

## SECTION THREE

### 3.01 Contract Type

This contract is a firm fixed price contract, based upon a per diem rate per filled bed per day.

### 3.02 Contract Approval

The State's obligation will commence when the contract is approved by the Commissioner of the Department of Corrections, or the commissioner's designee. The State will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the State.

### 3.03 Standard Contract Provisions

The contractor will be required to sign and submit the State's Standard Agreement Form for Professional Services Contracts (form 02-093)/Appendix A. The contractor must comply with the contract provisions set out in this document. No alteration of these provisions will be permitted without prior written approval from the Contracting Officer.

### 3.04 Proposal as a Part of the Contract

Unless otherwise specified in the contract, the requirements and specifications set forth in the RFP, the successful proposal, and the scope of work as negotiated, will be incorporated into the contract, and will be binding upon the contractor. In any case in which these differ, the contract and then the RFP in that order, shall take precedence over the proposal submitted by the contractor.

### 3.05 Additional Terms and Conditions

Subject to the following conditions, the State and the contractor have agreed that the State may add terms and conditions during the life of the contract or during annual discussions. These terms and conditions will be within the general scope of the contract, and if it is determined that compensation is required for the contractor to implement the directives or policy changes, the compensation may be in the form of an increase in the per diem rate or a one-time lump sum payment. The contractor shall not be required supply additional services at additional costs until the parties have reached a mutually satisfactory agreement regarding increased compensation. Likewise, any directive or policy changes that lead to a reduction in contractor services may require a reduction in the per diem rate or a one-time lump sum credit.

### 3.06 Insurance Requirements

The contractor must maintain proof of insurance at all times.

The contractor must secure the insurance coverage required by the State. The coverage must be satisfactory to the Department of Administration, Division of Risk Management. An offeror's failure to provide evidence of such insurance coverage is a material breach

and grounds for withdrawal of the award or termination of the contract. See also Appendix B.

### **3.07 Bid Bond – Performance Bond – Surety Deposit**

Not applicable to this contract.

### **3.08 Utilities**

All utilities are the responsibility of the contractor.

### **3.09 Contract Funding**

Approval or continuation of the contract is contingent upon legislative appropriation.

### **3.10 Proposed Payment Procedures**

The State will make payments based on a negotiated payment schedule at rates established in the contract. Each billing must consist of an itemized invoice. No payment will be made until invoices have been approved by the Director of Institutions, or designee. All billings should be submitted timely and reference the contract and encumbrance numbers.

Upon determination that a portion or the entire invoice is incorrect, the contractor shall receive written notice from the DOC Director of Institutions, or designee, of the amount of the billing or portion thereof is in dispute and stating the reasons for the dispute. That portion of or entire invoice shall not be processed for payment until after resolution of the dispute.

A per diem rate is defined (per Federal Government Contract Language) as: "The per diem rate for detention services under this agreement is per man-day. This rate covers one prisoner per day. A portion of any day shall count as a man-day under this agreement, except that the State may not be billed for two days when a Prisoner is admitted one evening and removed the following morning. In that situation, the contractor will bill for the day of arrival, but not for the day of departure."

See also Section 4.14 (A. 1) regarding payment for medical costs.

### **3.11 Contract Payment**

No payment will be made until the contract is approved by the Commissioner of the Department of Corrections, or designee, and the invoices have been approved by the Director of Institutions, or designee. Under no conditions will the State be liable for the payment of any interest charges associated with the cost of the contract. The State is not responsible for and will not pay local, state, or federal taxes. (Clarification: This sentence refers to direct payment by the state; however, it is expected that offerors include their taxes in the proposal budget and incorporate these costs into their per bed contract cost.) All costs associated with the contract must be stated in U.S. currency.

In the event of an error that causes payment(s) to the contractor (or benefits to others) to be issued in error, the contractor shall reimburse the State within thirty (30) days of written notice of such error for the full amount of the payment. Interest shall accrue at the statutory rate upon any amounts not paid and determined to be due after the thirtieth (30th) day following the notice.

### **3.12 Informal Debriefing**

When the contract is completed, an informal debriefing may be performed at the discretion of the Director of Institutions, or designee. If performed, the scope of the debriefing will be limited to the work performed by the contractor.

### **3.13 Contract Personnel**

Any change of the key project team members named in the proposal must be approved, in advance and in writing, by the Director of Institutions, or designee. Personnel changes that are not approved by the State may be grounds for the State to terminate the contract.

The Department of Corrections, Director of Institutions, or designee, reserves the right to disallow the use of any individual whose performance or conduct is not acceptable to the Department. In the event of a staff person's inappropriate conduct or inadequate training, contractor will prevent that staff person from any interaction with DOC prisoners, upon the request of DOC. An employee who is disallowed from working under this contract shall not be restricted from working elsewhere for the contractor. DOC intends for this provision to be utilized in rare situations where serious questions about an employee's fitness or appropriateness for duty exists. The Director of Institutions, or designee, shall have final say in determining an employee's fitness or appropriateness for duty.

### **3.14 Specification of Audit Criteria and Corrective Action Procedures**

The contractor is responsible for the performance and completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the Director of Institutions, or designee. The State may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract

The DOC or its representatives will be afforded unlimited access to all areas of the facility for the purposes of auditing its operations or for any other official purposes as described in the Contract not limited to but including:

- A. **Financial Audits:** AS 36.30.420 states: The State may audit the books of a contractor or a subcontractor to the extent that the books and records relate to the performance of the contract or subcontract. Books and records shall be maintained by the contractor for a period of three years after the date of final payment under the prime contract, and by the subcontractor for a period of three years after the date of final payment under the subcontract, unless a shorter period is authorized in writing by the commissioner.

The Department of Corrections, Commissioner or Designee, will conduct periodic financial audits of each facilities financial records pertaining to the funds and services of this contract. The DOC may choose an independent auditor(s) to

perform the audits and will provide the auditing criteria, which will be based upon standard accounting practices. The cost of these audits shall be borne by the state.

Access to records shall be limited to those records necessary for the State to determine contract compliance and shall not apply to contractor's confidential, sensitive or proprietary information, financial information not publicly available or information regarding salary and benefits other than what is needed for the purposes of section 4.04A.

- B. **Program Audits:** Program audits and contract compliance monitoring shall be conducted as deemed necessary by designated staff. Custody, security, program administration, and physical plant audits shall be conducted to determine compliance with DOC required standards. Areas noted as being in partial compliance or non-compliance shall be corrected by the contractor within thirty to ninety (30-90) days as specifically stated in the written audit report.
- C. **Corrective Plans:** The contractor shall receive official written notice as to the areas of partial compliance or non-compliance. Within twenty (20) days of receiving the notice, the contractor shall submit to the Director of Institutions, or designee, a remedial plan indicating action to be taken and time frames for full compliance. The plan shall be reviewed and DOC will either concur with the plan or notify the contractor of his/her non-concurrence. In cases of non-concurrence, the DOC shall specifically identify the corrective actions to be taken and the time frames for their completion. The contractor must implement these before any appeal.
- D. **Appeal Process:** In case of disagreement, an appeal process shall be available. A written appeal must be filed within ten (10) days of the contractor's receipt of the notice of non-concurrence. The first level of appeal shall be to the Director of Institutions. The next and final level of appeal shall be to the Commissioner of the Department of Corrections.

Substantial failure of the contractor to perform the contract may cause the State to terminate the contract in whole or in part. In this event, the State may require the contractor to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages. Please also refer to Section 3.35 for additional information on non-compliance damages or remedies.

