



Department of Hawaiian Home Lands

RELEASE DATE: NOVEMBER 6, 2025

REQUEST FOR PROPOSALS
No. RFP-26-HHL-009

SEALED OFFERS
FOR
EAST KAPOLEI II II-A PROJECT

WILL BE RECEIVED UP TO 2:00 P.M. (HST) ON JANUARY 5, 2026

AT HALE KALANIANAOLE, 91-5420 KAPOLEI PARKWAY, KAPOLEI, HAWAII 96707. DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO ELIJAH DAVIDSON, TELEPHONE (808) 445-1664, E-MAIL AT elijah.m.davidson@hawaii.gov

KALI WATSON
CHAIRPERSON, HAWAIIAN HOMES COMMISSION
PROCUREMENT OFFICER

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SECTION ONE

INTRODUCTION, TERMS AND ACRONYMS, KEY DATES

1.1 INTRODUCTION

The State Department of Hawaiian Home Lands (DHHL) is issuing this Request for Proposals (RFP) for the East Kapolei II II-A Project, Kapolei, Oahu, Hawaii. The selected developer's responsibilities shall include design and construction of on- and off-site infrastructure; and design, construction, financing, and marketing of ~400-500 multi-family townhomes in an approximately ~32.6-acre residential development, including the construction of two adjacent parks and roadways. DHHL is specifically interested in design/build concepts that are "green build" in nature and affordable to buyers in a wide range of AMI categories. Proposals that bring these concepts together effectively will be viewed favorably. Developer's proposal should show how the project can be built/financed using minimal DHHL funds.

1.2 CANCELLATION OF RFP

This RFP may be cancelled and any or all submittals rejected in whole or in part, without liability to the State, when it is determined to be in the best interest of the State, pursuant to Hawaii Administrative Rules (HAR) 3-122-95 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 not accepted or if this RFP is cancelled.

1.3 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

ADA	=	Americans with Disabilities Act
AMI	=	Area Median Income
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 Chairperson during the solicitation period establishing changes to the request for proposals.

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

Applicant – A native Hawaiian who is a member of one of DHHL’s island-wide residential waiting lists.

Area Median Income (AMI) – the median income for a County as defined by HUD, and as adjusted for family size.

Beneficiary – A native Hawaiian or Hawaiian beneficiary of the Hawaiian Homes Commission Act.

Chairperson – Chairperson of the Hawaiian Homes Commission. The Chairperson also serves as the Director of the Department of Hawaiian Home Lands and is the Procurement Officer for the department.

Commission – The Hawaiian Homes Commission (HHC).

Contact Person – The person designated by the Department 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 of 1920, as amended.

Developer – The entity or person retained by the Department 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.

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

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 of 1920 (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.

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.

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 proposals.

Low-Income Housing Tax Credits or LIHTC – A program under Section 42 of the Internal Revenue Code that gives State and local LIHTC-allocating agencies budget authority to issue tax credits for the acquisition, rehabilitation, or new construction of rental housing targeted to lower-income households.

Median Income – The median income for the County as determined by HUD from time to time and as adjusted for family size.

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).

Project – Development of the DHHL property at Kapolei, Oahu, Hawaii, described in section two, Background and Scope of Work.

Project Lease – A homestead lease awarded by DHHL to a beneficiary for a specific DHHL housing project that is under development.

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.

Rent With Option to Purchase or RWOTP – A program that provides native Hawaiian beneficiaries with an alternative method to achieve homeownership through the assistance of the Tax Credit for Low Income Rental Housing Program, Tax Reform Act of 1986, as amended. Eligible families may receive a 99-year homestead lease while paying an affordable monthly rent for a homestead lot with the option to purchase the vertical improvements at the end of the required 15-year rental period.

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

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.

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

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

State – The State of Hawaii acting through its authorized representative.

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.

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.

Turn Key Unit – A housing unit financed and constructed by Developer for sale to a DHHL homestead lessee.

