

STATE OF HAWAII
DEPARTMENT OF EDUCATION
PROCUREMENT AND CONTRACTS BRANCH

July 24, 2020

INVITATION FOR BIDS

NO. IFB D21-013

SEALED BIDS

TO

FURNISH AND DELIVER

DISPOSABLE FOOD SERVICE PRODUCTS – GLOVES AND MASKS

TO

HAWAII DEPARTMENT OF EDUCATION CAFETERIAS, STATEWIDE

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

on

AUGUST 10, 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.

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

**FURNISH AND DELIVER DISPOSABLE FOOD SERVICE PRODUCTS – GLOVES AND MASKS
TO HAWAII DEPARTMENT OF EDUCATION CAFETERIAS, STATEWIDE
IFB D21-013**

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, 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 a:

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: _____

The following offer is hereby submitted for Disposable Food Service Products as stated in the Specification. Refer to Specifications, page S-1, for complete specifications of the products listed below.

OAHU

COMPLETE ALL COLUMNS FOR EACH ITEM YOU ARE OFFERING.

Item No.	Description	10-month Est. Quantity	UOM	Manufacturer/Brand Name & Product Number	Quantity per Unit	Unit Bid Price**	Total Bid Price	Price per Pack/Case***
GROUP 1 - GLOVES, POLYETHYLENE								
1	Small. Min 100/bx	66,900	gloves	_____	gloves/box	_____/glove	\$ -	_____/box
2	Medium. Min 100/bx	88,700	gloves	_____	gloves/box	_____/glove	\$ -	_____/box
3	Large. Min 100/bx	54,800	gloves	_____	gloves/box	_____/glove	\$ -	_____/box
GROUP 1 - GLOVES, POLYETHYLENE - TOTAL GROUP PRICE							\$ -	
GROUP 2 - GLOVES, VINYL								
4	Small. Max 100/bx	90,600	gloves	_____	gloves/box	_____/glove	\$ -	_____/box
5	Medium. Max 100/bx	433,600	gloves	_____	gloves/box	_____/glove	\$ -	_____/box
6	Large. Max 100/bx	324,400	gloves	_____	gloves/box	_____/glove	\$ -	_____/box
7	Extra Large. Max 100/bx	304,300	gloves	_____	gloves/box	_____/glove	\$ -	_____/box
GROUP 2 - GLOVES, VINYL - TOTAL GROUP PRICE							\$ -	
GROUP 3 - FACE MASKS								
8	Face Mask. Max 50/pkg	128,598	masks	_____	masks/pkg	_____/mask	\$ -	_____/pkg
GROUP 3 - FACE MASKS - TOTAL GROUP PRICE							\$ -	

Notes:

**Unit Bid Price shall be rounded to the nearest 7 decimal places or .0000000

***Price per Pack/Case shall be used to confirm pack/case/box/roll price only. In the event of error in Price per Pack/Case, Unit Bid Price shall govern.

"Min" = minimum packaging per unit; "Max" = maximum packaging per unit.

In the event of an error in extended price, unit bid price shall govern.

The following offer is hereby submitted for Disposable Food Service Products as stated in the Specifications. Refer to Specifications, page S-1, for complete specifications of the products listed below.

HAWAII

COMPLETE ALL COLUMNS FOR EACH ITEM YOU ARE OFFERING.

Item No.	Description	10-month Est. Quantity	UOM	Manufacturer/Brand Name & Product Number	Quantity per Unit	Unit Bid Price**	Total Bid Price	Price per Pack/Case***
GROUP 1 - GLOVES, POLYETHYLENE								
1	Small. Min 100/bx	11,700	gloves		gloves/box	/glove	\$ -	/box
2	Medium. Min 100/bx	24,000	gloves		gloves/box	/glove	\$ -	/box
3	Large. Min 100/bx	22,400	gloves		gloves/box	/glove	\$ -	/box
GROUP 1 - GLOVES, POLYETHYLENE - TOTAL GROUP PRICE							\$ -	
GROUP 2 - GLOVES, VINYL								
4	Small. Max 100/bx	4,900	gloves		gloves/box	/glove	\$ -	/box
5	Medium. Max 100/bx	78,900	gloves		gloves/box	/glove	\$ -	/box
6	Large. Max 100/bx	73,900	gloves		gloves/box	/glove	\$ -	/box
7	Extra Large. Max 100/bx	55,300	gloves		gloves/box	/glove	\$ -	/box
GROUP 2 - GLOVES, VINYL - TOTAL GROUP PRICE							\$ -	
GROUP 3 - FACE MASKS								
8	Face Mask. Max 50/pkg	29,598	masks		masks/pkg	/mask	\$ -	/pkg
GROUP 3 - FACE MASKS - TOTAL GROUP PRICE							\$ -	

