HAWAII STATE DEPARTMENT OF EDUCATION

PROCUREMENT AND CONTRACTS BRANCH

NOVEMBER 19, 2026

INVITATION FOR BIDS

Number IFB D27-075

SEALED BIDS

TO

FURNISH AND DELIVER SUPPLEMENTAL FRESH PRODUCE

TO VARIOUS HAWAII STATE DEPARTMENT OF EDUCATION

SCHOOL CAFETERIAS ON HAWAII ISLAND AND KAUAI

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

on

DECEMBER 1, 2026

Offerors interested in responding to this electronic solicitation must be registered on the HIePRO (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 HIePRO solicitation.

Questions relating to this solicitation may be directed to Albert Perry, Procurement and Contracts Support Specialist, at telephone (808) 675-0130, via facsimile (808) 675-0133, or via email at albert.k.perry@k12.hi.us.

FURNISH AND DELIVER SUPPLEMENTAL FRESH PRODUCE
TO VARIOUS HAWAII STATE DEPARTMENT OF EDUCATION
SCHOOL CAFETERIAS ON HAWAII ISLAND AND KAUAI
IFB D27-075

OFFER PAGE OF-1

Exact Legal Name of Offeror, including "dba" or "division" of a corporation (furnish the exact legal name of the entity under which an awarded contract, if any, will be executed):			
Address: Principal Place of Business (may not be a P.O. Box):			
Mailing Address (only if different):			
Payment Address (only if different)			
Offeror's Primary Contact Person: Name			
Title			
Telephone Number		Fax Number	
Email Address			
Federal Tax Identification Number:			
State of Hawaii General Excise Tax License Number:			
Type of Business Entity (check one):	☐ Sole Proprietor ☐ Partnership ☐ Corporation ☐ Joint Venture ☐ Limited Liability Company ☐ Other _____		
Names of all Offeror's parent, affiliate and subsidiary organizations:			
Offeror is either:	☐ A **Hawaii business** incorporated or organized under the laws of the State of Hawaii; **OR** ☐ A **Compliant Non-Hawaii business** incorporated or organized under the laws of the State of _____ on (date) _____, and, if applicable, registered with the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii.		

The undersigned has carefully read and understands the terms and conditions specified herein and hereby submits the following offer to provide the goods and/or perform the work specified herein, all in accordance with the true intent and meaning thereof, and further that the Offeror shall comply with all terms, conditions and requirements of the solicitation. The undersigned further understands and agrees that by submitting this offer, 1) the undersigned is declaring the undersigned's offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) the undersigned is certifying that the price(s) submitted was (were) independently arrived at without collusion.

_____ _____
Authorized (Original in ink) Signature Name (printed)

_____ _____
Title Date

GROUP 5 - LOCALLY GROWN
GEOGRAPHIC AREA:
ISLAND OF HAWAII-WEST

Offeror: _____

The following offer is hereby submitted:

Item Number	Item Description	Unit	(A) 6-Month Estimated Quantities	(B) Unit Bid Price	(C) Total Bid Price (A times B equals C)
	Apple, Fuji, 100 Count	pound	Not Applicable	Not Applicable	Not Applicable
HWE-2L	Banana	pound	500	$ -	$ -
HWE-3L	Bell Pepper, Green	pound	25	$ -	$ -
	Bell Pepper, Red	pound	Not Applicable	Not Applicable	Not Applicable
HWE-5L	Bok Choy	pound	500	$ -	$ -
HWE-6L	Cabbage, Green	pound	5	$ -	$ -
HWE-7L	Cabbage, Green, Chopped	pound	1	$ -	$ -
HWE-8L	Cabbage, Green, Shredded	pound	1	$ -	$ -
HWE-9L	Cabbage, Red	pound	5	$ -	$ -
HWE-10L	Cantaloupe, Melon	pound	50	$ -	$ -
HWE-11L	Carrot, Shredded	pound	1	$ -	$ -
HWE-12L	Carrot, Whole	pound	50	$ -	$ -
	Carrots, Baby Whole	pound	Not Applicable	Not Applicable	Not Applicable
	Celery, 24 to 36 Count	pound	Not Applicable	Not Applicable	Not Applicable
HWE-15L	Chinese Parsley	pound	1	$ -	$ -
HWE-16L	Cucumber, American	pound	100	$ -	$ -
HWE-17L	Cucumber, Japanese	pound	1	$ -	$ -
HWE-18L	Cucumbers, Mini	pound	1	$ -	$ -
HWE-19L	Daikon	pound	1	$ -	$ -
HWE-20L	Dragon Fruit	pound	10	$ -	$ -
HWE-21L	Ginger Root	pound	50	$ -	$ -
	Grapes, Red or Green, Seedless	pound	Not Applicable	Not Applicable	Not Applicable
HWE-23L	Honeydew, Melon	pound	35	$ -	$ -

GROUP 5 - LOCALLY GROWN
GEOGRAPHIC AREA:
ISLAND OF HAWAII-WEST

Offeror: _____

The following offer is hereby submitted:

Item Number	Item Description	Unit	(A) 6-Month Estimated Quantities	(B) Unit Bid Price	(C) Total Bid Price (A times B equals C)
HWE-24L	Kabocha	pound	50	$ -	$ -
HWE-25L	Lemon, whole raw	pound	1	$ -	$ -
HWE-26L	Lettuce, Butter	pound	1	$ -	$ -
HWE-27L	Lettuce, Green Leaf	pound	100	$ -	$ -
HWE-28L	Lettuce, Red Leaf	pound	1	$ -	$ -
HWE-29L	Lettuce, Romaine	pound	35	$ -	$ -
HWE-30L	Lettuce, Romaine, Chopped	pound	1	$ -	$ -
HWE-31L	Salad mix	pound	1	$ -	$ -
HWE-32L	Lime, whole raw	pound	1	$ -	$ -
HWE-33L	Mandarin, including Tangerines and Clementines	pound	100	$ -	$ -
HWE-34L	Mushroom	pound	5	$ -	$ -
HWE-35L	Onion, Green	pound	1	$ -	$ -
HWE-36L	Onion, Round	pound	25	$ -	$ -
HWE-37L	Onion, Round, Diced	pound	1	$ -	$ -
HWE-38L	Oranges 88 to 113 Count	pound	1,000	$ -	$ -
HWE-39L	Oranges 48 to 72 Count	pound	100	$ -	$ -
HWE-40L	Pak Choy	pound	1	$ -	$ -
HWE-41L	Papaya 8 to 10 Count	pound	1	$ -	$ -
	Pears, Danjou 100's	pound	Not Applicable	Not Applicable	Not Applicable
	Peeled Garlic	pound	Not Applicable	Not Applicable	Not Applicable
HWE-44L	Pineapple, Chunks	pound	1	$ -	$ -
HWE-45L	Pineapple, Whole size 7 to 8	pound	1	$ -	$ -
	Potato, Russet	pound	Not Applicable	Not Applicable	Not Applicable

GROUP 5 - LOCALLY GROWN
GEOGRAPHIC AREA:
ISLAND OF HAWAII-WEST

Offeror: _____

The following offer is hereby submitted:

Item Number	Item Description	Unit	(A) 6-Month Estimated Quantities	(B) Unit Bid Price	(C) Total Bid Price (A times B equals C)
HWE-47L	Potato, Sweet, Okinawan	pound	100	$ -	$ -
	Spinach	pound	Not Applicable	Not Applicable	Not Applicable
HWE-49L	Squash, Opo	pound	1	$ -	$ -
HWE-50L	Strawberry	pound	25	$ -	$ -
HWE-51L	Swiss Chard	pound	1	$ -	$ -
HWE-52L	Tomato 6x6	pound	100	$ -	$ -
HWE-53L	Tomato Cherry	pound	5	$ -	$ -
HWE-54L	Tomato, Diced	pound	1	$ -	$ -
HWE-55L	Watercress	pound	5	$ -	$ -
HWE-56L	Watermelon	pound	1	$ -	$ -
HWE-57L	Won Bok also known as Napa Cabbage	pound	1	$ -	$ -
HWE-58L	Zucchini	pound	35	$ -	$ -
				TOTAL SUM BID PRICE GROUP 5 - LOCALLY GROWN: ISLAND OF HAWAII-WEST (ITEMS HWE-2L to HWE-58L)	$ -

GROUP 6 - DOMESTIC
GEOGRAPHIC AREA:
ISLAND OF HAWAII-WEST

Offeror: _____

The following offer is hereby submitted:

Item Number	Item Description	Unit	(A) 6-Month Estimated Quantities	(B) Unit Bid Price	(C) Total Bid Price (A times B equals C)
HWE-1D	Apple, Fuji, 100 Count	pound	5,000	$ -	$ -
HWE-2D	Banana	pound	1,500	$ -	$ -
HWE-3D	Bell Pepper, Green	pound	75	$ -	$ -
HWE-4D	Bell Pepper, Red	pound	15	$ -	$ -
HWE-5D	Bok Choy	pound	2,000	$ -	$ -
HWE-6D	Cabbage, Green	pound	15	$ -	$ -
HWE-7D	Cabbage, Green, Chopped	pound	500	$ -	$ -
HWE-8D	Cabbage, Green, Shredded	pound	35	$ -	$ -
HWE-9D	Cabbage, Red	pound	15	$ -	$ -
HWE-10D	Cantaloupe, Melon	pound	150	$ -	$ -
HWE-11D	Carrot, Shredded	pound	5	$ -	$ -
HWE-12D	Carrot, Whole	pound	200	$ -	$ -
HWE-13D	Carrots, Baby Whole	pound	450	$ -	$ -
HWE-14D	Celery, 24 to 36 Count	pound	40	$ -	$ -
HWE-15D	Chinese Parsley	pound	5	$ -	$ -
HWE-16D	Cucumber, American	pound	400	$ -	$ -
HWE-17D	Cucumber, Japanese	pound	1	$ -	$ -
HWE-18D	Cucumbers, Mini	pound	1	$ -	$ -
HWE-19D	Daikon	pound	1	$ -	$ -
HWE-20D	Dragon Fruit	pound	40	$ -	$ -
HWE-21D	Ginger Root	pound	150	$ -	$ -
HWE-22D	Grapes, Red or Green, Seedless	pound	500	$ -	$ -
HWE-23D	Honeydew, Melon	pound	115	$ -	$ -

GROUP 6 - DOMESTIC
GEOGRAPHIC AREA:
ISLAND OF HAWAII-WEST

Offeror: _____

The following offer is hereby submitted:

