



STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

RELEASE DATE: December 20, 2023

REQUEST FOR PROPOSALS  
No. RFP-24-HHL-005

SEALED OFFERS  
FOR

**LAND ACQUISITION AND DEVELOPMENT,**  
**STATEWIDE**

WILL BE RECEIVED UP TO 2:00 P.M. (HST) ON FEBRUARY 2, 2024

AT HALE KALANIANAOLE, 91-5420 KAPOLEI PARKWAY, KAPOLEI, HAWAII 96707.  
DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO RAYMOND KANNA,  
TELEPHONE (808) 620-9281 OR E-MAIL AT [raymond.s.kanna@hawaii.gov](mailto:raymond.s.kanna@hawaii.gov).

KALI WATSON  
CHAIRMAN, HAWAIIAN HOMES COMMISSION  
PROCUREMENT OFFICER

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**SECTION ONE**

**INTRODUCTION, TERMS AND ACRONYMS, KEY DATES**

**1.1 INTRODUCTION**

The Department of Hawaiian Home Lands (Department) is asking for proposals from interested landowners/developers (Offerors) to offer real property for acquisition by the Department.

The offer may include a proposal for the properties to be developed by the Offeror, including, but not limited to, the design and construction of on- and off-site infrastructure, and the design, construction, and marketing of residential units to Department beneficiaries.

The Department may accept more than one submitted proposal and reserves the right to reject unacceptable proposals. If the proposal includes both land acquisition and development, the Department may accept only the acquisition portion of the proposal.

**1.2 CANCELLATION**

The Department reserves the right to cancel this RFP and to reject any and all proposals in whole or in part when it is determined to be in the best interest of the Department, pursuant to HAR § 3-122-96 through 3-122-97. The Department shall not be liable for any costs, expenses, loss of profits or damage incurred by the Offeror in the event its proposal is rejected or if this RFP is cancelled.

**1.3 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION**

ADA	=	Americans with Disabilities Act
AMI	=	Area Median Income
BAFO	=	Best and Final Offer
CPO	=	Chief Procurement Officer
DA	=	Development Agreement
DAGS	=	Department of Accounting and General Services
DCAB	=	Disability and Communication Access Board
DHHL	=	Department of Hawaiian Home Lands
FHA	=	Federal Housing Administration
GC	=	103D General Conditions, issued by the Department of the Attorney General
GET	=	General Excise Tax
HAR	=	Hawaii Administrative Rules
HCE	=	Hawaii Compliance Express
HHC	=	Hawaiian Homes Commission
HRS	=	Hawaii Revised Statutes
HUD	=	Department of Housing and Urban Development.
NAHASDA	=	Native American Housing Assistance and Self Determination Act of 1996
RFP	=	Request for Proposals
UFAS	=	Uniform Federal Accessibility Standards

VA = Department of Veteran Affairs

Addendum – A written document which may be issued by the Chairman of the Hawaiian Homes Commission during the solicitation period establishing changes to the request for proposals.

Advertisement – A public announcement inviting proposals for work to be performed or materials to be furnished.

Area Median Income (AMI) – The median income for a County as most recently determined by the U.S. Department of Housing and Urban Development, with adjustment defined by HUD for family size.

Chairman – The Chairman means the Chairman of the Hawaiian Homes Commission as designated under section 202 of the Hawaiian Homes Commission Act, 1920, as amended. The Chairman also serves as the Director of the Department of Hawaiian Home Lands and is the Chief Procurement Officer.

Commission – The Commission refers to the Chairman of the Hawaiian Homes Commission designated under Section 202 of the Hawaiian Homes Commission Act, 1920, as amended, which serves as the executive board of the Department of Hawaiian Home Lands

Contact Person – The person designated by the Department of Hawaiian Home Lands to receive various communications in writing to the Department in conjunction with the project.

Department of Hawaiian Home Lands (DHHL or Department) – A public body responsible for administering the day-to-day operations of the Hawaiian Homes Commission Act, 1920, as amended.

Developer – The entity or person retained by the Department of Hawaiian Home Lands to implement the Project.

Development Agreement – The contract through which the Offeror will implement the Project.

Developer-Built Homes – Houses constructed by the developer (as opposed to self-help, owner-builder, etc.).

Federal Labor Standards – U.S. Department of Housing and Urban Development form HUD-4010, as may be amended from time to time.

Federal Rate Schedule – HUD General Decision HI20220001 10/14/2022, as may be amended from time to time.

Green building – Design and construction practices that minimize environmental impact, maximize the quality of homes, and reduce the cost of maintenance and operation.

Hawaii Housing Finance & Development Corp. (HHFDC) – The public agency under the Department of Business, Economic Development, and Tourism that is tasked with developing and financing affordable housing projects, particularly for low- and moderate-income families and administering homeownership programs. HHFDC awards State & Federal tax credits, Hula Mae Bonds, Rental Housing Revolving and Dwelling Unit Revolving Funds.

Hawaiian Home Lands Trust Fund – The funds established in Section 213 of the Hawaiian Homes Commission Act, 1920, as amended within the State Treasury to which all specified appropriations from the State legislature shall be deposited therein.

Hawaiian Homes Commission Act, 1920, as amended (HHCA) – The Hawaiian Homes Commission Act, 1920, Pub. L. No 67-34, (chapter 42, 42 Stat. 108, *et seq.*) provides for the rehabilitation of the native Hawaiian people through a government-sponsored homesteading program. The HHCA is now part of the Hawaii State Constitution and is subject to amendment or repeal as prescribed in Article XII of the Hawaii State Constitution.

Hawaii BuiltGreen - A program for building-industry professionals enrolled in the Hawaii BuiltGreen Program of the Building Industry Association of Hawaii. It is designed to support the Self-Certification Checklist used to certify Hawaii BuiltGreen Home Builder projects.

Housing Contractor (Contractor) – For the purpose of this RFP, a company whose primary or a significant portion of business is the construction of residential dwellings.

Infrastructure Contractor – For the purpose of this RFP, a company whose primary or a significant portion of business is the construction of sitework, roadways and utilities.

Inspector – The person assigned to make detailed inspections of contract performance and services supplied.

Laws – All federal, state, county laws, ordinances, rules, and regulations including any amendments thereto effective as of the date of the solicitation for sealed proposals.

Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) – NAHASDA is a program funded through the U.S. Department of Housing & Urban Development and serves the affordable housing needs of American Indians, Alaskan Natives, and Title VIII for Native Hawaiians, with a block grant going directly to the Department. NAHASDA seeks to promote the general welfare by providing affordable housing, creating safe and healthy environments, and promoting self-determination.

Native Hawaiian – Defined as any descendant of not less than one-half (50%) part of the blood races inhabiting the Hawaiian Islands previous to 1778 (a lower case "n" is commonly used in the phrase "native Hawaiian" when referring to Hawaiian Homes Commission Act beneficiaries. The upper case "N" is used when more generally describing persons with any percentage of Hawaiian ancestry).