1.4 RFP SCHEDULE AND SIGNIFICANT DATES

Except for the January 5, 2026 proposal due date, the following 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 "Proposals Due" date 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 schedule is as follows:

Release of Request for Proposals	NOVEMBER 6, 2025
Deadline for DHHL to receive written inquiries to be answered at the Pre-submittal Conference Location: DHHL, 91-5420 Kapolei Parkway, Kapolei, HI 96707	NOVEMBER 12, 2025
Pre-submittal Conference Location: TEAMS meeting See Link below (“1.5 Pre-Submittal Conference”) <u>Contact:</u> Elijah Davidson, Land Development Division; (808) 445-1664; elijah.m.davidson@hawaii.gov	10:00 am, WEDNESDAY, NOVEMBER 19, 2025
Site Inspection: none	
Final deadline for written inquiries	DECEMBER 1, 2025
DHHL's responses to Offerors’ written inquiries distributed	DECEMBER 15, 2025
Deadline for DHHL to receive written Notice of Intent to Submit Proposals (Attachment 2) Location: DHHL, 91-5420 Kapolei Parkway, Kapolei, HI, 96707	2:00 pm MONDAY, DECEMBER 22, 2025
Proposals Due: A USB-C flash drive containing Offeror’s submittal files may be dropped off to DHHL’s office, located at 91-5420 Kapolei Parkway, Kapolei, HI, 96707. It can also be mailed to the above-address to arrive by the JANUARY 5, 2025 2:00pm due date. <u>This is a firm deadline unless changed by DHHL.</u>	2:00pm MONDAY, JANUARY 5, 2026
Determination of "Priority List" Offerors	JANUARY 12, 2026
Discussion with “Priority List” Offerors (if necessary)	FEBRUARY 9, 2026 (tentative)
Best and Final Offer (if necessary)	FEBRUARY 17, 2026 (tentative)
Notice of Award	FEBRUARY 24, 2026 (tentative)
Execution of Developer Agreement	JUNE 23, 2026 (tentative)

Solicitation documents may be obtained at the Hawaii Awards & Notices Data System (HANDS) Web site:

<https://hands.ehawaii.gov/hands/opportunities/>

There is no fee assessment to download the RFP documents from the SPO Web site. It is the responsibility of potential Offerors to check the SPO Web site for any addenda issued by DHHL.

1.5 PRE-SUBMITTAL CONFERENCE

The purpose of the pre-submittal conference is to provide Offerors an opportunity to be briefed on this procurement and to ask any questions about this procurement. While attendance at the pre-submittal 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-submittal conference does not change any part of this RFP. Any and all changes and/or clarifications to this RFP shall be done in the form of an addendum.

The pre-submittal conference will be held as follows:

Date: Wednesday, November 19, 2025

Time: 10:00 am

Location: [TEAMS](#) Link

Meeting ID: 229 855 195 928 3

Passcode: 4Cr2fN6z

Dial in by phone

+1 808-829-4853,,200125301#

A site visit will **not** be conducted following the pre-submittal conference. Access to the Project land is not restricted. Potential Offerors are encouraged to contact DHHL for a limited right-of-entry to inspect the land at their convenience.

1.6 QUESTIONS AND ANSWERS PRIOR TO RECEIPT OF PROPOSALS

All questions shall be submitted by the due date specified in Section 1.4, *RFP Schedule and Significant Dates*, as amended.

The State will respond to questions through Addenda/Amendments by the date specified in Section 1.4, *RFP Schedule and Significant Dates*, as amended.

1.7 NOTICE OF INTENT TO SUBMIT PROPOSALS

In accordance with Section 103D-310, Hawaii Revised Statutes, and Section 3-122-111, Hawaii Administrative Rules, a written Notice of Intention to Submit Proposals (“Notice”) must be submitted to the Chairperson. The Notice may be hand carried, mailed, or e-mailed to the office indicated in the RFP.

The written Notice must be received by the office indicated in the RFP. The written Notice will be time stamped when received. If the written Notice is hand carried, then the bearer is responsible to ensure that the Notice is time stamped. If the Notice is sent by email, the date and time indicated in the "Sent" field of the email shall be the presumptive date and time of receipt.