### 3.15 Disputes

Any dispute arising out of this agreement shall be resolved under the laws of Alaska. Any appeal of an administrative order or any original action to enforce any provision of this agreement or to obtain any relief from or remedy in connection with this agreement may be brought only in the superior court for the State of Alaska. See Appendix A, Article 3. The parties will work together to resolve any disputes before submitting them to a formal dispute resolution process. To the extent permitted by law, the parties may extend the time periods set forth in AS 36.30.620 for the purpose of resolving issues prior to submission for a formal administrative hearing.

### 3.16 Termination

A contractor's failure to comply with any of the terms and conditions of this contract may result in a default action by the State after a thirty (30) calendar day written notice to cure the problem that had produced the apparent default.

If the Director of Institutions, or designee, determines that the contractor has refused to perform the work or has failed to perform the work with such diligence as to ensure its timely and accurate completion, the State may, by providing written notice to the contractor, terminate the contractor's right to proceed with part or all of the remaining work.

Contractor shall have termination rights only if DOC fails to fund an annual CPI adjustment. This termination is subject to a 120-day notice (after State has 30 days to pay = 60 days to cure, 30 days to terminate. For non-payment of services rendered the provisions of the State Procurement Code will apply.

This clause does not restrict the State's termination rights under the contract articles or provisions of Appendix A, if used.

### 3.17 Liquidated Damages

See Section 3.35 for liquidated damages or non-compliance remedies.

### 3.18 Contract Changes – Anticipated Amendments

The Department anticipates that it may be in the State's best interest to extend the contract for additional periods of service. If the State exercises this option, extension will be within the maximum period allowable under administrative authority #2005-2090-4544.

The State may increase or decrease the provision for the contract, depending on the needs of the department and upon the funding available. Any change in work requirements will be within the scope of work specified in the PFP contract and will be approved through the required amendment procedures. The contractor shall not be required to supply additional services at additional costs until the parties have reached a mutually satisfactory agreement regarding increased compensation. All changes must be in writing. Verbal agreements are not binding.

Increases are not anticipated to exceed 100% of the contract amount in any given year due to increases in the number of incarcerations in the State of Alaska facilities or events of an emergent nature. In this event, moving prisoners to a contract facility to relieve the in-state overcrowding may be required. Any increase in a particular fiscal year may or may not be carried forward into subsequent fiscal years, depending on the needs of the Department.

The DOC requires all beds to be provided at a single facility (for 1000 prisoners or less). However, it is an anticipated amendment that upon mutual agreement of DOC and the contractor, with written pre-approval of the State, that contractor may transfer prisoner(s) to other contractor facilities. Unless otherwise agreed, contractor is responsible for transport of prisoner(s) back to the originally designated facility or airport, before their return to Alaska.

**PRICE ADJUSTMENTS:** Per diem rates are to remain firm through June 30, 2005. Annually beginning July 1, 2005, the contractor shall receive price adjustments subject to

appropriations. Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI), All Urban Consumers, Series #CUUSA429SA0 for the Phoenix-Mesa, Arizona area, issued annually. The base for this contract will be 103.3 (2003 annual). Half-year adjustments will not be utilized. The percentage difference between the CPI issued for 2003, and the most recent annual CPI issued for each year of adjustment will determine the maximum allowable adjustment of the per diem rate. No retroactive per diem rate adjustments will be allowed. Adjustments will be capped at 2% per year.

### **3.19 Contract Changes - Unanticipated Amendments**

During the course of this contract, the contractor may be required to perform additional work subject to the following conditions. That work will be within the general scope of the contract. When additional work is required, the Director of Institutions, or designee, will provide the contractor a written description of the additional work and request for the contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of such amendments per AS 36.30.400.

The contractor will not commence additional work until the Director of Institutions, or designee, has secured any required State approvals necessary for the amendment and issued a written contract amendment, approved by the Commissioner of the Department of Corrections, or designee. The contractor shall not be required to supply additional services at additional costs until the parties have reached a mutually satisfactory agreement regarding increased compensation. All changes must be in writing. Verbal agreements are not binding.

### **3.20 Contract Extension**

Unless otherwise provided in this contract, the State and the contractor agree:

Excluding any exercised renewal options, the State may extend the term of this contract by written notice to the contractor no later than 15 days before the expiration of the contract, in order to:

- A. Complete negotiations between the state and current or new provider of these services; complete legal requirements for a 10 day protest period after a Notice of Intent to Award is issued and before a contract is signed, or, prevent a lapse in service for number of beds contracted at this facility.
- B. Notification under this clause does not commit the State to an extension.
- C. The State may require continued performance of any services within the limits and at the rates specified in the contract if the state exercises this option.
- D. The State agrees to make a good faith effort to limit the duration of this option if it is invoked. Extension beyond the final period is capped at a maximum of 120 days.
- E. If the State exercises this option, the extended contract shall continue to include this provision.

- F. The State may not extend the term of this Contract pursuant to this provision 3.20 if the contractor has provided notice of termination pursuant to section 3.16.

### **3.21 Transition at End of Contract**

The contractor agrees to assist the Department and any subsequent provider in facilitating the transition between providers in the event of termination or completion of this contract. This includes extensions of this agreement at current rates to cover transition periods. This agreement is a condition precedent to the contractor's right to receive any final payment of funds under this contract. Extension beyond the final period is capped at a maximum of 120 days.

### **3.22 Per Diem Adjustment & CPI Adjustment**

**PRICE ADJUSTMENTS:** Per diem rates are to remain firm through June 30, 2005. Annually beginning July 1, 2005, the contractor shall receive price adjustments subject to appropriations. Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI), All Urban Consumers, Series #CUUSA429SA0 for the Phoenix-Mesa, Arizona area, issued annually. The base for this contract will be 103.3 (2003 annual). Half-year adjustments will not be utilized. The percentage difference between the CPI issued for 2003, and the most recent annual CPI issued for each year of adjustment will determine the maximum allowable adjustment of the per diem rate. No retroactive per diem rate adjustments will be allowed. Adjustments will be capped at 2% per year.

### **3.23 Contract Invalidation**

If any provision of this contract is found to be invalid, such invalidation will not be construed to invalidate the entire contract.

### **3.24 Performance Standards**

The Department reserves the right to evaluate (or audit) the services being provided by the contractor under the terms of this contract. The contractor will be responsible for developing a plan of action to address any areas of concern raised through an evaluation process. The action plan MUST be approved by the Director of Institutions, or designee. The Department reserves the right to refuse contractor utilization of any individual whose standards of performance are not acceptable to the Department.

### **3.25 Investigation & Litigation**

Contractors are obligated to notify the Director of Institutions, or designee, the next working day if, they, or any member of their contract staff, are being investigated for malpractice and/or ethical violations by a licensing board or professional organization, or if they are named as a party in a civil or criminal litigation relating to their professional activities. The Department reserves the right to disallow the provision of contract services by any individual undergoing investigation and/or litigation under this section.

### **3.26 Continuing Education (CE)**

The contractor must assure, at no cost to the State, that all persons working under the terms of the contract meet and maintain any and all legal requirements for licensing and Continuing Education.

### **3.27 Records**

The prisoner records and other information compiled by the contractor in accordance with the duties and responsibilities of this contract shall be the property of the Department of Corrections. The records and information compiled will generally be limited to prisoner records, but may include other contractor information. Copies of such records shall be provided to the Department within a reasonable period, upon request. This requirement is mandatory irrespective of any payment due to the contractor for service provision.

See also Section 4.14 (M, 9) regarding medical records.

### **3.28 Research**

Any research conducted under the terms of the contract must receive prior written approval by the Commissioner of Corrections, or designee. A written description of the research project must be submitted prior to consideration for approval. In addition, all research projects must comply with the provisions of Policy and Procedure 501.02.

### **3.29 Format of Reports and Data**

If needed, the contractor will be expected to provide electronic reports and data in a format compatible with the department's systems and formats, and it will be the contractor's responsibility to create the data files. This includes data entry and the development of any automated interfaces to the contractor's information systems or data entry software needed for this purpose. The State has standardized the use of Microsoft products (Excel, Word, and Access).

