

STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
PROCUREMENT AND CONTRACTS BRANCH

January 17, 2020

INVITATION FOR BIDS

No. IFB D20-114

SEALED BIDS

TO

FURNISH AND DELIVER JUMP START BREAKFAST PRODUCTS TO VARIOUS HAWAII  
DEPARTMENT OF EDUCATION SCHOOL CAFETERIAS STATEWIDE

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

on

February 11, 2020

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

**Wednesday, January 29, 2020**, Data Submission Form, request for consideration of "Pre-approved Acceptable Products", will be received up to **2:00 p.m. (HST)** in the STATE, HIDEOE, Procurement and Contracts Branch, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797, via fax at (808) 675-0133, hand deliver, or email to [Taufaasau.paulo@k12.hi.us](mailto:Taufaasau.paulo@k12.hi.us)

**Tuesday, February 4, 2020, ONE (1) PRODUCTION CASE** of sample product, approved for testing and consideration will be received between **9:00 a.m. and 10:00 am. at the School Food Services Branch, 1106 Koko Head Avenue, Honolulu, HI. 96816** (Reference Special Conditions No. 22).

Questions relating to this solicitation may be directed to Taufaaasau Paulo, Procurement and Contracts Support Specialist, at telephone (808) 675-0130, via facsimile (808) 675-0133, or via email at [taufaaasau.paulo@k12.hi.us](mailto:taufaaasau.paulo@k12.hi.us)

**FURNISH AND DELIVER JUMP START BREAKFAST PRODUCTS TO VARIOUS HAWAII  
DEPARTMENT OF EDUCATION SCHOOL CAFETERIAS STATEWIDE  
IFB D20-114**

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

To Whom It May Concern:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications, Special Conditions, and General Conditions, Form AG-008 attached hereto and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

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

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

State of incorporation: \_\_\_\_\_

Offeror is:  Sole Proprietor    Partnership    Corporation    Joint Venture    Other \_\_\_\_\_

Federal I.D. No.: \_\_\_\_\_ Hawaii General Excise Tax License I.D. No.: \_\_\_\_\_

Payment address (other than street address below): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Business address (street address): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Date: \_\_\_\_\_

Respectfully submitted:

Telephone No.: \_\_\_\_\_

\_\_\_\_\_  
Authorized (Original) Signature

Fax No.: \_\_\_\_\_

\_\_\_\_\_  
Name and Title (Type or Print)

E-mail Address: \_\_\_\_\_

\* \_\_\_\_\_  
**Exact Legal Name of Company (Offeror)**

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

Offeror shall provide the following information:

**1. The Offeror shall submit the following documents with its bid:**

- a. Copy of Current State of Hawai`i Department of Health Food Safety Inspection;
- b. Copy of Current State of Hawai`i Food Establishment Permit;
- c. Copy of Current Department of Health "Green" Placard ("Red" and "Yellow" Placards are unacceptable);
- d. Copy of operating Hazard Analysis Critical Control Point (HACCP) plan; and
- e. Proof of Pest Control Program in place.

**2. ~~State of Hawaii-based Warehouse. Office and Point of Contact.~~ Offeror shall provide the following information regarding the State of Hawaii-based wholesale or retail business with a permanent warehouse and office and be compliant with the current Good Manufacturing Practices as applicable. Offeror shall provide the information for the employee designated as the STATE, HIDOE Point of Contact (POC):**

Name of Company \_\_\_\_\_

Office Address \_\_\_\_\_

Warehouse Address \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

E-Mail Address (if applicable) \_\_\_\_\_

Point of Contact Name \_\_\_\_\_

POC: Email address: \_\_\_\_\_ Contact No.: \_\_\_\_\_

Backup Point of Contact \_\_\_\_\_

POC Backup Email address: \_\_\_\_\_ Contact No: \_\_\_\_\_

**3. For the Islands of Molokai and Lanai, Unit bid prices shall be based on delivery to dock. The HIDOE will arrange for transportation from dock.**

Offeror: \_\_\_\_\_

In the 2018-19 school year, First Lady Dawn Amano-Ige teamed up with the Department of Education, local and national non-profits, and local businesses to launch the Jump Start breakfast initiative aimed at providing more students with the opportunity to eat school breakfast and start their day healthy and ready to learn. Through breakfast model pilot testing, the team learned that innovative models like grab-and-go or second chance breakfast, morning breakfast clubs, and serving foods that resonate with students' palate can help ensure more kids take advantage of this program.

## SPECIFICATIONS

### GENERAL SPECIFICATIONS

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

These specifications shall apply to all products unless otherwise specified.

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

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

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

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

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

Acceptable products specified have been researched and found to meet all necessary requirements and set a standard of quality. However, it is not the STATE'S intention to restrict Offerors to only the manufacturers or brands named; other manufacturers or brands may be tested and evaluated for acceptability.

1. **SHELF-LIFE:** The principle role of food packaging is to protect the food products from microbial attack, exposure to gases and moisture so as to extend the shelf life of the commodity.
2. **PACKAGING:** Materials used to hold commodity packed as cases and packages shall be constructed to ensure safe and sanitary transportation to the point of delivery so that the products, in each case, are properly protected without damage to product. All packaging materials shall be FDA approved to meet all pertinent State and Federal regulations for safe use with foods. Packaging materials shall impart no odor, flavor, and color to the product.

3. LABELING: All product packaging shall be clearly labeled identifying the contents size/weight, the manufacturer, the packing date, and origin. All packaging must designate the origin of the produce delivered.
4. 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.
5. PRIVATE LABELED PRODUCT: When the product offered is a privately labeled product, identification of the product shall be made by:
  - 5.1 A permanent pre-printed impression on the container or on the product itself; or a label affixed by the manufacturer.

## **SERVICES**

### General Requirements

The CONTRACTOR shall furnish and deliver Jump Start Breakfast products to the STATE, Department of Education, school cafeterias statewide. See Detailed Specifications for food items in accordance with the provisions and requirements stated herein.

1. Unless otherwise specified herein, the CONTRACTOR shall furnish all material, labor, facilities, equipment, and supplies necessary to perform the services required herein.
2. The CONTRACTOR shall provide services to the sole satisfaction of and in accordance with the instructions provided by School Food Service Branch (SFSB).
3. The CONTRACTOR shall accommodate placing of orders via multiple sources (i.e. email orders, fax and/or phone orders).
4. The CONTRACTOR shall coordinate and manage the delivery dates with the STATE POC or the School Food Service Manager (SFSM) of the schools, and supervise, manage, and deliver units of Jump Start Breakfast products to schools.
5. The CONTRACTOR shall maintain best quality of products within the warehousing facilities and throughout the delivery process.
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 and local health inspections and approvals and that such inspection/approvals are current. Documentation shall be maintained on file to reflect compliance with federal, state and local regulations.