Notes:

**Unit Bid Price shall be rounded to the nearest 7 decimal places or .0000000

***Price per Pack/Case shall be used to confirm pack/case/box/roll price only. In the event of error in Price per Pack/Case, Unit Bid Price shall govern.

"Min" = minimum packaging per unit; "Max" = maximum packaging per unit.

In the event of an error in extended price, unit bid price shall govern.

The following offer is hereby submitted for Disposable Food Service Products as stated in the Specifications. Refer to Specifications, page S-1, for complete specifications of the products listed below.

MAUI

COMPLETE ALL COLUMNS FOR EACH ITEM YOU ARE OFFERING.

Item No.	Description	10-month Est. Quantity	UOM	Manufacturer/Brand Name & Product Number	Quantity per Unit	Unit Bid Price**	Total Bid Price	Price per Pack/Case***
GROUP 1 - GLOVES, POLYETHYLENE								
1	Small. Min 100/bx	14,000	gloves	_____	gloves/box	/glove	\$ -	/box
2	Medium. Min 100/bx	11,100	gloves	_____	gloves/box	/glove	\$ -	/box
3	Large. Min 100/bx	30,000	gloves	_____	gloves/box	/glove	\$ -	/box
GROUP 1 - GLOVES, POLYETHYLENE - TOTAL GROUP PRICE							\$ -	
GROUP 2 - GLOVES, VINYL								
4	Small. Max 100/bx	11,500	gloves	_____	gloves/box	/glove	\$ -	/box
5	Medium. Max 100/bx	84,700	gloves	_____	gloves/box	/glove	\$ -	/box
6	Large. Max 100/bx	51,700	gloves	_____	gloves/box	/glove	\$ -	/box
7	Extra Large. Max 100/bx	14,600	gloves	_____	gloves/box	/glove	\$ -	/box
GROUP 2 - GLOVES, VINYL - TOTAL GROUP PRICE							\$ -	
GROUP 3 - FACE MASKS								
8	Face Mask. Max 50/pkg	22,454	masks	_____	masks/pkg	/mask	\$ -	/pkg
GROUP 3 - FACE MASKS - TOTAL GROUP PRICE							\$ -	

Notes:

**Unit Bid Price shall be rounded to the nearest 7 decimal places or .0000000

***Price per Pack/Case shall be used to confirm pack/case/box/roll price only. In the event of error in Price per Pack/Case, Unit Bid Price shall govern.

"Min" = minimum packaging per unit; "Max" = maximum packaging per unit.

In the event of an error in extended price, unit bid price shall govern.

The following offer is hereby submitted for Disposable Food Service Products as stated in the Specifications. Refer to Specifications, page S-1, for complete specifications of the products listed below.

KAUAI

COMPLETE ALL COLUMNS FOR EACH ITEM YOU ARE OFFERING.