It is the responsibility of the prospective Offeror to ensure that the written Notice is received by the deadline indicated in the RFP. The Department assumes no responsibility for Offeror's failure to timely deliver the Notice.

SECTION TWO

BACKGROUND AND SCOPE OF WORK

2.1 PROJECT OVERVIEW AND HISTORY

The Hawaiian Homes Commission Act of 1920, as amended (HHCA), was enacted by the U.S. Congress to rehabilitate native Hawaiians. The Department of Hawaiian Home Lands (“DHHL”), created by the first Hawaii State Legislature, is tasked with administering certain public lands, called Hawaiian home lands, for homesteading by eligible native Hawaiians, defined as individuals having at least 50 percent Hawaiian blood.

Under Act 279, Session Laws of Hawaii 2022, the Hawaii State Legislature appropriated \$600,000,000 in funds to address the needs of HHCA beneficiaries still waiting for a Hawaiian home lands lease. The Hawaiian Homes Commission (“HHC”) has approved the Strategic Approach to Implement Act 279 - August 2022 (the “Act 279 Plan”), which provides:

For projects in the Engineering Design Phase, DHHL will explore Design-Build contract agreements utilizing Developer Agreements with private developers to expedite development timeframes.

The proposed Project in this RFP is part of the Act 279 Plan. In the development of the Project, the Developer shall comply with all applicable Federal, State and County laws, regulations, and standards. Proposals that can be financed/implemented using minimal DHHL funds will be viewed favorably.

The approximately ~32.6-acre project site is located at Kapolei, Island of Oahu, Tax Map Key: (1) 9-1-017-159 (EXHIBITS E and F). City and County of Honolulu Zoning is AG-1, Agricultural District. The Department has declared that the Project will be designed and built in accordance with **AMX-2** District standards.

The proposed Project will consist of ~400 to 500 multi-family housing units in townhome buildings, with a community center for project residents, two adjacent parks/roadways and onsite roadways and utilities infrastructure as described in Section 2.2.2 of this RFP. Proposals that provide a higher number of multi-family units will be viewed more favorably. Proposals that provide an income stream to cover common area maintenance costs will also be viewed more favorably.

The Department intends to award Project Leases to beneficiaries ahead of development. Once Project Leases have been awarded, the recipient’s financial capacity will be assessed to determine the appropriate mix of unit types and affordable prices of products the Developer will build for this Project, based on HUD Income Guidelines. The Department will view favorably proposals that service Beneficiaries with diverse income levels ranging from 30% AMI to 140% AMI and offer a range of financial options including Rent With Option to Purchase; and Turn Key Units.

The Department will view favorably proposals that use alternative construction methods to assist in delivering more affordable homes in a shorter timeframe to DHHL beneficiaries.

The housing unit mix is subject to negotiations between the developer and DHHL, and may be modified based on market conditions, availability of financing programs, or other factors. All residential housing lots shall be leased to eligible native Hawaiians who at closing will be awarded 99-year residential homestead leases from Department for one dollar (\$1.00) a year.

In addition to the multi-family homes, Proposals are to include the development of parks on the Keahumoa Parkway side of both TMK: (1) 9-1-017-156 and TMK: (1) 9-1-017-157 (Exhibit M and Exhibit N). The parks are to be developed between Keahumoa Parkway and the existing drainage basins. The design and construction of the parks areas must respect the existing access, drainage and sewer easements (Exhibit O) and electrical easements (Exhibit P) on both parcels and incorporate a design that will respect and protect the existing underground drainage infrastructure. The design of the parks shall prioritize low-maintenance uses and cost-effective practices while ensuring long-term functionality and community benefit.

2.1.1 Site Conditions

Landowner

State of Hawaii, Department of Hawaiian Home Lands.

Current Use of the Site

Vacant

Surrounding Uses

Residential

Infrastructure

Utilities:

Water: The Project will be connected to the Honolulu Board of Water Supply system, including the reservoir HI0000335 at the 215' elevation and transmission lines within the Kualaka'i Parkway. Non-potable water will be required for irrigation purposes once the recycled water system is energized.