Offeror – Any individual, partnership, firm, corporation, joint venture, or representative or agent, submitting an offer in response to this solicitation.

Project – Development of the acquired property. (see Section Two: Background and Scope of Work)

Procurement Officer – Any person within the State of Hawaii, Department of Hawaiian Home Lands with delegated authority from the head of the purchasing agency, the chief procurement officer, or a designee of either, to enter into and administer contracts, and to make written determinations with respect thereto.

Proposal – A document submitted by an Offeror in the prescribed manner in response to this RFP.

Responsible Managerial Employee (RME) – The individual who is designated by the Developer to be responsible for all work of the project and is authorized by the Developer to receive and fulfill instructions and notices from the Department.

Sales Agreement – The contract through which the Department will purchase the property or Project.

Secretary of Housing & Urban Development (HUD) – HUD means the Secretary of Housing & Urban Development, his delegates, and assigns, and the officers and

employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

Selection Committee – A committee consisting of at least three governmental employees, appointed by the Chairman, which will evaluate proposals and recommend the Selected Developer for this Project to the Chairman for approval.

Selected Developer – The Offeror selected by the Selection Committee and approved by the Chairman.

State – The State of Hawaii, including its department, agencies, and political subdivisions.

Subcontractor – An individual, partnership, firm, corporation, joint venture, or other legal entity, as covered in Chapter 444, HRS, which enters into an agreement with the Contractor to perform a portion of the work for the Contractor.

Subsistence Agricultural Lot – An agricultural lot comprised of at least one-half (1/2) an acre up to three (3) acres in size for cultivation of food crops or raising of small livestock for to provide for the needs of a lessee or their family, leaving little, if any surplus for sale or trade.

Surety – The qualified individual, firm, or corporation other than the Developer, which executes a bond for the benefit of the Developer and the Department to insure acceptable performance of the Construction Contract.

Term Sheet – The agreement executed by DHHL and the successful Offeror that articulates basic terms and conditions that the parties agree to further negotiate and refine, and ultimately set forth in detail in the Development Agreement.

#### 1.4 RFP SCHEDULE AND SIGNIFICANT DATES

The schedule represents the State's best estimate of the schedule that will be followed. All times indicated are Hawaii Standard Time (HST). If a component of this schedule, such as "Proposal Due date/time" is delayed, the rest of the schedule will likely be shifted by the same number of days. Any change to the RFP Schedule and Significant Dates shall be reflected in and issued in an addendum. The approximate is as follows:

Release of Request for Proposals	December 20, 2023
Pre-proposal Conference	January 3, 2024
Due date to Submit Questions	January 19, 2024
State's Response to Questions	January 26, 2024
Proposals Due date/time	February 2, 2024, 2:00pm
Acquisition	
Property Evaluations	February 16, 2024
Discussion with Priority Listed Offerors (if necessary)	February 21, 2024
Best and Final Offer (if necessary)	March 1, 2024
Notice(s) of Award	March 8, 2024
Development	
Proposal Evaluations	March 14, 2024
Discussion with Priority Listed Offerors (if necessary)	March 20, 2024
Best and Final Offer (if necessary)	March 29, 2024
Notice(s) of Award	April 5, 2024
Execution of Sale Agreement(s) or Developer Agreement	May 31, 2024

#### 1.5 PRE-PROPOSAL CONFERENCE

The pre-proposal conference is to brief potential Offerors on this procurement. It also gives the Offerors the opportunity to ask clarifying questions. While the pre-proposal conference is not mandatory, Offerors are encouraged to attend to gain a better understanding of the requirements of this RFP.

Offerors are advised that anything discussed at the pre-proposal conference does not change any part of this RFP. All changes and/or clarifications to this RFP shall be done in the form of an addendum.

The pre-proposal conference will be held as follows:

Date: January 3, 2024

Time: 10:00 am

Location: TEAMS Meeting

#### 1.6 QUESTIONS AND ANSWERS PRIOR TO OPENING OF PROPOSALS

All questions shall be submitted by the due date specified in Section 1.4, *RFP Schedule and Significant Dates*, in writing and directed via email to [raymond.s.kanna@hawaii.gov](mailto:raymond.s.kanna@hawaii.gov). The State will respond to questions through Addenda/Amendments by the date specified in Section 1.4. The only official position of DHHL is that which is stated in writing and issued in this RFP and/or as addenda to this RFP. No other means of communication,

whether oral or written, will be construed as a formal or official response or statement and may not be relied upon as such.



**SECTION TWO**  
**BACKGROUND AND SCOPE OF WORK**

**2.1 PROJECT OVERVIEW AND HISTORY**

Act 279 of 2022 Session Laws of Hawaii appropriated \$600,000,000 in funds to address the needs of those on the DHHL waitlist and those beneficiaries still waiting to get on the land. The Commission approved the *Strategic Approach to Implement Act 279 - August 2022*, which provided:

DHHL will entertain opportunities to acquire new lands close to existing infrastructure and suitable for residential use. DHHL may also entertain acquiring property needed for water source development in areas where DHHL lands do not have sufficient water for homestead development.

In addition, the Consolidated Appropriations Act, 2022 included \$22,300,000 for Fiscal Year 2022, the highest level of funding for the Native Hawaiian Housing Block Grant program as authorized under NAHASDA. The 2022-2023 Native Hawaiian Housing Block Grant Annual Housing Plan accepted by the Commission and subsequently determined to be compliant by HUD includes property acquisition as a program activity to increase affordable housing inventory.

DHHL will entertain opportunities to acquire new lands close to existing infrastructure and suitable for residential and/or subsistence agricultural use. DHHL may also entertain opportunities to acquire property needed for water source development in areas where DHHL lands do not have sufficient water for homestead development.

**2.2 SCOPE OF WORK**

Proposals shall consider the Department's objectives for this project, which are summarized as follows:

- A. To identify readily available real property (developed, or not) for acquisition by the Department. Projects with environmental, health and safety, archaeological, or community concerns are not acceptable.
- B. To plan, design, and construct residential and/or subsistence agricultural neighborhoods that consider the opportunities and constraints of the Department's waiting lists and the existing site conditions, show respect to the area, and harmonize with adjacent land use determinations.
- C. To utilize planning and design standards and concepts that will foster a sense of community interaction and identity.
- D. To develop single-family improved finished lots and houses and/or subsistence agricultural lots for applicants on the Department's waiting lists who are financially qualified to purchase a house through turnkey, self-help, or owner-builder methods. Subsistence agricultural lot lessees will have the option to build their own home or purchase a packaged home for their subsistence agricultural lot.
- E. To provide DHHL residential applicants an opportunity to choose an improved vacant lot for the purpose of constructing their house as owner-builders, or through Habitat for Humanity, or other self-help housing construction program.