### **DETAILED SPECIFICATIONS:**

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

### **ULU (Breadfruit) PANCAKE**

Acceptable Brands: La Tour Bakehouse #F1001 or equal

One (1) 2.5 oz. serving shall consist of five (5) pieces approximately 2.5" in diameter, ready to eat. Each

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serving shall provide 1 oz. USDA NSLP Bread/grain equivalent. Flat, round pancake containing Ulu (Breadfruit).

### **KALO (TARO) CHUNKS**

Acceptable Brands: Aloha Aina Poi Company #002, Hanalei Taro 852805002020, Waiahole Poi Factory #002 or equal

Kalo (Taro) steamed, peeled and packed in one (1) pound food safe bags or containers.

### **POI**

Acceptable Brands: Aloha Aina Poi Company #001, Hanalei Taro 00852805002068, Waiahole Poi Factory #001 or equal

Kalo (Taro) steamed and processed into Poi. Ready to serve, honey-like consistency. Packed in approximately (1) pound food safe bags or containers.

### **GENERAL REQUIREMENTS**

1. The CONTRACTOR shall furnish and deliver Jump Start Breakfast products to the STATE, Department of Education, school cafeterias statewide. See **Detailed Specifications** for food items in accordance with the provisions and requirements stated herein.
  - 1.1 Unless otherwise specified herein, the CONTRACTOR shall furnish all material, labor, facilities, equipment, and supplies necessary to perform the services required herein.
  - 1.2 The CONTRACTOR shall provide services to the sole satisfaction of and in accordance with the instructions provided by School Food Service Branch (SFSB).
  - 1.3 The CONTRACTOR shall accommodate placing of orders via multiple sources (i.e. website, email orders, fax and/or phone orders).
  - 1.4 The CONTRACTOR shall coordinate and manage the delivery dates with the STATE POC or the School Food Service Manager (SFSM) of the schools, and supervise, manage, and deliver units of Jump Start Breakfast products to schools.
  - 1.5 The CONTRACTOR shall maintain best quality of products within the warehousing facilities and throughout the delivery process.
  - 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 and local health inspections and approvals and that such inspection/approvals are current. Documentation shall be maintained on file to reflect compliance with federal, state and local regulations.

### **2. DEPARTMENT OF HEALTH STANDARDS:**

CONTRACTOR shall ensure that all products shall be prepared, handled, and are stored in accordance with health and sanitation standards for the State of Hawaii Department of Health Food Safety Code, Hawaii Administrative Rules 11-50.

## **CONTRACTUAL REQUIREMENTS**

### **1. PRODUCT QUALITY**

Products furnished under this IFB shall be fresh and 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 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.

### **2. WAREHOUSE AND FOOD STORAGE REQUIREMENTS**

- 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.

In accordance with food safety guidelines, the food products shall be rotated in and out of storage by expiration date using First In-First Out. 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.

- 2.2 The CONTRACTOR shall furnish a warehousing facility with sufficient equipment, personnel, and space to accept, unload, handle, store, and deliver perishable (temperature controlled, and refrigerated) food items to schools under the jurisdiction of SFSB.
- 2.3 Additionally, the CONTRACTOR must maintain records/logs of the appropriate ventilation, security, and temperature levels for the types of food throughout the transportation process.
- 2.4 The CONTRACTOR's warehousing facility shall:
- a. Be maintained as stipulated in 7 CFR, Part 250.14 regulations and ensure that warehouse storage facilities have obtained all required federal, state and/or local health inspections and/or approvals are current.
  - b. Be maintained in a clean, dry, and orderly manner to ensure the safety, wholesomeness, and sanitary condition of the stored food and free from rodent, bird, insect, and other animal infestation.
  - c. Be kept free of damaged food or food of questionable condition.
- 2.5 The CONTRACTOR shall:
- a. Store items off the floor in a manner to allow for adequate ventilation and cleaning.
  - b. Safeguard against theft, spoilage, and other loss.

- 2.6 CONTRACTOR shall ensure that Jump Start Breakfast products are produced from manufacturers with a Hazard Analysis Critical Control Point (HACCP) system in place.
- 2.7 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.

### 3. ORDER AND DELIVERY REQUIREMENTS

#### 3.1 Orders

During the contract period, as products are required, STATE, Department of Education cafeterias will submit orders via e-mail, or by phone to CONTRACTORS by 3:00 p.m., ten (10) business days prior to the necessary delivery date. CONTRACTOR shall provide order confirmations to ordering schools within one (1) business day of receiving orders. All orders received by the CONTRACTOR during the contract period must be honored and the CONTRACTOR is obliged to deliver 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 at **least five (5) days before the requested delivery date.**

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

#### 3.2 Delivery Requirements

- 3.2.1 The CONTRACTOR shall be responsible and liable for each schools' delivery from the CONTRACTOR'S facility to the school and assures that delivery is completed in accordance with Title 11, Chapter 50, Hawai'i Administrative Rules (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.
- 3.2.2 The CONTRACTOR is responsible for processing shipping documents, Bill of Lading, etc. for deliveries to all schools on the neighbor islands.
- 3.2.3 The CONTRACTOR is responsible for delivering products to the shipping carrier with the shipping documents. All shipping charges shall be billed to the CONTRACTOR.
- 3.2.4 Deliveries of all orders shall be completed within ten (10) business days after receipt of order. For orders received prior to ten (10) business days of requested delivery dates, CONTRACTOR shall deliver on the requested delivery date. Deliveries shall be made to the individual cafeterias at locations designated on the orders.
- 3.2.5 The minimum order for delivery shall be FIFTY DOLLARS (\$50.00). 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 FIFTY DOLLARS (\$50.00) shall be made available on a "will call" basis within twenty-four (24) hours after receipt of order. Delivery of orders totaling less than \$50.00 may be made at the CONTRACTOR'S option and according to their delivery



schedule. CONTRACTOR is required to deliver all items outstanding at the end of the contract period if order was received during the contract period.

3.2.6 The CONTRACTOR shall deliver food products on Monday through Friday, no earlier than 6:00 a.m. and be completed no later than 2:00 p.m. , excluding the following specified holidays, and considering special circumstances of the schools (such as school closures due to inclement weather, natural disasters, etc.):

- 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. Dr. Martin Luther King Jr. Day
- h. Presidents' Day
- i. Kuhio Day
- j. Good Friday
- k. Memorial Day
- l. 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 School Food Service Manager or Contract Point-of-Contact (POC).