Item No.	Description	10-month Est. Quantity	UOM	Manufacturer/Brand Name & Product Number	Quantity per Unit	Unit Bid Price**	Total Bid Price	Price per Pack/Case***
GROUP 1 - GLOVES, POLYETHYLENE								
1	Small. Min 100/bx	1,000	gloves	_____	gloves/box	/glove	\$ -	_____/box
2	Medium. Min 100/bx	1,000	gloves	_____	gloves/box	/glove	\$ -	_____/box
3	Large. Min 100/bx	200	gloves	_____	gloves/box	/glove	\$ -	_____/box
GROUP 1 - GLOVES, POLYETHYLENE - TOTAL GROUP PRICE							\$ -	
GROUP 2 - GLOVES, VINYL								
4	Small. Max 100/bx	10,100	gloves	_____	gloves/box	/glove	\$ -	_____/box
5	Medium. Max 100/bx	29,500	gloves	_____	gloves/box	/glove	\$ -	_____/box
6	Large. Max 100/bx	30,500	gloves	_____	gloves/box	/glove	\$ -	_____/box
7	Extra Large. Max 100/bx	13,700	gloves	_____	gloves/box	/glove	\$ -	_____/box
GROUP 2 - GLOVES, VINYL - TOTAL GROUP PRICE							\$ -	
GROUP 3 - FACE MASKS								
8	Face Mask. Max 50/pkg	13,268	masks	_____	masks/pkg	/mask	\$ -	_____/pkg
GROUP 3 - FACE MASKS - TOTAL GROUP PRICE							\$ -	

Notes:

**Unit Bid Price shall be rounded to the nearest 7 decimal places or .0000000

***Price per Pack/Case shall be used to confirm pack/case/box/roll price only. In the event of error in Price per Pack/Case, Unit Bid Price shall govern.

"Min" = minimum packaging per unit; "Max" = maximum packaging per unit.

In the event of an error in extended price, unit bid price shall govern.

The following offer is hereby submitted for Disposable Food Service Products as stated in the Specifications. Refer to Specifications, page S-1, for complete specifications of the products listed below.

MOLOKAI

COMPLETE ALL COLUMNS FOR EACH ITEM YOU ARE OFFERING.

Item No.	Description	10-month Est. Quantity	UOM	Manufacturer/Brand Name & Product Number	Quantity per Unit	Unit Bid Price**	Total Bid Price	Price per Pack/Case***
GROUP 1 - GLOVES, POLYETHYLENE								
1	Small. Min 100/bx	100	gloves		gloves/box	/glove	\$ -	/box
2	Medium. Min 100/bx	100	gloves		gloves/box	/glove	\$ -	/box
3	Large. Min 100/bx	100	gloves		gloves/box	/glove	\$ -	/box
GROUP 1 - GLOVES, POLYETHYLENE - TOTAL GROUP PRICE							\$ -	
GROUP 2 - GLOVES, VINYL								
4	Small. Max 100/bx	100	gloves		gloves/box	/glove	\$ -	/box
5	Medium. Max 100/bx	100	gloves		gloves/box	/glove	\$ -	/box
6	Large. Max 100/bx	3,000	gloves		gloves/box	/glove	\$ -	/box
7	Extra Large. Max 100/bx	5,000	gloves		gloves/box	/glove	\$ -	/box
GROUP 2 - GLOVES, VINYL - TOTAL GROUP PRICE							\$ -	
GROUP 3 - MASKS								
8	Face Mask. Max 50/pkg	3,062	masks		masks/pkg	/mask	\$ -	/pkg
GROUP 3 - FACE MASKS - TOTAL GROUP PRICE							\$ -	

**Unit Bid Price shall be rounded to the nearest 7 decimal places or .0000000

***Price per Pack/Case shall be used to confirm pack/case/box/roll price only. In the event of error in Price per Pack/Case, Unit Bid Price shall govern.

"Min" = minimum packaging per unit; "Max" = maximum packaging per unit.

In the event of an error in extended price, unit bid price shall govern.

The following offer is hereby submitted for Disposable Food Service Products as stated in the Specifications Refer to Specifications, page S-1, for complete specifications of the products listed below.

LANAI

COMPLETE ALL COLUMNS FOR EACH ITEM YOU ARE OFFERING.