Item Number	Item Description	Unit	(A) 6-Month Estimated Quantities	(B) Unit Bid Price	(C) Total Bid Price (A times B equals C)
HWE-24D	Kabocha	pound	150	$ -	$ -
HWE-25D	Lemon, whole raw	pound	1	$ -	$ -
HWE-26D	Lettuce, Butter	pound	1	$ -	$ -
HWE-27D	Lettuce, Green Leaf	pound	400	$ -	$ -
HWE-28D	Lettuce, Red Leaf	pound	1	$ -	$ -
HWE-29D	Lettuce, Romaine	pound	115	$ -	$ -
HWE-30D	Lettuce, Romaine, Chopped	pound	50	$ -	$ -
HWE-31D	Salad mix	pound	1	$ -	$ -
HWE-32D	Lime, whole raw	pound	1	$ -	$ -
HWE-33D	Mandarin, including Tangerines and Clementines	pound	400	$ -	$ -
HWE-34D	Mushroom	pound	15	$ -	$ -
HWE-35D	Onion, Green	pound	5	$ -	$ -
HWE-36D	Onion, Round	pound	75	$ -	$ -
HWE-37D	Onion, Round, Diced	pound	200	$ -	$ -
HWE-38D	Oranges 88 to 113 Count	pound	3,500	$ -	$ -
HWE-39D	Oranges 48 to 72 Count	pound	400	$ -	$ -
HWE-40D	Pak Choy	pound	1	$ -	$ -
HWE-41D	Papaya 8 to 10 Count	pound	1	$ -	$ -
HWE-42D	Pears, Danjou 100's	pound	2,000	$ -	$ -
HWE-43D	Peeled Garlic	pound	20	$ -	$ -
HWE-44D	Pineapple, Chunks	pound	500	$ -	$ -
HWE-45D	Pineapple, Whole size 7 to 8	pound	1	$ -	$ -
HWE-46D	Potato, Russet	pound	1	$ -	$ -

GROUP 6 - DOMESTIC
GEOGRAPHIC AREA:
ISLAND OF HAWAII-WEST

Offeror: _____

The following offer is hereby submitted:

Item Number	Item Description	Unit	(A) 6-Month Estimated Quantities	(B) Unit Bid Price	(C) Total Bid Price (A times B equals C)
HWE-47D	Potato, Sweet, Okinawan	pound	400	$ -	$ -
HWE-48D	Spinach	pound	30	$ -	$ -
HWE-49D	Squash, Opo	pound	1	$ -	$ -
HWE-50D	Strawberry	pound	75	$ -	$ -
HWE-51D	Swiss Chard	pound	1	$ -	$ -
HWE-52D	Tomato 6x6	pound	400	$ -	$ -
HWE-53D	Tomato Cherry	pound	15	$ -	$ -
HWE-54D	Tomato, Diced	pound	450	$ -	$ -
HWE-55D	Watercress	pound	20	$ -	$ -
HWE-56D	Watermelon	pound	1	$ -	$ -
HWE-57D	Won Bok also known as Napa Cabbage	pound	5	$ -	$ -
HWE-58D	Zucchini	pound	115	$ -	$ -
				TOTAL SUM BID PRICE GROUP 6 - DOMESTIC: ISLAND OF HAWAII-WEST (ITEMS HWE-1D to HWE-58D)	$ -

GROUP 7 - LOCALLY GROWN
GEOGRAPHIC AREA:
ISLAND OF HAWAII-EAST

Offeror: _____

The following offer is hereby submitted:

Item Number	Item Description	Unit	(A) 6-Month Estimated Quantities	(B) Unit Bid Price	(C) Total Bid Price (A times B equals C)
	Apple, Fuji, 100 Count	pound	Not Applicable	Not Applicable	Not Applicable
HEA-2L	Banana	pound	350	$ -	$ -
HEA-3L	Bell Pepper, Green	pound	50	$ -	$ -
	Bell Pepper, Red	pound	Not Applicable	Not Applicable	Not Applicable
HEA-5L	Bok Choy	pound	1,000	$ -	$ -
HEA-6L	Cabbage, Green	pound	350	$ -	$ -
HEA-7L	Cabbage, Green, Chopped	pound	1	$ -	$ -
HEA-8L	Cabbage, Green, Shredded	pound	1	$ -	$ -
HEA-9L	Cabbage, Red	pound	1	$ -	$ -
HEA-10L	Cantaloupe, Melon	pound	10	$ -	$ -
HEA-11L	Carrot, Shredded	pound	1	$ -	$ -
HEA-12L	Carrot, Whole	pound	250	$ -	$ -
	Carrots, Baby Whole	pound	Not Applicable	Not Applicable	Not Applicable
	Celery, 24 to 36 Count	pound	Not Applicable	Not Applicable	Not Applicable
HEA-15L	Chinese Parsley	pound	1	$ -	$ -
HEA-16L	Cucumber, American	pound	1,000	$ -	$ -
HEA-17L	Cucumber, Japanese	pound	1	$ -	$ -
HEA-18L	Cucumbers, Mini	pound	1	$ -	$ -
HEA-19L	Daikon	pound	1	$ -	$ -
HEA-20L	Dragon Fruit	pound	35	$ -	$ -
HEA-21L	Ginger Root	pound	50	$ -	$ -
	Grapes, Red or Green, Seedless	pound	Not Applicable	Not Applicable	Not Applicable
HEA-23L	Honeydew, Melon	pound	350	$ -	$ -

GROUP 7 - LOCALLY GROWN
GEOGRAPHIC AREA:
ISLAND OF HAWAII-EAST

Offeror: _____

The following offer is hereby submitted:

Item Number	Item Description	Unit	(A) 6-Month Estimated Quantities	(B) Unit Bid Price	(C) Total Bid Price (A times B equals C)
HEA-24L	Kabocha	pound	50	$ -	$ -
HEA-25L	Lemon, whole raw	pound	1	$ -	$ -
HEA-26L	Lettuce, Butter	pound	1	$ -	$ -
HEA-27L	Lettuce, Green Leaf	pound	500	$ -	$ -
HEA-28L	Lettuce, Red Leaf	pound	1	$ -	$ -
HEA-29L	Lettuce, Romaine	pound	1,000	$ -	$ -
HEA-30L	Lettuce, Romaine, Chopped	pound	1	$ -	$ -
HEA-31L	Salad mix	pound	25	$ -	$ -
HEA-32L	Lime, whole raw	pound	1	$ -	$ -
HEA-33L	Mandarin, including Tangerines and Clementines	pound	25	$ -	$ -
HEA-34L	Mushroom	pound	10	$ -	$ -
HEA-35L	Onion, Green	pound	25	$ -	$ -
HEA-36L	Onion, Round	pound	250	$ -	$ -
HEA-37L	Onion, Round, Diced	pound	1	$ -	$ -
HEA-38L	Oranges 88 to 113 Count	pound	2,500	$ -	$ -
HEA-39L	Oranges 48 to 72 Count	pound	500	$ -	$ -
HEA-40L	Pak Choy	pound	1	$ -	$ -
HEA-41L	Papaya 8 to 10 Count	pound	1	$ -	$ -
	Pears, Danjou 100's	pound	Not Applicable	Not Applicable	Not Applicable
	Peeled Garlic	pound	Not Applicable	Not Applicable	Not Applicable
HEA-44L	Pineapple, Chunks	pound	1	$ -	$ -
HEA-45L	Pineapple, Whole size 7 to 8	pound	1	$ -	$ -
	Potato, Russet	pound	Not Applicable	Not Applicable	Not Applicable

GROUP 7 - LOCALLY GROWN
GEOGRAPHIC AREA:
ISLAND OF HAWAII-EAST

Offeror: _____

The following offer is hereby submitted:

Item Number	Item Description	Unit	(A) 6-Month Estimated Quantities	(B) Unit Bid Price	(C) Total Bid Price (A times B equals C)
HEA-47L	Potato, Sweet, Okinawan	pound	250	$ -	$ -
	Spinach	pound	Not Applicable	Not Applicable	Not Applicable
HEA-49L	Squash, Opo	pound	1	$ -	$ -
HEA-50L	Strawberry	pound	1	$ -	$ -
HEA-51L	Swiss Chard	pound	1	$ -	$ -
HEA-52L	Tomato 6x6	pound	1,000	$ -	$ -
HEA-53L	Tomato Cherry	pound	25	$ -	$ -
HEA-54L	Tomato, Diced	pound	1	$ -	$ -
HEA-55L	Watercress	pound	5	$ -	$ -
HEA-56L	Watermelon	pound	100	$ -	$ -
HEA-57L	Won Bok also known as Napa Cabbage	pound	50	$ -	$ -
HEA-58L	Zucchini	pound	50	$ -	$ -
				TOTAL SUM BID PRICE GROUP 7 - LOCALLY GROWN: ISLAND OF HAWAII-EAST (ITEMS HEA-2L to HEA-58L)	$ -

GROUP 8 - DOMESTIC
GEOGRAPHIC AREA:
ISLAND OF HAWAII-EAST

Offeror: _____

The following offer is hereby submitted:

Item Number	Item Description	Unit	(A) 6-Month Estimated Quantities	(B) Unit Bid Price	(C) Total Bid Price (A times B equals C)
HEA-1D	Apple, Fuji, 100 Count	pound	10,000	$ -	$ -
HEA-2D	Banana	pound	1,150	$ -	$ -
HEA-3D	Bell Pepper, Green	pound	300	$ -	$ -
HEA-4D	Bell Pepper, Red	pound	115	$ -	$ -
HEA-5D	Bok Choy	pound	4,000	$ -	$ -
HEA-6D	Cabbage, Green	pound	1,150	$ -	$ -
HEA-7D	Cabbage, Green, Chopped	pound	1,000	$ -	$ -
HEA-8D	Cabbage, Green, Shredded	pound	500	$ -	$ -
HEA-9D	Cabbage, Red	pound	10	$ -	$ -
HEA-10D	Cantaloupe, Melon	pound	40	$ -	$ -
HEA-11D	Carrot, Shredded	pound	500	$ -	$ -
HEA-12D	Carrot, Whole	pound	750	$ -	$ -
HEA-13D	Carrots, Baby Whole	pound	2,000	$ -	$ -
HEA-14D	Celery, 24 to 36 Count	pound	75	$ -	$ -
HEA-15D	Chinese Parsley	pound	10	$ -	$ -
HEA-16D	Cucumber, American	pound	4,000	$ -	$ -
HEA-17D	Cucumber, Japanese	pound	1	$ -	$ -
HEA-18D	Cucumbers, Mini	pound	1	$ -	$ -
HEA-19D	Daikon	pound	1	$ -	$ -
HEA-20D	Dragon Fruit	pound	115	$ -	$ -
HEA-21D	Ginger Root	pound	200	$ -	$ -
HEA-22D	Grapes, Red or Green, Seedless	pound	150	$ -	$ -
HEA-23D	Honeydew, Melon	pound	1,150	$ -	$ -

