitted by any offeror whose performance on other projects has been unsatisfactory.

1.9. Selection on Initial Proposal

The RCUH may select a Contractor on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the bidder's best terms.

1.10. Availability of Funds

Bidders are advised that entering into an Agreement for Services is contingent upon availability of funds. If funds are not available, the RCUH reserves the right not to enter into an agreement.

1.11. Notice to Proceed

The RCUH shall not be responsible for work done, even in good faith, prior to the RCUH's, execution of an Agreement for Services unless specific provisions are made in the agreement.

1.12. Changes to Contractor's Fee

It is recognized that financial audit disallowances and other changes may require adjustments in the compensation due to the Contractor. In the event that future actions

would either disallow or minimize the payments already made to the Contractor, the Contractor shall assist the RCUH in defending the correctness of the claim for reimbursement. If the audit disallowance or adjustment is upheld, then the Contractor will participate in the payback to the extent the amount of the disallowance or adjustment contributed to the total fee received by the Contractor. Payment to the RCUH shall be made within THIRTY (30) days from which official notice is received by the Contractor from the RCUH.

1.13. Disqualification

An acceptable bid must conform in all material respects to this Invitation For Bid (IFB). Any of the following may be grounds for disqualifications:

1. Taking exception to any of the specifications terms or conditions contained in the IFB;
2. Placing conditions on the furnishing of solicited goods or services
3. Inclusion of a quotation or order form containing additional specifications, terms or conditions;
4. Referencing external documents containing additional specifications, terms or conditions;
5. Evidence of collusion among bidders;
6. Lack of responsibility and cooperation as shown by past work such as failing to complete all of the requirements to close the project within a reasonable time or engaging in a pattern of unreasonable or frivolous claims for extra compensation.
7. More than one bid for the same project from an individual, firm partnership, corporation or joint venture under the same or different name.
8. Lack of responsibility, including, but not limited, to arrearages on existing contracts in litigation with the Research Corporation of the University of Hawai'i, University, State of Hawai'i, or defaults on a previous contract.
9. Being in arrears on existing contracts with the Research Corporation of the University of Hawai'i, University and State of Hawai'i, or having defaulted on a previous contract with the University or the State of Hawai'i.
10. Delivery of bids after the deadline.
11. Failure to follow directions and instructions in the invitation
12. Failure to pay, or satisfactorily settle, all bills overdue for labor and materials of former contracts in force at the time of issuance of bid forms.
13. Debarment or suspension consistent with the provisions of Chapters 103D, 104 and 444, Hawai'i Revised Statutes, as amended, or federal statutes.

Bidders are advised that bids are evaluated as submitted and requests by bidders to delete conditions contained in their bids after bid opening cannot be considered.

2. TECHNICAL AND FUNCTIONALS REQUIREMENTS

2.1. Specifications

2.2. Part 1: T-1 Dedicated Digital Data Services

A. Specifications

1. The RCUH requires dedicated data services within the State of Hawaii Hui No Ke Ola Pono sites. See below for A and Z location.
 - a. 95 Mahalani Street Room 21, Wailuku, Maui, Hawaii 96793
 - b. Hana Community Center, 5101 Uakea Place, Hana, Maui Hawaii 96713
2. The digital data service must have a minimum of a 10⁻⁸ BER, B8ZS coding for T-1, and terminate at a RJ-45/48.
3. The digital data service requirement will be 1.544Mbps.
4. The Proposer must have a 7 x 24-hour operations staff that is able to respond to trouble calls.
5. Problem calls must be responded to within 4-working hours during the working day and within 8-hours over weekends and holidays. The problem must be resolved within 24-hours of the time of notification.
6. Following the resolution to a problem, the Proposer must provide a detailed technical statement of the problem, including the amount of time required to resolve a problem.

2.3. Part 2: Digital Subscriber Line (DSL) Broadband Internet Service

A. Specifications

1. The RCUH requires data services within the State of Hawaii Hui No Ke Ola Pono Wailuku site.
 - a. 95 Mahalani Street Room 21, Wailuku, Maui, Hawaii 96793
2. The DSL Broadband Internet service must have a minimum download speed of 5 Mbps and a minimum upload speed of 1 Mbps.
3. The Proposer must provide a DSL modem for the connection. The DSL connection must terminate at a RJ-45 connector which will serve as the demarcation point.
4. The Proposer must have a 7 x 24-hour operations staff that is able to respond to trouble calls.
5. Problem calls must be responded to within 4-working hours during the working day and within 8-hours over weekends and holidays. The problem must be resolved within 24-hours of the time of notification.
6. Following the resolution to a problem, the Proposer must provide a detailed technical statement of the problem, including the amount of time required to resolve a problem.

