University’s response to questions are in red.

1. Will the University allow the Contractor to subcontract the vending services (Paragraph C on the page marked Section 2-5) Also, are the vending rebate or commission based on net sales?
   Yes, the Contractor will be allowed to subcontract the vending services. Rebate/commission will be based on the dollar amount that the Contractor receives.

2. Will the juice bar be a part of the contract now or in the future? Pursuant to Paragraph 2.5.A on the page marked Section 2-4, the Juice Bar is not a part of the food service contract.
   The Student Life Juice Bar will be a part of the Contract from the beginning of the Contract.

3. Will the University modify its thirty (30) day notice requirement? Contractor shall not initiate a transfer of a management employee; however, an employees shall be permitted to and Contractor shall not discourage an employee from responding to an open position which may affect the length of service at a particular account if that employee is offered and accepts a different position and which may not guarantee that a 30-day notice period may be given. (Paragraph 6 on the page marked Section 2-6) simplify questions
   NO. the University will not modify. The 30 day requirement applies to General Manager only. UH Hilo wants to ensure a smooth running operation. Although an employee may initiate a transfer, the Contractor ultimately controls when the General Manager will be allowed to end in the old position and start in the new. However, if the Contractor can provide overwhelming evidence that the departure is beyond their control, University will waive this requirement.

4. Will the University submit a request for replacement of Contractor’s in writing and guarantee that their request for dismissal does not violate any applicable employment laws? (Paragraph 7 on page marked Section 2-6 and paragraph 5.11 on the page marked Section 5.3)
   All requests will be done in writing to the Contractor and request will not or cannot violate any applicable employment laws.

5. Based on HIPA, please clarify the word “provide”? Will employees be permitted to obtain examinations from their private physicians? (Paragraph 8 on the page marked Section 2.6)
The intent here is to ensure that all employees are in good health and minimally meet the requirements for food handlers. The Contractor will have to ensure that all employees meet the health requirements to handle food.

6. Can the University provide examples of requirements from the University’s Environmental Safety Specialist? (Paragraph B.3 on the page marked Section 2-7)
The University will follow and comply with State Health regulations and policies. As necessary, the Environmental Safety Specialist will enforce these regulations.

7. Which equipment new, replacement or existing will be the responsibility of the contractor? (Paragraph B.4 on the page marked Section 2-7)
This will apply to all equipment that the Contractor decides they want and the University decides not to purchase.

8. Will the University consider a joint physical inventory to include Contractor upon termination or expiration of Agreement? (Paragraph 11 on the page marked Section 2-8)
Yes, the University would include the Contract upon termination or expiration of the contract.

9. Can the University clarify the University will be responsible for repair and maintenance for all University-owned equipment or direct wired equipment? (Paragraph 17 on the page marked Section 2-9)
When fiscally feasible, the University will cover that cost of repair and maintenance of University owned equipment for normal wear and tear provided that the Contractor has sufficiently performed responsibilities outlined in Section 2 Item B Paragraph 15. There is no expectation on behalf of the University for the Contractor to pay for repair and/or maintenance on behalf of the University, in the event the University does not have the funding to do so.

10. What is the average annual utility cost per building (gas, electric, steam, water and sewage)? What are the average telephone charges, hood cleaning and pest control costs per building? How will these costs be established and monitored? (Paragraph D, Utilities, on the page marked Section 2-10)
Pest control and routine hood maintenance is currently the responsibility of the contractor, as such the University does not have cost data. The cost of a telephone line on the University system is currently about $30.00 per line per month. Offerors should check with local telephone service providers for other services and rates.

The kitchens in both the Campus Center Dining (CC Dining) and the Resident Dining have individual meters for liquid petroleum gas (LP Gas). The Contractor will be responsible to pay to this utility directly. The CC Dining operation is the only program that uses LP Gas in the Campus Center. The cost for LP gas in the CC Dining was $22,504 for calendar year 2008 and $19,491.13 for calendar year 2009. The cost of LP
Gas for the Resident Dining has been reported by the current contractor to be $58,122 for calendar year 2008 and $40,712 for calendar year 2009.

A long term goal will be to have the Contractor assume responsibility for an appropriate share of other utility costs incurred in the dining operations. This will be incrementally implemented after discussions with the contractor, as our current meters do not allow for accurate assessment of the Contractor’s cost share for these utilities. The Contractor’s proposal shall include known costs at this time (gas, phone, pest, hood maintenance). For utility costs that cannot be determined at this time (electricity, etc.), once they can be determined, a contract modification can be completed to make these costs the responsibility of the Contractor. Contractor and University may negotiate a fee adjustment as a result of this requirement.