GROUP 8 - DOMESTIC
GEOGRAPHIC AREA:
ISLAND OF HAWAII-EAST

Offeror: _____

The following offer is hereby submitted:

Item Number	Item Description	Unit	(A) 6-Month Estimated Quantities	(B) Unit Bid Price	(C) Total Bid Price (A times B equals C)
HEA-24D	Kabocha	pound	250	$ -	$ -
HEA-25D	Lemon, whole raw	pound	1	$ -	$ -
HEA-26D	Lettuce, Butter	pound	1	$ -	$ -
HEA-27D	Lettuce, Green Leaf	pound	2,500	$ -	$ -
HEA-28D	Lettuce, Red Leaf	pound	1	$ -	$ -
HEA-29D	Lettuce, Romaine	pound	4,000	$ -	$ -
HEA-30D	Lettuce, Romaine, Chopped	pound	1	$ -	$ -
HEA-31D	Salad mix	pound	75	$ -	$ -
HEA-32D	Lime, whole raw	pound	1	$ -	$ -
HEA-33D	Mandarin, including Tangerines and Clementines	pound	75	$ -	$ -
HEA-34D	Mushroom	pound	40	$ -	$ -
HEA-35D	Onion, Green	pound	75	$ -	$ -
HEA-36D	Onion, Round	pound	750	$ -	$ -
HEA-37D	Onion, Round, Diced	pound	250	$ -	$ -
HEA-38D	Oranges 88 to 113 Count	pound	7,500	$ -	$ -
HEA-39D	Oranges 48 to 72 Count	pound	3,000	$ -	$ -
HEA-40D	Pak Choy	pound	1	$ -	$ -
HEA-41D	Papaya 8 to 10 Count	pound	1	$ -	$ -
HEA-42D	Pears, Danjou 100's	pound	4,000	$ -	$ -
HEA-43D	Peeled Garlic	pound	20	$ -	$ -
HEA-44D	Pineapple, Chunks	pound	1,000	$ -	$ -
HEA-45D	Pineapple, Whole size 7 to 8	pound	1	$ -	$ -
HEA-46D	Potato, Russet	pound	300	$ -	$ -

GROUP 8 - DOMESTIC
GEOGRAPHIC AREA:
ISLAND OF HAWAII-EAST

Offeror: _____

The following offer is hereby submitted:

Item Number	Item Description	Unit	(A) 6-Month Estimated Quantities	(B) Unit Bid Price	(C) Total Bid Price (A times B equals C)
HEA-47D	Potato, Sweet, Okinawan	pound	750	$ -	$ -
HEA-48D	Spinach	pound	75	$ -	$ -
HEA-49D	Squash, Opo	pound	1	$ -	$ -
HEA-50D	Strawberry	pound	1	$ -	$ -
HEA-51D	Swiss Chard	pound	1	$ -	$ -
HEA-52D	Tomato 6x6	pound	3,000	$ -	$ -
HEA-53D	Tomato Cherry	pound	75	$ -	$ -
HEA-54D	Tomato, Diced	pound	500	$ -	$ -
HEA-55D	Watercress	pound	30	$ -	$ -
HEA-56D	Watermelon	pound	300	$ -	$ -
HEA-57D	Won Bok also known as Napa Cabbage	pound	200	$ -	$ -
HEA-58D	Zucchini	pound	250	$ -	$ -
				TOTAL SUM BID PRICE GROUP 8 - DOMESTIC: ISLAND OF HAWAII-EAST (ITEMS HEA-1D to HEA-58D)	$ -

GROUP 15 - LOCALLY GROWN

GEOGRAPHIC AREA:
ISLAND OF KAUAI

Offeror: _____

The following offer is hereby submitted:

Item Number	Item Description	Unit	(A) 6-Month Estimated Quantities	(B) Unit Bid Price	(C) Total Bid Price (A times B equals C)
	Apple, Fuji, 100 Count	pound	Not Applicable	Not Applicable	Not Applicable
KAU-2L	Banana	pound	500	$ -	$ -
KAU-3L	Bell Pepper, Green	pound	10	$ -	$ -
	Bell Pepper, Red	pound	Not Applicable	Not Applicable	Not Applicable
KAU-5L	Bok Choy	pound	500	$ -	$ -
KAU-6L	Cabbage, Green	pound	100	$ -	$ -
KAU-7L	Cabbage, Green, Chopped	pound	1	$ -	$ -
KAU-8L	Cabbage, Green, Shredded	pound	1	$ -	$ -
KAU-9L	Cabbage, Red	pound	1	$ -	$ -
KAU-10L	Cantaloupe, Melon	pound	50	$ -	$ -
KAU-11L	Carrot, Shredded	pound	1	$ -	$ -
KAU-12L	Carrot, Whole	pound	50	$ -	$ -
	Carrots, Baby Whole	pound	Not Applicable	Not Applicable	Not Applicable
	Celery, 24 to 36 Count	pound	Not Applicable	Not Applicable	Not Applicable
KAU-15L	Chinese Parsley	pound	1	$ -	$ -
KAU-16L	Cucumber, American	pound	500	$ -	$ -
KAU-17L	Cucumber, Japanese	pound	1	$ -	$ -
KAU-18L	Cucumbers, Mini	pound	1	$ -	$ -
KAU-19L	Daikon	pound	1	$ -	$ -
KAU-20L	Dragon Fruit	pound	5	$ -	$ -
KAU-21L	Ginger Root	pound	1	$ -	$ -
	Grapes, Red or Green, Seedless	pound	Not Applicable	Not Applicable	Not Applicable
KAU-23L	Honeydew, Melon	pound	50	$ -	$ -

GROUP 15 - LOCALLY GROWN

GEOGRAPHIC AREA:
ISLAND OF KAUAI

Offeror: _____

The following offer is hereby submitted:

Item Number	Item Description	Unit	(A) 6-Month Estimated Quantities	(B) Unit Bid Price	(C) Total Bid Price (A times B equals C)
KAU-24L	Kabocha	pound	35	$ -	$ -
KAU-25L	Lemon, whole raw	pound	1	$ -	$ -
KAU-26L	Lettuce, Butter	pound	1	$ -	$ -
KAU-27L	Lettuce, Green Leaf	pound	50	$ -	$ -
KAU-28L	Lettuce, Red Leaf	pound	1	$ -	$ -
KAU-29L	Lettuce, Romaine	pound	100	$ -	$ -
KAU-30L	Lettuce, Romaine, Chopped	pound	1	$ -	$ -
KAU-31L	Salad mix	pound	1	$ -	$ -
KAU-32L	Lime, whole raw	pound	1	$ -	$ -
KAU-33L	Mandarin, including Tangerines and Clementines	pound	100	$ -	$ -
KAU-34L	Mushroom	pound	5	$ -	$ -
KAU-35L	Onion, Green	pound	25	$ -	$ -
KAU-36L	Onion, Round	pound	35	$ -	$ -
KAU-37L	Onion, Round, Diced	pound	1	$ -	$ -
KAU-38L	Oranges 88 to 113 Count	pound	1,000	$ -	$ -
KAU-39L	Oranges 48 to 72 Count	pound	1	$ -	$ -
KAU-40L	Pak Choy	pound	1	$ -	$ -
KAU-41L	Papaya 8 to 10 Count	pound	1	$ -	$ -
	Pears, Danjou 100's	pound	Not Applicable	Not Applicable	Not Applicable
	Peeled Garlic	pound	Not Applicable	Not Applicable	Not Applicable
KAU-44L	Pineapple, Chunks	pound	1	$ -	$ -
KAU-45L	Pineapple, Whole size 7 to 8	pound	1	$ -	$ -
	Potato, Russet	pound	Not Applicable	Not Applicable	Not Applicable

GROUP 15 - LOCALLY GROWN
GEOGRAPHIC AREA:
ISLAND OF KAUAI

Offeror: _____

The following offer is hereby submitted:

Item Number	Item Description	Unit	(A) 6-Month Estimated Quantities	(B) Unit Bid Price	(C) Total Bid Price (A times B equals C)
KAU-47L	Potato, Sweet, Okinawan	pound	350	$ -	$ -
	Spinach	pound	Not Applicable	Not Applicable	Not Applicable
KAU-49L	Squash, Opo	pound	1	$ -	$ -
KAU-50L	Strawberry	pound	100	$ -	$ -
KAU-51L	Swiss Chard	pound	1	$ -	$ -
KAU-52L	Tomato 6x6	pound	50	$ -	$ -
KAU-53L	Tomato Cherry	pound	5	$ -	$ -
KAU-54L	Tomato, Diced	pound	1	$ -	$ -
KAU-55L	Watercress	pound	1	$ -	$ -
KAU-56L	Watermelon	pound	35	$ -	$ -
KAU-57L	Won Bok also known as Napa Cabbage	pound	1	$ -	$ -
KAU-58L	Zucchini	pound	35	$ -	$ -
				TOTAL SUM BID PRICE GROUP 15 - LOCALLY GROWN: ISLAND OF KAUAI (ITEMS KAU-2L to KAU-58L)	$ -

SPECIFICATIONS

1. INTRODUCTION

The Hawaii State Department of Education (STATE) seeks vendor(s) to furnish and deliver fresh fruit and vegetable products along with minimally processed fruits and vegetables (Fresh Fruit and Vegetable products) to all schools under the jurisdiction of the STATE School Food Services Branch (SFSB) on the islands of Hawaii and Kauai.

The specifications shall apply to all products unless otherwise specified.

The school cafeterias currently participating in this Contract are listed in Exhibit B.

2. GENERAL SPECIFICATIONS

2.1 SERVICES

General Requirements:

The CONTRACTOR shall provide and deliver Fresh Fruit and Vegetable products to Hawaii State Department of Education Cafeterias on the islands of Hawaii and Kauai. See **Detailed Specifications** for food items in accordance with the provisions and requirements stated herein.

2.1.1 Unless otherwise specified herein, the CONTRACTOR shall furnish all material, labor, facilities, equipment, and supplies necessary to perform the services.

2.1.2 The CONTRACTOR shall provide services to the sole satisfaction of and in accordance with the instructions provided by SFSB.

2.1.3 The CONTRACTOR shall accommodate placing of orders via multiple sources (example: website, email orders, fax and/or phone orders).

2.1.4 The CONTRACTOR shall coordinate and manage the delivery dates with the STATE Point of Contact (POC) or the School Food Service Manager (SFSM) of the participating school, and supervise, manage, and deliver units of Fresh Fruit and Vegetable products to participating school cafeterias.

2.1.5 The CONTRACTOR shall maintain quality of products within the warehousing facilities and throughout the delivery process.