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

3.2.7 Except for an emergency/disaster situation or a situation of distress, if delivery is not being accepted by a school, such as no food service staff at the 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 hour following the CONTRACTOR'S notification for the CA or STATE POC to provide the CONTRACTOR with instructions regarding the refused shipment.

### 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 or contract POC of the shortages on the awarded items at least five (5) days before the requested delivery date. CONTRACTOR shall then obtain prior approval from the STATE, SFSB and the ordering cafeteria to deliver an acceptable substitute, at the same unit 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.

#### **4. PERSONNEL**

Offeror shall designate at least one (1) employee or group of employees as the point of contact with a direct phone number for this contract. This individual or group shall 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 applicable Offer page. Additionally:

- The CONTRACTOR shall have the capability to handle large accounts.
- The CONTRACTOR shall have an Account Representative assigned to School Food Services Branch (SFSB) accounts throughout the course of the contract. The Account Representative shall be designated as the primary contact person to ensure strict adherence to the contractual requirements and communicate with STATE POC. Also, the CONTRACTOR shall provide the name of one backup individual who shall assume the responsibilities of the primary contact person in his/her absence.
- The CONTRACTOR'S Account Representative shall adhere to a two (2) hour response time, Monday through Friday 8:00 a.m. to 4:00 p.m. during product recalls and emergencies. The Account Representative shall provide the following services:
- Timely communication with STATE POC or designee to discuss shortages and needed substitutions.
- Respond to STATE POC complaints about various products.
- Issue credit memos and arrange for returns/pick-ups of mis-shipped or unacceptable products. Resolve any problems with the order/delivery schedule (including, but not limited to: pick up/delivery timing and access issues) that arise.
- Coordinate with STATE POC any rebate programs.

#### **5. RECALL/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 STATE menus:

- 5.1 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.
- 5.2 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.
- 5.3 Disposal. The CONTRACTOR shall dispose of all products in accordance with USDA and manufacturer guidelines.

#### **6. 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 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 also reserves the right to reject any product with a short (less than 5 days) expiration period. Products shall meet all applicable federal and state regulations.

Failure to replace or to 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.

## **7. 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.

## **SPECIAL CONDITIONS**

### **GENERAL INFORMATION**

#### **1. Addenda and Interpretations**

Discrepancies, omissions, or questions related to this solicitation shall be communicated in writing to the STATE, PCB via facsimile at (808) 675-0133 or e-mail to Taufaaasau.Paulo@k12.hi.us for interpretation and must be received no later than ten (10) 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 HlePRO registered Offerors prior to the date fixed for the close of bids. Failure of any Offeror to receive any such addenda or interpretations shall not relieve the Offeror of any obligation under this solicitation. All addenda issued shall be incorporated into the resulting contract.

#### **2. Scope**

Work under this agreement shall consist of furnishing and delivery of Jump Start Breakfast products to STATE, Department of Education school cafeterias statewide and shall be in accordance with these Special Conditions, the attached Specifications, and the General Conditions AG-008 (latest revision).

#### **3. Buy American**

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

##### **3.1 Applicability to Hawaii:**

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

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

##### **3.2 Offeror Responsibility:**

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

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

##### **3.3 Documentation Requirements:**

If the Hawaii Product Preference is applicable, 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 currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as

amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

#### 4.2 Procurement of Recovered Materials

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

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

### 5. State’s Commitment

Pursuant to Section 3-121-6, HAR, it is mandatory that STATE, Department of Education school cafeterias, IFB D20-114, Furnishing and Delivery of Jump Start Breakfast products to various HIDOE school cafeterias statewide, purchase from price lists issued by the STATE, Department of Education, Procurement and Contracts Branch (PCB).

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

### 6. Contract Administrator

For purposes of this contract, Mr. Albert Scales, Director of the STATE, Department of Education, School Food Services Branch or his successor, is designated Contract Administrator (CA). CA can be contacted by telephone at 808-733-8400, via facsimile at 808-753-6262, or via e-mail at Albert.Scales@k12.hi.us

The CA is responsible for:

- the terms, conditions, quantities, specifications, scope of services, other contract terms, and all decisions relating to the contract;
- monitoring the CONTRACTOR’s work, documenting that CONTRACTOR maintains the required insurance coverage (if applicable), resolving contract disputes and discrepancies, evaluating the work of the CONTRACTOR, assuring the services or goods are delivered as required in the contract, and processing payment for services rendered; and

- notifying Procurement and Contracts Branch 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 Ms. Lauren Oda as Point-of-Contact (POC) for this contract. As such, the POC should be the initial contact on all matters related to this contract. POC can be contacted by telephone at (808) 784-5076, via facsimile at (808) 735-6262, or via e-mail at Lauren.Oda@k12.hi.us

## **7. Contract Period**

The Contract shall commence Upon Execution and shall end on June 30, 2021 subject to availability of funds as specified in the General Conditions.

The Contract may be extended for not more than four (4) additional twelve-month periods, i) upon mutual written agreement of the parties, ii) prior to expiration and iii) under the same terms and conditions of the original agreement or as negotiated between the STATE and the CONTRACTOR. Contract extension(s) shall be contingent upon i) the need for continued services and ii) funding availability beyond the current fiscal year. 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.

## **OFFEROR INFORMATION**

### **8. 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.

### **9. Offeror Qualifications**

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

#### **Authorized Distributor**

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

#### **Warehousing Facility**

At the time of bidding and throughout the contract period, Offeror shall maintain a Warehouse Facility (hereafter "Facility") in the State of Hawaii. 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. Offeror shall submit information regarding its State based Warehouse Facility on the applicable Offer Page.

#### **Delivery Capabilities**

CONTRACTOR shall furnish and deliver food products a minimum of one (1) day to a maximum of five (5) days of deliveries per week to STATE, HIDOE school cafeterias that placed an order, with the understanding that there may be shipping delays due to uncontrollable situations, including but not limited to, inclement weather.

#### **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 current Department of Health "Green" Placard ("Red" and "Yellow" Placards are unacceptable);

- d. Copy of Operating Hazard Analysis Critical Control Point (HACCP) plan; and
- e. Proof of Pest Control Program in place.

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 contact period. Failure to maintain these requirements may result in cancellation of award.

The STATE reserves the right to inquire if the prospective Offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work. The STATE may submit questions or request information in writing, and the unreasonable failure of the Offeror to supply answers or the requested information within five (5) business days may be grounds for a determination of non-responsibility. The STATE may consider the response or other factors in its review. Thereafter, pursuant to §103D-310, HRS and §3-122-108 and 109, HAR, a determination of responsibility or non-responsibility of an Offeror to perform the work called for in this solicitation shall be made by the procurement officer on the basis of available information. If the Offeror is found to be not fully qualified and able to perform the intended work, a written determination of non-responsibility shall be made by STATE POC.