### **3.30 Legal Proceedings**

Confinement by the contractor shall not deprive any prisoner of legal right which he would have if confined in a State of Alaska managed facility.

The State of Alaska will defend any post conviction action, including appeals and writs of habeas corpus, by any prisoner in an Alaskan Court challenging the underlying judgment of conviction or the administration of the sentence imposed at no cost to the contractor. The State will defend a prisoner challenge to placement within the facility or at any facility.

The contractor will defend, at its expense any actions filed against it by a prisoner which challenge conditions of confinement operational policies, treatment by staff of other matters related to confinement at the Facility.

### **3.31 Assignment**

Per 2 AAC 12.480, the contractor may not transfer or assign any portion of the contract without prior written approval from the procurement officer.

### **3.32 Intellectual Property**

The contractor warrants that all materials produced hereunder shall be of original development by contractor, and shall be specifically developed for the fulfillment of this Agreement and shall not infringe upon or violate any patent, copyright, trade secret or other property right of any third party, and the contractor shall indemnify and hold the State harmless from and against any loss, cost, liability, or expense arising out of breach or claimed breach of this warranty.

### **3.33 Excusable Delays**

The contractor shall be excused from performance hereunder for any period that it is prevented from performing any services hereunder in whole or in part as a result of an act of God, war, civil disturbance, epidemic, court order, or other cause beyond its reasonable control, and such nonperformance shall not be a default or ground for termination of the Agreement.

### **3.34 Prohibition of Bribes, Gratuities & Kickbacks**

Pursuant to Alaska Statute 39.52, the receipt or solicitation of bribes, gratuities and kickbacks is strictly prohibited.

No elected or appointed officer or other employee of the State of Alaska shall benefit financially or materially from this Agreement. No individual employed by the State of Alaska shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom.

### **3.35 Non-Compliance Remedies**

#### **A. Immediate Compliance**

If the DOC Director of Institutions or designee determines that the contractor is not operating in compliance with a term or condition of the contract which, poses a real, immediate and serious danger to the inmates, staff, or public, contractor shall be notified in writing (or verbally if it is believed an emergency situation exists). The notice shall direct contractor to immediately correct the noncompliance. Please also see section 3.17.

- 1) Contractor shall immediately notify the Director of Institutions or designee of the proposed corrective action. If the Director or designee does not object to the proposed corrective action, contractor shall immediately implement said corrective action.
- 2) If the Director of Institutions or designee disagrees with the proposed corrective action or if contractor fails to notify the Director or designee immediately of its proposed corrective action, the Commissioner of the Department shall be notified. The Commissioner shall either agree with

Contractor or specify corrective action which contractor shall immediately implement.

- 3) Notwithstanding any provision contained herein to the contrary, in such a circumstance, contractor shall immediately implement the corrective action specified by the Commissioner before any appeal is taken.
- 4) In the event contractor disagrees with the determination of noncompliance or designated corrective action, an appeal may be taken to the Commissioner. In no event shall the corrective action be delayed pending appeal to the Commissioner.
- 5) Upon examination, if the Commissioner determines in his or her sole discretion that a noncompliance did not exist or that the required corrective action was excessive, the Commissioner shall authorize payment to contractor of the actual expense incurred in taking said corrective action or excessive corrective action upon receipt of appropriate documentation substantiating said expense from contractor.
- 6) This provision shall not be construed to prohibit contractor from filing a complaint with the court once it has exhausted the administrative remedies set forth herein.

#### **B. Breach**

A party shall be deemed to have breached the Contract if any of the following occurs:

- 1) Failure to perform in accordance with any term or provision of the Contract;
- 2) Partial performance of any term or provision of the contract; and
- 3) Any act prohibited or restricted by the Contract.

For the purposes of this article, items 1) through 3) above shall be hereinafter be referred to as "Breach".

In the event of a breach by contractor, the State shall have available the following remedies as described further herein:

- 1) Actual damages and any other remedy available at law or equity;
- 2) Liquidated Damages;
- 3) Partial Default; Partial Recovery; and/or
- 4) Termination of the Contract.

The State shall have no claim for Breach of contract and may not pursue any remedy for such Breach under any provision of this contract unless the State has first given contractor notice of the alleged breach and a 30 day period to cure the Breach. If the Breach cannot be cured within thirty (30) days after notice but such Breach can be cured through an ongoing effort on the part of contractor, contractor may, within the thirty (30) day period, submit a plan for curing the Breach within a reasonable time. If the plan is approved by the State, and such approval shall not be unreasonably withheld, the State shall not take action or pursue remedy against

contractor so long as contractor acts in good faith to cure the breach in accordance with the approved plan. This subsection regarding notice and opportunity to cure shall not be applicable under the immediate compliance provision, but the State shall not assess liquidated damages under the immediate compliance provision unless the contractor fails to take the corrective action requested by the State. In the event contractor repeats the same specific breach within a twelve month period because the contractor failed to continue the curative action initiated with the prior breach, the State shall notify the contractor of the repeated breach and may elect to eliminate or lessen the cure period prior to assessing damages pursuant to Appendix E for the particular repeated breach.

### **C. State Breach**

In the event of a Breach of Contract by the State, contractor shall notify the State in writing of any Breach of contract by the State. Said notice shall contain a description of the Breach. The State shall be afforded a forty-five (45) day period in which to effect a cure or in which to take reasonable steps to effect a cure; provided, however, that if the alleged Breach concerns the State's failure to make payment under this Contract, the State shall have sixty (60) days after the notice to effect a cure unless the payment is the subject of a dispute between the parties.

- 1) With the exception of the provisions contained in subsection (4) herein, in no event shall any Breach on the part of the State excuse contractor from full performance under the Contract. Notwithstanding the foregoing, the State shall have no claim for Breach against contractor if contractor's Breach is directly caused by the State's preceding Breach.
- 2) In the event of a material Breach by the State, the contractor shall have the following remedies: actual damages and any other remedy available at law or equity; and/or termination of the contract upon sixty (60) days notice provided, however, contractor shall have no claim for breach of contract and may not pursue any remedy for such Breach unless the contractor has first given State notice of the alleged breach and the required period to cure the Breach.
- 3) Failure by either party to file a claim before the appropriate forum in Alaska with jurisdiction to hear such claim within two (2) years of the notice described in subsection (a) shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by either party.
- 4) In the event the State fails to make any payment due under the contract within the 60 day cure period specified herein and the amount not paid exceeds one hundred thousand dollars (\$100,000.00), contractor may terminate the contract upon 30 days prior written notice to the Commissioner, provided, however, contractor may terminate the Contract only upon the State's failure to pay an amount which is not in dispute.

### **D. Liquidated Damages**

Subject to the notice and cure provisions specified in this section 3.35, in the event of a Breach by contractor described in this section, the State may withhold as a liquidated damage the amounts designated in Appendix E from any amounts owed contractor.

- 1) The State shall notify contractor in writing of the Breach and the amounts to be withheld as a liquidated damage.
- 2) Liquidated damages shall be assessed in conformance with Appendix E.
- 3) The State may continue to withhold the liquidated damages or a portion thereof until contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract.
- 4) The State is not obligated to assess liquidated damages before availing itself of any other remedy.
- 5) The State may chose to discontinue liquidated damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, contractor shall receive a credit for said liquidated damages previously withheld except in the event of a Partial Default.

#### **E. Partial Default**

- 1) Subject to the notice and cure period provisions specified herein, in the event of a Breach by contractor, the State may declare a Partial Default.
- 2) If contractor fails to cure the Breach within the time period provided in the notice, then the State may declare a Partial Default and provide written notice to contractor of the following:
  - a) The date upon which contractor shall terminate providing the service associated with the Breach; and
  - b) The date the State will begin to provide the service associated with the Breach.