Wastewater: The Project will be connected to the City & county of Honolulu sewer system.

Electricity: The Project will be connected to the Hawaiian Electric Company's system.

Telecommunication: The surrounding community is serviced by all major providers.

Access:

Roadway: Off Kualaka'i Parkway, through Keahumoa Parkway

Environmental Issues

The former Office of Environmental Quality Control has determined that the proposed master development is generally consistent with the previously accepted Final Environmental Impact Statement for the East Kapolei master Plan (available on the State Environmental Review website:

https://files.hawaii.gov/dbedt/erp/EA_EIS_Library/1998-07-23-OA-FEIS-East-Kapolei-Master-Plan.pdf

Abutilon menziesii (commonly known as red ilima or ko'olua'ula) is federal and state listed as endangered. A habitat conservation plan (HCP) was initiated in 1996 to mitigate for the effects of development on the population of plants in the East Kapolei region. The HCP and related Incidental Take License expired in 2021 without the success criteria of the HCP being met. The HCP and annual reports are available on the Division of Forestry and Wildlife, Wildlife Program website:

<https://dlnr.hawaii.gov/wildlife/hcp/approved-hcps/>

Beneficiary Survey

DHHL Beneficiaries Study Applicant Report, 2020 by SMS (EXHIBIT G) indicated that while a majority of applicants prefer a turn-key lot award (53.9%), there are some who would prefer a vacant lot with utilities (water, electricity and sewer) readily available (22.2%), or a single-family rental home with option to buy (8.9%).

2.2 SCOPE OF WORK

2.2.1 DHHL Project Objectives

- 1) To plan, design, and construct a multi-family residential development that considers the needs of the Department's waiting list and the existing site conditions, shows respect to the area, harmonizes with adjacent land uses, and will foster a sense of community interaction and identity.
- 2) To develop multi-family residential units for applicants on the Department's Residential Waitlist.
- 3) To provide low-income applicants an opportunity to participate in a Low Income Housing Tax Credit (LIHTC) Rent-with-Option-to-Purchase program.
- 4) To incorporate green building practices, including implementation of DHHL'S Ho'omaluo Energy Policy (EXHIBIT H) into the design and construction of the

facilities to achieve a lower cost of operation and maintenance by minimizing energy use.

- 5) To design and construct low-maintenance parks located on both TMK: (1) 9-1-017-156 and TMK: (1) 9-1-017-157 (Exhibit M and Exhibit N) that respect existing easements (Exhibit O and Exhibit P). The project must preserve the existing drainage basins on both parcels and incorporate design features that respect and protect the existing underground infrastructure. Park design shall prioritize low maintenance uses and cost-effective practices while ensuring long term functionality and community benefits.

2.2.2 Developer's Responsibilities

The Developer shall have the responsibility for all aspects of development planning and execution. The Developer's responsibilities shall include, but shall not be limited to, compliance with all federal, state and county requirements, and industry standards, 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. All backbone and secondary roadways and utilities infrastructure, including (without limitation) all sidewalks, curbs, gutters, planter strips, hydrants, roadway signage and lighting, shall be designed and constructed to the applicable City & County of Honolulu standards. Specific developer responsibilities include, but are not limited to:

- 1) Plan and design roadways and utilities for each increment.
- 2) Obtain approvals for subdivision and construction plans.
- 3) Solicit for and execute contract with contractor to construct on-site infrastructure for each increment.
- 4) Construction contractors and sub-contractors will be required to provide performance and payment bond, each in the full amount of the infrastructure construction contract.
- 5) Design, construct, finance, and market multi-family homes.
- 6) Provide periodic and ongoing inspections by licensed architects and/or engineers to ensure that the infrastructure and townhomes are built according to the plans and specifications accepted by 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.

- 7) 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.
- 8) Provide sufficient warranties to ensure correction of construction defects during the warranty period.
- 9) Establish a Condominium Association, as appropriate, and in compliance with any applicable administrative rules.
- 10) Manage Rent-With-Option-to Purchase Program, if applicable.
- 11) Use mailing labels provided by DHHL, to send out initial packets to applicants on the appropriate island-wide residential waiting lists, or any other appropriate and applicable waiting lists.
- 12) Primarily conduct orientation and lot selection meetings.