## 10. Responsibility of Offerors

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

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

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

## **BID PREPARATION**

- 11. Offer Page OF-1.** Offeror is requested to submit the 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 HlePRO. The submission of the bid on HlePRO shall indicate the Offeror's intent to be bound.

- 12. Taxable Transaction.** Unless the HRS exempts a person from paying the applicable general excise tax, work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS and Chapter 238, HRS, where applicable. Both out-of-state and Hawaii-based companies are advised that the gross receipts derived from this 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.

The "State of Hawaii Information on Hawaii State Taxes Administered by the Department of Taxation", Publication-1 (Revised 2018) is included herein by reference and available online at <http://files.hawaii.gov/tax/news/pubs/18pub1.pdf>

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

For evaluation purposes, pursuant to §103D-1008, HRS, a tax-exempt 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.



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

- For the Islands of Oahu, Hawaii, Maui, Kauai, unit bid prices shall be based on delivery to school cafeteria. Unit bid price shall, upon school's request, include the stacking of delivery items in a previously-cleared storage area;
- For the Islands of Molokai and Lanai, Unit bid prices shall be based on delivery to dock. The HDOE will arrange for transportation from dock or airport to school;
- Offeror need not bid on all Groups to qualify for award.

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

**16. Manufacturer/Brand Name and Product Number.** Offeror shall provide the name of the manufacturer or brand, the manufacturer's product code number, the Offeror's label or brand name, and/or any other identifier(s) of each product offered. Failure to do so or indicating remarks such as "as specified" shall be sufficient grounds for rejection of the offer.

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

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

#### **17. Hawaii Products Preference**

Hawaii Products Preference, although Hawaii products are preferred, shall not be factored into any award subject to this solicitation. When locally grown produce is not available, in season Regional (California, Oregon, and Washington) and domestic (USA grown) should be offered before sourcing outside of the USA. The CONTRACTOR is responsible for identifying the origin of each item on all packaging, delivery invoices and monthly statements by state (i.e. Hawaii-Grown, California) or country if other than USA grown.

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

**19. Offeror Information.** Offeror shall provide information regarding its warehouse location(s), and point-of-contact, on the applicable Offer Page.

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

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

**21. Offer Guaranty.** An offer guaranty (bid bond) is not required for this IFB.

#### **PRE-APPROVED ACCEPTABLE PRODUCTS**

#### **22. Pre-Approved Acceptable Products**

## Pre-Approval Process

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

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

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

### Step 1 - Documentation (Data Submission Form)

**At or before Wednesday, January 29, 2020, 2:00 p.m. (HST):** Interested parties must fax, hand deliver, or email a copy of the following documents to the State of Hawaii, Department Of Education, Procurement and Contracts Branch, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797, fax: (808) 675-0133, email: [Taufaasau.paulo@k12.hi.us](mailto:Taufaasau.paulo@k12.hi.us).

Documents shall include:

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

The burden of proof as to the quality and suitability of the offered product shall be upon the Offeror.

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

**On or around Thursday, January 30, 2020,** the STATE will issue an addendum via the HlePRO listing all products submitted for pre-qualification and will include the classification of each product as "Approved" or "Rejected".

### 23. Product Information and Sample

Product brochures and other information submitted shall become the property of the STATE and may be retained for future reference.

#### Step 2 – Sample Submission

**On Tuesday, February 4, 2020, between 9:00 a.m. and 10:00 a.m. (HST),** interested parties must deliver one **(1) PRODUCTION case** of the pre-qualified product to the School Food Services Branch, 1106 Koko Head Avenue, Honolulu, HI 96816. No samples will be accepted after the date and time specified, unless prior arrangements have been made with the School Food Services Branch.

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

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

**On or around Tuesday, February 4, 2020** an addendum will be issued via the HlePRO listing all products pre-approved by the STATE as an acceptable product.

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

will not be considered for award.

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

## **BID SUBMITTAL**

### **24. Submission of Bid**

**Bids will be received through the State of Hawaii eProcurement System (HlePRO) Public Procurement Notices Website at no later than the date and time stated on the HlePRO.**

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 STATE PCB no later than ten (10) 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 HlePRO (<https://heipro.ehawaii.gov/welcome.html>) on the solicitation document(s) available on the HlePRO. 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.

Bids 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 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.

### **25. Confidential Information**

If an Offeror believes that any portion of his proposal contains information that should be withheld as confidential, then the Procurement and Contracts Branch 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 Section 3-122-58, Hawaii Administrative Rules (HAR), the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination in accordance with Chapter 92F, Hawaii Revised Statutes (HRS). If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with Section 92F-42(12), HRS.

### **26. 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 indicate any other person or firm to submit or not to submit for the purpose of restricting competition.

## **27. 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 day period.

## **BID EVALUATION**

### **28. Disqualification of Offers**

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

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

### **29. Method of Award**

Award, if made, shall be to the responsive, responsible offeror(s) submitting the lowest Unit Bid Price on a per item basis. However, if the Total Sum Bid 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 with the allotted funds.

Offeror need not bid on all items to qualify for the award.

### **30. Protest**

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

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

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

## **AWARD EXECUTION**

### **31. Price List Award**

Formal written contracts and performance bonds will not be required for awards made in response to this bid solicitation. Successful Offerors will receive a "Notice of Award by Price List" letter to which will be attached the price list indicating item(s) awarded to the successful Offeror. This method of award does not waive compliance with the Specifications,

Special Conditions, and General Conditions, Form AG-008.

A STATE, Department of Education Price List will be issued as a result of any awards made against this IFB. Orders will be placed on an "as needed" basis during the term of the contract. The actual purchases will depend on the needs of the STATE and availability of funds.

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

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

### **32. Responsibility of CONTRACTOR**

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

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

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

### **33. Hawaii Compliance Express.**

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

### **34. Timely Submission of All Certificates**

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

### **35. 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.

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

and above all outstanding contracts sufficient to cover the amount required by the contract.

If the contract calls for performance or payment in more than one fiscal year (July 1 to June 30), the CFO may certify only that portion of the total funds allocated to satisfy the STATE's obligations for payments in the current fiscal year. In that event, the STATE will not be liable for the unpaid balance beyond the end of the current fiscal year, and availability of funds in excess of the amount certified shall be contingent upon future appropriations or special fund revenues. All partially-funded contracts 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 in order to acquire similar equipment 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 his 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 himself 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.
- Workers' Compensation: The CONTRACTOR shall maintain workers' compensation and employer's liability insurance that comply with statutory limits.
- 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 clause:

- 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 obliged 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. Pricing Adjustments**

Price Adjustment for the Initial Contract Period:

There shall be no price increase adjustment during the first three (3) months of the initial contract period. Only one price increase if any, per food item, shall be allowed during the second half of the initial contract period and is limited to the inflation rate published by the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for the Honolulu area.