- F. To provide DHHL agricultural applicants an opportunity to choose an improved vacant lot for subsistence agricultural use, upon which they have the option to build their own home.
- G. To provide the lower-income applicants an opportunity to participate in a low-income housing tax credit with option to purchase program.
- H. To incorporate green building practices, including implementation of Department's Ho'omalū Energy Policy (Exhibit E) into the design and construction of the facilities to achieve a lower cost of operation and maintenance by minimizing energy use.

## **2.3 DEVELOPER'S RESPONSIBILITIES**

- A. Convey the project property to DHHL.

If the offer includes a proposal to develop the property and is accepted by the Department, the Developer shall have the responsibility for all aspects of development, planning and execution. The Developer's responsibility shall include, but shall not be limited to, compliance with all federal, state and county requirements necessary for development; planning, design and construction of all off-site and on-site infrastructure improvements; environmental and preservation requirements; subdivision of lots; improvement and completion of lots; design and construction of the housing units; and marketing and sales of the units to qualified native Hawaiians in a lien-free condition. The Department retains the right to oversee all aspects of development, planning, and execution.

The following shall also apply:

- B. Assemble and coordinate a development team for the project. Identify the Responsible Managerial Employee who shall be the authorized representative for the entire project.
- C. Compile and process an Environmental Impact Statement (EIS) or Environmental Assessment (EA) to comply with the requirements of HRS Chapter 343, including but not limited to: being the primary contact in preparing presentations for the Commission, beneficiary consultation meetings, and neighborhood board meetings.
- D. Complete all required elements for submission and publication of an EA with the HUD Environmental Review Only System for NAHASDA funding.
- E. Perform a soil investigation and analysis for the site and provide results to the Department within forty-five (45) days of signing the Development Agreement.
- F. Plan the development and provide construction drawings and specifications for the site including the interior roadway and utility systems, the subdivision and fine grading of individual house lots, and connection to off-site infrastructure. House lots shall meet HUD and Fair Housing Act standards for drainage and compaction. The design for the site, lots, and the houses shall be done by qualified design professionals licensed by the State.
- G. Obtain all necessary permits and approvals from appropriate State and county agencies for infrastructure construction, unless provided by DHHL or its third-party consultant.
- H. Construct infrastructure and lot improvements.

- 1) For improved vacant lots for owner-builder, Habitat for Humanity, or other self-help construction programs, the Developer shall provide a "ready-to-build" lot in compliance with HUD and Fair Housing Act standards for drainage and compaction, with utility stub-outs to the lot boundary.
  - 2) For owner-builder houses, the lessee will be responsible for location of the house footprint, house pad compaction, driveway location, all excavations for foundation, drainage swales and utilities, and connection to utilities, including water meter.
  - 3) For Subsistence agricultural lots, utility stub-outs shall be provided to the lot boundary. The lessee may choose to build their own home or purchase a package home to install on the lot.
- I. Develop a menu of housing and financing options that addresses the spectrum of buyer economic needs as reflected in the *DHHL Beneficiaries Study Applicant Report, 2020* (Exhibit F), and/or through the Developer's own study. If the Developer seeks to use its own study, the Developer should receive the written approval from the Department.
  - J. Use mailing labels provided by DHHL, to send out initial packets to applicants on the appropriate island-wide residential waiting lists, agricultural waiting list or any other appropriate and applicable waiting lists.
  - K. Primarily conduct orientation and lot selection meetings.
  - L. If applicable, prepare and submit a funding application to HHFDC, request for DHHL's NAHASDA program, and apply to any other federal, state and county programs.
  - M. Obtain interim house construction financing.
  - N. For residential lots, provide house plans and site the houses on the Project Lots. All homes shall be designed to meet all county code requirements on all lots. Every house model should fit on every lot. The Developer should indicate any exceptions to this requirement. House designs shall be consistent with the soil engineer's recommendations.
  - O. Provide house designs and specifications to support implementation of the Project Green Building Strategy. Particularly, the designs and specifications for each house or lot shall achieve or exceed the minimum two-star Hawaii BuiltGreen certification level.
  - P. Prepare Composite Plot Plans for the Project Lots. The Plot Plan shall show the location of the house and driveway (for residential lots) relative to the property lines, finish elevation of the house, and fine grading, including individual lot swales around each lot.
  - Q. Obtain all permits (e.g., building and grading permits) and approvals required for the construction of the homes in accordance with the requirements of the county and other agencies having jurisdiction over the Project, including, but not limited to, a Fine Grading Permit for installation of the imported top soil on the Project Lots. Close permits after final inspections.
  - R. Construction contractors and sub-contractors will be required to provide performance

- and payment bond, each in the full amount of the infrastructure construction contract.
- S. Construct houses per DHHL and County approved house plans and specifications and according to applicable Codes. Including connections to utilities.
  - T. Install water meter for each residential and subsistence agricultural lot. The cost of the water meter shall be included in house price.
  - U. Provide geotechnical inspections and compaction tests prior to concrete pours for the driveways and house foundations. Written reports and compaction test results shall be provided to DHHL.
  - V. Construct concrete driveways for the residential lots. Driveways shall be a minimum of 18 feet in width and 20 feet in length. No driveways are required for Subsistence Agricultural Lots.
  - W. Install privacy fences at rear and side yards of residential lots. Cost of fencing shall be included in prices for houses. No fencing required for Subsistence Agricultural Lots.
  - X. Upon completion of each house, the Developer shall import and install top soil and grass all exposed areas around the house. Developer shall maintain all common area grassing within the subdivision until all houses are accepted by DHHL and lessees. Grassing and vegetation on each lot shall be cut just prior to homeowner move-in.
  - Y. Subsistence agricultural lots shall be cleared along the perimeter of the parcel to allow visible placement of property flags and to identify location of utilities' stubouts.
  - Z. Be responsible for dust control, noise control, erosion control and related damages.
  - AA. Provide periodic and ongoing inspections by licensed architects and/or engineers to insure that the infrastructure and houses are built according to the plans and specifications accepted by the Department. Written reports of these inspections shall be provided to the Department. The receipt of such inspection reports by the Department shall not relieve or constitute a waiver or modification of any duty and requirement the Developer may have under the Development Agreement.
  - BB. Observe and comply with all provisions of Chapter 104, HRS and the Davis-Bacon Act and Related Acts (40 U.S.C. §§ 3141-3148 29 CFR Parts 1, 3, 5, 6, and 7). The Developer shall submit a certified copy of each weekly payrolls and a certified copy of a fringe benefit reporting form supplied by the department or any certified form that contains all the required fringe benefit information to the Department within seven calendar days after the end of each weekly payroll period. Failure to do so on a timely basis shall be cause for withholding of payments, termination of the contract, and/or debarment. The Developer shall be responsible for the timely submission of certified copies of payrolls of all subcontractors. The certification shall affirm that payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision, any amendments thereto during the period of the contract, and that the classifications set forth for each laborer and mechanic conform with the work they performed. The Developer shall maintain payroll records for all laborers and mechanics working at the site of the work during the course of the work and preserve for a period of four (4) years thereafter.
  - CC. Provide any other services of functions that are necessary for successful

completion of the proposed construction, including, but not limited to, final inspection of each house, turnover of each house to DHHL/Buyer, preparation, and submittal of final Warranty Packages for each house to DHHL/Buyer, and any unique circumstances of their proposal.