2.4. Part 3: Cable Broadband Internet Service

A. Specifications

1. The RCUH requires data services within the State of Hawaii Hui No Ke Ola Pono Wailuku site.
 - a. 95 Mahalani Street Room 21, Wailuku, Maui, Hawaii 96793
2. The Cable Internet connection must have a minimum download speed of 1.54 Mbps and a minimum upload speed of 0.50 Mbps.

3. The Proposer must provide a Cable broadband modem for the connection. The Cable Broadband connection must terminate at a RJ-45 connector which will serve as the demarcation point.
4. The Proposer must have a 7 x 24-hour operations staff that is able to respond to trouble calls.
5. Problem calls must be responded to within 4-working hours during the working day and within 8-hours over weekends and holidays. The problem must be resolved within 24-hours of the time of notification.
6. Following the resolution to a problem, the Proposer must provide a detailed technical statement of the problem, including the amount of time required to resolve a problem.

3. APPENDICES

3.1. Appendix A: Bid Forms

Intent to Bid Form

INTENT TO BID FORM

**FCC PACIFIC BROADBAND
TELEHEALTH DEMONSTRATION NETWORK
(IFB#06)**

Return to:

Telecommunications and Information Policy Group
Social Science Research Institute
University of Hawaii at Manoa
Saunders Hall, Suite 713
2424 Maile Way
Honolulu, HI 96822

Attention: Christina Higa
Email: fiscal@tipg.net
Fax: (808) 956-8019

This Intent to Bid form must be received at the above address no later than 5-days after IFB is posted to USAC web page to register to the IFB mailing list for responses to questions, revisions, or announcement of informational meetings. The Intent to Bid Form does not represent any commitment from the prospective proposer to submit a bid.

The completed form shall be returned to UH TIPG by email or fax. UH TIPG will acknowledge receipt by email.

Proposed Bidder:

Company or Organization: _____

Contact Name: _____

Contact Title: _____

Mailing Address: _____

Phone: _____

Fax: _____

Email: _____

Bid Form – Part 1

Telecommunications Services									
Part 1 Bid Form:									
				a	b	c	(b+c) x12	a+((b+c) x12)	(b+c) x60
Item	From	Qty.	To	One-Time Installation Charge*	Monthly Recurring Charge (1-Month)	Taxes and Surcharges	Total Unit MRC (12-Month)	Total MRC and Installation (12-Month)	MRC for 5 yrs. (MRCx60 Mon)
T-1	95 Mahalani Street Room 21, Wailuku, Maui, Hawaii 96793	1	Hana Community Center, 5101 Uakea Place, Hana, Maui Hawaii 96713	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Summary of Cost Proposal						Grand Total	\$ -	\$ -	\$ -

Please note the pricing must include all components and provide an RJ-45/48 interface at each location.

*Other - One-Time Installation Charge (Routers, Misc. Hardware, Cabling & Installation)

Bid Form – Part 2

Telecommunications Services				a	b	c	(b+c) x12	a+((b+c) x12)	(b+c) x60
Part 2 Bid Form:									
Item	Address	Qty.		One-Time Installation Charge*	Monthly Recurring Charge (1-Month)	Taxes and Surcharges	Total Unit MRC (12-Month)	Total MRC and Installation (12-Month)	MRC for 5 yrs. (MRCx60 Mon)
DSL	95 Mahalani Street Room 21, Wailuku, Maui, Hawaii 96793	1		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Summary of Cost Proposal						Grand Total	\$ -	\$ -	\$ -

Please note the pricing must include all components and provide an RJ-45/48 interface at each location.

*Other - One-Time Installation Charge (Routers, Misc. Hardware, Cabling & Installation)

Bid Form – Part 3

Telecommunications Services									
Part 3 Bid Form:				a	b	c	(b+c) x12	a+((b+c) x12)	(b+c) x60
Item	Address	Qty.		One-Time Installation Charge*	Monthly Recurring Charge (1-Month)	Taxes and Surcharges	Total Unit MRC (12-Month)	Total MRC and Installation (12-Month)	MRC for 5 yrs. (MRCx60 Mon)
Cable	95 Mahalani Street Room 21, Wailuku, Maui, Hawaii 96793	1		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Summary of Cost Proposal						Grand Total	\$ -	\$ -	\$ -
Please note the pricing must include all components and provide an RJ-45/48 interface at each location.									