2.1.6 The CONTRACTOR shall ensure that all subcontractors shall: conduct annual reviews of their respective facilities and assure that the warehouse and/or holding facilities and/or delivery vehicles have obtained all required federal, State of Hawaii and local health inspections and approvals and that such inspection and approvals are current. Documentation shall be maintained on file to reflect compliance with federal, State of Hawaii and local regulations.

2.2 FOOD SAFETY CERTIFICATION FOR HAWAII-BASED SUPPLIER FARMS POLICY

2.2.1 The CONTRACTOR shall ensure that its Hawaii-based supplier farms possess current food safety certification in compliance with the United States Department of Agriculture (USDA) Good Agricultural Practices (GAP) Food Safety Certification program, or the Primus Global Food Safety (GFS) certification program.

2.2.2 The CONTRACTOR shall provide copies of the GAP or GFS certification documents for the specific produce item(s) intended for STATE's school food service within three (3) business days from the STATE's request.

2.2.3 Rarely Consumed Raw (RCR) Produce Exemption to STATE Policy

2.2.3.1 This STATE Policy includes a food safety certification exemption for RCR produce items, aligned with the Food and Drug Administrations (FDA) Produce Safety Rule (PSR) Code of Federal Regulations (21 CFR §112.2). RCR produce are fruits and vegetables that are almost always eaten only after being cooked (for example: heat treated in some form). Cooking heat is a pathogen kill-step that can adequately reduce the presence of microorganisms that are of public health significance. The most current list of RCR produce can be found at 21 CFR § 112.2.

2.2.3.2 In addition to the FDA's RCR list, the STATE shall also exempt the following items:

2.2.3.2.1 Breadfruit;
2.2.3.2.2 Cassava Root;
2.2.3.2.3 Bean, Soy (edamame);
2.2.3.2.4 Taro (root and tops);
2.2.3.2.5 Yam;
2.2.3.2.6 Zucchini;
2.2.3.2.7 Bok Choy; and
2.2.3.2.8 Pak Choy (choi).

2.2.4 Hawaii-based Supplier Farms Eligibility If Enrolled in a Food Safety Certification Preparation Program

2.2.4.1 The CONTRACTOR may supply produce from Hawaii-based supplier farms that are formally enrolled in a recognized certification preparation program. The CONTRACTOR shall provide the STATE a list of their Hawaii-based supplier farms enrolled in a food safety certification preparation program and the name of the program. The CONTRACTOR shall ensure that any changes to the list shall be conveyed to the STATE within three (3) business days. The STATE does not endorse any specific food safety certification preparation program.

2.2.4.2 Eligibility as a Hawaii-based supplier farm supplying produce items to the CONTRACTOR under this Contract may be lost if certification is not obtained by August 1st of the following year. August 1st is the start of the STATE's school year and food service. The STATE will work collaboratively with the CONTRACTOR to determine the Hawaii-based supplier farm's continuance of eligibility to supply produce items under this Contract.

2.2.5 School Food Services Branch (SFSB) intends to maximize the utilization of locally sourced agricultural products grown, raised, and harvested within the State of Hawaii whenever operationally feasible, competitively compliant, and available within the marketplace. Offerors are encouraged to identify and supply Hawaii-grown agricultural products where allowable under applicable federal and state procurement regulations.

2.2.6 Pursuant to USDA guidance regarding geographic preference for unprocessed locally grown or locally raised agricultural products and applicable federal and state procurement regulations, SFSB may utilize allowable geographic preference methods and operational procurement strategies to support increased participation of Hawaii agricultural producers and suppliers. For purposes of this solicitation, locally sourced agricultural products may include products grown, raised, harvested, or otherwise allowable under applicable USDA geographic preference guidance and federal procurement regulations within the State of Hawaii, consistent with applicable federal and state definitions and procurement authorities. Offerors shall clearly identify the origin of agricultural products supplied under this Contract, including state or country of origin, on packaging, invoices, delivery documentation, and monthly reports where applicable. SFSB

may utilize allowable geographic preference methods consistent with USDA guidance and applicable federal and state procurement regulations. Nothing within this solicitation shall be construed to restrict full and open competition or supersede applicable federal or state procurement requirements.

2.3 PROCESSED PRODUCE

CONTRACTOR shall ensure that all processed Fresh Fruit and Vegetable products (fresh-cut and whole-trimmed Ready to Eat [RTE]) are produced from manufacturer(s) with a Hazard Analysis Critical Control Point (HACCP) system in place.

2.4 PRODUCT ORIGIN DEFINITIONS

Locally Grown. Locally Grown means an unprocessed agricultural product grown and harvested within the State of Hawaii. For other covered agricultural products, local means raised or caught within the State of Hawaii, as applicable. Local status is based on the origin of the agricultural product, not the location of the bidder, distributor, broker, packer, or delivery facility. Products may undergo the handling and preservation techniques permitted by 7 CFR § 210.21(g)(2) without losing their inherent character.

The Department may designate a line item as Locally Grown. For any line item carrying that designation, the offered agricultural product shall meet the Locally Grown definition above for the offer to be considered responsive for that line item.
Authorities: 7 CFR § 210.21(d)(1) and (g); USDA FNS Memorandum SP 22-2024, CACFP 08-2024, SFSP 13-2024, Geographic Preference Expansion Related to the Final Rule.

https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-A/part-220/section-220.16?
https://www.fna.usda.gov/f2s/geographic-preference-expansion?

https://www.capitol.hawaii.gov/hrscurrent/Vol01_Ch0001-0042F/HRS0027/HRS_0027-0008.htm

Domestic Commodity or Product. An agricultural commodity that is produced in the United States; or a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States. Substantially using agricultural commodities produced in the United States means that over fifty-one percent (51%) of the food product consists of agricultural commodities grown domestically.

2.5 STATE OF HAWAII DEPARTMENT OF HEALTH STANDARDS

CONTRACTOR shall ensure that all products shall be prepared, handled, and are stored in accordance with heath and sanitation standards for the State of Hawaii Department of Health food safety standards, Title 11, Chapter 50, Hawaii Administrative Rules (HAR).

2.6 DETAILED SPECIFICATIONS

All products are to be prepared and packaged WITHOUT ADDED SULFIDES OR PRESERVATIVES.

2.6.1 FRESH FRUIT AND VEGETABLE PRODUCTS

Products provided shall be of the best quality of its respective kind. Product shall be free from defects such as, but not limited to, foreign objects, et cetera. that may render it unfit or a hazard for children and/or adult consumption. All produce items shall be delivered fresh and clean, free of dirt, sand or other foreign materials and packed in clean cartons and/or crates. Unless otherwise specified, produce must be United States (U.S.) grades Number 1, Number 1 medium, Extra Number 1, Number 2, Fancy, Extra Fancy, Fancy Table, Extra Fancy Table, U.S. Fancy Table, U.S. Number 1 Table, U.S. Extra Fancy Table, Fancy Husked, or Choice.

At the time of delivery, the product must be of the best quality of its respective kind (example: proper color, no scars, proper shape), fully mature and in good commercial condition (example: no bruising, decay, or discoloration) with the appropriate texture, juiciness, and firmness in accordance with its type and varietal attributes. All whole Fresh Fruit and Vegetable products shall not contain mold, fungus or any other signs of decay at the point of acceptance.

Applicable products shall be identified with a readable open case such as “Processed Produce”. Items shall not contain mold, fungus or any other signs of decay at the point of acceptance. Produce items that are prepacked and date coded must have a minimum of five (5) days remaining on expiration date code at the time of delivery. Products delivered with expired “use by” or “sell-by” dates shall be rejected.

If excessive spoilage is noted, the product will be rejected and must be replaced within twenty-four (24) hours, or full credit must be issued to receiving school.

2.6.2 PROCESSED FRESH WHOLE PRODUCE

2.6.2.1 PRODUCE QUALITY - Fruits shall be grades U.S. Fancy or Number 1 or comparable high quality for produce type, meeting industry standards (fresh, best color, free from decay, clean, firm, not soft, mealy or mushy, and free from damage caused by spreading or broken tips, dirt, and insects)

2.6.2.2 PREPARATION – Produce shall be delivered fresh, whole, washed and clean to meet quality standards for delivery acceptance.

2.6.2.3 PACKAGING – All products shall be available to purchase in one (1) pound increments. All packaging shall include trace back capabilities for all products to the point of origin to show the chain of custody of each delivered item.

2.6.3 PROCESSED READY-TO-EAT (RTE) FRESH-CUT AND WHOLE TRIMMED PRODUCE

2.6.3.1 PRODUCE QUALITY – Fruits and vegetables shall be grades U.S. Number 1 or comparable high quality for produce type, meeting industry standards.

2.6.3.2 FRESH-CUT – Produce will be ordered to achieve strong student appeal (appealing and easy to grab) in-line with serving size compliance. Fresh-cut may be chopped, cubed, sticked, halved, sliced, peeled, et cetera. Produce shall not be canned, frozen, dried, or otherwise processed. Produce shall not have added sulfides or other preservatives.

2.6.3.3 WHOLE TRIMMED – Produce ordered whole trimmed shall be washed, trimmed, stems removed, ready-to-eat and delivered in food grade packaging to ensure food safety.

2.6.3.4 FRESHNESS – Produce shall be delivered to schools as fresh as possible, processed less than twenty-four (24) hours before delivery when possible. All products received by the school shall have a shelf life of five (5) days. If the manufacturer recommended shelf life is less than five (5) days, school cafeteria SFSM or STATE POC must be notified in advance and approve shelf life. Any deviation from these requirements must be approved by school cafeteria SFSM or STATE POC. All products are to be prepared and packaged without added sulfides or preservatives with accordance to food safety management and practices.

2.6.3.5 PACKAGING – Product shall be packed into food safe material. CONTACTOR shall adhere to food safety management practice and industry standards while packing product.

2.6.4 SHELF-LIFE

All products delivered shall be as fresh as possible and within the Growers and/or Packers' original shelf life (example: Best if Used by Date, Expiration Date, or other markings). Applicable products shall be identified with readable open case such as "Best Used by Date," "Sell by Date," "Date of Harvest," "Date of Production", or similar markings indicating the end of the guaranteed freshness date. Produce supplies shall be rotated on a "First-In, First-Out" basis using date of receipt or harvest dates.

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

2.6.5 PACKAGING

Cases and packages shall be constructed as to ensure safe and sanitary transportation to point of delivery so that the products, in each case, are properly protected. All packaging materials shall be FDA approved to meet all pertinent State of Hawaii and federal regulations for safe use with foods. Packaging materials shall impart no odor, flavor, or color to the product.

2.6.6 LABELING

All product packaging shall be clearly labeled identifying the contents, the packaging size and/or weight, the manufacturer, the packing date, and origin. All packaging, invoices, and delivery documentation shall identify the state or country of origin for produce items supplied under this Contract when applicable. For example, Pineapple (Hawaii), Tangerines (Florida), et cetera.