Website: [https://www.bls.gov/regions/west/hi\\_honolulu\\_msa.htm](https://www.bls.gov/regions/west/hi_honolulu_msa.htm)

If the CONTRACTOR chooses to adjust prices, the CONTRACTOR shall submit at the time of such, a written request, documentation or verification that the increase is the result of the inflation rate published by the United State Department of Labor, Bureau of Labor Statistics Consumer Price Index for the Honolulu area.

Price Adjustment for Contract Extension(s):

If the option to extend for an additional four (12) months is exercised, the CONTRACTOR may submit a price increase adjustment request once, prior to the extension being executed, to be effective during the extension term. CONTRACTOR will be allowed to adjust prices based on the inflation rate published by the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for the Honolulu area. Website:

[https://www.bls.gov/regions/west/hi\\_honolulu\\_msa.htm](https://www.bls.gov/regions/west/hi_honolulu_msa.htm)

The price adjustment is an index specific to Honolulu and will encompass the increase in freight if any.

If the CONTRACTOR chooses to adjust prices, the CONTRACTOR shall submit at the time of such, a written request, documentation or verification that the increase is the result of the inflation rate published by the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for the Honolulu area. Documentation shall include CONTRACTOR's cost and shipping for the base agreement period indicating the comparison to "new" cost per food item to the CA and PCB within thirty (30) days prior to the effective date of price change.

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

## **PERFORMANCE OF CONTRACT**

### **38. Authority of the STATE**

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

### **39. 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/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.

#### **40. Vendor and Product Evaluation**

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

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

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

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

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

#### **41. Quantities**

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

The STATE shall have the right to purchase larger or smaller quantities at the prices bid. The CONTRACTOR may, at his 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 Department 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. See Attached Exhibit B for list of schools.

#### **42. Exclusion of Specific Workers**

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

### **PAYMENT**

#### **43. Invoicing**

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

#### **44. Payment**

Section 103-10, HRS, provides that the STATE shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the STATE 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 interest payments greater than that allowed by §103-10, HRS, as amended.

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

The **final payment** on the contract shall be for services rendered during the billing period just prior to the contract anniversary date.

The following shall accompany the final payment invoice:

- A valid (not over 2 months old) and **original** Tax Clearance Certificate (TCC) must accompany the final payment invoice. In accordance with Section 103-53, HRS, 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.
- The Certification of Compliance for Final Payment (DOE Form-22) with an original signature of an authorized representative of the CONTRACTOR.
- In lieu of the above, CONTRACTOR may submit an original Certificate of Vendor Compliance as issued by the State Procurement Office via an online system, also referred to as "Hawaii Compliance Express". Details regarding this online application process can be viewed at: <http://vendors.ehawaii.gov/hce/>.

### **APPROVALS**

#### **45. State's General Conditions**

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

#### **46. Approvals**

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

**EXHIBIT A  
DATA SUBMISSION FORM**

Product Description: \_\_\_\_\_ Bid Item No. \_\_\_\_\_

Manufacturer: \_\_\_\_\_ Brand Name: \_\_\_\_\_

UPC or GTIN #: \_\_\_\_\_

Case Weight: \_\_\_\_\_ lbs/ounces      Per Serving Wt. \_\_\_\_\_ oz.      No. of servings/case: \_\_\_\_\_

**GROCERY PRODUCTS**

The following documents must be submitted along with this form:

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

**CHILD NUTRITION LABEL (CN) PRODUCTS (as applicable)**

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

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

**BUY AMERICA CERTIFICATION**

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

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

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

**DATA SUBMISSION FORM COMPLETED AND SUBMITTED BY:**

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

Print Name \_\_\_\_\_ Rep. Company \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_ Telephone No. \_\_\_\_\_

.....  
**Sample Submitted by:**

Print Name \_\_\_\_\_ Rep. Company \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_ Telephone No. \_\_\_\_\_

=====  
**DOE USE ONLY:**

Data Submission:  Accept  Reject – Reason \_\_\_\_\_ Reviewed by \_\_\_\_\_

Testing & Evaluation Percentage: \_\_\_\_\_ Sample/Testing:  Accept  Reject by \_\_\_\_\_

**EXHIBIT B**  
**LIST OF SCHOOLS THAT FALL UNDER THE HIDEO SFSB PROGRAM**

(Contact SFSB for any changes to this list)

**GROUP 1: OAHU - HONOLULU**

<b>NO.</b>	<b>SCHOOL</b>	<b>PHONE</b>	<b>ADDRESS</b>	<b>CITY</b>	<b>ZIP</b>
1	Aina Haina	377-2422	801 Hind Drive	Honolulu	96821
2	Aliiolani	733-4754	1240 7th Avenue	Honolulu	96816
3	Anuenue	733-8478	2528 10th Ave.	Honolulu	96816
4	Central Middle	587-4400	1302 Queen Emma St.	Honolulu	96813
5	Jefferson	971-6930	324 Kapahulu Ave.	Honolulu	96815
6	Kaahumanu	587-4422	1141 Kinau St.	Honolulu	96814
7	Kahala	733-4670	4559 Kilauea Ave.	Honolulu	96816
8	Kaimuki High	733-4908	2705 Kaimuki Ave.	Honolulu	96816
9	Kaimuki Middle	733-4805	631 18th Ave.	Honolulu	96816
10	Kaiser High	394-1200 xt.2323	511 Lunalilo Home Road	Honolulu	96825
11	Kaiulani	832-3166	783 N. King Street	Honolulu	96817
12	Kalani High	305-0519	4680 Kalaniana'ole Hwy.	Honolulu	96821
13	Kauluwela	587-4456	1486 Aala Street	Honolulu	96817
14	Kawananakoa M	587-4434	49 Funchal Street	Honolulu	96813
15	Lanakila	587-4478	717 N. Kuakini St.	Honolulu	96817
16	Likelike	832-3375	1618 Palama Street	Honolulu	96817
17	Lincoln	307-2922	615 Auwailimu St.	Honolulu	96813
18	Lunalilo	973-0275 xt.239	810 Pumehana St.	Honolulu	96826
19	Maemae	595-2973	319 Wylie Street	Honolulu	96817
20	Manoa	988-1866	3155 Manoa Road	Honolulu	96822
21	McKinley High	594-0462	1039 S. King Street	Honolulu	96814
22	Niu Valley Middle	377-2400	310 Halemaumau Street	Honolulu	96821
23	Noelani	988-1850	2655 Woodlawn Drive	Honolulu	96821
24	Nuuanu	595-5429	3055 Puiwa Lane	Honolulu	96817
25	Palolo	733-4704	2106 10th Avenue	Honolulu	96816
26	Pauoa	587-4504	2300 Pauoa Road	Honolulu	96813
27	Roosevelt High	307-0562	1120 Nehoa Street	Honolulu	96822
28	Royal	587-4516	1519 Queen Emma Street	Honolulu	96813
29	Stevenson M	587-4532	1202 Prospect Street	Honolulu	96822
30	Waikiki	971-6903	3710 Leahi Avenue	Honolulu	96815
31	Washington M	973-0182	1633 S. King Street	Honolulu	96826