- DD. Prepare and issue to each buyer a Homeowner's Manual consisting of warranty information (including claim filing procedures), important telephone numbers, recommendations for periodic maintenance, and community association information.
- EE. Market turnkey houses, including participation in information/orientation meetings; coordinating loan pre-qualifications; establishing escrow accounts; coordinating sale and mortgage loan closings; and providing financial and homeownership/warranty counseling to applicants.
- FF. Maintain and protect each house and project lot until sale and loan closing, and turnover of the home or project lot to a lessee takes place.
- GG. Provide sufficient warranties to ensure correction of construction defects during the warranty period.
- HH. Establish a Community Association, as appropriate.

## **2.4 DEPARTMENT OF HAWAIIAN HOME LANDS' RESPONSIBILITIES**

- A. Acquire the project property.

If the offer includes a proposal to develop the property, which is accepted by the Department, the following shall also apply:

- B. Grant development rights to the selected Developer for the project.
- C. Review the Developer's soils investigation and analysis within fourteen (14) days of its receipt and determine if the project is to be canceled.
- D. Submit HRS Chapter 343 documentation for approval: EIS to the Commission and Governor; EA to Commission.
- E. Pay for planning and design of roadways and utilities servicing the site.
- F. Pay for site construction not to exceed the cost of on- and off-site infrastructure construction, utility connections up to the lot boundary and grading. Pay for utility development fees or facility costs, less any development credits as may be applicable. Pay for the cost of clearing and grubbing and mass grading of property to building pad sub-grade elevations. All additional finished grading inclusive of building pad and utility excavation and installation within each house lot will be included as on-site building cost to be borne by the Developer and/or lot owner.
- G. The Department may provide zero-interest interim construction loan funds to qualified developers to fund the construction of the turn-key housing units. Said loans will require no monthly re-payments; loan will be paid down from the proceeds of the sales of turn-key homes through escrow to the department. These funds may be made available and utilized in lieu of developer financing from a commercial lending institution provided that the developer offers a reduction of the sales price for houses constructed utilizing the interim loan fund. The term of loan shall be for a period of twenty-four (24) months from

the recordation of Contract of Loan.

- H. If available, Affordable Housing Credits as provided by the Counties may be made available to the Developer.
- I. Confirm eligibility of buyers pursuant to the HHCA.
- J. If deemed feasible, the Department may assist the Developer in requesting HHFDC assistance to certify the persons or entities who are contractually participating in the project and are involved in the design, development/planning, construction, financing, marketing and sale of the project, for exemption from applicable Hawaii general excise taxes on gross income received from the Project pursuant to HRS § 201H-36.
- K. Provide Developer with mailing labels for initial mail out of offers to applicants on the appropriate island-wide residential waiting lists, agricultural waiting list, or any other appropriate and applicable waiting lists.
- L. Assist Developer with orientation and lot selection meetings.
- M. Monitor house construction for compliance with approved plans and specifications.
- N. Provide and record executed leases and the consent to mortgage documents. Record any mortgage documents with the Department's internal recordation system.
- O. If the project lot or house is funded by a tax credit or bond financing with an option to purchase, the Department will provide a separate ground homestead lease to the homesteader(s).

## **2.5 TERM OF CONTRACT**

If the offer includes a proposal to develop the property, the contract shall be for the period stated in the Offeror's proposal.

The Department reserves the right to terminate the contract without penalty for cause or convenience as provided in the General Conditions.

## **2.6 CONTRACT ADMINISTRATOR**

For the purposes of this contract, Stewart Matsunaga, Land Development Division Administrator, (808) 620-9283, or authorized representative, is designated the Contract Administrator.

**SECTION THREE**  
**PROPOSAL FORMAT AND CONTENT**

**3.1 OFFEROR'S AUTHORITY TO SUBMIT AN OFFER**

The State will not participate in determinations regarding an Offeror's authority to sell a product or service. If there is a question or doubt regarding an Offeror's right or ability to obtain and sell a product or service, the Offeror shall resolve that question prior to submitting an offer.

The Offeror shall have title to the proposed project property, or written authorization to negotiate the sale of the property on behalf of the owner.

**3.2 REQUIRED REVIEW**

- A. Before submitting a proposal, each Offeror must thoroughly and carefully examine this RFP, any attachment, addendum, and other relevant document, to ensure Offeror understands the requirements of the RFP. Offeror should carefully review this solicitation for defects and questionable or objectionable matter.
- B. Comments concerning defects and questionable or objectionable matter shall be directed via email to [raymond.s.kanna@hawaii.gov](mailto:raymond.s.kanna@hawaii.gov) prior to the deadline for written questions. This will allow the issuance of necessary corrections and/or amendments to the RFP. It will help prevent the opening of a defective solicitation and mitigate reliance of a defective solicitation and exposure of Offeror's proposal upon which award could not be made. Any exceptions taken to the terms, conditions, specifications, or other requirements listed herein, must be listed in the Exceptions section of the Offeror's proposal, if the exception is unresolved by the Proposal Due Date.
- C. Offeror must also become familiar with State, local, and Federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work required.

**3.3 PROPOSAL PREPARATION COSTS**

Any and all costs incurred by the Offeror in preparing or submitting a proposal are the Offeror's sole responsibility. Any costs incurred by the Offeror prior to the execution of a contract are not eligible for reimbursement. Costs incurred in connection with the review, inspection, and verification of information provided in this RFP will be the Offeror's sole responsibility. Offerors will ensure that the Department is provided with the written authorization(s) necessary to verify information in the Offeror's proposal.

**3.4 TAX LIABILITY**

- A. State GET Exemption. The Department makes no representations or warranties as to whether gross income related to the project will be certified for exemption from Hawaii general excise taxes pursuant to HRS § 201H-36. The proposed budget shall include GET. If the Offeror is offered a Contract, the Offeror is solely responsible for applying for general excise tax exemptions on the Project.

B. Federal I.D. Number and Hawaii General Excise Tax License I.D. Offeror shall submit its current Federal I.D. No. and Hawaii General Excise Tax License I.D. number in the space provided on Offer Form, page OF-1, thereby attesting that the Offeror is doing business in the State and that Offeror will pay such taxes on all sales made to the State.