For any item provided and designated as Locally Grown, the product label and case marking shall identify the Hawaii producer or grower and the Hawaii place of origin.

2.6.7 DATE CODES

Identifying date codes must be clearly visible upon delivery, either stamped on the case or packaging material within the case. These codes may represent the production date or "Best Used by date".

2.6.8 PRIVATE LABELED PRODUCT

When the product offered is a privately labeled product, identification of the product shall be made by:

2.6.8.1 A permanent pre-printed impression on the container or on the product itself; or a label affixed by the manufacturer.

3. CONTRACTUAL REQUIREMENTS

3.1 PRODUCT QUALITY

Products furnished under this IFB shall be of the best quality of its respective kind. Products shall be free from defects that may render it unfit for consumption. Unacceptable or rejected products must be immediately removed from the school and replaced with products of the quality required by these specifications. Products shall meet all applicable federal and State of Hawaii regulations.

Failure to replace or to remove any rejected product shall not relieve the CONTRACTOR from the responsibility imposed upon it by this agreement. 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 time limits of this agreement, nor shall it in any way terminate, cancel, or abrogate the agreement or any part thereof.

3.2 WAREHOUSE STORAGE REQUIREMENTS

The CONTRACTOR shall furnish a warehousing facility that meets the below requirements. Warehousing facility shall have sufficient equipment, personnel, and space to accept, unload, handle, store, and deliver perishable (refrigerated) Fresh Fruit and Vegetable products to participating school cafeterias.

3.2.1 The storage facility and handling of food products shall be in compliance with the Current Good Manufacturing Practices. The food products shall be stored in a sanitary and pest controlled warehouse facility with appropriate storage equipment as specified: temperature controlled and refrigerated.

3.2.2 In accordance with food safety guidelines, the CONTRACTOR shall rotate food products in and out of storage by expiration date on a First-In, First-Out basis using date of receipt or harvest dates. The food products shall be in appropriate holding equipment during transportation and delivery. The CONTRACTOR shall insure that food product temperatures are maintained throughout delivery and receiving process.

3.2.3 The CONTRACTOR shall ensure that refrigerated foods stay chilled until delivered to schools. In the event the CONTRACTOR fails to maintain such conditions, SFSB reserves the right to take action as deemed necessary to ensure the safety, wholesomeness, and sanitary conditions of the transported food.

The warehouse facility and handling of food products shall be in compliance with HACCP guidelines. Upon request, the CONTRACTOR shall provide a copy of warehouse facility's operating HACCP plan.

All food products shall be stored in such a way as not to come in contact with any non-food products (example: disposable products and custodial supplies).

3.2.4 The CONTRACTOR's warehousing facilities shall:

3.2.4.1 At a minimum, be capable of storing SFSB's estimated rotating quantities of Fresh Fruit and Vegetable products.
3.2.4.2 Be maintained as stipulated in 7 CFR, Part 250.14 regulations and ensure that warehouse storage facilities have obtained all required federal, and State of Hawaii approvals and approvals are current.
3.2.4.3 Be maintained in a clean, dry, and orderly manner to ensure the safety, wholesomeness, and sanitary conditions of the stored food and are free from rodent, bird, insect, and other animal infestation.
3.2.4.4 Be kept free of damaged food or food of questionable condition.
3.2.4.5 Maintain food at proper storage temperatures as follows:

3.2.4.5.1 Refrigerated – shall be stored in a refrigerator immediately upon receipt of products. The maximum temperature of refrigerated food is 40 degrees Fahrenheit.

3.2.4.6 The CONTRACTOR must disclose and identify any prospective warehouse if, during the term of the Contract, the space of the warehouse is beyond the CONTRACTOR's capacity.

3.2.4.6.1 The CONTRACTOR is requested to secure, at the CONTRACTOR expense, an adequate storage capacity that meets or exceeds federal and State of Hawaii specifications and requirements for compliance.

3.2.4.6.2 The CONTRACTOR must have a method of inventory controls and track contracted Fresh Fruit and Vegetable products that are stored at a secondary or subcontractor's facility.

3.2.5 The CONTRACTOR shall store products off the floor in a manner to allow for adequate ventilation in the appropriate storage space; safeguard against theft, spoilage, and other loss; take protective measures as deemed necessary by federal and State of Hawaii regulations and principles of HACCP.

3.2.6 Additionally, the CONTRACTOR must maintain records and/or logs of the appropriate ventilation, security, and temperature levels for the types of food throughout the transportation process. The CONTRACTOR shall have documented temperature controls of refrigerated containers while in transit to neighbor islands.

3.2.7 Inspection of Warehouses. At the time of bidding and throughout the life of the Contract, SFSB reserves the right to conduct random inspections twice a year. SFSB will be visiting CONTRACTOR's warehousing facilities to inspect the condition of the warehouse and how price list items are being maintained. Such inspections will not unreasonably interfere with the conduct of the CONTRACTOR's business. CONTRACTOR will be given at least five (5) calendar days advance notice in order to prepare for inspection.

3.3 ORDER AND DELIVERY REQUIREMENTS

3.3.1 Orders

During the award period, as products are required, Hawaii 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) working days prior to the necessary delivery date. CONTRACTOR shall provide order confirmations to ordering schools within one (1) working 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 on the awarded items at least **five (5) days before the requested delivery date**.

3.3.1.1 **CANCELLATION OF ORDERS**: STATE may cancel an order with advance cancellation notice to a CONTRACTOR by 2:00 p.m. at least five (5) working days prior to scheduled delivery. STATE will be responsible for payment of the order if timely cancellation notice is not submitted to the CONTRACTOR.

3.3.2 Delivery Requirements:

3.3.2.1 The CONTRACTOR shall be responsible and liable for each schools' delivery from the CONTRACTOR's facility to the various school cafeterias on the island(s) specified. The CONTRACTOR shall assure that delivery is completed in accordance with Title 11, Chapter 50, HAR related to Food Safety Code; citing deliveries of chilled products shall be made in vehicles with refrigeration systems capable of maintaining proper chilled state of products delivered.

3.3.2.1.1 The CONTRACTOR is responsible for processing shipping documents, Bill of Lading, et cetera for deliveries to all schools on the neighbor islands.

3.3.2.1.2 The CONTRACTOR is responsible for delivering Fresh Fruit and Vegetable products to the shipping carrier with the shipping documents. All shipping charges shall be billed to the CONTRACTOR.

3.3.2.1.3 The CONTRACTOR shall be responsible and liable for any improper distribution, loss, theft, spoilage or damage of these products.

3.3.2.2 Deliveries of all orders shall be completed within ten (10) working days after receipt of order. For orders received prior to ten (10) working days of requested delivery date, CONTRACTOR shall deliver on the requested delivery date. Deliveries shall be made to the individual cafeterias at location designated on the order. CONTRACTOR shall stack and rotate the products in the designated areas of the school cafeteria refrigerator as specified by the SFSM. The SFSM shall be responsible for clearing the area prior to the delivery. The CONTRACTOR shall provide delivery status information for shipment received upon request from the SFSM.

3.3.2.3 The minimum order for delivery shall be ONE HUNDRED DOLLARS ($100.00). The STATE reserves the right to include products from other price lists as well as non-bid items to meet this minimum order requirement. Orders totaling less than ONE HUNDRED DOLLARS ($100.00) shall be made available on a “will call” basis within twenty-four (24) hours after receipt of order. Delivery of orders totaling less than $100.00 may be made at the CONTRACTOR’s option and according to their delivery schedule.

3.3.2.4 The CONTRACTOR shall deliver Fresh Fruit and Vegetable products no earlier than 6:00 a.m. and be completed no later than 10:30 a.m. Deliveries shall be scheduled for a minimum of two (2) non-consecutive working days per week for all schools located on the islands of Hawaii and Kauai (Note: Friday and Monday are considered “consectutive working days” since no business is transacted on Saturday and Sunday) excluding the following specified holidays, and considering special circumstances of the schools (such as school closures due to inclement weather, natural disasters, et cetera):

a. Independence Day
b. Statehood Day
c. Labor Day
d. Election Day (if applicable)
e. Veteran’s Day
f. Thanksgiving Day and the day after
g. Christmas Day
h. New Year’s Day
i. Dr. Martin Luther King Jr. Day
j. Presidents’ Day
k. Kuhio Day
l. Good Friday
m. Memorial Day
n. Kamehameha Day

LATE DELIVERIES: Time of delivery is critical to kitchen operations. Late deliveries will not be accepted and it will be the CONTRACTOR’s responsibility to arrange an alternate delivery time by immediately contacting the ordering school’s SFSM or STATE POC.

All deliveries of refrigerated food products shall be made from refrigerated vehicles as per State of Hawaii Department of Health Food Safety Code guidelines. The ordering school reserves the right not to accept deliveries made in non-temperature-controlled vehicles.

3.3.2.5 Except for an emergency and/or disaster situation or a situation of distress, if delivery is not being accepted by a school, such as no food service staff at the school cafeteria, the

CONTRACTOR shall notify the CA or STATE POC immediately. The CONTRACTOR shall follow the instructions provided by the CA or STATE POC regarding the non-acceptance of delivery. The CONTRACTOR shall allow the CA or STATE POC at least one (1) hour following the CONTRACTOR's notification for the CA or STATE POC to provide the CONTRACTOR with instructions regarding the refused shipment.

3.3.3 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 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.

A substitute for an awarded Locally Grown line item must also meet the Locally Grown definition and all applicable specifications unless the STATE POC provides prior written approval for a substitute that does not meet the Locally Grown definition after determining that an acceptable Locally Grown product is unavailable. Any approved substitute shall be supplied at the same or lower Price List price unless a different price is authorized in writing under the Price List Price Adjustments provisions.

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 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 shall have the option to cancel the order and obtain similar products from another source.

3.4 RECORDING REQUIREMENTS

3.4.1 The CONTRACTOR shall establish and maintain complete and accurate records pertaining to the receipt, storage, and delivery of food for each school as a separate account.

3.4.2 The CONTRACTOR shall understand and agree that all records, equipment, and facilities shall be available for inspection by representatives of the STATE CA and/or authorized representative designee and the State Auditor's office at any reasonable time and place.

3.5 REPORTING REQUIREMENTS

The CONTRACTOR shall provide the following reports upon request to the STATE POC:

3.5.1 Monthly delivery reports, in Microsoft Excel format, detailing the following information:

i) School Name;
ii) Product Description;
iii) Product Number;
iv) State or country of origin and, for each Locally Grown item, the Hawaii producer or grower and Hawaii place or island of origin;
v) Invoice Number; and
vi) Number of pounds or number of items sold.