**EXHIBIT B**  
**LIST OF SCHOOLS THAT FALL UNDER THE HIDEO SFSB PROGRAM**

(Contact SFSB for any changes to this list)

<b>NO.</b>	<b>SCHOOL</b>	<b>PHONE</b>	<b>ADDRESS</b>	<b>CITY</b>	<b>ZIP</b>
32	Wilson	733-4744	4945 Kilauea Avenue	Honolulu	96816
33	Hawaii School for Deaf & Blind	733-4829	3440 Leahi Avenue	Honolulu	96816
34	Dole Middle	832-3347	1803 Kam IV Road	Honolulu	96819
35	Farrington High	305-5153	1564 N. King Street.	Honolulu	96817
36	Fern	832-3047	1121 Middle Street	Honolulu	96819
37	Kalakaua Middle	832-3141	821 Kalihi Street	Honolulu	96819
38	Kalihi	305-2430	2471 Kula Kolea Dr.	Honolulu	96817
39	Kalihi-Kai	832-3330	626 McNeill Street	Honolulu	96817
40	Kalihi-Uka	832-3315	2411 Kalihi Street	Honolulu	96819
41	Kalihi-Waena	832-3215	1240 Gulick Avenue	Honolulu	96819
42	Kapalama	305-5550	1601 N. School Street	Honolulu	96817
43	Puuhale	832-3196	345 Puuhale Road	Honolulu	96819

**EXHIBIT B**  
**LIST OF SCHOOLS THAT FALL UNDER THE HIDEO SFSB PROGRAM**

(Contact SFSB for any changes to this list)

**GROUP 2: OAHU - CENTRAL**

<b>NO.</b>	<b>SCHOOL</b>	<b>PHONE</b>	<b>ADDRESS</b>	<b>CITY</b>	<b>ZIP</b>
44	Aiea High	483-7312	98-1276 Ulune Street	Aiea	96701
45	Aiea Inter	483-7233	99-600 Kulaweia Street	Aiea	96701
46	Aliamanu I	421-4105	3271 Salt Lake Blvd.	Honolulu	96818
47	Daniel K. Inouye Elem.	305-3439	Waianae & Ayers Aves.	Wahiawa	96786
48	Helemano	621-0808	1001 Ihi Ihi Avenue	Wahiawa	96786
49	Hickam	421-4161	Manzelman Circle, HAFB	Honolulu	96818
50	Iliahi	621-7500	2035 California Avenue	Wahiawa	96786
51	Kaala	305-3952	130 California Avenue	Wahiawa	96786
52	Kipapa	627-7310	95-075 Kipapa Drive	Mililani	96789
53	Leilehua High	305-3112	1515 California Avenue	Wahiawa	96786
54	Makalapa	421-4113	4435 Salt Lake Blvd.	Honolulu	96818
55	Mililani High	307-4185	95-1200 Meheula Pkwy	Mililani	96789
56	Mililani Ike	626-0940x252	95-1330 Lehiwa Drive	Mililani	96789
57	Mililani Mauka	305-1761	95-1111 Makaikai Street	Mililani	96790
58	Mililani Middle	627-9010x73109	95-1140 Lehiwa Drive	Mililani	96789
59	Moanalua	305-1268	1337 Mahiole Street	Honolulu	96819
60	Moanalua High	305-1169	2825 Ala Ilima Street	Honolulu	96819
61	Moanalua Middle	305-1330	1289 Mahiole Street	Honolulu	96819
62	Mokulele	421-4189	250 Aupaka St., HAFB	Honolulu	96818
63	Nimitz	307-4431	520 Main Street	Honolulu	96818
64	Pearl Harbor	421-4136	1 Moanalua Ridge	Honolulu	96818
65	Pearl Harbor Kai	421-4254x275	1 C Avenue & Center Drive	Honolulu	96818
66	Radford High	421-4221	4361 Salt Lake Blvd.	Honolulu	96818
67	Red Hill	831-7865	1265 Ala Kula Place	Honolulu	96819
68	Scott	483-7227	98-1230 Moanalua Road	Aiea	96701
69	Solomon	305-1841	211 Carpenter Street	Wahiawa	96786
70	Wahiawa	621-5011	1402 Glen Avenue	Wahiawa	96786
71	Wahiawa Inter	305-3352	275 Rose Street	Wahiawa	96786
72	Waialua	307-2621	67-020 Waialua Beach Rd.	Waialua	96791
73	Waialua H/I	307-2442	67-160 Farrington Hwy.	Waialua	96791
74	Waimalu	483-7215	98-825 Moanalua Road	Aiea	96701

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

**GROUP 2: OAHU - CENTRAL**

75	Wheeler Inter	621-8655	Wheeler AFB	Wahiawa	96786
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**EXHIBIT B**  
**LIST OF SCHOOLS THAT FALL UNDER THE HIDEO SFSB PROGRAM**

(Contact SFSB for any changes to this list)

