

HAWAII STATE DEPARTMENT OF EDUCATION
PROCUREMENT AND CONTRACTS BRANCH

December 13, 2022

INVITATION FOR BIDS

Number IFB D23-074

SEALED BIDS

TO

FURNISH AND DELIVER COMMODITY PROCESSED ITEMS
TO HAWAII STATE DEPARTMENT OF EDUCATION CAFETERIAS,
STATEWIDE

**will be received through the State of Hawaii eProcurement System (HlePRO) at
<https://hiepro.ehawaii.gov/welcome.html> until 4:30 p.m., Hawaii Standard Time (HST)**

on

JANUARY 31, 2023

Offerors interested in responding to this electronic solicitation must be registered on the HlePRO (<https://hiepro.ehawaii.gov/welcome.html>) in order to participate in this procurement. Registration is free. Once registered, Offerors can login to view and respond to the HlePRO solicitation.

Requests for Consideration of "Pre-approved Acceptable Products", will be received up to **3:00 p.m. on December 28, 2022**, in the STATE, Department of Education, PCB, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797 or via email to wendy.ebisui@k12.hi.us.

ONE (1) PRODUCTION CASE of sample product approved for testing and consideration will be received between **9:00 a.m. and 10:00 a.m. January 13, 2023 at Waikiki Elementary School Cafeteria, 3710 Leahi Avenue, Honolulu, HI 96815** (Reference Special Conditions No. 22).

Questions relating to this solicitation may be directed to Ms. Wendy Ebisui, Procurement and Contracts Support Specialist, at telephone (808) 675-0130, via facsimile (808) 675-0133, or via email at wendy.ebisui@k12.hi.us.

**FURNISH AND DELIVER COMMODITY PROCESSED ITEMS
TO HAWAII STATE DEPARTMENT OF EDUCATION CAFETERIAS, STATEWIDE
IFB D23-074**

Chief Procurement Officer
Hawaii State Department of Education
Honolulu, Hawaii 96813

To Whom It May Concern:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications, Special Conditions, and General Conditions attached hereto and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

The undersigned represents: **(Check ✓ one only)**

- A **Hawaii business** incorporated or organized under the laws of the State of Hawaii; **OR**
A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii, and, if applicable, registered at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii.
- Consumer Affairs Business Registration Division to do business in the State of Hawaii.
State of incorporation: _____

Offeror is:

- Sole Proprietor Partnership Corporation Joint Venture Other

Federal I.D. Number: _____ Hawaii General Tax License I.D. Number: _____

Payment address (other than street address below): _____

City, State, Zip Code: _____

Business address (street address): _____

City, State, Zip Code: _____

Date: _____

Phone Number: _____

Fax Number: _____

E-mail Address: _____

Respectfully submitted:

Authorized (Original) Signature

Name and Title (Type or Print)

*

Exact Legal Name of Company (Offeror)

*If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed: _____

The following offer is hereby submitted:

Offeror:

Item No	Description	Unit	OAHU 12-month Estimated Quantity	Manufacturer Name and Product Number	Servings per Case	Unit Bid Price - OAHU (per serving)	OAHU Bid Price	Commercial Case Price	Commodity Value	Net Case Price
CATEGORY 1 - USDA #110244; Cheese, Mozzarella Low-Moisture Part Skim, Chilled										
1	CHEESE STUFFED BREADSTICKS. Bulk pack case shall contain approximately 112 / 2 oz. servings.	-serving	168,876				\$ -			
2	BREAKFAST PIZZA, ALL BEEF with WHITE COUNTRY GRAVY. Case pack shall contain approximately 160 / 2.79 oz. individually wrapped servings.	-serving	168,876				\$ -			
3	PEPPERONI PIZZA, 10-CUT, PRE-CUT, CHEESY BOTTOM. Case pack shall contain approximately 90 / 5.50 oz. slices.	-serving	581,064				\$ -			
4	FOUR (4)-CHEESE PIZZA, 10-CUT, PRE-CUT, CHEESY BOTTOM. Case pack shall contain approximately 90 / 5.49 oz. slices.	-serving	581,064				\$ -			
5	5" DEEP DISH PEPPERONI PIZZA. Case pack shall contain approximately 80 / 5.63 oz. individually wrapped servings.	-serving	30,720				\$ -			
6	5" DEEP DISH CHEESE PIZZA. Case pack shall contain approximately 80 / 5.49 oz. individually wrapped servings.	-serving	30,720				\$ -			
7	CHEESE BITES. Bulk pack case shall contain approximately 240 / 1 oz. pieces.	-serving	3,486,384				\$ -			
CATEGORY 2 - USDA #110242; Cheese, Natural American, Barrel, Chilled										
8	REDUCED SODIUM CHEESE SAUCE Each case shall provide approximately 263 / 1.82 oz. servings.	-serving	971,611				\$ -			
9	REDUCED SODIUM CREAMY MACARONI & CHEESE, Large Elbows. Each case shall provide approximately 80 / 6.0 oz. servings.	-serving	406,740				\$ -			
CATEGORY 3 - USDA #100332; Tomato Paste for Bulk Processing										
10	DIPPING SAUCE, MARINARA, PORTION CUP. The case pack shall contain approximately 84 / -2.5 oz. cups per case.	-serving	749,940				\$ -			
11	DIPPING SAUCE, SALSA, PORTION CUP. The case pack shall contain approximately 84 / -3 oz. cups per case.	-serving	1,216,397				\$ -			
12	KETCHUP, NATURALLY BALANCED, LOW SODIUM, PORTION PACK. The case pack shall contain approximately 1000 / -9 gram packets per case.	-serving	2,016,396				\$ -			
13	KETCHUP, NATURALLY BALANCED, LOW SODIUM. The case pack shall contain 6 / #10 cans per case.	case	360				\$ -			
TOTAL SUM BID PRICE (Items 1 through 13) - OAHU							\$ -			

*Unit Bid Price shall be based on delivery to destination and shall include labor, equipment, materials, transportation, overhead, profit, all applicable taxes, and any other incidental and operational expenses incurred in the performance of all obligations hereunder. Unit Bid Price shall be the all-inclusive cost to the STATE and no other charges will be honored.

The following offer is hereby submitted:

Offeror: _____

Item No	Description	Unit	HAWAII 12-month Estimated Quantity	Manufacturer Name and Product Number	Servings per Case	Unit Bid Price - HAWAII (per serving)	HAWAII Bid Price	Commercial Case Price	Commodity Value	Net Case Price
CATEGORY 1 - USDA #110244; Cheese, Mozzarella Low-Moisture Part Skim, Chilled										
1	CHEESE STUFFED BREADSTICKS. Bulk pack case shall contain approximately 112 / 2 oz. servings.	serving	44,352				\$			
2	BREAKFAST PIZZA, ALL BEEF with WHITE COUNTRY GRAVY. Case pack shall contain approximately 160 / 2.79 oz. individually wrapped servings.	serving	44,352				\$			
3	PEPPERONI PIZZA, 10-CUT, PRE-CUT, CHEESY BOTTOM. Case pack shall contain approximately 90 / 5.50 oz. slices.	serving	109,284				\$			
4	FOUR (4)-CHEESE PIZZA, 10-CUT, PRE-CUT, CHEESY BOTTOM. Case pack shall contain approximately 90 / 5.49 oz. slices.	serving	109,284				\$			
5	5" DEEP DISH PEPPERONI PIZZA. Case pack shall contain approximately 80 / 5.63 oz. individually wrapped servings.	serving	5,760				\$			
6	5" DEEP DISH CHEESE PIZZA. Case pack shall contain approximately 80 / 5.49 oz. individually wrapped servings.	serving	5,760				\$			
7	CHEESE BITES. Bulk pack case shall contain approximately 240 / 1 oz. pieces.	serving	655,704				\$			
CATEGORY 2 - USDA #110242; Cheese, Natural American, Barrel, Chilled										
8	REDUCED SODIUM CHEESE SAUCE Each case shall provide approximately 263 / 1.82 oz. servings.	serving	182,619				\$			
9	REDUCED SODIUM CREAMY MACARONI & CHEESE, Large Elbows. Each case shall provide approximately 80 / 6.0 oz. servings.	serving	76,500				\$			
CATEGORY 3 - USDA #100332; Tomato Paste for Bulk Processing										
10	DIPPING SAUCE, MARINARA, PORTION CUP. The case pack shall contain approximately 84 / ~2.5 oz. cups per case.	serving	153,636				\$			
11	DIPPING SAUCE, SALSA, PORTION CUP. The case pack shall contain approximately 84 / ~3 oz. cups per case.	serving	477,480				\$			
12	KETCHUP, NATURALLY BALANCED, LOW SODIUM, PORTION PACK. The case pack shall contain approximately 1000 / ~9 gram packets per case.	serving	417,252				\$			
13	KETCHUP, NATURALLY BALANCED, LOW SODIUM. The case pack shall contain 6 / #10 cans per case.	case	72				\$			
TOTAL SUM BID PRICE (Items 1 through 13) - HAWAII								\$		

*Unit Bid Price shall be based on delivery to destination and shall include labor, equipment, materials, transportation, overhead, profit, all applicable taxes, and any other incidental and operational expenses incurred in the performance of all obligations hereunder. Unit Bid Price shall be the all-inclusive cost to the STATE and no other charges will be honored.

The following offer is hereby submitted:

Offeror: _____

Item No	Description	Unit	MAUI 12-month Estimated Quantity	Manufacturer Name and Product Number	Servings per Case	Unit Bid Price - MAUI (per serving)	MAUI Bid Price	Commercial Case Price	Commodity Value	Net Case Price
CATEGORY 1 - USDA #110244; Cheese, Mozzarella Low-Moisture Part Skim, Chilled										
1	CHEESE STUFFED BREADSTICKS. Bulk pack case shall contain approximately 112 / 2 oz. servings.	serving	28,464				\$			
2	BREAKFAST PIZZA, ALL BEEF with WHITE COUNTRY GRAVY. Case pack shall contain approximately 160 / 2.79 oz. individually wrapped servings.	serving	28,464				\$			
3	PEPPERONI PIZZA, 10-CUT, PRE-CUT, CHEESY BOTTOM. Case pack shall contain approximately 90 / 5.50 oz. slices.	serving	95,244				\$			
4	FOUR (4)-CHEESE PIZZA, 10-CUT, PRE-CUT, CHEESY BOTTOM. Case pack shall contain approximately 90 / 5.49 oz. slices.	serving	95,244				\$			
5	5" DEEP DISH PEPPERONI PIZZA. Case pack shall contain approximately 80 / 5.63 oz. individually wrapped servings.	serving	4,800				\$			
6	5" DEEP DISH CHEESE PIZZA. Case pack shall contain approximately 80 / 5.49 oz. individually wrapped servings.	serving	4,800				\$			
7	CHEESE BITES. Bulk pack case shall contain approximately 240 / 1 oz. pieces.	serving	571,464				\$			
CATEGORY 2 - USDA #110242; Cheese, Natural American, Barrel, Chilled										
8	REDUCED SODIUM CHEESE SAUCE Each case shall provide approximately 263 / 1.82 oz. servings.	serving	154,295				\$			
9	REDUCED SODIUM CREAMY MACARONI & CHEESE, Large Elbows. Each case shall provide approximately 80 / 6.0 oz. servings.	serving	69,528				\$			
CATEGORY 3 - USDA #100332; Tomato Paste for Bulk Processing										
10	DIPPING SAUCE, MARINARA, PORTION CUP. The case pack shall contain approximately 84 / ~2.5 oz. cups per case.	serving	123,708				\$			
11	DIPPING SAUCE, SALSA, PORTION CUP. The case pack shall contain approximately 84 / ~3 oz. cups per case.	serving	110,074				\$			
12	KETCHUP, NATURALLY BALANCED, LOW SODIUM, PORTION PACK. The case pack shall contain approximately 1000 / ~9 gram packets per case.	serving	323,502				\$			
13	KETCHUP, NATURALLY BALANCED, LOW SODIUM. The case pack shall contain 6 / #10 cans per case.	case	60				\$			
TOTAL SUM BID PRICE (Items 1 through 13) - MAUI								\$		

*Unit Bid Price shall be based on delivery to destination and shall include labor, equipment, materials, transportation, overhead, profit, all applicable taxes, and any other incidental and operational expenses incurred in the performance of all obligations hereunder. Unit Bid Price shall be the all-inclusive cost to the STATE and no other charges will be honored.