The State may revise the time periods contained in the notice upon written notice to contractor.

- 3) In the event the State declares a Partial Default, the State may withhold from the amounts due contractor the greater of:
  - a) Amounts which would be paid contractor to provide the defaulted service as provided in subsection (5); or
  - b) The cost to the State of providing the defaulted service, whether said service is provided by the State or a third party;
 together with any other damages associated with the Breach.
- 4) To enable the State to determine the amount the contractor is being paid for any particular service, contractor shall provide accurate, current documentation of the costs of that service. Based on the documentation, the parties shall make a determination of said amount.
- 5) The State may assess liquidated damages against the contractor pursuant to Section 3.35 (D) for any failure to perform which ultimately results in a Partial Default with said liquidated damages to cease when said Partial Default is effective.

- 6) Upon Partial Default, contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- 7) Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

**F. Termination**

- 1) In the event of a Breach by contractor, the State may terminate the contract immediately or in stages.
- 2) Contractor shall be notified of the termination in writing signed by the Commissioner. Said notice shall hereinafter be referred to a Termination Notice.
- 3) The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that contractor shall cease operations under this Contract in stages.
- 4) Contractor agrees to cooperate with the State in the event of a termination, Partial Default or Partial Takeover.
- 5) In the event of a termination on the grounds of Contractor Breach, the State may withhold any amounts which may be due contractor without waiver of any other remedy or damages available to the State at law or at equity.
- 6) In the event of a termination, contractor shall be liable to the State for any and all damages incurred by the State including but not limited to transportation of Prisoners, activation of the National Guard or any other state agency, expenses incurred by the State to staff the Facility, and any and all expenses incurred by the State to incarcerate the Prisoners which exceed the amount the State would have paid contractor under this Contract.

**G. Partial Takeover**

- 1) The State may, at its convenience and without cause, exercise a partial takeover of any service which contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between contractor and a third party, although contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State.
- 2) Contractor shall be given at least thirty (30) days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption.
- 3) Any Partial Takeover by the State shall not alter in any way contractor's other obligations under this Contract.

- 4) **The State may withhold from amounts due contractor the amount contractor would have been paid to deliver the service as determined by the Commissioner. The amounts shall be withheld effective as of the date the State assumes the service. This provision shall not be construed to prohibit contractor from appealing the decision of the Commissioner to a presiding legal authority after exhaustion of the administrative process in AS 36.30.620.**
- 5) **Upon Partial Takeover, contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.**

**H. Termination Due to Unavailability of Funds or Court Order.**

**With the exception of payment for services already rendered, the payment of money by the State under any provisions hereto is contingent upon the availability of funds appropriated to pay the sums pursuant to this Contract. In the event funds for this Contract become unavailable due to non-appropriation, or if the State is ordered not to transfer Prisoners to contractor by a court of competent jurisdiction, the State shall have the right to terminate this Contract without penalty, upon the State retaking all Prisoners from contractor and payment of all amounts due under the Contract.**

## SECTION FOUR

### 4.01 Introduction and Background Information

The Alaska Department of Corrections requires an adult multi-level custody secure prison facility with program services. The Facility must be accredited by ACA within 24 months of the Service Commencement Date.

The department requires contractor to provide a facility and services to accommodate a prison population of a minimum of 500 male multi-custody level prisoners, with expansion potential to 1,000 (or more). Prisoners must be housed in a single facility. Per diem rates will be negotiated and the use of multiple facilities are subject to mutual consent for placements exceeding 1000 prisoners.

The approximate prisoner custody level populations for the contract facility are: 1% Maximum, 37% Close, 34% Medium and 28% Minimum. These are subject to change depending on the needs of the department.

The facility must meet the needs of the State to meet its goal of providing safe and secure correctional services to the State of Alaska. The contractor may refuse to take specific prisoners and or transfer them back to Alaska only if prior written approval is obtained from the Director of Institutions.

### 4.02 Definitions

As used in this solicitation, the following terms have the definition set opposite each term.

**"ACA" – The American Correctional Association.**

**"ACA Standards" – The Standards for Adult Correctional Institutions published by the American Correctional Association. (Fourth Edition and Standards Supplement, and as the standards may be modified, amended, or supplemented in the future).**

**"Acute condition" – An immediate or severe episode of illness or the treatment of injuries related to an accident, trauma or other impairment or during recovery from surgery.**

**"Authorized representative" – Any person or entity duly authorized and designated in writing to act for an on behalf of a party to this agreement or contract, which designation has been furnished to all the parties herein.**

**"Chronic care" - A pattern of continuous medical care that focuses on prisoners with longstanding or persistent disease or health conditions. It includes care specific to the problem as well as other measures to encourage self-care, to promote health and to prevent loss of function.**

**"Commissioner" – The Commissioner for the Alaska Department of Corrections.**

**"Compliance Officer" – Title has been changed to "Standards Officer."**

**"Contract"** – The signed agreement for services. A copy of the RFP will be attached as part of the final contract. The contractor's proposal will also become a part of the final contract.

**"Contract Monitor"** – The person(s) designated by the Department of Corrections to monitor operation of the Facility for Contract compliance and/or to assist in the coordination of actions and communications between the Department and the contractor.

**"Contractor"** – The contractor awarded the Contract develop and/or operated the Facility as described in this contract.

**"Correctional Services"** – Those functions set forth in the proposal.

**"Court Orders"** – Any existing or future orders or judgements issued by a court of competent jurisdiction; or any existing or future stipulations, agreements, or plans entered into in connection with litigation which are applicable to the operation, management or maintenance of the facility or related to the care and custody of prisoners at the facility.

**"Custody Levels"** – The custody levels specified in Alaska Administrative Code Regulations

**"Department or DOC"** – The Alaska Department of Corrections.

**"Director"** – The Director of the Division of Institutions for the Alaska Department of Corrections.

**"Employee"** – An employee of the contractor or a sub-contractor providing services under the Contract.

**"Effective Date of Contract"** – The date on which the Contract is executed.

**"Emergency"** – Any significant disruption of normal facility procedure, policy or activity caused by prisoner disturbances, work or food strikes, food borne illness, escapes, fires, natural disasters or other serious incidents.

**"Emergency care"** – The medical or surgical care necessary to treat the sudden onset of a potentially life or limb threatening condition or symptoms which must begin with 12 hours after onset. Heart attacks, strokes, poisoning, loss of consciousness or respiration, and convulsions are examples of medical care emergencies.

**"Facility"** – The fully equipped and furnished correctional facility to be designed, constructed and/or operated by the contractor. This includes housing units, administrative offices and all other structure and improvements of whatever kind, including but not limited to all support buildings, roads, fences, and utility systems; for the incarceration of prisoners assigned by the Department.

**"Fiscal Year"** – Each one-year period beginning on July 1 and ending on June 30, that is used for budgeting and appropriation purposes by the State.

**"Force Majeure"** – The failure to perform any of the terms and conditions of the contract resulting from acts of God.

**"Indigent Prisoner"** – a prisoner who has less than \$20.00 available in his or her account and who has had no more than \$50.00 in his or her account during the preceding 30 days. A prisoner with more than \$50.00 in his or her account during the preceding 30 days will be considered indigent if no more than \$50.00 remains after mandatory deductions (restitution, or civil judgements) or deductions made for educational materials or courses, counseling, or health care.

**"Inpatient Care"** – Health care received by an prisoner admitted to an institution licensed and operated pursuant to law which is primarily engaged in providing health services on an inpatient basis for the care and treatment of injured or sick individuals through medical, diagnostic and surgical facilities.

**"Lethal force"** – The force a person uses with the purpose of causing or creating a substantial risk of death or serious bodily harm.