The Department retains the right to oversee all aspects of development, planning, and execution.

2.2.3 Department's Responsibilities

DHHL shall be responsible for the following:

- 1) Execute a Development Agreement with the Developer for the design, financing, construction, and marketing of the Project.
- 2) Submit to City & County of Honolulu a declaration that the Project shall be developed in accordance with AMX-2 zoning standards.
- 3) Pay the Developer monthly progress payments for infrastructure design and construction based on the value of services performed by the Developer, as estimated by the Developer and approved by DHHL. Reimburse Developer for

utility development fees or facility assessments, 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 multi-family housing building will be included as on-site building cost to be borne by the Developer and/or the purchaser of the multi-family units.

- 4) Provide Developer with mailing labels for initial mailout to applicants on the Oahu Island-wide Residential Waiting Lists or any other appropriate and applicable waiting lists.
- 5) Assist with information/orientation meetings and selection of lots/houses.
- 6) Certify the native Hawaiian qualification status of prospective buyers.
- 7) Award homestead leases in accordance with HHCA and DHHL Administrative Rules. Record leases, mortgages and other documents necessary for Developer's conveyance of multi-family homes to beneficiaries.
- 8) May make Affordable Housing Credits available to the Developer, subject to Affordable Housing Credits policy and negotiations with DHHL.
- 9) May provide zero-interest interim construction loan funds to qualified developers to fund the construction of turn-key housing units. Said loans will require no monthly re-payments; loan will be paid down from 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 reduces the sales price by the amount that would have been paid to the commercial lending institution.
- 10) Pursuant to HRS § 201H-36, request Hawaii Housing Finance and Development Corporation (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 and whom the Department has approved in writing, as exempt from applicable Hawaii general excise tax on gross income earned from the Project.

2.3 TERM OF CONTRACT

The term of contract shall be specified in the Development Agreement agreed to by the parties.

2.4 CONTRACT ADMINISTRATOR

For the purposes of this contract, Elijah Davidson, (808) 445-1664, or authorized representative, is designated the Contract Administrator.

2.5 OFFEROR PROPOSALS

Minimum Qualifications for Offerors, at the time Proposals are submitted:

- 1) A principal member of the Offeror's company must have at least five (5) years of multi-family housing development experience in the State of Hawaii.
- 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 development projects with at least one project consisting of one hundred (100) or more units.
- 3) The Offeror shall show evidence of credit worthiness and financial resources to complete the design and construction of the Project lien-free.
- 4) 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, architects, engineers, contractors, subcontractors, sales agents, managing agents and lenders.
- 5) 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 shall not have any outstanding judgments against it.
- 6) The Offeror shall provide its two (2) most recent audited annual financial statements, a statement of financial net worth, and statement of bonding capacity.
- 7) The Offeror shall provide evidence of two prior projects similar to that documented in the RFP and provide completed cost data.

2.6 DISQUALIFICATION OF OFFERORS

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

- 1) Non-compliance with HRS § 103D-310.
- 2) Evidence of collusion among Offerors.
- 3) More than one submittal for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name.

- 4) Delivery of submittal after the deadline specified in the advertisement calling for submittals.
- 5) Debarment or suspension pursuant to HRS § 103D-702.

SECTION THREE
PROPOSALS FORMAT AND CONTENT

3.1 OFFEROR’S AUTHORITY TO SUBMIT PROPOSALS

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

3.2 REQUIRED REVIEW

3.2.1 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.

3.2.2 Should Offeror find defects and questionable or objectionable items in the RFP, Offeror shall notify the Department of Hawaiian Home Lands in writing prior to the deadline for written questions as stated in the RFP *Schedule and Significant Dates*, as amended. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum and mitigate reliance of a defective solicitation and exposure of proposal(s) 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.