*Other - One-Time Installation Charge (Routers, Misc. Hardware, Cabling & Installation)

3.2. Appendix B: The Research Corporation of the University of Hawaii (RCUH) General Terms and Conditions

Appendix B: RCUH General Conditions

1. COORDINATION OF SERVICES BY THE STATE

RCUH, or RCUH's designee, shall coordinate the services to be provided by the Contractor in order to complete the Project. The Contractor shall maintain communications with RCUH, or RCUH designee, at all stages of the Contractor's work, and submit to RCUH or RCUH designee, for resolution, any questions which may arise as to the performance of this Agreement

2. RELATIONSHIP OF PARTIES, INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES

In the performance of services required under this Agreement, the Contractor shall be an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, RCUH shall have a general right to inspect work in progress to determine whether in RCUH's opinion, the services are being performed by the Contractor in accordance with the provisions of this Agreement. It is understood that RCUH does not agree to use the Contractor exclusively, and that the Contractor is free to contract to provide services to other individuals or entities while under contract to RCUH.

The Contractor and the Contractor's employees and agents, shall not be considered agents or employees of RCUH for any purpose, and the Contractor's employees and agents shall not be entitled to claim or receive from the RCUH any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to RCUH employees.

The Contractor shall be responsible for the accuracy, completeness, and adequacy of its performance under this Agreement. Furthermore, the Contractor intentionally, voluntarily, and knowingly assumes the sole and entire liability (if such liability is determined to exist) to the Contractor's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the Contractor or the Contractor's employees or agents in the course of their employment.

The Contractor shall be responsible for payment of all applicable federal, state and county taxes and fees which may become due and owing by the Contractor by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The Contractor is further responsible for obtaining all licenses, permits, and certificates that may be required by reason of this Agreement, including but not limited to a general excise tax license from the State of Hawaii Department of Taxation.

The Contractor shall be responsible for securing any and all insurance coverage for the Contractor and the Contractor's employees and agents which is or may be required by law during the pendency of this Agreement. The Contractor shall further be responsible for payment of all premiums, costs, and other liabilities associated with securing said insurance coverage.

3. PERSONNEL REQUIREMENTS

The Contractor shall secure, at the Contractor's own expense, all personnel required to perform the services required by this Agreement.

The Contractor shall ensure that the Contractor's employees or agents are experienced and fully qualified to engage in the activities and services required under this Agreement,

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. NONDISCRIMINATION

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

5. SUBCONTRACTS AND ASSIGNMENTS

The Contractor shall not assign or subcontract any of the Contractor's duties, obligations, or interests under this Agreement without the prior written consent of RCUH. Additionally, no assignment by the Contractor of the Contractor's right to compensation under this Agreement shall be effective unless and until the assignment is approved by RCUH.

6. CONFLICT OF INTEREST

The Contractor represents that neither the Contractor, nor any employee or agent of the Contractor, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, which would or might conflict in any manner or degree with the performance of the Contractor's services under this Agreement.

7. MODIFICATIONS OF AGREEMENT

Any modification, alteration, amendment, change, or extension to any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by the Contractor and RCUH.

8. SUSPENSIONS AND TERMINATION OF AGREEMENT

Suspensions and Termination of Agreement: The established contract shall not incorporate a termination liability agreement. There shall be no penalties to RCUH for early termination of services. During the period of the contract, RCUH may elect to continue service or terminate the service at any time without penalty. In the event of termination, RCUH shall pay only a pro-rated share for the month that the service is terminated in. The termination will be preceded with a 7-day notice of termination from RCUH.

RCUH reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the Contractor. Upon receipt of said notice the Contractor shall immediately comply with said notice and suspend all work under this Agreement at the time stated.

If, for any cause, the Contractor breaches this Agreement by failing to satisfactorily fulfill in a timely or proper manner the Contractor's obligations under this Agreement or by failing to perform any of the promises, terms, or conditions of this Agreement, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time specified by the RCUH, the RCUH shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination at least seven (7) calendar days before the effective date of such terminating. Furthermore, RCUH may terminate this Agreement without statement of cause at any time by giving written notice to the Contractor of such termination at least seven (7) calendar days before the effective date of such termination.

Upon termination of this Agreement, the Contractor shall, within four (4) weeks of the effective date of such termination, compile and submit in an orderly manner to RCUH an accounting of the work performed up to the effective date of termination. In such event, the Contractor shall be paid for the actual cost of the services rendered, but in no event more than the total compensation payable to the Contractor under this Agreement.