**"Major mental illness"** – A prisoner will be identified as having a major mental illness if they are prescribed psychotropic medication.

**"Medical care"** - All care that is not classified as emergency care which is routinely required by operating standards.

**"NCCHC"** – National Correctional Care Health Commission

**"NITA or ITA"** – Notice of Intent to Award or Intent to Award

**"Outpatient Care"** – Health care provided when the prisoner remains ambulatory and is not kept in a health care facility overnight.

**"Parole Board"** – The Alaska Parole Board including current members of the Board and the staff assigned to the Board.

**"Per Diem Rate"** – the charge per prisoner per day. See also Section 3.10.

**"Proposal"** – The Proposal (or offeror) together with all appendices and addenda thereto, including the Proposal Package.

**"Prisoner"** – Any person committed by the courts to the DOC and assigned by the DOC to the Facility.

**"Prisoner Day"** – Each 24 hour period a prisoner is admitted to the Facility, plus the first day of incarceration, but not the last. See also Section 3.10.

**"Prisoner Welfare Fund"**- A special fund created for the benefit and general welfare of the prisoners at the Facility.

**"Reimbursable medical costs"** – Those medical, dental, and mental health costs payable by DOC.

**"RFP or Request"** - The Request for Proposals, together with all amendments and negotiated changes that was utilized to establish this contract.

**"Service Commencement Date"** – The first day that Prisoners are received at the Facility.

**"Standards" or "Operating Standards"** – The standards described in the RFP and the Proposal, including without limitation, applicable federal, state and local laws, codes, regulations, constitutional requirements, Court Orders, ACA and/or NCCHC accreditation standards, Department policies and procedures set for in the appendix, as revised, or made applicable to the contractor at a later date by written notice from DOC. If two or more Standards are in conflict, the more stringent shall apply, as determined by DOC. If any provision of the Contract is more stringent than an applicable Standard or Standards, as determined by DOC, the Contract provisions shall govern. DOC may require contractor to provide documentation justifying any potential cost increase resulting from policy changes. By mutual agreement, cost increases may be compensated for by an increased per diem rate or by lump sum payment. The contractor shall not be required to supply additional services at additional costs until the parties have reached a mutually satisfactory agreement regarding increased compensation. DOC shall require a reduction in the per diem rate if new policies or directives are implemented or any changes in policies or directives result in the reduction of services. Such a reduction shall be negotiated between the parties. Prior to any increase in per diem or request for lump sum payment, DOC must approve.

**"Standards Officer"**- Formerly known as "Compliance Officer".

**"State"** - The State of Alaska, or the Alaska Department of Corrections.

**"Subcontract"** – Any agreement entered into by the contractor with another entity to provide services and supplies to perform contract services.

**"Unforeseen Circumstances"** – Those acts or occurrences beyond the reasonable contemplation of the parties at the time of the execution of the contract which materially alter the financial conditions upon which the Contract is based. This is provided that such acts shall not include acts within the control of the party claiming an unforeseen circumstances or changes in law or regulation. Unforeseen circumstances shall include the failure of the Legislature to appropriate funds.

**"Urgent care"** – Care medically necessary to prevent deterioration, other than normal aging, of a prisoner's health that results from an unforeseen illness or injury and the care cannot be delayed.

#### **4.03 Administration**

##### **A. Qualifications of Warden**

The Facility and its correctional services shall be managed by a single executive officer employed by the contractor. Written policy and procedure shall provide that the facility Warden's office be located with the facility and that his/her position be a full-time assignment. He/she will be required to personally inspect and review the facility and all

operations on at least a weekly basis. This facility inspection requirement cannot be delegated to subordinate staff. Documentation of such reviews shall be maintained including action plans to correct any noted deficiencies. The Warden shall be empowered with full authority to act for the contractor, and shall be responsible for all facility employees and subcontractors.

The Warden shall possess a Bachelor's degree for the equivalent from an accredited college;

**AND EITHER:**

Four years of experience as a Correctional Officer III or Adult Probation Officer III with the State of Alaska or the equivalent elsewhere;

**OR**

Two years as an Assistant Correctional Superintendent with the State of Alaska or the equivalent elsewhere.

**Bachelor's degree substitution:**

Work experience performing the full range of security duties in an adult correctional institution, or performing adult probation or parole duties in a community, will substitute for the required education (3 semester hours or 4 quarter hours equal one month). The work experience is met by service as a Correctional Officer II or Adult Probation Officer II with the State of Alaska or the equivalent elsewhere.

There is no substitution for the specific experience.

**B. Accreditation**

The contractor shall achieve ACA and NCCHC accreditation of the Facility within twenty-four (24) months of the Service Commencement Date. Thereafter accreditation shall be continuously maintained for the term of the Contract. Failure to do so could result in termination of the Contract.

**C. Policies, Procedures and Post Orders**

The contractor shall develop and submit to the State, for the State's approval, no later than 60 days after the Service Commencement date the following:

- a facility policy and procedure manual that covers the full range of Facility operations.
- Post orders for security staff must be by post and shift and be maintained and updated annually.

**D. Meeting areas**

The contractor will provide adequate facilities for meetings and hearings with the Department authorities, including the Parole Board and legal representatives of prisoners. At the request and expense of the State, the contractor shall provide telephonic or video access for such hearings.

**E. Non-Smoking**

The Facility will be non smoking for staff and prisoners.

**F. Self Monitoring by Contractor**

The contractor will be responsible to establish a process for self-monitoring the facility operations to ensure compliance with all applicable ACA and NCCHC standards, DOC policies, state and federal laws, and all applicable health and safety standards. All monitoring reports and copies of corrective action plans will be forwarded to the Contract Monitor and the Director of Institution within 30 days of the monitoring.

**G. Contract Monitor**

The State will be responsible for the costs of contract monitoring. The Contract Monitor shall have access at all times, with or without notice, to prisoners and staff, all areas of the Facility and to inspect all documents and records relating to the Contract and the contractor's performance. This includes employee qualifications or the requirements of training, disciplinary records relating to serious incidents and security breaches and reports kept by the contractor concerning the operation of the Facility. The contractor shall permit the Contract Monitor and authorized representatives to make and remove copies of records. The contractor shall obtain written waivers from its employees permitting the Contract Monitor to review employee qualifications and disciplinary records. Any such inspection or removal shall be in strict compliance with privacy rights and shall be kept confidential. Documents excluded from DOC access include: financial disclosures in violation of securities regulations, information regarding other customers, corporate analysis that might include Florence but also other facilities, and employee salary and benefit information in excess of what is required for purposes of Section 4.04A. DOC will not be limited access to records that it feels are necessary to monitor the contractor's obligations under this contract.

**H. Office Space/Furnishings**

Private office space shall be made available for Alaskan Probation Officers. The office shall be provided with desks, chairs, and access to a fax / telephone / and computer lines.

**I. Department of Corrections Policies & Procedures**

The administration and operation of the facility must be in accordance with certain DOC Policies. Subject to the provisions of the Contract, the Facility shall adopt and follow the departmental policies and procedures and any subsequent Directives or policy changes. DOC may require contractor to provide documentation justifying any potential cost increase resulting from policy changes. By mutual agreement, cost increases may be compensated for by an increased per diem rate or by lump sum payment. The contractor shall not be required to supply additional services at additional costs until the parties have reached a mutually satisfactory agreement regarding increased compensation. DOC shall require a reduction in the per diem

rate if new policies or directives are implemented or any changes in policies or directives result in the reduction of services. Such a reduction shall be negotiated between the parties. Prior to any increase in per diem or request for lump sum payment, DOC must approve.

J.

#### Prisoners from other Jurisdictions

EXHIBIT: "C"

Prisoners from other jurisdictions will not be housed in the same living units as Alaskan prisoners without written permission of the Director of Institutions.