3.5.2 Copies of the most recent third-party audit reports shall be provided to the STATE POC upon request. Reports shall include but not be limited to the following:

i) Copy of Current State of Hawaii Department of Health Food Safety Inspection;

ii) Copy of Current State of Hawaii Food Establishment Permit;
iii) Copy of the most recent Accredited Third Party Certification review;
iv) Copy of the most recent Food Safety Management System review; and
v) Copy of current Department of Health "Green" Placard ("Red" and "Yellow" Placards are unacceptable;
vi) Copy of operating Hazard Analysis Critical Control Point (HACCP) plan; and
vii) Proof of Pest Control Program in place.

3.6 RECALL AND/OR CHANGE PROCEDURES

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

3.6.1 Notification. All USDA and Manufacturer recalls should be communicated to SFSB in an email within twenty-four (24) hours of the CONTRACTOR being notified. Upon notification SFSB will discuss with the CONTRACTOR the needed steps to execute the recall.

3.6.2 Removal. The CONTRACTOR shall remove all recall items from all schools. All products impacted by the recall shall be stored in accordance with the CONTRACTOR's internal recall procedures.

3.6.3 Disposal. The CONTRACTOR shall dispose of all products in accordance with USDA and manufacturer guidelines.

3.7 RETURNS (DAMAGED PACKAGING)

Items delivered in damaged packaging affecting the quality of the produce or readability of required labeling may be rejected and returned for credit or immediate replacement at no cost to the STATE.

Damaged or rejected products must be immediately removed from the site and replaced with products of the quality required by these specifications. The STATE reserves the right to reject any product with a short (less than 5 days) expiration period. Products shall meet all applicable federal and State of Hawaii regulations.

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

3.8 TRACEABILITY

CONTRACTOR shall provide trace back capabilities for all products to the point of origin. Traceability's capabilities must prove custodial ownership and transfers along the supply chain with indicators of proper temperature measures upon each delivered item.

For each product represented as Locally Grown, traceability records shall identify the producer or grower, farm or production location, Hawaii place or island of origin, harvest or packing information when available, and transfers through the supply chain. A distributor's Hawaii address, standing alone, does not establish that a product is Locally Grown. The CONTRACTOR shall provide supporting records to the STATE upon request.

SPECIAL CONDITIONS

GENERAL INFORMATION

1. Addenda and Interpretations

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

Interpretation(s), if any, and any supplemental instructions will be in the form of written addenda that will be made available to all HIePRO 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 contract.

2. Scope

Work under this agreement shall consist of Furnishing and Delivering Supplemental Fresh Produce to Various Hawaii State Department of Education School Cafeterias on Hawaii Island and Kauai and shall be in accordance with these Special Conditions, the attached Specifications, and the State of Hawaii's General Conditions AG-008 (latest revision).

3. Buy American and Product Origin

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) 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 Hawaii 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, 220.16(f)(1)). 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 a product meets the requirement of the Hawaii Product Preference, 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 required provisions, the following provisions are included as applicable.

(A) Contracts for more than the simplified acquisition threshold, 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) 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.

(D) 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.

(E) 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.

(F) 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).

(G) 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 governmentwide 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.

(H) 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.

5. 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 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

6. State's Commitment

Pursuant to § 3-121-6, HAR, it is mandatory that all Hawaii State Department of Education cafeterias purchase from price lists issued by the Hawaii State Department of Education, Procurement and Contracts Branch.

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 Hawaii State Department of Education.

7. Contract Administrator

For purposes of this Contract, Anneliese Tanner, Program Administrator or the Program Administrator's successor, is designated Contract Administrator (CA). The CA can be contacted by telephone at 808-784-5500, via facsimile at 808-735-6262, or via e-mail at anneliese.tanner@k12.hi.us.

The CA is responsible for:

1. the terms, conditions, quantities, specifications, scope of services, other contract terms, and all decisions relating to the Contract;
2. 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
3. notifying the Hawaii 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 Jason Ono as Point-of-Contact (POC) for this Contract. As such, the POC, or their successor, should be the initial contact on all matters related to this Contract. The POC can be contacted by telephone at 808-789-8586, via facsimile at 808-735-6262, or via e-mail at jason.ono@k12.hi.us.

8. Contract Period

This Contract shall commence on January 1, 2027 and shall end on June 30, 2027, subject to availability of funds as specified in the General Conditions.

Beyond June 30, 2027, this Contract may be extended for not more than two (2) additional six (6)-month periods upon mutual written agreement of the parties, prior to expiration. As each option(s) to extend is mutually agreed upon, the CONTRACTOR shall be required to execute a supplement to the Contract for each additional period. The Contract Price for the extended period shall remain the same or lower than the initial Contract Price, subject to any price adjustment allowed by the Contract.

OFFEROR INFORMATION

9. Offeror's Authority to Bid

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 bid price submitted is the lowest bid, the Contract will be awarded to that Offeror.

10. Offeror Qualifications

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

A. Authorized Distributor
At the time of bidding and throughout the Contract period, Offeror shall be an authorized distributor of all line items offered. As evidence of this, Offeror may be requested to provide documentation that verifies Offeror's status as an authorized distributor. Offeror shall provide documentation within three (3) working days from STATE's request.

B. Office Location
At time of bidding and throughout the Contract 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. Offeror shall provide the Office Location on the Exhibit A. Exhibit A shall be provided within three (3) working days from STATE's request.

C. Warehouse Facilities
At time of bidding and throughout the Contract period, Offeror shall maintain a Warehouse Facility (hereafter "Facility") for the island(s) specified on their Offer Page(s). Facility shall be a wholesale or retail business with a permanent warehouse capable of stocking an inventory of products. Facility shall be compliant with the current Good Manufacturing Practices, USDA HACCP compliant and capable of stocking an inventory of products. As evidence of this, Offeror shall provide information regarding each of its Hawaii-based Warehouse facilities on Exhibit A.

If the Offeror does not have a warehouse facility, they shall arrange with a third-party provider of said warehouse facility and service. The warehouse facility shall be in compliance with the Current Good Manufacturing Practices, USDA HACCP compliant and capable of stocking an inventory of products. As evidence of this, Offeror shall provide on the Exhibit A, information regarding this third-party warehouse facility and service provider.

The STATE reserves the right to visit and inspect the Offeror's or third-party's warehouse facility to determine acceptability under this requirement.

D. Personnel
Offeror shall designate at least one (1) employee as the point of contact (POC) for this Contract. This individual shall be available during regular business hours, 7:45 a.m. to 4:30 p.m. HST Monday through Friday, excluding STATE Holidays, and be capable of answering questions, resolving problems, and providing sales, ordering, and follow-up assistance. An answering service is not acceptable. Offeror shall provide Point of Contact information on the Exhibit A. Exhibit A shall be provided within three (3) working days from STATE's request.

E. Delivery Capabilities
Offeror shall be capable of delivering products awarded to the various cafeterias on the island(s) specified. Deliveries shall be scheduled for at least two (2) non-consecutive working days per

week to all schools on Hawaii and Kauai. (Note: Friday and Mondays are considered "consecutive working 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 Health Food Safety Branch guidelines. The ordering school reserves the right not to accept deliveries made in non-temperature-controlled vehicles.

F. Documentation
Offeror shall provide all necessary documentation to substantiate compliance with this requirement. The Offeror shall submit the following documents with the offer:

a. Copy of Current State of Hawaii Department of Health Food Safety Inspection;
b. Copy of Current State of Hawaii Food Establishment Permit;
c. Copy of the most recent Accredited Third Party Certification review;
d. Copy of the most recent Food Safety Management System review; and
e. Copy of current Department of Health "Green" Placard ("Red" and "Yellow" Placards are unacceptable;
f. Copy of operating Hazard Analysis Critical Control Point (HACCP) plan; and
g. Proof of Pest Control Program in place.

G. Refrigerated Vehicle(s)
In compliance with Title II, Chapter 50, Hawaii Administrative Rules (HAR) related to Food Safety Code, deliveries of frozen and/or chilled products shall be made in vehicles with refrigeration systems capable of maintaining the proper frozen and/or chilled state of products delivered. Offeror shall submit information regarding its fleet of vehicles on the on the Exhibit A.

The STATE reserves the right to research, evaluate and inspect the Offeror's storage facilities or service provider to determine acceptability under this requirement.

Failure on the Offeror's part to meet these requirements may result in rejection of bid. These requirements must remain in effect during the entire contract period. Failure to maintain these requirements may result in cancellation of award.

11. Responsibility of Offerors

Offeror is advised that if awarded a contract under this solicitation, Offeror must furnish proof of compliance with the requirements of HRS § 103D-310(c), 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 of Hawaii.

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

BID PREPARATION

12. Offer Page OF-1

Offeror is requested to submit the bid 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 Contract.

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 a bid on HIePRO. The submission of the bid on HIePRO shall indicate the Offeror's intent to be bound.

13. 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 Contract 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.

14. 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 HRS § 103D-1008, a tax-exempt bid 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.

15. Bid Price

Unit Bid Price shall include labor, equipment, materials, transportation, shipping, overhead, profit, all applicable taxes and any other incidental and operational expenses incurred in the performance of all obligations hereunder. 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.

15.1. For the Islands of Hawaii and Kauai, Unit bid prices shall be based on delivery to the school cafeterias. Unit bid prices shall, upon school's request, include the stacking of delivery items in a previously-cleared storage area; and

15.2. Offeror must bid on all items within a group to qualify for the group award.

16. Hawaii Products Preference

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

17. Vehicles

Offeror shall identify the type and number of refrigerated vehicles to be used in providing services under this Contract on the Exhibit A. Exhibit A shall be provided within three (3) working days from STATE's request.

18. Authorized Distributor

Offeror may be requested to provide documentation which verifies Offeror's status as an authorized distributor. If requested by the STATE, Offeror shall provide documentation with their Exhibit A within three (3) working days from the STATE's request.

19. Offeror Information

Offeror shall provide information regarding its office location, warehouse facility, STATE's point-of-contact, and documentation on the Exhibit A. Exhibit A shall be provided within three (3) working 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 the *Liability Insurance* clause for additional information regarding this requirement. Accordingly, Offeror should consider these insurance requirements when preparing their offer.

21. Offer Guaranty

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

BID SUBMITTAL

22. Submission of Bid

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

Submission of a bid 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 a bid, 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 Hawaii State Department of Education, PCB no later than seven (7) calendar days prior to the date fixed for the close of bids. 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 bids 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 any way; 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 bids. 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 copies 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.

23. Confidential Information

If an Offeror believes that any portion of Offeror's proposal contains information that should be withheld as confidential, then the Hawaii 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 bid, be clearly marked, and shall be readily separable from the bid in order to facilitate eventual public inspection of the non-confidential portion of the bid.