11. Is the Contractor responsible for the air conditioning and water heaters and is this only the units dedicated to the food service areas? (Section E.1 under Sanitation Safety Facilities Maintenance and Inspection on the page marked Section 2-10)
   The AC and Heaters should be considered University property and will be maintained by the University. Exception would be for equipment installed by the Contractor.

12. Is the Contractor responsible for the building ventilation system in its entirety or just the exhaust hoods? (Section E.4 under Sanitation Safety Facilities Maintenance and Inspection on the page marked Section 2-11)
   The ventilation system that is connected to the exhaust hoods should be included in the maintenance. Repair and replacement should be the responsibility of the University.

13. Will the University clarify in which facilities and the number of digital menu boards they would like the Contractor to install? (Section F.4 under Space Use on page the marked Section 2.13)
   Minimally 2 menu boards in the Campus Center Dining and one in the Residential Dining Room.

14. Will the University consider liability for instances of theft, crime and loss in the event such acts are the result of University negligence or involvement even by third parties? (Section G.3 on the page marked Section 2.14 and throughout the RFP where applicable)
   No, the University will not.

15. Will the University consider Sodexo purchasing standards?. (Section M, Purchasing Standards, on the pages marked 2-15 and 2-16)
   The Purchasing Standards serves as a minimum. Yes, as long as Contractor’s standards meet these, it will be acceptable.
16. Will the university require Sodexo to use products from non Sodexo approved vendors and to what extent? (paragraph 6 on the page marked Section 2-16)
No. The list of purveyors are to encourage buying from local vendors, which in turn supports the University’s effort of sustainability and reduced “carbon footprint.” As a member of the University community, it is hoped the Contractor will actively strive to contribute to core values and goals of the University.

17. Regarding non-exclusive catering does this mean that CC events and the dining room will now be scheduled, cleaned, maintained, monitored and secured by the university? (Section S under Catering Concession Program on the pages marked Section 2-19 and 2-10.)
No, it means that the University could have food/beverages brought in from outside vendors. Contractor will control the kitchen and dining areas except as defined in Section 2 paragraph 2.5 Item E listed on page 2-5.

18. How will the university determine quality? (paragraph 1 under Prices and portions on the page marked Section 2-23)
University uses “quality” to define the level and characteristics that the campus community expects in food. This includes but not limited to presentation, appearance, taste, color, textures, smell, price, etc. However, this in not to say that the University will not discuss with the Contractor what it considers quality. Standards of quality and their measures will be discussed with the Contractor and mutually agreed upon by University and Contractor, and then documented in writing for purposes of accountability and quality improvement.

19. Is the term rebate and commission used interchangeably, is it based on gross sales or net sales (net of taxes), section 5?
Commission and rebate are used interchangeably in this document and will be based on gross sales.

20. Will the University consider modifying paragraph C on the page marked Section 5.2 to include; invoices that are not corrected due to sole error by the contractor?
After further consideration, the University believes it is not in the University’s best interest to change the language in section 5.2.

21. Will amounts owed by the University to the Contractor also be subject to interest? (paragraph D on the page marked Section 5.2)
Yes, pursuant to Section 103-10 of the Hawaii Revised Statutes.

22. Does the University have a recommended time frame and recommended auditing firms to conduct the requested annual sales and rebate audits? (Paragraph D under Section 5.17 in Appendix A on the page marked Section 5-5)
No, the University does not have a recommendation on a firm.
23. Will the University consider a mutual indemnity or stating that the University shall be responsible for liabilities resulting from the negligence of the University its agents or employees? (Section 5.23 in Appendix A on the page marked Section 5-6)
   After further consideration, the University believes it is not in the University’s best interest to modify section 5.23.

24. Will the University consider making Section 5.24, Litigation, in Appendix A on the page marked Section 5-7, mutual?
   After further consideration, the University believes it is not in the University’s best interest to modify section 5.24.