#### K. Photographing and Release of Information

The contractor shall not release to the public any information, records or other data concerning prisoners. The contractor shall not release to the public personal histories or photographs of prisoners or information concerning the prisoner's delivery, removal, intra-institutional transfer, retaking or release. The contractor shall permit reporters or photographers to interview or photograph prisoners only with permission of the Director of Institutions and consistent with DOC 808.02, Prisoner/Media Contact. The contractor may release prisoner information under exigent circumstances without first obtaining permission from the Director of Institutions, but only for emergencies affecting the general public (i.e. escapes, hostage situations, major disturbances, etc.). See also Section 1.20.

#### L. Incident Reporting

All Level 1, 2 and 3 incidences as described in CCA policy # 5-1 require immediate telephonic notification to the Director of Institutions. The contractor may utilize CCA form #5-1G Preliminary Incident / Situation Notification Report (to include pertinent backup) to report the incident to the DOI. The incident reporting form shall be submitted timely after telephonic notification has occurred. The Department may investigate any incident pertaining to the performance of the Contract.

#### M. Other reports

The Department and the contractor will establish a system for regular monthly reporting of information including but not limited to incidents of force being used, medical transports, grievances, staff vacancies etc.

#### N. Public Information and Publicity

Contractor may release any non-exempt public record information which it possesses regarding DOC prisoners. Contractor will not release public record information which is exempt from public disclosure, or any non-public record information which it possesses regarding DOC prisoners. Contractor will refer to the DOC requests for public information which it does not possess, public record information which may be exempt from public disclosure pursuant to Alaska laws, and non-public information.

Contractor will comply with DOC Policy 808.02 Prisoner / Media Contact with regard to all public information release and prisoner access to the media. Contractor will not knowingly subject any Prisoner to unwanted publicity.

Nothing in this section prevents official use of any information regarding a prisoner.

Please also refer to Sections 1.20 and 4.03K.

#### **4.04 Staffing and Human Resources**

##### **A. Staffing Plan/Vacancies**

The contractor shall maintain a staffing plan and organizational chart that fully describes the facility organization and the relationships between functions, services and activities. The staffing plan shall identify any vacant or essential positions including but not limited to case management, medical, food service, programs and security. The plan shall identify all security post assignments for the operation of all shifts, including any outside or off-premise assignments. The plan shall identify the minimum level of staffing that would be maintained on a daily basis for each functional area (See Appendix F).

In addition to remedies provided in the contract document, the DOC may deduct from an invoice the contractors' cost of any vacant position. "Vacant position" means any actual vacancy in a staff position in the institution engaged in the delivery or support of the operation and management services described in the proposal. It also includes a staff position that is filled with a person who does not possess the training, licensure, or credentials to perform the function. "Vacant position" does not include a vacancy in a position if the contractor arranges for the service to be provided by another appropriately qualified individual, so long as the service is actually provided on the shift or during the hours and in the manner intended by the Contract. This adjustment shall not be considered a form of liquidated or actual damages, but is a withholding of payment for a service not received. After thirty days, a position that is actually vacant may also be subject to an assessment of non-compliance remedies with written notice.

If the contractor fails to fill a position as required or within the specified time-frame, the monetary liquidated damage shall be equal to one and one-half (1 ½) times the daily value of the salary and benefits for the position for each day the position is not filled after the expiration of the cure period. The remedies described herein shall not be cumulative. Upon commencement of liquidated damages, withholding of payment shall cease.

All positions identified in the staffing plan will be assumed to be 40 hours per week unless otherwise stated. Unless expressly stated, key supervisory positions identified will be assumed to be occupied by persons whose duties and responsibilities are exclusively associated with the management of Alaskan prisoners. The contractor will be responsible to report the vacancy rate monthly on a form provided by the State.

The contractor must maintain a contingency plan covering work actions or strikes and include this as part of their personnel manual.

**B. Staff Qualifications/Personnel**

The contractor shall maintain job descriptions and qualifications for all facility positions, including the Warden.

The contractor shall provide personnel to deliver twenty-four (24) hour care and supervision of prisoners, as well as administrative, treatment, and support service personnel for the overall operation of the Facility according to the staffing pattern (See Appendix F).

No changes in that staffing pattern may be made except by written agreement of the State and the contractor. At least thirty percent (30%) of the Contractor's security personnel shall have a minimum of one year of experience in law enforcement or corrections as of the Service Commencement Date. This level shall be maintained for the duration of the contract. The contractor and DOC will work together to adjust the staffing pattern accordingly if the prisoner population changes significantly (i.e. a decrease of 160 prisoners for a period of 30 days or more, or a decrease in population that it is appropriate to close one or more housing units).

Daily correctional staff assignment rosters that reflect both scheduled and actual assignments, by shift and for each post, and for medical staff shall be maintained for the facility.

**C. Pre employment Screening**

No applicant or subcontractor shall be offered employment or access to the facility until a criminal background check, employment background check, reference check, and a pre-employment drug screen, at minimum, have been submitted, verified, and processed by the contractor. Staff having direct involvement with the operation of the facility must never have been convicted of a felony or a crime involving moral turpitude (no exceptions). All procedures, forms, etc. will apply equally to all levels of employees.

Periodically all employee's criminal history will be rechecked.

**D. Personnel Records**

The contractor shall maintain a personnel file for each employee that contains records of the background investigation, dates of employment, training records, performance objectives and appraisals conducted at least annually, disciplinary actions, commendations, and related records. All files (records) shall be accessible to the employee and the DOC. Personnel requirements of the contractor shall convey to all on-site subcontractor personnel and volunteers.

**E. Code of Ethics and Standards of Conduct**

The contractor shall adopt and assure compliance of policies and procedures similar to DOC Policy and Procedures 202.01 Code of Ethical and Professional Conduct and 202.15 Standards of Conduct. The contractor shall submit their related policy and procedures to DOC for review and approval. The contractor shall notify employees and subcontractors of the standards of conduct and document this information in the individual's personnel file. The employee shall sign an acknowledgment form stating he/she understands the standards of conduct.

If any employee of the contractor violates any of the rules or standards set forth in the DOC ethics and standards of conduct policies or the equivalent contractor's policies that have been approved by DOC; the contractor shall immediately appraise the Director of Institutions by telephone, followed in writing within 72 hours. DOC reserves the right to exclude from working with Alaska DOC prisoners any person deemed by the DOC to be incompatible with the goals, mission, security or safety of its program.

#### **F. Drug-Free Workplace**

The contractor agrees to comply with all applicable federal, state, and local laws relating to maintaining a drug-free workplace and further agrees to require all of its subcontractors to comply with the same.

#### **G. Personnel Policies**

The contractor shall maintain written personnel policies available to all staff and accessible to employees. The policies shall assure equal employment opportunities, avoid any discrimination, address hiring practices, promotions, grievance procedures, staff development, performance appraisals, benefits, disciplinary procedures, and terminations. These documents shall be reviewed at least annually.

#### **H. Collective Bargaining Agreement**

The contractor shall include in any Collective Bargaining Agreement applicable to the Facility, a provision that no strike will be held during the term of the Contract. It shall also include a provision that neither the Union or Management will call or support a strike.

In the absence of a Collective Bargaining Agreement, the contractor shall require their employees to sign an agreement that they shall provide uninterrupted service in return for adequate consideration including a grievance procedure and shall not strike or interrupt service without 10 days notice.

### **4.05 Training**

#### **A. Accreditation Requirements**

The contractor shall provide pre-service and in-service training for all of its employees and subcontractors that is in compliance with ACA and NCCHC

standards. The contractor shall submit its initial and in-service training plan to the State for approval within 30 days after the Service Commencement Date.