Item No.	Description	12-month Est. Quantity	UOM	Manufacturer/Brand Name & Product Number	Quantity per Unit	Unit Bid Price**	Total Bid Price	Price per Pack/Case***
GROUP 1 - GLOVES, POLYETHYLENE								
1	Small. Min 100/bx	100	gloves	_____	gloves/box	/glove	\$ -	/box
2	Medium. Min 100/bx	100	gloves	_____	gloves/box	/glove	\$ -	/box
3	Large. Min 100/bx	100	gloves	_____	gloves/box	/glove	\$ -	/box
GROUP 1 - GLOVES, POLYETHYLENE							\$ -	
GROUP 2 - GLOVES, VINYL								
4	Small. Max 100/bx	100	gloves	_____	gloves/box	/glove	\$ -	/box
5	Medium. Max 100/bx	2,000	gloves	_____	gloves/box	/glove	\$ -	/box
6	Large. Max 100/bx	2,000	gloves	_____	gloves/box	/glove	\$ -	/box
7	Extra Large. Max 100/bx	100	gloves	_____	gloves/box	/glove	\$ -	/box
GROUP 2 - GLOVES, VINYL - TOTAL GROUP PRICE							\$ -	
GROUP 3 - FACE MASKS								
8	Face Mask. Max 50/pkg	1,021	masks	_____	masks/pkg	/mask	\$ -	/pkg
GROUP 3 - FACE MASKS - TOTAL GROUP PRICE							\$ -	

**Unit Bid Price shall be rounded to the nearest 7 decimal places or .0000000

***Price per Pack/Case shall be used to confirm pack/case/box/roll price only. In the event of error in Price per Pack/Case, Unit Bid Price shall govern.

"Min" = minimum packaging per unit; "Max" = maximum packaging per unit.

In the event of an error in extended price, unit bid price shall govern.

SPECIFICATIONS

DETAILED SPECIFICATIONS

GROUP 1 - GLOVES, POLYETHYLENE - disposable, food service type, hot cast embossed, minimum 0.85 mil, low density polyethylene, offset gauntlet cuffs; slides on/off without sticking or tearing, ambidextrous, minimum 100/dispenser box. Gloves shall be easily dispensed out of box.

Gloves shall be manufactured of virgin (non/recycled) resin and shall comply with Code of Federal Regulations, Food and Drug Administration, Title 21 regarding the use of raw materials in the manufacture of gloves for food contact applications. Offeror shall submit a certification from the manufacturer verifying compliance with this requirement within three (3) business days from STATE request.

1. Small (Foodhandler 105-212, Handgards 303363211, Daxwell F10000177, or equal)
2. Medium (Foodhandler 105-214, Handgards 303363212, Daxwell F10000171, or equal)
3. Large ((Foodhandler 105-216, Handgards 303363213, Daxwell F10000165, or equal)

GROUP 2 - GLOVES, VINYL - disposable, food service type, seamless sheer vinyl, minimum 5 mil, ambidextrous, lightly powdered, maximum 100/dispenser box. Gloves shall be easily dispensed out of box and not easily torn.

4. Small (Foodhandler 102-202, Valugards 304340171, Diamond Gloves IF47S, Daxwell F10001254, or equal)
5. Medium (Foodhandler 102-204, Valugards 304340172, Diamond Gloves IF47M, Daxwell F10001751, or equal)
6. Large (Foodhandler 102-206, Valugards 304340173, Diamond Gloves IF47L, Daxwell F10001746, or equal)
7. Extra Large (Foodhandler 102-208, Valugards 304340174, Daxwell F10001747, or equal)

GROUP 3 – FACE MASK – Disposable 3 ply single use, pleated form fitting, with adjustable nose wire.

- 1st layer: Approximately 25 gsm non-woven Spunbond polypropylene
- 2nd layer: 25 gsm +/-2% of Meltblown in the middle layer
- 3rd layer : Approximately 25 gsm non-woven Spunbond polypropylene

Mask shall have breathable filtration and be fluid resistant. Minimum 95% Bacterial Filtration Efficiency that protects against dust, air pollutants, and other harmful particles. Mask approximate measure 6.88" L x 3.74" W flat without pleat extension. Ear loops made from soft elastic with approximate measure of 7 3/32". Maximum 50/package. Masks shall be easily dispensed from package by grabbing ear loops. Elastics shall be securely attached to mask.