In the event of termination of either type, or in the event of the scheduled expiration of the time of performance specified in this Agreement, all finished or unfinished material prepared by the Contractor shall, at RCUH's option, become RCUH's property and, together with all material, if any, provided to the Contractor by RCUH, shall be delivered and surrendered to RCUH on or before the expiration date or date of termination. For the purposes of this Agreement, "material" includes, but is not limited to any information, data, reports, summaries, tables, maps, charts, photographs, films, graphs, studies, recommendations, program concepts, titles, scripts, working papers, files, models, audiotapes, videotapes, computer tapes, cassettes, diskettes, documents, and records developed, prepared, or conceived by the Contractor in connection with this Agreement, or furnished to the Contractor by RCUH. The terms do not include records which are maintained by RCUH solely for the Contractor's own use and which have only an ancillary relationship to the services provided under this Agreement.

If this Agreement is terminated for cause, the Contractor shall not be relieved of liability to RCUH for damages sustained because of any breach by the Contractor of this Agreement. In such event, RCUH may retain any amounts which may be due and owing to the Contractor until such time as the exact amount of damages due to the RCUH from the Contractor has been determined. RCUH may also set off any damages so determined against the amounts retained.

9. COMPLIANCE WITH LAWS

The Contractor shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be from time to time, which in any way affect the Contractor's performance of this Agreement.

10. INDEMNIFICATION AND DEFENSE

The Contractor shall defend, indemnify, and save harmless RCUH and the University of Hawaii, its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the malicious, reckless, or negligent acts or omissions of the Contractor or the Contractor's employees, officers, agents, or subcontractors occurring during or in connection with the performance of the Contractor's services under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

11. DISPUTES

No dispute arising under this Agreement may be sued upon by the Contractor until after the Contractor's written request to RCUH to informally resolve the dispute is rejected, or until ninety (90) calendar days after RCUH's receipt of the Contractor's written request whichever comes first. While RCUH considers the Contractor's written request, the Contractor agrees to proceed diligently with the provision of services necessary to complete the Project.

12. CONFIDENTIALITY OF MATERIAL

Any 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 RCUH.

All information, data, or other material provided by the Contractor to RCUH shall be kept confidential only to the extent permitted by law.

13. OWNERSHIP RIGHTS AND COPYRIGHT

RCUH shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the Contractor pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the RCUH upon expiration or termination of this Agreement. RCUH, at its discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the Contractor pursuant to this Agreement. The Contractor, however, reserves the right to use thereafter any ideas and techniques that may be developed during the

performance of this Agreement.

14. PUBLICITY

The Contractor shall not refer to RCUH, or any project, office, agency, or officer thereof, or to the services provided pursuant to this Agreement, in any of the Contractor's brochures, advertisements, or other publicity of the Contractor. All media contacts to the Contractor about this Agreement shall be referred to RCUH.

15. PAYMENT PROCEDURES, FINAL PAYMENT. TAX CLEARANCE

All payments under this Agreement shall be made only upon submission by Contractor of original invoices specifying the amount due and certifying that services requested under this Agreement have been performed by Contractor according to the Agreement. For contracts of \$25,000 or more final payment under this Agreement shall be subject to Section 103-53, Hawaii Revised Statutes, which requires an original tax clearance from the State of Hawaii Director of Taxation and the Internal Revenue Service stating that all delinquent taxes, if any, levied or accrued against the Contractor have been paid.

16. CONTRACT NOT BINDING UNLESS TAX CLEARANCE

In addition to tax clearance prior to final payment, the Contractor is required to obtain an original tax clearance from the Internal Revenue Service and the State of Hawaii Department of Taxation prior to execution of this contract if the contract is \$25,000 or more, less the contract is deemed non-binding.

17. GOVERNING LAW

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.

18. NOTICES

Any written notice required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to RCUH at its address and to the Contractor at its address as indicated in this Agreement. A notice shall be deemed to have been received by the recipient three (3) days after mailing or at the time of actual receipt, whichever is earlier.

19. SEVERABILITY

In the event that any provision of this Agreement 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 Agreement.

20. WAIVER

The failure of RCUH to insist upon the strict compliance with any term, provision or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of RCUH's right to enforce the same in accordance with this Agreement.

21. FEDERAL PROVISIONS

If federal funds are expended under this contract, the CONTRACTOR shall comply with the applicable provisions of Attachment 32a.