The following offer is hereby submitted:

Offeror: _____

Item No	Description	Unit	MOLOKAI 12-month Estimated Quantity	Manufacturer Name and Product Number	Servings per Case	Unit Bid Price - MOLOKAI (per serving)	MOLOKAI Bid Price	Commercial Case Price	Commodity Value	Net Case Price
CATEGORY 1 - USDA #110244; Cheese, Mozzarella Low-Moisture Part Skim, Chilled										
1	CHEESE STUFFED BREADSTICKS. Bulk pack case shall contain approximately 112 / 2 oz. servings.	serving	2,400				\$			
2	BREAKFAST PIZZA, ALL BEEF with WHITE COUNTRY GRAVY. Case pack shall contain approximately 160 / 2.79 oz. individually wrapped servings.	serving	2,400				\$			
3	PEPPERONI PIZZA, 10-CUT, PRE-CUT, CHEESY BOTTOM. Case pack shall contain approximately 90 / 5.50 oz. slices.	serving	5,928				\$			
4	FOUR (4)-CHEESE PIZZA, 10-CUT, PRE-CUT, CHEESY BOTTOM. Case pack shall contain approximately 90 / 5.49 oz. slices.	serving	5,928				\$			
5	5" DEEP DISH PEPPERONI PIZZA. Case pack shall contain approximately 80 / 5.63 oz. individually wrapped servings.	serving	960				\$			
6	5" DEEP DISH CHEESE PIZZA. Case pack shall contain approximately 80 / 5.49 oz. individually wrapped servings.	serving	960				\$			
7	CHEESE BITES. Bulk pack case shall contain approximately 240 / 1 oz. pieces.	serving	35,568				\$			
CATEGORY 2 - USDA #110242; Cheese, Natural American, Barrel, Chilled										
8	REDUCED SODIUM CHEESE SAUCE Each case shall provide approximately 263 / 1.82 oz. servings.	serving	9,603				\$			
9	REDUCED SODIUM CREAMY MACARONI & CHEESE, Large Elbows. Each case shall provide approximately 80 / 6.0 oz. servings.	serving	3,588				\$			
CATEGORY 3 - USDA #100332; Tomato Paste for Bulk Processing										
10	DIPPING SAUCE, MARINARA, PORTION CUP. The case pack shall contain approximately 84 / ~2.5 oz. cups per case.	serving	8,328				\$			
11	DIPPING SAUCE, SALSA, PORTION CUP. The case pack shall contain approximately 84 / ~3 oz. cups per case.	serving	29,884				\$			
12	KETCHUP, NATURALLY BALANCED, LOW SODIUM, PORTION PACK. The case pack shall contain approximately 1000 / ~9 gram packets per case.	serving	22,020				\$			
13	KETCHUP, NATURALLY BALANCED, LOW SODIUM. The case pack shall contain 6 / #10 cans per case.	case	5				\$			
TOTAL SUM BID PRICE (Items 1 through 13) - MOLOKAI							\$	-		

*Unit Bid Price shall be based on delivery to destination and shall include labor, equipment, materials, transportation, overhead, profit, all applicable taxes, and any other incidental and operational expenses incurred in the performance of all obligations hereunder. Unit Bid Price shall be the all-inclusive cost to the STATE and no other charges will be honored.

The following offer is hereby submitted:

Offeror: _____

Item No	Description	Unit	LANAI 12-month Estimated Quantity	Manufacturer Name and Product Number	Servings per Case	Unit Bid Price - LANAI (per serving)	LANAI Bid Price	Commercial Case Price	Commodity Value	Net Case Price
CATEGORY 1 - USDA #110244; Cheese, Mozzarella Low-Moisture Part Skim, Chilled										
1	CHEESE STUFFED BREADSTICKS. Bulk pack case shall contain approximately 112 / 2 oz. servings.	-serving	1,308				\$			
2	BREAKFAST PIZZA, ALL BEEF with WHITE COUNTRY GRAVY. Case pack shall contain approximately 160 / 2.79 oz. individually wrapped servings.	-serving	1,308				\$			
3	PEPPERONI PIZZA, 10-CUT, PRE-CUT, CHEESY BOTTOM. Case pack shall contain approximately 90 / 5.50 oz. slices.	-serving	3,432				\$			
4	FOUR (4)-CHEESE PIZZA, 10-CUT, PRE-CUT, CHEESY BOTTOM. Case pack shall contain approximately 90 / 5.49 oz. slices.	-serving	3,432				\$			
5	5" DEEP DISH PEPPERONI PIZZA. Case pack shall contain approximately 80 / 5.63 oz. individually wrapped servings.	-serving	960				\$			
6	5" DEEP DISH CHEESE PIZZA. Case pack shall contain approximately 80 / 5.49 oz. individually wrapped servings.	-serving	960				\$			
7	CHEESE BITES. Bulk pack case shall contain approximately 240 / 1 oz. pieces.	-serving	20,592				\$			
CATEGORY 2 - USDA #110242; Cheese, Natural American, Barrel, Chilled										
8	REDUCED SODIUM CHEESE SAUCE Each case shall provide approximately 263 / 1.82 oz. servings.	-serving	5,560				\$			
9	REDUCED SODIUM CREAMY MACARONI & CHEESE, Large Elbows. Each case shall provide approximately 80 / 6.0 oz. servings.	-serving	2,076				\$			
CATEGORY 3 - USDA #100332; Tomato Paste for Bulk Processing										
10	DIPPING SAUCE, MARINARA, PORTION CUP. The case pack shall contain approximately 84 / ~2.5 oz. cups per case.	-serving	4,740				\$			
11	DIPPING SAUCE, SALSA, PORTION CUP. The case pack shall contain approximately 84 / ~3 oz. cups per case.	-serving	24,055				\$			
12	KETCHUP, NATURALLY BALANCED, LOW SODIUM, PORTION PACK. The case pack shall contain approximately 1000 / ~9 gram packets per case.	-serving	12,504				\$			
13	KETCHUP, NATURALLY BALANCED, LOW SODIUM. The case pack shall contain 6 / #10 cans per case.	case	1				\$			
TOTAL SUM BID PRICE (Items 1 through 13) - LANAI								\$		

*Unit Bid Price shall be based on delivery to destination and shall include labor, equipment, materials, transportation, overhead, profit, all applicable taxes, and any other incidental and operational expenses incurred in the performance of all obligations hereunder. Unit Bid Price shall be the all-inclusive cost to the STATE and no other charges will be honored.

The following offer is hereby submitted:

Offeror: _____

Item No	Description	Unit	KAUAI 12-month Estimated Quantity	Manufacturer Name and Product Number	Servings per Case	Unit Bid Price - KAUAI (per serving)	KAUAI Bid Price	Commercial Case Price	Commodity Value	Net Case Price
CATEGORY 1 - USDA #110244; Cheese, Mozzarella Low-Moisture Part Skim, Chilled										
1	CHEESE STUFFED BREADSTICKS. Bulk pack case shall contain approximately 112 / 2 oz. servings.	serving	11,100				\$			
2	BREAKFAST PIZZA, ALL BEEF with WHITE COUNTRY GRAVY. Case pack shall contain approximately 160 / 2.79 oz. individually wrapped servings.	serving	11,100				\$			
3	PEPPERONI PIZZA, 10-CUT, PRE-CUT, CHEESY BOTTOM. Case pack shall contain approximately 90 / 5.50 oz. slices.	serving	42,036				\$			
4	FOUR (4)-CHEESE PIZZA, 10-CUT, PRE-CUT, CHEESY BOTTOM. Case pack shall contain approximately 90 / 5.49 oz. slices.	serving	42,036				\$			
5	5" DEEP DISH PEPPERONI PIZZA. Case pack shall contain approximately 80 / 5.63 oz. individually wrapped servings.	serving	2,880				\$			
6	5" DEEP DISH CHEESE PIZZA. Case pack shall contain approximately 80 / 5.49 oz. individually wrapped servings.	serving	2,880				\$			
7	CHEESE BITES. Bulk pack case shall contain approximately 240 / 1 oz. pieces.	serving	252,216				\$			
CATEGORY 2 - USDA #110242; Cheese, Natural American, Barrel, Chilled										
8	REDUCED SODIUM CHEESE SAUCE Each case shall provide approximately 263 / 1.82 oz. servings.	serving	68,098				\$			
9	REDUCED SODIUM CREAMY MACARONI & CHEESE, Large Elbows. Each case shall provide approximately 80 / 6.0 oz. servings.	serving	25,476				\$			
CATEGORY 3 - USDA #100332; Tomato Paste for Bulk Processing										
10	DIPPING SAUCE, MARINARA, PORTION CUP. The case pack shall contain approximately 84 / ~2.5 oz. cups per case.	serving	53,136				\$			
11	DIPPING SAUCE, SALSA, PORTION CUP. The case pack shall contain approximately 84 / ~3 oz. cups per case.	serving	77,863				\$			
12	KETCHUP, NATURALLY BALANCED, LOW SODIUM, PORTION PACK. The case pack shall contain approximately 1000 / ~9 gram packets per case.	serving	138,390				\$			
13	KETCHUP, NATURALLY BALANCED, LOW SODIUM. The case pack shall contain 6 / #10 cans per case.	case	24				\$			
TOTAL SUM BID PRICE (Items 1 through 13) - KAUAI								\$	-	

*Unit Bid Price shall be based on delivery to destination and shall include labor, equipment, materials, transportation, overhead, profit, all applicable taxes, and any other incidental and operational expenses incurred in the performance of all obligations hereunder. Unit Bid Price shall be the all-inclusive cost to the STATE and no other charges will be honored.

SPECIFICATIONS

These specifications shall apply to all products unless otherwise specified.

1. OVERVIEW

The State of Hawaii Department of Education is seeking a qualified, statewide distributor (CONTRACTOR) to deliver processed United States Department of Agriculture (USDA) commodity processed items. The processor of the USDA commodity item must be listed on the School Year 2023-2024 National Processing Agreement (NPA) Approved Processor List available on the USDA website: <https://www.fns.usda.gov/usda-fis/national-processing-agreement-npa-approved-processors>.

The purpose and intent of this IFB is to secure a statewide distributor to deliver commodity processed items from their processor to schools under the jurisdiction of the State of Hawai`i, Department of Education, School Food Services Branch (SFSB), statewide (Oahu, Hawaii, Maui, Molokai, Lanai, and Kauai).

The CONTRACTOR shall coordinate with the Contract Administrator (CA) or authorized representative designated herein to determine all commodity shipping dates and shall provide necessary administrative services (which includes, but is not limited to, providing invoice numbers of invoices billed to schools who have ordered the products herein), equipment, labor, transportation, and supplies to furnish the goods and/or services requested in this Invitation for Bid.

The CA reserves the right to review all sub-contractors' equipment, records and storage facilities with a five (5) business day written notification.

2. REFUND COMMODITY PROCESSING PRICING

The CONTRACTOR shall provide to School Food Services Branch (SFSB) "Refund" for commodity processed products. The awarded CONTRACTOR must have the ability to meet the reporting and audit requirements involving the tracking of the items. The "Refund Pass Through System" allows the CONTRACTOR to invoice SFSB at the commercial/gross price of the end product. SFSB will submit a refund application to the CONTRACTOR within 30 days from the end of the month of date of delivery. Within thirty (30) days of the receipt of the application, the CONTRACTOR shall compute the amount and issue payments of refund directly to SFSB. CONTRACTOR shall be able to accept refund applications electronically via the Internet, e-mail, or other electronic means. CONTRACTOR must maintain documentation to support the electronic submission was received. Refunds shall be payable to School Food Service in the form of a check.

3. GENERAL REQUIREMENTS

- CONTRACTOR shall have written assignment from their Processor to act as Processor's billing agent.
- CONTRACTOR shall maintain a tracking system for all USDA foods from Processor's receipt through production and delivery.
- CONTRACTOR shall ensure that product received from Processor containing "USDA food" will only be sold to SFSB.
- CONTRACTOR shall work with Processor to assure that tracking/traceability system will be implemented and will identify product by item code and lot number (provided by the Processor) in the event of a USDA recall.

4. REPORTING REQUIREMENTS

The CONTRACTOR must submit a report indicating invoice numbers and sales generated by this agreement. The report shall list usage by line item, showing the quantities/dollars generated by this agreement. The CONTRACTOR shall provide monthly performance, inventory, and production reports to the SFSB.

- CONTRACTOR shall invoice each school separately for the items awarded through this solicitation.
- CONTRACTOR shall provide a Velocity Report to SFSB once a month no later than the 5th working day of every month for commodity processed products sold for the previous month.

5. PACKAGING REQUIREMENTS

- All food products relating to this IFB must be packaged and marked appropriately.
- All containers (and all products within containers) must be packed in adequate material to protect the product(s) against damage during transportation, storage, and handling. Damaged containers, cartons and/or containers not adequately closed/secured will not be received.
- All products shall be bagged/boxed properly for easy checking and receiving. Identification markings and production dates must be clearly visible.
- Container Dates: Each case/carton must state the processing date and/or expiration/use by date to determine freshness.