8. Face Mask (Karat GS-PPE200a or equal)

SPECIAL CONDITIONS

GENERAL INFORMATION

1. Addenda and Interpretations

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

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

2. Scope

Work under this agreement shall consist of furnishing and delivering Disposable Food Service Products - Gloves and Masks to various State of Hawaii, Department of Education Cafeterias, as described and specified herein, and shall be in accordance with these Special Conditions, the attached Specifications, and the General Conditions AG-008 (latest revision).

3. Federal Guidelines

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

- 3.1 In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the federal award must contain provisions covering the following, as applicable.
- (A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
 - (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
 - (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
 - (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The

decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (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.

3.2 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]

4. State's Commitment

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

Offerors are advised that the majority of purchases will be made by food service programs of the STATE, Department of Education. Occasionally, other schools and offices may purchase from this price list but these orders will be minimal and infrequent.

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, Procurement and Contracts Branch.

5. Contract Administrator

For purposes of this agreement, Albert Scales, Director of the STATE, Department of Education, School Food Services Branch or his duly authorized representative or successor in office is designated Contract Administrator (CA). They can be contacted by telephone at (808) 784-5500, fax at (808) 735-6262.

The CA is responsible for:

- the terms, conditions, quantities, specifications, scope of services, other contract terms, and all decisions relating to the agreement;
- 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 agreement, and processing payment for services rendered; and
- notifying PCB in the event of change in scope of work, change in the performance period, increase or decrease in total compensation, and/or changes in any other contract terms.

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

The CA has designated Iris Fujimoto as Point-of-Contact (POC) for this agreement. As such, the POC should be the initial contact for all matters related to this agreement. She can be contacted by telephone at 784-5500 or via email at iris.fujimoto@k12.hi.us

6. Award Period

Award shall be for a ten (10) month period, beginning October 1, 2020, and ending July 31, 2021. Award may be extended by mutual written agreement for one (1) additional period not to exceed three (3) months at the same bid price(s) and conditions of the original bid.

OFFEROR INFORMATION

7. Offeror's Authority to Submit an Offer

The STATE will not participate in determinations regarding an Offeror's authority to sell a product or perform a service. If there are any questions or doubts regarding an Offeror's right or ability to obtain and sell a product or to render a service, the Offeror should resolve those issues prior to submitting an offer. If the Offeror's offer meets specifications and is acceptable and the price submitted is the lowest offer, that Offeror will be awarded.

8. Offeror Qualifications

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

Facility Location and Contractor Personnel

At time of offer submittal and during the agreement period, Offeror shall maintain an office based in the State of Hawaii (hereafter "Facility"). Facility shall be a wholesale or retail business with a permanent office and a warehouse capable of stocking an inventory of products. Facility shall be compliant with the current Good Manufacturing Practices, as applicable.

Offeror shall designate at least one (1) employee or group of employees as the point of contact for this award agreement. This individual or group shall be capable of answering questions, resolving problems, and providing sales, ordering, and follow-up assistance.

Offeror shall provide, on the Exhibit A, information regarding its facility. Offeror shall make copies of the Exhibit A to provide the necessary information for each island Offeror is submitting an offer on. The State reserves the right to visit and inspect the Offeror's warehouse facility to determine acceptability under this requirement. Exhibit A shall be provided to the STATE within three (3) business days from request.

Authorized Distributor

At time of offer submittal and during the agreement 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.

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 the head of the purchasing agency or their designee.

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

9. Responsibility of Offerors

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

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

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

OFFER PREPARATION

10. Offer Page OF-1

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

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

11. Taxable Transaction

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

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

12. Tax Exempt Transaction

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

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

13. Bid Price

- Oahu, Hawaii, Maui, Kauai - Unit bid prices shall be based on delivery to the Department of Education school cafeteria and/or office indicated on the PO or order forms; unit bid price shall, upon school/office request, include the stacking of delivered items in a previously-cleared storage area.
- Molokai, Lanai - Unit bid prices shall be based on delivery to the island (Molokai or Lanai) the Department of Education school cafeteria and/or office is located. For deliveries made to the dock, the Department of Education will arrange transport of goods from the dock to the school; the Department of Education may require CONTRACTOR to provide information regarding their shipment for successful transport.