All required training shall be at the contractor's expense. Annual re-certification will be required for unarmed self-defense, Use of Force and First Responder Training. Annual training plans describing course contents and time to complete each course will be submitted to the DOC Training Academy for approval. First responder training is to consist at a minimum of basic life support and automated defibrillator courses.

DOC shall provide specialized training for the contractor of no more than 40 hours in such areas as case management, discipline etc. The State reserves the right to withhold funds from the contractor for such training if it is the result of excessive turnover. Excessive turnover is defined as more than once per year. The contractor may request at its expense, additional training to supplement the initial training provided.

#### **B. Training Coordination and Reporting**

The contractor shall designate a staff member to coordinate training delivery. He/she shall be responsible to maintain lesson plans for all training sessions, maintain training files for each employee, document failure-to-pass written or proficiency tests and certification criteria.

#### **C. Other training**

The contractor shall provide Disturbance Control training to appropriate staff. Certified instructors will be utilized to conduct the emergency training. The use and carrying of weapons for training shall meet all federal, state and local laws and regulations.

Full time staff working the segregation or maximum security units will receive 8 hours of specialized training in working with segregated prisoners.

### **4.06 Fiscal Management Practices**

#### **A. Indigent Prisoners**

The contractor will provide for the needs of Indigent Prisoners consistent with DOC Policy 808.12 Photocopying For Prisoners, 810.03 Prisoner Mail, and 806.02 Prisoner Hygiene, Grooming and Sanitation. See Section 4.02 for the definition of "Indigent Prisoner".

#### **B. Prisoner Welfare Fund**

A Prisoner Welfare Fund will be maintained for the benefit of prisoners consistent with DOC Policy 302.10, Prisoner Welfare Fund. If approved in writing by the Director of Institutions, profits and commissions generated from commissary operations shall be placed into this fund upon receipt.

An accounting of all income and expenditures for this fund will be sent to Alaska DOC monthly. Should the contract be terminated or prisoners moved to another facility operated by the contractor, DOC's proportionate amount of the remaining funds will be transferred to the receiving facility.

**C. Prisoner Trust Fund**

A prisoner trust fund for each prisoner will be operated in accordance with DOC policy 302.12C, Offender Trust Account. All prisoner earnings, proceeds from craft sales or monies received by the prisoner will be placed in the fund to be used solely by that prisoner.

Procedures will be established for transferring funds upon a prisoner's release from the facility, transfer to another facility or when a prisoner requests a funds transfer to an outside source. Transfer of funds shall occur within 5 working days of the prisoners release, transfer or request for funds transfer.

General accepted accounting procedures will be followed in managing this account. DOC will provide periodic training to CCA staff in proper prisoner trust fund accounting procedures.

**D. Gate Money**

The department no longer provides gate money to its prisoners. If this requirement changes in the future the contractor will provide gate money consistent with Alaska DOC policy. If it is determined that compensation is required for the contractor to implement the directives or policy changes, the compensation may be in the form of an increase in the per diem rate or a one-time lump sum payment. The contractor shall not be required to supply additional services at additional costs until the parties have reached a mutually satisfactory agreement regarding increased compensation.

**E. Prisoner's Funds From Outside Sources**

Prisoners are permitted to receive funds from outside sources. Outside funds or those generated from work may be used to pay for products and services from the commissary or outside vendors as allowed by the contractor.

**F. Prisoner Pay**

Prisoners shall receive pay consistent with that received by prisoners in Alaskan DOC facilities. DOC Policy 812.02, Compensation for Prisoner Produced Goods and Services shall be followed. Funds for prisoner payroll shall be included in the per diem rate. DOC and CCA agree that inmate wages will be capped at no more than \$1.52 of the daily per diem rate, and CCA must maintain at least a 70% participation rate for working Alaskan prisoners. If CCA is not able to maintain 70% minimum participation because of prisoner refusal to work, CCA must document in writing each individual prisoner's refusal to participate. If the facility has a correctional industry program, funds for prisoner pay shall come from revenue generated by that program.

Per DOC Policy 304.01 Prisoner Wage Disbursal a percentage of prisoner wages must be withheld and placed into a non-interest bearing trust account for prisoner use upon their release. DOC Policy 304.01 must be followed, no exceptions.

Compensation for working prisoners is to be for actual hours worked (not automatically assumed as eight hours per day, five days per week).

**G. Prisoner Club funds**

The contractor shall establish prisoner accounts for the exclusive use of prisoner interest groups (i.e. cultural clubs, computer users group, cable television, etc.). The funds for these accounts must be held in non-interest bearing accounts. Reporting and internal control shall be done in accordance with DOC Policy 302.10 Prisoner Welfare fund.

**4.07 Prisoner Management Practices**

**EXHIBIT: "CC"**

**A. Prisoner Communication**

The contractor shall make available to prisoners written communication forms for the purpose of contacting staff to resolve questions and problems. The contractor's staff shall provide timely answers.

**B. Prisoner Reception and Orientation**

All prisoners arriving at the facility will be strip-searched by a person of the same gender. The intake process shall include at a minimum, medical and social screening prior to the prisoner's release to general population. See also Section 4.14 (A),

**C. Rules and Discipline**

The Facility shall have formal, written facility rules and a discipline system. A signed acknowledgment for receipt of rules indicating the prisoner understands their content must be kept in the prisoner's file. DOC policies 809.02 Prohibited Conduct and Penalties, 809.03 Reporting Procedure for Rule Violations, 809.04 Disciplinary Committee Hearing Officer and Basic Operation, and 809.06 Disciplinary Appeal must be followed.

All discipline imposed must be reasonable and proportionate to the violation, impartial and non-discriminatory, neither arbitrary nor retaliatory, not physically abusive. Accurate, detailed reports must be maintained. Only DOC classification staff may deny statutory good time.

Facility staff will be trained by DOC in the Disciplinary process. Only trained staff may conduct disciplinary hearings.

**D. Housing of Prisoners**

Prisoners will be assigned to living units based on the best judgement of the Chief Administrator, or Warden. Alaskan prisoners shall not be housed with prisoners from other contracts, unless approved in writing by the Director of Institutions.

**EXHIBIT: "CCC"**

**E. Prisoner Grievances**

Prisoners shall have the ability to air grievances related to the facility conditions, services, and treatment in accordance with DOC policy 808.03 Prisoner Grievances.

The contractor shall provide, at their expense, someone designated as a Standards Compliance Officer. The State reserves the right to place a Standards Compliance Officer at the Facility at the State's expense. If the State places a Standards Compliance Officer within the contractor's facility, private office space shall be made available for one (1) employee. The office shall be provided with desks, chairs, and access to a fax / telephone / and computer line.

**F. Prisoner Death**

In the event of a death of a prisoner, the contractor must immediately contact law enforcement if it appears criminal activity was involved. For any death the Director of the Division of Institutions will be notified immediately. DOC will be responsible to notify the next of kin.

The costs of disposition of the body will be borne by the DOC. The contractor is responsible to obtain a certified copy of the death certificate and forward it to DOC.

**G. Research**

Any research conducted by the contractor will be consistent with DOC Policy 501.02 Research Activities.

**H. Use of Force**

The contractor shall use their Use of Force Policy 9-1 dated December 1, 2002 to include the negotiated Attachment C that specifies no warning shot will be fired at ECC. If the contractor requests to use an alternative policy, this must be approved in writing by the Director of Institutions. Following any use of force, a medical evaluation will be conducted on the prisoner and a report will be placed in the prisoner's medical chart.

**I. Escapes**

It is the contractor's responsibility to prevent escapes from the Facility. Law enforcement and the Director of Institutions will be immediately notified of an absence or escape. The contractor will be expected to develop and implement a written agreement and procedures with local law enforcement to facilitate delivery of support services.

The contractor shall engage in hot pursuit of escapees only on the grounds of the Facility. The contractor may assist law enforcement if requested and appropriately trained and commissioned.