C. Conveyance Tax. Seller shall be responsible for payment of conveyance tax.

### 3.5 CONFIDENTIAL INFORMATION

All information, data, or other material provided by the Offeror or the Contractor to the State shall be subject to the Uniform Information Practices Act, HRS Chapter 92F. If an Offeror believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld as confidential, the Offeror will request in writing nondisclosure of such information (e.g., designated trade secrets or other proprietary data that are to remain confidential) and provide justification to support the designation of confidentiality. Such information will accompany the proposal, be clearly marked, and will be readily separable from the proposal documents to facilitate the eventual public inspection of the non-confidential section of the proposal documents. The price and the provisions of the minimum required services are not considered confidential and will not be withheld.

Offerors who choose to identify portions of their proposal as confidential will be responsible to ensure that the minimum services are not included.

### 3.6 EXCEPTIONS

Offerors will list any exceptions taken to the terms, conditions, specifications, or other requirements listed herein. Offeror shall reference the RFP section where exception is taken, a description of the exception taken, and the proposed alternative, if any. The State reserves the right to accept or not accept any exceptions.

Requests for exceptions from State, federal, or local laws will not be approved. No exceptions to statutory requirements of the Attorney General's General Conditions shall be considered.

### 3.7 PROPOSAL CONTENTS

A. To be considered responsive, the Offeror's proposal shall respond to and include all items specified in this RFP and any subsequent addendum. Any proposal offering any other set of terms and conditions that conflict with the terms and conditions providing in the RFP or in any subsequent addendum may be rejected without further consideration.

B. Proposals shall be organized into sections, following the exact format using all titles, subtitles, and numbering, with tabs separating each section described below. Each section must be addressed individually and pages must be numbered.

1) Transmittal letter confirming that the Offeror shall comply with the requirements, provisions, terms, and conditions specified in this RFP.

2) Offer Form, OF-1. Offer Form, OF-1 (Attachment 1) shall be completed using Offeror's exact legal name as registered with the Department of Commerce and



Consumer Affairs and to indicate the exact legal name in the appropriate spaces on Offer Form page OF-1. Failure to do so may delay proper execution of the contract.

The Offeror's authorized signature on the Offer Form, OF-1 shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

- 3) Offer Form, OF-2. Proposed development and budgets shall be submitted on Offer Form OF-2 (Attachment 2).
- 4) Submit an original set and a flash drive containing a set of electronic files of all documents.

C. Handwritten offers are not acceptable.

### **3.8 AMENDMENTS**

The Department reserves the right to amend this RFP at any time prior to the proposal submission deadline. Offerors will be notified of the availability of amendments through verbal or written communications.

### **3.9 RECEIPT AND REGISTRATION OF PROPOSALS**

- A. The date and time recorded for the receipt of any proposals by the Department, any modification to the proposals, and withdrawals of proposals will be the date and time of receipt of the email by the Department.
- B. All documents received will be held in a secure place by the Department and will not be examined for evaluation purposes until the submittal deadline. The register of proposals and proposals of the Offeror(s) shall be open to public inspection upon posting of award(s) pursuant to HRS § 103D-303 and HAR § 3-122-51.
- C. Proposals will not be opened at a public proposal opening. Proposals will be received and verified by two or more procurement officials on or after the date and time specified in Section One, or as amended. Proposals and modifications shall be shown only to members of the evaluation committee and state personnel or their designees having legitimate interest in them.
- D. After the date established for receipt of proposals, a register of proposals shall be prepared, which shall include for all proposals: the name of each offeror; the number of modifications received, if any; and a description sufficient to identify the item offered. The register of proposals shall be open to public inspection as provided in HAR § 3-122-58.
- E. Proposals shall be open to public inspection as provided in HAR § 3-122-58.

### **3.10 MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS**

All proposals may be modified or withdrawn prior to the deadline for submittal by written notice to modify or withdraw the proposal. All requests for modification will be sealed,

accompanied by the actual modification to the proposals, and signed by an authorized signatory.

### **3.11 MISTAKES IN PROPOSALS**

- A. Mistakes shall not be corrected after award of contract.
- B. When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer should request the Offeror to confirm the proposal. If the Offeror alleges a mistake, the proposal may be corrected or withdrawn pursuant to this section.
- C. Once discussions have commenced or after BAFO are requested, any priority-listed Offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.
- D. If discussions are not held, or if the BAFO upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.
- E. If discussions are not held, or if the BAFO upon which award will be made have been received, an Offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the Offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.
- F. Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if BAFO upon which award will be made have been received, the Procurement Officer may waive such irregularities or allow an Offeror to correct them if either is in the best interest of the State. Examples include the failure of an Offeror to: return the number of signed proposals required by the request for proposals; sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Offeror's intent to be bound; or to acknowledge receipt of an amendment to the request for proposal, but only if it is clear from the proposal that the Offeror received the amendment and intended to be bound by its terms; or the amendment involved had no effect on price, quality or quantity.

### **3.12 REJECTION OF PROPOSALS**

DHHL reserves the right to consider as acceptable and responsible only those proposals submitted in accordance with all requirements set forth in this RFP and which demonstrate an understanding of the problems involved and comply with the service specifications. Any proposal offering any other set of terms and conditions contradictory to those included in this RFP may be rejected without further notice. A proposal may automatically be rejected for any one or more of the following reasons:

- A. Cancellation of solicitation and rejection of offers (HAR § 3-122-95);

- B. Cancellation of solicitation (HAR § 3-122-96);
- C. Rejection of offers (HAR § 3-122-97);
- D. Reporting of anti-competitive practices (HAR § 3-122-191 to § 3-122-196);
- E. Rejection for inadequate accounting system (HRS § 103D-314(2));
- F. Late proposals (HAR § 3-122-16.08);
- G. Proposal not responsive (HAR § 3-122-97(b) and HAR § 3-122-97(c)); and
- H. Offer not responsible (HAR § 3-122-97(b) and HAR § 3-122-97(c)).

## SECTION FOUR

### EVALUATION CRITERIA

#### 4.1 SCORING SYSTEM

Evaluation criteria for offers to convey property to the Department and develop said property are listed below. All proposals will be scored to determine which properties are suitable for acquisition by the department (potential acquisitions). Of the potential acquisitions, those with Offerors for development will be scored. The Department may accept more than one proposal submitted and reserves the right to reject any or all proposals as unacceptable.

Proposals that only offer real property for acquisition will not be evaluated under this section of the RFP, and instead will be considered on a case-by-case basis at the sole discretion of the Department. If the proposal includes both land acquisition and development, the Department, at its discretion, may elect to accept only the offer for acquisition, which will be evaluated as described above.

<i>Criteria Description</i>	<i>Points</i>	
<b>Suitability of Property</b>		
Location and Site Characteristics	20	
Cost of Acquisition	10	
Off-Site Infrastructure	10	
Total Possible Points		40
<b>Development</b>		
Proposal		25
DHHL Cost	10	
Developer input	5	
Schedule	5	
Site and House Designs	5	
Team's Qualifications		35
Previous Projects	15	
Financial Capacity	20	
Total Possible Points		60

#### 4.2 SUITABILITY OF PROPERTY

Properties offered shall be evaluated on the following criteria.