Unit bid prices shall include labor, equipment, delivery, materials, transportation, overhead, profit, all

applicable taxes, and any other incidental and operational expenses incurred in the performance of all obligations hereunder. Unit bid price shall be the all-inclusive cost to the STATE and no other charges will be honored. In case of error in extension of bid price, unit bid price shall govern.

Unit bid prices submitted shall be rounded up to the nearest 7 decimal places (i.e. 0.0000000), if applicable. All unit bid prices submitted shall be based on the units and packaging indicated and shall be the all-inclusive unit bid cost to the STATE; no other charges will be honored.

14. Manufacturer/Brand Name and Product Number

Offeror shall indicate on the Offer page(s) the exact manufacturer/brand name, the manufacturer's product code number, the Offeror's label or brand name, packaging size, 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, Department of Education 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.

15. Samples

When requested by the STATE, Offeror shall submit, at his own expense, within five (5) working days from date of the STATE's request, detailed specifications, brochures, and sample(s) of the item(s) offered, properly identified. Failure to do so shall be cause for rejection of bid. Any sample submitted for testing purposes will become the property of the STATE and will not be returned to the Offeror. The STATE shall be the sole judge as to the suitability of the item, and its decision will be final.

Offeror shall identify all samples by brand name and product or model number, exactly as offered in the IFB in order for product to be acceptable.

When the product offered is a private label product, a permanent pre-printed impression on the container or the product itself must identify the product, or a label affixed by the manufacturer that will identify the product, will be acceptable. The mere attaching of an adhesive label by the Offeror will not be considered positive identification. Any sample of a private label product failing to meet this identification requirement will not be considered for award.

No changes or clarification of product identification will be considered. Offeror is advised that the mere meeting of product identification or labeling requirements does not mean that the product itself meets specifications and is acceptable. Submitted samples that are not of a specified quality or does not meet STATE requirements will not be considered for award.

16. Hawaii Products Preference

Hawaii Products Preference shall not be factored into any award subject to this solicitation.

17. Recycled Products Preference

Recycled Product Preference shall not be factored into any award subject to this solicitation for recycled products offered.

18. Offer Guaranty

Offer guaranty (bid bond) is not required for this solicitation.

OFFER SUBMITTAL

19. Submission of Offer

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

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

Before submitting a proposal, each Offeror must:

1. examine the solicitation documents thoroughly for defects and questionable or objectionable material. Solicitation documents include this IFB, any attachments, plans referred to herein, and any other relevant documentation. Comments must be submitted in writing and received by the STATE, Department of Education, PCB no later than seven (7) calendar days prior to the date fixed for bid opening. This will allow for issuance of addenda, if necessary.
2. become familiar with State, local, and federal laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work.

All offers shall be made through the HlePRO (<https://hiepro.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. Faxed or electronically submitted offers will not be accepted or acknowledged and will be automatically rejected.

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

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

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

20. Confidential Information

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

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

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

21. Certification of Independent Cost Determination

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

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

22. Acceptance of Offer

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

BID EVALUATION

23. 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.

24. Method of Award

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

Award, if any, shall be made to the responsive, responsible Offeror submitting the lowest estimated TOTAL BID PRICE per group per island or lowest evaluated estimated total bid price per group per island, if applicable.

Offeror is not required to bid on every island to be considered for award, nor is Offeror required to bid on every group within an island to be considered for award. However, Offeror must bid on all items within a group in an island to be considered for the island's group award.

25. Protest

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

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

protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract.

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

AWARD EXECUTION

26. Price List Award

Formal written contracts and performance bonds will not be required for awards made in response to this solicitation. Successful Offerors will receive a "Notice of Award by Price List" letter to which will be attached the price list indicating item(s) awarded to the successful Offeror. This method of award does not waive compliance with the Specifications, Special Conditions, and General Conditions, Form AG-008 (as revised).

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 agreement. The STATE is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the CONTRACTOR prior to the official starting date.