6. RECALL PROCEDURES

CONTRACTOR shall adhere to the following situations, including but not limited to, USDA or manufacturer recalls and changes in USDA regulations.

- Notification. CONTRACTOR shall communicate all USDA and Manufacturer recalls to SFSB in an email within a twenty-four (24) hour period upon CONTRACTOR being notified. Upon notification, SFSB will discuss with the CONTRACTOR the needed steps to execute the recall, to include, but is not limited to, insure all product being held, customers informed, and costs recovered.
- Removal. CONTRACTOR shall remove all recalled items from schools. All products impacted by the recall shall be stored in accordance with CONTRACTOR's internal recall procedures.
- Disposal. CONTRACTOR shall dispose of all products in accordance with USDA and manufacturer guidelines.

7. GENERAL SPECIFICATIONS

Specifications and conditions pertaining to grading, manufacturing, labeling, packing, sanitation and delivering shall be in accordance with all Federal, State and County statutes and regulations, and Hazardous Analysis Critical Control Point (HACCP) guidelines.

All packaging and packing materials must be clean and in new condition, must not impart objectionable odors or flavors to the product, and must be safe.

The products shall be wrapped, packed, and covered in conventional packaging material so that the products, in each case, are properly protected. All product packaging shall be clearly labeled identifying the contents, the packaging size/weight, the manufacturer, and the packing date. The products shall have a packing code date or other identifying code date stamped on the case or packaging material within the case. Any code date other than the packing code date stamped on the case or package shall be coded whereas an identifiable packing code date may be retrieved by a conversion method. Offeror

shall provide the information as to what the production code looks like and the location of where the code is located on case/package of item with their offer or within three (3) business days of STATE request.

When the product offered is a privately labeled product, a permanent pre-printed impression on the container or on the product itself must identify the product. A label affixed by the manufacturer to identify the product is also acceptable. The mere attaching of an adhesive label by the Offeror shall not be considered positive identification.

The STATE will not accept any product that exceeds one hundred eighty (180) days of the pack or other identifying code date.

Products delivered with expired "use by", "sell by" or "freeze by" dates shall be rejected.

8. PRODUCT QUALITY

Products furnished under this IFB shall be of the best quality of its respective kind. Product shall be free from defects such as foreign objects, etc., that may render it unfit or a hazard for children/adult consumption. Damaged or rejected products must be immediately removed from the site and replaced with products of the quality required by these specifications. The STATE also reserves the right to reject any product with a short expiration period. Products shall meet all applicable federal and state regulations.

CONTRACTOR'S failure to replace or to remove any product rejected by the STATE shall not relieve the CONTRACTOR from the responsibility imposed upon it by the award. No payment, whether partial or final, shall be construed to be an acceptance of unacceptable products.

The STATE may at any time and by written order, stop the delivery of products not conforming to these specifications. Such stop order shall not relieve the CONTRACTOR of its obligation to complete its work within the award time limits, nor shall it in any way terminate, cancel, or abrogate the award or any part thereof. School Food Service Branch (SFSB) has the right to solicit a replacement product to meet menu needs of the Program.

9. PRODUCT CHANGES

If at any time during the life of the contract a product undergoes changes of any kind (including but not limited to formulation, Child Nutrition (CN) crediting, product discontinuation, case/pack size), it shall be the responsibility of the Manufacturer and/or Broker to notify School Food Services Branch Contract Administrator (CA) or Point-of-Contact (POC) and the awarded CONTRACTOR immediately. The Manufacturer and/or Broker shall email all respective parties as soon as possible.

10. DETAILED SPECIFICATIONS

Offerors are advised that only pre-approved, acceptable products shall be considered for award. Offerors submitting an offer must have their products pre-approved through procedures detailed in IFB Special Conditions No. 22.

Item No.	Description
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CATEGORY 1 – USDA #110244; Cheese, Mozzarella Low-Moisture Part Skim, Chilled

- | | |
|---|--|
| 1 | <u>CHEESE STUFFED BREADSTICKS</u> , Bulk Pack, approximately 2 oz. This product shall be a breadstick made utilizing at least 51% whole grain flour meeting the whole grain rich criteria that is stuffed with 100% mozzarella cheese. One (1) approximately 2 oz. serving shall consist of one (1) breadstick that shall provide 1 oz. equivalent meat/meat alternate and 1 oz. equivalent grain under the USDA Child Nutrition Meal Pattern Requirements. Calories shall not exceed 140, sodium shall not exceed 230 milligrams and total fat shall |
|---|--|

not exceed 5 grams per serving (1 stick). This product shall not contain any Sodium Nitrate, Sodium Benzoate, L-Cysteine, Calcium Propionate, BHA and BHT. This product shall come in a bulk pack case that contains approximately 112 / 2 oz. servings.

Manufacturer Approved Brands: Wild Mike's 11001 or pre-approved equal.

- 2 **BREAKFAST PIZZA, ALL BEEF with WHITE COUNTRY GRAVY**, Individually Wrapped, approximately 2.79 oz. This product shall be an individually wrapped breakfast pizza made utilizing at least 51% whole grain flour meeting the whole grain rich criteria. This product will come on a whole grain crust with a white country gravy, topped with a 4-cheese blend of Mozzarella, Provolone, Romano and Parmesan and all beef crumbles. One (1) approximately 2.79 oz. piece shall equal one (1) serving that shall provide 1 oz. equivalent meat/meat alternate and 1 oz. equivalent grain under the USDA Child Nutrition Meal Pattern Requirements. Calories shall not exceed 180, sodium shall not exceed 200 milligrams and total fat shall not exceed 7 grams per serving. This product shall not contain any Sodium Nitrate, Sodium Benzoate, L-Cysteine, Calcium Propionate, Soy, BHA and BHT. The product shall come individually wrapped in ovenable bags. Case pack shall contain approximately 160 / 2.79 oz. individually wrapped servings.

Manufacturer Approved Brands: Wild Mike's 90503 or pre-approved equal

- 3 **PEPPERONI PIZZA, 10-CUT, PRE-CUT, CHEESY BOTTOM**, Approximately 5.50 oz. This product shall be a 16" round pizza pre-cut into 10 slices. Each pizza shall have real mozzarella cheese baked into the bottom of the crust which is made utilizing at least 51% whole grain flour meeting the whole grain rich criteria. This product will have a whole grain crust with a tomato-based sauce, a 4-cheese blend of Mozzarella, Provolone, Romano and Parmesan topped with all-natural uncured sliced pepperoni. One (1) approximately 5.50 oz. slice shall equal one (1) serving that shall provide 2 oz. equivalent meat/meat alternate, 2 oz. equivalent grain, and credit 1/8 cup equivalent red/orange vegetable under the USDA Child Nutrition Meal Pattern Requirements. Calories shall not exceed 400, sodium shall not exceed 610 milligrams and total fat shall not exceed 17 grams per slice. This product shall not contain any sodium nitrates, sodium benzoate, L-Cysteine, Calcium Propionate, BHA and BHT. Case pack shall contain approximately 90 / 5.50 oz. slices.

Manufacturer Approved Brands: Wild Mike's 20210 or pre-approved equal

- 4 **FOUR (4)-CHEESE PIZZA, 10-CUT, PRE-CUT, CHEESY BOTTOM**, approximately 5.49 oz. slices. This product shall be a 16" round pizza pre-cut into 10 slices. Each pizza shall have real mozzarella cheese baked into the bottom of the crust which is made utilizing at least 51% whole grain flour meeting the whole grain rich criteria. This product will have a whole grain crust with a tomato-based sauce and a 4-cheese blend of Mozzarella, Provolone, Romano and Parmesan. One (1) approximately 5.49 oz. slice shall equal one (1) serving that shall provide 2 oz. equivalent meat/meat alternate, 2 oz. equivalent grain and credit 1/8 cup equivalent red/orange vegetable under the USDA Child Nutrition Meal Pattern Requirements. Calories shall not exceed 400, sodium shall not exceed 610 milligrams and total fat shall not exceed 17 grams per slice. This product shall not contain any Sodium Nitrate, Sodium Benzoate, L-Cysteine, Calcium Propionate, BHA and BHT. Case pack shall contain approximately 90 / 5.49 oz. slices.

Manufacturer Approved Brands: Wild Mike's 20211 or pre-approved equal

- 5 **5" DEEP DISH PEPPERONI PIZZA**, Individually Wrapped, Approximately 5.63 oz. This product shall be a 5" round, individually wrapped pepperoni pizza made utilizing at least 51% whole grain flour meeting the whole grain rich criteria. This product will come on a whole grain crust with a tomato-based sauce, topped with a 4-cheese blend of

Mozzarella, Provolone, Romano, Parmesan, and diced, all natural, uncured, all beef pepperoni. One (1) approximately 5.63 oz. pizza shall equal one (1) serving that shall provide 2 oz. equivalent meat/meat alternate, 2 oz. equivalent grains and credit 1/8 cup equivalent red/orange vegetable under the USDA Child Nutrition Meal Pattern Requirements. Calories shall not exceed 410, sodium shall not exceed 630 milligrams and total fat shall not exceed 17 grams per serving. This product shall not contain any Sodium Nitrate, Sodium Benzoate, L-Cysteine, Calcium Propionate, BHA and BHT. The product shall come individually wrapped in ovenable bags. Case pack shall contain approximately 80 / 5.63 oz. servings.

Manufacturer Approved Brands: Wild Mike's 80649 or pre-approved equal

- 6 **5" DEEP DISH CHEESE PIZZA**, Individually Wrapped, Approximately 5.49 oz. This product shall be a 5" round, individually wrapped cheese pizza made utilizing at least 51% whole grain flour meeting the whole grain rich criteria. This product will come on a whole grain crust with a tomato-based sauce and topped with a 4-cheese blend of Mozzarella, Provolone, Romano and Parmesan. One (1) approximately 5.49 oz. pizza shall equal one (1) serving that shall provide 2 oz. equivalent meat/meat alternate, 2 oz. equivalent grains and credit 1/8 cup equivalent red/orange vegetable under the USDA Child Nutrition Meal Pattern Requirements. Each serving shall contain no more than 400 calories, 540 milligrams of sodium and no more than 15 grams of total fat. This product shall not contain any Sodium Nitrate, Sodium Benzoate, L-Cysteine, Calcium Propionate, BHA and BHT. The product shall come individually wrapped in ovenable bags. Case pack shall contain approximately 80 / 5.49 oz. servings.

Manufacturer Approved Brands: Wild Mike's 80650 or pre-approved equal

- 7 **CHEESE BITES**, Bulk Pack, approximately 1 oz. per piece. This product shall be a cheese bite made utilizing real mozzarella cheese and at least 51% whole grain flour meeting the whole grain rich criteria. Each approximately 1 oz. piece shall provide .5 oz. equivalent meat/meat alternate and .5 oz. equivalent grains under the USDA Child Nutrition Meal Pattern Requirements. Calories shall not exceed 70, sodium shall not exceed 115 milligrams and total fat shall not exceed 2.5 grams per piece. This product shall not contain any Sodium Nitrate, Sodium Benzoate, L-Cysteine, Calcium Propionate, BHA and BHT. Case pack shall contain approximately 240 / 1 oz. pieces.

Manufacturer Approved Brands: Wild Mike's 11003 or pre-approved equal

CATEGORY 2 – USDA #110242; Cheese, Natural American, Barrel, Chilled

- 8 **REDUCED SODIUM CHEESE SAUCE**, Approximately 1.82 oz. This product shall be a creamy, golden cheese sauce with cheddar cheese listed as the first ingredient. The sauce is reduced sodium and contains cheddar cheese along with various seasonings. One (1) 1.82 oz. serving (by weight) shall provide 1.0 oz. equivalent meat/meat alternate under the USDA Child Nutrition Meal Pattern Requirements. Each 1.82 oz. serving (by weight) shall contain no more than 116 calories, sodium shall not exceed 209 milligrams and total fat shall not exceed 9 grams. This product shall be packed in approximately 6 / 5 lb. boilable bags. Each case shall provide approximately 263 / 1.83 oz. servings.

Manufacturer Approved Brands: JTM 5734 or pre-approved equal

- 9 **REDUCED SODIUM CREAMY MACARONI & CHEESE, Large Elbows**, Approximately 6 oz. This product shall be a macaroni & cheese made using a whole grain, large elbow macaroni in a creamy cheddar cheese sauce. One (1) serving shall be a 6 oz. portion (by

weight) that shall provide 2.0 oz. equivalent meat/meat alternate and 1.0 oz. equivalent grain under the USDA Child Nutrition Meal Pattern Requirements. Each 6 oz. serving shall contain no more than 335 calories, sodium shall not exceed 577 milligrams and total fat shall not exceed 17 grams per serving. The product shall be packed in approximately 6 / 5 lb. boilable bags. Each case shall provide approximately 80 / 6.0 oz. servings.