Pursuant to § 3-122-58, Hawaii Administrative Rules (HAR), the head of the purchasing agency or designee shall consult with the Department of 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 Offeror appeals the denial to the Office of Information Practices in accordance with HRS § 92F-42(12).

24. Certification of Independent Cost Determination

By submitting a bid 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 of the Contract.

3. No other attempt has been made or will be made by the Offeror to solicit or implore any other person or firm to submit or not to submit a bid in response to this IFB for the purpose of restricting competition.

25. Acceptance of Bid

Acceptance of bid, 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 (60) day period.

BID EVALUATION

26. 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 Offeror under the same or different names.
   2.1 Legally distinct Offerors such as subsidiaries or jointly-owned companies may submit offers and these offers may be accepted for evaluation and award if such Offerors submit with their offer a certificate of non-collusion which affirms that the offer is made freely and without collusion with another Offeror.
      2.1.1 Legally distinct Offerors such as subsidiaries or jointly-owned companies shall submit business registration information indicating that the entities were not created after the IFB was released.
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.

27. Method of Award

Award, if made, shall be to the responsive, responsible Offeror submitting the lowest estimated Total Sum Bid Price per Group. However, if the Total Sum Bid Price per Group of the qualified low offer exceeds allotted funds, the STATE shall have the option to shorten the Contract period to allow award to be made within the allotted funds. Offeror is not required to bid on every group to be considered for award. However, Offeror must submit an offer on all items within a Group to be considered for that Group award.

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

28. Protest

Pursuant to HRS § 103D-701 and § 3-126, HAR, “Legal and Contractual Remedies”, an actual or prospective offeror who is aggrieved in connection with the solicitation or award 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.

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

PRICE LIST EXECUTION

29. 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 items awarded. This method of award does not waive compliance with the Specifications, Special Conditions, and General Conditions.

Upon award, the Hawaii State Department of Education will issue a Price List of all items awarded to the CONTRACTOR(s). This price list will be made available to all school cafeterias for use throughout the Contract period. The actual purchases will depend on the needs of the STATE and availability of funds; the POC shall coordinate all purchases on behalf of the Hawaii State Department of Education. There is no guarantee to purchase any amount of goods.

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

Pursuant to § 3-121-6, HAR, it is mandatory that school cafeterias purchase from price lists issued by the Hawaii State Department of Education. 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 school cafeterias by the Hawaii State Department of Education’s PCB.

30. Quantities

Quantities shown are good-faith estimates and constitute the STATE's best information available for the stated Contract period. They are provided for bid evaluation and planning and are not guaranteed minimum purchases. Variations between estimated and actual requirements will not constitute grounds for an equitable adjustment. Offerors shall consider the estimated quantities, seasonality, production capacity, and delivery requirements when preparing bids.

The STATE shall have the right to purchase larger or smaller quantities at the prices offered. The CONTRACTOR may, at the CONTRACTOR’s option, request approval from the PCB to terminate any line item of the award only when accumulated purchases for that line item exceed the estimated quantity by twenty-five (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 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 Procurement Officer will determine the termination date within ten (10) days from date of receipt of the request.

The STATE reserves the right to increase the number of schools to be serviced. The CONTRACTOR shall service new schools within their awarded areas and charge the same unit price.

31. Responsibility of CONTRACTOR

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

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. One of the following:

    1. That CONTRACTOR is registered and incorporated or organized under the laws of the State of Hawaii (hereinafter referred to as a "Hawaii business"); or
    2. That CONTRACTOR is 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 issued 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 HRS § 103D-310(c), and is therefore acceptable for contracting purposes. CONTRACTORs that elect to use HCE services are required to pay an annual registration fee of (at least) twelve dollars ($12.00).

33. Timely Submission of All Certificates

The above certificates should be applied for and submitted to the Hawaii 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 Contract

Normally, award shall be made within sixty (60) calendar days after the close of bids but in no case will award be made until all necessary investigations are made. After award is made, failure on the CONTRACTOR's part to execute a contract as required within ten (10) calendar days (or such further time as the Superintendent may allow) after the Offeror has received the Contract for execution shall be just cause for the annulment of the award. The Superintendent reserves the right to cancel or reject this solicitation or all offers in whole or in part when it is in the best interest of the STATE or to award the Contract to the next lowest Offeror or may publish another call for tenders, if the lowest bid is non-responsive to the STATE's needs.

35. Availability of Funds

This Contract is subject to the availability of funds. Pursuant to HRS § 103D-309, except in certain circumstances, no contract entered into by 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 Contract.

If the Contract requires performance and/or payment in more than one (1) 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 such event, the STATE will not be liable for the unpaid balance beyond the end of the current fiscal year, and the availability of funds in excess of the amount certified shall be contingent upon future appropriations or special fund revenues. All partially-funded contracts

shall be enforceable only to the extent that funds are certified as available. The STATE agrees to notify the 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 Contract to acquire similar goods or services from a third party.

36. Liability Insurance

The CONTRACTOR shall maintain in full force and effect, during the life of this Contract, liability and property damage insurance. This insurance shall protect the CONTRACTOR and the CONTRACTOR's subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this Contract, whether such operations be by the CONTRACTOR or by a subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the Contract, the insurance policy or policies shall name the subcontractor as additional insured.

As an alternative to the CONTRACTOR providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, CONTRACTOR may require subcontractor to provide its own insurance which meets the requirements herein. It is understood that a subcontractor's insurance policy(ies) are in addition to the CONTRACTOR's own policy or policies.

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

- Commercial General Liability: (Occurrence Form) — $2,000,000 aggregate; $1,000,000 combined single limit per occurrence for bodily injury and property damage.
- Automobile Liability: (Combined Single Limit) — $1,000,000 per accident

General liability and automobile liability policies required by this Contract, including a subcontractor's policy, shall contain the following clauses:

1) "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

2) "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."

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

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

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

The 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 Contract. 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.

PRICE LIST PRICE ADJUSTMENTS

37. Price List Adjustments

Unit bid prices shall remain firm throughout the initial Contract period. No price increase will be considered or applied during the initial Price List period. A price adjustment may be considered only for an optional extension period and must be requested, evaluated, and approved in accordance with Special Conditions 38. Quarterly Pricing Adjustments before the optional extension period price becomes effective.

38. Quarterly Pricing Adjustments

For an optional extension period, fluctuating market conditions may support an upward or downward adjustment to an awarded unit price. A requested adjustment must be based on verifiable market changes occurring after bid opening and must be directly related to the item for which adjustment is requested. An approved adjustment will not be retroactive and will take effect only on the date stated in the Price List.

The CONTRACTOR shall notify the STATE POC of both increases and decreases supported by the designated market evidence. The STATE may independently apply a documented decrease. Approval of any adjustment is subject to the STATE's review of the documentation, the calculation required by this Contract, the availability of funds, and issuance of a Price List.

38.1. FREQUENCY: A request for the first renewal period shall be submitted once, before execution of that renewal. If a renewal period exceeds three (3) months, subsequent adjustment requests may be submitted quarterly during that renewal period, but no item may be adjusted more than once in a quarterly adjustment period.

38.2. SUBMITTAL: The CONTRACTOR shall submit a written request by email to the STATE POC no later than thirty (30) calendar days before the proposed effective date. The request shall identify each affected item, current Contract price, proposed price, requested percentage change, calculation, market reference period, and supporting documentation. An incomplete or untimely request may be denied.

38.3. SUITABLE DOCUMENTATION: CONTRACTORs may be allowed to adjust their bid prices upon presentation of suitable proof of a price increase from their source or valid market resource. Suitable documentation includes, but is not limited to, order sheets from CONTRACTOR source(s), which would verify any price increase. STATE will utilize The USDA Agricultural Marketing Service, Los Angeles Terminal, as a reference for confirming produce costs to evaluate requests for price increases. CONTRACTORs may also utilize The USDA Agricultural Marketing Service, Los Angeles Terminal as suitable documentation for verifying any price increases: https://www.ams.usda.gov/market-news.

39. Review and Consideration of Price Adjustments

SFSB will review requests for price adjustments, and reserves the right to reject any and all requests, or modify prices, as deemed to be in the best interest of the STATE.

40. Limitations of Price List Adjustments

No increase will be allowed during the initial Price List period. During an optional extension period, the cumulative adjustment to an item's current bid price shall not exceed ninety percent (90%). The same methodology and reference data used to support increases shall be used to recognize decreases. The STATE may reject an adjustment that is unsupported, inconsistent with the specified methodology, or not in the STATE's best interest and may decline to renew the affected item or Price List.

PERFORMANCE OF CONTRACT

41. Authority of the Hawaii State Department of Education

The Hawaii 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 Hawaii 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.

42. 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 (example: delivery delays, numerous out of stock, failure to notify manager of none delivery, et cetera) 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 3-126, 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.

43. Relief Available to STATE

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

1. Suspend Payments – Temporarily withhold or disallow all or part of the billing cost and/or payments pending correction of a deficiency or a non-submission of a required deliverable by the CONTRACTOR;

2. Suspend Referrals – Suspend referrals to the CONTRACTOR should the CONTRACTOR fail to comply with any of the requirements or other term(s) or condition(s) of this Contract and, further,

the STATE may maintain the suspension of referrals until such time as the deficiency or non-compliance is corrected and the CONTRACTOR's corrective actions are determined to be acceptable by the STATE; and

3. Seek Reimbursement – Seek reimbursement from the CONTRACTOR or withhold future payments for any funds paid to the CONTRACTOR subsequent to a determination that such was unauthorized, fraudulently obtained, or inappropriately billed.

4. Seek Market Value – In the event the CONTRACTOR fails, refuses or neglects to perform the services in accordance with the requirements of these Special Conditions, the Scope of Services or the General Conditions, the STATE reserves the right to purchase, in the open market, a corresponding quantity of the services specified herein and to deduct from any monies due or that may thereafter become due to the CONTRACTOR, the difference between the price named in the Contract and the actual cost to the STATE. In case any money due the CONTRACTOR is insufficient for said purpose, the CONTRACTOR shall pay the difference upon demand from the STATE. The STATE may also utilize all other remedies provided by law.