3.2.3 Offeror must also become familiar with State, County, 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 and submitting a Proposal shall be the Offeror’s sole responsibility whether or not any award results from this RFP. The State shall not reimburse such costs. 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

3.4.1 State GET Exemption – The Governor’s Fifteenth Proclamation Relating to Affordable Housing dated September 23, 2025 exempts state or county housing projects from the GET. Should the proclamation be amended or not be extended, DHHL shall apply to HHFDC for exemption from GET for gross income derived from the development of the Project pursuant to HRS § 201H-36.

3.4.2 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, 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, as applicable.

3.5 PROPERTY OF STATE

All submittals become the property of the State of Hawaii.

3.6 CONFIDENTIAL INFORMATION

3.6.1 If an Offeror believes that any portion of a submittal, protest, or correspondence contains information that should be withheld from disclosure as confidential, then the Offeror shall inform the Procurement Officer in writing and provide justification to support the Offeror's confidentiality claim. Price is not considered confidential and will not be withheld.

3.6.2 An Offeror shall request in writing nondisclosure of information such as designated trade secrets or other proprietary data Offeror considers to be confidential. Such requests for nondisclosure shall accompany the submittal, be clearly marked, and shall be readily separable from the submittal in order to facilitate eventual public inspection of the non-confidential portion of the submittal.

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

3.7 EXCEPTIONS

Offeror 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.

3.8 PROPOSAL CONTENTS

3.8.1 To be considered responsive, the Offeror's submittal 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.

3.8.2 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 indicate 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 a set of electronic files of all documents on a USB-C flash drive.

3.8.3 Handwritten Proposals are not acceptable.

3.9 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.

3.10 RECEIPT AND REGISTER 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.

3.11 MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF PROPOSALS

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.

3.12 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.

3.13 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)).

3.14 OFFER GUARANTY

A solicitation security deposit is not required for this RFP.

SECTION FOUR
EVALUATION CRITERIA

The award will be made to the responsible Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria listed in this section. The total number of points used to score the proposals is 100. Proposals will be evaluated based on the following point distribution.

<i>Criteria Description</i>	<i>Points</i>
<p><u>A. Experience</u></p> <p>The degree to which the proposal demonstrates the Offeror and the Offeror’s team experience and professional qualifications relevant to the Project. Points will be awarded based on the following:</p> <ol style="list-style-type: none"> 1. The Offeror and the team’s experience with developing projects of similar scope and size, with weight given to experience in directing a multidisciplinary team and facilitating a community involvement process. 2. The Offeror and team’s experience in efficiently planning, constructing, and managing of projects similar to that proposed in the RFP and familiarity with Hawaii real estate development requirements and challenges. 3. The Offeror and the team’s experience working on State or County housing agency projects, and participation in low-income housing financing programs. 	20
<p><u>B. Past Performance</u></p> <p>The degree to which the submittal demonstrates the Offeror and the Offeror’s team’s past performance on projects of similar size and scope for public agencies and/or the private sector. Points will be awarded based on the following:</p> <ol style="list-style-type: none"> 1. The Offeror and team’s ability to complete a project on schedule and within budget, obtain innovative financing, employ alternative construction techniques, and integrate community and supportive services into the overall development of projects similar to that proposed in the RFP. 2. Offeror’s demonstration that it is not in default and has not failed to perform under any contract, agreement, development design-build agreement, or lease with the State of Hawaii, and does not have any outstanding judgments against it. 	20