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

Participating State agencies (under the Executive and Judiciary jurisdictions) may purchase from the resulting price list at their option.

27. Responsibility of Contractor

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

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

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

28. 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/hce/splash/welcome.html>. The *Certificate of Vendor Compliance* provides current compliance status as of the issuance date, satisfies requirements of Chapter 103D-310(c), HRS, and is therefore acceptable for contracting purposes. CONTRACTORS that elect to use HCE services are required to pay an annual subscription fee of twelve dollars (\$12.00) to the Hawaii Information Consortium, LLC (HIC).

29. Timely Submission of All Certificates

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

30. Failure to Execute Award

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 an agreement as required within ten (10) calendar days (or such further time as the Superintendent may allow) after the bidder has received the agreement 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 agreement to the next lowest bidder or may publish another call for tenders, if the lowest bid is non-responsive to the STATE's needs.

31. Liability Insurance

The CONTRACTOR shall maintain, in full force and effect, during the life of this agreement, 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 agreement, 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 agreement, 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: \$2,000,000 aggregate
(Occurrence Form) \$1,000,000 combined single limit per occurrence
for bodily injury and property damage.
- Automobile Liability: \$1,000,000 per accident
(Combined Single Limit)

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

- 1) "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."
- 2) "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the agreement, 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 section 431:8-301 Hawaii Revised Statutes.

Upon CONTRACTOR's execution of the agreement, the CONTRACTOR agrees to deposit with the STATE certificate(s) of insurance necessary to satisfy the STATE that the insurance provisions of this agreement 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 agreement, 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 agreement, entitling the STATE to exercise any or all 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 agreement. Notwithstanding said policy(ies) of insurance, CONTRACTOR shall be obligated for the full and total amount of any damage, injury, or loss caused by the CONTRACTOR, its employees, officers, or agents, in connection with this Contract.

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

32. Availability of Funds

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

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

PERFORMANCE OF CONTRACT

33. Authority of the STATE, Department of Education

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

34. Product Quality

Products furnished under this IFB shall be new and of the best quality of its respective kind. Product shall be free from defects that may render it unfit to use. Damaged or rejected products shall be immediately removed from the site and replaced with products of the quality required by these specifications. Replacement of damaged or rejected products must be completed within seven (7) calendar days from the date of non-acceptance or rejection of product by the STATE. Delivery beyond the seven (7) calendar

days for replacement of damaged or rejected products may be allowed upon approval from the ordering entity. 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 award. No payment, whether partial or final, shall be construed to be an acceptance of unacceptable products.

The STATE, Department of Education may, at any time and by written order, stop the delivery of products not conforming to these specifications. Such stop order shall not relieve the CONTRACTOR of its obligation to complete its work within the award time limits, nor shall it in any way terminate, cancel, or abrogate the award or any part thereof.

35. Quantities

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

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

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

36. Price Adjustment

During the contract period, the CONTRACTOR may request an increase in contract price when there is a substantial increase in the cost of materials.

Requests for price adjustment shall be made in writing to the CA/POC and shall meet the following conditions:

1. Request for a price increase shall be limited to the costs imposed upon the CONTRACTOR by the manufacturer or supplier of the materials. No allowances will be given for CONTRACTOR's increased labor or operating expenses.
2. CONTRACTOR shall submit at the time of such written request, documentation or verification that the increase is the result of manufacturer or supplier increase in cost of materials.
3. No price increase adjustment shall be allowed during the first three (3) months of the contract. CONTRACTOR may submit a price increase adjustment request once every three (3) months for item(s) awarded provided proper documentation is submitted to substantiate the increase as detailed in items 1 and 2.

The STATE shall make the final determination for allowance of price increase requests. In the event of a general price decrease, the STATE will be entitled to reductions; provided, however, the amount of such decrease shall not exceed the amount of any increase granted herein. CONTRACTOR shall notify the STATE within five (5) business days of such price decrease.