44. Confidentiality Obligations

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

The CONTRACTOR, including its employees, agents, representatives, and assigns shall abide by the following with regards to Confidential Information: (i) They shall not disclose to any unauthorized party any Confidential Information, except as specifically permitted by the STATE and subject to the STATE's limitations on confidentiality of information and relevant legal requirements of the State to include, but not limited to the Family Educational Rights and Privacy Act (FERPA). Permission will be granted through a formal written agreement concerning the disclosure of personally identifiable information (PII) from student education records, signed by the STATE and the CONTRACTOR, and must be provided as an attachment to this Contract; (ii) They shall only permit access to Confidential Information to employees, agents, representatives, and assigns having a specific need to know in connection with performance under this Contract; and (iii) They shall advise each of their employees, agents, representatives, and assigns of their obligations to keep such Confidential Information confidential 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) who are authorized to handle the Confidential Information (hereinafter referred to as "Authorized Handlers"). Authorized Handlers shall ensure the security of the Confidential Information. Only Authorized Handlers shall have access to the Confidential Information, which 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 will be responsible for safeguarding the confidentiality of all Confidential Information it receives from the STATE and shall safeguard and protect such documents from unauthorized use, handling, or viewing. CONTRACTOR shall be liable to the STATE and to any person 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 Contract.

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

44.2 In the event of termination of this Contract, CONTRACTOR shall return to STATE all Confidential Information, including student information, received under this Contract and further agrees to destroy any and all copies of, or references to, any Confidential Information, including student information, shared by STATE as a result of this Contract. CONTRACTOR shall certify in writing that all such copies have been destroyed or returned to the STATE.

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 Worker(s) 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 or provide an original invoice directly to the STATE cafeterias as listed on the order. Invoicing shall be one (1) invoice per school per Price List. CONTRACTOR’s Invoices shall include product description exactly as stated on the STATE PL. Invoice should reference both the Price List number and the solicitation number.

48. Payment

HRS § 103-10, provides that the STATE shall have thirty (30) calendar days to make payment after receipt of the invoice or satisfactory delivery of the goods or satisfactory performance of the services. For this reason, the STATE may reject any bid submitted with a condition requiring payment within a shorter period. Further, the STATE may reject any bid submitted with a condition requiring any interest payments greater than that allowed by HRS § 103-10, as amended.

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

The **final payment** under the Contract shall be for services performed and/or goods delivered during the billing period just prior to the Contract anniversary date.

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

1. A valid (not over 2 months old) and **original** *Tax Clearance Certificate* (TCC) must accompany the final payment invoice. In accordance with HRS § 103-53, all CONTRACTORs must provide a TCC from the State of Hawaii Department of Taxation and the U.S. Internal Revenue Service as a prerequisite to receipt of final payment.
2. The *Certification of Compliance for Final Payment* (DOE Form-22) with an original signature of an authorized representative of the CONTRACTOR.
3. In lieu of the above, the CONTRACTOR may submit an original *Certificate of Vendor Compliance* as issued via the online system, also referred to as "Hawaii Compliance Express". Details regarding this online application process may be viewed at: http://vendors.ehawaii.gov/hce/.

APPROVALS

49. State of Hawaii'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 if applicable, is subject to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.

Offeror: _____

EXHIBIT A

OFFEROR INFORMATION

Offeror shall provide the Exhibit A, including attachments if applicable, within three (3) working days from STATE's request.

A. AUTHORIZED DISTRIBUTOR

At the time of bidding and throughout the Contract period, Offeror shall be an authorized distributor of all line items offered. As evidence of this, Offeror may be requested to provide documentation that verifies Offeror's status as an authorized distributor.

Authorized Distributor Documentation Attached ☐ Yes

B. OFFICE LOCATION

At time of bidding and throughout the Contract 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.

Office Location

Office Street Address _____

_____

Phone Number _____

C. WAREHOUSE FACILITIES

At time of bidding and throughout the Contract period, Offeror shall maintain a Warehouse Facility (hereafter "Facility") for the island(s) specified on their Offer Page(s). Facility shall be a wholesale or retail business with a permanent warehouse capable of stocking an inventory of products. Facility shall be compliant with the current Good Manufacturing Practices, USDA HACCP compliant and capable of stocking an inventory of products. As evidence of this, Offeror shall provide information regarding each of its Hawaii-based Warehouse facilities on Exhibit A.

If the Offeror does not have a warehouse facility, they shall arrange with a third-party provider of said warehouse facility and service. The warehouse facility shall be in compliance with the Current Good Manufacturing Practices, USDA HACCP compliant and capable of stocking an inventory of products. As evidence of this, Offeror shall provide on the Exhibit A, information regarding this third-party warehouse facility and service provider.

The STATE reserves the right to visit and inspect the Offeror's or third-party's warehouse facility to determine acceptability under this requirement.

1. Hawaii Warehouse Facility Name _____

Offeror: _____

Warehouse Facility Street Address _____

_____

Phone Number _____

Third-party warehouse facility ☐ Yes ☐ No

2. Kauai Warehouse Facility Name _____

Warehouse Facility Street Address _____

_____

Phone Number _____

Third-party warehouse facility ☐ Yes ☐ No

D. PERSONNEL

Offeror shall designate at least one (1) employee as the point of contact (POC) for this Contract. This individual shall be available during regular business hours, 7:45 a.m. to 4:30 p.m. HST Monday through Friday, excluding STATE Holidays, and be capable of answering questions, resolving problems, and providing sales, ordering, and follow-up assistance. An answering service is not acceptable.

POC Name _____

Office Telephone Number _____

Cell Phone Number _____

Email Address _____

E. DOCUMENTATION

Offeror shall provide all necessary documentation to substantiate compliance with this requirement. The Offeror shall submit the following documents with the offer:

a. Copy of Current State of Hawaii Department of Health Food Safety Inspection ☐ Yes

b. Copy of Current State of Hawaii Food Establishment Permit ☐ Yes

c. Copy of the most recent Accredited Third Party Certification review ☐ Yes

d. Copy of the most recent Food Safety Management System review ☐ Yes

e. Copy of current Department of Health "Green" Placard ("Red" and "Yellow" Placards are unacceptable ☐ Yes

f. Copy of operating Hazard Analysis Critical Control Point (HACCP) plan ☐ Yes

g. Proof of Pest Control Program in place ☐ Yes

F. REFRIGERATED VEHICLE(S)

In compliance with Title II, Chapter 50, Hawaii Administrative Rules (HAR) related to Food Safety Code, deliveries of frozen and/or chilled products shall be made in vehicles with refrigeration systems capable of maintaining the proper frozen and/or chilled state of products delivered.

The STATE reserves the right to research, evaluate and inspect the Offeror's storage facilities or service provider to determine acceptability under this requirement.

	Year	Make	Model	License Number
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

*If additional space is needed for the refrigerated vehicles(s), please include an additional page with the same information.

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

NUMBER	SCHOOL	PHONE	ADDRESS	CITY	ZIP
	HAWAII DISTRICT				
1	Ernest Bowen DeSilva Elementary School	808-974-4859	278 Ainako Avenue	Hilo	96720
2	Hilo High School	808-313-5676	556 Waianuenue Avenue	Hilo	96720
3	Hilo Intermediate School	808-974-4954	587 Waianuenue Avenue	Hilo	96720
4	Hilo Union Elementary School	808-933-0900	506 Waianuenue Avenue	Hilo	96720
5	Holualoa Elementary School	808-322-1527	76-5957 Mamalahoa Highway	Holualoa	96725
6	Honokaa High and Intermediate School	808-313-7040	45-527 Pakalana Street	Honokaa	96727
7	Kahakai Elementary School	808-313-6252	76-147 Royal Poinciana Drive	Kailua-Kona	96740
8	Prince Jonah Kalanianaole Elementary and Intermediate School	808-964-9700	27-330 Old Mamalahoa Highway	Papaikou	96781
9	Chiefess Kapiolani Elementary School	808-974-4006	966 Kilauea Avenue	Hilo	96720
10	Kau High and Pahala Elementary School	808-313-4151	96-3150 Pikake Street	Pahala	96777
11	Keaau Elementary School	808-313-4660	16-680 Keaau-Pahoa Road	Keaau	96749
12	Keaau High School	808-313-3370	16-725 Keaau-Pahoa Road	Keaau	96749
13	Keaau Middle School	808-313-4829	16-565 Keaau-Pahoa Road	Keaau	96749
14	Kealakehe High School	808-313-3646	74-5000 Puohulihuli Street	Kailua-Kona	96740
15	Keonepoko Elementary School	808-313-4582	15-890 Kahakai Boulevard	Pahoa	96778
16	Kealakehe Intermediate School	808-327-4663	74-5062 Onipaa Street	Kailua-Kona	96740
17	Keaukaha Elementary School	808-974-4185	240 Desha Avenue	Hilo	96720
18	Kohala High School	808-889-7130	54-3611 Akoni Pule Highway	Kapaau	96755
19	Konawaena High School	808-323-4573	81-1043 Konawaena Sch Road	Kealakekua	96750
20	Konawaena Elementary School	808-323-7569	81-901 Onouli Road	Kealakekua	96750
21	Mountain View Elementary School	808-968-2307	18-1235 Volcano Road	Mt. View	96771
22	Naalehu Elementary and Intermediate School	808-313-4050	95-5545 Mamalahoa Highway	Naalehu	96772
23	Paauilo Elementary and Intermediate School	808-776-7716	43-1497 Hauola Road	Paauilo	96776
24	Pahoa High and Intermediate School	808-965-2162	15-3038 Puna Road	Pahoa	96778
25	Waiakea High School	808-974-4832	155 W. Kawili Street	Hilo	96720
26	Waiakea Intermediate School	808-981-7243	200 W. Puainako Street	Hilo	96720
27	Waiakeawaena Elementary School	808-981-7213	2420 Kilauea Avenue	Hilo	96720
28	Waikoloa Elementary and Middle School	808-883-2379	68-1730 Hooko Street	Waikoloa	96738
29	Waimea Elementary School	808-887-6099	67-1225 Mamalahoa Highway	Kamuela	96743
	KAUAI DISTRICT				
30	Eleele Elementary School	808-335-2118	4750 Uliuli Road	Eleele	96705
31	Kalaheo Elementary School	808-332-6800	4400 Maka Road	Kalaheo	96741
32	Kapaa High School	808-821-4409	4695 Mailihuna Road	Kapaa	96746
33	Kapaa Middle School	808-821-6966	4867 Olohena Road	Kapaa	96746
34	Kauai High School	808-274-3165	3577 Lala Road	Lihue	96766
35	Chiefess Kamakahelei Middle School	808-241-3221	4431 Nuhou Street	Lihue	96766
36	King Kaumualii Elementary School	808-241-3162	4381 Hanamaulu Road	Lihue	96766
37	Kekaha Elementary School	808-337-7662	8140 Kekaha Road	Kekaha	96752
38	Kilauea Elementary School	808-828-0338	2440 Kolo Road	Kilauea	96754
39	Koloa Elementary School	808-742-8452	3223 Poipu Road	Koloa	96756
40	Waimea High School	808-338-6820	9707 Tsuchiya Road	Waimea	96796
41	Elsie H Wilcox Elementary School	808-274-3024	4319 Hardy Street	Lihue	96766

GENERAL CONDITIONS

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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 section103D-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 for 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.