Manufacturer Approved Brands: JTM 5776 or pre-approved equal

CATEGORY 3 – USDA #100332; Tomato Paste for Bulk Processing

- 10 **DIPPING SAUCE, MARINARA, PORTION CUP,** Approximately 2.5 oz. cups. This product shall be a smooth tomato puree with tidbits of tomatoes and seasoned with a blend of Italian flavors. This product shall be made without any high fructose corn syrup, MSG, gluten, coloring, sulfites and shall be free from the eight (8) Allergens (Milk, Eggs, Fish, Crustacea, Tree Nuts, Peanuts, Soybeans, and Wheat). One (1) approximately 2.5 oz. dipping cup shall be one serving that shall provide 1/2 cup equivalent Red/Orange Vegetable under the USDA Child Nutrition Meal Pattern Requirements. Each 2.5 oz. cup shall contain no more than 40 calories, sodium shall not exceed 200 milligrams and total sugars shall not exceed 4 grams. Product shall be shelf stable (at least 9 months), ready to eat and come packed in individual 2.5 oz. plastic cups with a foil cover. The case pack shall contain approximately 84 / 2.5 oz. cups per case.

Manufacturer Approved Brands: Red Gold REDNA2ZC84 or pre-approved equal

- 11 **DIPPING SAUCE, SALSA, PORTION CUP,** Approximately 3 oz. cups. This product shall be a made of premium tomatoes that are smoothly blended with spices including but not limited to Jalapeno peppers, distilled vinegar, sugar, onions and garlic and have a chunky consistency. This product shall not contain any gluten, MSG, coloring, sulfites and free from the 8 major Allergens (Milk, Eggs, Fish, Crustacea, Tree Nuts, Peanuts, Soybeans, and Wheat). One (1) approximately 3 oz. dipping cup shall be one serving that shall provide 1/2 cup equivalent Red/Orange Vegetable under the USDA Child Nutrition Meal Pattern Requirements. Each 3 oz. cup shall contain no more than 25 calories, sodium shall not exceed 195 milligrams and total sugars shall not exceed 3 grams. Product shall be shelf stable (at least 9 months), ready to eat and come packed in individual 3 oz. plastic cups with a foil cover. The case pack shall contain approximately 84 / 3 oz. cups per case.

Manufacturer Approved Brands: Red Gold REDSC2ZC84 or pre-approved equal

- 12 **KETCHUP, NATURALLY BALANCED, LOW SODIUM, PORTION PACK,** Approximately 9-gram packets. This product shall be a 100% natural ketchup made from mature, red vine-ripened tomatoes that have been concentrated, milled and homogenized to a smooth finish. This product shall be made without any high fructose corn syrup, MSG, gluten, coloring, sulfites and shall be free from the 8 major Allergens (Milk, Eggs, Fish, Crustacea, Tree Nuts, Peanuts, Soybeans, and Wheat). Each 9 oz. packet shall provide no more than 10 calories, sodium shall not exceed 25 milligrams and sugars shall not exceed 2 grams. Product shall be shelf stable (at least 9 months), ready to eat and come packed in individual approximately 9-gram foil lined packets. The case pack shall contain approximately 1000 / 9 gram packets per case.

Manufacturer Approved Brands: Red Gold REDYL9G or pre-approved equal

- 13 **KETCHUP, NATURALLY BALANCED, LOW SODIUM,** 6 / #10 Cans. This product shall be a 100% natural ketchup made from mature, red vine-ripened tomatoes that have been concentrated, milled and homogenized to a smooth finish. This product shall be made

without any high fructose corn syrup, MSG, gluten, coloring, sulfites and shall be free from the 8 major allergens (Milk, Eggs, Fish, Crustacea, Tree Nuts, Peanuts, Soybeans, and Wheat). Calories shall not exceed 15, sodium shall not exceed 45 milligrams and sugars shall not exceed 3 grams per 0.60 oz serving. The product shall be shelf stable (at least 30 months), ready to eat and the case pack shall contain 6 / #10 cans (3-piece steel food can with BPA Free liner) per case.

Manufacturer Approved Brands: Red Gold REDYL99 or pre-approved equal

SPECIAL CONDITIONS

GENERAL INFORMATION

1. Addenda and Interpretations

Discrepancies, omissions, or questions related to this solicitation shall be communicated in writing to the STATE, Department of Education, Procurement and Contracts Branch (PCB) via facsimile at (808) 675-0133 or e-mail to wendy.ebisui@k12.hi.us for interpretation and must be received no later than seven (7) calendar days prior to the date fixed for bid opening.

Interpretation(s), if any, and any supplemental instructions will be in the form of written addenda that will be made available to all HlePRO registered Offerors prior to the date fixed for the close of bids. Failure of any Offeror to receive any such addenda or interpretations shall not relieve the Offeror of any obligation under this solicitation. All addenda issued shall be incorporated into the resulting agreement.

2. Scope

Work under this agreement shall consist of furnishing and delivering Commodity Processed Items to Hawaii State Department of Education Cafeterias, Statewide and shall be in accordance with these Special Conditions, the attached Specifications, and the General Conditions AG-008 (latest revision).

3. Buy American

The Richard B. Russell National School Lunch Act (NSLA) provides in Section 12(n) the Buy American provision which requires that School Food Authorities (SFAs) operating school meals programs purchase domestically produced (grown) and processed foods, to the maximum extent practicable. The Buy American provision was codified in the National School Lunch Program regulations at 7 CFR 210.21(d).

3.1 Applicability to Hawaii:

Paragraph (d)(2)(i) of this section shall apply to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school lunch program under this part.

The STATE, Department of Education participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic-Hawaii commodities or products for Programs meals.

3.2 Offeror Responsibility:

Offeror will comply with the Buy American requirement, which dictates that SFAs participation in the federal school meal programs are required to purchase domestic-Hawaii commodities and products for SFA meals to the maximum extent practicable.

A domestic-Hawaii commodity or product means an agricultural commodity that is produced in Hawaii and a food product that is processed in Hawaii substantially (at least fifty-one [51] percent) using agricultural commodities that are produced in Hawaii (7 CFR 210.21, 220.61). SFAs in Hawaii are required to purchase food products produced in Hawaii in sufficient quantities, as determined by the SFA to meet school meal program needs per 7 CFR 210.21(d)(3).

3.3 Documentation Requirements:

If the Hawaii Product Preference is applicable, the STATE will require Offerors to certify that an applicable commodity offered was produced in Hawaii, or an applicable product offered was processed in Hawaii and contains at least fifty-one (51) percent of its agricultural food component

from Hawaii by using the State Procurement Office's "CERTIFICATION FOR HAWAII PRODUCT PREFERENCE" form (SPO-038) which is located at the following link: <http://spo.hawaii.gov/all-forms/>

4. Federal Guidelines

U.S. Department of Agriculture (USDA) is an equal opportunity provider and employer.

- 4.1 In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the federal award must contain provisions covering the following, as applicable.
- (A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
 - (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
 - (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
 - (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
 - (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C.

3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

4.2 Procurement of Recovered Materials

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000;

procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

5. State's Commitment

Pursuant to Section 3-121-6, HAR, it is mandatory that all STATE, Department of Education cafeterias purchase from price lists issued by the STATE, Department of Education, Procurement and Contracts Branch (PCB).

When quality level or product design is not suited to a cafeteria's purpose, however, an exception to purchase outside of the price list may be granted to such cafeteria by the STATE, Department of Education.

6. Contract Administrator

For purposes of this contract, Ms. Lindsay Rodrigues, Interim Program Administrator or her successor, is designated Contract Administrator (CA). She can be contacted by telephone at 808-784-5500, via facsimile at 808-753-6263, or via e-mail at lindsay.rodrigues@k12.hi.us.

The CA is responsible for:

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

Notwithstanding the responsibilities set forth hereinabove, any coordination of services falling outside those articulated above shall remain with the head of the purchasing agency, as set forth in the attached General Conditions (see General Conditions, paragraph 1, entitled "Coordination of Services by the STATE.").

The CA has designated Lauren Oda as Point-of-Contact (POC) for this contract. As such, the POC should be the initial contact on all matters related to this contract. She can be contacted by telephone at 808-784-5526 or via e-mail at lauren.oda@k12.hi.us.

7. Award Period

Award shall be for the period beginning July 1, 2023 and ending June 30, 2024. Award may be extended by mutual written agreement for two (2) additional periods not to exceed twelve (12) months at the same bid price(s), or adjusted bid prices as allowed by the Price Adjustment clause herein, and conditions of the original bid.

OFFEROR INFORMATION

8. Offeror's Authority to Submit an Offer

The STATE will not participate in determinations regarding an Offeror's authority to sell a product or perform a service. If there are any questions or doubts regarding an Offeror's right or ability to obtain and sell a product or to render a service, the Offeror should resolve those issues prior to submitting a bid. If

the Offeror's offer meets specifications and is acceptable and the price submitted is the lowest offer, that Offeror will be awarded.

9. Offeror Qualifications

In addition to meeting legal and any other requirements of this solicitation, Offeror and/or their Distributor, must meet these qualifications to be considered for award.

Authorized Distributor

At the time of offer submittal, Offeror shall be an authorized distributor or reseller of items offered. As evidence of this, Offeror may be requested to provide documentation from the manufacturer which verifies Offeror's (or Offeror's Distributor's) status as an authorized distributor. Documentation shall be provided within three (3) business days from STATE's request.

State of Hawaii-based Office

At the time of offer submittal and during the award period, Offeror, shall maintain a State of Hawaii-based wholesale or retail business with a permanent office and be compliant with the current Good Manufacturing Practices. Information shall be provided on the Exhibit C. Exhibit C shall be provided within three (3) business days from STATE's request.

Offeror shall designate at least one (1) employee as the STATE's point of contact (POC) for this agreement. This individual shall be based at Offeror's State of Hawaii-based Office and available during regular business hours, Monday – Friday excluding holidays, and shall be capable of answering questions, resolving problems, and providing sales, ordering, and follow-up assistance. Information regarding the POC shall be provided on the Exhibit C. Exhibit C shall be provided within three (3) business days from STATE's request.

Warehousing

For every group for which an offer is submitted, Offeror and/or their Distributor, shall also have a warehouse (on Oahu, Hawaii, Maui, and/or Kauai, as applicable) capable of stocking an inventory of products that is compliant with the current Good Manufacturing Practices. As evidence of this, Offeror shall provide information regarding its warehouse(s) on Exhibit C. Exhibit C shall be provided to the STATE within three (3) business days from STATE's request.

Delivery Capabilities

Offeror and/or their Distributor, shall be capable of delivering products awarded to the various cafeterias on the island(s) specified. Except for Hana and Lanai, which shall have deliveries one (1) day per week, deliveries shall be scheduled for at least two (2) non-consecutive business days per week to all schools on Oahu, Hawaii, Maui, and Kauai. (Note: Friday and Monday are considered "consecutive business days" since no business is transacted on Saturday and Sunday.)

All deliveries of refrigerated or frozen food products shall be made from refrigerated vehicles as per State of Hawaii Department of Sanitation food safety and sanitation guidelines. The ordering school reserves the right not to accept deliveries made in non-temperature-controlled vehicles.

Supporting Documentation

Offeror is requested to submit the following documents with their HlePRO offer. If not provided with the HlePRO offer, Offeror shall submit the following documents to the CA/POC with their Exhibit C. Exhibit C shall be provided to the STATE within three (3) business days from STATE's request:

- a. Copy of Current State of Hawai`i Department of Health Food Safety Inspection
- b. Copy of Current State of Hawai`i Food Establishment Permit
- c. Copy of the most recent Accredited Third Party Certification review
- d. Copy of the most recent Food Safety Management Systems review
- e. Information as to the conversion method and location of the packing code date

Failure on the Offeror's part to meet these requirements may result in rejection of offer. These requirements must remain in effect during the entire agreement period. Failure to maintain these requirements may result in cancellation of award agreement. Further, the STATE shall be the sole judge as to whether or not the qualifications have been met and its decision shall be final.