- 1) Location and Site Characteristics:
  - a. Higher consideration will be given to properties on Oahu, which has the greatest waitlist demand and where DHHL has the smallest inventory.
  - b. Even, gently sloping topography.
  - c. No environmental concerns (flood zones, archaeology, flora/fauna, hazmat, etc.).
  - d. Compatibility with surrounding development.

- e. Proximity of community services (police, fire, medical, schools, etc.).
- 2) Cost of Acquisition
  - a. Total proposed price versus appraised value and/or tax assessed value.
  - b. Price per acre versus similar properties.
- 3) Off-Site Infrastructure
  - a. Proximity to existing roadways and utility systems. Higher consideration will be given to properties closest to existing infrastructure.
  - b. Capacity of utility systems expected to serve the development (water, wastewater, electricity, telecommunications). Higher consideration will be given to properties closest to utility systems with existing adequate capacity.

#### **4.3 DEVELOPMENT PROPOSAL**

If the offer includes a proposal to develop the property, development proposals shall be evaluated on the following criteria:

- 1) DHHL Cost: Proposed cost for design and construction of on- and off-site infrastructure.
- 2) Developer input: Proposed methods to leverage existing sources of funds to lower the cost of infrastructure to the Department and/or cost of housing units to beneficiaries.
- 3) Schedule: Proposed times for major milestones to develop the project.
- 4) Site and House Designs: Proposed mixture of development models (turnkey, rent with-option-to-purchase, owner-builder, etc.) addressing the various economic statuses of beneficiary families.

#### **4.4 OFFEROR QUALIFICATIONS**

If the offer includes a proposal to develop the property, minimum Qualifications for Offerors, at the time the proposal is submitted:

- 1) A principal member of the Offeror's company must have at least five (5) years of housing development experience in the State of Hawaii, including but not limited to single-family, multi-family, affordable rental, apartment, townhouse and condominium development.
- 2) The Offeror shall name the Responsible Managerial Employee (RME) who will be responsible for day-to-day operations and oversight throughout the design and construction of the Project. The RME shall have had substantial responsibility or been materially involved in the development and/or operation of at least three (3) separate subdivision or housing development projects with at least one project consisting of thirty (30) or more units. Offerors having experience with developing projects over one hundred (100) units may be afforded additional consideration.
- 3) The Offeror shall demonstrate its team's capacity to complete projects of similar size and scope.

- 4) The Offeror shall show evidence of credit worthiness and financial resources to complete the design and construction of the Project lien-free. Offerors may provide evidence of financing related to completed projects. If applicable, Offerors shall include proposals for providing equity, or lender financing, which would lessen the burden on DHHL.
- 5) At the time of the submittal of the proposal, the Offeror must be authorized to do business in the State of Hawaii and have all licenses necessary to carry out the design, construction, and management of the Project. All persons and entities to be used on the design and construction shall possess all required professional and other licenses issued by the State of Hawaii including, but not limited to, planners, architects, engineers, contractors, sub-contractors, sales agents, and lenders.
- 6) At the time of submittal of the proposal, the Offeror shall not be in default or have failed to perform under any contract, agreement, development or design-build agreement, or lease with the State of Hawaii, and not have any outstanding judgments.
- 7) The Offeror shall provide its two (2) most recent audited annual financial statements, a statement of financial net worth, or statement of bonding capacity.

#### **4.5 DISQUALIFICATION OF OFFERORS**

Any one or more of the following causes will be considered as sufficient for the disqualification of an Offeror and the rejection of its proposal or proposals:

- 1) Non-compliance with HRS § 103D-310.
- 2) Evidence of collusion among Offerors.
- 3) More than one proposal for the same work from an individual, firm, partnership, corporation, or joint venture under the same or different name.
- 4) Delivery of proposals after the deadline specified in the advertisement calling for proposals.
- 5) Debarment or suspension pursuant to HRS § 103D-702.

## SECTION FIVE

### CONTRACTOR SELECTION AND CONTRACT AWARD

#### 5.1 EVALUATION OF PROPOSALS

An Evaluation Committee of at least three (3) qualified State employees selected by the Procurement Officer shall evaluate proposals. The evaluation will be based solely on the evaluation criteria set out in Section Four of this RFP.

Each member of the evaluation committee shall explain his or her ranking determination in writing which shall be placed in the procurement file. The written ranking evaluations or explanations shall be available for public inspection after the award of contract is posted.

Prior to holding any discussions with Offerors, a priority list shall be generated consisting of offers determined by the Evaluation Committee to be acceptable or potentially acceptable. However, proposals may be accepted without such discussions.

If numerous acceptable and potentially acceptable proposals are submitted, the Evaluation Committee may limit the priority list to the three highest ranked, responsible Offerors for each major island.

#### 5.2 DISCUSSION WITH PRIORITY LISTED OFFERORS

Before conducting discussions, a priority list shall be generated by the evaluation committee. To generate a priority list, proposals shall be classified as acceptable, potentially acceptable, or unacceptable. All responsible offerors who submit acceptable or potentially acceptable proposals are eligible for the priority list. If numerous acceptable and potentially acceptable proposals have been submitted, the evaluation committee may rank the proposals and limit the priority list to at least three responsible offerors who submitted the highest-ranking proposals. Those responsible offerors who are selected for the priority list and referred to as the "priority-listed offerors."

The State may invite priority listed Offerors who submit proposals determined to be acceptable or potentially acceptable of being selected for award to discuss their proposals. The objective of these discussions is to promote understanding of the requirements set forth in the RFP and the Offeror's proposal; and facilitate arriving at a contract that will provide the best value to the Department, taking into consideration the evaluation factors set forth in this RFP. The State in its sole discretion shall schedule the time and location for these discussions, generally within the timeframe indicated in *RFP Schedule and Significant Dates*. Any discussion is not intended to require an award of contract by the Department.

Proposals may be accepted on evaluation without discussion.

Priority-listed offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. Any substantial oral clarification of a proposal shall be reduced to writing by the priority-listed offeror. If during discussions there is a need for a substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate the clarification or change.

Addenda to the RFP shall be distributed only to the priority-listed offerors. The priority-listed offerors shall be permitted to submit new proposals or to amend those submitted. If in the opinion of the evaluation committee, a contemplated amendment will significantly change the nature of the procurement, the RFP shall be cancelled a new RFP will be issued.

The contents of any proposal shall not be disclosed to competing offerors during the discussion process.

### **5.3 BEST AND FINAL OFFER**

If the State determines a best and final offer (BAFO) is necessary, it shall request one from the Offeror. BAFOs shall be submitted only once, unless the Chairman or a designee of the Chairman above the level of procurement officer determines in writing that it is in the State's best interest to conduct additional discussions or change the State's requirements by an addendum distributed only to priority-listed offerors and require another submission of BAFOs. Otherwise, no discussion of or changes in the BAFO shall be allowed prior to the award.