<p><u>C. Capacity</u></p> <p>The degree to which the submittal demonstrates the Offeror and the Offeror’s team’s capacity to complete projects of similar size and scope for public agencies and/or the private sector. Points will be awarded based on the following:</p> <ol style="list-style-type: none"> 1. The Offeror and team’s organization size, and number of employees; and description of the type, location, scheduled completion date, dollar value, and number of units of any concurrent projects that Offeror may be involved in. 2. The Offeror’s financial capacity (as developer and provider of guarantees) as evidenced by financial statements, most recent audit and bank references, and statement of how Offeror intends to honor all guarantees should the need arise. 3. The extent of the Offeror team’s organization chart clearly demonstrates the team’s capacity to meet the requirements of the RFP. 	<p>20</p>
<p><u>D. Project Approach</u></p> <p>The degree to which the submittal addresses the DHHL’s requirements and goals relevant to the project. Points will be awarded based on the following:</p> <ol style="list-style-type: none"> 1. Unique approaches or solutions the Offeror will undertake to assist DHHL in awarding homestead lots to native Hawaiians on DHHL’s application waitlist. 2. Unique approaches or solutions the Offeror will undertake to leverage existing sources of funds to lower the cost of infrastructure to DHHL and/or the cost of housing units to beneficiaries. 3. Unique approaches or solutions the Offeror will undertake to provide a mixture of development models (e.g., turn-key, rent-with option-to-purchase, etc.), addressing the economic diversity of Beneficiary families that are within the income levels ranging from 30% AMI to 140% AMI. 4. Unique approaches or solutions the Offeror will undertake to incorporate green building practices into the development, including implementing DHHL’s Ho’omalū Energy Policy. 5. Unique approaches or solutions the Offeror will undertake to create low-maintenance and cost-effective common spaces and parks. 6. Unique approaches the Offeror would undertake to generate revenue to offset or fully cover common area maintenance costs will be evaluated based on their creativity, feasibility, and sustainability. 	<p>20</p>

<p>Approaches that identify innovative income-generating opportunities tied to the project’s design, operation, or surrounding community; demonstrate clear financial models that reliably contribute to common area maintenance expenses over time; and align with the project’s mission, community values, and long-term viability. Approaches that reduce reliance on external subsidies or additional fees, while offering measurable outcomes, scalability, and minimal risk.</p> <p>7. Unique approaches the Offeror would undertake to use alternative construction methods to assist in delivering more affordable homes in a shorter timeframe to DHHL beneficiaries that are innovative, practical, and aligned with DHHL’s mission. Approaches that demonstrate construction techniques or technologies that reduce costs without compromising quality, improve efficiency in the permitting or building process, and shorten delivery timelines. Approaches that show clear, evidence-based benefits, and long-term sustainability while meeting housing standards.</p>	
<p><u>E. Fees, costs, and other project expenses</u></p> <p>The degree to which the proposed fees, costs, and other project expenses, including costs to be paid by DHHL and unit sales prices, are reasonable as compared to projects of similar size and scope for public agencies and/or private industry and to DHHL’s statutory mission to provide housing for its native Hawaiian beneficiaries.</p>	<p>20</p>
<p style="text-align: right;">Total Possible Points</p>	<p>100</p>

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 proposals 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.

5.2 DISCUSSION WITH PRIORITY LISTED OFFERORS

The State may invite priority listed Offerors to discuss their Proposals to ensure thorough, mutual understanding. 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 and 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 Chairperson or a designee of the Chairperson 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

Award will be made to the responsible Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria set forth in the RFP.

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 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 quickly and easily 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, the 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 be incorporated into the contract. All proposals shall become the property of the State of Hawaii.

5.7 PUBLIC INSPECTION OF PROPOSALS

Except for confidential portions, the Proposals shall be made available for public inspection upon posting of award pursuant to HRS § 103D-303(d).

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

Pursuant to HRS § 103D-303(h) and HAR § 3-122-60, a non-selected Offeror may request a debriefing to understand the basis for award.

A written request for a debriefing shall be made within three (3) working days after the posting of the contract award. The Procurement Officer or designee shall, to the extent practicable, hold the debriefing within seven (7) working days from the receipt date of Offeror’s written request for debriefing.

Any protest by a Offeror following a debriefing, shall be filed within five (5) working days after the date upon which the debriefing is completed, as specified in HRS § 103D-303(h) and HAR § 3-122-60.

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.

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

Honorable Kali Watson, Chairperson
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 proposals. 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.

The notice of award, if any, resulting from this solicitation shall be posted on the Hawaii Awards & Notices Data System (HANDS), which is available on the SPO website: <https://hands.ehawaii.gov/hands/awards>.

5.10 NOTICE OF AWARD AND APPROVALS

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

Successful Offeror receiving award shall enter into an agreement (Term Sheet) executed with DHHL 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 specified in section 1.4 of this RFP.