Periodic drills shall be conducted.

The contractor will be responsible for all costs involving the escape to include returning the prisoner to the State as directed by DOC, and any costs paid to law enforcement agencies. The State shall be responsible for returning escapees from other jurisdictions provided that the contractor shall reimburse DOC for the expense.

**J. Arrest Authority**

The contractor will comply with all state laws regarding authority to arrest. The extent of arrest authority will be documented in writing by the law enforcement agency with jurisdiction. This documentation will be forwarded to the Director of Institutions within 30 days of the Service Commencement Date.

**K. Delivery and Return of Prisoners**

The State, at its expense, will deliver the prisoner(s) to the agreed upon airport and custody of contractor staff, together with an authenticated copy of the mittimus or other commitment order, and any other official papers or documents authorizing confinement. The State will provide security staff and security from Alaska to and from the drop off and pickup point at the designated airport.

Upon demand by the DOC, contractor will relinquish to State physical custody of any Prisoner, unless the contractor's compliance would cause the contractor to violate the order of a court of competent jurisdiction.

- 1) Should a Prisoner be returned to the State as a result of an action by the contractor's State Legislature, State court, or other similar entity which prevents prisoner's confinement at contractor's facility, contractor shall be responsible for the cost of transportation.
- 2) Should the facility become unusable, in whole or in part, and the DOC prisoners are transferred to another facility chosen by DOC, contractor will pay such transportation costs. This Agreement will then be appropriately modified to reflect the impact of any such change in facility's use.
- 3) In the event of fire, natural disaster, or other emergency situation that would require the immediate transfer of Prisoners to another secure facility, contractor may select such facility and shall transport prisoners to such facility, as necessary to ensure both the safety and security of prisoners. Under such circumstances, however, contractor shall notify DOC immediately, or in no case in more than 24 hours, of such an emergency transport. If this facility is not acceptable to DOC, subsection 2) above shall be implemented in a reasonable and timely manner.

- 4) The DOC requires all beds to be provided at a single facility (for 1000 prisoners or less). However, it is an anticipated amendment that upon mutual agreement of DOC and the contractor, with written pre-approval of the State, that contractor may transfer prisoner(s) to other contractor facilities. Unless otherwise agreed, contractor is responsible for transport of prisoner(s) back to the originally designated facility or airport, before their return to Alaska.

**L. Alaska Board of Parole**

The Alaska Board of Parole will travel to the contractor's facility to conduct face-to-face parole hearings with Alaskan prisoners who are eligible for parole consideration. The Board of Parole will be at the facility approximately one week each quarter of the year (approximately four times each year, for a period of as much as a full week for each hearing session). The Board of Parole contingent is to be provided a meeting room that can be reasonably accessed by any prisoners seeing the Board. The room should have privacy from any other persons other than the participants in the hearing; be visually separated from hallways or other rooms, and noise levels surrounding are to be such that recording of and listening to the hearings is not impaired. By Alaska statute, Parole Board hearings are confidential with only a small number of specific individuals allowed to be present for the hearings. The room should have a table-setup that will accommodate as many as 12 persons and the considerable volume of paperwork that accompanies each hearing. The room is to have phone service and phone line connection that has allowance for accessing outside phone lines (many of the parties to the hearing may be present telephonically from Alaska). On some occasions, the parole hearing may require that victim(s) of the prisoner's offense (who have a legal right to be present under Alaska statute) be allowed access within the prison to the meeting room for a given parole hearing; this is to be accommodated by the contractor. Coordination of the hearing room facility, and other logistics of the Parole Board hearing process are to be coordinated through the parole officers assigned to and working with the Alaska inmates in the facility.

**M. Searches of Prisoners in Institutional Areas**

All searches of prisoners must be done in accordance with DOC Policy 1208.08 Searches of Prisoners and Institutional Areas or a contractor's policy that has been approved in writing by the Director of Institutions.

**4.08 Security and Control**

**A. General Statement**

The contractor is responsible at all times to provide security and control of prisoners. All prisoner program activities will take place inside the facility. The contractor must be able to provide maximum custody housing for some prisoners that has very little program activity and maximum supervision.

**B. Intelligence Information**

A policy must be established for collecting, analyzing and disseminating intelligence information regarding issues effecting safety and security. This must include a

telephone monitoring system. Criminal behavior must be investigated and referred to local authorities. All intelligence information gathered by the contractor for Alaska prisoners must be shared with the Director of Institutions.

**C. Tool Control**

A policy must be established that requires controlled tools and equipment to be classified by security risk and those most likely to be used as a weapon or in an escape must be used only with direct staff supervision.

**D. Counts**

The contractor shall maintain a system to physically count all prisoners. Formal or informal counts must be completed with no more than a four-hour lapse in time. There must be at least 3 formal counts during each 24-hour period. Contractor's policy must be consistent with DOC Policy 1208.14 Count Principles & Procedures.

**E. Perimeter Control**

The perimeter fence should have some type of electronic alarm systems and policy must prohibit prisoners from coming within 20 feet of the fence. Designated prisoners (i.e. yard work crew) may approach the perimeter fence with adequate staff supervision. Contractor must have a written policy in place and approved by the Director of Institutions.

The contractor must provide constant armed perimeter surveillance of the facility.

**F. Master Control Center / Communication System**

A control center will be provided for integrating security, program and communications functions. The control center shall be staffed as a 24 hour post and access shall be limited to authorized personnel only. The facility must have an adequate radio communication system.

**G. Key Control**

The contractor must have a procedure for the maintenance and security of keys and locking mechanisms. The policy must define which keys are allowed to be checked out and must prevent 24 hour keys from check out.

Emergency keys shall be available for all areas of the facility to which emergency access or egress may be necessary.

**H. Control of Contraband Introduction**

The contractor shall have written policies for the detection, control and disposition of contraband. The policy must include provisions for prisoner and visitor searches. The policy must include procedures for searches of the facility, prisoners and others on the premises.

**I. Documentation**

The contractor shall maintain written policies that require the facility to maintain shift logs that documents personnel on duty, counts, admissions/releases, shift activities, entry and exit of staff and visitor and any unusual shift occurrences.

**J. Armory**

The contractor shall maintain written policies for the armory to include the types of munitions, chemical agents, electronic devices. The policy should limit access to the Armory.

**K. Off Grounds Security/Transportation**

Transportation of prisoners off grounds is at the contractor's expense. This includes transportation to and from the airport to the facility. DOC reserves the right to specify the airport to be utilized if more than one is located nearby.

The contractor shall provide security at all times for prisoners assigned to its care and custody both within and outside the secure perimeter. This includes but is not limited to court appearances, medical appointments and hospital stays.

The only prisoners who are allowed to leave the facility without armed escort are minimum custody work crews. Policies for allowing off site work crews must be approved by DOC Director of Institutions.

**L. Emergency procedures**

The contractor will be required to be able to respond to emergencies and to have trained personnel. The contractor shall have policies for dealing with emergency situations including but not limited to dealing with prisoner disturbances, hostage taking, escape, evacuation due to fire, chemical spills or natural disaster. All contract staff must review policies at least annually. Contractor policies must be consistent with DOC Policy 1208.10 Management of Hostage Situations, and 1208.16 Institutional Emergency Plan.

The contractor must have their own or ready access to a fully trained emergency response team.

Mutual Aid agreements with appropriate state and local authorities must be in place before the Service Commencement Date.

**M. Substance Abuse Testing**

The contractor shall provide for drug and alcohol urinalysis. Five (5) percent of the prisoners must be tested each month. Testing will be random or for cause. Should prisoners request a blood test to confirm a positive finding, arrangements must be made, at the prisoner's expense for this. The provision of prisoner paid confirmation testing must be included in the contractor's policy.