10. Responsibility of Offerors

Offeror is advised that if awarded a contract under this solicitation, Offeror must furnish proof of compliance with the requirements of §103D-310(c), HRS as a pre-requisite to receiving a contract:

1. Chapter 237, General Excise Tax Law;
2. Chapter 383, Hawaii Employment Security Law;
3. Chapter 386, Workers' Compensation Law;
4. Chapter 392, Temporary Disability Insurance;
5. Chapter 393, Prepaid Health Care Act; and
6. Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

Offeror should refer to the "Award Execution" provision for further information regarding the above-mentioned requirements.

BID PREPARATION

11. Offer Page OF-1

Offeror is requested to submit the offer under the company's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, and to indicate exact legal name in the appropriate space on Offer Page OF-1. Failure to do so may delay proper execution of the agreement.

The authorized signature on the hard copy Offer Page OF-1 shall be an **original signature in ink**. Ink signatures are not required for electronic submission of an offer on the HlePRO. The submission of the offer on the HlePRO shall indicate the Offeror's intent to be bound.

12. Taxable Transaction

Unless the HRS exempts a person from paying the applicable general excise tax, work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS and Chapter 238, HRS, where applicable. Both out-of-state and Hawaii-based companies are advised that the gross receipts derived from this agreement are subject to the general excise tax imposed by Chapter 237, HRS, at the current rate and, where applicable, to tangible property imported into the State of Hawaii for resale, subject to the applicable use tax imposed by Chapter 238, HRS.

Information on the Hawaii State Taxes administered by the Department of Taxation is available online at <http://tax.hawaii.gov>.

13. Tax Exempt Transaction

If, however, an Offeror is a person exempt by the HRS from paying the general excise tax and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

For evaluation purposes, pursuant to §103D-1008, HRS, a tax-exempt offer submitted in response to a solicitation shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

14. Bid Price

Unit Bid Price shall include labor, equipment, materials, transportation, overhead, profit, all applicable taxes, and any other incidental and operational expenses incurred in the performance of all obligations hereunder. Unit Bid price shall be the all-inclusive cost to the STATE and no other charges will be honored.

In case of error in extension of bid price, unit bid price shall govern.

Unit bid prices shall be based on delivery to destination as follows:

- For the Islands of Oahu, Hawaii, Maui, Kauai, Unit bid prices shall be based on delivery to school cafeteria. Unit bid price shall, upon school's request, include the stacking of delivery items in a previously-cleared storage area;
- For the Islands of Molokai and Lanai, Unit bid prices shall be based on delivery to dock or airport. The STATE, Department of Education will arrange for transportation from dock or airport to school;

Offeror must bid on all items, on all islands, to qualify for award.

15. Brochures/Specifications Literature

Offeror shall submit manufacturer's brochures and/or specifications literature for all products offered on Exhibit A, attached hereto and incorporated by reference. Upon request, Offeror shall provide, at his own expense and within five (5) calendar days from the STATE's request, additional information necessary to verify acceptability of products offered. Failure to comply with these requirements may result in rejection of products offered in Exhibit A, In addition, the STATE has the option to classify products as disapproved if the Exhibit A and its accompanying information is incorrectly completed. Product brochures and other information submitted shall become the property of the STATE and may be retained for future reference.

16. Manufacturer/Brand Name

Offeror shall indicate on the Offer page(s) the exact name of the manufacturer or brand, the manufacturer's product code number, the Offeror's label or brand name, and/or any other identifier(s) of each product offered. Failure to do so or indicating remarks such as "as specified" shall be sufficient grounds for rejection of the offer.

If additional space is needed to provide complete product identification, Offeror may attach a separate sheet for that purpose.

If any of the called-for elements of product identification are missing on the Offer page, the STATE will be unable to determine acceptability of products offered and whether the Offeror is responsive for the item offered. Offeror shall not be allowed to clarify item or product identification after bid opening. This is to ensure all offers are submitted under the same conditions with no opportunity for one Offeror having an advantage over another Offeror after exposure of offers.

17. Hawaii Products Preference

Hawaii Products Preference, although Hawaii products are preferred, shall not be factored into any award subject to this solicitation.

18. Authorized Distributor

Offeror may be requested to provide documentation from the manufacturer which verifies Offeror's status as an authorized distributor.

19. Offeror Information

Offeror shall provide information regarding its Office and Warehouse location(s) and STATE's point-of-contact, on the Exhibit C. Exhibit C shall be provided to the STATE within three (3) business days from STATE's request.

20. Liability Insurance

Work included under this agreement requires the provision of liability and property damage insurance, to remain in full force and effect during the life of this contract. Offeror shall refer to *Liability Insurance* clause for additional information regarding this requirement.

Accordingly, Offeror should consider these insurance requirements when preparing this bid.

21. Offer Guaranty

An offer guaranty (bid bond) is not required for this IFB.

PRE-APPROVED ACCEPTABLE PRODUCTS

22. Pre-Approved Acceptable Products Process

Offerors are advised that only pre-approved, acceptable products will be considered for award.

Products listed in the specifications have been researched and found to meet all necessary requirements and set a standard of quality. It is not the STATE's intention to restrict Offerors to only the manufacturers or brands named.

Parties interested in pre-qualifying products must submit the following information for each product.

Step 1 - Documentation (Data Submission Form)

At or before December 28, 2022 3:00 p.m. (HST): Interested parties must email a copy of the following documents to the STATE, Department of Education, Procurement and Contracts Branch, via email to: wendy.ebisui@k12.hi.us. Documents shall include:

1. Exhibit A, Data Submission Form (one form per product) – completed and signed;
 - a. IFB item No. and product description on Data Submission Form
 - b. Manufacturer or brand name, UPC or GTIN number, or other identifier of product
2. Copy of Manufacturer's ingredient label; and
3. Copy of Nutrition fact sheet, if applicable.

The burden of proof as to the quality and suitability of the offered product shall be upon the Submitter. Products submitted shall comply with Specifications.

The STATE has the right to request for clarification from the Submitter. Any request for clarification that is not responded to in a timely manner, may result in the Submitter's requested products being disapproved. In addition, the STATE has the option to classify products as disapproved if the Exhibit A and its accompanying information is incorrectly completed.

On or around December 29, 2022, the STATE will issue an addendum listing all products submitted for pre-qualification and will include the classification of each product as "Approved", "Pre-Qualified", or "Rejected". Products classified as "Approved" shall be considered as pre-approved by the STATE as an acceptable product. Product classified as "Pre-Qualified" shall submit Samples as per Step 2 - Sample Submission, below.

Any offer for products that have not been listed as a pre-approved acceptable product will be automatically rejected and will not be considered for award.

The STATE shall be the sole judge as to the acceptability of the submitted item(s) and its decision will be final.

Step 2 – Sample Submission, Taste Testing and Evaluation

On January 13, 2023, between 9:00 a.m. and 10:00 a.m. (HST), interested parties shall deliver one **(1) PRODUCTION case** of the pre-qualified product to Waikiki Elementary School Cafeteria at 3710 Leahi Avenue, Honolulu, HI 96815. No samples will be accepted before or after the date and time specified, unless prior arrangements have been made with the School Food Services Branch.

Samples shall be delivered in person by a broker, manufacturer, or authorized third party. Samples delivered via UPS, FedEx, USPS Mail, or other Courier will NOT be accepted. Samples will be checked in by SFSB Personnel to ensure the correct item is being delivered. Data Submission Forms will need be signed by the representative at the time of delivery. Failure to deliver samples as required herein may result in the disqualification of product(s) being submitted for the pre-approved, acceptable products process.

When the product offered is a privately labeled product, a permanent pre-printed impression on the container or on the product itself must identify the product. A label affixed by the manufacturer to identify the product is also acceptable. The mere attaching of an adhesive label by the Offeror will not be considered positive identification.

The STATE will pre-approve as acceptable only one (1) product code per manufacturer or brand per item; only those items with a 70% or higher test and evaluation score will be considered for approval. In the event multiple product codes of a single manufacturer are qualified in Step 1, all products will be subject to Step 2 for final selection of a single product code.

On or around January 17, 2023, an addendum will be issued via the HlePRO listing all products pre-approved by the STATE as an acceptable product.

Any offer for products that have not been listed as a pre-approved acceptable product will be automatically rejected and will not be considered for award.

The STATE, Department of Education shall be the sole judge as to the acceptability of the offered item(s) and its decision will be final.

OFFER SUBMITTAL

23. Submission of Offer

Offers will be received through the State of Hawaii eProcurement System (HlePRO) Public Procurement Notices Website at <https://hiepro.ehawaii.gov/welcome.html> no later than the date and time stated on the HlePRO.

Submission of an offer shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of this IFB, and that the IFB documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.

Before submitting an offer, each Offeror must:

1. examine the solicitation documents thoroughly for defects and questionable or objectionable material. Solicitation documents include this IFB, any attachments, plans referred to herein, and any other relevant documentation. Comments must be submitted in writing and received

by the STATE, Department of Education, PCB no later than seven (7) calendar days prior to the bid due date. This will allow for issuance of addenda, if necessary.

2. become familiar with State, local, and federal laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work.

All offers shall be made through the HiePRO (<https://hiepro.ehawaii.gov/welcome.html>) on the solicitation document(s) available on the HiePRO. Offers shall be completed in accordance with the solicitation instructions, and addenda, if any.

The specifications, Special Conditions, General Conditions and other documents referenced in or attached to the offer shall be considered a part of the offer submitted, whether or not attached to the offer at the time of submission. Such documents shall not be altered in anyway; any alterations so made by the Offeror may result in rejection of the offer.

Offers will be received only until the hour and date set for the close of offers. Unless otherwise stated, Offeror shall submit only one (1) offer. If more than one offer is submitted, all offers shall be rejected for that item.

Hard copy of ALL ORIGINAL OFFER PAGES AND ANY OTHER APPLICABLE DOCUMENTS AS STATED IN THE SOLICITATION must also be received by the Hawaii State Department of Education, Procurement and Contracts Branch, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii, 96797, within five (5) working days after the bid closing date.

24. Confidential Information

If an Offeror believes that any portion of his offer contains information that should be withheld as confidential, then the STATE, Department of Education, PCB should be so advised in writing.

Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Such data shall accompany the offer, be clearly marked, and shall be readily separable from the offer in order to facilitate eventual public inspection of the non-confidential portion of the offer.

Pursuant to Section 3-122-58, Hawaii Administrative Rules (HAR), the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination in accordance with Chapter 92F, Hawaii Revised Statutes (HRS). If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with Section 92F-42(12), HRS.

25. Certification of Independent Cost Determination

By submitting an offer in response to this solicitation, Offeror certifies as follows:

1. The costs in this IFB have been arrived at independently, without consultation, communication, or agreement with any other Offeror, as to any matter relating to such costs for the purpose of restricting competition.
2. Unless otherwise required by law, the costs which have been quoted in this IFB have not been knowingly disclosed by the Offeror prior to award, directly or indirectly, to any other Offeror or competitor prior to the award.
3. No other attempt has been made or will be made by the Offeror to indicate any other person or firm to submit or not to submit for the purpose of restricting competition.

26. Acceptance of Offer

Acceptance of offer, if any, will be made within sixty (60) calendar days after the close of bids and the prices quoted by the Offeror shall remain firm for the sixty day period.

BID EVALUATION

27. Disqualification of Offers

Any one or more of the following causes will be considered as sufficient for disqualification of the offer:

1. Hard copy offer not signed by an authorized individual.
2. More than one offer from an individual, firm, corporation or joint venture under the same or different names.
3. Evidence of collusion among Offerors or prices obviously unbalanced, lack of responsibility and cooperation as shown by past work, being in arrears on existing contracts with the State of Hawaii, or defaulting on previous contract(s).
4. Lack of proper equipment and/or sufficient experience to perform the work contemplated.
5. Offer received after specified deadline for close of offers.
6. Evidence of any noncompliance with any applicable law, any unauthorized additions or deletions, of submission of conditional offer, incomplete offer, or irregularities of any kind which may make the offer incomplete, indefinite, or ambiguous as to its meaning.

28. Method of Award

Award, if any, shall be made to the responsive, responsible Offeror submitting the lowest estimated TOTAL SUM BID PRICE or lowest evaluated estimated total sum bid price, if applicable. Offeror is required to bid on every item, on every island, to be considered for award.

In case of error in the extension of the total bid price, the unit bid price shall govern.

29. Protest

Pursuant to §103D-701, HRS and §3-126, HAR, "Legal and Contractual Remedies", an actual or prospective offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Any protest shall be submitted in writing to the Hawaii State Department of Education's Chief Procurement Officer, c/o the Procurement Office at the Waipahu Civic Center, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797.

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract.

The notice of award(s), if any, resulting from this solicitation shall be posted on the HlePRO and shall be posted on the Hawaii Awards and Notices Data System (HANDS) website at <https://hands.ehawaii.gov/hands/awards>.