In the event that the parties are not able to come to a mutually agreeable Development Agreement, the Department, at its discretion, may elect to rescind the award, then start negotiations with the second-ranked Offeror. Should the second round of negotiations also fail to result in a Development Agreement, the Department may commence negotiations with the third-ranked Offeror.

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 with 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 contract start date, the Developer shall procure and maintain, at its sole expense, insurance coverage acceptable to the State in full force and effect throughout the term of the Development Agreement. The name of the Insuree and Developer will be the same. The Developer 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
 <u>Construction Defect</u>	 <u>10 year tail coverage</u>

The insurance policies shall be in a form and substance including amounts of coverage, acceptable to DHHL.

Developer shall furnish DHHL with insurance policies and/or certificates, which shall name DHHL as an additional insured. Such insurance policies shall provide that the insurance company shall give DHHL no less than thirty (30) days prior written notice of any termination or cancellation of such insurance policies.

- B. Developer shall deposit with DHHL, on or before the effective date of the Development Agreement, certificate(s) of insurance necessary to satisfy DHHL that the insurance coverage provisions of the Development Agreement have been complied with. Developer shall keep such insurance in effect and provide the certificate(s) of insurance to DHHL during the entire term of the Development Agreement. Upon request by DHHL, Developer shall furnish a copy of the insurance policy or policies.
- C. Developer will immediately provide written notice to DHHL should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, 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 Developer to provide and keep in force such insurance shall constitute a material default under the Development Agreement, entitling the State to exercise any or all of the remedies provided in the Development Agreement (including without limitation terminating the Development Agreement). The procuring of any required policy or policies of insurance shall not be construed to limit the Developer's liability hereunder, or to fulfill the indemnification provisions of the Development Agreement. Notwithstanding said policy or policies of insurance, the Developer 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 Development Agreement.

5.17 REQUIREMENTS FOR PERFORMANCE AND PAYMENT BONDS

Pursuant to HAR § 3-122-224, before any construction contract is entered into, the Contractor shall provide performance and payment bonds to the State. The bonds shall each be in the penal sum of one hundred percent (100%) of the amount of the contract awarded.

5.18 PAYMENT

Incremental payments for infrastructure design and construction work shall be made to the awarded Developer monthly, in accordance with the Development Agreement.

5.19 DEVELOPMENT AGREEMENT INVALIDATION

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

5.20 NO ASSIGNMENTS

The Developer may not assign the Development Agreement without DHHL's written consent. If the Developer desires to assign the Development Agreement, the assignee must meet all requirements imposed by DHHL, and must be acceptable to DHHL. If DHHL consents to an assignment of the Development Agreement, DHHL shall not be required to release the Developer, including any guarantor nor security which secures the payment and performance of the Developer's obligations under the Development Agreement.

5.21 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.

5.22 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.

5.23 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.

5.24 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.

5.25 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.

5.26 RELATIONSHIP BETWEEN THE DEVELOPER AND DHHL

Subject to Hawaiian Homes Commission approval, DHHL may enter development, financing, management, or other working agreements with Developer for the project. There will, however, be no partnership, joint venture akin to a partnership, employer and employee, master and servant, or other agency relationship between DHHL and Developer such that the Developer's acts, omissions, or liabilities may be imputed to DHHL. The Developer, inclusive of any person acting by, through, under, or for the benefit of the Developer, such as, for example, any real estate broker or sales person, will not represent or hold itself out as being a partner, joint venture, employee, servant, or agent of DHHL, nor will the Developer, inclusive of any person acting by, through, under, or for the benefit of Developer, have any authority to bind, act for, or represent DHHL in any respect. The Developer will be constructing the Project in the Developer's own behalf and will release, indemnify, defend, and hold DHHL harmless from all claims, demands, lawsuits, judgments deficiencies, damages (whether paid by DHHL as part of a settlement or as a result of a judgment), and expense, including attorney's fees, and all costs of suit, made against DHHL or incurred or paid by DHHL arising out of or in connection with Developer's design, construction, management, and maintenance of the Project.