**GROUP 3: OAHU - LEEWARD**

<b>NO.</b>	<b>SCHOOL</b>	<b>PHONE</b>	<b>ADDRESS</b>	<b>CITY</b>	<b>ZIP</b>
76	August Ahrens	307-7250	94-1170 Waipahu Street	Waipahu	96797
77	Barber's Point	673-7404	3001 Boxer Road	Kapolei	96706
78	Campbell High	305-3674	91-980 North Road	Ewa Beach	96706
79	Ewa Beach	689-1247	91-740 Papipi Road	Ewa Beach	96706
80	Ewa Makai Middle	687-9488	91-6291 Kapolei Parkway	Ewa Beach	96706
81	Highlands Inter	453-6487	1460 Hoolaulea Street	Pearl City	96782
82	Holomua	685-2006	91-1561 Keaunui Drive	Ewa Beach	96706
83	Honowai	307-7140	94-600 Honowai Street	Waipahu	96797
84	Hookele Elem.	305-8590	91-511 Kunehi Street	Kapolei	96707
85	Iroquois Point	499-6500x296	5553 Cormorant Avenue	Ewa Beach	96707
86	Kapolei	305-8752	91-1119 Kamaaha Loop	Kapolei	96707
87	Kapolei High	305-8052	91-5005 Kapolei Parkway	Kapolei	96707
88	Kapolei Middle	693-7025x255	91-5335 Kapolei Parkway	Kapolei	96707
89	Keone'ula Elem	307-2132	91-970 Kaileolea Drive	Ewa Beach	96706
90	Lehua	307-3721	791 Lehua Avenue	Pearl City	96782
91	Maili	697-7152	87-360 Kulaaupuni Street	Waianae	96792
92	Makaha	695-7909	84-200 Ala Naauao Place	Waianae	96792
93	Manana	454-5317	1147 Kumano Street	Pearl City	96782
94	Nanaikapono	305-7890	89-153 Mano Avenue	Waianae	96792
95	Nanakuli High	668-5860	89-980 Nanakuli Avenue	Waianae	96792
96	Palisades	307-4750	2306 Auhuhu Street	Pearl City	96782
97	Pearl City High	307-5591	2100 Hookiekie Street	Pearl City	96782
98	Waianae High	697-7008	85-251 Farrington Hwy.	Waianae	96792
99	Waianae Inter	697-7141	85-626 Farrington Hwy.	Waianae	96792
100	Waikele	307-6150	94-1035 Kukula Street	Waipahu	96797
101	Waipahu	675-0156	94-465 Waipahu Street	Waipahu	96797
102	Waipahu High	675-0235	92-1211 Farrington Hwy.	Waipahu	96797
103	Waipahu Inter	307-9072	94-455 Farrington Hwy.	Waipahu	96797

**EXHIBIT B**  
**LIST OF SCHOOLS THAT FALL UNDER THE HIDEO SFSB PROGRAM**

(Contact SFSB for any changes to this list)

**GROUP 4: OAHU - WINDWARD**

<b>NO.</b>	<b>SCHOOL</b>	<b>PHONE</b>	<b>ADDRESS</b>	<b>CITY</b>	<b>ZIP</b>
104	Aikahi	305-6760	281 Ilihau Street	Kailua	96734
105	Castle High	305-0782	45-386 Kaneohe Bay Dr.	Kaneohe	96744
106	Enchanted Lake	266-7802	770 Keolu Drive	Kailua	96734
107	Hauula	293-8929	54-046 Kamehameha Hwy	Hauula	96717
108	Heeia	233-5680	46-202 Haiku Road	Kaneohe	96744
109	Kahaluu	239-3106	47-280 Waihee Road	Kaneohe	96744
110	Kahuku H/I	305-7493	56-490 Kamehameha Hwy	Kahuku	96731
111	Kailua	266-7884	315 Kuulei Road	Kailua	96734
112	Kailua High	266-7908	451 Ulumanu Drive	Kailua	96734
113	Kailua Inter	266-7973	145 S. Kainalu Drive	Kailua	96734
114	Kainalu	305-0320	165 Kaiholu Street	Kailua	96734
115	Kalaheo High	254-7954	730 Iliaina Street	Kailua	96734
116	Kaneohe	233-5640	45-495 Kamehameha Hwy	Kaneohe	96744
117	Kapunahala	233-5657	45-828 Anoi Road	Kaneohe	96744
118	Keolu	266-7816	1416 Keolu Drive	Kailua	96734
119	King Inter	233-5739	46-155 Kamehameha Hwy	Kaneohe	96744
120	Maunawili	266-7825	1465 Ulupii Street	Kailua	96734
121	Mokapu	254-7930	1193 Mokapu Blvd.	Kailua	96734
122	Parker	233-5690	45-259 Waikalua Road	Kaneohe	96744
123	Pope	259-0456	41-133 Huli Street	Waimanalo	96795
124	Puohala	305-5940	45-233 Kulauli Street	Kaneohe	96744
125	Waiahole	239-3118	48-215 Waiahole Valley Rd	Kaneohe	96744
126	Waimanalo E/I	259-0470	41-1330 Kalaniana'ole Hwy	Waimanalo	96795



**EXHIBIT B**  
**LIST OF SCHOOLS THAT FALL UNDER THE HIDEO SFSB PROGRAM**

(Contact SFSB for any changes to this list)

**GROUP 5: HAWAII - EAST**

<b>NO.</b>	<b>SCHOOL</b>	<b>PHONE</b>	<b>ADDRESS</b>	<b>CITY</b>	<b>ZIP</b>
127	De Silva	974-4859	278 Ainako Avenue	Hilo	96720
128	Hilo High	313-5655	556 Waianuenu Avenue	Hilo	96720
129	Keaukaha	974-4185	240 Desha Avenue	Hilo	96720
130	Hilo Inter	974-4954	587 Waianuenu Avenue	Hilo	96720
131	Hilo Union	974-4007	506 Waianuenu Avenue	Hilo	96720
135	Kalaniana'ole E/I	964-9700	27-330 Old Mamalahoa Hwy	Papaikou	96781
136	Kapiolani	974-4006	966 Kilauea Avenue	Hilo	96720
137	Ka'u H & Pahala	313-4151	96-3150 Pikake St.	Pahala	96777
138	Keaau Elem	313-4660	16-680 Keaau-Pahoa Rd	Keaau	96749
139	Keaau High	313-3370	16-725 Keaau-Pahoa Rd	Keaau	96749
140	Keaau Middle	313-4829	16-565 Keaau-Pahoa Rd	Keaau	96749
142	Keonepoko	313-4582	15-890 Kahakai Blvd.	Pahoa	96778
147	Mt. View	968-2307	18-1235 Volcano Rd.	Mt. View	96771
148	Naalehu E/I	313-4050	95-5545 Mamalahoa Hwy.	Naalehu	96772
150	Pahoa H	965-2162	15-3038 Puna Road	Pahoa	96778
151	Waiakea H	974-4832	155 W. Kawili Street	Hilo	96720
152	Waiakea I	981-7243	200 W. Puainako Street	Hilo	96720
153	Waiakeawaena	981-7213	2420 Kilauea Avenue	Hilo	96720

**EXHIBIT B**  
**LIST OF SCHOOLS THAT FALL UNDER THE HIDEO SFSB PROGRAM**

(Contact SFSB for any changes to this list)