AWARD EXECUTION

30. Price List Award

Formal written contracts and performance bonds will not be required for awards made in response to this solicitation. Successful Offerors will receive a "Notice of Award by Price List" letter to which will be

attached the price list indicating item(s) awarded. This method of award does not waive compliance with the Specifications, Special Conditions, and General Conditions, Form AG-008 (as revised).

A Hawaii State Department of Education Price List will be issued as a result of any awards made against this IFB. The Price List will be made available to all cafeterias for use throughout the contract period. Orders will be placed on an "as needed" basis during the term of the contract. The actual purchases will depend on the needs of the STATE and availability of funds.

No work shall be undertaken by the CONTRACTOR prior to the commencement date specified on the agreement. The STATE is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the CONTRACTOR prior to the official starting date.

Pursuant to Section 3-121-6, HAR, it is mandatory that the STATE, Department of Education cafeterias purchase from this price list issued by the STATE, Department of Education, Procurement and Contracts Branch. When quality level or product design is not suited to their purpose, however, an exception to purchase outside of the price list may be granted to such STATE, Department of Education cafeterias by the Procurement and Contracts Branch.

31. Responsibility of CONTRACTOR

CONTRACTOR shall furnish proof of compliance with these requirements of §3-122-112, HAR:

- Chapter 237, General Excise Tax Law;
- Chapter 383, Hawaii Employment Security Law;
- Chapter 386, Workers' Compensation Law;
- Chapter 392, Temporary Disability Insurance;
- Chapter 393, Prepaid Health Care Act; and
- One of the following:
 1. Be registered and incorporated or organized under the laws of the State of Hawaii (hereinafter referred to as a "Hawaii business"); or
 2. Be registered to do business in the State of Hawaii (hereinafter referred to as a "compliant non-Hawaii business").

The CONTRACTOR may demonstrate compliance by submitting an original consolidated CERTIFICATE OF VENDOR COMPLIANCE as issued by the State Procurement Office via the online system, "Hawaii Compliance Express." Detailed information about the system and regarding this online application process can be viewed at: <http://vendors.ehawaii.gov>.

32. Hawaii Compliance Express

A *Certificate of Vendor Compliance* may be obtained through the Hawaii Compliance Express (HCE). This service allows CONTRACTORS to register online through a simple wizard interface at <http://vendors.ehawaii.gov>. The *Certificate of Vendor Compliance* provides current compliance status as of the issuance date, satisfies requirements of Chapter 103D-310(c), HRS, and is therefore acceptable for contracting purposes. CONTRACTORS that elect to use HCE services are required to pay an annual subscription fee of twelve dollars (\$12.00) to the Hawaii Information Consortium, LLC dba NIC Hawaii.

33. Timely Submission of All Certificates

The above certificates should be applied for and submitted to the STATE, Department of Education, PCB as soon as possible. If a valid certificate is not submitted on a timely basis for award, an offer otherwise responsive and responsible may not receive the award.

34. Failure to Execute Award

Normally, award shall be made within sixty (60) calendar days after the close of bids but in no case will

The procuring of such required insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this agreement. Notwithstanding said policy(ies) of insurance, CONTRACTOR shall be obligated for the full and total amount of any damage, injury, or loss caused by the CONTRACTOR, its employees, officers, or agents, in connection with this Contract.

CONTRACTOR shall notify the STATE, via written notice within twenty-four (24) hours should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

36. Availability of Funds

This agreement is subject to the availability of funds. Pursuant to Section 103D-309, HRS, except in certain instances, no contract or agreement entered into between the STATE and the CONTRACTOR shall be binding or of any force unless the Chief Financial Officer (CFO) certifies that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the agreement.

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

PRICE LIST PRICE ADJUSTMENTS

37. Pricing Adjustments

Once the Price List becomes effective, Price Adjustments will be allowed once every six (6) months.

CONTRACTOR shall be required to hold their bid prices for the first six (6) months of the agreement. Thereafter, once every six (6) months, CONTRACTOR is allowed to review their current price list pricing and adjust current price list prices based on the inflation rate published by the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for the Honolulu area. Website:

https://www.bls.gov/regions/west/news-release/consumerpriceindex_honolulu.htm

The Price Index link provided above is an index specific to Honolulu and will encompass the increase in freight, if any.

Should CONTRACTOR choose to adjust prices, CONTRACTOR shall submit, a written request to the CA and/or POC with a copy to PCB. Written request shall be submitted at least thirty (30) days prior to the effective date of the requested price change. The written request shall include, but is not limited to:

1. Documentation or verification that the increase is the result of the inflation rate published by the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for the Honolulu area;
2. CONTRACTOR's cost and shipping for the period of the prior agreed upon price, or for the first request for price adjustment, base contract price; and
3. CONTRACTOR's comparison to the "new" cost per food item.

In the event of a price decrease in the rate published by the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for the Honolulu area, the STATE shall be entitled to reductions. The CONTRACTOR shall notify the STATE within five (5) business days of such price decrease.

PERFORMANCE OF CONTRACT

38. Authority of the STATE, Department of Education

The STATE, Department of Education shall decide all questions which may arise as to the work performed, as to the manner of such performance, as to the interpretation of any term, condition or provision, as to the applicability and interpretation of any law, rule or regulation, policies and procedures, as to compensation, or additional reason to service, and as to any other matter which may arise under the Contract. The decision of the STATE, Department of Education in such matters shall be final provided that decision is not in violation of law and not arbitrary, capricious or characterized by abuse of discretion.

39. Quantities

Quantities listed are estimates for the period specified. No guarantee to purchase the exact amount listed is intended or implied. For this reason, Offerors shall submit an offer only on regular stock items to avoid inventory hardships that could arise from stocking materials for State use only. In the event the estimated requirements do not materialize in the quantities listed, such failure shall not constitute grounds for equitable adjustment under this award.

The STATE shall have the right to purchase larger or smaller quantities at the prices offered. The CONTRACTOR may, at his option, request approval from the STATE, Department of Education's Procurement Office to terminate any line item of the award when accumulated purchases for that line item exceed the estimated quantity by 25 percent or more. The request to terminate a line item shall be accompanied by documentation evidencing the accumulated purchases.

The request to terminate must be in writing to the STATE, Department of Education's Procurement Officer and shall include a copy of the CONTRACTOR's cumulative record of purchases for the line item; the record shall list the ordering agency, transaction date, and quantity sold. The STATE, Department of Education's Procurement Officer will determine the termination date within ten (10) days from date of receipt of the request.

40. Orders

During the award period, as products are required, STATE, Department of Education cafeterias will submit orders via CONTRACTOR's on-line ordering system, email, fax, or phone to CONTRACTOR by 3:00 p.m., ten (10) business days prior to the necessary delivery date. CONTRACTOR shall provide order confirmations to ordering schools within one (1) business day of receiving orders. All orders received by the CONTRACTOR during the award period must be honored and the CONTRACTOR is obliged to deliver according to the award terms and within the required delivery time. If a CONTRACTOR is unable to deliver because product is temporarily out of stock, it shall be the CONTRACTOR'S responsibility to notify the ordering cafeteria of the shortages of the awarded items at **least five (5) days before the requested delivery date.**

40.1 Cancellation of Orders

The STATE, Department of Education may cancel an order with advance cancellation notice to a CONTRACTOR by 2:00 p.m. at least five (5) business days prior to scheduled delivery. The STATE, Department of Education will be responsible for payment of the order if timely cancellation notice is not submitted to the CONTRACTOR.

41. Delivery Requirement

Deliveries of all orders shall be completed within ten (10) business days after receipt of order. For orders received prior to ten (10) business days of requested delivery dates, CONTRACTOR shall deliver on the requested delivery date. Deliveries shall be made to the individual cafeterias at locations designated on the orders.

The minimum order for delivery shall be seventy-five dollars (\$75.00). The STATE reserves the right to include products from other price lists as well as non-bid items to meet this minimum order requirement. Delivery of orders totaling less than seventy-five dollars (\$75.00) may be made at the CONTRACTOR's option and according to CONTRACTOR's delivery schedule. CONTRACTOR is required to deliver all items outstanding at the end of the award period if order was received during the award period.

Deliveries to STATE, Department of Education school cafeterias shall be made between 6:00 a.m. and 2:00 p.m. Deliveries shall be scheduled for at least two (2) non-consecutive business days per week for all schools on Oahu, Hawaii, Maui (excluding Hana), and Kauai. (Note: Friday and Monday are considered "consecutive business days" since no business is transacted on Saturday and Sunday.)

For Molokai and Lanai, CONTRACTOR shall deliver to the dock or airport one (1) day per week. The STATE will arrange for transportation to the school(s) from the dock.

For Hana, CONTRACTOR shall deliver or shall arrange for delivery to Hana, at minimum, one (1) day per week.

Upon the STATE's request, CONTRACTOR shall stack delivered cases in a previously-cleared storage area.

The CONTRACTOR shall deliver orders on Monday through Friday, no earlier than 6:00 a.m. and be completed no later than 2:00 p.m., excluding the following specified holidays, and considering individual circumstances of the schools (including, but not limited to, school closures due to inclement weather, natural disasters, school designated waiver days, and pandemics):

- | | |
|---------------------------------------|-----------------------------------|
| a. Independence Day | g. Dr. Martin Luther King Jr. Day |
| b. Statehood Day | h. President's Day |
| c. Labor Day | i. Kuhio Day |
| d. Election Day (if applicable) | j. Good Friday |
| e. Veteran's Day | k. Memorial Day |
| f. Thanksgiving Day and the day after | l. Kamehameha Day |

In compliance with Title 11, Chapter 50, Section 31, Hawaii Administrative Rules (HAR) related to Food Safety Code, deliveries of all frozen products shall be made in vehicles with refrigeration systems capable of maintaining the proper frozen state, 32 degrees Fahrenheit or less, during and upon delivery. All refrigerated products shall also be delivered in vehicles with refrigeration systems capable of maintaining the product at 41 degree Fahrenheit or below during and upon delivery. The ordering school reserves the right not to accept any frozen/refrigerated deliveries made in non-temperature-controlled vehicles.

42. Failure to Deliver

CONTRACTOR shall be obliged to deliver products under this award in accordance with the terms and conditions stated herein. If a CONTRACTOR is unable to deliver because product is temporarily out of stock, it shall be the CONTRACTOR's responsibility to notify the ordering cafeteria of the shortages on the awarded items at least five (5) days before the requested delivery date. CONTRACTOR shall then obtain prior approval from the STATE, Department of Education, SFSB and the ordering cafeteria to deliver an acceptable substitute, at the same bid price and under the same terms and conditions of this award. It shall be the CONTRACTOR's responsibility to obtain such substitute. In the event a CONTRACTOR consistently

needs to substitute or refuses to substitute products, the STATE reserves the right to terminate the award and/or initiate the debarment process pursuant to Chapter 3-126, Legal and Contractual Remedies, HAR.

If an item is backordered or cannot be delivered within the required time frame for any reason, it shall be the CONTRACTOR's responsibility to notify the state agency of the backorder or delayed delivery status. Notification shall be made within twenty-four (24) hours of receipt of order. At that time, the state agency shall have the option to cancel the order and obtain similar products from another source.

43. Vendor and Product Evaluation

The School Food Services Branch will distribute SFSB Form 12, Evaluation of Good and Services, to the School Food Service Managers with the issuance of the resulting price list.

Product Evaluation. Upon receipt of complaint, CONTRACTOR shall be notified of product quality. CONTRACTOR shall follow up with the manufacturer and respond to the SFSB as to what remedies have or will be taken to correct the problem. If product quality is not corrected and the complaint(s) persist, steps will be taken to delete product from the price list.

Vendor Evaluation. In the event of complaints regarding CONTRACTOR's services (i.e. delivery delays, numerous out of stock, failure to notify manager of none delivery, etc.) the SFSB will notify the CONTRACTOR. Within one (1) week of notification, the CONTRACTOR shall take corrective measures to resolve the complaint, and inform the SFSB of action taken.

Should the CONTRACTOR consistently receive complaints for poor service or refuses to resolve the complaints, the STATE reserves the right to terminate the contract and/or initiate the debarment process pursuant to Chapter 3-125, HAR, Legal and Contractual Remedies.

The resolving of complaints pursuant to product and CONTRACTORS evaluation notifications shall be done at no additional charge to the STATE.