25. Will the University consider modifying the insurance requirements to Sodexo providing insurance certificates and access to insurance policies? (Section 5.25 in Appendix A on the page marked Section 5-7)
   The University will amend the document for clarity.
   Section 5.25, second to the last paragraph shall be amended to read:

   “The UNIVERSITY shall notify the CONTRACTOR in writing of changes in the insurance requirements; and if CONTRACTOR does not deposit written evidence of acceptable insurance coverage with the UNIVERSITY incorporating such changes within SIXTY (60) days of receipt of such notice, this CONTRACT shall be in default without further notice to CONTRACTOR and the UNIVERSITY shall be entitled to all legal remedies.”

26. Will the University consider granting the Contractor the right to terminate with or without cause? (Section 5.26 in Appendix A on the page marked Section 5-8)
   After further consideration, the University believes it is not in the University’s best interest to modify section 5.26.

27. Will the University consider relieving the Contractor from complying with a decision of the University during a time of dispute of the decision conflicts with Contractor’s policy or any applicable laws? (Paragraph D under Section 5.27 on the page marked Section 5-8)
   After further consideration, the University believes it is not in the University’s best interest to modify section 5.27.

28. Will the university allow the operating hours to be mutually determined and agreed upon? (Appendix A)
   For the CFO, the Offeror should use the hours as listed in preparation of offer. However, operating hours may be adjusted through a process of mutual agreement in order to respond to changing student and campus needs. Adjustments to existing hours of operation must be discussed and mutually agreed upon with the University.

29. Will the following language be included in the resulting Contract?:
Agreement Not To Hire. University shall not, without Contractor’s written consent, hire, make any agreement with, or permit the employment, in any operation providing food service, any person who has been a Contractor management employee at the Food Service within the earlier of one (1) year after said employee terminates employment with Contractor or within one (1) year after termination of this Agreement. University agrees that Contractor employees have acquired special knowledge, information, skills and contacts as a result of being employed with and trained by Contractor. If University hires, makes any agreement with or permits employment of any such employee, in any operation providing food service within the restricted period, it is agreed by University that Contractor shall suffer damages and University shall pay Contractor as liquidated damages an amount equal to two (2) times the annual salary of each employee hired by University. This sum has been determined to be reasonable by both parties after due consideration of all relevant circumstances. This provision shall survive termination of this Agreement.

After further consideration, the University believes it is not in the University’s best interest to modify this.

Trade Secrets and Proprietary Information. During the term of the Agreement, Contractor may grant to College a nonexclusive right to access certain proprietary materials of Contractor, including menus, signage, Food Service survey forms, software (both owned by and licensed to Contractor), and similar items regularly used in Contractor’s business operations (“Proprietary Materials”). In addition, College may have access to certain non-public information of Contractor, including, but not limited to, recipes, management guidelines and procedures, operating manuals, personnel information, purchasing and distribution practices, pricing and bidding information, financial information, surveys and studies, and similar compilations regularly used in Contractor’s business operations (“Trade Secrets”). Trade Secrets shall not include (i) any information which at the time of disclosure or discovery or thereafter is generally available to and known by the public or the relevant industry (other than as a result of a disclosure directly or indirectly by College), or (ii) any information which was available to College on a non-confidential basis from a source other than Contractor, provided that such source was not bound by an agreement prohibiting the transmission of such information, or (iii) any information independently developed or previously known without reference to any information provided by Contractor.

College shall not disseminate any Proprietary Materials or disclose any of Contractor’s Trade Secrets, directly or indirectly, during or after the term of the Agreement. College shall not photocopy or otherwise duplicate any such material without the prior written consent of Contractor. All Proprietary Materials and Trade Secrets shall remain the exclusive property of Contractor and shall be returned to Contractor immediately upon termination of the Agreement. Without limiting the foregoing, College specifically agrees that all software associated with the operation of the Food Service, including without limitation, menu systems, food production systems, accounting systems, and other software, are owned by or licensed to Contractor and not College. Furthermore,
College’s access or use of such software shall not create any right, title interest, or copyright in such software, and College shall not retain such software beyond the termination of the Agreement. Any signage, servicemark or trademark proprietary to Contractor shall remain the exclusive property of Contractor and shall be returned to Contractor immediately upon termination of this Agreement. In the event of any breach of this provision, Contractor shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available. This provision shall survive termination of the Agreement.

The University will not accept the requested language on "Trade Secrets and Proprietary Information". As the University of Hawaii at Hilo is an Agency of the State of Hawaii, all release of information shall be done in accordance with Hawaii Revised Statute 92F. The University will return proprietary information used in providing the required services upon expiration/termination of the contact. All information that is proprietary should be labeled as such, in accordance with 92F HRS.