The State shall inform priority-listed offerors that if they do not submit a notice of withdrawal or another BAFO, their immediate previous offer will be construed as their BAFO. After BAFOs are received, final evaluations will be conducted for an award pursuant to HAR § 3-122-57. The Offeror shall submit its BAFO and any BAFO received after the deadline or not received shall not be considered.

### **5.4 AWARD OF CONTRACT**

The Department may accept more than one proposal submitted and reserves the right to reject any or all proposals as unacceptable. If a proposal to develop the land is included, the Department may accept only the offer for land acquisition.

The award shall be issued in writing to the responsible Offeror whose proposal is determined in writing to provide the best value to the State taking into consideration price and the evaluation criteria in the RFP and posted pursuant to HRS § 103D-701 for five (5) working days. Other criteria may not be used in the evaluation. The contract file shall include the basis for selecting the successful Offeror. Cost or pricing data requirements shall be as specified in HRS § 103D-312.

The determination of the final offer shall be final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law.

### **5.5 RESPONSIBILITY OF OFFERORS**

Offeror is advised that to be awarded a contract under this solicitation, Offeror will be required, to be compliant with all laws governing entities doing business in the State including the following chapters and pursuant to HRS § 103D-310(c):

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



The Offeror shall be registered and incorporated or organized under the laws of the State of Hawaii. The Offeror will be a Hawaii business, which is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, the Offeror will submit a Certificate of Good Standing issued by the Department of Commerce and Consumer Affairs Business Registration Division. A Hawaii business doing business as a sole proprietorship is not required to register with the DCCA, and therefore not required to submit the certificate. An Offeror's status as sole proprietor or other business entity and its business street address will be used to confirm that the Offeror is a Hawaii business.

In the alternate, the Offeror will be registered to do business in the State of Hawaii. A business entity referred to as a compliant non-Hawaii business is not incorporated or organized under the laws of the State of Hawaii, but is registered to do business in the State. As evidence of compliance, the Offeror will submit a Certificate of Good Standing.

The State will verify compliance on Hawaii Compliance Express (HCE).

**Hawaii Compliance Express.** The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service, Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

Vendors/contractors/service providers should register with (HCE) prior to submitting an offer at <https://vendors.ehawaii.gov>. The annual registration fee is \$12.00 and the 'Certificate of Vendor Compliance' is accepted for the execution of contract and final payment.

**Timely Registration on HCE.** Vendors/contractors/service providers are advised to register on HCE soon as possible. If a vendor/contractor/service provider is not compliant on HCE at the time of award, an Offeror will not receive the award.

## **5.6 PROPOSAL AS PART OF THE CONTRACT**

This RFP, any addenda issued, and the successful Offeror's proposal shall become a part of the contract. All proposals shall become the property of the State of Hawaii.

## **5.7 PUBLIC INSPECTION OF PROPOSALS**

The existing contract file, except those portions the offeror designates in writing as trade secrets or other proprietary data to be confidential, shall be available for public inspection upon posting of award pursuant to HRS § 103D-701. The contract file shall include, but is not limited to the following: the register of proposals prepared pursuant to HAR § 3-122-51; a listing of all vendors to whom copies of the RFP were distributed; name of successful Offeror and dollar amount of the offer; the basis on which the award was made; a copy of the RFP; a copy of the successful Offeror's proposal; a copy of all unsuccessful offerors' proposals; and a copy of the executed contract resulting from the RFP.

If a person requests to inspect the portions of an offeror's proposal designated as confidential pursuant to HAR § 3-122-46(9), the inspection shall be subject to written determination by the attorney general for confidentiality in accordance with HRS Chapter 92F. If the attorney general determines in writing that the material designated as

confidential is subject to disclosure, the material shall be open to public inspection unless the Offeror appeals pursuant to HRS § 92F-42(1). If the Department denies a person access to a state procurement record, the person may appeal the denial to the State's Office of Information Practice in accordance with HRS § 92F-15.5.

## **5.8 DEBRIEFING**

The purpose of a debriefing is to inform the nonselected offerors of the basis for the source selection decision and contract award. A written request for debriefing shall be made within three working days after the posting of the contract award.

The Procurement Officer or designee shall hold the debriefing to the maximum extent practicable, within seven working days; provided the procurement officer or designee may determine whether or not to conduct individual or combined debriefings.

Any protest by the requestor following a debriefing, shall be filed within five working days, as specified in HRS § 103D-303(h).

## **5.9 PROTEST PROCEDURES**

Pursuant to HRS § 103D-701 and HAR § 3-126-3, an actual or prospective offeror (protestor) who is aggrieved in connection with the solicitation or award of a contract may submit a protest.

An actual or prospective Offeror may protest the solicitation or award of services only for a serious violation of procurement policies and operational procedures. Only the following matters may be protested:

1. A state purchasing agency's failure to follow procedures established by Chapter 103D, HRS, as amended.
2. A state purchasing agency's failure to follow any statute established by Chapter 103D, HRS, as amended.
3. A state purchasing agency's failure to follow any procedure, requirement, or evaluation criterion in a request for proposals issued by the state purchasing agency.

The notice of award, if any, resulting from this solicitation shall be posted on the Procurement Reporting System, which is available on the SPO website: <http://www.hawaii.gov/spo2/source/>.

Any protest pursuant to HRS § 103D-701 and HAR § 3-126-3 shall be submitted in writing to the Procurement Officer at:

Kali Watson, Chairman  
Hawaiian Homes Commission  
Department of Hawaiian Home Lands  
91-5420 Kapolei Parkway  
Kapolei, HI 96707

A protest shall be submitted in writing within five (5) working days after the protestor 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 or if requested, within five (5) working days after the procurement officer's debriefing was completed.

#### **5.10 NOTICE OF AWARD AND APPROVALS**

Any Contract arising out of this solicitation is subject to the approval of the Department, the State Department of the Attorney General as to form, further approvals including the approval of the Governor, as required by statute, regulation, rule, order, or other directive. Any Contract out of this solicitation is subject to the availability of funding.

The Offeror will receive a Notice of Award which will indicate that the Offeror has been selected to provide the services under this RFP. No work is to be undertaken by the Offeror prior to the Contract commencement date. The Department is not liable for any work, contract, costs, expenses, loss of profits, or any damage whatsoever incurred by the Offeror prior to the Contract commencement date as specified in the Contract. Pursuant to HAR\_§ 3-122-12, the Offeror will produce documents to the Procurement Officer to demonstrate compliance with this section.

#### **5.11 ADDITIONAL TERMS AND CONDITIONS**

The Department reserves the right to add terms and conditions during contract negotiation and discussions. The terms and conditions may be applicable to the scope of the RFP and will not affect the proposal evaluation.