44. Confidentiality Obligations

In the course of performing under this agreement, the CONTRACTOR will receive, be exposed to or acquire confidential information, which may include but not be limited to, names, addresses, telephone numbers, birthdates, social security numbers, medical information, and other employment information, written or oral, fixed in hard copy or contained in any computer database or computer readable form (hereinafter referred to as "Confidential Information"). The CONTRACTOR, including its employees, agents, representatives, and assigns (i) shall not disclose to any third party any Confidential Information, except as specifically permitted by the STATE, (ii) shall only permit use of such Confidential Information by employees, agents, representatives, and assigns having a need to know in connection with performance under this agreement, and (iii) shall advise each of their employees, agents, representatives, and assigns of their obligations to keep such Confidential Information confidential in compliance with all relevant state and federal laws.

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

CONTRACTOR may not share data received under this agreement with any other entity without the prior written approval of the STATE.

CONTRACTOR will be responsible for safeguarding the confidentiality of all personal records it receives

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

45. Exclusion of Specific Workers

The STATE reserves the right to require the CONTRACTOR to remove an employee, agent, subcontractor or volunteer (Worker) from performing work under this contract. The Contract Administrator shall notify the CONTRACTOR in writing and this exclusion of a specific Worker(s) shall take effect as indicated on the notice. The CONTRACTOR may appeal this decision to the Contract Administrator, in writing within ten (10) working days of receipt of the notice. Removal of the employee, agent, subcontractor or volunteer shall remain in effect pending the outcome of the appeal. This provision shall not infringe upon the right of the CONTRACTOR to employ the removed individual, but shall apply to any work requiring interaction with the STATE, its employees or students.

46. Records Retention

Should the CONTRACTOR be aware of or be made aware of any dispute, disagreement, or request relating to the files, books, or records prior to their destruction, the CONTRACTOR shall retain the files, books, and records until said dispute, disagreement, or request has been fully resolved, including any potential lawsuits or appeals. Said files, books, and records may thereafter be destroyed upon obtaining the agreement of the STATE.

PAYMENT

47. Invoicing

Upon delivery of products, CONTRACTOR shall forward an original and one (1) copy of the invoice directly to the STATE, Department of Education cafeterias as listed on the order. CONTRACTOR's invoices shall include product descriptions exactly as stated on the STATE, Department of Education price list. Invoice should reference both the Price List number and the solicitation number.

48. Payment

Section 103-10, HRS, provides that the STATE shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the STATE will reject any offer submitted with a condition requiring payment within a shorter period. Further, the STATE will reject any offer with a condition requiring interest payment greater than that allowed by Section 103-10, HRS, as amended.

The STATE will not recognize any requirement established by the CONTRACTOR and communicated to the STATE after award of the agreement which requires payment within a shorter period or interest payment not in conformance with statute.

APPROVALS

49. State's General Conditions

The Special Conditions shall serve to supplement the General Conditions; both documents remain part of the contract with full force and effect. In the case of a conflict between the General Conditions and Special Conditions, the Special Conditions shall control to the extent necessary to resolve the conflict.

50. Approvals

Any agreement arising out of this offer may be subject to the approval of the Department of the Attorney General as to form, and is subject to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.

EXHIBIT A
Data Submission Form

Attached

**EXHIBIT A
DATA SUBMISSION FORM**

Product Description: _____ Bid Item Number: _____
Manufacturer: _____ Brand Name: _____
UPC or GTIN Number: _____ Product Code: _____
Case Weight: _____ pounds per ounce Per Serving Weight: _____ ounce
Number of servings per case: _____

GROCERY PRODUCTS

The following documents must be submitted along with this form:

- Product Data Sheet
 - a) Nutritional Information (Nutrition Facts and Nutrient Data Sheet)
 - b) Ingredients list **including Allergen Information**
- Product Information indicating the following:
 - a) Case code
 - b) Pack size
 - c) Yield

CHILD NUTRITION LABEL (CN) PRODUCTS (as applicable)

In addition to documents required for Grocery Products, as listed above, the following documents are required:

- CN Label (as it will appear on the Product Case) must show credit toward food components and serving size
- OR**
- Manufacturer's Product Formulation Statement (PFS)

BUY AMERICA CERTIFICATION

Certification of the percentage of U.S. content in products supplied in this IFB is required, if certification is not provided the product will be disqualified.

We will require bidders to certify that the item listed above was processed in Hawaii and contains over 51% of its agricultural food component from Hawaii.

I certify that this product contains at least **51%** of Hawaii grown and/or raised ingredients. Yes No

DATA SUBMISSION FORM COMPLETED AND SUBMITTED BY:

I certify that the above information is correct and accurate to the best of my knowledge and products meet and/or exceed specifications.

Print Name _____ Representative Company _____
Signature _____ Date _____ Telephone Number _____
Hawaii Brokerage _____ Hawaii Brokerage Representative _____

.....
Sample Submitted by:

Print Name _____ Representative Company _____
Signature _____ Date _____ Telephone Number _____

DOE USE ONLY:

Data Submission: Accept Reject – Reason _____ Reviewed by _____

Testing & Evaluation Percentage: _____ Sample/Testing: Accept Reject by _____

EXHIBIT B
List of Schools that Fall Under the State, Department Of Education, SFSB Program

Attached

EXHIBIT B
LIST OF SCHOOLS THAT FALL UNDER THE SFSB PROGRAM
(Contact SFSB for any changes to this list)

NO.	SCHOOL	PHONE	ADDRESS	CITY	ZIP
1	Aina Haina	377-2422	801 Hind Drive	Honolulu	96821
2	Aliiolani	733-4754	1240 7th Avenue	Honolulu	96816
3	Anuenue	733-8478	2528 10th Ave.	Honolulu	96816
4	Central Middle	587-4400	1302 Queen Emma St.	Honolulu	96813
5	Jefferson	971-6930	324 Kapahulu Ave.	Honolulu	96815
6	Kaahumanu	587-4422	1141 Kinau St.	Honolulu	96814
7	Kahala	733-4670	4559 Kilauea Ave.	Honolulu	96816
8	Kaimuki High	733-4908	2705 Kaimuki Ave.	Honolulu	96816
9	Kaimuki Middle	733-4805	631 18th Ave.	Honolulu	96816
10	Kaiser High	394-1200 xt.2323	511 Lunalilo Home Road	Honolulu	96825
11	Kaiulani	832-3166	783 N. King Street	Honolulu	96817
12	Kalani High	305-0519	4680 Kalaniana'ole Hwy.	Honolulu	96821
13	Kauluwela	587-4456	1486 Aala Street	Honolulu	96817
14	Kawananakoa M	307-0353	49 Funchal Street	Honolulu	96813
15	Lanakila	587-4478	717 N. Kuakini St.	Honolulu	96817
16	Likelike	832-3375	1618 Palama Street	Honolulu	96817
17	Lincoln	307-2922	615 Auwailimu St.	Honolulu	96813
18	Lunalilo	307-2842	810 Pumehana St.	Honolulu	96826
19	Maemae	595-2973	319 Wyllye Street	Honolulu	96817
20	Manoa	988-1866	3155 Manoa Road	Honolulu	96822
21	McKinley High	594-0462	1039 S. King Street	Honolulu	96814
22	Niu Valley Middle	377-2400	310 Halemaumau Street	Honolulu	96821
23	Noelani	988-1850	2655 Woodlawn Drive	Honolulu	96821
24	Nuuanu	595-5429	3055 Puiwa Lane	Honolulu	96817
25	Palolo	733-4704	2106 10th Avenue	Honolulu	96816
26	Pauoa	587-4504	2300 Pauoa Road	Honolulu	96813
27	Roosevelt High	307-0562	1120 Nehoa Street	Honolulu	96822
28	Royal	587-4516	1519 Queen Emma Street	Honolulu	96813
29	Stevenson M	587-4532	1202 Prospect Street	Honolulu	96822
30	Waikiki	971-6903	3710 Leahi Avenue	Honolulu	96815
31	Washington M	973-0182	1633 S. King Street	Honolulu	96826
32	Wilson	733-4744	4945 Kilauea Avenue	Honolulu	96816
33	Hawaii School for Deaf & Blind	307-6923	3440 Leahi Avenue	Honolulu	96816

EXHIBIT B
LIST OF SCHOOLS THAT FALL UNDER THE SFSB PROGRAM
(Contact SFSB for any changes to this list)

NO.	SCHOOL	PHONE	ADDRESS	CITY	ZIP
34	Dole Middle	832-3347	1803 Kam IV Road	Honolulu	96819
35	Farrington High	305-5153	1564 N. King Street.	Honolulu	96817
36	Fern	832-3047	1121 Middle Street	Honolulu	96819
37	Kalakaua Middle	832-3141	821 Kalihi Street	Honolulu	96819
38	Kalihi	305-2430	2471 Kula Kolea Dr.	Honolulu	96817
39	Kalihi-Kai	832-3330	626 McNeill Street	Honolulu	96817
40	Kalihi-Uka	832-3315	2411 Kalihi Street	Honolulu	96819
41	Kalihi-Waena	832-3215	1240 Gulick Avenue	Honolulu	96819
42	Kapalama	305-5550	1601 N. School Street	Honolulu	96817
43	Puuhale	832-3196	345 Puuhale Road	Honolulu	96819
44	Aiea High	483-7312	98-1276 Ulune Street	Aiea	96701
45	Aiea Inter	483-7233	99-600 Kulaweia Street	Aiea	96701
46	Aliamanu I	421-4105	3271 Salt Lake Blvd.	Honolulu	96818
47	Daniel K. Inouye Elem.	305-3440	Waianae & Ayers Aves.	Wahiawa	96786
48	Helemano	621-0808	1001 Ihi Ihi Avenue	Wahiawa	96786
49	Hickam	421-4161	Manzelman Circle, HAFB	Honolulu	96818
50	Iliahi	621-7500	2035 California Avenue	Wahiawa	96786
51	Kaala	305-3952	130 California Avenue	Wahiawa	96786
52	Kipapa	627-7310	95-075 Kipapa Drive	Mililani	96789
53	Leilehua High	305-3112	1515 California Avenue	Wahiawa	96786
54	Makalapa	421-4113	4435 Salt Lake Blvd.	Honolulu	96818
55	Mililani High	307-4185	95-1200 Meheula Pkwy	Mililani	96789
56	Mililani Ike	626-0940x252	95-1330 Lehiwa Drive	Mililani	96789
57	Mililani Mauka	305-1761	95-1111 Makaikai Street	Mililani	96790
58	Mililani Middle	627-9010x73109	95-1140 Lehiwa Drive	Mililani	96789
59	Moanalua	305-1268	1337 Mahiole Street	Honolulu	96819
60	Moanalua High	305-1169	2825 Ala Ilima Street	Honolulu	96819
61	Moanalua Middle	305-1330	1289 Mahiole Street	Honolulu	96819
62	Mokulele	421-4189	250 Aupaka St., HAFB	Honolulu	96818
63	Nimitz	307-4431 (sfsm of	520 Main Street	Honolulu	96818
64	Pearl Harbor	421-4136	1 Moanalua Ridge	Honolulu	96818
65	Pearl Harbor Kai	421-4254x275	1 C Avenue & Center Drive	Honolulu	96818
66	Radford High	421-4221	4361 Salt Lake Blvd.	Honolulu	96818

EXHIBIT B
LIST OF SCHOOLS THAT FALL UNDER THE SFSB PROGRAM
(Contact SFSB for any changes to this list)

NO.	SCHOOL	PHONE	ADDRESS	CITY	ZIP
67	Red Hill	831-7865	1265 Ala Kula Place	Honolulu	96819
68	Scott	483-7227	98-1230 Moanalua Road	Aiea	96701
69	Solomon	305-1841	211 Carpenter Street	Wahiawa	96786
70	Wahiawa	622-6393 ext 280	1402 Glen Avenue	Wahiawa	96786
71	Wahiawa Inter	305-3352	275 Rose Street	Wahiawa	96786
72	Waiialua	307-2621	67-020 Waiialua Beach Rd.	Waiialua	96791
73	Waiialua H/I	307-2442	67-160 Farrington Hwy.	Waiialua	96791
74	Waimalu	483-7215	98-825 Moanalua Road	Aiea	96701
75	Wheeler Inter	621-8655	Wheeler AFB	Wahiawa	96786
76	August Ahrens	307-7250	94-1170 Waipahu Street	Waipahu	96797
77	Barber's Point	673-7404	3001 Boxer Road	Kapolei	96706
78	Campbell High	305-3674	91-980 North Road	Ewa Beach	96706
79	Ewa Beach	689-1247	91-740 Papii Road	Ewa Beach	96706
80	Ewa Makai Middle	687-9488	91-6291 Kapolei Parkway	Ewa Beach	96706
81	Highlands Inter	453-6487	1460 Hoolaulea Street	Pearl City	96782
82	Holomua	685-2006	91-1561 Keaunui Drive	Ewa Beach	96706
83	Honowai	307-7140	94-600 Honowai Street	Waipahu	96797
84	Honouliuli Middle	307-7882	91-559 Maunakapu Street	Ewa Beach	96706
85	Hookele Elem.	305-8590	511 Kunehi Street	Kapolei	96707
86	Iroquois Point	499-6500x296	5553 Cormorant Avenue	Ewa Beach	96707
87	Kapolei	305-8752	91-1119 Kamaaha Loop	Kapolei	96707
88	Kapolei High	305-8052	91-5005 Kapolei Parkway	Kapolei	96707
89	Kapolei Middle	693-7025x255	91-5335 Kapolei Parkway	Kapolei	96707
90	Keone'ula Elem	307-2132	91-970 Kaileolea Drive	Ewa Beach	96706
91	Lehua	307-3721	791 Lehua Avenue	Pearl City	96782
92	Maili	305-4600	87-360 Kulaaupuni Street	Waianae	96792
93	Makaha	695-7909	84-200 Ala Naauao Place	Waianae	96792
94	Manana	454-5317	1147 Kumano Street	Pearl City	96782
95	Nanaikapono	305-7890	89-153 Mano Avenue	Waianae	96792
96	Nanakuli High	668-5860	89-980 Nanakuli Avenue	Waianae	96792
97	Palisades	307-4750	2306 Auhuhu Street	Pearl City	96782
98	Pearl City High	307-5591	2100 Hookiekie Street	Pearl City	96782
99	Waianae High	307-8402	85-251 Farrington Hwy.	Waianae	96792