37. Sales Report

Upon STATE request, CONTRACTOR shall submit a written sales report to the STATE, Department of Education, SFSB. Sales report will be due by the date specified on the request. The SFSB will provide a form to CONTRACTORS to use for sales reporting purposes. The quantities provided on this form shall be the amount purchased by the STATE, Department of Education against this Price List award during the period specified on the request. Questions on how to correctly complete the form can be directed to the STATE, Department of Education, SFSB.

38. Orders

During the award period, orders will be submitted/faxed to the CONTRACTOR(s) by the various STATE, Department of Education cafeterias as products are required. All orders received by the CONTRACTOR during the award period must be honored and CONTRACTOR is obliged to deliver according to the award terms and within the required delivery time. If a CONTRACTOR is unable to deliver because product is temporarily out of stock, it shall be the CONTRACTOR's responsibility to notify the ordering entity of the shortages on the awarded items at least five (5) days before the requested delivery date.

39. Deliveries

For Oahu, Hawaii, Maui, and Kauai, CONTRACTOR shall deliver products awarded to the various cafeterias in the State of Hawaii. Deliveries shall be scheduled for at least two (2) non-consecutive business days per week per district or geographical area. (Note: Friday and Monday are considered "consecutive business days" since no business is transacted on Saturday and Sunday.)

For Molokai, Lanai, CONTRACTOR shall deliver products awarded to the Island of Molokai and/or the Island of Lanai, as applicable. Deliveries shall be scheduled for at least one (1) business day per week.

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

The minimum order for delivery shall be FIFTY DOLLARS (\$50.00). Orders totaling less than FIFTY DOLLARS (\$50.00) shall be made available on a "will call" basis within 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 award period if order was received during the award period.

Deliveries to STATE, Department of Education school cafeterias and participating State agencies shall be made between 6:00 a.m. and 2:00 p.m. Deliveries shall be scheduled for at least two (2) non-consecutive business days per week per district or geographical area. (Note: Friday and Monday are considered "consecutive business days" since no business is transacted on Saturday and Sunday.) Upon the STATE's request, CONTRACTOR shall stack delivered cases in a previously-cleared storage area.

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

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

40. Failure to Deliver

CONTRACTOR shall be obliged to deliver products under this award in accordance with the terms and conditions stated herein. If a CONTRACTOR is unable to deliver because product is temporarily out of stock, it shall be the CONTRACTOR's responsibility to notify the ordering cafeteria of the shortages on the

awarded items at least five (5) days before the requested delivery date. CONTRACTOR shall then obtain prior approval from the STATE, Department of Education, SFSB and the ordering cafeteria to deliver an acceptable substitute, at the same bid price and under the same terms and conditions of this award. It shall be the CONTRACTOR's responsibility to obtain such substitute. In the event a CONTRACTOR consistently needs to substitute or refuses to substitute products, the STATE reserves the right to terminate the award and/or initiate the debarment process pursuant to Chapter 3-126, Legal and Contractual Remedies, HAR.

41. 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 STATE, Department of Education, School Food Services Branch 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 STATE, Department of Education, School Food Service Branch will notify the CONTRACTOR. Within one (1) week of notification, the CONTRACTOR shall take corrective measures to resolve the complaint, and inform the STATE, Department of Education, School Food Service Branch 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 agreement 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.

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, cafeteria as listed on the order. CONTRACTOR's invoices shall include product descriptions exactly as stated on the STATE, Department of Education price list. Invoice should reference both the Price List number and the solicitation number.

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 will reject any offer submitted with a condition requiring payment within a shorter period. Further, the STATE will reject any offer with a condition requiring interest payment greater than that allowed by Section 103-10, HRS, as amended.

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

APPROVALS

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

Offeror shall provide Exhibit A within three (3) business days from STATE request. Offeror shall print a copy of the page below for each island Offeror is submitting an offer on.

1. Facility. Offeror shall provide the following information regarding their facility based in the State of Hawaii that will be servicing the island specified herein and name of contact person. (Reference Special Conditions, Offeror Qualifications):

Name of Company _____

Address _____

Telephone No. _____ Fax No. _____

E-Mail Address (if applicable) _____

Name of Contact Person(s) _____

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.