#### **5.12 CONTRACT EXECUTION**

If the offer includes a proposal to develop the property, which is accepted by the Department, a successful Offeror receiving award shall enter into a Development Agreement. No performance or payment bond is required for this contract.

If the parties are not able to come to a mutually agreeable Development Agreement prior to the deadline to execute the Development Agreement specified in section 1.4 of this RFP, the Department, at its discretion, may elect to rescind an award from a successful Offeror.

No work is to be undertaken by the Contractor prior to the effective date of the contract. The State of Hawaii 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 of the contract.

If an option to extend is mutually agreed upon, the Contractor shall be required to execute a supplemental to the contract for the additional extension period.

#### **5.13 MONITORING AND EVALUATION**

The Offeror's performance under the Contract will be monitored and evaluated by the DHHL Contract Administrator or their designated representative. Failure to comply with all material terms of the Contract may be cause for suspension or termination as provided in the General condition. The Offeror may be required to submit additional written reports, including a corrective action plan, in response to monitoring conducted by the Department. These additional reports will not be considered a change to the scope of work and will continue for a duration of time as deemed necessary by the Department.

**5.14 CONTRACT MODIFICATIONS – UNANTICIPATED AMENDMENTS**

During the course of this contract, the Offeror may be required to perform additional work that will be within the general scope of the initial contract. When additional work is required, the Contract Administrator will provide the Offeror a written description of the additional work and request the Offeror to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work.

Changes to the contract may be modified only by written document (contract modification) signed by the Department of Hawaiian Home Lands and Offeror personnel authorized to sign contracts on behalf of the Offeror. The Offeror will not commence additional work until a signed contract modification has been issued.

**5.14 GOVERNING LAW - COST OF LITIGATION**

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 equity to enforce or interpret the provisions of this contract shall be brought in a state court or competent jurisdiction in Honolulu, Hawaii.

In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Offeror in connection with this contract, the Offeror shall pay all costs and expenses incurred by or imposed on the State, including attorneys' fees.

**5.15 INDEMNIFICATION**

The Offeror will defend, indemnify, and hold harmless the State of Hawaii, the Department, officers, agents and employees from and against all liability, loss, damage, cost, and expense, including attorneys' fees, and all claims, suits, and demands arising out of or resulting from the acts or omission of the Offeror or the Offeror's officers, employees, agents, or subcontractors.

**5.16 INSURANCE**

A. Prior to the effective date of the contract, the Contractor shall procure at its sole expense and maintain insurance coverage acceptable to the State in full force and effect throughout the term of the Contract. The Offeror shall provide proof of insurance for the following minimum insurance coverage(s) and limit(s) to be awarded a Contract. The type of insurance coverage is listed as follows:

<u>Insurance Coverage</u>	<u>Minimum Policy Limits</u>
General Liability	\$2,000,000.00 in the aggregate for property damage; \$1,000,000.00 per occurrence for injuries to or death of any one person in any accident in the aggregate
Workers' Compensation	As required by Hawaii laws
Fire and extended coverage	100% replacement value

Builder's risk covering the general contractor and all subcontractors	100% replacement value
Malicious mischief	100% replacement value
Flood insurance (if required)	Maximum coverage available

- B. The Contractor shall deposit with the Department, on or before the effective date of the Contract, certificate(s) of insurance necessary to satisfy the Department that the provisions of the Contract have been complied with, and to keep such insurance in effect and provide the certificate(s) of insurance to the Department during the entire term of the Contract. Upon request by the Department, the Contractor shall furnish a copy of the policy or policies.
- C. The Contractor shall immediately provide written notice to the Department should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, substantively changed, limited in scope, or not renewed upon expiration.
- D. The certificates of insurance shall contain the following clauses:
  1. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
  2. "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."
- E. Failure of the Contractor to provide and keep in force such insurance shall constitute a material default under the Contract, entitling the State to exercise any or all remedies provided in the Contract (including without limitation terminating the Contract). The procuring of any required policy or policies of insurance shall not be construed to limit the Contractor's liability hereunder, or to fulfill the indemnification provisions of the Contract. Notwithstanding said policy or policies of insurance, the Contractor shall be responsible for the full and total amount of any damage, injury, or loss caused by the Contractor's negligence or neglect in the provision of services under the Contract.

**5.17 PAYMENT**

- A. Invoices shall be submitted by the Contractor, and incremental payments shall be made to the Contractor, upon receipt of deliverables that are 100% complete, meet the criteria of the RFP, and meet the expectations of the project team. Payments will not be issued for partially completed deliverables. Payments for tasks, such as project management, which span the duration of the project, will be paid upon project completion. The receipt of deliverables shall be due based on the timeline submitted by the Offeror in the proposal, or as amended.

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

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

- B. Payment for purchase of the land will be made through an escrow company upon closing.
- B. If the offer includes a proposal to develop the property, incremental payments shall be made to the awarded Developer monthly, upon receipt of reports that meet the expectations of the RFP. The submittal of monthly reports shall be in accordance with the Development Agreement.

#### **5.18 SUBCONTRACTING**

No work or services shall be subcontracted or assigned without the prior written approval of the Department. No subcontract shall under any circumstances relieve the Offeror of their obligations and liability under this contract with the State. All persons engaged in performing the work covered by the contract shall be considered employees of the Contractor.

#### **5.19 CONTRACT INVALIDATION**

If any provision of the contract is found to be invalid, such invalidation will not be construed to invalidate the entire contract.

#### **5.20 CONFLICTS OF INTEREST**

The Offeror represents that neither the Offeror, nor any employee or agent of the Offeror, 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 Offeror's performance of this contract.

#### **5.21 WAIVER**

The failure of the Department 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.

#### **5.22 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.

#### **5.23 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTOR**

If Offeror is awarded a contract in response to this solicitation, the Offeror shall agree to comply with HRS § 11-205.5, which states that campaign contributions are prohibited from a State government contractor during the term of the contract if the contractor is paid with funds appropriated by a legislative body.

#### **5.24 FAILURE TO DELIVER**

The Offeror shall deliver products awarded in this contract in accordance with the terms and conditions herein. Failure to produce an acceptable deliverable by its respective deadline may be cause for termination of contract and the barring of the Contractor from future bidding. If the Offeror fails to request approval to delay delivery or if the

Department denies the request, the Department reserves the right to terminate the contract and may bar the Offeror from future bidding.

## **SECTION SIX**

### **SPECIAL PROVISIONS**

#### **6.1 OFFER GUARANTY**

A proposal security deposit is NOT required for this RFP.

#### **6.2 PROPERTY ACCESS**

The Department shall have the right to itself, and to its staff, agents, and representatives, for reasonable access to the property for due diligence investigations relating to, but not limited to title search, appraisal, environmental assessment, and phase 1 environmental hazard assessment. The revelation of false or misleading statements or major omissions in a proposal will be grounds to cancel selection of the proposal and terminate negotiation of the Development Agreement.