EXHIBIT B
LIST OF SCHOOLS THAT FALL UNDER THE SFSB PROGRAM
(Contact SFSB for any changes to this list)

NO.	SCHOOL	PHONE	ADDRESS	CITY	ZIP
100	Waianae Inter	697-7141	85-626 Farrington Hwy.	Waianae	96792
101	Waikele	307-6150	94-1035 Kukula Street	Waipahu	96797
102	Waipahu	675-0156	94-465 Waipahu Street	Waipahu	96797
103	Waipahu High	675-0235	92-1211 Farrington Hwy.	Waipahu	96797
104	Waipahu Inter	307-9072	94-455 Farrington Hwy.	Waipahu	96797
105	Aikahi	305-6760	281 Ilihaui Street	Kailua	96734
106	Castle High	305-0782	45-386 Kaneohe Bay Dr.	Kaneohe	96744
107	Enchanted Lake	266-7802	770 Keolu Drive	Kailua	96734
108	Hauula	293-8929	54-046 Kamehameha Hwy	Hauula	96717
109	Heeia	233-5680	46-202 Haiku Road	Kaneohe	96744
110	Kahaluu	239-3106	47-280 Waihee Road	Kaneohe	96744
111	Kahuku H/I	305-7493	56-490 Kamehameha Hwy	Kahuku	96731
112	Kailua	266-7884	315 Kuulei Road	Kailua	96734
113	Kailua High	266-7908	451 Ulumanu Drive	Kailua	96734
114	Kailua Inter	266-7973	145 S. Kainalu Drive	Kailua	96734
115	Kainalu	305-0320	165 Kaiholu Street	Kailua	96734
116	Kalaheo High	254-7954	730 Iliaina Street	Kailua	96734
117	Kaneohe	233-5640	45-495 Kamehameha Hwy	Kaneohe	96744
118	Kapunahala	233-5657	45-828 Anoi Road	Kaneohe	96744
119	Keolu	266-7816	1416 Keolu Drive	Kailua	96734
120	King Inter	233-5739	46-155 Kamehameha Hwy	Kaneohe	96744
121	Maunawili	266-7825	1465 Ulupii Street	Kailua	96734
122	Mokapu	254-7930	1193 Mokapu Blvd.	Kailua	96734
123	Parker	233-5690	45-259 Waikalua Road	Kaneohe	96744
124	Pope	259-0456	41-133 Huli Street	Waimanalo	96795
125	Puohala	305-5940	45-233 Kulauli Street	Kaneohe	96744
126	Waiahole	239-3118	48-215 Waiahole Valley Rd	Kaneohe	96744
127	Waimanalo E/I	259-0470	41-1330 Kalaniana'ole Hwy	Waimanalo	96795
128	De Silva	974-4859	278 Ainako Avenue	Hilo	96720
129	Hilo High	313-5676	556 Waianuenu Avenue	Hilo	96720
130	Hilo Inter	974-4954	587 Waianuenu Avenue	Hilo	96720
131	Hilo Union	933-0900	506 Waianuenu Avenue	Hilo	96720
132	Holualoa	322-1527	76-5957 Mamalahoa Hwy	Holualoa	96725

EXHIBIT B
LIST OF SCHOOLS THAT FALL UNDER THE SFSB PROGRAM
(Contact SFSB for any changes to this list)

NO.	SCHOOL	PHONE	ADDRESS	CITY	ZIP
133	Honokaa H/I	313-7040	45-527 Pakalana Street	Honokaa	96727
134	Kahakai	313-6252	76-147 Royal Poinciana Dr.	Kailua-Kona	96740
135	Kalaniana'ole E/I	964-9700	27-330 Old Mamalahoa Hwy	Papaikou	96781
136	Kapiolani	974-4006	966 Kilauea Avenue	Hilo	96720
137	Ka'u H & Pahala	313-4151	96-3150 Pikake St.	Pahala	96777
138	Keaau Elem	313-4660	16-680 Keaau-Pahoa Rd	Keaau	96749
139	Keaau High	313-3370	16-725 Keaau-Pahoa Rd	Keaau	96749
140	Keaau Middle	313-4829	16-565 Keaau-Pahoa Rd	Keaau	96749
141	Kealakehe High	313-3646	74-5000 Puohuluhuli Street	Kailua-Kona	96740
142	Keonepoko	313-4582	15-890 Kahakai Blvd.	Pahoa	96778
143	Kealakehe Inter	327-4663	74-5062 Onipaa Street	Kailua-Kona	96740
144	Keaukaha	974-4185	240 Desha Avenue	Hilo	96720
145	Kohala H/I	889-7130	54-3611 Akoni Pule Hwy.	Kapaau	96755
146	Konawaena High	323-4573	81-1043 Konawaena Sch Rd.	Kealakekua	96750
147	Konawaena El.	323-7569	81-901 Onouli Road	Kealakekua	96750
148	Mt. View	968-2307	18-1235 Volcano Rd.	Mt. View	96771
149	Naalehu E/I	313-4050	95-5545 Mamalahoa Hwy.	Naalehu	96772
150	Paauiilo E/I	776-7716	43-1497 Hauola Rd.	Paauiilo	96776
151	Pahoa H	965-2162	15-3038 Puna Road	Pahoa	96778
152	Waiakea H	974-4832	155 W. Kawili Street	Hilo	96720
153	Waiakea I	981-7243	200 W. Puainako Street	Hilo	96720
154	Waiakeawaena	981-7213	2420 Kilauea Avenue	Hilo	96720
155	Waikoloa	883-2379	68-1730 Hooke Street	Waikoloa	96738
156	Waimea E	887-6099	67-1225 Mamalahoa Hwy	Kamuela	96743
157	Baldwin High	727-3131	1650 Kaahumanu Avenue	Wailuku	96793
158	Haiku	575-3008	105 Pauwela Road	Haiku	96708
159	Hana H/E	248-4825	4111 Hana Hwy.	Hana	96713
160	Iao	727-5253	1910 Kaohu Street	Wailuku	96793
161	Kahului	873-3061	410 Hina Avenue	Kahului	96732
162	Kalama Inter	573-8758	120 Makani Road	Makawao	96768
163	Kamalii	875-5961	180 Kealii Alanui	Kihei	96753
164	Kamehameha III	662-3960	611 Front Street	Lahaina	96761
165	Kihei	727-4440	250 E. Lipoa Street	Kihei	96753

EXHIBIT B
LIST OF SCHOOLS THAT FALL UNDER THE SFSB PROGRAM
(Contact SFSB for any changes to this list)

NO.	SCHOOL	PHONE	ADDRESS	CITY	ZIP
166	King Kekaulike High	573-8733	121 Kula Highway	Pukalani	96788
167	Kula	876-7617	5000 Kula Highway	Kula	96790
168	Kulanihakoi High	TBD	901 Piilani Highway	Kihei	96753
169	Lahaina Inter	662-4025	871 Lahainaluna Road	Lahaina	96761
170	Lahainaluna High	662-3979x241	980 Lahainaluna Road	Lahaina	96761
171	Lihikai	727-4500	335 S. Papa Avenue	Kahului	96732
172	Lokelani Inter	875-5973	1401 Liloa Street	Kihei	96753
173	Makawao	727-5721	3542 Baldwin Avenue	Makawao	96768
174	Maui High	873-3005	660 S. Lono Avenue	Kahului	96732
175	Maui Waena Inter	727-4270	795 Onehee Street	Kahului	96732
176	Pukalani	727-3913	2945 Iolani Street	Pukalani	96788
177	Waihee	727-5342	2125 Kahekili Highway	Wailuku	96793
178	Wailuku	727-5591	355 South High Street	Wailuku	96793
179	Pomaikai	873-3415	4650 South Kamehameha Ave	Kahului	96732
180	Kaunakakai	567-7230	30 Ailoa St.	Kaunakakai	96748
181	Kilohana	774-8427	334 Kamehameha V Hwy.	Kaunakakai	96748
182	Molokai High	567-6962	2140 Farrington Ave.	Hoolehua	96729
183	Lanai H/E	565-7906	555 Fraser Ave.	Lanai City	96763
184	Eleele	335-2118	4750 Uliuli Rd.	Eleele	96705
185	Kalaheo	332-6800	4400 Maka Road	Kalaheo	96741
186	Kapaa High	821-4409	4695 Mailihuna Road	Kapaa	96746
187	Kapaa Middle	821-6966	4867 Olokena Road	Kapaa	96746
188	Kauai H/I	274-3165	3577 Lala Road	Lihue	96766
189	Kamakahahei	241-3221	4431 Nuhou Street	Lihue	96766
190	King Kaunualii	241-3162	4381 Hanamaulu Road	Lihue	96766
191	Kekaha	337-7662	8140 Kekaha Rd.	Kekaha	96752
192	Kilauea	828-0338	2440 Kolo Road	Kilauea	96754
193	Koloa	742-8452	3223 Poipu Road	Koloa	96756
194	Waimea High	338-6820	9707 Tsuchiya Rd.	Waimea	96796
195	Wilcox	274-3024	4319 Hardy Street	Lihue	96766

EXHIBIT C
Offeror Information

Exhibit C shall be provided to the STATE within three (3) business days from STATE's request.

Offeror shall provide information regarding its Distributor's permanent State of Hawaii-based business office and the applicable warehouse(s). Offeror shall print a copy of the page below for each of the islands: Oahu, Hawaii, Maui, and Kauai.

Island: _____

A. State of Hawaii-based Office

Offeror shall provide the following information regarding its Distributor's State of Hawaii Business Office that they intend to use in the performance of obligations under this solicitation, including the Point of Contact. (Reference Special Conditions, Offeror Qualifications).

Company Name _____

Address _____

Telephone Number _____

Fax Number _____

E-Mail Address (if applicable) _____

Point of Contact _____

B. Warehouse

Offeror shall provide the following information regarding its Distributors Warehouse(s) Offeror intends to use in the performance of obligations under this solicitation. (Reference Special Conditions, Offeror Qualifications).

Address _____

Telephone Number _____

Fax Number _____

E-Mail Address (if applicable) _____

C. Delivery Schedule

Except for Hana, Molokai, and Lanai, which shall have deliveries one (1) day per week, deliveries shall be scheduled for at least two (2) non-consecutive business days per week to all schools on Oahu, Hawaii, Maui and Kauai. (Note: Friday and Monday are considered "consecutive business days" since no business is transacted on Saturday and Sunday).

Island/Group	Delivery Days (between 6:00 a.m. and 2:00 p.m.)
_____	_____
_____	_____

Island/Group (*continued*)

Delivery Days (between 6:00 a.m. and 2:00 p.m.)

D. Documentation

The Offeror shall submit the following documents. If documents apply to Offeror's Distributor, Offeror shall provide their Distributor's documents:

- a. Copy of Current State of Hawai'i Department of Health Food Safety Inspection
- b. Copy of Current State of Hawai'i Food Establishment Permit
- c. Copy of the most recent Accredited Third Party Certification review
- d. Copy of the most recent Food Safety Management Systems review
- e. Information as to the conversion method and location of the packing code date

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE 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 with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. 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 Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, 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. Conflicts 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, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their 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 acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and 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 arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

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

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

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

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

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

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.