**GROUP 6: HAWAII - WEST**

<b>NO.</b>	<b>SCHOOL</b>	<b>PHONE</b>	<b>ADDRESS</b>	<b>CITY</b>	<b>ZIP</b>
132	Holualoa	322-1527	76-5957 Mamalahoa Hwy	Holualoa	96725
133	Honokaa H/I	313-7040	45-527 Pakalana Street	Honokaa	96727
134	Kahakai	313-6252	76-147 Royal Poinciana Dr.	Kailua-Kona	96740
141	Kealakehe High	313-3646	74-5000 Puohulihuli Street	Kailua-Kona	96740
143	Kealakehe Inter	327-4663	74-5062 Onipaa Street	Kailua-Kona	96740
144	Kohala H/I	889-7130	54-3611 Akoni Pule Hwy.	Kapaau	96755
145	Konawaena High	323-4573	81-1043 Konawaena Sch Rd.	Kealakekua	96750
146	Konawaena El.	323-7569	81-6469 Mamalahoa Hwy	Kealakekua	96750
149	Paauilo E/I	776-7716	43-1497 Hauola Rd.	Paauilo	96776
154	Waikoloa	883-2379	68-1730 Hooke Street	Waikoloa	96738
155	Waimea E	887-6099	67-1225 Mamalahoa Hwy	Kamuela	96743

**EXHIBIT B**  
**LIST OF SCHOOLS THAT FALL UNDER THE HIDEO SFSB PROGRAM**

(Contact SFSB for any changes to this list)

**GROUP 7: MAUI**

<b>NO.</b>	<b>SCHOOL</b>	<b>PHONE</b>	<b>ADDRESS</b>	<b>CITY</b>	<b>ZIP</b>
156	Baldwin High	727-3131	1650 Kaahumanu Avenue	Wailuku	96793
157	Haiku	575-3008	105 Pauwela Road	Haiku	96708
158	Hana H/E	248-4825	4111 Hana Hwy.	Hana	96713
159	Iao	727-5253	1910 Kaohu Street	Wailuku	96793
160	Kahului	873-3061	410 Hina Avenue	Kahului	96732
161	Kalama Inter	573-8758	120 Makani Road	Makawao	96768
162	Kamalii	875-5961	180 Kealii Alanui	Kihei	96753
163	Kamehameha III	662-3960	611 Front Street	Lahaina	96761
164	Kihei	875-6829	250 E. Lipoa Street	Kihei	96753
165	King Kekaulike High	573-8733	121 Kula Highway	Pukalani	96788
166	Kula	876-7617	5000 Kula Highway	Kula	96790
167	Lahaina Inter	662-4025	871 Lahainaluna Road	Lahaina	96761
168	Lahainaluna High	662-3979x241	980 Lahainaluna Road	Lahaina	96761
169	Lihikai	727-4500	335 S. Papa Avenue	Kahului	96732
170	Lokelani Inter	875-5973	1401 Liloa Street	Kihei	96753
171	Makawao	573-8778	3542 Baldwin Avenue	Makawao	96768
172	Maui High	873-3005	660 S. Lono Avenue	Kahului	96732
173	Maui Waena Inter	727-4270	795 Onehee Street	Kahului	96732
174	Pukalani	727-3913	2945 Iolani Street	Pukalani	96788
175	Waihee	727-5342	2125 Kahekili Highway	Wailuku	96793
176	Wailuku	727-5591	355 South High Street	Wailuku	96793
177	Pomaikai	873-3415	4650 South Kamehameha Ave	Kahului	96732

**EXHIBIT B**  
**LIST OF SCHOOLS THAT FALL UNDER THE HIDEO SFSB PROGRAM**

(Contact SFSB for any changes to this list)

**GROUP 8: MOLOKAI & LANAI**

<b>NO.</b>	<b>SCHOOL</b>	<b>PHONE</b>	<b>ADDRESS</b>	<b>CITY</b>	<b>ZIP</b>
178	Kaunakakai	567-7230	30 Ailoa St.	Kaunakakai	96748
179	Kilohana	774-8427	334 Kamehameha V Hwy.	Kaunakakai	96748
180	Molokai High	567-6962	2140 Farrington Ave.	Hoolehua	96729
181	Lanai H/E	565-7906	555 Fraser Ave.	Lanai City	96763

**EXHIBIT B**  
**LIST OF SCHOOLS THAT FALL UNDER THE HIDEO SFSB PROGRAM**

(Contact SFSB for any changes to this list)

**GROUP 9: KAUAI - CENTRAL**

<b>NO.</b>	<b>SCHOOL</b>	<b>PHONE</b>	<b>ADDRESS</b>	<b>CITY</b>	<b>ZIP</b>
186	Kauai H/I	274-3165	3577 Lala Road	Lihue	96766
187	Kamakahahei	241-3221	4431 Nuhou Street	Lihue	96766
188	King Kaumualii	241-3162	4381 Hanamaulu Road	Lihue	96766
191	Koloa	742-8452	3223 Poipu Road	Koloa	96756
193	Wilcox	274-3024	4319 Hardy Street	Lihue	96766

**EXHIBIT B**  
**LIST OF SCHOOLS THAT FALL UNDER THE HIDEO SFSB PROGRAM**

(Contact SFSB for any changes to this list)

**GROUP 10: KAUAI - NORTH**

<b>NO.</b>	<b>SCHOOL</b>	<b>PHONE</b>	<b>ADDRESS</b>	<b>CITY</b>	<b>ZIP</b>
184	Kapaa High	821-4409	4695 Mailihuna Road	Kapaa	96746
185	Kapaa Middle	821-6966	4867 Olohena Road	Kapaa	96746
190	Kilauea	828-0338	2440 Kolo Road	Kilauea	96754

**EXHIBIT B**  
**LIST OF SCHOOLS THAT FALL UNDER THE HIDEO SFSB PROGRAM**

(Contact SFSB for any changes to this list)

**GROUP 11: KAUAI - WEST**

<b>NO.</b>	<b>SCHOOL</b>	<b>PHONE</b>	<b>ADDRESS</b>	<b>CITY</b>	<b>ZIP</b>
182	Eleele	335-2118	4750 Uliuli Rd.	Eleele	96705
183	Kalaheo	332-6800	4400 Maka Road	Kalaheo	96741
189	Kekaha	337-7662	8140 Kekaha Rd.	Kekaha	96752
192	Waimea High	338-6820	9707 Tsuchiya Rd.	Waimea	96796

# GENERAL CONDITIONS

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## GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

### 13. Termination for Default.

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

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

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

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

#### 14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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



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

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

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

21. Price Adjustment.

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

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

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

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

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

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

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

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

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

31. Records Retention.

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

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

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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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